



Item No: 9

Meeting Date: Wednesday 8th November 2017

Glasgow City Integration Joint Board

Report By: Susanne Millar, Chief Officer, Strategy & Operations /
Chief Social Work Officer

Contact: Mike Burns, Head Strategy and Operations, Children's
Services

Tel: 0141 276 5880

TREATMENT FOSTER CARE SERVICE REVIEW AND EMPLOYMENT TRIBUNAL JUDGEMENT

Purpose of Report:	<p>To advise the IJB on the comprehensive review of Treatment Foster Care (TFC) undertaken by Glasgow Health and Social Care Partnership regarding the financial cost of the service and the impact on outcomes for young people.</p> <p>Also to advise the IJB on the implications of the judgement by the Employment Tribunal relating to foster carers (the claimants) with the Treatment Foster Care Service.</p>
Background/Engagement:	<p>Treatment Foster Care was introduced to address a specific cohort of children and young people, who have experienced repeated placements disruptions and consequently, experienced repeated moves. On occasions, a number of such young people have escalated to high cost placements in the past.</p> <p>After 9 years, it was considered both prudent and necessary to commence a review of the service. The staff have been leading on this review and the Carers have been advised that a comprehensive review has been undertaken. Regular and on-going support and engagement has remained available to the Carers throughout.</p>

Recommendations:	<p>The Integration Joint Board is asked to:</p> <p>a) approve the termination of the Treatment Foster Care Service and direct the Chief Executive of Glasgow City Council to resolve the staffing issues therein.</p>
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Relevance to Integration Joint Board Strategic Plan:

Page 18, Children's Services section 'to secure better outcomes for every child in Glasgow'.

Implications for Health and Social Care Partnership:

Reference to National Health & Wellbeing Outcome:	Outcome 9: resources are used effectively and efficiently in the provision of health and social care services.
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Personnel:	The current Health Board and Council employees within the scheme will require to be reassigned within the HSCP.
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Carers:	Carers will require to be provided with alternative arrangements. The judgement of the Employment Tribunal is being appealed. In relation to those carers affected by the judgement, if the appeal is unsuccessful, the alternative arrangements will have to be consistent with employee status.
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Provider Organisations:	There are no provider organisations involved.
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Equalities:	There are not considered to be any equalities issues coming from the recommendation in the paper.
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Financial:	The financial implications of acceptance of the recommendations are that current resource, both financial and specialist health and care workforce, can be re-directed into providing ongoing support to greater numbers of children and young people in the LAAC system with complex issues to address.
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Legal:	An application was made by Glasgow City Council to have the judgement reconsidered. That was on the basis that it was believed that factual errors were made in the judgement. A decision was made regarding that application on 20 October 2017 and received by Glasgow City Council on 27 October 2017. While it was accepted by the Employment Judge that a factual error had been made, ultimately he affirmed his original decision.
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	<p>Separately, an application has been made to appeal the decision of the Employment Tribunal. That appeal is made to the Employment Appeal Tribunal.</p> <p>If the decision is taken to close the TFC service it is likely that would be a redundancy situation, if the appeal to the EAT is unsuccessful.</p>
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Economic Impact:	None
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Sustainability:	None
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Sustainable Procurement and Article 19:	Not applicable
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Risk Implications:	<p>The risk implications specifically related to the TFC service is that the financial investment is not commensurate with the outcomes secured for children. It would not represent value for money to continue with the service nor does the service align with the HSCP transformation agenda and continued investment in residential care.</p> <p>Separate from that the Employment Tribunal decision is being appealed, if that is unsuccessful there are risks that the claimants will be successful with their claims for unlawful deductions from wages and whistleblowing. There will be risks that similar claims will be made by other carers in TFC. If the TFC service is terminated in a way that is not consistent with employee or worker status then there may be further claims made to the Employment Tribunal. The risk of those claims would be mitigated by treating the carers as employees.</p>
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Implications for Glasgow City Council:	The Employment Tribunal and its conclusions has received previous media coverage; a decision by the IJB as recommended will likely lead to further media coverage.
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Implications for NHS Greater Glasgow & Clyde:	None
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Direction Required to Council, Health Board or Both	Direction to:	
	1. No Direction Required	
	2. Glasgow City Council	✓
	3. NHS Greater Glasgow & Clyde	
	4. Glasgow City Council and NHS Greater Glasgow & Clyde	

1. Introduction

- 1.1 The report summarises the comprehensive and detailed reviews undertaken by the Health and Social Care Partnership into both Treatment Foster Care sites.
- 1.2 This report also advises the Integration Joint Board on the outcome and implications of the Employment Tribunal's decision following two Treatment Foster Carers' legal application to secure employee rights with Glasgow City Council.
- 1.3 The report outlines the implications for the Treatment Foster Care Service within the Health and Social Care Partnership (HSCP) and also highlights the employment implications for the council.

2. Background

- 2.1 The Glasgow Treatment Foster Care Service for **Adolescents and Children**, formerly Multidimensional Treatment Foster Care (MTFC), was established in January 2009 and is led by Social Work Services in partnership with NHS Greater Glasgow and Clyde Specialist Children's Services and Education services. The service for Middle Childhood was developed in January 2015.
- 2.2 The decision to expand the TFC service in Glasgow followed examination of a large scale Needs Assessment conducted in 2013 on young people within Glasgow's Foster Care Service, Residential Child Care services and two specialist child service provisions.
- 2.3 TFC which is based on a licenced programme is unique to Scotland and was previously part of a larger Treatment Foster Care Oregon network. TFC Glasgow was awarded its accreditation from Oregon Social Learning Centre (OSCL) in April 2013 and was re-accredited in April 2015.
- 2.4 TFC was introduced in Glasgow due to the number of young people in high cost residential placements, who due to emotional and behavioural challenges have experienced repeated placement disruptions and are deemed difficult to manage within mainstream placements. Expected outcomes of Treatment Foster Care included:
 - Progression to a less restrictive environment at the end of intervention; with the ultimate goal of returning the young person home or on to long term foster placement.
 - Increased capacity to live within a family environment.
 - Improved functioning including engagement with mainstream education.
 - A reduction in problematic behaviours.

3. Findings from the Health and Social Care Partnership Review

- 3.1 Following the creation of the Health and Social Care Partnership, a decision was made to review all evidenced based groups such as Stop Now and Plan (SNAP), Result (a residential approach), KEEP (a foster care approach) and Treatment Foster Care. The new Head of Service was commissioned to review these programmes in light of the changing financial challenges and the renewed strategy to shift the balance of care and invest in local community family support. It was timely to review these programmes around value for money, best value, their efficacy and most critically in terms of their impact on securing good outcomes for the children and young people of Glasgow.
- 3.2 After a comprehensive and detailed review of TFC, undertaken over 9 months and involving a multi-disciplinary team of professionals the following **findings** were established;
- 3.3 Glasgow TFC is one of 27 sites that have opened in the UK Since 2002. At 2017 there are now only 3 accredited sites still operating in the UK, namely Wessex, Manchester and Glasgow. The attrition rate for TFC sites has been 88.8%.
- 3.4 Review of Glasgow's TFC service has shown that outcomes for young people from high cost placements are not as expected. Evidence of its efficacy with 'hard-to manage' adolescents within the social care system in the UK remains limited. To date a randomised control trial (RCT) of TFC with adolescents within the UK care system (CaPE evaluation 2013) has concluded no significant overall additional benefit of TFC for these young people compared to being in a usual care placement on all key outcomes.
- 3.5 Further professional staff remained concerned about the impact on the young person of yet another placement change.
- 3.6 Critically, an outcomes analysis of placement pathways (based on a small control group of young people suitable for TFC but who received treatment as usual) suggests no additional benefit for young people compared to being in a usual care placement.
- 3.7 Examination of targeting also shows that the service has not been prioritised to those young people from high cost placements as per its original aims.
- 3.8 Trends show that there has been an overall increase in the use of purchased placements following TFC involvement.
- 3.9 Trends show that of the sample of young people for whom 1 year follow up data was available only half (54%) of TFC graduates remained in their move on placement for up to a year following TFC intervention.

- 3.10 Whilst TFC offers a 3 month follow up after move on, the uptake of this support has varied from placement to placement, often resulting in difficulties maintaining improvements once placement and follow on support has ended. Young people struggle to make the transition from hour to hour support of their lives to mainstream placements. This has been an issue reported across all TFC sites.
- 3.11 The review also identified that the wider service and system did not sustain the intervention towards the most appropriate young people and thus ensuring that the service remained tasked on achieving its aims in line with HSCPs strategic objectives.
- 3.12 There have been delays in move on placements as the level of reduction in presenting behaviour does not meet the criteria for provided placements and there have been concerns about the high cost of destination placements. Of the 28 graduates 20 (71%) were in their TFC placement over 9 months. This can have an impact on treatment gains and with some young people lengthy delays have resulted in treatment reversal.
- 3.13 The accreditation criteria for the programme, dictated by the purveyors requires young people to exit the programme to lower tariff outcomes which effectively means high cost purchased foster placements, this is at odds with the strategic aims of HSCP around the positive contribution of residential care. Whilst the service is viewed by the programme developers as a Superior functioning site, within the wider system the programme is failing to meet its objectives because of the continuing use of purchased resources.
- 3.14 TFC foster carers have significantly different arrangements from their counterparts at FFC (Families for Children – the Council's provided fostering service) and these arrangements were put in place in anticipation of the higher tariff young people associated with the programme however, such conditions have not by themselves facilitated the placement of complex young people in placement with TFC carers. In this respect, the additional allowances have not acted as an incentive to place complex young people in need.
- 3.15 Essentially, the HSCP has reviewed the full cost of care and this audit has highlighted the need to significantly re-balance care and spend towards prevention and towards our most vulnerable Glasgow communities. TFC is an expensive approach that unfortunately has failed to secure the scale of outcomes commensurate with the investment made.

4. The Employment Tribunal

- 4.1 In addition and separate to the review, two of the Treatment Foster Carers (the claimants), raised legal actions with the Employment Tribunal in which they claimed that they had suffered detriment on account of making qualified disclosures (whistleblowing) in terms of Section 43B and 44 of the Employment Rights Act. They also claimed that they suffered unlawful deduction of wages. In order to proceed with those claims they firstly needed to establish that they were either employees or workers.

- 4.2 The claimants were approved as Treatment Foster Carers for TFC in January 2011. The couple have continued to receive a fee of £2,461 every 28 days; approximately £30,762.30 annually. The reported damage to their property would have been no more than £1,000.
- 4.3 The Employment Tribunal hearing was held on 1 and 2 June 2017 before Employment Judge Ian McFatridge. Glasgow City Council argued that the agreement between the claimants and Glasgow City Council was not a contract and without a contract the claimants could not be employees or workers. This argument was based on previous decisions in other cases in the Employment Tribunal system. The Employment Judge however decided that it was a contract. Thereafter the Employment Judge decided that because of what he saw as the mutual obligations between the parties and the amount of control Glasgow City Council exercised over the claimants, they were employees. The Employment Judge also took into consideration that the claimants were entitled to annual leave.
- 4.4 Of critical importance though, the Employment Judge was explicit that such findings did not in any way make 'a finding about the status of ordinary mainstream Foster Carers'.
- 4.5 The judgment consequently has enabled the claim to proceed to a final hearing.

5. Implications for the Council as the Employer

- 5.1 The claimants began to assert that they should have employee rights in April 2016. As it stands the decision is that they have had employee rights since 2011.
- 5.2 The implications for the Foster Carers in TFC are **significant**. Employees enjoy the full suite of employment rights. The main entitlements are:
- getting the National Minimum Wage
 - protection against unlawful deductions from wages
 - the statutory minimum level of paid holiday
 - the statutory minimum length of rest breaks
 - not work more than 48 hours on average per week or to opt out of this right if they choose
 - statutory sick pay
 - protection against unlawful discrimination
 - protection for 'whistleblowing'
 - right to pension contribution from employer under the auto-enrolment scheme
 - various rights on termination of employment:
 - statutory minimum notice period
 - written statement of reasons for dismissal
 - not to be unfairly dismissed
 - statutory redundancy payment
 - collective redundancy consultation

- 5.3 Another 9 current households, and a further 5 households, who have already moved on from the TFC service, who can show they have the same relationship with Glasgow City Council may be able to obtain Employment Status subject to time limits.
- 5.4 An appeal has been lodged in this case. If that appeal is unsuccessful then there would be a variety of practical implications arising from the rights as set out in paragraph 5.2.

6. Recommendations

- 6.1 The Integration Joint Board is asked to:
- a) approve the termination of the Treatment Foster Care Service and direct the Chief Executive of Glasgow City Council to resolve the staffing issues therein.

DIRECTION FROM THE GLASGOW CITY INTEGRATION JOINT BOARD

1	Reference number	081117-9-a
2	Date direction issued by Integration Joint Board	8 November 2017
3	Date from which direction takes effect	8 November 2017
4	Direction to:	Glasgow City Council only
5	Does this direction supersede, amend or cancel a previous direction – if yes, include the reference number(s)	No
6	Functions covered by direction	Treatment foster care services
7	Full text of direction	Glasgow City Council are directed to terminate the treatment foster care service as outlined in this report and to resolve the staffing issues therein.
8	Budget allocated by Integration Joint Board to carry out direction	As advised by the Chief Officer: Finance and Resources
9	Performance monitoring arrangements	In line with the agreed Performance Management Framework of the Glasgow City Integration Joint Board and the Glasgow City Health and Social Care Partnership.
10	Date direction will be reviewed	November 2018