

STRATEGIC OVERVIEW AND SCRUTINY PANEL

12 OCTOBER 2010

Present :- Councillor Christopher Arnold (Chairman)
Councillors Nigel Chapman, Mark Cory, Bill Frame,
Theresa Higgins, Nigel Offen, Gerard Oxford and
Julie Young

Substitute Members :- Councillor Margaret Kimberley
for Councillor Andrew Ellis
Councillor Jackie Maclean for Councillor Dennis Willetts

Also in Attendance :- Councillor Sonia Lewis
Councillor Paul Smith
Councillor Lyn Barton

15. Minutes

The minutes of the meeting held on 21 September 2010 were confirmed as a correct record.

16. Have Your Say - HX Care Home Serious Case Review

Have Your Say

Ms. Helen Orrell, Colchester Gazette, addressed the panel saying she believed the panel's consideration of the HX Care Home – Serious Case Review, to be taken under part B of the agenda, therefore not open to the public or the media, should at least in part, and in the public's interest, be held in public in an open and transparent process.

Ms. Orrell said people want answers to their concerns, and any further information from that within the summary report should be considered in public. Ms. Orrell said there was public interest in what happened at the care home, and fully understood that there was a duty to protect individuals, but this could be achieved by redacting personal details and having a general discussion in public.

In response to Councillor J Young, Ms. Orrell said Essex County Council had not yet responded to her July request for further details under the Freedom of Information Act.

HX Care Home Serious Case Review - Discussions on open or closed session

Councillor Arnold said it was absolutely right that discussions on this review were held in closed session, confident that the panel are doing what they set out to do. The process was agreed in the summer, starting with correspondence with the Chair of the Essex Safeguarding Adults Board (ESAB), resulting in an agreement for officers to attend this meeting, but in addition a request, given the nature of the information likely to be sought and provided, from the ESAB Chair that such a meeting would need to be held in private session.

Councillor Arnold said the purpose of this review was not to learn about individual

cases. The panel had a responsibility to ensure proper scrutiny of the review was undertaken to their satisfaction but had to consider whether this could be done without going into closed session.

Councillor Cory said he was in principle against private sessions, and given the panel are not going into personal detail, he could not see why the discussions could not be undertaken in open session. Councillor Theresa Higgins agreed with Councillor Cory, that if individual names are not mentioned, discussions should take place in open session.

Councillor J. Young and Councillor Frame said the panel were caught in a dilemma in whether to continue in an open or closed session. There would be a difficulty for members to conduct frank discussions with officers without breaching confidentiality, and Councillor Arnold believed any alleged breach by any individual Panel attendee could be examined by the Standards Board.

Councillor Offen said it was imperative that the discussions would allow members to understand what had happened and the ensuing outcomes, and if it meant having the discussions in private so be it, though this was not desirable. Councillor Offen said it was not possible to judge whether the recommendations within the summary report are the correct ones.

Councillor Kimberley said a lot could be learnt from County officers, who had agreed to attend voluntarily and members should not seek to inhibit. These discussions are not necessarily to be the last and the panel may need to undertake further work, a point later made by Councillor G.Oxford, who also said if a future was meeting agreed this would provide an opportunity for people to attend and hear the debate.

Mr. Ian Vipond, Executive Director, said the Council prides itself on openness and transparency, and every effort is made to provide as much information for discussions within an open environment. The difficulty here was we don't know until we have had the debate whether it could have been held in public. That said, whatever the outcome of the meeting every effort would be made to publish as full a minute of the debate as possible. Councillor Chapman said the Council is very good at making reports public, and the public and media should be assured that a decision to have discussions in private is not taken lightly.

Councillor Arnold said the Council would ensure a full minute as agreed with the Essex Safeguarding Adults Board would be published.

Councillor Lewis said in order that all information was disclosed without restriction, the discussions would need to be in private. Councillor Lewis did not like closed sessions but believed this was the appropriate way forward.

The Committee/Panel resolved under Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 2 of Part 1 of Schedule 12A to the Local Government Act 1972.

17. Exclusion of the public

SEVEN voted FOR, and THREE voted AGAINST.

Councillor Theresa Higgins (in respect of her membership of Essex County Council (representing the Division where the HX Care Home was located)) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

18. HX Care Home - Serious Case Review

Ms. Liz Chidgey, Deputy Executive Director, Adults, Health and Community Wellbeing, Essex County Council and Chair of the Essex Safeguarding Adults Board Management Committee, and Ms. Shirley Jarlett, Essex County Council Solicitor and Legal Advisor to the Essex Safeguarding Adults Board attended the meeting.

Ms. Jarlett confirmed that officers would refer to the care home in question throughout the discussions as HX Care Home.

Ms. Jarlett confirmed the status of the Essex Safeguarding Adults Board (ESAB), that unlike the Essex Safeguarding Childrens Board (ESCB) it did not have any statutory standing. The ESCB was a statutory board, provided through legislation, with a legal duty to conduct serious case reviews. The ESAB was made up of various agencies to deal with a variety of matters, but did not have an obligation to undertake serious case reviews.

Ms. Jarlett confirmed to Councillor Young that whilst only the summary report on the serious case review was published, it is widely anticipated that in the future the safeguarding adults agenda will also be placed on a statutory footing, and in that scenario ESAB may have a duty to publish reports in full, though this will not be done retrospectively.

In response to Councillor Frame, Ms. Chidgey said once Essex County Council (ECC) officers had concluded investigation of the Serious Incidents, ECC referred the matter to the ESAB to undertake a serious case review. The care company agreed with the serious case review, but in order to gain full participation, an agreement was reached that the publication of an executive summary report only would provide an environment of openness in which shared views and written evidence could be discussed frankly. Ms. Jarlett said there was not agreement by all parties to have the whole report published.

Ms. Chidgey responded to Councillor Young saying the Police are involved from the outset of a Safeguarding investigation which became an Institutional Safeguarding investigation and always engage at the outset of such investigations. In this case to date, the Police, in full knowledge of the facts, do not believe there is a case to take

proceedings further. Ms. Jarlett said the purpose of the serious case review which comes after the conclusion of the Institutional Safeguarding Investigations was about learning, not apportioning blame, and the Police have reiterated that no allegation or instance warrants a police investigation. It was confirmed that the Police have been represented on the serious case review panel. Ms. Chidgey said it was expected that the Police would be involved from the outset, in the process of examining Institutional Safeguarding allegations, and with specialist police officers involved in all interviews and a police inspector represented on the ESAB. The executive summary report would not have been published had the Police still been investigating evidence of the Institutional Safeguarding investigation.

In response to Councillor Smith, Ms. Chidgey said that in regards to recommendation 3, stating all agencies need to ensure that there are clear processes to alert the police in cases of suspected institutional abuse in line with SET guidelines, it did not suggest that the Police were not involved in the serious case review from the outset. Whilst the Police did not take a lead in the review they had been participative from the outset and involved throughout the whole process. Ms. Jarlett said the Police still had a duty to investigate, and that whilst nothing arose from the review, this would remain an ongoing process. Ms. Chidgey explained that in regards to alerts at this particular home, there had been 5 alerts between the 1 September 2008 and the 12 September 2008, with two of these coming from one person. This evidence, a cluster of problems, plus a whistle blowing letter, highlighted a 'critical week'. ECC officers immediately decided to investigate all people at the home (considered good practice), including staff and residents.

Responding to Councillor Kimberley, Ms. Chidgey said the work associated with recommendation 22, that consideration should be given to joint training between Operational Leads and the police officers in supervisory roles in Domestic Violence and Hate Crime Units on the Mental Capacity Act with particular emphasis on the elements required for an offence to have been committed, this was work in progress, and the progress has been, and continues to be reported to the appropriate ECC scrutiny panel. Despite not having a legal framework in place, part of the Council's activity and vigilance in 'safeguarding areas' has resulted in holding people to account and successful convictions e.g. theft.

Ms. Chidgey told Councillor Young that whilst a local police superintendent may not be personally aware of all the information surrounding the review, she assured her that all the evidence obtained through the serious case review was given to the Police, and whilst some elements of information was further explored, nothing that was alleged or disclosed was of a criminal nature. Ms. Chidgey said that nobody outside the Safeguarding Investigation had a right to access to the evidence obtained, but if Councillor Young was aware of any new evidence this should only be passed to the appropriate authority.

Councillor Young said she remained concerned about the case. She said she believed that a long standing friend and resident at the home is still affected by what had happened. Councillor Young said she had every right to raise her concerns with whoever she wished. Ms. Chidgey said this was not disputed but there is an agreed process if a Safeguarding alert is raised.

In respect of the alerts received by ECC, Ms. Chidgey explained to Councillor Offen that as was the case with all alerts, dependent on the type of alert, Police were engaged as appropriate. Concerns had been identified about the care provision for some months. Thirteen improvement requirements had been put on the home prior to the aforementioned alerts in September 2008, and the home continued to be closely monitored by ECC. The safeguarding alerts confirmed that more action needed to be considered. Ms. Chidgey said the evidence did not in any way suggest physical injury or wilful act of physical abuse, and that the issues centred on systemic negligence.

Whilst the report says the HX Care Home had generated care and practice concerns to ECC since 2007, Ms. Chidgey confirmed to Councillor Smith that the home had periodically continued throughout this period to be regularly and closely monitored to ensure improvements were sustained. That said, the serious case review did highlight lessons about how monitoring procedures could be improved, a bringing together of pertinent information from various records kept by the different health care organisations, e.g. feedback from GPs, regular visitors to care homes. A better understanding was needed through shared information that could have picked up the issues earlier. In response to Councillor Cory, Ms. Chidgey said information sharing protocols have now been introduced across all the care economy. Ms. Chidgey confirmed to Councillors Frame and Arnold that each care home with this Provider is a company in its own right, and in this particular case, the care home was given thirty days to make a substantial improvement in regards to the issues. This did not transpire, and finally, ECC breached the contract resulting in residents being removed from the care home. This outcome has enabled ECC to use the situation to demand something very different from the parent company and in relation to all their care homes in Essex. The outcome of having all residents removed from the home is not unique to Colchester.

Ms. Chidgey confirmed that registration to open and run a care home comes from the Care Quality Commission (CQC). In response to Councillor Kimberley, Ms. Chidgey said as the commissioner, ECC are very proactive in their inspection and monitoring regime. It is also reactive in dealing with complaints, with a dedicated complaints team dealing with any issues or representations in a timely fashion.

In respect of medications, Ms. Chidgey explained to Councillor Oxford that there was a need to understand why there had been large returns of medications, and this was a national as well as a specific issue. In response to Councillor Offen, Ms. Chidgey said any disciplinary action against staff resulting from medication not being administered appropriately was a matter for the care home company to deal with. Essex health officials are reviewing how medication is dispensed, working alongside district nurses and pharmacists resulting in a lot of actions and good outcomes. As part of the work with the Primary Care Trust (PCT), "deep dives" at North Essex are putting in place a significant amount of local actions. This is to form part of the locality plans being drawn up by all the PCTs. Once the plans are signed off by the Strategic Health Authority, this work and the resulting outcomes can be shared, there was nothing secret about this work but part of identifying commissioning priorities.

Ms. Jarlett responded to Councillor Offen in respect of checks made of potential new employees and the Criminal Records Bureau (CRB). The result of the serious case

review revolved around general neglect and individuals within the home could not be held accountable for general neglect. It is understood that the whole care system needs to avoid a situation where individuals who cause concern are able to move between home care facilities. Checks with the CRB, and disciplinary action against individuals are for the individual companies providing the care to manage, and companies are able to refer individuals to the Department of Health. ECC continue to work with care home companies to provide proper recruitment practice. Ms. Chidgey confirmed that as the ECC home care commissioner, she did, due to the failure of the care home company to do so, and because of the breach in contract, make a request of the CQC to have the company de-registered. The CQC declined to take action as the Care Provider had requested voluntary de-registration which was actioned by CQC, and if panel members so wished, they would need to ask the CQC why this application was declined. Ms. Chidgey said the future of the site was yet to be decided, but should a care home be re-introduced it would be for the company to decide who provides the care, and for the CQC to decide if that company should be registered. Councillor T. Higgins later explained that CRB records are a snapshot, updated and reproduced every three years, so even these checks are not foolproof.

Ms. Jarlett confirmed that no specific allegation was made against an individual, the company accepted that given the issues arising from the care home, the monitoring of overall supervision had not been carried out correctly. At the time leading up to the serious case review the parent company had a reasonable record. These points were later reiterated to Councillor Offen by Ms. Chidgey, who said the parent companies view was they did not sufficiently support management at the care home. Ms. Chidgey confirmed that at the time leading up to the closure of the home several of employees at the care home had been those employed previously by ECC when the home was in their ownership. Ms. Chidgey said there was never an indication that the home was understaffed, but there was a view that staff were not been supervised correctly, or showed the appropriate competencies. All these issues resulted in an inability of the staff to bring the standards up and the care staff expressed disappointment in themselves.

Councillor Young wondered why there remained confidence in the company, given what has happened in Colchester, and the fact that other counties refuse to commission this parent company for care home provision. Ms. Chidgey said there remained long standing contracts with the parent company. Assurance against a repeat of these issues provided the leverage to ensure compliance. There are also many counties who do use the parent company, with the national CQC ratings being good. In response to Councillor T. Higgins, Ms. Chidgey said a lot of work on contracts was been undertaken across the county to standardise conditions and to be used broadly across all social care and health agencies. Home Support contracts are to be re-let, with a view to improving the contractual arrangements that will provide improvements to quality.

Ms. Chidgey confirmed to Councillor Chapman that all the executive summary report recommendation timescales so far had been met, and there had been no further issues to be addressed. The ESAB had, and would continue to monitor the recommendations. Ms. Jarlett confirmed that as part of the ESAB remit, an action plan was produced that included a timetable built into the desired outcomes. The plan was

to be reported to the ESAB at the meeting of the 20 October 2010.

In response to Councillor Smith, Ms. Chidgey said in late 2008, and following the suspension of a number of staff, a senior manager was placed at the home in an attempt to improve the situation. ECC, with a duty of care to the residents allowed the home to try and bring the standards up between mid September and the end of October. The expected improvements did not materialise. A judgment had to be made, and the residents were relocated though it is quite possible that given further time the improvements may have been forthcoming but the risks were considered too high. The issues had become systemic within the culture of managing the home. As the Commissioner, Ms. Chidgey said if the quality of care is compromised, it is for her to act.

The cost of moving residents to alternative accommodation and the additional care costs needed were all met by the parent company.

Ms. Chidgey said the issues surrounding the lack of communication with ward councillors at the time of the problems was dealt with by herself and Councillor Finch, Portfolio Holder at Essex County Council, at a previous meeting in Colchester, when a full apology was given.

Ms. Chidgey explained to Councillor Arnold that following the serious case review, ECC started the process of communicating with concerned relatives and carers, to arrange feedback, and this was been offered in the form of relatives and representatives meetings in either small groups or as individual face to face sessions. Any further agreed actions would be tracked and monitored continually. Further meetings are happening this week. It was pointed out that everyone's needs and the way they deal with these issues is different, but every effort was being made to ensure individuals do have closure. In response to Councillor T. Higgins, Ms. Chidgey said some former residents have expressed a wish to return to the home, though this would depend on the completion of the new build and if ECC choose to have a contract with the care home company. If it did happen every effort would be made to allow former residents to return.

Ms. Chidgey confirmed to Councillor Young that people should still come forward if they still have concerns, and also have the right to appeal if they believe the concerns are not dealt with to their satisfaction. Ms. Jarlett said any concerns considered to be criminal would be referred on to the Police.

Following the conclusion of dialogue between the officers and members, the Chairman expressed his gratitude to Ms. Chidgey and Ms. Jarlett for attending the meeting.

Conclusions

Councillor T. Higgins suggested that the panel should request the Portfolio Holder to write to the relevant Minister requesting that the safeguarding adults agenda should receive the same statutory standing accorded to the safeguarding children agenda. Whilst Ms. Chidgey and Ms. Jarlett were sympathetic to this, it was clear that a clear legal, statutory framework for safeguarding adults, similar to that of safeguarding

children, was to happen very shortly. That said, it could possibly result in full reports being diluted, because of the statutory need to publish. However, whilst this could be counterproductive, it would be a huge step forward.

Councillor Frame asked whether the report to be presented to the ESAB in October, could be provided for members consideration following this meeting. Ms. Chidgey said the action plan, produced at the ESAB request, to monitor the recommendations within the executive summary report will continue to be monitored and scrutinised until all the recommendations are completed, and this could be presented to the panel following the ESAB October meeting.

Mr. Gareth Mitchell, Head of Life Opportunities explained to the panel that in his capacity as senior manager for safeguarding, he and the Chief Executive have been auditing the borough council's compliance with safeguarding good practice in response to requests from both the ESCB and ESAB, and that coming out of that work are some questions around governance and the links to the council's executive and scrutiny arrangements. Ms. Chidgey explained that the ESAB had used information from the ESCB as guidance templates, when agreeing their own procedures and forms, and an audit of this information was being undertaken at present, the outcome of which was due at the end of this month. Ms. Chidgey said any future meeting to discuss the action plan could also provide an opportunity to consider the position of this work in relation to others. Ms. Jarlett said she was sure both boards would be happy to attend an agreed future meeting.

Councillor Young thanked Ms. Chidgey and Ms. Jarlett for attending the meeting and the frank discussions, but still felt their remained a lack of accountability of the staff working at the care home and was disappointed that there remained no suggestion of a police investigation.

Councillor Offen said he believed the panel should write to the CQC requesting a further independent review of this serious case review on the grounds that there was a lack of clarity on what caused the disaster, and why was the then present standard of care not brought up to the required standards. Councillor Young supported Councillor Offen's proposal, though this suggestion was not pursued by the panel. Ms. Chidgey said she believed nothing more could be learnt from such an action, and questioned what would be the added value. If a Councillor remained concerned about the outcomes e.g. staff competency, they should raise a further 'safeguarding' concern with ECC.

Whilst it was very difficult to explain why, following the county council's intervention, the deterioration in care could not be halted, Ms. Chidgey said it was a combination of a number of factors, including culture, leadership and poor management and poor care.. Ms. Chidgey said that if people had concerns about safeguarding in any aspect of community care, they should raise a safeguarding alert through the established process with ECC, whereby if there was any suggestion of criminal activity, it would immediately be passed to the Police.

RESOLVED that the panel;

- i) Thanked Ms. Chidgey and Ms. Jarlett for attending the meeting and entering into a detailed and meaningful dialogue with members.
- ii) Agreed that the Chairman of the Overview and Scrutiny Panel should write to the CQC and ESAB specifically about the two issues that remained of concern to panel members, the failure to identify specific reasons for the decline in standards at the HX Care Home and the inability to track employees as they move through the care system.
- iii) Agreed for the Chief Executive and Head of Life Opportunities to attend a future meeting, date to be agreed with the Chairman, to give a presentation on the Council's role in safeguarding adults and children, with an invitation going to the ESAB and ESCB to attend.
- iv) Agreed to receive an update on the Executive Summary action plan from the Chair of the Essex Safeguarding Adults Board.