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Improving the Health offer to adoption in Somerset – addressing regulatory irregularities

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Background

- Somerset – population 562,225 including over 116,000 children
- 48% of the population live in rural areas
- 47,000 Somerset residents live in a neighbourhood identified as one of the 20% most deprived in England.
- West Somerset has the highest % of people aged 65+ in the UK
- Taunton Deane has one of the highest suicide rates in the UK, (19.1 per 100,000 compared to the UK rate of 10.5 per 100,000)

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Context

- 561 children are looked after by Somerset, 215 placed out of area
- 258 Care Leavers, 252 currently in touch with Somerset County Council
- 27 Somerset adopters approved in 2020/2021
- 14 non agency step parent adoption assessments and 8 non agency adoption assessments took place in 2020/2021
- Activity has been steadily increasing since 2019

	Best interest decisions 2019/2020	Best interest decisions 2020/2021	Matches of children with adoptive families 2019/2020	Matches of children with adoptive families 2020/2021
Somerset	44	56	38	48

Background 1

- Pre 2019:
  - No separate Designated Nurse CLA and Care Leavers role
  - 3 sessions of Agency Medical Advisor time commissioned
  - Confusion about the distinct roles of Designated Doctor, AMA and Community Paediatrics delivery of statutory health assessments
  - Challenges in managing requests from the Local Authority and Regional Adoption Agency, with AMA capacity issues delaying Matching Panels
  - 42 week model for delivering health assessments leading to significant backlogs outside of statutory timeframes

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Background 2

- November 2019 CCG agreed significant substantive investment over a three year period starting in 2020/2021
- Investment to provide additional nursing, medical and administrative capacity, strengthening CLA and Care Leaver services to better identify and meet health need by providing:
  - Timely and high quality statutory health assessments
  - Improved adoption services
  - Dedicated Designated and Named Doctor sessions
  - Assertive outreach health support to Care Leavers
  - Delivery of early mental and emotional health trauma informed interventions
  - Outreach to Somerset CLA placed out of Somerset to avoid unnecessary delay in identifying and meeting health needs and to improve consistency of assessor for the child

April 2021

- A Placement Order hearing in the Somerset Family Court identified that the Agency Decision Maker had not had access to an Agency Adoption Regulations AAR 17 compliant Health Summary written by the AMA when making the Best Interest Decision
- Further review later determined that this was a widespread issue in Somerset; requests for the AAR 17 Health Summary had declined and eventually ceased in the run up to the launch of the Regional Adoption Agency in 2018
- Focus had always been on the provision of Pre Adoption Medical Reviews to inform prospective adopters and share at Matching Panels
- IHAs had been wrongly used to inform the Best Interest Decision

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Immediate actions

- All Placement and Adoption Orders were paused in Somerset whilst advice was sought from the High Court
- The CCG sought legal advice
- 12 children were identified as a high priority, ("primary cohort" children), to have their cases addressed as their Placement Order applications had been imminent and adopters were in place at the time the irregularities were discovered
- The County Council identified a much larger cohort of 258 children, ("wider cohort" children), who had been affected by the irregularities, some had Placement Orders and some had been awarded final Adoption Orders
- The County Council raised further concerns that the Somerset Medical Advisor had not been correctly appointed in accordance with the Agencies Adoption Regulations AAR 9

Judiciary response 1

- Initial determination handed down in November 2021 by Mrs Justice Roberts who found:
  - AMA lawfully appointed
  - Solution in law found to declare “primary cohort” children Placement Orders lawful
  - SCC free to place “primary cohort” children with adopters
  - Procedure agreed to manage “wider cohort” children and planned to begin in January 2022

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Judiciary response 2

- January 2022 - involvement of the President of the Family Division, Sir Andrew McFarlane - regulatory breaches identified in Somerset were in fact much more widespread
- In some areas Registered Nurses had been fulfilling the role of AMA
- A national approach was required
- The Secretary of State for Education became party to the proceedings
- Sir Andrew prepared a briefing for all Local Authorities in England requesting they review their policies and processes to ascertain whether there were systemic non-compliance issues which raise similar difficulties to those in the Somerset case and if so to begin the task of identifying affected children

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Judiciary response 3

- A final hearing took place in March 2022 with the following outcomes:
  - Mrs Justice Roberts judgement, that each individual Placement and Adoption Order required an application for a declaration that the order was valid, was "*neither appropriate nor required*"
  - no other Local Authority or Adoption Agency needed to follow a similar route to the one outlined by Mrs Justice Roberts when attempting to rectify breaches of the medical requirements of the Agency Adoption Regulations
  - **all court orders are valid and enforceable unless and until a court sets them aside**
  - "*any unlawfulness by a first actor may invalidate their own acts, but will not directly invalidate the act of a second actor*"

How did we drive forward improvement in Somerset?

- Relationships
- Shared knowledge and understanding
- Shared media communications
- Integrated policy development
- No blaming
- Improved professional communication
- Utilising the risk management framework
- Jointly commissioned external audit
- Additional investment

Which led to…

- An integrated adoption pathway that meets the needs of our children and fulfils the statutory adoption requirements of both Health and Social Care
- No delays for Somerset children with a care plan for adoption
- True partnership working facilitated by a weekly tripartite meeting
- The Judiciary is assured that statutory requirements are being delivered
- Somerset adopter and foster carer confidence is returning
- Increased knowledge and understanding of AMA responsibilities by the CCG Board and support for the service
- Additional medical, nursing and administrative resources

Next steps

- Development of a Somerset Adoption Strategy
- Evaluation of the current service in preparation for the development of a 2022/2023 business case
- Recruitment of new nursing and administrative staff
- Overarching ICS Safeguarding Framework workstream utilising similar principles for better integrated working and driving up improvement

- https://unit.law/2022/04/25/new-guidance-on-remedying-breaches-of-the-aar-2005/