

# Agenda

**Meeting: Care and Independence  
Overview & Scrutiny Committee**

**Venue: The Grand Meeting Room,  
County Hall, Northallerton DL7 8AD  
(See location plan overleaf)**

**Date: Thursday 2 July 2015 at 10.30 am**

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## Business

1. **Minutes of the meeting held on 23 April 2015.**

(Pages 1 to 6)

2. **Exclusion of the public from the meeting during consideration of each of the items of business listed in Column 1 of the following table on the grounds that they each involve the likely disclosure of exempt information as defined in the paragraph(s) specified in column 2 of Part 1 of Schedule 12A to the Local Government Act 1972 as amended by the Local Government (Access to information)(Variation) Order 2006:-**

Item number on the agenda	Paragraph Number
9	4

3. **Public Questions or Statements.**

Members of the public may ask questions or make statements at this meeting if they have given notice to Ray Busby Policy & Partnerships (*contact details below*) no later than midday on Monday 29 June 2015, three working days before the day of the meeting. Each speaker should limit themselves to 3 minutes on any item. Members of the public who have given notice will be invited to speak:-

- at this point in the meeting if their questions/statements relate to matters which are not otherwise on the Agenda (subject to an overall time limit of 30 minutes);
- when the relevant Agenda item is being considered if they wish to speak on a matter which is on the Agenda for this meeting.

4. **Mental Health Strategy** – Report of the Corporate Director – Health & Adult Services  
(Report not yet available – to follow)
5. **Deprivation of Liberty Standards** – Report of the Corporate Director – Health & Adult Services  
(Pages 7 to 14)
6. **Self- Funders** – Report of the Corporate Director – Health & Adult Services  
(Pages 15 to 17)
7. **Carers & the Care Act** – Verbal Report of the Corporate Director – Health & Adult Services
8. **Work Programme** - Report of the Scrutiny Team Leader.  
(Pages 18 to 22)

**The following Item (9) to be considered in Private**

9. **Assessment and Reablement Pathway: 2020 savings.** – Presentation by the Corporate Director – Health and Adult Services.
10. **Other business which the Chairman agrees should be considered as a matter of urgency because of special circumstances.**

Barry Khan  
Assistant Chief Executive (Legal and Democratic Services)

County Hall  
Northallerton

24 June 2015

**NOTES:**

- (a) Members are reminded of the need to consider whether they have any interests to declare on any of the items on this agenda and, if so, of the need to explain the reason(s) why they have any interest when making a declaration.

The relevant Corporate Development Officer or the Monitoring Officer will be pleased to advise on interest issues. Ideally their views should be sought as soon as possible and preferably prior to the day of the meeting, so that time is available to explore adequately any issues that might arise.

- (b) **Emergency Procedures For Meetings**

**Fire**

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# Care and Independence Overview and Scrutiny Committee

## 1. Membership

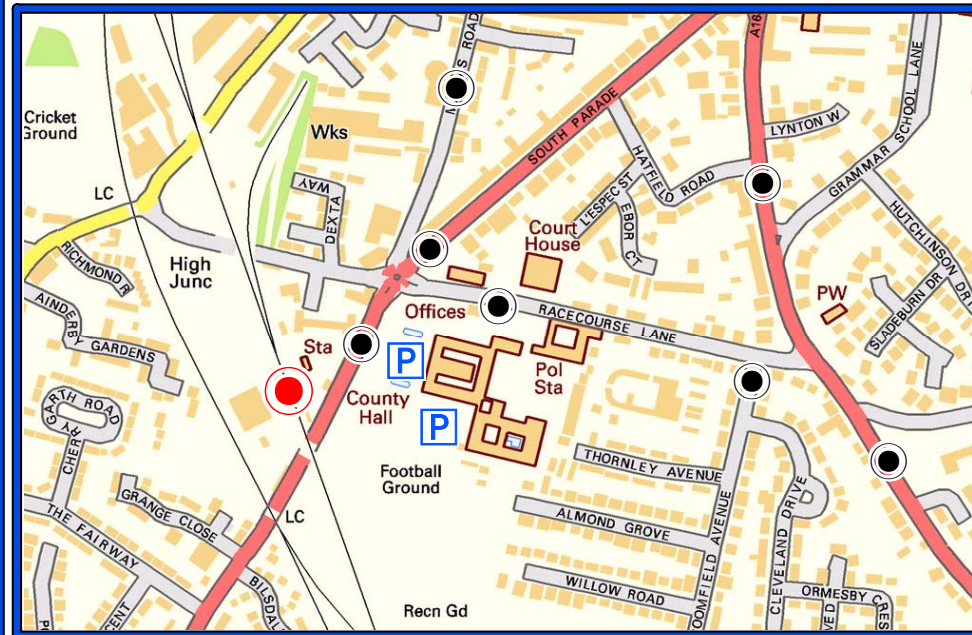
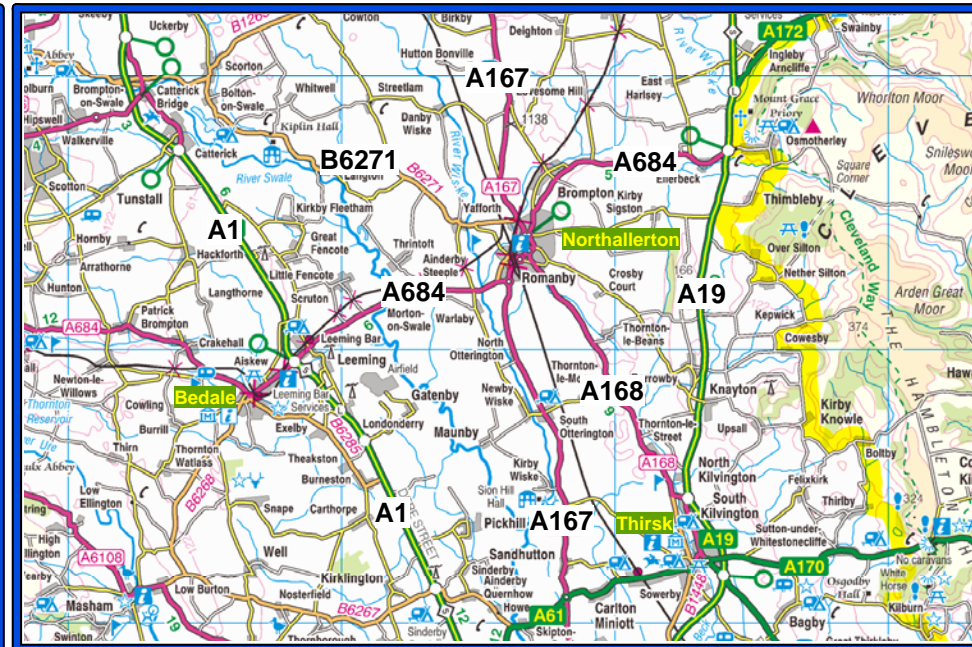
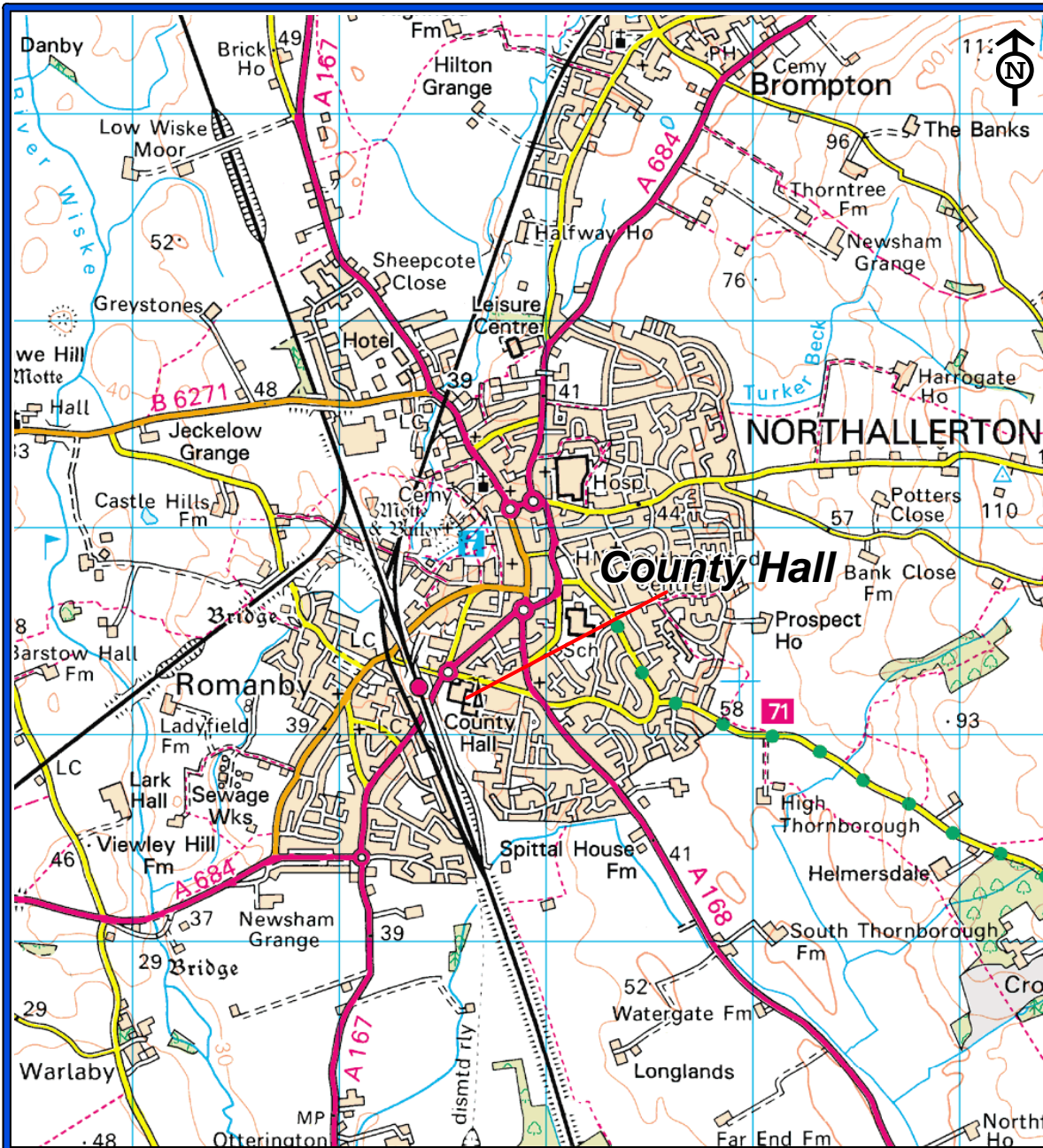
County Councillors (13)							
	Councillors Name			Chairman/Vice Chairman	Political Party	Electoral Division	
1	CASLING, Liz				Conservative		
2	ENNIS, John				Conservative		
3	GRANT, Helen			Vice-Chairman	NY Independent		
4	HOULT, Bill				Liberal Democrat		
5	JORDAN, Mike				Conservative		
6	McCARTNEY, John				NY Independent		
7	MARSDEN, Penny				Conservative		
8	MARSHALL, Brian				Labour		
9	MOORHOUSE, Heather				Conservative		
10	MULLIGAN, Patrick			Chairman	Conservative		
11	PLANT, Joe				Conservative		
12	PEARSON, Chris				Conservative		
13	SAVAGE, John				Liberal		
Members other than County Councillors – (2)							
Non Voting							
	Name of Member			Representative		Substitute Member	
1	CARLING, Jon			North Yorkshire and York Forum			
2	SNAPE, Jackie			Disability Action Yorkshire			
3	PADGHAM, Mike			Independent Care Group			
Total Membership – (15)					Quorum – (4)		
Con	Lib Dem	NY Ind	Labour	Liberal	UKIP	Ind	Total
8	1	2	1	1	0	0	13 *

\* Left the Liberal Democrat Group in February 2015 and has yet to declare her affiliation

## 2. Substitute Members

<b>Conservative</b>		<b>Liberal Democrat</b>	
	<i>Councillors Names</i>		<i>Councillors Names</i>
1	MARSHALL, Shelagh OBE	1	
2	CHANCE, David	2	GRIFFITHS, Bryn
3	JEFFELS, David	3	JONES, Anne
4	BACKHOUSE, Andrew	4	
5		5	
<b>NY Independent</b>		<b>Labour</b>	
	<i>Councillors Names</i>		<i>Councillors Names</i>
1	HORTON, Peter	1	BILLING, David
2	JEFFERSON, Janet	2	
3		3	
4		4	
5		5	
<b>Liberal</b>			
	<i>Councillors Names</i>		
1	CLARK, John		





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Northallerton  
North Yorkshire  
DL7 8AD

Tel : 0845 8 72 73 74



North  
Yorkshire County Council

## North Yorkshire County Council

### Care and Independence Overview and Scrutiny Committee

Minutes of the meeting held on 23 April 2015 at 10.30 am at County Hall, Northallerton.

#### Present:-

County Councillor Patrick Mulligan in the Chair

County Councillors: Liz Casling, John Ennis, Helen Grant, Mike Jordan, John McCartney, Penny Marsden, Brian Marshall, Heather Moorhouse, Joe Plant, Chris Pearson and John Savage.

Representatives of the Voluntary Sector: Jackie Snape (Disability Action Yorkshire) and

In attendance: County Councillor Clare Wood (Executive Member for Adult Social Care Health Integration)

Officers: Mike Webster (Assistant Director, Contracting, Procurement and Quality Assurance (Health and Adult Services)), Kathy Clark (Assistant Director, Health and Adult Services), Mike Rudd (Head of Commissioning - Scarborough & Ryedale, Commissioning and Partnership (Health and Adult Services)), Avril Hunter (Strategic Commissioning Manager, Commissioning and Partnership (Health and Adult Services)), Ray Busby (Scrutiny Support Officer, (Policy and Partnerships))

Apologies: Jon Carling (North Yorkshire and York Forum) and Mike Padgham (Independent Care Group).

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#### Copies of all documents considered are in the Minute Book

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#### 58. Minutes

##### Resolved –

That, subject to the addition of 'County Councillor Clare Wood' in the list of Members in attendance, the minutes of the meeting held on 22 January 2015, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

#### 59. Public Questions or Statements

A number of questions had been submitted to the Committee:

##### Gabriel Werth asked:

I like Botton very much and I don't want to lose the co-workers. What will you do to protect my freedom of choice and my human rights?

##### Response given:

NYCC has had a long involvement with Botton Village and supports many people like Gabriel to live there. Around five years ago as a result of some concerns we had to take a greater interest and have monitored the care people receive along with the arrangements for their finances.



At all points our primary aim is to ensure that residents' wellbeing is put first and that they continue to receive appropriate support whilst the dispute around the status of co-workers has continued.

This is a role that we take extremely seriously whether it is at Botton or other providers.

**Eddie Thornton asked:**

The chair and the spokespeople for this committee have decided with the help of council officials that the crisis at Botton village should not be discussed at this meeting. In their report they say this is because they view the plans as an "internal business matter". Do the committee members agree that the dismantling of family homes and workplaces against the stated wishes of 80% of the residents is a business decision? Or would this be a matter that they would like to discuss in accordance with the remit of this committee which is to provide scrutiny and oversight for vulnerable adults, older people and people whose independence needs to be supported by intervention from the public or voluntary sector.

**Response given:**

The report published in the scrutiny papers weighs up the arguments whether the issues raised by the petition should be the subject of a Scrutiny investigation. It records the views expressed by Group Spokespersons and Chairman after being advised by officers. It is the Committee that determines its work programme, which is why the report is included in that part of the agenda.

The Committee exercises its responsibilities towards vulnerable adults in a strategic way in the context of policy development and review, not by reviewing the individual circumstances of service users and/or how individual providers work with and support them.

Having read the briefing provided by officers to the area committee, the scrutiny committee's Group Spokespersons and the Chairman were reassured that experienced, high level officers had been involved from an early stage, and also that this involvement would continue. This gave those Members the confidence they were looking for that residents' wellbeing was of paramount importance for the HAS directorate.

How a provider chooses to manage its relationship with its employees is an internal, organisational matter for that business. If, as the questioner implies, CVT's business proposals have had, are having, or will have an impact on residents' residential arrangements, consequent decisions about care provisions is a commercial concern for the provider. It would be inappropriate for a NYCC Scrutiny to intervene.

The issue of the employment status of co-workers is, amongst other issues, the subject of on-going court cases. The Care Quality Commission and NYCC will only work with providers who adhere to legal, including employment, requirements.

Given that the CVT proposals are internal matters and in view of the on-going legal proceedings, the Group Spokespersons understood and supported the decision of the Directorate to adopt a neutral stance (as reported in their report to the area committee).

**Fiona Wylie asked:**

By allowing the CVT to force through unwanted and unnecessary changes is NYCC doing enough to comply with the Care Act which states that "local authorities should encourage a genuine choice of service type, not only a selection of providers offering similar services, encouraging, for example, a variety of different living options such as shared lives, extra care housing, supported living, support provided at home, and

live-in domiciliary care as alternatives to homes care, and low volume and specialist services for people with less common needs”

**Response given:**

NYCC has always promoted a diversity of service provision. The Scrutiny Committee has had examples of this brought to its attention though not usually from individual contracted organisations.

We do not normally dictate the model of care and have at all stages made clear that we are not looking to change the ethos behind the care at Botton which is unique. However we expect the regulated provider (Camphill Village Trust) to meet regulatory and statutory requirements that are in place to protect and safeguard people receiving care.

**Fionn Reid asked:**

From reading the Forth report, committee members will be able to see that the CVTs spending has doubled in the last three years despite the demerger of two communities. If this trajectory continues it is clear the charity that used to be one of the wealthiest in the UK will no longer be financially sustainable. What is the council's responsibility to the residents whose care provider is on its way to bankruptcy, at what point will the council intervene?

**Response given:**

NYCC and CQC monitor contracted organisation's financial circumstances through checks on their published accounts. Where appropriate any issues are investigated and acted upon.

Mike Webster, Assistant Director Quality & Engagement, Health and Adult Services, responded to questions from Members and representatives of Action for Botton. He emphasised that the Directorate would not normally dictate the model of care and have at all stages made clear that it is not looking to change the ethos behind the care at Botton which is unique. However, the Directorate expects the regulated provider (Camphill Village Trust) to meet contractual, regulatory and statutory requirements that are in place to protect and safeguard people receiving care.

The Directorate's concerns regarding care arrangements at the Village had come to the fore around five years ago. Whilst it was not the Directorate's responsibility, or intention, to influence the model of care, the prevailing ethos of care had given rise to questions regarding how some financial transactions were being conducted. It had come to the Directorate's attention that, amongst other issues, some residents when leaving Botton had been left in a debt position to the village.

Secondly, concerns had emerged in relation to the level of informed choice residents were allowed and able to exercise – for example in relation to medical treatment.

It was at this point in the meeting that the Chairman agreed to take the work programme item, bearing in mind this provided Group Spokespersons' views on the referral from the Area Committee.

**60. Work Programme**

Considered –

The report of the Scrutiny Team Leader on the Work Programme.



Whilst there was some support amongst a number of Members for some limited enquiry regarding the social care aspects, the consensus reached was that it would not be appropriate to embark on formal scrutiny work at this juncture - as the Area Committee appeared to be suggesting – for the following reasons:

- The relationship between the Trust and the co-workers is an internal business matter.
- How the current dispute regarding that relationship is resolved is an internal operational matter for the Camphill Village Trust.
- It would not be appropriate to scrutinise the preferred care arrangements of one particular provider.
- The Committee's remit it exercises its responsibilities towards vulnerable adults in a strategic way in the context of policy development and review, not by reviewing the individual circumstances of service users and/or how individual providers work with and support them.
- The Committee was mindful that the legal proceedings have yet to run their full course. Any scrutiny work whilst legal action was continuing would be not only premature, but also inadvisable.
- The contribution that Botton makes of the wider community is essentially a local matter; it is primarily, therefore, an Area Committee concern.

It was vitally important, therefore, that the Committee maintained a neutral stance. At this stage, the Scrutiny Committee was simply not in a position to take a definitive view as to whether the matter should be looked at, and if so, in what way, and in what level of detail. That said, Members acknowledged that this was a complicated issue and one in which many people believed NYCC scrutiny could legitimately could take an interest. Recognising this and the range of views expressed by some Members, the most appropriate course of action might be to keep abreast of progress so that the Committee could turn its attention to this issue when it was right to do so.

#### **Resolved –**

- a) That the Work Programme be agreed
- b) That Group Spokespersons keep a weather eye on developments in relation to Botton Village, principally through HAS Officer briefings, but have the discretion to refer the matter back to the Committee should there be any significant developments (one such reason could possibly be when the outcome of the current legal proceedings was known).

#### **61. Healthwatch: How it Can Help the Committee**

Considered -

Presentation by David Ita, Partnership Co-ordinator, Healthwatch North Yorkshire.

David expanded upon his report summarising the rationale, findings and approach to statutory 'Enter and View Visits'. David presented opportunities for Healthwatch to support the scrutiny committee using these activities.

Members agreed that it was important for regular communication between Healthwatch and the Committee on what Healthwatch is doing. Clearly there will be matters of concern which would be picked up through 'Enter and View Visits' and from members of the public about the quality of social care services.

David responded to questions about visits to what, after all, are people's homes, by describing the use of volunteers, the level of training and vetting procedures.

Members agreed that the information provided would help the Committee, but as a filtering process it would be helpful for Group Spokespersons at the Mid-Cycle Briefing to consider these on a regular basis and bring forward items as circumstances warranted, at the very least a report would be submitted annually.

**Resolved -**

- a) That the presentation be noted.
- b) That Group Spokespersons consider published 'Enter and View Visit' reports on a regular basis and bring forward items as and when circumstances dictate but, in any event, an annual report be submitted for the Committee on visits undertaken and on the work of Healthwatch generally.

**62. Supporting People: 2020 Savings**

Considered -

The report of the Corporate Director - Health and Adult Services outlining how the current savings profile for the Support People Budget has developed since February 2014.

Avril Hunter explained progress to date in achieving the target savings. Some forecasting was still being undertaken on the level of savings that would be achieved for 15/16. As a result of implementing the changes up to October last year, 375 people had been assisted during the time of their re-assessment in attracting welfare benefits, up to an estimated value of £1.2m on an annual basis.

**Resolved -**

That the report be noted.

**63. The Care Act 2014**

Considered -

The report of the Corporate Director - Health and Adult Services updating the Committee on the way that the impact of the Care Act will be monitored and the response to the Department of Health Consultation on the proposals around the introduction from April 2016 of the Care Cap and Care Account and a new Appeals system.

The Portfolio Holder, Clare Wood, emphasised that this was undoubtedly a progressive piece of legislation but there was still a great deal of uncertainty regarding the full financial impact of the Care Act. All efforts are focussed on making sure we will be ready and adequately resourced in order that we can be confident we will be fully compliant.

**Resolved -**

That the report be noted.

**64. Domiciliary Care Contracts**

Considered -

The report of the Corporate Director - Health and Adult Services informing Members of the outcome of the tender for new Framework Contracts for the provision of Domiciliary Care in Harrogate, Selby and Scarborough.

Mike Rudd outlined the strategy for the commissioning of domiciliary care, the results of the procurement exercise undertaken and outlined the progress of procurement for the remaining services in other areas of the County.

Mike Webster clarified the position where a provider, for whatever reason, chooses to withdraw from a contract before its termination date. He described how in a recent case just that situation had arisen in the Selby area where the required service had been picked up successfully, with interesting results, by the in-house Reablement team. Members agreed that they be advised of this at some point in the future.

**Resolved -**

That the progress made to date be noted and a further update be provided in the autumn.

**65. Extra Care Procurement**

Considered -

The report of the Corporate Director - Health and Adult Services.

**Resolved -**

That the report be noted.

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The meeting concluded at 12:45pm

**NORTH YORKSHIRE COUNTY COUNCIL**  
**CARE AND INDEPENDENCE OVERVIEW AND SCRUTINY COMMITTEE**

**2 July 2015**

**Deprivation of Liberty Safeguards**

**1.0 Purpose of Report**

1.1 This paper briefs Members of the Deprivation of Liberty Safeguards and its significance for the Directorate.

1.2 This issue is of particular significance for the Committee because:

- a) It affects some of the most vulnerable adults in our communities.
- b) Safeguarding adults is a particular responsibility for Members of this Committee.
- c) Latest developments in connection with Deprivation of Liberty Safeguards are having a direct impact upon Directorate obligations and resources. In addition to recognising the additional burdens, it is important that the Committee reassures itself that all possible steps are being taken to respond proactively to the recent legal requirements.

**2.0 BACKGROUND**

2.1 Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. Some people who live in hospitals and care homes cannot make their own decisions about their care or treatment because they lack the mental capacity to do so. Sometimes, caring for and treating people who need extra protection may mean restricting that freedom. The Deprivation of Liberty Safeguards (DoLS) is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

2.2 The DoLS Safeguards apply to people in England and Wales who have a mental disorder and lack capacity to consent to the arrangements made for their care. They were introduced in 2009 and provide legal protection for vulnerable people who are, or may become, deprived of their liberty within a hospital or care home. They exist to provide a proper legal process and suitable protection in circumstances where, for a person's best interest, deprivation of liberty appears to be unavoidable.

2.3 DoLS apply to anyone:

- aged 18 and over;
- who suffers from a mental disorder or disability of the mind – such as dementia or a profound learning disability;
- who lacks the capacity to give informed consent to the arrangements made for their care and / or treatment; and for whom deprivation of liberty (within the meaning of Article 5 of the European Commission for Human Rights (ECHR)) is considered after an independent assessment to be necessary in their best interests to protect them from harm.

2.4 The Deprivation of Liberty Safeguards (DoLS) can only apply to people who are in a care home or hospital. This includes where there are plans to move a person to a care home or hospital where they may be deprived of their liberty. The care home or hospital is called the Managing Authority in the Deprivation of Liberty Safeguards.

2.5 Where a Managing Authority thinks it needs to deprive someone of their liberty, they have to ask for this to be authorised by a Supervisory Body. They can do this up to 28 days in advance of when they plan to deprive the person of their liberty.

2.6 For care homes and hospitals the Supervisory Body is the local authority where the person is ordinarily resident. Usually this will be the local authority where the care home is located unless the person is funded by a different local authority.

2.7 The Managing Authority must fill out a form requesting a standard authorisation. This is sent to the Supervisory Body which has to decide within 21 days whether the person can be deprived of their liberty.

2.8 The Supervisory Body then appoints assessors to see if the conditions are met to allow the person to be deprived of their liberty under the safeguards. Staff who undertake assessments of whether to make someone subject to DoLS are known as Best Interests Assessors (BIAs).

2.9 In 2013/14 NYCC undertook 113 DoLS Best Interest Assessments.

### 3.0 KEY POINTS FROM THE SUPREME COURT RULING

3.1 On 19 March 2014, the Supreme Court handed down its judgment in the case of “P v Cheshire West and Chester Council and another” and “P and Q v Surrey County Council”. The judgment is significant in deciding whether arrangements made for the care and/or treatment of an individual who might lack capacity to consent to those arrangements amount to a deprivation of liberty:

#### Revised test for deprivation of liberty:

The Supreme Court clarified that there is a deprivation of liberty for the purposes of Article 5 of the European Convention on Human Rights if a person is subject both to continuous supervision and control and not free to leave. This is referred to as the 'acid test', and the focus is not on the person's ability to express a desire to leave, but on what those with control over their care arrangements would do if they sought to leave.

#### Deprivation of liberty in "domestic" settings

The Supreme Court held that a deprivation of liberty can occur in domestic settings, such as supported living arrangements in the community. This must be authorised by the Court of Protection.

- 3.2 The effect of this judgment is a significant increase both in the number DoLS assessments, and the number of applications to the Court of Protection.
- 3.3 The Law Society was commissioned to write a report regarding the interpretation of "continuous supervision and control", which was published in March this year. This document makes clear that the broader interpretation of the definition is the appropriate one, and makes clear the need for local authorities to also be proactive in taking cases of Deprivation of Liberty in Supported accommodation and Domestic settings, to the Court of Protection. This report, coupled with the lack of any expected case law that again addresses the issue, strongly suggests that we have this current situation for at least 3-4 years.

## **4.0 INITIAL ASSESSMENT OF THE KEY ISSUES FOR NYCC**

#### Potential Increase in requests

- 4.1 The Association of Directors of Adult Social Services (ADASS) had advised that Local Authorities should in the year 2014/2015 expect a **10 fold increase** in the number of DoLS referrals compared to the previous year, but predicting the potential increase in the number of DoLS requests is complex and speculative. The outcome, for NYCC, was in fact a **13 fold increase**.
- 4.2 As a consequence of the "acid test" it is likely that the number of patients being detained under the Mental Health Act will increase, which will significantly impact on the number of people requiring aftercare in accordance with section 117 of the Mental Health Act, although the implications of this are not yet fully understood. Similarly, the implications for the increased applications to the Court of Protection are not fully understood.
- 4.3 During last financial year 1,790 authorisations were requested, resulting in 1,497 being progressed to the assessment stage. Of these, 1,082 breached the statutory timescales.
- 4.4 In addition to this, there are the applications that will need to be made to the Court of Protection re a Deprivation of Liberty in Supported Living and in



Domestic settings. Initial scoping has identified 201 cases of people with learning disabilities, with an unknown quantity of individuals who are older people or people who have mental health support needs.

## **5.0 Significant Risks And Mitigation**

### Risks associated with increased referrals

5.2 There are a number of risks arising from the increased numbers, taking into account the requirements within the Mental Capacity Act and our statutory responsibilities.

- There is currently a waiting list of 179 Best Interest Assessments and 139 Mental Health assessments.
- Key Staff -The Mental Capacity Coordinator and Mental Capacity Project Officer - have been diverted from their roles to focus on DoLS applications and Best Interest Assessments, which is having a negative impact on the wider aspect of the Local Authority obligations within the Mental Capacity Act.
- Large numbers of authorisations are being requested at the same time causing a strain to complete assessments within the legislative timescales (assessments must be completed within 7 or 21 days), with potential cost implications if timescales are not met. Requests for assessments from providers are being carefully managed, risk assessed and prioritised.
- There is the potential for erosion of some of the elements of the Mental Capacity Act principles and practice, as well as quality assuring the volume of applications which will become increasingly difficult.

## **6.0 ACTIONS TO MANAGE THE INCREASED DEMAND**

6.1 Following the initial assessment of the key issues for NYCC, an action plan has been developed around maximising existing resources, increasing resources and managing risks to ensure the response is in line with legislative requirements. For those aspects which are managed in-house, the increased demand is challenging, and has to be balanced with the need to continue to manage existing service delivery. Steps being taken include:

### i. Reconfiguring In-House Services

By enhancing current staff skills, greater management input where appropriate and increasing staff capacity generally, for example, will ensure existing qualified BIA's skills and practice are refreshed and training is maximised and recurring. Increasing the number of staff doing the accredited training necessary to achieve the BIA qualification and therefore the number of staff able to undertake assessments.

ii. Purchased Resources

- The market for Independent BIA's may be able to pick the outstanding assessments, however, there is active competition between authorities who are all experiencing increasing numbers of requests. As a result, costs are increasing per assessment. Since February, the balance has further moved towards independents and agencies undertaking a greater proportion of assessments and meaning greater costs for the authority.

<b>Workers</b>	<b>Number of Assessments between April 2014 and March 2015</b>
In House	507
Casual (NYCC Staff)	297
Independent	214
Agency	421
Unallocated	58
<b>Total</b>	<b>1497</b>

iii. Risk Management

- Risk is being managed by operating a risk management framework regarding the prioritisation of applications as agreed as advised by ADASS.

iv. Working with partners and other relevant organisations

- We are dealing on a daily basis with enquiries from providers, and are managing discussions around "bulk applications" from organisations. A number of communications have been issued to providers, and the updated DoLS training materials are available to them. In addition to the internal DoLS review group, a partnership meeting with representatives from Clinical Commissioning Groups, acute trusts, mental health trusts, independent providers, CYPS, Partnership Commissioning Unit, and NYCC legal team, meets on a bi-monthly basis.

## **7.0 Summary of impact on the work of the Mental Capacity Act (MCA) Forum**

7.1 All MCA activity continues to be centred on the increase in allocations for Deprivation of Liberty assessments. The pressure recognised at a national level, is impacting on all connected and other services involved i.e;

- Reduction in quality of information on assessment requests
- Pressure on capacity to consult effectively with people and their carers involved in the process.

- Sheer volume has impacted upon quality and accuracy of reports
- Delays in appointing paid Relevant Persons Representatives – a statutory right
- Inability to appoint paid Relevant Persons Representatives in some out of County placements
- Overall the number of informal and formal complaints have increased
- Safeguarding alerts have been raised by the IMCA Service re poor MCA implementation.
- Impact of Court of Protection applications is unknown but 201 individuals have been initially identified and the process begun on a small cohort.
- Full impact of people in hospital and in domestic settings is yet to be fully realised.

## **8.0 Implications**

### Resource And Finance Implications/Benefits

#### **Decisions to increase resources**

- 8.1 Based on modelling, it is anticipated that there is a significant additional budget requirement for 2014/15 as agreed. There will also be additional increased costs associated with the Court of Protection applications, as further guidance is awaited, and does not take into account the number of DoLS reassessments which will be required in 2015/16, as a DoLS authorisation is for a maximum of 12 months.
- 8.2 The increasing costs fall into two main areas – the additional purchase of external provision, and additional resources to support the DoLS processes. The latter includes increasing the training as previously mentioned, increasing the capacity of the Business Support staff, and providing additional support to the MCA Coordinator to assist with the management of the DoLS process and ensure the wider role of the Mental Capacity Act does not lose focus.
- 8.3 Whilst it has recently been agreed that the Law Commission will undertake a review of DoLS, with a view to fundamentally changing the legislation, the full cost to the authority will not be known until the outcome of this work, expected in 2017, with the alternative being implemented between 2018 - 2020.
- 8.4 Original budget for MCA/Dols was £275k. Originally the request was for an additional budget of 500k to meet demand. The actual outturn year end figure for 14/15 was £45,810 further overspent.
- 8.5 For 15/16 predicted budget estimate to include is full year effect of staff; all cases to be reviewed based on 62% of last years plus new referrals is £1.15m.

## 8.6 Performance

- 8.7 Measuring NYCC's performance or benchmarking is quite difficult as there has become a reluctance to share what is very sensitive information across Supervisory Bodies. What we do know is that there is a significant prevalence of requests remaining unallocated across the region. This ranges from 6% of the requests to 45% across the 9 local authorities, with NYCC at 17%. 5 of these local authorities had higher rates of unallocated work.
- 8.8 We also know following an FOI request published in the Community Care journal is that the issues we are facing are repeated across the country. This included significant increase in demand; lack of BIA's available; Increase in expenditure; prioritising referrals is common practice; Risk of legal challenges is increased; Risk of destabilising other key areas of work through demands on the most highly trained staff; 50% of cases are not completed on time although bit reports that 23 local authorities met all timescales in 14/15 so far. Please also see Appendix 2 re some provisional figures based on the Q3 collection
- 8.9 Health and Social Care Information Centre/Omnibus returns are published on a regional basis which makes it very difficult to accurately gauge our performance against neighbouring authorities.
- 8.10 The Directorate commissioned an independent review of the above contingencies and their implementation against the ADASS advice and experience in other local authorities. This review indicated that the actions taken were as effective as could be expected given this unforeseen surge in applications. It also benchmarked the performance as good alongside that of the region.

## 9.0 Conclusions

- 9.1 All local authorities have faced a huge and unexpected surge in demand in respect of DoLS applications. Although this has placed the Directorate's performance in jeopardy all independent indications are that the response has been relatively effective and there will be continued monitoring of the situation.
- 9.2 Further information is expected on the national picture and this will be reported to members via the Mid Cycle Briefings.

## 10.0 Recommendations

1. That the Committee recognises that NYCC as a Supervisory Body, alongside most Local Authorities nationally, are currently under extreme pressure to apply the Deprivation of Liberty Safeguards as they are

intended.

2. That the Committee acknowledge that at this time, progress is affected in not undertaking the required work to develop MCA practice generally across the different agencies within the County.
3. That the Committee recognise that the burden associated with Deprivation of Liberty Safeguards is unlikely to significantly change within the next 2-4 years.

**Mike Webster**  
**Assistant Director, Quality & Engagement**  
**Health and Adult Services**

**County Hall**  
**Northallerton**

**23 June 2015**

**NORTH YORKSHIRE COUNTY COUNCIL**

**CARE AND INDEPENDENCE OVERVIEW AND SCRUTINY COMMITTEE**

**2 JULY 2015**

**SELF-FUNDERS BRIEFING**

**Purpose of Report**

1. At their Mid-Cycle Briefing Group Spokespersons suggested that the Committee receive a briefing on the privately determined and financed social care market in respect of self-funders. This would help shape the work the Committee intended on customer experience and advice and the care funding reforms (commonly termed the Dilnot proposals).

**Introduction**

2. The briefing explains the Directorate's obligations towards self-funders, the financial consequences in North Yorkshire for the market, the social care economy and Directorate resources. It also highlights how we engage with people to help them plan to avoid running out of money on private care costs.

**Context**

3. In England, older people who pay entirely for their own social care and support account for 45% of residential care home places, 47.6% of nursing home placements and 20% of home care support. These people (though it is not just older people) are often referred to as 'self-funders'. The self-funded registered residential care and registered nursing home market is worth £4.9 billion per year and the self-funded home care market £652 million. (2011 Local Government Information Unit Survey)

**Some Definitions**

4. **Self-funder** – A person who pays and arranges for their own care needs. No direct council involvement in setting up the care package. Payments to providers are outside of council contracts. Not covered by the council's standard terms and conditions. In some circumstances can arrange inappropriate care packages.

**A full cost payer** – A person who, though the councils charging arrangements, pays the full cost of their care package. The council arranges for their care package, following a full needs assessment. Direct council involvement in setting up the care package and payments to providers are made alongside council supported clients. Covered by the council's standard terms and conditions. Full cost payers are subject to a financial assessment.



**Capital Limits** – A term to used to refer to a self-funder whose asset pot has depleted to the point that they require council financial assistance to maintain their care package. The current capital limit is £23, 250, however it is proposed that this will increase to £118,000 under the Care Act as from April 2016.

### **National and Local Prevalence**

5. Whilst some local authorities have modest numbers of social care self-funders compared with those receiving state-funded support, in other areas self-funders are in the majority. Yet self-funders are often ignored in official statistics, and in national and local social care and health strategies and policies. Based on recent work for the implementation Care Act North Yorkshire has higher levels of self- funder than quoted in the opening paragraph with 71% of residential care being self-funding (45% nationally ) and 52% of Nursing care being self-funding (47.6% nationally). It is likely that the higher residential figure reflects the use of Extra Care throughout the county. These percentages are set against a figure of just over 6000 registered beds in the county.
6. Domiciliary care is more difficult to estimate as there is no fixed ceiling for the number of care hours that can be provided. However, from the various models that support the care act it is estimated that there are approximately 2500 additional users who may have an eligible need

### **Dilnot Proposals**

7. Under the Dilnot proposals for financial reform in the Care Act, from April 2016 those self-funders who do come forward will require an assessment for eligibility, annual reviews and the creation and maintenance of a care account to record ongoing expenditure towards the new care cap.(£72,000)
8. New systems will need to be developed for councils and individuals to work together, to agree care needs and to monitor the amount people spend on their own care up to the cap, after which the state will meet on-going costs to meet social care need. Local authorities will need to be aware of, and work with, people who previously would have been 'off the council's radar' because they were self-funding.
9. Self-funders have the potential to become very costly to the state and to local authorities in particular. If self-funders make uninformed choices about care, or purchase care which after a time they can no longer afford, they risk running out of funds and becoming dependent on their local authority for ongoing care funding.

## **Advice and Information**

10. The 2011 (LGIU) survey estimated that the outcome of uninformed choices by self-funders represented 3.5% of the average council's residential care budget.
11. If self-funders are not well informed at the outset about the preventative support services and care options available to them, the result may be earlier loss of independence and premature use of registered residential care and registered nursing homes. This is why the provision of good quality information and advice is a duty for local authorities under the Care Act and a key objective of a number of North Yorkshire 2020 projects. Also key is the provision of independent financial advice to ensure that people's hard earned assets are put to best use. This advice needs to be available through a range of routes including, but not limited to, websites.

## **Working with Partners**

12. It is often the case that the decision to enter residential care is taken in time of crisis, which can create a long term dependency. Work with our NHS partners is currently aimed at delivering new models of care that are designed to rehabilitate people so that they do not become reliant on residential care and can return to independent living. The final strand of ensuring that people do not enter residential care unnecessarily is ensuring that carers are fully supported and are able to carry out their caring role.
13. Furthermore, the impact of reduced independence on an individual's health may also lead to greater strain being placed on NHS resources.

## **Recommendations**

14. Later in the year the Committee will return to this as part of its more detailed work on the authority's preparedness and implementation of the Care Act.

## **TONY LAW**

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24 June 2015

## NORTH YORKSHIRE COUNTY COUNCIL

## CARE AND INDEPENDENCE OVERVIEW AND SCRUTINY COMMITTEE

2 July 2015

## WORK PROGRAMME REPORT

**1.0 Purpose of Report**

- 1.1. The Committee has agreed the attached work programme (Appendix 1).
- 1.2. The report gives Members the opportunity to be updated on work programme items and review the shape of the work ahead.

**2.0 Background**

- The scope of this Committee is defined as:

***‘The needs of vulnerable adults and older people and people whose independence needs to be supported by intervention from the public or voluntary sector.’***

**3.0 Botton Village**

- 3.1 At its 23 April meeting, the Care and Independence Overview and Scrutiny Committee considered a referral from the Yorkshire Coast and Moors Area Committee of a local petition regarding Botton Village. The Scrutiny Committee was also able to review additional written submissions from the Camphill Village Trust, and from the Action for Botton campaign. A full account of the discussion is included in the minutes.
- 3.2 Whilst there was some support amongst a number of Members for some limited enquiry regarding the social care aspects, the consensus reached was that it would not be appropriate to embark on formal scrutiny work at this juncture.
- 3.3 The Committee wanted to maintain a neutral stance. At this stage, the Scrutiny Committee was simply not in a position to take a definitive view as to whether the matter should be looked at, and if so, in what way, and in what level of detail. That said, Members acknowledged that this was a complicated issue and one in which many people believed NYCC scrutiny could legitimately could take an interest. Recognising this, and the range of views expressed by some Members, the most appropriate course of action might be to keep abreast of progress so that the Committee could turn its attention to this issue when it was right to do so.
- 3.4 For Members, the most practical approach was for Group Spokespersons to keep a weather eye on developments, principally through HAS Officer briefings, but have the discretion to refer the matter back to the Committee should there be any significant developments. One such reason could possibly be when the

outcome of the current legal proceedings was known. At their Mid-Cycle Briefing, Members were advised of the following and, in the spirit of the previous decision, decided to report this to today's Committee meeting.

### Current Situation

- 3.5 Following a hearing in the High Court on 1 April 2015, agreement was reached between CVT and a number of the Claimant's within the proceedings who live and work within Botton, to enable care and support to continue to be provided pending a full hearing of the Private Law case. The Order made by the Judge contained a number of schedules which set out cross undertakings given by the Claimants and CVT. The undertakings remain in force until such time as the Judge makes a further Order in the matter.
- 3.6 The key undertakings given by the Claimants are as follows:
- Not knowingly permit the media to enter any property without the consent of CVT.
  - Allow access to certain employees of CVT to the homes and property owned by CVT.
  - To use best endeavours to ensure that no person permitted to enter property owned by CVT seeks to intimidate or harass staff volunteers.
  - Accept written particulars of role provided by CVT.
  - Enter into a tenancy at will in the form to be found at Annex 4 of the Order.
  - Set up and maintain a standing order to pay rent, council tax, utilities, telephone and food.
- 3.7 The key undertakings given by CVT are:
- To not take any steps to evict certain individuals from their homes, dismiss them from their "social care work in respect of the house in which they reside", pay them for work done in accordance with the particulars of employment.
  - To not take any steps to evict certain persons from their homes Not to alter the level of financial and other support that the same individuals receive in relation to their accommodation and household utilities.
  - End financial support in relation to the retired co-workers not in shared living, capped at £4,500.
  - Not to terminate the tenancies of, or change the shared living arrangements for those beneficiaries living in certain houses as detailed in the Order This is however subject to certain exceptions, for example if the change is considered to be in the beneficiary's best interests or in the event that the beneficiary consents to the change.
- 3.8 It is understood that CVT and the Claimants have agreed to mediation ahead of a further court hearing to determine the outcome of the private law proceedings which is expected to take place in the Autumn.

- 3.9 A second legal action which was taken by 3 named villagers as a Judicial Review under Human Rights legislation has now been withdrawn by the Claimants following the refusal of the High Court to grant permission to proceed with the claim.
- 3.10 Health and Adult Services continue to monitor the situation and this includes a regular presence in the village from assessment and quality monitoring staff. An action plan is being agreed with CVT to take account of the latest audit report prepared by Veritau.
- 3.11 The Area Committee has asked for updates at their next meeting.

#### **4.0 Recommendations**

- 6.1 The Committee is recommended to consider the attached work programme and determine whether any further amendments should be made at this stage.

**BRYON HUNTER**  
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22 June 2015

## Care and Independence Overview and Scrutiny Committee – Work Programme Schedule 2015

### Scope

The needs of vulnerable adults and older people and people whose independence needs to be supported by intervention from the public or voluntary sector

### Meeting dates

<b><i>Scheduled Mid Cycle</i></b> Lead Members of Committee		Thurs, 3 September 2015 at 10:30am	Thurs, 3 December 2015 at 10:30am	Thurs, 31 March 2016 at 10:30am
<b><i>Scheduled Committee Meetings</i></b> <i>Agenda briefings to be held at 9.30am prior to Committee meeting. Attended by Lead Members of Committee</i>	Thurs, 2 July 2015 at 10:30am	Thurs, 1 October 2015 at 10:30am	Thurs, 21 January 2016 at 10:30am	Thurs, 21 April 2016 at 10:30am

MEETING	SUBJECT	AIMS/TERMS OF REFERENCE	ACTION/BY WHOM
<b>1 October 2015</b>	North Yorkshire Local Assistance Fund	To update the Committee on activity and trends of usage.	Policy & Partnerships
	Adult Substance Misuse Services	Update on progress of new integrated service “North Yorkshire Horizons” and issues encountered one year into contract. Representatives of providers to attend.	HAS-DPH
	Local Account	To agree the final version.	
	Sexual Health Services	Further update regarding the new North Yorkshire sexual health service. Provider to be invited to attend.	DPH
	Safeguarding	Committee to review the Annual Report of the NY Safeguarding Adults Board.	HAS, Chair of Board.



## Care and Independence Overview and Scrutiny Committee – Work Programme Schedule 2015

	Stronger Communities and Social Care	How are we making sure solutions will come from not just social care. What resources will be used from across all the authority and, wider still, all public services? How we are working towards promoting local networks and community associations can help people make the most of informal support, and combat loneliness and isolation in particular.	HAS – Stronger Communities
	DPH Public Report and Assessing the impact of Public Health on Social Care (possibly moved to October meeting)	To receive the DPH Annual Report but also focus on the extent to which public health initiatives and commissioning arrangements are helping social care directly.	HAS - DPH
	Targeted Prevention and Support. (NYCC Savings Target item)	How the relevant savings target is being achieved. How the impact upon service users is being managed, focussing on the evidence regarding the effect of the range of preventative services funded by the council for people who already have low level health and/or social care needs and their carers.	HAS
<b>21 January 2016</b>	Equipment and Telecare (NYCC Savings Target item)	Possible item. How the relevant savings target is being achieved. How the impact upon service users is being managed, focussing on delivering savings through the rationalisation of the current equipment and stores arrangements.	HAS
	Better Care Funding	Success against the Better Care Funding Programme in terms of the three main priorities; to improve health, self-help and independence for North Yorkshire people; invest in primary care and community services; and create a sustainable system. Update on progress.	HAS
<b>21 April 2016</b>	Complex needs	Current situation and progress against 2020 Savings requirement.	

Please note that this is a working document, therefore topics and timeframes might need to be amended over the course of the year.

Additional issues (to those above) which will be picked up at Mid-Cycle Briefings and which may also be brought to the subsequent Committee include:

<b>3 September 2015</b>	Market Management and Provider Failure, Independent Advocacy (Information and Advice), Workforce, Employment of Care Workers
<b>3 December 2015</b>	Market Shaping, Commissioning, Assessment and Enabling, The Care Cost Gap