

# Birmingham City Council

## Report to Cabinet

5 September 2023



**Subject:** **ACCEPTANCE OF RECOMMENDATIONS FROM SEND COMMISSIONER'S SECOND REPORT**

**Report of:** **Sue Harrison, Director Children and Families**

**Relevant Cabinet Member:** **Cllr Karen McCarthy - Children, Young People & Families**

**Relevant O&S Chair(s):** **Cllr Kerry Jenkins - Education, Children & Young People**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: N/A		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

### 1 Executive Summary

- 1.1 In May 2023 John Coughlan CBE, the DfE appointed Commissioner for Special Educational Needs and Disability (SEND) Services in Birmingham, published his second report to the Secretary of State for Education. This report was dated February 2023. His first report was published in May 2022, the recommendations of which were accepted in full by Cabinet in November 2022.

- 1.2 In his second report, the SEND Commissioner notes that '*there have been a number of significant and welcome areas of progress and development in Birmingham SEND*' and sets out areas where measurable progress has been made.
- 1.3 The Commissioner also notes that '*there is substantial work to do*' and makes 10 recommendations.
- 1.4 This report sets out the progress that has been made in SEND since the Commissioner drafted his second report. Cabinet is asked to accept the recommendations in the Commissioner's second report, note the Council's commitment to delivering the action plan that seeks to address them as well as note the progress made against the Commissioner's first set of recommendations.

## **2 Recommendations**

- 2.1 That Cabinet:
  - 2.1.1 Accepts the recommendations made by the Commissioner in his second report (published May 2023, dated February 2023).
  - 2.1.2 Notes the updated action plan appended with this report that sets out progress against the recommendations set out in the Commissioner's first report (published May 2022).
  - 2.1.3 Notes the action plan appended with this report that sets out how the recommendations from the Commissioner's second report will be addressed and the progress made since the Commissioner drafted his report.

## **3 Background**

- 3.1 In June 2018 Ofsted and the Care Quality Commission (CQC) conducted a joint inspection of Birmingham to judge the effectiveness of the area in implementing the disability and special educational needs reforms as set out in the Children and Families Act 2014.
- 3.2 As a result of the findings of that inspection and in accordance with the Children Act 2004 (Joint Area Reviews) Regulations 2015, Her Majesty's Chief Inspector (HMCI) determined that a Written Statement of Action (WSOA) was required because of 13 significant areas of weakness in practice. The WSOA was issued in September 2018.
- 3.3 In May 2021, Ofsted and the CQC revisited Birmingham to assess whether sufficient progress had been made in addressing the areas of significant weakness detailed in the WSOA.
- 3.4 That inspection found that Birmingham had not made sufficient progress in addressing 12 of the 13 areas of significant weakness.
- 3.5 In October 2021 the Secretary of State for Education issued a [statutory direction to Birmingham City Council](#) requiring the Council to take steps to improve its SEND services, including co-operating with the DfE appointed SEND Commissioner, John Coughlan.

- 3.6 The Council was also directed to submit its Accelerated Progress Plan (APP) to the DfE and NHS England (NHSE) setting out:
- 3.6.1 the governance and accountability structures and processes that will support the next phase of improvement.
  - 3.6.2 the actions the Council is now taking (and has taken since inspectors left) to respond to their outstanding concerns; the impact measures and milestones to which the Council is working on, being clear on the improvements that will be delivered in the next 3, 6 and 12 months.
- 3.7 [The APP](#) was subsequently published and approved by the DfE. The APP is reviewed and updated after each 6 monthly DfE/NHSE review, after the formal feedback from each review is received.
- 3.8 In February 2022, [the SEND Commissioner published his first report](#) to the Secretary of State for Education. The report looked in detail at a range of structural options and made the key recommendation not to recommend structural reform. This recommendation was made on the basis that the Council would unequivocally commit to the range of related recommendations in the report as a statement of the local authority's determination to return vulnerable children to the heart of the city's ambitions.
- 3.9 The Council unequivocally accepted the recommendations that were made in the Commissioner's first report. The Council also provided the SEND Commissioner with an action plan which set out how each of the recommendations would be addressed.
- 3.10 The action plan appended with this report (**Appendix 1**) shows the progress made against the recommendations in the Commissioner's first report.
- 3.11 In May 2023 the Commissioner's second report (dated February 2023) was published.
- 3.12 In this report, the Commissioner stated that *'there have been a number of significant and welcome areas of progress and development in Birmingham SEND. Most notably these include: very substantial corporate progress; similar progress in the rebuilding of children services generally; gradual progress in the services themselves, though this is less evident to parental and child experience.'*
- 3.13 The Commissioner highlighted areas of measurable progress made since his first report was drafted including the percentage of Education, Health and Care Plans (EHCPs) issued within 20 weeks, increasing traffic to the Local Offer website, a reduction in the percentage of children and young people with EHCPs who are not in employment, education or training (NEET) and over 95% of phase transfers being completed on time.
- 3.14 There is an established, positive working relationship with the SEND Commissioner across the partnership of SEND services. Partnership meetings are embedded to drive the improvement required, with commitment from the highest level of leadership, including the political leadership of the council.

- 3.15 The Commissioner's second report made ten recommendations. **Appendix 2** sets out the progress made so far against these recommendations.
- 3.16 The Commissioner's recommendations have been accepted by the SEND Improvement Board (SIB) which oversees progress made via regular stocktakes.
- 3.17 **Appendix 2** sets out progress made against the ten recommendations since the Commissioner wrote his second report.

## **4 Consultation**

- 4.1 The work of the SEND Improvement Board is based on co-production and consultation with a variety of stakeholders.
- 4.2 Co-production and consultation help to crystalise the deliverables of the programme and how we improve outcomes for children and young people in Birmingham.

## **5 Risk Management**

- 5.1 Risks in delivering against the recommendations made by the SEND Commissioner are identified, evaluated and controlled through the SEND Improvement Board.
- 5.2 The Accelerated Progress Plan has a risk register through which risks are logged and managed.

## **6 Compliance Issues:**

### **6.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 6.1.1 The recommendation supports the delivery of one or more of the Council's priorities as set out in the Birmingham City Council Plan 2022:
- Birmingham is an aspirational city to grow up in - we will improve protection of vulnerable children and young people (including those with Special Educational Needs and Disability).
  - Birmingham is an aspirational city to grow up in - we will inspire our children and young people to be ambitious and achieve their full potential.

### **6.2 Legal Implications**

- 6.2.1 On 15 October 2021 the Secretary of State for Education issued a statutory direction under section 497A(4B) of the Education Act 1996, directing the Council to take a number of steps including complying '*with any instructions of the Secretary of State or the SEND Commissioner in relation to the improvement of the Council's exercise of its SEND functions and provide such assistance as either the Secretary of State or the SEND Commissioner may require*'. The Council is therefore required to act upon the recommendations set out in the SEND Commissioner's Report dated February 2023.

### **6.3 Financial Implications**

- 6.3.1 A report was approved at Full Council on 28<sup>th</sup> February 2023 for the additional resources required by the Children and Families Directorate.

### **6.4 Procurement Implications (if required)**

- 6.4.1 None.

### **6.5 Human Resources Implications (if required)**

- 6.5.1 None related to this report. A report was approved at Full Council on 28<sup>th</sup> February 2023 seeking approval for the additional resources required by the Children and Families Directorate. This resource has recently been identified and there is much to do. In the meantime, progress is being made both in terms of the recruitment to leadership positions in Children and Families Directorate and the redesign/restructure of the service.

### **6.6 Public Sector Equality Duty**

- 6.6.1 The inspections of Birmingham's services for children and young people with SEND identified areas of weakness that needed to be addressed.
- 6.6.2 In considering and fully accepting the Commissioner's recommendations the Council has had regard to the PSED and in particular notes that the functions carried out by the Council's SEND services are designed to support the aims set out in section 149 of the Equality Act 2010, particularly for those with the protected characteristic of disability.

### **6.7 Environmental and Sustainability Implications**

- 6.7.1 N/A

## **7. Appendices**

- 7.1 **Appendix 1** - Updated Action Plan showing progress against the recommendations from the Commissioner's first report.
- 7.2 **Appendix 2** - Action Plan setting out how the recommendations from the Commissioner's second report will be addressed.

## **8. Background documents**

- Statutory direction issued to Birmingham City Council due to its special educational needs and disability (SEND) service provision.  
<https://www.gov.uk/government/publications/direction-issued-to-birmingham-city-council-october-2021>
- Independent reports and recommendations from the commissioner for SEND services in Birmingham.  
<https://www.gov.uk/government/publications/birmingham-city-councils-send-service-commissioners-report>