

Improving Special Educational Needs and Disability (SEND) Services in Birmingham

**Third Report to the Secretary of State for
Education by John Coughlan CBE,
Commissioner for SEND Services**

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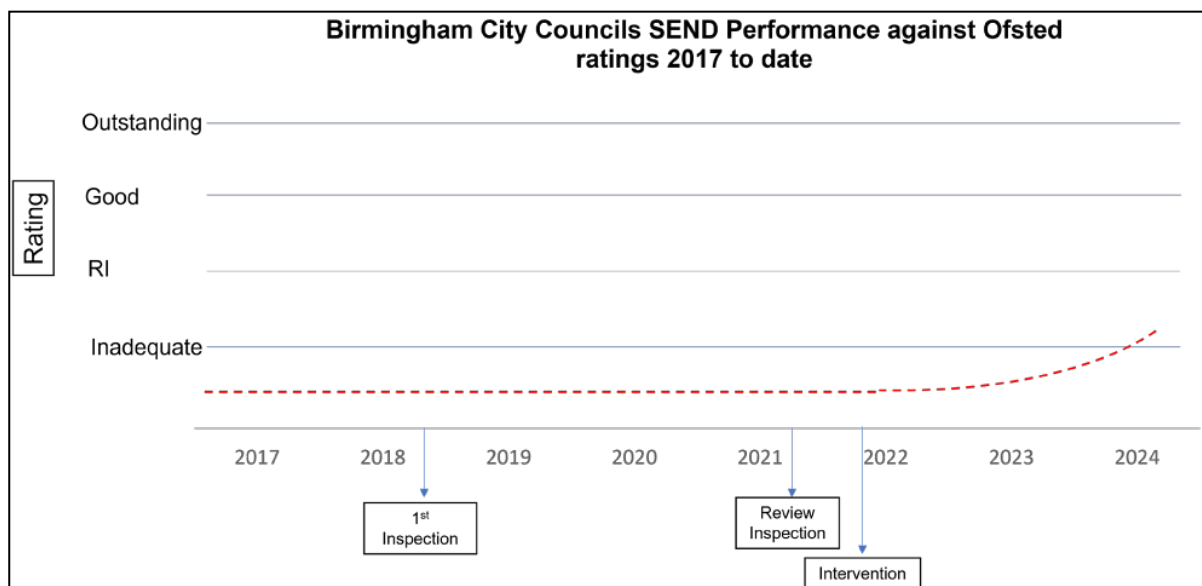
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Introduction and Executive Summary

1. This is the third full (annual) report of the DfE intervention into SEND services in Birmingham City Council (BCC). The intervention was triggered by a review inspection of the services in May 2021 which found that 12 of 13 areas for priority action, identified in a highly critical inspection in 2018, had not made any progress. This intervention by DfE commenced in October 2021 (by which point indicating a minimum of four plus years of gross service failure) through the appointment of a Commissioner together with a Statutory Direction. That is the first time those powers have been exercised over a SEND service.
2. The first report in early 2022 confirmed deeply worrying and chaotic service arrangements with widescale breakdowns in working relations within and between the key services including between the LA and schools but especially within Birmingham City Council. The EHCP assessment and review services (SENAR) were in particular disarray with a substantial dependency on interim staff. This reflected very high levels of senior churn in the council, at the highest levels, including the now much quoted statistic of no less than nine chief executives and nine directors of children's services in the preceding eight years. In particular, that report concluded that, as a concept and entity, the wider statutory children's services under Children Act 2004 were no longer properly evident within Birmingham. There were also extensive failings in corporate support to SEND through HR, legal, finance and procurement functions. The report was directly critical of adversarial political cultures, not just between political parties but in the interface between members and officers with SEND having become something of a political football. There was an especially difficult issue to do with a disproportionately powerful SENDIAS service which was in turn implicated by significant political conflicts of interest. However, for a variety of argued reasons, that first report decided on balance not to recommend the transfer of SEND into a children's trust.
3. The second report in early 2023 identified some progress being made in establishing new foundations to SEND in Birmingham under the auspices of more stable continuous leadership from chief executive and DCS. That included the leadership being established through partners at the SEND Improvement Board (SIB). However, the progress was seen to be too slow and inconsistent and not yet effectively reaching the experiences of long-suffering children and families. This second report was still more overtly critical of the various political cultural challenges which generally were at best not helping improvement and, regrettably, were directly hindering improvement, not least with regard to SENDIASS. Alongside the strengthening SIB, a notable, and it turns out well-founded, cause for optimism was the appointment of a highly committed and skilled new Director for SEND.
4. This report will chart more positive and embedding progress within Birmingham SEND itself in the past year. That progress remains slow but is now measurable and accelerating, more secure and impacting on more children and families (though by no means all). The wicked issue of SENDIASS has been finally resolved (but there remains little evidence of genuine political appreciation of what went wrong and why or of the scale of the fundamental political problem in BCC of understanding conflicts

of interest). There are vision, strategy and confidence from the officer and the service political leadership spreading through services and partners.

5. The SEND Improvement Board (SIB) is now a well-established partnership arrangement driving improvement as evidenced by a positive review of the written statement of action in December 23. That review has since been endorsed by a very positive letter from DfE.



However, the above graphic is a simple but reasonable illustration of the nature of SEND progress (against the broader Ofsted criteria) in Birmingham over a seven-year period. The more recent improvements are to be welcomed and are measurable. But this is the first time in that period that the services have come close to moving out of an inadequate rating. This is an uncomfortable if now optimistic graphic. There is much more to be done and no room for complacency.

6. Recruitment remains an unacceptably and unnecessarily difficult challenge, as do financial and related business systems in the council. That in turn relates to the widespread corporate and financial crisis in the city which has led to a separate Best Value intervention.
7. The Best Value intervention commenced in October 23 following the issuing of a s114 notice by the council. This was directly triggered by revelations concerning the scale of the council's liabilities to fix both equal pay and a failure of implementation of Oracle. That challenge has since been extended as it is clear now that the council is also facing a significant revenue gap of over £300 million which must be closed in a two-year period. These events will substantially change the council going forward and have implications both for children services and SEND. In the circumstances it was agreed between DfE and DLUHC that the SEND Commissioner should also join the Best Value commissioning team.
8. The remainder of this report will look in more detail at some of the key areas of both progress and concern. The report will reflect back on the previous reports'

recommendations by exception and go on to make further recommendations for the period ahead.

SEND Improvement Board (SIB)

9. The SIB is now very well established. It meets routinely and is well attended particularly with strong schools and health representation. The board is properly serviced by BCC with good agenda planning. That includes a well-established routine of hearing from parents and carers and key cases (examples of the lived experience). Political engagement and behaviours at the SIB have improved substantially across parties, led by the Lead Member.
10. In December '23 the board undertook a thorough and well-prepared review of the progress of the written statement of action. It remains the case that overall progress has been too slow and there is a great deal of work still to do. However, there is now clear evidence of measurable progress against all of the areas of the written statement of action. Notably, DfE colleagues have since agreed to close the first area concerning strategic joint working. That is a welcome endorsement of progress and has been matched with a positive letter from the Department.
11. Among the measurable areas of progress being reported to the board are the following:
 - Significant reductions in the lodging of tribunal appeals
 - Very strong performance in the completion of EHCPs within the 20-week timescale (now significantly better than national averages)
 - Good rates of actioning annual reviews within four weeks of meetings
 - Increased proportions of children with EHCPs being maintained in mainstream placements (but lower than national averages)
 - Reducing numbers of children awaiting a school placement
 - A developing body of evidence of the quality of individual case management through a model of case audit which is slowly being embedded.
12. Further work is now underway with the Commissioner's agreement to convert the board into a SEND and Alternative Provision (AP) partnership which retains the role of improvement towards inspection but also covers the partners' collective wider responsibilities including with regard to alternative provision.

SENAR and SENDIASS

13. SENAR, Birmingham's assessment and review service, is in a stronger state leading to a more effective flow of EHCP processes and substantially better communication with parents. A restructuring of this service which will include a necessary reinforcement of staffing has been approved by SIB and by Cabinet. The funding for this work is not in jeopardy at the current time. That funding remains essential for any prospect of continued service improvement. A decision was taken at the start of this improvement process to ensure SENAR staff are more directly accessible to parents and carers and this together with the bolstering of the service has probably had the single most important impact on improvement so far. However, attempts to appoint to a permanent head of service have floundered as have attempts to shift the balance

from interim to permanent staff. The latter issue is definitely at least in part a result of the continued challenges of corporate HR support in Birmingham. These need finally to be addressed including through the work of the Best Value intervention.

14. SENDIASS is now much closer to full compliance. The service is under new management with a largely new team with much clearer governance and understanding of remit. The overt and unhelpful political interference has now abated. This progress coincided with the intervention in early '23 of the national Labour Party with regard to the council's political leadership. It is notable that the relief of this specific and disproportionate problem has had a major positive impact on the rest of the improvement programme. It has freed wasted senior management capacity and perhaps asserted the determination of the current improvement programme to achieve proper solutions and deal with unhelpful barriers to improvement. There is further work to be done corporately and in the context of the Best Value improvement programme to ensure that the failures of governance which contributed to this unnecessarily damaging issue should not recur here or elsewhere in Birmingham.

Parent Carer Forum (PCF) and Co-Production

15. As previous reports have noted, the PCF in Birmingham had a strong record in offering appropriate and usually constructive challenge to the services and agencies. This was demanding and often frustrating work for the then Chair of PCF. For various reasons there was a change of leadership of the PCF in early '23. That change has been well delivered and the new PCF leadership continues to offer strong and constructive support and criticism but is also establishing a wider base of distributed leadership across the widening membership of the forum which will be positive for the future. The new head of the forum should be congratulated for her part in the very effective transfer and continued strong contributions to the board. The Commissioner and service leaders know they are receiving strong and clear representation.
16. Unfortunately, but not unusually across SEND systems, other representations have more recently been made which reflect some tensions between different members of the parent carer community. It will continue to be for service leaders and managers in all the key agencies to ensure effective parent carer engagement and co-production going forward. For the effective working of the board however, we should continue to focus on the PCF as the key member of the board and point of contact into that parent carer community.
17. On a linked point and in the context of a continuous drive to promote the principles of co-production in SEND in Birmingham, the SIB has recently undertaken targeted coproduction training to support our own work but also to set down a marker for other parts of the leadership system. Co-production, as with other aspects of inclusion and equality, must be and be seen to be a continuous process of improvement that is endorsed and empowered across the sector.

Schools and Education (and Alternative Provision)

18. The relationship between schools and the local authority remains under considerable general strain and this applies especially in the SEND arena as outlined in the previous reports. This is inevitable given the history and context but there are now a number of growing positives upon which to build a stronger system in future.

19. Representation of all phases on the SIB has been consistent and constructive. Those phase representatives undertake a difficult task on behalf of their respective school communities with high levels of commitment. The task of communicating between the board and often beleaguered school communities is not easy, especially when messages of progress can be countered by evidence of various case challenges. The Commissioner has seen direct evidence of outstanding school leadership for SEND children in Birmingham, and regrettably some direct evidence of cynicism. The SIB and the children's leadership are working hard to shift the dial of the relationship and with some success, but for various reasons the progress remains slow.
20. Some of the key metrics relate to inclusion of SEND children. That is improving with (at last count) around 34% of EHCP children retained in mainstream which compares favourably to the 29% figure last year but remains short of the national averages. Presenting this as a positive shift to schools and parents who may distrust the very targets, especially with regard to individual children, is part of the challenge.
21. A key agent in the relationship between the LA and schools is Birmingham Education Partnership (BEP), which, largely, was commissioned in the past as a school improvement provider. As part of the new strategy for education and partnership with schools, the DCS and team are intending to take more direct control of these functions and re-establish direct relations. This is seen as an existential threat for BEP, though the LA is intent on retaining its services for other activities including coordination of the Developing Local Provision model of school's partnerships. There has been external pressure for this commission to intervene in the LA's plans, but the Commissioner is of the view that this is a legitimate local decision which should not be blocked in the absence of clear evidence otherwise. It is a legitimate local determination. Furthermore, the LA's plans are consistent with legitimate determination to establish a more balanced wider education and schools' system in the city, which will certainly be of benefit to the SEND community. The DCS is also very positive of the engagement with the role of the Regional Schools Director to this end.

Health

22. In early '23 the SIB commissioned a "health summit" in order to achieve greater coherence between health commissioning and provider services, and with partners, in order to better address outstanding health concerns for SEND. These particularly were to do with waiting times for various therapies, and the need to develop better early intervention that might reduce the sense among families that a clinical diagnosis and EHCP are a necessary "currency" for seeking support for children. Among other things, the summit agreed to promote a "balanced system" as a model for the development of that earlier health intervention.
23. The summit, generally regarded as a successful intervention, has effectively converted into a working sub-group of the SIB and both enjoy consistently strong engagement from all aspects of the health system including highest involvement of the ICS.

24. However, most of the performance measures for a healthy SEND system, while reducing, remain stubbornly high and continue to represent a system that is too frustrating for parents and too slow for a child's developmental needs. The improved engagement and commitment will need to continue to drive improvement hard for the foreseeable future. There remain significant questions for the resource investment and clinical capacity in all health systems for SEND, not just in Birmingham. The continued direct engagement from the leadership of the ICS is especially helpful.

Birmingham Children's Trust (BCT)

25. The major recent event for BCT was its achievement of a Good rating in the Ofsted ILACS inspection, which is excellent news for Birmingham's vulnerable children and probably a partial vindication of the decision not to destabilise the trust by integrating SEND at that time. BCT has since undergone a change of leadership but that has been managed effectively and with helpful continuity.

26. That said, there were last year emerging tensions between the work of BCT and some SEND issues. They especially related to the review of provision of short breaks which largely affected SEND families who were concerned about the commitment to them and to co-production. The processes were subsequently revised but damage was done to some working relations including across the PCF. The new CEO of BCT has helpfully taken on direct engagement with the SIB from his predecessor. The trust also now has an interim designated social care officer (DSCO) which is a good step reflecting the increasing overlaps between SEND and social care. The "commissioning" relationship between BCC, through the DCS, and the trust is now much more coherent and appropriate.

BCC Corporate Support and Governance

27. These issues are now reflected by the context of the Best Value intervention discussed below. This SEND intervention has commented strongly throughout on the poor corporate support in BCC - specifically HR, finance and legal - and its detrimental impact on the undeniable service and professional failures. A year ago, not least through the Chief Executive's support, there was a sense of a turning point with BCC apparently better understanding the need for that support to improve with the service. Regrettably, that sense has not generally translated into actual support improvement – as the triggering of the Best Value intervention more widely illustrates.

28. In terms of finance, perhaps the most frustrating issue is that the usual main barrier to service improvement – a lack of hard cash – has not been the issue here (as best we can understand). The Council has voted through the required resources to support improvement, especially with regard to the essential expansion of SENAR into a functioning assessment service. But the chaotic history of BCC's financial management and systems, inextricably linked to the much-publicised failings of the Oracle implementation, continues to block or at best damagingly delay the service leadership's attempts to pursue key aspects of the improvement plan, including recruitment.

29. A further aspect of the Oracle problem is its impact upon schools individually and especially upon the fabric of the essential relationship between schools and the LA. Schools have been struggling to manage their own finances and close their own

books because of the Oracle failings. This is reinforcing their sense of being within a local authority that is poorly run, doesn't understand or care about their problems and exacerbates the SEND related problems.

30. Much the same applies to HR within the service, especially on recruitment. Significant and unnecessary process delays, and bureaucratic blocks that seem to have lost sight of their purpose, have contributed to the continued failure to recruit to a Head of SENAR. This is a key post which remains unfilled in a failing service that is entering its third year of statutory intervention. The service itself remains dependent on about 70% agency and interim staff. Aside from the cost, inefficiency and professional weakness that represents, at time of writing even those interims are at risk from an internal financial ruling which is limiting even the job security of interims and which bears no relationship to the essential nature of the work and the continued experiences of families. The Council still needs to re-learn its fundamental responsibility to provide effective administrative support which enables rather than frustrates statutory service delivery and support.

Politics

31. Notwithstanding the Best Value intervention and its antecedents, there have actually been at least some positive political developments in the SEND journey since the last report. Most notably, the Lead Member has remained in role for almost two years now and is offering invaluable political stability and leadership – within the service, within Cabinet and externally. The calm and assurance she brings to the role have been invaluable and hopefully are increasingly better recognised across the political spectrum. The conflict of interest behaviours that seriously impeded the early stages of the intervention, especially through SENDIASS, have significantly abated, particularly since the national Labour Party intervened in the local political leadership last year. Although painfully slow, some political disciplinary measures should help to encourage better individual politicians' behaviours going forward. There has also been a notable shift of tone and focus from the Children's Scrutiny Committee with some developing recognition of that committee's role in supporting officers and improvement rather than being a challenging adversary to them and the intervention. Finally, cross party support and behaviour has substantially improved.
32. There is a but. These political improvements, such as they are, have been hard fought and painfully but also damagingly slow. The poor political culture and functionality in Birmingham have certainly contributed to the flat-lined graph of improvement shown above. More importantly, the wider political culture and function in Birmingham – the foundation of this malaise – have not substantially changed and it is hard to see how any of these or other improvements can be accelerated or sustained without a major shift in governance and culture. The first of these reports made clear recommendations about work needed to improve that culture. Those recommendations were not properly implemented. If they had been, arguably, the Best Value intervention might have been averted. The opportunity now, through the Best Value intervention, to take this work more seriously needs to be grasped by all concerned to avoid disastrous repetition for Birmingham children.

Best Value (BV) Intervention

33. The circumstances of the BV intervention, led by DLUHC, are crudely summarised above and better explained elsewhere. For these purposes the important issues are to do with the interface between that intervention and this.
34. The BV process is necessarily wider, more potent and better resourced. On one level, the SEND intervention is arguably “subsumed” by the BV one given the SEND process is focussed on one dimension of a local authority that is now entirely under the auspices of the BV intervention. However, the SEND intervention must remain subject to its own statutory framework and formal direction.
35. The solution arrived at to this exceptional dilemma has been to retain and respect the continuing integrity and necessity of the SEND process as a continuing free-standing one, but to include it in the architecture of the wider improvement and recovery programme for the whole council, under the BV process. The SEND Commissioner remains in role but takes on an additional role as a member of the BV Commissioning Team, sharing the wider corporate responsibilities and accountabilities of that team alongside the more specific SEND ones. The model makes sense and so far seems to be working but will require continuing monitoring, especially, for these purposes, to ensure the SEND progress is not compromised.
36. More immediately, the deepening financial crisis which triggered the BV intervention poses a significant threat to all concerned. The late recognition of the scale of the revenue gap has required urgent activity to develop a two-year savings programme (‘24-‘26) with sufficient credibility to release the required “exceptional financial support (EFS)” from DLUHC without which the council would not be a going concern. That involves circa £150m targeted savings in the first year (24/25).
37. The savings required of children’s services excluding the children’s trust in the financial year 24/25 amount to 38% of spend, which is obviously a very significant figure. When the BCT budgets and savings are included the savings figure “nets” as 13% and is a reflection of the necessary protection that must be offered to children’s social care. These savings will be painful to deliver (including a substantial change to the funding of home to school transport including for SEND) but the DCS and her team have put forward credible if challenging plans. The DCS has also made it clear that she is gravely and rightly concerned about the implications of a further savings target in the following year. The other significant impact will be upon the capacity and personal resource of the leadership of the SEND service, which is already severely stretched, in the implementation of these savings proposals.
38. It should also be noted that the corporate budget gap includes the costs of inflation, demand and population growth, which will be built back into the service budgets going forward. That actually means that notwithstanding the savings proposals, in cash terms the department will be spending as much if not slightly more than the current year on essential support to the most vulnerable children. Obviously, this is a difficult message to explain publicly and the savings are real and challenging to deliver. It would be wrong and dangerous to underestimate the scale of risk – through general instability and indirect financial challenges – which this context now represents to SEND improvement. There has to be a wide commitment to manage those risks and

embed and sustain the fragile improvements for SEND. That includes with regard to the reductions in early help funding. The impressive and developing partnership between the DCS and BCT is providing essential system leadership in this regard.

39. The second crucial dimension to the BV intervention will be the governance improvement programme which relates to the technical governance of the LA (audit, decision making, constitutional) and to the organisational culture and behaviours – including political and officer behaviours and the relations between the two. As a first step towards this process the Council commissioned and has publicly agreed a report from the Centre for Governance and Scrutiny (CfGS). The ensuing improvement process in BCC will be overseen by the BV intervention team with the SEND Commissioner closely involved. The key point to note at this stage is the close synergies between the CfGS work and the issues of profound governance concern that have been thematic to this series of SEND reports. The main lesson from that theme is that BCC has an ability to pay convincing lip service to such interventions. In fact, BCC is a highly sophisticated institution in the way it defends itself from genuine change. The processes of governance and culture change will need to be driven with the utmost determination to prevent regression on behalf of SEND as well as the wider council and its services.

Previous Recommendations

40. Against a more positive back drop of hard fought progress in SEND in Birmingham the following recommendations remain outstanding from previous versions of this report. These recommendations were agreed by all parties at the time.

41. *[February 2022, Rec16]* The City Council should conduct a thorough business process review, if necessary with external support, to ensure all of its corporate business process and governance arrangements and systems are fit for purpose and efficient with a particular view to ensuring their ability to support not hinder service delivery.

42. *[February 2022, Rec 17]* Following the establishment of a new political administration through the May 2022 local elections, the City Council should conduct an exercise with external support to review and refresh the member-officer culture to ensure it too is fit for purpose especially but not only in the support of children's service improvement.

43. *[February 2022, Rec 18]* The Department for Education should conclude an effective review of the 2014 SEND reforms including with regard to more stable funding and, through that process or otherwise, look to establish ways to assess schools on their duty of inclusion.

44. *[February 2023, Rec 7]* The intention to give stronger focus through this intervention on the role of schools and the development of a new SEND strategy between the LA and schools should be agreed.

45. All of the above were essential and agreed recommendations which have not progressed well enough if at all. They need continued if not now urgent attention.

Conclusions

46. After a challenging period and slow start, SEND improvement in Birmingham is now evidentially progressing. That should be applauded, given the context, but all efforts must now be brought to bear on supporting and accelerating that improvement.
47. Regrettably, the wider malaise in BCC, financial and otherwise, which has now triggered the Best Value intervention, represents a potential further threat to that improvement, so concerted efforts will be required to ensure otherwise, not least on behalf of vulnerable children and families who have lived with an under-performing system for far too long. Therefore, the mechanisms described above to synchronise the two interventions must be maintained and developed.
48. Conversely, these two interventions working together may now offer Birmingham the best chance in many years of achieving a stable and effective council which is a good home for these crucial SEND services.

Recommendations

49. The established “architecture” of this SEND intervention should be retained, including: the Statutory Direction; the Commissioner; the SIB.
50. The synchronisation with the BV intervention should also be maintained through a shared Commissioner but this novel arrangement should be kept under review by both processes and government departments.
51. The SIB and the Improvement Plan should be maintained as the cornerstones of the local improvement work – and that should include agreement for the SIB taking on general improvement and partner oversight for SEND including AP.
52. The SIB will receive updates from the BV work with regard to governance and corporate service reform in BCC (linked to 40 and 43 above).
53. Once agreed, the SIB should oversee the recommendations within this report including reviewing the outstanding actions described in 40-43 above.
54. That should include an update from DfE about the progress of national reform for SEND.
55. The SIB should also continue to champion the principles of co-production as a model to the system including through the inclusion of the PCF at the Board.

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