

BIRMINGHAM CITY COUNCIL

EDUCATION AND CHILDREN'S SOCIAL CARE O&S

COMMITTEE – PUBLIC MEETING

**1000 hours on Wednesday, 19 October 2022, Committee Rooms 3 & 4,
Council House, Victoria Square, B1 1BB**

Action Notes

Present:

Councillor Kerry Jenkins (Chair)

Councillors: Shabina Bano, Jilly Bermingham, Debbie Clancy, Des Hughes, Morriam Jan, Shehla Moledina, and Simon Morrall

Other Voting Representatives: Justine Lomas, Roman Catholic Diocese, Osamugi Ogbe, Parent Governor, and Rabia Shami, Parent Governor

Also Present:

Cllr Karen McCarthy, Cabinet Member, Children, Young People and Families

Sabiha Aziz, Chair, Parent Carer Forum

Janie Berry, City Solicitor

John Coughlan CBE, Department for Education (DfE) Commissioner for SEND Services

John Elsegood, Interim Lead, Children and Young People Travel Service

Sue Harrison, Strategic Director, Children and Families (on-line)

Victor Roman, SEND Improvement Programme Manager (on-line)

Christian Scade, Head of Scrutiny and Committee Services

Amanda Simcox, Scrutiny Officer

1. NOTICE OF RECORDING/WEBCAST

The Chair advised that this meeting would be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2. APOLOGIES

Apologies for non-attendance were received on behalf of Sarah Smith, Church of England Diocese.

3. DECLARATIONS OF INTERESTS

Councillor Des Hughes declared a non-pecuniary interest by virtue of previously being an employee of Special Educational Needs and Disability Information, Advice and Support Service (SENDIASS). He stated that he wasn't employed by SENDIASS anymore and had not been for the past six months.

4. ACTION NOTES AND ACTION TRACKER

(See documents No. 1 and No.2)

RESOLVED:

The action notes of the formal meeting held on the 7th September 2022 were agreed, and the action tracker was noted.

5. SEND COMMISSIONER

The Chair introduced the item and informed Members that the DfE Commissioner for SEND Services had been invited to attend to provide information in relation to the role and remit of the SEND Improvement Board, of which he was Chair, and what the Commissioner believed was required to drive continued improvement work.

John Coughlan CBE, DfE Commissioner for SEND Services provided the context for his involvement, and this included:

- His role is on behalf of the DfE, which is a ministerial appointment under a statutory direction.
- There was an original inspection of SEND in Birmingham in 2018 that resulted in 13 priority actions, which is a high number, as a typical weak report would tend to include three or four priority actions.
- The follow up inspection in 2021, which was the stimulation for the government intervention, was that Ofsted and CQC found that only one of those priority areas had been reasonably, if not fully addressed.
- It is really important for the Council to understand the gravity of the circumstances of SEND services in Birmingham.
- The first stage of his role was described as assessments and diagnostics, which is not a further inspection, as it was a given that the Ofsted and CQC judgment

was accurate. But there was a dimension of reviewing the elements, and it was particularly about trying to understand why services were in sustained failure. His report was concluded in February 2022, and it had been mutually agreed to delay publication, due to the pre-election period, with it being published in May 2022.

John Coughlan CBE, DfE Commissioner for SEND Services provided the headlines of the findings in his report, and these included:

- The inspection findings were accurate, and this indicated at least four or five years of sustained and unsatisfactory performance in the delivery of SEND Services in Birmingham, and recovery was extraordinarily difficult for all concerned.
- He has endorsed the findings based upon what he has seen so far. He stressed that the Council has got good people trying really hard, and it is important to remember that at all times. The issue is what efforts are needed to reconstruct the wider context as well as the service, because the service failed within the context.
- The strategic concern that contributed to the sustained failures, was there having been a lot of senior instability; in the eight years since the Kerslake report, there have been nine Chief Executives, and nine equivalents to the Director of Children's Services (DCS). He was pleased the Council had made progress, and there was now a substantive Chief Executive, as well as a substantive DCS, whose role was now commensurate with the statutory definition of the DCS.
- Prioritising the wider needs of children in accordance with the Children Act 2004, and how well the council has fulfilled its broad responsibility to all children was important.
- Work on the weaknesses in the corporate system was progressing. However, it remained a significant challenge to get things done as quickly as needed, and that would apply to recruitment which in turn was key to progress.
- He has made some comments about the political culture, and he respects that some leading politicians disagreed with him about some of those. However, this was about the eighth intervention he has done, and he has been involved in the leadership of services in local government across the piece for many years and stands by those concerns.
- There were issues about the tone and balance of officer and Member relationships in the organisation, which needed further work, and he was pleased that the Chief Executive and Leader were taking this seriously.
- The report talks at length about service specific issues, including the role of Special Educational Need Assessment and Review (SENAR) Service, which is the bedrock of the service, and was broken in Birmingham. This resulted in a high

level of complaints from parents, with most of these being queries, but parents had to raise the complaint in order to get a response, which raised the ante. Work was ongoing to fix SENAR, and more was to be done.

- Other key areas of practice and engagement included the real problems of Home to School Transport; this has been sorted in the interim. The performance in the past critical weeks since the start of the new term, compared to last year, was remarkable, and he congratulated those involved.
- SENDIASS in Birmingham has a particularly high profile. As set out in the report it was explained there were polarised opinions about the role of SENDIASS.
- There have been previous considerations of reviewing SENDIASS in Birmingham, however these reviews had not concluded. Therefore, his report recommended that the review should be conducted under independent cover and should be concluded.
- That has now happened, and the review was a very critical judgement about SENDIASS. Its management may have been committed to its function, but on a number of different levels it was working outside its function, and therefore its core function was not compliant with minimum standards. The review was calling for a full renewal and reset of SENDIASS in Birmingham.
- His report made comments about the need to improve co-production, and good work has happened, and the Improvement Board was going to help to address this.
- The Parent Carer Forum (PCF) in Birmingham, like everywhere, was complicated and they were all unique. The experience in Birmingham had been exceptional and the contribution of the Chair to the Improvement Board has been invaluable.
- Part of his brief was to consider whether SEND services in Birmingham was safe to stay with the Council. He did not think the Council needed to transfer SEND services to a trust, such as Birmingham Children's Trust. However, this recommendation was contingent upon his recommendations being pursued by the City Council and its partners. This was because moving to a trust would be expensive, disruptive, and distracting, and he has faith in the work undertaken thus far. However, if the work was not sustained then this trust question would need to be urgently reviewed. Everyone needed to work together and the DfE was closely watching this point.
- Going forward, he was pleased that he had a letter from the Leader, the Chief Executive and other lead members, and key people in the system, saying they accepted his recommendations in full. He noted though that the letter accepted his recommendations, but they did not necessarily accept all of the assessment. He was pleased there were plans to confirm this position through a report to Cabinet.

- The Accelerated Progress Plan (APP) was the bedrock of the action planning, and at the December meeting of the Improvement Board there will be a formal review of the progress of the APP with the DfE and National Health Service England (NHSE).
- The Improvement Board was trying to get the fixes installed in SENAR. One of the problems in Birmingham and many places was staffing issues. The necessary urgent resolution had been to recruit far and wide, the downside of which was the staff don't know the city, and the recruitment of the SENAR staff needs to be more localised so they have a sense of the demography and geography of the city to better serve children and families locally.
- Some very good permanent appointments have been made, including the arrival in November of an Assistant Director for SEND and Inclusion. This was an extremely important role, and the person comes with strong credentials, but will need to be well supported to do the job well.
- There were bids in the system for additional special school places and it was in the context of the government's current approach to the green paper, and the recognition of the need for additional special school places. Discussions with the school leadership at the Improvement Board regarding the profile of the placement of children with SEND in mainstream school were happening; it was a really complicated and difficult issue, and he was pleased with the head teacher engagement.
- He was now working more closely with health colleagues on the health dimension to services for SEND. The Council's problems, quite legitimately, may have overshadowed the NHS problems and the Improvement Board are looking closely at this.
- The Improvement Board was made up of a range of stakeholders, which includes unusually, five seats for politicians. He has done seven or eight Improvement Boards and that was by far the most political space an Improvement Board has had in his experience. He was aware there was an issue about how close politicians feel to the work of the Improvement Board.
- The previous version of the Board was not functioning well. He was concerned at the way its business was being rehearsed externally, including on social media. That was not conducive to the hard business of real improvement. The new Board was starting to work well, and it has to be a long term process.

During the discussion and in response to queries raised by Members, the main points included:

SENDIASS

- The work of SENDIASS and the review was queried, raising the issue of transparency and SENDIASS being invited to the November committee meeting. The Commissioner highlighted SENDIASS, like SENAR, needed to be

compliant with its role according to legislation and it was not. But SENDIASS was a very small component of a SEND system whereas SENAR was fundamental to service delivery. The review was independently conducted by the national leaders who have set the minimum standards on behalf of the sector. A working party has been set-up and there had been no decision made regarding the future operating model for SENDIASS with regard to it being potentially outsourced. But it must be renewed and returned to its core business.

- The Commissioner highlighted the high profile of SENDIASS in Birmingham was disproportionate to its relevance to the delivery of a high quality SEND service. He suggested putting energies into the improvement of SENAR and everything that comes around it, was key for the Committee. He undertook to look at ways in which the headline contents of the SENDIASS review could be shared.
- Cllr Simon Morrall raised concerns about what had been communicated to Members in relation to delivering the improvements following the review at the previous committee meeting.
- The Chair highlighted that the Committee was at a disadvantage as they had not had sight of the review. Cllr Simon Morrall has a seat on the Improvement Board and was party to more information than the Committee, and she highlighted that none of the information from the Improvement Board had been passed on to this Committee from Cllr Simon Morrall.

The Improvement Board

- The work of the Improvement Board was valued.
- The Commissioner had observed the last meeting of the previous version of the Improvement Board, and he had made a plea that the politics should be kept out of children's services, and he was hugely impressed with the political discipline going forward, for which he was grateful.
- He has needed to be quite disciplined in his role as Chair and on many levels, he was an independent chair, although he was acting on behalf of the DfE. He returned to a headline point, in that the Council was in intervention because services across the piece were failing children in Birmingham for several years and the prospect of them improving was not good.
- As far as he was concerned, five political places at the Improvement Board - which was about running services - was probably too many. How those places were used is up to the governance of the Council and he would look at alternative models.

The Role of the Improvement Board and Scrutiny

- Concerns were raised by the Committee that the Improvement Board was not under the scrutiny function, and the Committee was interested in exploring what can be done to increase transparency. In response to concerns the

Commissioner explained that he had held conversations with the Chair, and colleagues involved in Scrutiny, around how Scrutiny involved itself in the role of an intervention. He highlighted he was open to those conversations being developed. However, there was also a question as to whether or not, for example, Scrutineers can be close to decision making and operations because then you would be scrutinising yourselves.

- His view was that the improvement journey included increased transparency and engagement in the due governance process. Going forward he would attend committee meetings when needed by Scrutiny, as this was constructive. He also highlighted that he wanted to work with the Committee to improve communication between the Improvement Board and Scrutiny through the Lead Cabinet Member and DCS, and examples, such as sharing the action notes or debriefing after the meeting, were given.
- The Commissioner understood the frustrations Scrutiny may feel, particularly when the Council has got a failing service. There was a difficult element for the Council to appreciate that in essence as a failing council in intervention the extent to which the council's own governance structures were to be relied upon to scrutinise the intervention was bound to be an issue. He highlighted the importance of accurate briefings being provided by officers to Members outside of the Improvement Board.
- The Cabinet Member, Children, Young People and Families committed to providing information on how the Improvement Board fits with the Council's overall governance and decision making structures.
- The Chair was grateful for the Commissioner's commitment to look at how he could work with Scrutiny in terms of governance systems to increase the transparency around the Improvement Board and welcomed further discussions. The Chair invited the Commissioner to attend a committee meeting early next year and suggested exploring ways of sharing the action notes/minutes would be a good first step.

Tribunal Appeals

- The rising rate of Special Educational Needs and Disability Tribunal (SENDIST) appeals, which was a key indicator in the APP, and the issues of the length of time they take, and decision making – including the naming of mainstream school by type in the EHCPs - was raised. The Committee was informed that staffing in SENAR was being increased and getting competent staff who were closer to Birmingham was needed. Also, this was a 2014 legislative issue and once Councils were on the track to Tribunal, the Tribunal would likely find in the favour of the parents. Therefore, the decision made at the front end needed to be better. One of the challenges in Birmingham was the sufficiency of places, so creating those new school places would take some time and needed to be matched by inclusivity in mainstream.

Budget Setting and Sustainability of the Service

- The budget setting and the sustainability of staffing levels was queried. The Commissioner gave a global statement, in that it was cheaper to run a successful service than a failing service.
- Recommendations in the report considered moving staff from interim to long term contracts, whether there were concerns regarding the high level of consultants and incentivising the retention of key staff who were business critical, was raised. The Commissioner highlighted:
 - That a pay and reward system is one for the Council to work out, especially in light of the huge turbulence, and there was a need to get the best people, in a competitive marketplace nationally.
 - The senior management job was very difficult because of the challenges in the services in Birmingham.
 - The Council may save money when it starts reducing the dependency on senior interim staff, but the Council needs to get out of interim arrangements because a long term commitment was needed. However, the Council would have been lost without some of the interims it has had, and they have been invaluable.
- Sue Harrison, Strategic Director, Children and Families assured the Committee that they have appointed high calibre staff – a substantive Assistant Director of SEND and Inclusion starting on the 2 November 2022, and an experienced leader of home to school transport – Birmingham was attracting the best people and they can then appoint a substantive team.

The Directorate's Improvement Plan

- The Director offered to bring the Directorate's Improvement Plan to a future committee meeting. The APP is one of five chapters in the Improvement Plan. This was a web of improvement and SEND will not improve on its own. It was part of the whole Directorate targeted Improvement Plan and will assist in joining up the dots. The Chair agreed to take up this offer, as the Committee was grateful for any help and information that can be provided to help the Committee to ensure that children get the best possible services that Birmingham can deliver.

RESOLVED:

- The update was noted.
- The Cabinet Member, Children, Young People and Families to report back on how the Improvement Board fits in with the Council's overall governance and decision making structures.
- The Strategic Director, Children and Families to bring the Directorate's Improvement Plan to a future committee meeting.

- The Commissioner to attend a committee meeting early next year.

6. HOME TO SCHOOL TRANSPORT / CHILDREN AND YOUNG PEOPLE TRAVEL SERVICE

(See document No. 3)

Sue Harrison, Strategic Director, Children and Families (on-line), John Elsegood, Interim Lead, Children and Young People Travel Service, and Sabiha Aziz, Chair, Parent Carer Forum were in attendance for this item.

John Elsegood gave the presentation and the main points included:

- There has been significant progress to mitigate the previous issues. They had an open offer to Members to visit the operation centre, 99.5% of routes ran successfully on the first day, 99.7% on 8 September 2022, and 99.9% afterwards.
- They have received encouraging feedback and recognise communication was key and has improved.
- The improvement programme was launched in March 2021 and the Programme Board meets on a monthly basis.
- They have strengthened the management team, and were co-creating the service with children, parents, carers, and suppliers.
- There has been an appointment of a new Assistant Director who will start at the end of the year on a two year fixed term contract.
- New processes to strengthen DBS assurance have been agreed and they will be undertaking the DBS checks internally.
- Complaints were being dealt with empathetically, efficiently, and effectively and they have a child centric approach.
- Examples of feedback were given.

During the discussion and in response to queries raised by Members, the main points included:

- Sabiha Aziz, Chair, PCF commented that a lot of positive comments came from parents who had been let down in the past and to turn the service around in the space of time was amazing. There have been some blips along the road, however communication from the service with the PCF was excellent and they work together really well.
- The ability to take on more children was queried and as the cohort grows, they have the ability and capacity to do this.
- There was an issue about a guide being changed, and although they aim to keep the consistency of the driver and guide where they can, sometimes it was

not possible, and the aim was to have a meet and greet with the child and guide beforehand.

- The time to resolve an issue where a driver refuses to take a child because of their behaviour depends on the risk assessments etc., and they work really quickly to try to turn this around in 24 hours. If there was a longer term pattern, then they look at alternative solutions and this may take longer. Sabiha Aziz added that there was a higher sense of urgency from the Service with these issues.
- The Cabinet Member, Children, Young People and Families commented that there had been significant improvement but a success rate of 99% meant there were families that had a bad experience and they do not underestimate the impact on those that had a bad service.
- Reputational issues and whether there were legal cases the Committee should be aware of was queried. Janie Berry, City Solicitor, responded that she could share this outside the committee meeting, and she could also get a more informed view from Legal Services regarding tribunals and delays etc., and feed back to the committee. The Chair welcomed the suggestion as this would fit into the work programme and help fill in the gaps, as to how the role of Legal Services contributes to make risk informed decisions.
- The service was a complex logistical operation that takes place twice a day at all of our special schools. However, notifications to a small number of parents did come rather late and this was partly because of the way the routing for the journeys takes place and, due to changing circumstances, they cannot communicate the routing until they have the full picture, as routes may change.
- If they know there is an appeal, then they can plan for it and are confident the processes can be put in place.
- The Council budget and sustainability for an increase in demand for home to school transport was queried. John Elsegood was confident there were improvements in their plan to help them continue to deliver in the best way possible and they will need to look at the policy in place.
- They have parent contact telephone details but not all telephone details, this was because some parents may not want to give them and some have changed their numbers, and they have undertaken a lot of work to capture this.
- The Cabinet Member, Children, Young People and Families highlighted that there was an in year budget pressure and they were working on this.
- They have guides employed by the Council, some of the transport providers provide guides as per their contractual agreement, and they have a small pool of agency guides. All guides operate to a certain level and have an

understanding of special needs and have gone through the appropriate training. Some may have more experience, but all have a minimum standard.

- Parents getting better knowledge regarding accessing the service is incumbent on the Council, and there was the Local Offer page and information on the Council's website which signposts people. Another way was the PCF, focus groups, and feedback groups assisting.
- The Local Offer was available in different languages and the PCF signposts to this. There were bespoke sections around transport, and the PCF asked for a bespoke database of all families, which was built, and this needed to be kept up to date.
- To sustain and continue the improvement they have done a lesson learned exercise across the service and were building this into their improvement project. If the PCF sees any slippage, they will contact them.
- They needed to ensure communication filters through to Members so they can also assist parents.
- The Chair congratulated the team and suggested it may be appropriate for this item to come back possibly later in the year.

RESOLVED:

- The update was noted.
- Janie Berry, City Solicitor, to share reputational issues and any cases the Committee should be aware of outside the committee meeting.
- Janie Berry, City Solicitor to be added to the work programme to update Members on tribunals and delays etc., and feedback on how the role of Legal Services contributes and makes risk informed decisions.

7. WORK PROGRAMME

(See document No. 4)

The Committee discussed the 30 November 2022 committee meeting and agreed the Children's Trust and SENDIASS would be agenda items for this meeting. The Birmingham Safeguarding Children's Partnership (BSCP) and the Children and Young People Plan would be moved to the January 2023 committee meeting.

The Commissioner and the Strategic Director, Children and Families raised concerns regarding the SENDIASS item coming to the November 2022 committee meeting. It was suggested that the January 2023 committee meeting may be more appropriate as there will be a report the Committee can scrutinise.

The Chair highlighted that SENDIASS would be an item on the 30 November 2022 committee meeting, as the Committee has been remiss in not being more aware of what had been happening in the delivery of the service and it was about information

gathering on what the service provides to parents, what it has been providing, and where it sees itself in the bigger arena. The Committee would not be able to discuss the review until it was in the public domain. The Commissioner agreed to write to the Chair to explain the concerns.

Members agreed to add the issue regarding student attendance at school during their period and the Young People's Substance Use Service to the work programme.

Cllr Shehla Moledina advised the Committee that she had attended the Health and Social Care O&S Committee yesterday, where the Children and Young People's Mental Health Inquiry Terms of Reference was agreed, and Forward Thinking Birmingham was discussed. Highlights included:

- One of the things that stood out was the waiting list for ADHD, with things having gotten worse in terms of the cases coming through.
- It was good to hear that several initiatives were in place.
- They were working collaboratively to spread out the beds and arrangements for children with mental health.
- The suicide rate for under 18's has increased.
- They have employed c.40 staff nurses from South Africa.

The Chair stated that going forward there will be more time allocated once the two inquiries have developed.

RESOLVED:

- SENDIASS to be an item on the 30 November 2022 committee meeting.
- The BSCP, and the Children and Young People Plan to be moved to the January 2023 committee meeting.
- The Commissioner to write to the Chair to explain the concerns of the SENDIASS item at the 30 November 2022 committee meeting.
- Noted the membership for the two Inquiries the Committee was involved with (Children and Young People's Mental Health, and Child Criminal Exploitation).
- Student attendance at school during their period, and the Young People's Substance Use Service to be added to the work programme.

8. DATE AND TIME OF NEXT MEETING

RESOLVED:

Noted the next meeting was scheduled for 30 November 2022 at 1000 hours in Committee Rooms 3 & 4.

9. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

None.

10. OTHER URGENT BUSINESS

None.

11. AUTHORITY TO CHAIR AND OFFICERS

RESOLVED:

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 12.12 hours.