

# Birmingham City Council

## Report to Cabinet

8 November 2022



**Subject:** ACCEPTANCE OF SEND COMMISSIONER'S RECOMMENDATIONS

**Report of:** Sue Harrison - Strategic Director Children and Families

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

**Relevant O&S Chair(s):** Cllr Kerry Jenkins - Education and Children's Social Care

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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:		
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 February 2022 John Coughlan CBE, the DfE appointed Commissioner for Special Educational Needs and Disability (SEND) Services in Birmingham, published his report to the Secretary of State for Education.
- 1.2 In his report, the SEND Commissioner considers a range of structural options, including a new standalone trust for SEND. He ultimately recommends that structural reform should not be chosen because *'the known costs and risks of such a step cannot be confidently assessed as outweighed by the potential benefits'*. He

stated that *‘the efforts required to establish the trust would be set against the immediate challenges and the green shoots of progress within BCC’*.

- 1.3 This recommendation was made on the condition that BCC unequivocally committed to the 18 recommendations in his report and created a bespoke improvement partnership to support improvement in an agile fashion.
- 1.4 The letter attached with this report was sent to the Commissioner in August 2022 to confirm BCC’s acceptance of his recommendations.
- 1.5 This report is for Cabinet to formally note the Council’s acceptance of the SEND Commissioner’s recommendations and Council’s commitment to delivering the action plan that seeks to address them.

## **2 Recommendations**

### **2.1 That Cabinet:**

- 2.1.1 Notes the Council’s acceptance of the recommendations made by the SEND Commissioner in his report dated February 2022.
- 2.1.2 Notes the action plan, updated in August 2022, that sets out how the recommendations will be addressed.

## **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 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 Accelerated Progress Plan](#) was subsequently published and approved by the DfE.
- 3.8 In February 2022, [the SEND Commissioner published his first report](#) to the Secretary of State for Education. This report had two core objectives:
  - 3.8.1 To provide the DfE and the Secretary of State with an up-to-date assessment of the current state of the services and their leadership.
  - 3.8.2 To offer a recommendation about the need for any structural reform for SEND in Birmingham.
- 3.9 In the report the SEND Commissioner confirmed that the Ofsted and CQC findings from July 2021 were accurate and not overstated. He noted that it will take '*substantial time*' for improvement to take hold but stressed that the SEND Improvement Board has work in progress to address the challenges.
- 3.10 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.
- 3.11 In response to the SEND Commissioner's report and recommendations, the Council sent a letter, signed by the Chief Executive, the Leader of the Council, the Deputy Leader of the Council, the Cabinet Member for Children, Young People and Families and the Director of Children and Families, unequivocally accepting the recommendations that were made.
- 3.12 The letter, appended to this report, also put on record the Council's thanks to the DfE for their support (via the Commissioner) in helping the Council begin the journey of improving SEND services for the children of Birmingham.
- 3.13 The Council also sent the SEND Commissioner the action plan appended to this report which set out how each of the recommendations would be addressed.

## **4 Consultation**

- 4.1 The work of the SEND Improvement Board is based on co-production and consultation with a variety of stakeholders. For example, eight Winter/Spring Engagement deep dive events took place with parents and carers and young people, and a Parent Carer survey received 788 responses.

- 4.2 These engagement activities have helped crystallise 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 will be 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 2022.

### **6.3 Financial Implications**

- 6.3.1 The additional resources required by the Children and Families Directorate will be set out as part of the Council's Medium Term Financial Plan (MTFP).

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

- 6.4.1 None.

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

- 6.5.1 The additional resources required by the Children and Families Directorate will be set out as part of the Council's Medium Term Financial Plan (MTFP).

## **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 Public Sector Equality Duty 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 Not required. Report consists of information involving submission of corporate response to Government Guidance/legislation etc.

## **7. Appendices**

**Appendix 1** - Letter to SEND Commissioner

**Appendix 2** - Action Plan

## **8. Background Papers**

[Statutory Direction Issued to Birmingham City Council Oct 2021](#)

[The Accelerated Progress Plan](#)

[BCC's SEND Service Commissioner's Report](#)