

Birmingham City Council

Report to Cabinet

12th November 2024



Title:	Acceptance of Recommendations from SEND Commissioners Third Report
Lead Member:	Councillor Brown- Cabinet Member for Children, Young People and Families.
Relevant Overview and Scrutiny Committee:	Education, Children and Young People
Has this report been shared with the relevant Overview and Scrutiny Committee Chair?	Report to be shared with Cllr Jenkins before corporate clearance
Report Author:	Helen Ellis Director of SEND and Inclusion helen.ellis@birmingham.gov.uk
Authorised by:	Sue Harrison Children and Families Directorate
Is this a Key Decision?	No
Reason(s) why not included on the Forward Plan and confirm who has authorised it to be considered:	Not Applicable
Is this a Late Report?	No
Reason(s) why Late and confirm who has authorised it to be considered:	Not Applicable
Is this decision eligible for 'call in?'	No
If 'call-in' has been dis-applied, please provide reason(s) and confirm who has authorised:	Not Applicable
Wards:	All Wards
Does this report contain exempt or confidential information?	No
Has this decision been included on the Notification of Intention to consider Matters in Private?	No

Reasons why not included on the Notification and confirm who has authorised it to be considered:	Not Applicable
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1 EXECUTIVE SUMMARY

1.1 This report is dated February 2024 but was not published or made available until August 2024 (due to the general election).

In February 2024, John Coughlan CBE, the DfE appointed Commissioner for Special Educational Needs and Disability (SEND) Services in Birmingham, provided his third report to the Secretary of State for Education. This report was published by the DfE in August 2024. The SEND Commissioner’s first report was published in May 2022 and his second in February 2023. The recommendations from both reports were accepted by cabinet in November 2022 and September 2023 respectively.

1.2 In this third report, the SEND Commissioner notes ‘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.’

1.3 In this third report, the Commissioner notes that SEND Improvement is now evidently progressing, but additional effort is needed to support and accelerate the improvement work further.

1.4 The Commissioner also notes that the circumstances which brought about the , Best Value intervention represent a further challenge to continuing SEND improvement, so concerted efforts will be required to ensure otherwise, not least on behalf of vulnerable children and families who have lived with an underperforming system for far too long.

1.5 The Commissioner makes seven further recommendations.

1.6 Cabinet is asked to accept the recommendations in the Commissioner’s third report, note the council’s commitment to delivering the plan (at Appendix 1) that seeks to address them as well as note the progress made against the Commissioner’s set of recommendations.

2 COMMISSIONER’S REVIEW

2.1 Commissioners note the Councils response.

3 RECOMMENDATIONS

That Cabinet:

3.1 Accepts the recommendations made by the Commissioner in his third report (written in February 2024, published August 2024).

- 3.2 Notes the updated plan at Appendix 1 with this report that sets out progress against the recommendations set out in the Commissioners third report.

4 KEY INFORMATION

Context

- 4.1 In June 2018 Ofsted and the Care Quality Commission 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.
- 4.2 As a result of the findings of that inspection and in accordance with the Children's Act 2004 (Joint Area Reviews) Regulations 2015, Her Majesty's Chief Inspector (HMCI) determined that a Written Statement of Actions (WSOA) was required because of thirteen significant areas of weakness in practice. The WSOA was issued in September 2018.
- 4.3 In May 2021, Ofsted and the CQC revisited Birmingham to assess whether sufficient progress in addressing twelve of the thirteen areas of significant weakness. That assessment judged that only one of the thirteen areas had made progress. Prior to this report, two other areas of significant weakness have also been signed off and therefore 10 areas of significant weakness remain.
- 4.4 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.
- 4.5 The Council was also directed to submit its Accelerated Progress Plan (APP) to the DfE and NHS England (NHSE) setting out.
- 4.5.1 the governance and accountability structures and processes that will support the next phase of improvement.
- 4.5.2 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.
- 4.6 The APP was subsequently published and approved by the DfE. The APP is reviewed and updated after a six monthly DfE/NHSE review, when formal feedback from each review is received.
- 4.7 In February 2022, the SEND Commissioner published his first report to the Secretary of State for Education. The report looked in detail at the range of structural options and made the key recommendations not to recommend structural reform. These recommendations were 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 improve SEND services and return vulnerable children to the heart of the city's ambitions.

- 4.8 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.
- 4.9 The plan appended with this report (Appendix 1) shows the progress made against the recommendations in the Commissioner's reports.
- 4.10 In May 2023, the Commissioner's second report (dated February 2023) was published. That report noted some areas of initial progress but reasserted a number of issues of criticism including the pace of reform and evidence of corporate and political support for change.
- 4.11 Following the issuing of the 114 Notice by the City Council, the Best Value intervention commenced in October 2023 under a separate statutory notice from (now) MHCLG. The SEND Commissioner was then also appointed as a member of the Best Value commissioner team in order to help secure consistency between the two interventions,
- 4.12 In August 2024, the Commissioner's third report (dated February 2024) was published. He Commissioner highlighted areas of progress including the SEND Improvement Board (SIB) as evidenced by a positive review of the written statement of action in December 2023.
- 4.13 The Commissioner highlighted several points. It was noted, and we continue to work in the spirit of: "There is much more to be done and no room for complacency."
- 4.13.1 The SENAR service being stronger and delivering a more effective flow of Education, Health, and Care Plan (EHCP) processes.
- 4.13.2 The SENDIASS is much closer to full compliance with clearer governance and understanding of remit.
- 4.13.3 The Parent Carer Forum change in leadership being well delivered and offering strong and constructive support.
- 4.13.4 Around 34% of EHCP children retained in mainstream which compares favourably to the 29% figure of the previous year but remains short of the national average.
- 4.14 The Commissioner highlighted the growing positives between the relationship between schools and SEND where representation of all phases on the SEND Improvement Board (SIB) has been consistent and constructive.
- 4.15 The Commissioner also noted that a number of the issues that had been highlighted in his original report, including with regard to corporate services and systems representing barriers to progress in SEND, had been reinforced through the best Value intervention. One example was that the necessary substantial

recruitment to new SENAR posts had been delayed. Since the publication of the report the permanent Head of SENAR has been recruited and is in post and it is notable that the previous dependence on agency staff has been substantially reversed.

- 4.16 The Commissioner highlighted the short break tensions which affected SEND families. The CEO of the Birmingham Children's Trust (BCT) has taken on direct engagement with SIB. The trust now have a designated social care officer (DSCO) to support the overlaps between SEND and Social Care.
- 4.17 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.
- 4.18 The Commissioner's third report made seven recommendations. Appendix 1 contains these recommendations and the approach to addressing them. The Commissioner's third report has especially highlighted recommendations from his first and second reports which remain outstanding.
- 4.19 The Commissioner's recommendations have been accepted by the SEND Improvement Board (SIB) (now the SEND and Alternative Provision Improvement Board) which oversees the progress made against the APP.

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 (SIB).
- 5.2 The Accelerated Progress Plan has a risk register through which risks are logged and managed.

6 CONSULTATION

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

7 MEMBER ENGAGEMENT

Ward Councillor(s)

- 7.1

Overview and Scrutiny

7.2

8 IMPACT AND IMPLICATIONS

Finance and Best Value

8.1 The Commissioner highlights the adverse impact of inadequate corporate and governance support on SEND service delivery.

8.2 Financial Resources were included in the base budget for 2023-24 onwards.

Legal

8.3 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 Councils 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 and February 2024.

Equalities

8.4 The inspections of Birmingham services for children and young people with SEND identified areas of weakness that needed to be addressed.

8.5 In considering and fully accepting the Commissioner's recommendation's the Council had had regard to the PSED and in particular notes that the functions carried out by the Councils SEND services are designed to support the aims set out in section 149 of the Equality Act 2010, particularly for those with the protected characteristics of a disability.

Procurement

8.6 The Commissioner highlights the adverse impact of inadequate corporate and governance support on SEND service delivery and failures. It is important for improvements to SEND services (and others) that there are the necessary skills, resources and systems in place across BCC support functions, as well as within the SEND service, to support the ongoing SEND improvements in the future

People Services

8.7 The Commissioner highlights the adverse impact of inadequate corporate and governance support on SEND service delivery and failure in particular recruitment in SENAR, it is essential for HR to align with the SEND Improvement Plan.

Climate Change, Nature and Net Zero

8.8 Not Applicable

Corporate Parenting second report.

8.9 Not Applicable

Other

8.10 Refer to Guidance.

9 APPENDICES

9.1 Appendix 1- Updated Plan showing progress against the recommendations from the Commissioner's reports.

10 BACKGROUND PAPERS

10.1 Statutory direction issued to Birmingham City Council due to its special educational needs and disability (SEND) service provision. [Direction issued to Birmingham City Council \(October 2021\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1004233/Direction-issued-to-Birmingham-City-Council-October-2021.pdf)

10.2 The three independent reports with recommendations from the Commissioner for SEND Services in Birmingham. [Birmingham City Council's SEND service: commissioner's report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1004233/Birmingham-City-Councils-SEND-service-commissioner-s-report-2021.pdf)

Appendix 1

Recommendations from SEND Commissioner's third report to the Secretary of State

	Recommendation	Owner	Update October 2024	Status	Review dates
1	The established “architecture” of this SEND intervention should be retained, including: the Statutory Direction; the Commissioner; the SIB (49)	Director for Children and Families	Accepted and governance remains in place.	<u>Complete</u>	
2	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 (50)	Director for Children and Families	Accepted and governance remains in place.	<u>Complete</u>	
3	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 (51)	Director for Children and Families	SIB has been renamed the SEND and Alternative Provision (AP) Improvement Board. Refreshed membership with key additional stakeholders ensure we are aligned with national guidance and the new inspection framework.	<u>In Progress</u>	At each and all SEND & AP Improvement Boards and Executive Board meetings.
4	The SIB will receive updates from the BV work with regard to governance and corporate service reform in BCC (52 linked to 40 and 43)	Director for Children and Families	SEND Commissioner provides updates at every SEND & AP Improvement Board.	<u>Ongoing</u>	
5	Once agreed, the SIB should oversee the recommendations within this report including reviewing the outstanding actions (from the Commissioner’s previous reports).	Director for Children and Families	To be discussed at the Executive Board on 29 th October 2024.	<u>In Progress</u>	At each and all SEND & AP Improvement Boards and Executive Board meetings.

6	That should include an update from DfE about the progress of national reform for SEND	DfE SEND Advisor(s)	DfE invited to deliver updates at future SEND & AP Improvement Board meeting(s).	In Progress	Annually at SEND & AP Improvement Board
7	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.	Director for Children and Families	Training was received by the SIB in spring 2024 and co-production remains a priority within the APP.	In Progress	Direct intervention by Board members quarterly.

Recommendations from SEND Commissioner's previous reports to the Secretary of State

	Recommendation	Owner	Update October 2024	Status	Review dates
8	The intervention should be retained in its current form including: the Statutory Direction; the Commissioner role; the Improvement Board; and the APP.	N/A	All have been retained.	Complete	
9	The work being done within BCC to establish a stronger corporate infrastructure under the leadership of the Chief Executive and her team should be welcomed and endorsed.	N/A	Ongoing with new Leadership in place.	Complete	
9a	[February 2023, 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	N/A	Ongoing with new Leadership in place.	In progress	Update to be provided at Board meeting on 4 th March 2025.
10	The work of the Lead Member and the Deputy Leader should be noted in their core roles of political leadership for children and SEND which are successfully helping to drive this improvement notwithstanding other political concerns.	N/A	Ongoing with new leadership in place.	N/A	

10a	[February 2023, 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.		Ongoing with new leadership in place.	Ongoing	Update to be provided at Board meeting on 4 th March 2025.
11	However, the additional and continuing political concerns outlined above should be kept under close scrutiny. The planned work led by the Monitoring Officer is of particular importance and should be strongly supported.	City Solicitor	Work ongoing	In progress	Update to be provided at Board meeting on 4 th March 2025.
12	The progress in the establishment of the local authority children's leadership and the strengthening children's partnerships should be supported and sustained, including towards the ambition of a child friendly city.	Director for Children and Families	Birmingham was accepted onto UNICEF's Child Friendly City programme in June 2023 and the Children and Young People's Plan has been launched.	Complete	
13	The formal establishment of a clear health and care joint commissioning framework and approach should be driven forward by key leaders, including through the ICS, but remain under the auspices and monitoring of the Board for the immediate future.	Director for Children and Families	Work is currently underway to establish a Joint Commissioning Framework between BCC and the ICB. Initial proposals were presented at the SEND Improvement Board in July 2023. This work remains ongoing.	In progress	Update to be provided at Board meeting on 4 th March 2025.
14	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.	Director for Children and Families	There is a stronger focus on the role of schools. SEND and Inclusion strategies, co-produced with schools, were launched in July 2023 and have specific priorities to work	In progress	Update to be provided at Board meeting on 3 rd December 2024.

			towards. Progress has been slower than desired.		
15	In parallel the Department for Education should commit to the implementation of the recent Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan and any related initiatives which strengthen school inclusion and without which the work with schools is all the more difficult.	Department for Education	DfE Advisor to report back as in 6 above	<u>In progress</u>	Annually at SEND & AP Improvement Board
15a	[February 2023, 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.	Department for Education	DfE Advisor to report back as in 6 above	<u>In progress</u>	Annually at SEND & AP Improvement Board
16	The City Council should agree the reforms to SENDIASS in accordance with the Commissioner's direction.	Director Children and Families	In April 2023 Cabinet noted the improvements that had taken place in SENDIASS since January 2023 and that the service should remain inhouse to continue to address the issues identified by the independent review that took place in spring 2022.	<u>Complete</u>	
17	The intervention and the Board should continue to promote the principles of coproduction and communication by all agencies and that should include continued recognition and support for the BPCF in its complex role as described in this report.	Director Children and Families	The Board continues to recognise and support Birmingham Parent Carer Forum. There is now a clearly embedded co-production framework and awards scheme.	<u>Complete</u>	

			A parental participation and engagement – the Working Together – strategy has been created and endorsed with and by parents and the BPCF.		
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