

STATUTORY DIRECTION TO TORBAY COUNCIL IN RELATION TO CHILDREN'S SERVICES UNDER SECTION 497A(4) and (4B) OF THE EDUCATION ACT 1996

WHEREAS:

1. The Secretary of State for Education ("the Secretary of State") has noted in respect of Torbay Council ("the Council") that performance in respect of children's social care services is 'inadequate' as detailed in Ofsted's inspection report of 5 January 2016 ("the 2016 Ofsted report").
2. The Council's failure led the Secretary of State to issue a statutory direction on 11 May 2016 ("the first direction"), requiring the Council to comply with any instructions of the Secretary of State; and to co-operate with a Commissioner-led review of services, including the Council's intention to transfer children's services into an 'Integrated Care Organisation'.
3. The Children's Services Commissioner carried out a comprehensive review and concluded that the Council should not retain control of its children's social care services. Following a thorough options appraisal of alternative delivery models, the Children's Services Commissioner recommended in April 2017 that the Council should enter a contractual arrangement with Plymouth City Council, which will deliver children's services on the Council's behalf. The Secretary of State issued a new statutory direction on 27 October 2017 requiring the Council to co-operate with the development of a contractual arrangement with Plymouth City Council.
4. The Secretary of State has carefully considered:
 - a. The 2016 Ofsted report, which found the Council's delivery of children's social care services, particularly in relation to children who need help and protection, to be 'inadequate'. Leadership, management and governance in the Council were also judged to be 'inadequate';
 - b. The Children's Services Commissioner's report of April 2017 ("the 2017 report"), which concluded that in order to provide sustainable improvements to children's social care services the Council should enter into a contractual arrangement with Plymouth City Council; and
 - c. Ofsted's feedback as part of its recent quarterly monitoring visits to the Council, which acknowledge the progress that has been made by senior leadership in children's services, coming from a low starting point.
5. The Secretary of State remains satisfied that the Council is not yet performing to an adequate standard some or all of the functions to which section 497A of the Education Act 1996 ("the 1996 Act") is applied by section 50 of the Children Act 2004 ("children's social care functions"), namely:
 - a. social services functions, as defined in the Local Authority Social Services Act 1970, so far as those functions relate to children;

- b. the functions conferred on the Council under sections 23C to 24D of the Children Act 1989 (so far as not falling within paragraph a. above); and
 - c. the functions conferred on the Council under sections 10 of the Children Act 2004.
6. The Secretary of State has re-appointed John Coughlan CBE as the Children's Services Commissioner and Hampshire County Council as expert advisers in accordance with, and for the purposes of, the terms of reference ("the Terms of Reference") set out in the Annex to this direction.
7. The Secretary of State, having considered representations made by the Council, considers it expedient, in accordance with his powers under section 497A(4) and (4B) of the Education Act 1996, to direct the Council as set out below in order to ensure that all of the Council's children's social care functions are performed to an adequate standard.

NOW THEREFORE:

8. Pursuant to his powers under section 497A(4) and (4B) of the Education Act 1996, the Secretary of State directs the Council as follows:
- a. To comply with any instructions of the Secretary of State or the Children's Services Commissioner in relation to the improvement of the Council's exercise of its children's social care functions and provide such assistance as either the Secretary of State or the Children's Services Commissioner may require;
 - b. To co-operate with the Children's Services Commissioner, including on request allowing the Commissioner at all reasonable times access:
 - i. to any premises of the Council;
 - ii. to any document of, or relating to, the Council; and
 - iii. to any employee or member of the Council,which appears to the Commissioner to be necessary for achieving the purposes of, and carrying out the responsibilities set out in the Terms of Reference.
 - c. To provide the Children's Services Commissioner with such amenities, services and administrative support as he may reasonably require, from time to time, for the carrying out of his responsibilities in accordance with the Terms of Reference, including:
 - i. providing officers' time or support; and
 - ii. providing office space, meeting rooms or computer facilities.
 - d. To enter into a strategic contract with Plymouth City Council, which will see the appointment of a joint Director of Children's Services for both authorities, who will lead the delivery of its children's services functions, by

1 April 2018. It is acknowledged that there will be a transitional plan, agreed with the Commissioner, for the transfer of responsibilities from the existing Director of Children's Services to the joint Director of Children's Services, with such transition to be completed no later than 30 June 2018. The agreement will be for a term of five years or (if earlier) until such time as the Secretary of State is satisfied that children's social care services within the Council have improved to meet the minimum standard and that the improvement can be sustained.

e. The Department for Education will assess the progress of service improvements by undertaking performance reviews at six monthly intervals from the date of this direction. The progress of the partnership will be monitored through regular bi-monthly discussions between the Department for Education, the Commissioner whilst he remains appointed and the Director of Children's Services, or with such of their nominated representatives as have been agreed with the Department for Education, and through quarterly reports provided by either the Safeguarding Improvement Board or partnership governance board to the Department for Education.

9. In consequence of this direction, the Secretary of State for Education revokes the second direction.

10. This direction will remain in force until it is revoked by the Secretary of State.

Signed on behalf of the Secretary of State for Education

A handwritten signature in cursive script, appearing to read 'Suzanne Lunn', written in black ink.

SUZANNE LUNN

A Senior Civil Servant in the Department for Education

Dated: 23 March 2018

ANNEX

Commissioner for Children's Services and expert advisers

Terms of Reference

1. Torbay Council has persistently failed in its delivery of children's social care services. Ofsted's inspection report, published in January 2016, found the service to be 'inadequate' overall. The Council was previously found 'inadequate' in 2010 and remained so until April 2013 when the Council was judged 'adequate'. In all cases where a council has persistently or systematically failed to discharge its children's social care functions there is a presumption that service control will be removed from the council unless there are good reasons not to do so.
2. The Commissioner carried out a comprehensive review and concluded that Torbay cannot retain unilateral control of its children's social care services. Following a thorough options appraisal of alternative delivery models, the Commissioner recommended in April 2017 that Torbay should enter a contractual arrangement with Plymouth City Council, which will deliver children's services on Torbay's behalf, through the appointment of a joint Director of Children's Services.
3. The Commissioner is expected to provide independent strategic oversight of Torbay Council's and Plymouth City Council's contractual arrangement, with support from Hampshire County Council as expert advisers, under the updated Direction issued to Torbay Council by the Secretary of State under section 497A of the Education Act 1996 in March 2018. The Commissioner and expert advisers shall:
 - a. Jointly chair Torbay's Children's Services Improvement Board;
 - b. Ensure the improvement plan, which spans children's services, continues to be delivered and robustly monitored. Progress will be reported by the Council to each meeting of the Torbay Children's Services Improvement Board;
 - c. Ensure that the improvement plan continues to include clear and specific actions which reflect the journey of the child and which are designed to improve the quality of services for children in need of help and protection;
 - d. Support the implementation of the contractual arrangements between Torbay Council and Plymouth City Council; and
 - e. Deliver quarterly written updates on the Council's progress to the relevant Minister and more frequently if the pace of progress is not sufficient or if the Minister requires it.