

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

WHEREAS:

1. The Secretary of State for Education ("the Secretary of State") issued directions to Torbay Council ("the Council") pursuant to section 497A (4B) of the Education Act 1996 in May 2016 ("the first direction"), October 2017 ("the second direction") and March 2018 ("the third direction"), in light of inadequate performance by the Council of its children's social care functions as detailed in Ofsted's inspection report of 5 January 2016 ("the 2016 Ofsted report").
2. The third direction required the Council to enter into a strategic contract with Plymouth City Council, which appointed a joint Director of Children's Services for both councils, to lead the delivery of its children's services functions. The strategic contract began on 1 April 2018 with a formal transition period to 30 June 2018 when statutory responsibilities transferred to the joint Director of Children's Services. The agreement was 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.
3. An Ofsted re-inspection of services for children in need of help and protection, children looked after and care leavers was carried out between 11th June 2018 and 5th July 2018. A report of this inspection, published on 24th August 2018 ("the 2018 Ofsted report") found that the performance of children's social care services remains 'inadequate'.
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;
 - c. The 2018 Ofsted report, which found again that children's services are inadequate. The sub-judgements for children who need help and protection and leadership, management and governance were both rated 'inadequate'. The sub-judgement for children looked after and achieving permanence was rated 'requires improvement to be good'. The sub-judgement for adoption performance was rated as 'good' and the sub-judgement for the experiences and progress of care leavers was rated as 'requires improvement to be good'.

- d. Ofsted's feedback as part of its recent quarterly monitoring visit to the Council, which found the Council is taking too long to address critical weaknesses. As reported in previous monitoring visits, despite making some progress to implement necessary improvements, the quality of help and protection for vulnerable children continues to be very concerning.
 - e. The Council's mutual conclusion with Plymouth City Council that the contractual arrangement with Plymouth City Council should end in January 2020.
5. The Secretary of State remains satisfied that the Council is still failing to perform 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 appointed Nigel Richardson CBE as the Children's Services Commissioner 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 (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 (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, Children's Services Commissioner and any advisers 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 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 end the strategic contract with Plymouth City Council, established under the third direction dated 23rd March 2018. Termination of the strategic contract or material variations to its terms must be agreed by the Secretary of State, this includes withdrawal by Plymouth City Council if the withdrawal is made within a shortened notice period.

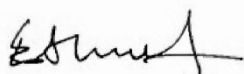
e. To co-operate with a Commissioner-led review to assess the capacity and capability of the council's leadership to retain control of children's social care services and consider the most appropriate governance model for sustainable improvement.

f. 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. Progress of the improvement work will also be monitored through regular monthly discussions between the Department for Education, the Commissioner 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 the Commissioner and the Safeguarding Improvement Board to the Department for Education.

9. In consequence of this direction, the Secretary of State for Education revokes the third direction dated 23 March 2018.

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



Emily Whitehead
A Senior Civil Servant in the Department for Education
Dated: 06 December 2019

ANNEX

Commissioner for Children's Services

Terms of Reference

1. Torbay Council has persistently failed in its delivery of children's social care services. Ofsted's latest inspection report, published in August 2018, 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'. The Council was again judged 'inadequate' in January 2016. 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. In 2016, the then Commissioner (John Coughlan) carried out a comprehensive review and concluded that Torbay could not retain unilateral control of its children's social care services. Following a thorough options appraisal of alternative delivery models, in April 2017 the Commissioner recommended that Torbay should enter a contractual arrangement with Plymouth City Council, to deliver children's services on Torbay's behalf, through the appointment of a joint Director of Children's Services.
3. In October 2019, a review of the joint arrangement between Plymouth and Torbay councils concluded that the arrangement should be terminated as soon as possible. Evidence from recent Ofsted monitoring visits suggests the arrangement has not had the desired impact on the Torbay service. The review considered reports from the joint DCS, an independent review of children's services management capacity for Torbay Council, and an independent DCS assurance test carried out for Plymouth. All three reports supported the Council's conclusion that the current joint DCS arrangement is untenable in the longer term.
4. The Commissioner is expected to provide independent strategic oversight of the termination of Torbay Council's and Plymouth City Council's contractual arrangement, consider options for future governance arrangements and support the Council's improvement programme, under the updated Direction issued to Torbay Council by the Secretary of State under section 497A of the Education Act 1996 in December 2019. The Commissioner shall:
 - a. Carry out a short assurance review of the Council's wider leadership capacity and capability, including considering the role and views of partners;
 - b. Oversee the termination of the joint arrangement with Plymouth, including the appointment of a new permanent DCS and consider short and medium term options for the future;
 - c. Chair Torbay's Children's Services Improvement Board;
 - d. 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;

- e. 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;
- f. Provide assurance that Torbay's safeguarding practice and compliance is working effectively and serious incidents are dealt with in line with current guidance;
- g. Provide where appropriate direction, monitoring, and coaching to the children's services senior team to secure the necessary improvements and to build on their capabilities; and
- h. Provide quarterly reports to the Department for Education on the Council's progress and more frequently if the pace of progress is not sufficient or if the Department requires it.