

15th October 2021

STATUTORY DIRECTION TO BIRMINGHAM CITY COUNCIL IN RELATION TO IT'S SPECIAL EDUCATIONAL NEEDS AND DISABILITY (SEND) SERVICE PROVISION, UNDER SECTION 497A(4B) OF THE EDUCATION ACT 1996

WHEREAS:

1. The Secretary of State for Education (“the Secretary of State”) has carefully considered the Joint Ofsted and the Care Quality Commission (CQC) Report in respect of Birmingham City Council (“the Council”) of its initial inspection carried out between 25 and 29 June 2018. The inspection report outlined that a Written Statement of Action was required because of thirteen significant areas of weakness in the local area’s practice in relation to its Special Educational Needs and Disability (SEND) service provision.
2. The Secretary of State has also carefully considered the Joint Ofsted and the Care Quality Commission (CQC) report in respect of the Council of its SEND Revisit carried out between 24 and 27 May 2021 (“the Ofsted/CQC Report 2021”). The inspection report found that the area has made sufficient progress in addressing one of the thirteen significant weaknesses identified at the initial inspection. The area has not made sufficient progress in addressing twelve significant weakness.
3. The Secretary of State is therefore satisfied that the Council is failing to perform to an adequate standard in some or all of the functions of Part 3 of the Children and Families Act 2014 (“the 2014 Act”) (“the SEND functions”) to which s.497A of the Education Act 1996 (“the 1996 Act”) applies.
4. The Secretary of State has appointed John Coughlan as Commissioner for SEND services in Birmingham (“the SEND 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.
5. 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 1996 Act, to direct the Council as set out below in order to secure that all of the Council’s SEND functions are performed to an adequate standard.
6. NOW THEREFORE:
7. Pursuant to his powers under section 497A(4B) of the 1996 Act, the Secretary of State directs the Council as follows:
 - a. To comply 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;

b. To co-operate with the SEND Commissioner, including on request allowing the SEND Commissioner at all reasonable times access to:

- i. any premises of the Council;
- ii. any document of, or relating to, the Council; and
- iii. any employee or member of the Council,

which appear to the SEND 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 SEND Commissioner with such amenities, services, and administrative support as they may reasonably require from time to time for the carrying out of his responsibilities in accordance with the Terms of Reference, including:

- i. providing employee or member of the Council, time or support;
- ii. providing office space, meeting rooms or computer facilities; and

d. To co-operate with a review led by the SEND Commissioner on how best to improve services and effectiveness of SEND leadership arrangements in Birmingham.

8. The Council to submit their Accelerated Progress Plan (APP) to the Department for Education ("the Department") and NHS England setting out:

- i. the governance and accountability structures and processes that will support the next phase of improvement;
- ii. the actions the Council is now taking (and have taken since inspectors left) to respond to their outstanding concerns;
- iii. 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 month and 12 months.

9. To engage with the Department who will work with the Council's Improvement Board to agree the final APP in November 2021. The Department will undertake reviews of progress against the Council's APP at least every six months, and more regularly where appropriate. These reviews may cover but are not exclusive to: culture; performance; leadership, management, and governance; quality of workforce training and

support; multi-agency arrangements – including the role and contribution of seeking and accounting for the views of the children and families concerned health providers; joint commissioning; and the timeliness and quality of Education, Health and Care plans.

10. This direction will remain in force until it is revoked by the Secretary of State and does not affect any of the conditions set out in the Direction to Birmingham City Council in relation to children's services dated 22 July 2019.

Signed on behalf of the Secretary of State for Education

Fiona Nzegwu- Deputy Director, Special Educational Needs and Disability (SEND) Improvement and Operations Division A Senior Civil Servant in the Department for Education

Dated: 15th October 2021

ANNEX

Non-Executive Commissioner for SEND

Birmingham City Council

Terms of Reference

The Secretary of State for Education (“the Secretary of State”) has carefully considered the Joint Ofsted and the Care Quality Commission (CQC) Report in respect of Birmingham City Council (“the Council”) of its initial inspection carried out between 25 and 29 June 2018. The inspection report outlined that a Written Statement of Action was required because of thirteen significant areas of weakness in the local area’s practice in relation to its Special Educational Needs and Disability (SEND) service provision.

The Secretary of State has also carefully considered the Joint Ofsted and the Care Quality Commission (CQC) report in respect of the local area SEND Revisit carried out between 24 and 27 May 2021. The inspection report found that the area has made sufficient progress in addressing one of the thirteen significant weaknesses identified at the initial inspection. The area has not made sufficient progress in addressing twelve significant weakness.

The Secretary of State is satisfied, therefore, that the Council’s children services and SEND functions are not being performed to an adequate standard as required by s.497A of the Education Act 1996.

In line with the recommendations set out in the Joint Ofsted and Care Quality (CQC) report of SEND Service Provision published 10 September 2018, and recent SEND Revisit Inspection Report, the SEND Commissioner is expected to take the following steps:

1. To issue any necessary instructions to the Council for the purpose of securing immediate improvement in the delivery of SEND Services; to identify ongoing improvement requirements; and to recommend any additional support required to deliver those improvements.
2. To Chair the Birmingham SEND Improvement Board and to hold SEND system leaders to account through this mechanism.
3. To bring together evidence to assess the Council’s capacity and capability to improve itself, in a reasonable timeframe, and recommend whether or not this evidence is sufficiently strong to suggest that long-term sustainable improvement to SEND Services can be achieved.
4. To advise on relevant delivery and governance arrangements for SEND Services, taking account of local circumstances and the views of the Council and key partners.

5. To report to the Parliamentary Under Secretary of State by a date to be agreed between the Department and the SEND Commissioner, followed by further reviews every three months for the duration of the appointment.