

Improving Special Educational Needs and Disability (SEND) Services in Birmingham

**First Report to the Secretary of State for
Education by John Coughlan CBE,
Commissioner for SEND Services in
Birmingham**

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Introduction

1. This is the first full report of the DfE Special Educational Needs and Disabilities (SEND) services Commission for Birmingham City Council. This follows the decision by DfE to appoint a Commissioner in the late summer of 2021, confirmed by a Statutory Direction that was signed off in October 2021. This represents the “assessment and diagnostics” phase of the intervention.
2. This statutory intervention is the first of its kind in any SEND service and essentially follows the model of intervention established over time in children’s social care. The trigger for the intervention was the joint Local Area Ofsted and CQC revisit of their inspection findings – the revisit taking place in May 2021 (published July 2021) relating to the inspection of 2018. The original 2018 inspection had found serious failings (in a narrative rather than a graded judgement) resulting in an exceptionally large number of 13 areas of significant weakness. The revisit in 2021 found only one of these areas of significant weakness had been at best partially addressed, pointing to a serious and sustained breakdown in the services for vulnerable children and their families.
3. This first report has two core objectives. It needs to provide DfE and the Secretary of State with an up-to-date assessment of the current state of the services and their leadership. It also needs to offer a recommendation about the need for any structural reform for SEND in Birmingham. That is, to offer a judgement about the capacity and conditions to support the required improvement, especially from within the City Council, and to consider whether that judgement establishes the need for an “alternative delivery model” (ADM), such as the introduction of a trust or other organisational model to deliver these services.
4. Clearly, this landscape is already complicated in Birmingham as there is an existing trust, Birmingham Children’s Trust (BCT), which was formed in 2018 in response to the previous history of failings in children’s social care in the city. Although complicating, it could equally be argued that this model has proved successful in Birmingham as BCT has led those services out of a failing category with sights currently set on moving from Requiring Improvement to Good in Ofsted terms.
5. All local SEND services nationally are a shared responsibility between the local authority, the local NHS and schools or other education settings, with the local authority as “lead partner”. It is fair to say that so far this commission has focussed primarily on the role and effectiveness of the local authority. That is partly a feature of the state of the services and the limitations of the current intervention. As the intervention progresses there will need to be a shift to widen that focus.
6. There is a national context to this local crisis. Many local SEND services are doing much better than Birmingham’s. But all SEND services appear to be struggling to varying degrees at present not least because of some significant current national challenges to the wider system, which also apply to Birmingham. Those challenges are, essentially, threefold. Firstly, it is widely accepted that the national reforms enshrined in legislation in 2014 are in need of review. At the time of writing the report the SEND and AP green paper had not yet been published [NB the Green Paper has

now been published¹]. In particular, the reforms have arguably created a laudable raising of parental expectations but with limited substantive capacity to systematically meet those expectations. Secondly, and inextricably linked, the funding for SEND is failing to keep pace with demand on top of other funding pressures for the NHS and local government. It is sadly ironic that of all of Birmingham's failings their SEND financial pressures aren't as severe as in some areas perhaps because the local system is failing so badly. Finally, schools and other education settings are a key partner to this work of course and Birmingham school representatives have engaged constructively with this intervention. But it must be acknowledged how hard progress can be in such a dispersed school system in which individual schools are measured on virtually everything in support of their vitally important gradings – but those measures do not include SEND Inclusion (as the current Ofsted Framework recognises progress, exclusions and attendance, without making a specific reference to SEND, or the context of SEND). That has to be wrong.

7. There are a number of points of continuing criticism in this report – building on and validating the previous Ofsted and CQC outcome. But it is essential to remind all concerned that the leaders, managers and staff of the services are working in remarkably challenging circumstances. They know they are working in a failing service and feel the effects of that on a daily basis – especially in dealing with justifiably aggrieved and distressed parents. Sustaining business as usual in those circumstances is very hard. On top of that, they are trying to cope with a substantial issue of backlog which has developed along with the history of service failure. On top of that they are having to come to terms increasingly with the requirements of an improvement journey. On top of that they are doing all of this under the crisis of COVID19 which is further disrupting these services for vulnerable people as many others.
8. The Commissioner wishes to record his thanks here to all of the staff, managers, politicians, head teachers, and especially parents who have engaged openly and constructively in this exercise to date. The quality of that engagement, in the light of some frankly difficult challenges from this exercise, has heavily influenced some of the findings that follow. This especially applies to some key officers and politicians who have worked especially closely with the process. That includes a number of interim managers and staff who, regardless of their interim status, are committing themselves to helping the improvement with dedication and skill. Particular mention is also due to the Parent Carer Forum (PCF) in Birmingham. The leadership of PCF has been extremely energetic and thoughtful in that engagement – never compromising for parents and children but always seeking to understand how to help the improvement. It is an asset to the city that probably could be better utilised.
9. The shape of the rest of this report is in four main parts. The first is an executive summary. The second will consider the corporate and organisational context to the services, with a view to offering some explanation as to why the services became and have remained so poor. The third will explore the current condition of the

¹ SEND Review: Right support Right Place Right time, Department for Education, last modified 29 March 2022, <https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time>.

services themselves in brief – bearing in mind that this process does not equate to a re-inspection. The fourth section will assess the options for structural reform and make recommendations.

Executive Summary

10. This intervention has seen nothing to suggest any inaccuracy or substantive changes in the inspection findings that culminated in the 2021 revisit. On a range of levels described in more detail below, the services remain under tremendous duress with relatively chaotic systems which are also fragile in their limited improvements and susceptible to further disruption from the unavoidable continuing pressures – especially staffing and inevitable demand. The situation remains deeply worrying for the wellbeing of the children and their families.
11. That said, it is also worth remembering that of the 10,600 plus children with education, health and care plans (EHCPs) in Birmingham, the vast majority are receiving to at least some extent a reasonable level of service and education as per their entitlement in those plans – though that service may well be subject to unacceptable levels of uncertainty and inconsistency. One of the many challenges, therefore, is to ensure that the significant changes required for improvement should cause minimum disruption to those many children and families - to ensure the “cure” does not make matters worse for them.
12. This is not least because, as is the case with most “failing” services, Birmingham’s SEND services are populated by extremely dedicated professional staff and front-line managers. Therapists, teachers, carers, administrators and social workers, they continue to work with great skill and commitment in support of the children and families who need them, often in spite of rather than because of the conditions within which they are working. It should be clearly understood that any critique embodied in this report is aimed at the strategic and leadership weaknesses over time in Birmingham which have made that work even harder than it necessarily is. The critique is also not about apportioning blame but on finding and establishing the best way forward for children and in ways that should make their work more productive and enjoyable.
13. The over-riding question has to be how and why did things get so bad, as described in inspection and verified here, in order to more safely address the question as to how they can be made better – faster and sustainably so.
14. This process has therefore attempted to assess the recent corporate and service history to support some understanding of the degree of upheaval and challenge the City Council has faced. A chronology is appended which charts key events since a particular “milestone”, the Kerslake Report of 2014. That includes a record of the key changes of leadership, especially in the posts of Chief Executive and Director of Children’s Services in that time – nine of each in an eight year period.
15. Without commenting on any individual post-holder, there has been a period of sustained leadership and managerial uncertainty in the city and for its children. The Commissioner is therefore confident to state that the city has struggled for at least a decade to provide consistent leadership for its services to its most vulnerable children and it shows. This episode for SEND is part of that sad sequence.
16. The current political leadership can, however, make a credible case that their repeated endeavours to create stability during this period have been thwarted by some exceptional events and or some examples of poor senior performance. This report has to avoid judging any individuals, many of whom were themselves impeded

by circumstance from doing the good job they surely set out to do in Birmingham. But the report must help to set a way forward out of this morass for the service and those concerned – employees, politicians and especially children.

17. The one exception to that sequence has been the progress made by Birmingham Children's Trust (BCT) for children's social care services. Those services were taken on by BCT in 2018 and judged in 2019 to have secured improvement after around a decade of inadequate performance. There is a shared confidence in the BCT leadership and model.
18. Within SEND itself, the context of corporate and departmental senior churn and uncertainty will surely have contributed to the poor management and partnerships which were exposed by the 2018 inspection.
19. The period between inspection and revisit (2019 to 2021) should have been one of relentless service and corporate focus to achieve improvement. Regrettably that was evidently not the case. It is not the role of this exercise to step into personal judgements. Suffice to say the specialist SEND leadership was driving at changes which were either not well designed, understood or supported within the services and at a senior and partner level. A number of those changes subsequently have either failed or been abandoned. This was not helped by the fact that during that period there were two interim and one permanent ADs for Inclusion and SEND, which in turn contributed to an apparent lack of a clear route of accountability and grip on SEND improvement. In fairness, the COVID19 pandemic also contributed (but was not causal) to the lack of progress.
20. In summary, SENAR (the SEND assessment and review service) was and remains in some disarray, not least following a period of significant under-staffing, arguably connected to an abortive re-organisation of it and related services. SENAR is the engine room of SEND and once it struggles so badly so does everything around it in terms of effective assessments and reviews and school provision. This was part caused and part compounded by a serious deterioration in the quality of data systems and confidence. One experienced and impartial stakeholder described the current confidence level in the data as "three out of ten". It does not take a data or SEND specialist to construe what that means for the wider service to children and families – including with regard to planning effective improvement.
21. The financial systems and support to SEND in Birmingham are fraught and uncertain. To their credit, the Cabinet has agreed two substantial tranches of funding in the past six months (against considerable urgent competing pressures) to try to fill various gaps and support the costly improvement journey. More such decisions will be required in future. NHS colleagues also point out that NHS has recently invested £2 million to address therapy and neuro development waiting lists (in the context of Covid). More such decisions will be required in future.
22. Meanwhile, the home to school transport (H2ST) service in Birmingham went through a series of its own traumas. This is not a core part of the SEND brief but, especially in an urban area like Birmingham, predominantly supports SEND children. Doubtless affected by all of the issues summarised above and an evident failure in effective corporate commissioning, H2ST experienced a chain of high-profile safeguarding crises largely concerning Disclosure and Barring Service (DBS) checks. Those original failings were compounded by at best failings of communication by various

senior officers which served to severely undermine the ruling politicians in a very public fashion. The reverberations of those crises continue.

23. All of these challenges have to varying degrees impacted on key partners but especially schools and education settings and the NHS. Those related issues are further considered below but in both regards there are grounds to suggest that the BCC problems are also serving to mask the need for substantial joint reviews and improvements of service quality and integration. For the NHS that includes the continued issues in waiting times, and for the schools or other education settings issues of inclusion and attainment as identified in the original inspection processes.
24. Children and families should of course be at the heart of these considerations. There are varied challenges but also opportunities ahead. These include the delayed but important progress of co-production and the excellent engagement of the Parent Carer Forum.
25. From the Commissioner's perspective, these mounting challenges over several years, but culminating in the home to school transport debacles, have also contributed to a particular issue of concern about member officer relations in BCC, especially as they relate to children's services. On the one hand this includes some blurring of the respective roles of officers and members. On the other hand, there is a palpable sense of mutual distrust in some quarters. Some senior members cannot hide their sense of being badly let down by senior officers in recent issues related to SEND and in a way that has been deeply damaging. A number of senior officers describe a consequent culture of fear and blame. The Commissioner has seen evidence of both perspectives, notes that the significance of this issue should be treated with care but is convinced of the need for future targeted work to address these organisational cultural issues in the near future.
26. Those issues are compounded by senior churn – and indeed churn throughout the services. As indicated in the chronology, the City and the service in particular are crying out for stability, consistency and competence, especially in senior officer leadership. This has also created difficulties for partners in having a consistent interface from BCC to work with. A feature of this churn and disrupted organisational memory is that, in the Commissioner's view, BCC is in danger of losing sight of its general responsibilities to children as per the Children Act 2004. There has been an absence of obvious and strategic "organisational love" for the city's most vulnerable children. It is actually encouraging that the current political and officer leadership strongly refute this and seem determined to prove the Commissioner wrong. For example, they cite that the council is planning 2023 as the Year of the Child, following on from the Commonwealth Games, and is determined that this will be the beginning of Birmingham's journey to become a Child Friendly City. Birmingham Children's Partnership has now identified 8 key priorities which are in the process of being adopted as the basis of Birmingham's Children's Plan.
27. Against all of these mounting challenges and many other corporate ones besides, the City Council has more recently appointed a new, highly experienced and regarded Chief Executive (currently on a two-year contract) and a new statutory Director of Children's Services (though that title has not been used routinely in the authority). The Chief Executive has set about restructuring the corporate management team with permanent appointments and a brief to transform the running of the council. The same can be said of the more recently appointed DCS who is creating a new

leadership team for children's services. This executive leadership "core" is perhaps the single most important basis for future confidence. These appointments help tip the decision about an alternative delivery model.

28. The decision about a structural solution for SEND is complicated by the progress of the BCT, but this is a two-edged sword. On the one hand BCT shows what can be achieved by a trust arrangement in Birmingham. On the other hand, the prospect of taking steps through merger of the existing trust with SEND, which could hinder or set back the progress of children's social care, would be unacceptable.
29. This report looks in more detail at the pros and cons of a range of structural options, ranging from a new standalone trust for SEND, to joining SEND to BCT or expanding BCT to include all children's services in Birmingham.

30. ~~Once~~ Once, the key recommendation here is not to choose structural reform because, essentially, the known costs and risks of such a step cannot be confidently assessed as outweighed by the potential benefits. What is clear is that the efforts required to establish the trust would be set against the immediate challenges and the green shoots of progress within BCC.

31. The major caveat on this recommendation however is that it should be for BCC to unequivocally commit to the range of related recommendations in this report as a statement of their determination as an authority to return vulnerable children to the heart of the City's ambitions in a way that the Commissioner considers has been lacking in recent years. That recommendation is also contingent upon the creation of a bespoke improvement partnership made up of sector specialists who can support improvement in an agile fashion. That would require sustained formal oversight through the independently chaired Improvement Board under the extension of the Statutory Direction. In the absence or failure of that commitment, a full children's trust built upon BCT would be the preferred outcome.

Conditions for Improvement- The Corporate and Department Context

32. It is vital to understand how we got here in order to support improvement and especially to prevent repetition. There is a rule of diminishing return in trying to excavate the deeper corporate past in Birmingham – so complex and occasionally dramatic have some of the events been, including, for example, the “Trojan Horse” schools episode which continues to influence those involved in leading the schools system. Suffice to say that there has been a series of major episodes and performance challenges, especially but not only related to children’s services.
33. The attached chronology starts at the Kerslake Report which was regarded as a watershed moment in the leadership of the City Council in 2014. It is for others to judge how fully those recommendations were implemented. But the obvious fact stemming from that moment is that there have been no less than nine post holders for both roles of chief executive and director of children’s services since then. Whatever the individual reasons for the individual changes – all doubtless valid – that fact alone points to a confused and inconsistent officer leadership context which was bound to militate against strong strategic direction for any challenging service. Add to that the punishing effects of a decade of austerity on the nation’s largest city with some of the highest density of deprivation and child poverty and it is easy to see how pressure has been mounting generally against the background of inconsistent leadership.
34. Notably political leadership has by comparison been more stable with one ruling group and three political leaders throughout [at time of writing and prior to the 2022 elections]. This may have been influenced by one of the main Kerslake recommendations which was promptly implemented, the introduction of a four yearly “all out” election cycle which eradicated the uncertainty of annual polls. However, the current ruling group acknowledge that the former Leader had become embattled in a high profile and damaging employment dispute which defined that period and was bound to be a distraction on other matters.
35. In 2016 BCC agreed with the Department for Education on the establishment of a children’s trust for its social care services. This followed a number of years in which those services struggled with various inadequate Ofsted judgements (the most recent in September 2016), differing forms of intervention and some high profile tragic or disruptive incidents. The trust chair was appointed almost immediately in late 2016 and the trust began its work in shadow form in 2017 before formally launching in 2018. The clearest measure of the effectiveness of the arrangement is that Ofsted judged the services as Requiring Improvement (to be Good) in a further inspection in late 2018, published January 2019. This was the first time these services had been anything other than inadequate in several years.
36. Of course, the wider partnership of the trust including the City Council should be proud of this progress and supportive of the drive for further improvement. There are strong inter-personal relations between the trust leadership and BCC and a high regard for the achievements to date. The trust’s chief executive stepped in to support as acting DCS during one of the recent vacant episodes. However, one possibly unsurprising feature of this relationship in the circumstances, in the Commissioner’s opinion and as reflected by some comments, is that the strength of the role of the

local authority as “commissioner” for the services of the trust is less prevalent. This is no-one’s “fault” as such, certainly not the trust’s or the politicians’. It was perhaps inevitable after such a period of struggle with social care services that the bulk of any retained BCC senior expertise went into the trust alongside the incoming new leadership. Those permanent appointments to the role of Director of Children’s Services in BCC since that time (a job title that has not been well used in the city) have had little if any social care expertise. This is not to say the trust has been left to its own devices. There are formal frameworks of communication which appear reasonably well supported. But the extent to which BCC can state it is confident in its continued accountability for the work of the trust through a strong technical commissioning relationship is less apparent. This is not about SEND per se of course but it is relevant to this exercise for two clear reasons: there is a significant proportion of EHCP children who will also be “known” to the trust which speaks to the need for strong strategic as well as operational partnering; and it points to an issue about the sustained centrality of vulnerable children to the work of the council. It relates to the question about the place of those children in the city’s strategy.

37. ~~Key~~ Outcome of this history, in the Commissioner’s opinion, is that the place _____ of children in Birmingham, especially the most vulnerable children, has become at best unclear if not lost. Senior councillors strongly dispute this assessment and that is probably encouraging. But in the Commissioner’s perspective the City Council has struggled with serving its most vulnerable children in a number of ways for a number of years. The critical role of Director of Children’s Services has been gradually eroded. Children were not featuring in corporate structures. Formal partnerships which should be subject to the determined leadership of the local authority have become all but defunct. There has been a palpable sense that the services and responsibilities to vulnerable children represent continuous costs and risks which are more burden than privilege. Such comments may provoke a strong reaction – if that reaction leads to the sort of concerted, long term and determined commitment to children’s services which they need that will be to the good (see also Para 57).
38. A linked but separate major event in this brief resume is the “Trojan Horse” episode which stemmed from 2014 when the local authority received anonymous letters claiming that some schools in the city were being imposed upon by radical religious groups. It is not appropriate to begin to assess that matter here other than to note that a number of stakeholders who have spoken to this commission claim that, while the episode itself may now be in the past, its ripple effects continue to affect the council, its services and its relations with schools, to varying degrees.
39. There has not been time or capacity in this exercise to conduct a more scientific analysis of “corporate churn” in BCC. That is, the extent to which instability in senior roles and related factors may impact upon the good governance of the council and its services. Suffice to offer two confident points. There has been a great deal of senior churn, including in children’s services, and certainly enough to show how hard it must be to secure effective strategic direction, progress and change across the organisation. Secondly, that is bound to be related to the well-publicised difficulties the city has experienced in securing a permanent chief executive, upon which role all other organisational progress is bound to pivot.
40. The Commissioner has received a range of perspectives about the key events and decisions that have impacted on the City Council’s struggle to appoint a suitable substantive Chief Executive. The issue has been the subject of much press

speculation – most of which has been apparently inaccurate or at best incomplete. It would be impracticable for a host of reasons for this report to comment on the details to this process – although it is a vital issue to the subject at hand. SEND needs secure corporate leadership, especially in these circumstances. The following points should suffice for these purposes. This is one of the hardest jobs to fill in local government – for what should be positive reasons – it is the top job in the biggest, most challenging but potentially most exciting city in the country. There is no question of the political leadership's determination to make a suitable and long-term appointment. The process over time has been regrettably "ill-fated", through no direct fault of either the council or of the recent candidates. There is also no question that members have good cause to be nervous about making a final appointment having felt let down by various related permanent senior appointments in recent years. For all that one can be critical of the unstable interim arrangements which cover the senior churn, it can be argued that some permanent appointments have proved more problematic than the interim alternatives.

41. Like other aspects of trying to understand the challenges of Birmingham's recent history as it applies to SEND, there comes a point to move on. Birmingham now has a highly experienced and capable Chief Executive in post but who, for various technical reasons, remains on a fixed term contract. Among the many significant and competing crises on her plate, the post holder has displayed a solid and supportive grip on the SEND improvement work and the wider children's agenda. There is a crying need to confirm the appointment permanently and consider ways to incentivise retention to finally begin to bring an end to the recent senior malaise and help plan for a more stable organisational future.
42. A further aspect to the lack of stable corporate leadership is the effectiveness of the support systems at the centre of the organisation, especially finance, HR and governance. Again this report should not stray too far into some sensitive current personnel issues that relate to these services. But there is sufficient qualitative evidence presented to this intervention to suggest those services are not functioning effectively enough to properly support a service in crisis.
43. ~~43.~~ Alongside legitimate questions about the quantum_____ of financial resource to support SEND, there appear to be significant systems challenges and failings which render effective management and financial monitoring extremely difficult. Coupled with the general data and information challenges this means any managerial task is further complicated. Again, there is a "chicken and egg" aspect to this problem – it is hard to determine if the known SEND management failings have contributed to the financial malaise or vice versa. The true answer may be a bit of both – but the real task now is to rapidly improve the functionality of the financial systems in parallel with the service improvements and necessary new investment.
44. Some of the IT challenges will be considered further in the service section to this report as they relate to SEND information systems per se. Again though, there needs to be firm assurance that the corporate IT capacity is geared and positioned to support the service improvement journey.
45. With regard to HR, senior managers within the service have expressed severe concerns about the pace and complexity of HR processes, especially with regard to agreeing and progressing key appointments. A vivid example of this is a recruitment requisition form required by corporate HR before a service manager can progress the

search. That form in its blank state was 60 pages long – over 70 when completed. Then once completed the form demands a laborious shared process from both HR and service managers to manually transfer it onto an HR system. All organisations need their processes for governance and control purposes. Bureaucracy is inevitable but there is good bureaucracy and bad – this seems like bad bureaucracy. Senior corporate managers have taken this issue up swiftly in the context of some challenging HR leadership issues the organisation is tackling alongside all else.

46. There has been no capacity to look in depth at the general governance of the City Council but various concerns have been raised by managers at different points in the commission about how hard it is to “get things done” in line with the HR process issue exemplified above. Perhaps the starkest example of some of the governance challenges surrounded a significant Cabinet decision with regard to SEND improvement. That was a report driven by the most recent (and highly effective) interim DCS and initiated in May '21 when it was apparent that the Ofsted review was going to be significantly problematic and requiring a heavily invested response alongside the inevitable arrival of a commissioner. These things are bound to take time in the best run council. But through the various process and delegation challenges in BCC, that report did not get approved by Cabinet (with additional caveats) until October '21 and, partly because of the HR challenges, the eventually agreed resources took an inordinately long time to be in place, as they had to pass through a number of additional processes before they could be recruited. You have to speculate, if this is the pace of processes when there is a crisis with a Statutory Direction in place, what is the responsiveness of governance in BCC ordinarily. It should be noted that there is also now a change taking place in the role of Monitoring Officer which may assist with transformation in this regard also.
47. BCC has very recently, not least through the drive of the new Chief Executive, introduced a new permanent director role to lead on all of these resources and related issues. That is a significant step forward. But that individual will need absolute support, personal determination and a root and branch approach to transform and modernise BCC's organisation systems. It is the Commissioner's opinion, disputed by some BCC corporate leaders, that these systems challenges at the centre of the organisation represent a model of governance that is more designed to protect the edifice of the organisation than the services the organisation is there to provide. That is not an uncommon feature of the context to failing children's services. The Commissioner would be delighted to be proved wrong by the speed with which BCC can transform its support systems accordingly.

Conditions for Improvement- The Political Context

48. To begin with, it should be acknowledged that there is a “context to the political perspective” in SEND in Birmingham. Any critique of how local politics in BCC is helping or hindering SEND improvement here needs to pay at least some reference to that wider context. This is a high profile city, the largest “unitary” LA in England, with huge innate challenges around deprivation. It is also strongly politically contested. The spotlight on lead politicians, especially leaders, is fierce, always locally and sometimes nationally. Added to which some of the high profile events are bound to have left a mark – the journey of inadequacy to the children’s trust, the Trojan Horse episode, various employment disputes, and now SEND, to name but a few. This is a tough political environment not least in children’s services.
49. Further, it is difficult to argue with a narrative that on balance, with regard to the SEND problems, it is politicians who have been let down by officers rather than vice versa. With regard to SEND, leading to the first inspection, politicians had actively supported work to recruit appropriately around the leadership of that service alongside an appropriately qualified and positioned director. There is little if any direct evidence of any specific political failing (beyond the wider more general challenges) that contributed to the original SEND failings identified by the 2018 inspection. Following that inspection, politicians supported the recruitment of a specialist manager and then received repeated reassurances that the improvement process was on track. Those assurances appeared to go almost to the wire of the 2021 revisit so the sense of political dismay bordering on anger at that outcome will have been understandable. That outcome was then directly causal to the departure from the role of Lead Member of an otherwise respected Cabinet colleague whose main fault will have been seen by some as having been too accepting of officer assurances.
50. Also, by the time of that 2021 SEND outcome becoming apparent, the city and its politicians had become embroiled in a deeply damaging series of separate but related episodes concerning home to school transport. These related to a significant provider failure in the management and oversight of DBS checks which in turn exposed arguable long standing structural weaknesses in corporate and departmental commissioning and contract management. These issues were severely compounded by further failures of management including in briefings to members which left them still more publicly exposed in what were very public repercussions.
51. Some of these matters remain “sub judice” in terms of internal formal processes and that in turn has exacerbated some of the political dialogue as ruling members are directly constrained about what they can say while opposition members express concerns that the matters are being “covered up”. The SEND Commissioner has been afforded full access to various documents on this matter and is satisfied that the above is a reasonable if restrictive summary and that there is little to be offered or gained by saying more here, other than recognising the inevitable impact on the other SEND services and relations (especially with schools) – and of course on the parents and children experiencing more organisational failure and public blame. The core point here is that politically it is hard to conceive of a more damaging cocktail in the context of the SEND failings to compound the sense of let-down and exposure felt by politicians who, at worst, feel they carry the weight of local public accountability while senior officers come and go. Of course, that is not a context to encourage the best officers to come and stay. So the cycle of failure persists.

52. All of the above should help explain if not defend what a number of current senior officers have forcefully described as a current organisational and political culture which they believe is not aiding their ability to function effectively – in already deeply challenging service circumstances. That is strongly disputed by senior members and some other senior officers. As ever, the truth probably lies somewhere in the middle. Members have every reason to be deeply concerned about the SEND (and H2ST) crises, including on behalf of their constituent families and children. They also have undoubtedly been severely let down by some senior officers in a number of high profile respects. On the other hand, the Commissioner has seen and heard enough to be satisfied that this has led to, if not a breakdown of, a significant disruption to the balance of the member officer culture in a way that has risked impeding SEND improvement. These are also cross party concerns which will require cross party commitment to better support improvement.
53. One manifestation of this, which has been live during this exercise, has been a problematic approach to the handling of case related questions. On the one hand members have been trying legitimately to pass on or escalate constituent queries. On the other hand, as an election approaches, it is perceived by some that SEND complaints have come to represent a political opportunity for some members. It's hardly surprising that there is a proliferation of these complaints through the current failings. Officers have been concerned that the nature and pace of this approach by politicians to questions and complaints has directly impeded their ability to focus on the necessary strategic work. The Commissioner has been satisfied that some of these tensions are certainly linked to the learned distrust of officers by members – not helped by some of the poor professional quality of some responses. The Chief Executive and DCS have been working recently and effectively, with political support, to re-set this balance – but it does need to be re-set quickly and sustainably.
54. A further manifestation of the potential for the SEND improvement work to be disrupted by public or political dispute has been the way in which some of these matters were playing out on social media at the start of this intervention. The level of “noise” was clearly problematic. All concerned need to understand that these services are publicly accountable and rest within a democratically accountable body. But there was an apparent expectation in some parts that the processes would play out, step by step, in public and in such a way that was bound to hinder progress. The Commissioner wishes to record his thanks for the good discipline of all concerned, especially politicians, in responding to his request that such noise should not be fed - and to the recognition that when vulnerable children are drawn into party politics, whoever may “win”, children always lose. That recently established discipline will need to be sustained throughout the future work.
55. Another issue for consideration as part of a general re-set after the forthcoming elections is improving officer and elected member relationships. These are sensitive issues and there is no simple summary, especially within the limitations of this commission. The issue is to do with the occasional blurring of lines of responsibility and accountability between members and officers and the extent to which occasionally adversarial party politics may stray into the political engagement with officers. On one level, that is the nature of work in local government. But in the Commissioner's view the balance is not currently well set in Birmingham. Undoubtedly, the sustained period of unstable officer leadership, which otherwise should be responsible for helping to “manage” this organisational cultural issue in partnership with lead members, has clearly had a negative impact. Specifically, work

should be undertaken after the forthcoming election to provide greater clarity and definition to officers, Cabinet Members and opposition members in relation to their individual roles, functions, responsibilities and accountabilities. This should include a review of officer-member protocols.

56. Another point of some senior discussion in this process relates to where all of this recent history has left the place of children in BCC. In simple terms the Commissioner has challenged the authority about where is the “organisational love” for the city’s most vulnerable children. There is an apt metaphor. If BCC is a (corporate) parent then these services, such as SEND, are its children. The parent has been through a traumatic period and the children are in any event extremely needy and demanding. They need the very best parenting and they are evidentially not getting it. There is a question as to whether the parent is capable of improving. In the metaphor the commissioner intervention is like a social work equivalent. It could be argued that the establishment of the social care trust represents the “removal” of one child from the corporate parent, and we are now considering removing the sibling that is SEND. When challenged the parent professes its love but the manifestation of that love can be harder to find.
57. There is currently no discernible vision from BCC for children and especially vulnerable children in Birmingham. There has been a strategic children’s partnership which the new DCS is rekindling with a view to re-energising the partnership and establishing that vision but this refresh will be from a low base. When that partnership is fully established it will need to be overtly owned and embraced by the corporate centre and politicians. Politicians in Birmingham are able to speak eloquently and appropriately about their role representing their community and about holding services to account. What has been less evident, perhaps understandably, is a firm articulation of the role of politicians in owning and leading those same services. Again, in this regard, politicians have probably not been well served by officers. The word “children” does not even appear in the corporate structures – nor currently does the full role of Director of Children’s Services. That statutory role has been subsumed into the role of Director of Education and Skills, presumably an after effect of the creation of the children’s trust (which BCC commissions and remains accountable for). The Cabinet Member for Education and Skills does not have a direct link into SEND despite mainstream education being a principal provision for a huge number of those children. Further, this distinction is reflected in the current senior management structures in which the Assistant Director responsible for education and early years currently plays no role in SEND. It is good to note that work is already underway to adopt a more joined-up approach both operationally and politically in relation to SEND. The Education and Skills directorate has now been renamed the Children and Families directorate to better signal a joined-up approach to developing services around children and their families. Work has begun to reshape the directorate management structure to ensure shared responsibility and ownership of SEND services. These are pleasing immediate changes but must be fully embedded.
58. Some of these issues – such as the nomenclature – are easy fixes, at least initially. Some of them – the manifestation of BCC’s organisational love for its vulnerable children – will require much deeper and longer term commitments and actions. They are certainly achievable, with the right levels of recognition, will and determination. The City of Leeds, the next largest city to Birmingham, faced a comparable challenge some years ago. It has since established outstanding services and is proud of its status as a Child Friendly City. That progress was long and hard fought. Birmingham

would do well to carefully research what was involved (see the next paragraph). The new DCS has initiated consideration about the city aiming towards a “year of the child”. That would be an excellent start but it should not be a finish.

59. There are two final points in this section on corporate conditions for improvement. Firstly, there is a general point about the organisational learning culture in Birmingham. The new Chief Executive has indicated that the development of corporate learning will be a key priority going forward and that will sit well with other developmental and transformational initiatives that should come from this process. In particular, the Commissioner has observed a Birmingham tendency to be self-referential in its learning and development, especially at a service level. Nowhere else quite compares to Birmingham so there is an inclination not to seek learning from elsewhere. That approach will need corporate challenge and will be critical to the introduction of a form of future improvement partner (see below).
60. Finally for this section, another dominating issue for the City Council at present is the hosting of the Commonwealth Games in Summer 2022. There is no question that this major programme will have presented huge additional challenges as well as great opportunities to the City’s organisational capacity. However, for the record, the Commissioner has seen no direct evidence to suggest those demands have directly impacted on the SEND issues.

A Summary of the SEND Service Issues

61. The purpose of this section is to provide a summary overview of the current service position. It should be stressed that this process at the start of intervention does not equate to an inspection.
62. It should be clearly stated that this process has found nothing to suggest that the Ofsted and CQC findings published last July are inaccurate or overstated. The services are in the dire predicament as described. If anything, it is likely the situation has deteriorated since then for reasons which will be explained. And there may be further deterioration in places before improvement takes hold. That is going to take substantial time, which is a deep frustration to all concerned and deeply unsatisfactory for families and children.
63. What follows is both depressing and worrying. Before going on it should be stressed that the Improvement Board (which will be described below) has work in progress to attack all of these problems. In particular the “Getting the Basics Right” theme of the Board’s programme is, as described, to do with putting in place common sense sustainable repairs which are compliant with the SEND Code of Practice 2015.
64. A helpful metaphor is to regard SEND in Birmingham as a large and multi-purpose building under shared ownership. The building is essential for the protection and shelter of its very vulnerable and crowded residents. But the building is in a dangerous state of disrepair after a period of neglect and mismanagement. The problems are throughout – structural, electrical, roofing, plumbing. The work to repair is urgent (and costly) but there is nowhere else for the residents to go so the work must be assessed and done around them. That means some fixes have to be short term to buy time to do them properly. Other problems have only been revealed in the process of fixing something else. And there is a severe shortage of the right materials and skilled labour. This metaphor does not excuse delay – it seeks to explain the scale of the challenge for all concerned. Being dependent on that building as a family is distressing.
65. Birmingham’s **Special Educational Needs Assessment and Review (SENAR)** service should be the heart of SEND and its functionality affects everything else including parental engagement and confidence. SENAR in Birmingham has been deeply dysfunctional for some considerable time. Some of the challenges are outlined below (and a number of the staffing challenges apply to other parts of the wider system).
66. The SENAR team was in the period of January 2020 to June 2021 in the process of a restructure, in part response to the first inspection, based on an operating model (locality based but also split by need) which was subsequently deemed not fit for purpose. During these 18 months, which of course were critical to the post inspection response, a shadow operational structure was in place, where no case officers were holding cases and case accountability was at best obscure. This inevitably fuelled the fire of parental frustration. Moreover, staff in this period were apparently not receiving regular supervision or support. Parent Link Officers in a form of “SEND contact centre” were commissioned through agency workers to cover phones and emails. It is arguable that this period saw the start of or exacerbated some process and boundary issues between SENAR and SENDIASS, the latter picking up some of the strain for these designed deficiencies.

67. This period also emphasised BCC's continuing overreliance on interims and agency support in SEND. Interims serve a purpose of course and include some excellent people serving Birmingham, but when they start to dominate the make-up of the workforce, especially for a service as sensitive as SEND, the risks of inconsistency, turnover and poor accountability multiply. Additionally, there apparently has been a lack of grip on agency spend (see above on financial systems and HR) and consultants were being moved sporadically from one piece of work to another, without sufficient if any strategic oversight (and fuelling reasonable political concerns about agency spend along the way). Officers are now starting to grip this activity but it will take time to reduce the ongoing dependency on interims.
68. There is subsequently a substantial backlog of cases (new and known) that need to be dealt with which leads to a high number of queries and complaints coming through to different people at different times through different routes with little coordination. It is difficult to exactly quantify the backlog but it is undoubtedly impacting on all aspects of the children's assessment and planning process and, among other things, fuelling the complaints, many of which relate to basic communications (rather than actual complaints). Some parents are complaining simply to find out about their child's plan. That also fuels some of the political angst.
69. The Head of SENAR post has been under various forms of temporary cover. The current incumbent is doing sterling work in difficult circumstances but is actually a specialist elsewhere in the system. A substantive resolution of this post is dependent on recruiting to a new Assistant Director for SEND and Inclusion which is currently being progressed. That appointment is key and urgent. This episode also led to various forms of "fixes" including inappropriate allocations – either to the wrong staff or impossible case loads. At one point case loads have theoretically reached 500 – 600 children per worker. That is not an allocation in the real meaning of the term. The Cabinet's recent financial decision has partly addressed this capacity problem – alongside the halt to the restructure. But that resolution remains time limited and needs to be fully resolved in the medium term. This reduces case loads **on average** to a more sustainable but still heavy 150 per officer. Also, the urgent recruiting to SENAR has relied on a wide geography of recruits who are benefitting from Covid remote working conditions but the sustainability of that approach will also be an issue later as the service will need to re-establish its local identity and presence. There will also be a major training and development requirement to support the new service. This brings us to the issues of **data and data management**.
70. The service currently uses a long established case management IT system. This is a system intended for wider education purposes but in any event which is nearing the end of its general functionality. It is in need of replacement. However, due to the deteriorating functionality, over the period of the past two years (i.e. during the period of SENAR disruption between inspections) some staff have apparently stopped using the system consistently and developed individual workarounds which will also have been symptomatic of weakening management grip and supervision. This renders data management and oversight increasingly inaccurate and based on a variety of self-designed spreadsheets. As a result, data is inconsistent, there is very little confidence in the data produced and utilising the data takes too long to produce what is unreliable intelligence.

71. A full upgrade to the system had been agreed and was scheduled but the current timeline for that work is September 2022. That timing is implicated by getting a dysfunctional system and service properly prepared to ensure the migration and upgrade can happen as smoothly and effectively as possible. The Commissioner is advised that even that date is now in doubt for legitimate technical reasons (not for a want of investment).
72. This also means that the data to summarise the current activity comes with its own health warning. Birmingham currently (at time of writing) has 10,607 children and young people on an EHC Plan. This represents 5% of the total school population (compared to a national average of 3.7%). However, about 2000 plans are not resourced, which means that if we discount those (for which the LA still has responsibility), Birmingham has an EHCP rate of 4%. However, it is a matter of concern that a non-resourced EHCP is a contradiction in terms as the purpose of the plan is to align a resource to a child's need. This points to a lack of grip in decision making before and during individual processes and also probably points to a failing of SEND support as an early intervention alternative to the more formal EHCP process.
73. Further, within this unreliable data we can be confident that statutory performance is poor with some areas dipping way below statutory timescales. The 20 weeks timescales were not being met in most cases of new EHCPs and annual reviews were infrequent. Rough data gathered in advance of the Ofsted/CQC Revisit indicated that out of the 10,000 EHCPs in Birmingham, at least half of them seemed to have not had an Annual Review at that time, even though the plans had been issued more than 12 months ago. (In fairness, the Commissioner is now advised that the position of outstanding annual reviews has been substantially recovered.) There was a delay in making decisions and this impacted on a family's right to appeal. As a result, appeal rates at SENDIST have been increasing from a high level – currently in the region of 300 appeals pending.
74. In any local authority the **relationship with schools** and the SEND system will be complex and varied. Birmingham's school system is large and complex in itself and functions in the contexts described above. The systems and performance failings described here, which must have been failing for at least three years now, are bound to have had a severe effect on schools themselves, their confidence in the city council and on the relationships between professionals. The Commissioner has seen and heard direct evidence of this. It is worth remembering that against this backdrop a substantial majority of SEND children are appropriately placed in a suitable education setting and being well served by their schools. But in terms of the wealth of problems otherwise it is hard to know where to start.
75. For the Interim Assistant Director that would certainly be with regard to the insufficiency of appropriate school placements. While the current round of placement allocations at phase transfer stages is reportedly much better than the last, there remains a continuing struggle. This pressure is also being exacerbated by the system for confirming placements which is felt to be arbitrary by some schools (though these issues may at least in part relate to the nationally rather than locally prescribed processes). From a position where the LA had been discussing 3 years ago the potential to close special school places (apparently in a manner which antagonised relationships with special schools), many would now argue that there is developing evidence for the opening of new special places and certainly additional resourced provision in mainstream.

76. That said, there is also a significant statistic which reveals a major challenge of placement distribution in future. The percentage of children and young people with EHCPs educated in mainstream environment in Birmingham is 29%, compared to a national average of 40%. This is a substantial variation which is not well understood across the schools or other education settings community and points to a future need to “recalibrate” placements and parental and professional expectations to ensure more children should experience more mainstream environments. [Notably, the Green paper published after the drafting of this report sets an ambition for 50% of children with plans to be included in mainstream provision.
77. However, this distribution of placements will also be related to the distribution of funding. At present Birmingham has an allocation of £7.3 million in the top-up fund for the High Needs Block (in schools budgets) – reasonable guestimates suggest that figure should be closer to £20 million in an authority the size of Birmingham. That is a substantial difference by any standards.
78. In early years, within a city where there is an unusual and highly valued level of nursery school provision, there is particular concern that the efforts of those schools to support children with complex but not yet fully assessed needs are not being recognised or supported – in funding and other terms. Again, at least some dimension of this relates to the national rather than the local system. But the levels of concern from early years heads cannot be over-stated.
79. The sum of these issues is that the relations and confidence between schools and the LA-led SEND system have been severely strained. Some of those strains are betrayed in what are perhaps understandable but nevertheless unhelpful comments by some heads in their discontent with their LA colleagues. It may be that the necessary refresh that should follow this intervention will also help all concerned reset the relationships with better, mutually earned respect. More positively, all of the school phases are represented and engaged in the improvement work. There is also confidence in the Delivering Local Provision (DLP) project, a more recently established and progressive model with schools and partners working in more defined localities to address their problems collaboratively.
80. Another point of contact between schools and the LA is **Home to School Transport (H2ST)**. This is not strictly the provenance of this intervention, but is obviously primarily about SEND children and some substantive issues in BCC’s H2ST have been explored above. There is a stronger managerial discipline imposed now on H2ST but that needs to be stabilised for the future and the more recent decisions that have been crisis-led will need to be reviewed. The data challenges which plague the wider system also disrupt the running of H2ST, and the after-effects of the contractual crises continue – formally and informally.
81. As also mentioned above, to date it has not been feasible in this process so far to give sufficient attention to the **health and NHS** aspects of SEND in Birmingham. It is arguable that the severe failings within the LA have also served to mask shortcomings outside of the direct purview of the LA. In health terms that would include the continuing unacceptable delays in the provision of therapies in the city where targets have been set outside of national minimum standards. NHS colleagues are engaging directly in the Improvement Board and fully supportive of that agenda. It is also understood that the incoming Integrated Care Board and system, which

should bring enhanced coherence to the oversight of health governance in Birmingham, will include SEND as one of its key priorities going forward. That will be helpful but health services will have to come up the list of priorities for the Commission and the Board in future months.

82. This brings the report to the issue of **parental engagement and support**. It should go without saying that the period and episodes outlined here have had a destructive effect on parental engagement in Birmingham. This is in the context of an area of service nationally, including since the 2014 reforms, where parental engagement can be fraught as the parents and families of children with additional needs typically feel they have to fight against rather than with the system to have those needs addressed to their satisfaction. Again, it should be said that there is a significant cohort of SEND children in Birmingham receiving effective education and allied services and whose parents have a less fractious relationship with the authorities. On the other hand, the Parent Carer Forum (PCF) in Birmingham, an agency that is seeking constructive engagement and is not seeking adversarial relations, has expressed concern on behalf of the “quietly passive” parents in Birmingham who for a variety of reasons may not feel empowered or able to challenge the nature or quality of their child’s service. The Commissioner in a short period has already met a significant number of parents who are angry, distrustful, tired and even scornful from their experiences of Birmingham’s malaise, alongside the everyday challenges their parenting can bring.
83. One of the underlying principles of the SEND Code of Practice is the practice of **co-production**, which is defined as “a way of working where children and young people, families and those that provide services work together to make a decision or create a service which works for them all.” (Young Minds) Put simply, co-production is not yet a discernibly effective construct in Birmingham, which is hardly surprising in the circumstances. However, under the auspices of the Improvement Board and the APP, significant work has now commenced, with credible independent input, to develop and implement a co-production strategy. That work will need the full involvement of all the agencies and services involved and the Board to oversee that, but at least it has started with some energy.
84. A key local dimension of any SEND service’s relationships with local families is the **SEND Information, Advice and Support Service (SENDIASS)**. Firstly, there is no question that SENDIASS in Birmingham has managed to sustain itself as a strong and valued function despite all else that has been happening in SEND in the city. That is a credit to its local management and staff. It is highly valued in many quarters and the Commissioner has received direct comments from families who single SENDIASS out as the only local resource they have any confidence in. On the other hand, SENDIASS in Birmingham has certain “marmite” characteristics, as a number of stakeholders question its precise role and function. Some argue it is too quick in recommending that parents should seek tribunal as a resolution. Certainly, there is an argument that as SENAR has melted down over a prolonged period, SENDIASS has been drawn into filling a vacuum of case related engagement. They would argue, and the Commissioner recognises this argument, that some key lines of responsibility and accountability, like others in Birmingham, have become unhelpfully blurred. There are also related complexities to the leadership of SENDIASS, including as a directly provided impartial service when many equivalents are at arm’s length from their respective authorities. Of additional concern is that there appear to have been recent initiatives to review SENDIASS in Birmingham, presumably to address some of these points, but which have faltered for various reasons. The Commissioner is

satisfied that without any preconceived outcomes such a review is necessary and should now be conducted to conclusion with independent oversight reporting to the DCS and the Commissioner.

85. Birmingham's **Parents and Carers Forum (PCF)** has been a source of genuine consistency of representation and clarity of advice in the context of Birmingham's general SEND problems and in the first stages of this Commission. A careful and enormously helpful balance has been struck between strong and well-informed representation of parental concerns and criticisms and a recognition of the need to engage in constructive, if robust, dialogue about the improvement work ahead. This is one aspect of the Birmingham system that needs to be supported and nurtured.
86. A particular issue that PCF promote relentlessly is that of **communications**, at a personal and strategic level. They are highly critical, with good cause, of communications failings throughout the system and the history of the service failures. This relates to the capacity and focus of efforts at a senior level to explain to parents the nature of the problems they are experiencing and why, and what the attempted fixes are, through to parents being advised clearly what is happening with regard to their own individual children. In both regards, strategic and at a case level, PCF and parents describe failings in frequency and clarity which, in some ways compound or worsen the service failures themselves. The perspective of PCF is that managers and staff at both levels either fail to recognise the importance of communication, or communicate in obscure ways, or are fearful to explain what has gone wrong and why progress may be stalled. Whereas the strong view of PCF is that any communication is better than none, that skilled professionals should also be skilled at understanding how to reach a given audience, and that the audience, at a case work or strategic level, would rather be told uncomfortable truths than have silence or spin or worse. In fairness the Commissioner would also accept some of this criticism directly but shares the view that with a little more care and attention to communications, and probably through some dedicated resource, stakeholders and parents can be far better engaged and some of the tensions can be de-escalated.
87. Finally, it should be reported that the work to re-boot **the Improvement Board** has progressed but there is more to do. The Commissioner is chairing from an independent perspective, terms of reference are revised and membership tightened to ensure a better strategic and political balance. As referenced above, there has been strong political discipline to ensure that the work of the board is not conducted in a party political spotlight. The revised APP has been signed off by central Government. That is all to the good. However, it is also obvious that much work and collaborative leadership will still be required to turn the board into a genuine force for improvement of these embattled and vital services. It will be helpful to pass the milestone of this first report and confirm the agreed recommendations herein. That should lead to some internal reviewing of the board's approach which should include: an integration of the recommendations here into the board's workplan alongside the APP; some time spent by board members to agree the future approach of meetings as we get past the current formative stage; a review of the APP to drive at the pace of that document; and the introduction of a stronger approach to communications as a more explicit and integral part of the planning.

Structural Options Appraisal

88. A requirement of the terms of reference for the Commission and the Statutory Direction is that consideration be given to any form of structural reform which may be required to ensure service improvement. That relates to the extent to which the corporate and related structures in Birmingham have been causal to these failings and whether the current structural conditions can be relied upon to support and sustain the essential future improvements. If not, the question has to be, is another structural solution required, and if so, how confident can we be that it would work.

89. ~~On~~ these questions is relatively straightforward. As this report has described, the recent history within BCC, especially with regard to senior instability in the officer leadership of children's services and the council more widely, is bound to have impacted upon this inadequate performance. Added to which the Commissioner has been critical of how children's services have fared more broadly in BCC in recent years and that critique may support in principle the case for structural reform. The further questions are less straightforward: it is harder to be certain of the extent to which the critique and any lessons from it have been shared and learned from by current leaders in BCC and then whether the upheaval that would be required to move to an alternative model of provision – a trust or similar – can bring with it sufficient confidence that the cost and disruption would lead to improvement. The following paragraphs go through the main options as currently understood with a summary commentary of respective strengths and weaknesses. There is more to be said about the details to options than can be included here. There may well be other options but the more extreme they may be the less likely they are to work. Also, this summary appraisal does not pretend to be scientific. These are broad judgements and anything more elaborate would probably slip into the accountancy term of "spurious accuracy". In short, it will be impossible for this decision not to be based in part at least on a degree of subjective speculation about what is most appropriate for children and most likely to secure sustained improvement. The options are as follows.

90. **Structural Status Quo** – this involves no significant structural change and the core SEND services remaining under the direct auspices of BCC. In its favour this model: avoids the cost and disruption of any trust proposal; this allows full focus on the improvement work with no organisational distraction; it retains coherence between BCC and the rest of children's services including the existing Children's Trust; this especially applies to the relationship with schools or other education services; it captures the opportunity of organisational stability offered by the new CEX and DCS. Against this model, it retains a high dependency on the very corporate systems and political context which have arguably contributed to if not caused the current malaise. **Therefore, for this option to be agreed would require a level of clear commitment from BCC for the proposal and the attendant work described in further recommendations below.**

91. **A new SEND trust** – this would involve the establishment of a new children's trust specifically for SEND services alone. The new trust would have to work with BCC as its commissioning and accountable body. It would also need to work with the existing Birmingham Children's Trust (BCT) with regard to those SEND children known to social care. In favour of this proposal it would create the clean break from the BCC systems and perceived impediments and allow for a more focussed approach and leadership to SEND and to SEND improvement. In fairness, BCC would rightly argue

that the city has successfully helped establish and works with a trust already and that is a potential positive to any of the trust options discussed here. Against this option, there would be substantial costs and capacity requirements involved in the creation of any new trust. Also, such a model would “bake in” divisions between social care and the retained educational oversight roles of the local authority. And there is no equivalent SEND specific trust model in the country.

92. **A new trust for SEND and all of the remainder of children’s services excluding those already under the existing trust** – this option would retain the costs and disruptions and related risks of the processes required to establish a trust. But it would retain children’s systems across education and SEND, so arguably would have more sustainability than the SEND-only trust. The option would again require a commissioning relationship with BCC. It would also require a formal relationship with BCT as a parallel body often dealing with the same children – those in receipt of SEND who are also “known” to children’s social care. It is that additional dynamic and complexity which also argues against this option, alongside the other demerits to all of the trust options about cost and disruption.
93. **A transfer of SEND only to the existing children’s trust (BCT)** – this model potentially creates the benefits of the new SEND only trust (paragraph 89) in freeing these services from any perceived drawbacks of remaining with BCC. It has the added benefit of joining SEND into the same managerial arrangements as social care in a proven trust organisation so there is a synergy for services to the most vulnerable children. It incurs cost and disruption but it has to be assumed that some of the financial costs of establishing a brand new trust could be defrayed by utilising the existing model. However, in this model we create a new division between the oversight for education more broadly within the LA and that of SEND. It is a difficult question to consider which synergy is more important for SEND to hold – with social care or with education – but an organisational divide between other education services and SEND does seem hard to justify. This model also draws into question the potential impact on existing improvement in children’s social care within BCT. This would be a major transformation of the existing trust and can obviously only be achieved through the full and willing collaboration of the existing trust and DfE. That should not be taken for granted given the significance of the proposition. If that transformation were to detract from further social care improvement that may well outweigh the potential benefits for SEND if and when they accrue. In short, one group of vulnerable children are put at further risk for the sake of another group of vulnerable children. This is also a model which has not been tried elsewhere.
94. **A transfer of all of the remaining LA children’s services, including SEND and education, into the existing trust to create a full children’s trust in scope with Children Act 2004** – This is an arguably more radical approach to a trust model for SEND. It builds on BCT again – so has all of the strengths and weaknesses of other options that utilise the existing trust – potentially less cost and disruption moving into a proven model; but with a more significant overhaul of service and therefore impact on the existing trust with all the risks that may then apply to social care. The longer term benefits though could be substantial as the full scope of service, working together and through a single coherent commissioning route from BCC, would be a more positive model for children and in line with the still current ambitions of the Children Act 2004. This model would also call into question the roles and relationships between the current CEX of a social care trust and that of the DCS. This model does exist elsewhere and is better proven if it can be effectively

established. It should also be noted here for the record that any such decision which impacts upon BCT would need the support of BCT, certainly in principle and probably technically. It should not be imposed.

95. **A local authority partnership** – this would potentially relate to Hampshire’s now long-standing relationship with Isle of Wight children’s services with the DCS of the former taking full responsibility for the latter through a partnership agreement. That has proved highly successful – the island’s services now being a strong Good having been a very poor Inadequate. However, the model was predicated on an unusual alignment and timing between those two councils – the one being much larger as well as higher performing in order to absorb the level of risk. This has not been directly replicated elsewhere and it is not clear if an LA exists which could cope with Birmingham’s size, or whether Birmingham would be prepared to work under such a partnership arrangement and all that comes with it, especially in the early years of its establishment. BCC leaders have indicated their disquiet at this option and that seems very understandable.

Tailored Improvement Partner – This is less of a structural option in itself but an improvement approach which could be attached to any of the above but has particular resonance in the potential for the “status quo” option (para 88). Returning to the parallels with social care improvement models it is now standard practice for a failing service to receive support from local regional improvement capacity, probably but not necessarily drawn from a single high performing authority. This is now referred to as the SLIP – the Sector Led Improvement Partnership – Programme. That capacity is aligned with the improvement planning process and will often involve a shadow support system of highly experienced specialist managers (e.g. in this case for SENAR, SENDIASS etc) working closely with their counterparts in the “host” LA to provide external objective support, direction and audit. If no such individual LA were capable of providing the full suite of support (which is how SLIP tends to work in social care) then a tailored arrangement of sector specialists operating as a collective support team could be established working with the LA and to the Commissioner and the IB. This is not least because, above all else, what must be remembered is that structural reform may help sustain but will not achieve service improvement. Service improvement will always be dependent on a well-developed improvement plan overseen by an effective IB and driven hard and determinedly over time by managers and staff in whatever structure.

97. The Commissioner now has a first and second preferred option subject to the clearly stated position of Birmingham City Council and DfE and subject to conditions that would apply. Before confirming that it is important to stress that this is a highly significant decision at a critical moment for these embattled services on behalf of highly vulnerable children. This report is geared to make this recommendation, but it can be seen as based on a relatively unilateral analysis. It will be important for all key stakeholders but especially BCC, DfE and NHS to commit wholeheartedly to any such decision, with the needs of children to the fore.
98. The current preferred option of the Commissioner, based on this exercise to date, is for structural status quo and Birmingham’s SEND services to remain under the direct auspices of the local authority. But this is strictly conditional on the City Council leadership making it clear the council is fully committed to this option and determined to make it work. That will not least be through a wholehearted support for all of the following recommendations in this report and the transformation work, service and

corporate, which will be required to secure sustainable improvement. In the absence of that unequivocal commitment then the Commissioner recommends that work should start immediately to establish a “full scope” children’s services trust, including SEND and all educational services, based upon the existing vehicle of BCT.

Recommendations

1. There should be no structural reform to introduce an alternative delivery model for SEND in Birmingham which should instead remain under the direct leadership and management of Birmingham City Council (supporting the wider SEND partnerships including with NHS and schools).
2. Recommendation 1 is strictly conditional on the unequivocal support of Birmingham City Council and on the local authority's absolute commitment to the remainder of these recommendations including the continuing roles of the Improvement Board, a DfE funded improvement partnership, the retained Statutory Direction and the Commissioner.
3. In the absence of the necessary commitment from BCC described in 2, work should start immediately to transfer all of the remaining children's services for which BCC is directly responsible into the Birmingham Children's Trust, thus establishing through that vehicle a full-scope children's trust including SEND and education services.
4. The roles of the independently chaired Improvement Board and the Commissioner should be consolidated accordingly with a retained Statutory Direction to oversee and drive the continued improvement work.
5. The Accelerated Progress Plan should be retained but the Improvement Board will assimilate oversight of that plan with oversight of the programme to implement these recommendations to ensure a coherent approach to all aspects of SEND improvement.
6. An early exercise should take place to review the APP and particularly its timescales now that this point in the process has been reached. In view of the scale of the improvement challenge that review should consider all ways to bring forward all possible deadlines with the full cooperation of all parties.
7. That will include taking all possible steps to ensure that the introduction of new SEND data systems are prioritised by all parties and thereby developing a clearer analysis of the financial requirements of future improvement.
8. The SENDIASS service in Birmingham should be externally reviewed with recommendations brought back to the IB in due course.
9. The Improvement Board and BCC should establish a resourced Communications Strategy as a matter of priority to establish more fluent, frequent and effective communications with parents and carers focussing on both the communications of the improvement work but also ensuring effective case work communication.
10. BCC will bring to the IB an update on the progress of the Home to School Transport reforms which are relevant to but not strictly part of the SEND process.
11. The DCS should plan and lead a collaborative process with schools to re-set the wider relationship between schools and the LA, including but not only with regard to SEND, taking the opportunity of her appointment and this report to trigger that work.
12. In the next stage of this process the Commissioner should work with NHS colleagues to offer a closer focus on the health dimensions to this work.
13. The City Council will commit to taking all legitimate steps to regularise the roles of all relevant staff and managers, moving from interim to permanent

- appointments wherever and as quickly as possible in the interest of stable SEND and children's services, supplemented with appropriate levels of training and development.
14. The City Council should consider an exercise to incentivise retention of key staff whose roles are business critical to the successful delivery of SEND improvement.
 15. The City Council should take immediate and long term steps to re-establish itself as a "children's services authority" in line with Children Act 2004. This is regardless of the structural model and will include such steps as: re-creating a "children's department" in some form and name and including the explicit title and role of the DCS; ensuring that the various leadership roles, politicians and officers, are consistent with statutory guidance; promoting a children's partnership with a clearly stated vision and plan for the city's children with the DCS leading that work.
 16. 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.
 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.
 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.

John Coughlan CBE

Appendix A- Children’s Services in Birmingham- Chronology

Key Events

Date	Event
2006	Birmingham Children’s Services are placed in Special Measures.
March 2013	Birmingham is issued with a statutory direction in light of inadequate performance by the Authority of its children’s social care function.
November 2013	Council receives ‘Trojan Horse’ anonymous letter.
May 2014	Ofsted inspection judges Birmingham’s Children’s Services as Inadequate
2014	<p>April – Ian Kershaw North Education Report into Trojan Horse</p> <p>July - Government report published into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter authored by Peter Clarke.</p>
September 2014	The statutory direction was reissued, and a Children’s Social Care Commissioner was appointed.
October 2014	Secretary of State for Communities and Local Government and the Leader of Birmingham City Council ask Sir Bob Kerslake to carry out an independent review of the governance and organisational capabilities of BCC. The review commenced formally in October 2014 and was published in December 2014.
December 2015	The second direction was revoked and replaced by a direction naming a new

Date	Event
	Commissioner for children's social care in Birmingham.
May 2016	Birmingham City Council announces its intention to move towards establishing a Children's Trust.
September 2016	Ofsted re-inspection judges Birmingham's Children's Services inadequate.
April 2018	Birmingham Children's Trust launches.
June 2018	Joint local Area SEND Inspection identifies thirteen areas of weakness that need to be addressed.
December 2018	BCC publishes Kerslake Stocktake report outlining the current position in relation to it achieving the improvements recommended by Lord Kerslake in December 2014.
September 2020	High profile failures in the Home to School Transport Service are identified. High level of press interest. EY are commissioned to write a report into service failures. Weightmans LLP commissioned to write a report on safeguarding in the service.
May 2021	Joint local Area SEND Revisit concludes that Birmingham has made sufficient progress in only one area of weakness.
August 2021	Contract ended with transport provider judged to be failing to adhere to DBS processes stipulated in the contract. A new provider has to be identified at short notice.

Date	Event
September 2021	Weightmans Report briefing circulated to Members.
October 2021	A Statutory Direction is issued to Birmingham City Council due to its SEND service provision and a commissioner is appointed.
November 2021	Sue Harrison joins BCC as DCS/Director for Education and Skills.

Political Leadership Chronology

Leaders of BCC	Political Party	Term of Office
Cllr Mike Whitby	Conservative	May 2004 – May 2012
Cllr Sir Albert Bore	Labour	May 2012 - Dec 2015
Cllr John Clancy	Labour	Dec 2015 - Sep 2017
Cllr Ian Ward	Labour	Sep 2017 -

Cabinet Member for Children’s Services	Political Party	Term of Office
Cllr Les Lawrence – Cabinet Member Children, Young People & Families	Conservative	2004 - 2012
Cllr Brigid Jones – Cabinet Member Children, Young People & Families	Labour	2012 - Nov 2017
Cllr Carl Rice – Cabinet Member Children, Families & Schools	Labour	Dec 2017 - Apr 2018
Cllr Kate Booth – Cabinet Member for Children’s Services	Labour	May 2018 - Aug 2021
Cllr Sharon Thompson – Cabinet Member for Vulnerable Children & Families	Labour	Aug 2021 -

Chief Executive Chronology

Chief Executives of BCC	Term of Office
Stephen Hughes	Until 2014
Mark Rogers	2014 – 2017
Angela Probert (Acting)	2017
Stella Manzie (Interim)	2017 - 2018
Dawn Baxendale	2018 – 2019
Clive Heaphy (Interim)	2019 – 2020
Professor Graeme Betts (Acting)	2020
Chris Naylor (Interim)	2020 - 2021
Professor Graeme Betts (Acting)	2021
Deborah Cadman OBE (interim)	June 2021 - ongoing

Director of Children's Services Chronology*

Director of Children's Services	Term of Office
Sally Taylor	2013- 2015
Peter Hay	DASS (also took on DCS role for some time and oversaw a People Directorate including Children's Services)
Eleni Ioannides (Interim)	2015
Alastair Gibbons	June 2016 – March 2018

Director of Children's Services	Term of Office
Colin Diamond	May 2015 – July 2018 (was Executive Director for Education for most of this time but took on DCS role at some point)
Ann Ainsworth	July 2018 – January 2019 Acted into role when Colin left
Tim O'Neill	January 2019 – January 2021
Andy Couldrick	February 2021 – May 2021 (Takes on DCS role whilst also retaining Chief Executive of BCT)
Kevin Crompton (Interim)	May 2021 – November 2021
Sue Harrison	November 2021 - ongoing

Assistant Director SEND Chronology

AD SEND	Term of Office
Chris Atkinson (Permanent)	Left 2016
Jill Crosby (Acting)	2016 – 2018
Austin McNamara (Interim)	2018 (in post at point of Local Area Inspection)
Sharon Scott (Interim)	2018-2019 (exact dates unclear)
Paul Senior (Interim)	2018-2019 (exact dates unclear)
Nichola Jones (Permanent)	July 2019 -June 2021
Pauline Madison (Interim)	August 2021 – ongoing

19 May 2022

Dear Colleagues and Parents,

Re: Birmingham SEND Commissioner's Report

I am writing to provide an update and summary of my first report to the Minister about the DfE Special Educational Needs and Disabilities (SEND) improvement intervention in Birmingham. This is a significant report as it sets out an analysis of the background to the poor SEND performance with a view to addressing how we must collectively improve these vital services. That includes a consideration of whether the services need to be removed from the direct control of the local authority.

In some respects, this report is already slightly out of date, partly because of election related delays and the publication of the Green Paper since its drafting. The report is also unavoidably long. So, the purpose of this letter is to summarise the main points and the next steps in a way that may help colleagues, partners and families with the headlines.

- There should be no doubting the accuracy of Ofsted and CQC assessments. In what are admittedly deeply challenging circumstances for SEND nationally, SEND services in Birmingham are far from good enough and have been severely wanting for several years now. The need for improvement is real and urgent. But the scale of the task of improvement will be long and hard and will require unwavering collective commitment and leadership over time.
- This is not a criticism of the very many good people in Birmingham who are trying extremely hard to provide a good service. Without those good people – in schools, health services, the voluntary sector and the City Council - things would be much worse. The problem is that the conditions they are working in are not conducive to success. That is as dispiriting to those staff as it is damaging to the children and families who depend upon them – and contributes to the staff turnover which is one of the severe challenges being faced.
- The nature of this stage of the Government intervention is to attempt to assess why services have deteriorated. But this is not an exercise in allocating blame – it is an exercise in then identifying what is required to create better conditions for improvement and successful services. And as it happens, such is the scale of the historical malaise surrounding these services, I judge that it would be impossible to apportion blame fairly.

- For example, in the past eight years (since the publication of the Kerslake Report) there have been no fewer than nine people holding the post of Chief Executive of the council and nine people holding the post of Director of Children's Services. There is no more simple and more telling statement to summarise the problem. It is impossible to ensure quality services in these unstable circumstances, let alone define, agree and implement complex improvement and transformation programmes. The services are crying out for more coherent and consistent leadership. In fact, in some quarters of Birmingham, excessive and destabilising senior churn seems to be regarded now as inevitable. It is destructive and pernicious but should not be inevitable.
- As it happens, at risk of personalising the solutions, the City Council now has its first opportunity in several years to secure permanent high quality leadership in both of these two critical posts – chief executive and DCS - and it is my view that all possible steps need now to be taken to secure those post holders and give them the required authority and tenure to lead this (and related) improvement work. That opportunity is key to some of the conclusions below.
- On a related point, and one which I know is not readily accepted by the political leadership, it is my conclusion that over time and for some understandable reasons, the City Council has lost sight of the centrality of its duties to vulnerable children. In fact, those statutory and moral duties, while expensive and burdensome, should be seen as a privilege by every local authority and form a cornerstone of the corporate purpose and strategy. I perceive the required focus has been lost in Birmingham and to regain it will require determined leadership and time. On one level, I am pleased the leadership are unhappy with this conclusion as it should speak to their determination to prove me wrong and show how much children, especially more vulnerable children, matter to the city.
- A feature of the inconsistencies in officer leadership corporately in the wider council, is that the organisational systems required to help these services – such as HR, finance and governance – are also in need of review and improvement. These bureaucratic systems are essential but are tending to act as more of an impediment than an aid to effective service delivery. So this must also be an improvement agenda that is linked to but separate from the specific SEND agenda.
- Something that Birmingham politicians deserve credit for (across parties) is their response to my request that they collectively defuse what I perceived to be a damaging approach to political public conflict about SEND in Birmingham last autumn. That shift has been enormously helpful and should continue – without avoiding the fact that there must be shared and transparent political accountability. While that has been positive, I am critical in my report about what I perceive to have been an unhelpful culture between officers and politicians in the council. Again, this is a criticism that is not readily shared, but I have seen enough evidence of what I perceive to be blurred lines between officers and members in terms of roles and responsibilities and a tendency towards adversarial and confrontational approaches. Every local authority has its own culture. I am simply saying that beyond the election and linked to this service improvement programme, Birmingham should take determined steps with external support to review its political and officer culture and ensure it is delivering the best for its citizens. It has not been delivering well for SEND children and their families in Birmingham.

- The report goes on to detail a range of the service specific issues and challenges which need to be addressed as part of the improvement programme over the coming years. That work will need to continue to be overseen by a well-established and supported, independently chaired Improvement Board with the continuing weight of a statutory direction behind it. It will need a collective approach to measurable and tangible progress.
- One of the more problematic implications of the City Council's uncertain leadership over time has been with regard to the partnerships which should be led by the local authority for children. This applies especially to schools many of whom, in an already complex and fragmented schools' system, have lost faith in the LA. There is a genuine opportunity now under new leadership to rebuild the partnerships and trust. But the challenges are mutual. There is a crisis of appropriate provision for SEND children in Birmingham which will need collective will to address. One element of that crisis is that not enough children with EHCPs are being supported by mainstream schools in a system which simply isn't consistently inclusive enough. On the other hand, I have been privileged to see at first hand some excellent inclusive schools and school leaders whose work can be replicated. The programme of Developing Local Provision (DLP), enabling schools to work more closely together at a local level, will be key to this major challenge.
- One of the weaknesses in Birmingham SEND over time has been with regard to co-production – the focussed approach to ensure that all partners, including and especially children and families, have a valid role to play in the development of services. That work has re-started in an encouraging way but will need steadfast support going forward.
- That must include Birmingham's Parent Carer Forum (PCF). From my perspective, the PCF in Birmingham has great strengths in providing clear representation and constructive criticism. These strengths need to be valued and nurtured, including with regard to how organisations communicate more effectively with families.
- One feature of this intervention to date is that it has focussed, necessarily, more on the role of the local authority. Of course, SEND must be a shared exercise and I know I need to spend much more time with health colleagues and services going forward. The challenges are not unique to the local authority.

- Finally, for now, a key element of this stage of the intervention is for me as Commissioner to make recommendations about any need for more fundamental structural reform, such as “out-sourcing” SEND to a trust. These are highly complex and nuanced considerations which are set out summarily in the report. There is no question there is a case for such a step (as has been applied successfully for children’s social care in the Birmingham Children’s Trust). However, I have concluded that at this point, the potential benefits of such a step for SEND in Birmingham are outweighed by the various risks, coupled with a real sense that all parties are ready to put their full energies now into improvement without the costs and distractions of structural reform. This is, in one sense, a vote of confidence in the local authority. But the major caveat to that conclusion is that the City Council in particular must show its unwavering support for this analysis and the recommendations for improvement which have been agreed by the Minister. These must now be implemented with full commitment under the oversight of the Improvement Board or the structural question is bound to re-surface.

The Minister has accepted this report and its recommendations in full. But like all of us, he remains deeply concerned about the state of these services and the need for early progress. He has asked me to redouble my reporting to him of our progress. It will be the job of the Improvement Board to oversee that progress through a series of linked action plans including DfE’s Accelerated Progress Plan (APP). Our shared ambition is to resolve the failings and then drive at achieving higher standards which others wish to follow! It is the job of all the relevant partners and authorities to ensure we succeed for vulnerable children in Birmingham.

Yours faithfully,

John Coughlan CBE
DfE Send Commissioner for Birmingham