

# People Scrutiny Commission

## Agenda



**Date:** Wednesday, 27 September 2023

**Time:** 6.00 pm

**Venue:** 1P05: Beira Room - City Hall, College Green,  
Bristol, BS1 5TR

### **Distribution:**

**Councillors:** Christine Townsend (Chair), Sarah Classick (Vice-Chair), Kerry Bailes, Brenda Massey, Sharon Scott, Lisa Stone, Mark Weston, Tim Wye and Katja Hornchen

**Issued by:** Bronwen Falconer, Scrutiny  
City Hall, PO Box 3167, Bristol, BS3 9FS

E-mail: [scrutiny@bristol.gov.uk](mailto:scrutiny@bristol.gov.uk)

**Date:** Tuesday, 19 September 2023



# Agenda

## 7. Public Forum

Up to 30 minutes is allowed for this item

**(Pages 3 - 13)**

Any member of the public or Councillor may participate in Public Forum. The detailed arrangements for so doing are set out in the Public Information Sheet at the back of this agenda. Public Forum items should be emailed to [scrutiny@bristol.gov.uk](mailto:scrutiny@bristol.gov.uk) and please note that the following deadlines will apply in relation to this meeting:-

Questions - Written questions must be received 3 clear working days prior to the meeting. For this meeting, this means that your question(s) must be received in this office at the latest by 5 pm on **Thursday 21 September**

Petitions and Statements - Petitions and statements must be received on the working day prior to the meeting. For this meeting this means that your submission must be received in this office at the latest by 12.00 noon on **Tuesday 26 September.**



# People Scrutiny Commission

## 27 September 2023

### Public Forum



#### Public Forum Questions

Ref	Name	Topic
Q1-6	Jen Smith (attending)	SEND and Bristol Autism Project
Q7	Dan Ackroyd (attending)	SEND and support for parents
Q8	Sally Kent	EHCP Update

#### Public Forum Statements

Ref	Name	Topic
S1	Jen Smith (attending)	Bristol Autism Project



## PUBLIC FORUM - QUESTIONS

### Question 1 – 6, Jen Smith

**Question 1:** Exactly how does the council retrieve money from education settings receiving high needs funding/top up funding when the child or young person is not attending because they have been 'pushed out'? I'd like it answered with specific details regarding the process in place and reference the policy. If there is no process in place and the setting keeps that funding, please also state this. If you have no policy regarding this please also state that in your answer.

*Note: This question was originally submitted to the Overview and Management Scrutiny Board.*

#### **Officer Response:**

In respect of Element 3 (Top Up) funding, the finance team rely on both notifications, either internally or from the school or college, and monthly data consolidation. When the Local Authority is aware that a child or young person has left a particular educational institution, the finance element of the system is updated with an end date. If a period of overpayment occurs, then a retrospective adjustment is made to automatically recover any overpayment to the setting.

Independent non-maintained schools are paid by invoice typically a term in advance. If a child or young person leaves the placement between payment periods, the Local Authority will obtain a credit note processed through Bristol City Council's finance system. In exceptional circumstances, we may raise an invoice to recover any overpayment; for example, on approach to the end of the academic year and all invoices are paid and there is no other placement at that establishment to use the credit against.

All transactions are processed in line with finance regulations and notification of ceasing funding is built into the SEND Assessment, Planning & Review Teams standard operating procedures.

**Question 2:** Exactly what action does the council take against education settings who push out Send learners with EHCPs? Please answer with specific details around the exact process and reference the policy. If nothing happens, please also state this. If you have no policy regarding this please also state that in your answer.

*Note: This question was originally submitted to the Overview and Management Scrutiny Board.*

#### **Officer Response:**

Bristol City Council is committed to supporting and challenging schools around the areas of inclusion and exclusions.

There are many factors that can contribute to a child or young person developing a disconnection from their education and/or educational institution. Therefore, there is not one pathway, policy or procedure but rather a collective responsibility and positive action will depend on the child or young person's needs and specific circumstance.

The Bristol Belonging Strategy: Belonging in Education 2021 – 2024 provides the overarching framework to guide planning and action. 'As part of this strategy all children and young people should have access to education that is inclusive and values diversity.

There are many touch points and forums for teams and between teams, across the Local Authority, to share information, skills, expertise and provide support to minimise and remove barriers prior to escalation, for children and young people, whatever these may be.

Currently, Bristol City Council's Inclusion Hub offers an inclusion surgery and daily drop-in sessions to offer schools help and support where there are concerns in supporting individual children and young people. SEND Officers attend regularly.

Other avenues where SEND Officers are represented alongside other teams (such as Schools Partnerships, Safeguarding in Education Team, Education Welfare Service, The Hope Virtual School, The Inclusion Hub, Educational Psychology Service and The Youth Justice Team) include; the Bristol Inclusion & Fair Access Panel, the Attendance & Belonging Group, Education, Training & Employment Group and ALPFAM.

These forums are mainly child and young person level designed to offer the right help, support and expertise at the right time; addressing the needs of individual children and young people with the overarching aim to avoid children and young people being 'pushed out' and exclusion or placement breakdown occurring.

The Government expects local authorities and schools to work together to prevent children becoming Children Missing Education (CME). A pupil's name can only lawfully be deleted from the admission register on the grounds prescribed in regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 as amended.

Schools are reminded that they may wish to seek their own legal advice before deleting a pupil's name from the admission register. Bristol City Council Children Missing Education guidance document outlines when a pupil's name may be removed from the admissions register at a non-standard transition point.

Ongoing systemic concerns, within a school setting, arising within any forum, within the Local Authority, can be escalated to senior leader level through the pathway 'schools causing concern' for audience with the Director of Education and the wider senior leader team. Action to be taken will be agreed by the Senior Leader Team on a case-by-case basis.

This pathway is currently under review following recent changes to the senior leadership team. The Local Authority are looking to develop this further in which will include IT opportunities to support consistency and information sharing across the directorate.

**Question 3:** The Bristol Autism Project is a short breaks provider of holiday activities for families with a child or young person aged 4-18 years of age who is autistic, or those with similar Social & Communication Interaction Needs (SCIN) - and their siblings who live in Bristol.

Families accessing this service must live in Bristol. Or they may live out of Bristol but attend a specialist school in Bristol. Or be under the care of Bristol Social Care team.

BAP is funded by Bristol City Council and until this point, it has always been a free to access service.

Why, during a cost of living crisis has Bristol City Council allowed an organisation funded they fund to make this a paid for membership scheme? Can you make available the Equality Impact Assessment behind this decision with the answer.

**Officer Response:**

Bristol City Council (BCC) commission Foundation for Active Community Engagement (FACE) to deliver the Bristol Autism Project (BAP).

BCC and FACE's joint aim has always been to maintain the current provision for all children and families, as the membership of BAP has grown. It was hoped that by introducing a £39 per year membership fee this would enable us to do this without restricting access for our children and families.

FACE were originally commissioned to deliver the BAP in 2019, with a target to support 175 different autistic children. Membership of BAP has now grown to 631 autistic children (554 families). Over the last two financial years, Bristol City Council has provided additional £11,000 per annum funding to meet the growing membership.

The contract with FACE includes a provision that the provider may charge a small fee, and that this fee should be waived if the Provider considers it will prevent a family from accessing a Short Break.

Bristol City Council and FACE felt that the option of a paid membership would ensure that:

- we can meet the needs of all
- we do not need to hold a waiting list to join the service
- we do not need to impose an upper limit on membership numbers
- we do not need to introduce further eligibility criteria to join
- registered BAP families are active members of BAP

As a result of these discussions, BCC and FACE agreed that FACE would run an engagement survey with parent carers who are members of BAP between 15<sup>th</sup> May and 15<sup>th</sup> September 2023. The survey was sent out to all active members and advertised on social media.

Parents and carers were asked about how they would feel about the introduction of a small annual fee for membership. FACE have shared an overview of the responses, the majority (67%) of which were supportive – detail at Appendix A.

In order to ensure that current members are not excluded from still accessing BAP or negatively impacted in the future with the introduction of a fee-based membership scheme; there is an exemption for those families who feel that they cannot pay and the fee can be paid in monthly instalments for those who will struggle with a lump sum payment. This is outlined in the FAQs section of the letter that went out to families:

*'What if I can't afford to pay?*

*If the cost is a real barrier to you, please get in touch with us. Referral agencies may pay the membership fee on behalf of families if they choose, however, be aware that this will be an annual payment request to stay with BAP. We will have other sponsors who could also help.'*

*'Can I pay monthly instead of one lump sum in October 2023 and onwards from March each year?*

*Yes, from April 2024 families may pay the membership fee of £3.25 monthly by direct debit if they prefer rather than an annual payment. This will be £2 per month for October 2023 - March 2024.'*

Other Targeted Short Break services ask for a financial contribution for children and young people attending Short Breaks, with an exemption for families who are facing financial challenges. Therefore, this proposal brought BAP in line with other BCC Targeted Short Breaks services.

We are in agreement that an EQIA would have been helpful at an earlier stage. EQIAs can be undertaken at various times and it is best practice to include engagement information, now the survey has finished one will be completed. The provider is in agreement that they will not implement any charge until this is in place and any issues raised through the EQIA are fully considered.

**Question 4.** What short breaks service will Bristol City Council now provide for families of autistic children and young people who are pushed out of this scheme by virtue of the fact that it's paid membership?

**Officer Response:**

Any family who is eligible to become a member of BAP will still be able to do so. Families who are facing financial pressures will still be able to access through the exemption process and will not be expected to pay a membership fee.

FACE has regular contact with their members through a number of different channels and will work with BCC to ensure equity of access. All new referrals into BAP will be signposted to the provider's website where they can find more information on the services available.

**Question 5:** Bristol City Council is delaying paying Alternative Learning Providers for many many months despite them having invoiced for their work. Why is this still continuing to happen? It's affecting the SEND provision of children and is an unethical attitude towards those working for the Local Authority.

**Officer Response:**

The associated teams, within the LA, receive a very high volume of payments to process. We fully acknowledge there has been difficulties with capacity affecting both payments and associated queries. The Officers, across teams, have been working hard to resolve any outstanding queries and/or payment issues experienced.

In July, the LA took positive action to improve; 4 Finance Operational Support Officers (3 permanent & 1 temporary) were moved back into the SEND service area. In September 2023, successful recruitment took place for an additional BG10 role specifically dedicated to Personal Budget Direct Payments. In addition, a temporary resource of 1 officer was agreed and is now in post from September 2023 until March 2024.

Commitment has been made by all teams to simplify and speed up the payments process whilst continuing to ensure we uphold a compliant and transparent process.

**Question 6 – Dan Ackroyd**

I don't know the full facts of the SEND scandal in Bristol council, but my understanding is as follows:

- Bristol City Council was performing terribly in providing adequate SEND provision.
- Some parents were complaining about how terrible BCC are.
- Following this, some Officers who are on very high salaries were spending their time looking at the social media of those parents for 'evidence' that could be used against them.
- On the 18<sup>th</sup> October 2022 in a 'Golden Motion' Full Council called for an investigation, which hasn't happened and doesn't seem likely to happen.

This seems manifestly unjust on multiple levels.

First, Bristol City Council failed to provide an adequate service which has hurt children by failing to provide their educational needs.

Second, instead of admitting the harm done, and working to either alleviate or remediate the damage done Bristol City Council appears to have 'circled the wagons' and are hoping that the individuals involved don't have enough resources to sue the council.

We've got to do better than this.

What can be done to stop people who have already suffered enough harm from suffering more harm? Would it be possible for independent legal advice to be arranged to be given to people who have suffered harm, so that they don't need to fund the legal cost of challenging BCC's poor performance themselves? Can their ongoing complaints be prioritised rather than slow-walked by the legal department?

**Officer Response:**

Complaints are dealt with in accordance with the Council's complaints process.

The Council is unable to source or provide independent legal advice however it can signpost individuals to organisations who can provide independent legal advice.

**Question 7 – 15, Sally Kent**

Tribunal

**Question 7:** How has BCC defined 'lodged'?

**Officer Response:**

When a parent/carer or young person officially registers an appeal with SENDIST and Bristol City Council is notified by receipt of a new registration letter from HM Courts & Tribunals Service.

**Question 8:** How many families in 2023 started the appeals process?

**Officer Response:**

54 as at the end of July 2023. Since completion of the report a further 7 appeals have been lodged.

**Question 9:** Of these families how many appeals did the LA concede upon receiving notification that the family had put in an appeal. Please provide the answer as a figure broken down by appeal type (type 1: refusal to assess, type 2: refusal to issue, type 3: section I only, type 4: section B and F and/ section I).

**Officer Response:**

Year to date, 30 appeals have been resolved prior hearing to date with Bristol City Council conceding 27 during the appeal process.

LA concede by category:

- Refusal to assess - 17
- Refusal to issue - 4
- Section I only - 4
- Section B and F and/ section I - 2



**Question 10:** How does this number compare to the same data held in the 2021 and 2022 reporting years?

**Officer Response:**

In 2021, there were 37 appeals lodged

In 2022, there were 118 appeals lodged

In 2021, BCC conceded 24 appeals

In 2022, BCC conceded 56 appeals

For 2022, 118 appeals lodged of which 93 did not go to hearing.

Table below shows outcomes for 93 that did not go to a hearing:

Conceded	56
Settled	30
Struck Out	2
Withdrawn	5

*\*Data will vary as appeals lodged in 2022 that are ongoing close.*

Table below shows the reasons tribunals were lodged for all conceded cases:

1. Refusal to Assess (Decision not to start an EHC Needs Assessment)	34
2. Refusal to Issue (Decision not to proceed to securing an EHC Plan)	6
3. Content of EHCP	16

For 2021 there were 37 appeals lodged. 29 did not go to hearing. Outcomes for those without a hearing are shown below:

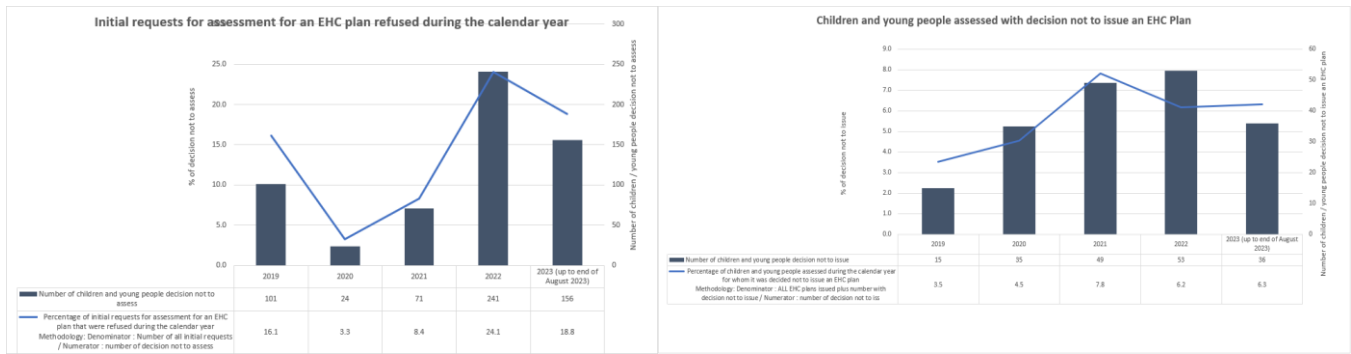
Conceded	24
Settled	4
Withdrawn	1

Of those conceded, 7 were lodged for refusal to issue reasons and 17 due to the content of the EHCP.

**Question 11:** What is the trend for refusal over the years, including 2023 so far? It would be useful to have context, I would like to know if i) refusal to assess data has changed over the last 5 years in terms of % changes ii) the refusal to issue data has changed over the last five years in terms of % changes

For a fuller context can you provide the last 3 years data including 2023 so far for mediation outcomes. Again, can this be broken down by appeal type.

**Officer response:**



The Local Authority is unable to provide data regarding mediation outcomes currently. This is an area that is in development and will feature within our Power BI project.

**Question 12:** Finally, how many decisions were overturned before the mediation date and therefore mediation cancelled.

**Officer Response:**

The Local Authority currently only records the mediations requested, in which year to date (September 2023) is 97.

This is an area that is in development and will feature within our Power BI project.

**EHCPs within 20 weeks.**

**Question 13:** Why does BCC calculate the % on time against those issues in a quarter rather than those due in a quarter. If this is a DfE recommendation, please can you provide further guidance.

**Officer Response:**

The DfE SEN2 data collection statutory guidance require the Local Authority to report on the number of EHCP’s issued per quarter specifically the number of EHCP’s issued within the 20-week timeframe and the number of EHCP’s issued which have exceeded this timeframe.

To date, the DfE has not asked for us to report on the number of EHCP’s due per calendar month.

**Question 14:** Does BCC continue to process a set quota of DfE cases out of chronological order. If so, how many cases not included in the DfE quota were processed within 20 weeks?

**Officer response:**

There is no DfE quota.

The Local Authority work in chronological date order in regard to both the EHC Needs Assessment process and issuing of first time final EHCP’s.

We aim to process all EHC Needs Assessments within the 20-week timeframe, in line with our statutory duty.

However, current demand coupled with capacity of the SEND Team and that of contributors means that we are unable to process all assessments within the statutory 20-week timeframe. As such, we are mindful of children and young people in particular circumstances or who may have additional vulnerabilities such as;

- Children in Care
- Children Missing Education
- Pupils Missing Education
- Pupils whose Key Stage Transfer is upcoming within the year.

In these circumstances, we will ensure these assessments are completed within the 20-week timeframe.

**Question 15:** Are any other LAs using the DfE quota method for processing EHCP applications? If so, how many?

**Officer response:**

Bristol City Council does not hold information on other Local Authorities and therefore is unable to provide comment.

**PUBLIC FORUM - STATEMENTS**

**Statement 1 – Jen Smith**

This statement is my opinion.

Bristol City Council's outsourced provider of the Bristol Autism Project, has announced this month that the free holiday activities funded by the council will now no longer be free. These short breaks have always been free. Now they can only be accessed through a paid for membership service.

The families who are alright with it becoming a chargeable service are the ones who do not have to worry about the financial impact of it.

Charging for this service will disproportionately affect disabled families and children. It will affect those on lower incomes. It's going to hit single parents -and these are mostly women. And it's going to hit those who live in deprived areas. Those who are already fighting to win at life have just been smacked down again with a £40 bill.

You are unlikely to hear from many of the families already having to make tough financial decisions. They will simply stop using the service. They will miss out yet again.

We already know from papers to Cabinet in February this year, that there are over 100 autistic children or young people in Bristol, or are on the assessment pathway, who are missing education – attributed to anxiety.

If they are out of school and on a low income, they will also be missing out on their Free School Meal entitlement. And now their accessible holiday activities will cost on top.

Even if you pay the membership fee, we have been told that this does not guarantee access to activities due to the numbers of people attempting to access the service.

I've not heard or seen any specific details about a consultation to make this free to access council service chargeable. And no equality impact assessment has been put forward.

The service says a survey was sent to families earlier in the year. This is not the same as a consultation. If I had received a consultation, I would have read it and shared it. It would also have come in a range of accessibility formats, reminders and I'm sure would have been published through official channels to ensure families had a chance to see it and engage.

Charging for this service is a sledgehammer to crack a nut. Some families simply weren't turning up for activities they'd booked onto. An understandable annoyance. But if more families are needing to access the service and the service doesn't have enough funds for the numbers it's getting, it needs more money to begin with.

I also find it baffling that children who live out of Bristol yet attend Bristol schools are allowed to use the service. Yet no one has advised those living in Bristol but sending their child to out of authority schools to see what services they can likewise use.

This is a backdoor cut to disability services as well as the privatisation of a funded council service.

What the council has allowed to happen here is to further alienate and isolate its autistic population in Bristol. We're used to it mind, but this is particularly low blow.

**Appendix A:**

	Supportive	Cost of Living / Concern	Alternative contribution system suggested	Other/no response
BAP Survey				
Number of respondents	42	7	7	7
Percentage	67	11	11	11