

# People Scrutiny Commission

14<sup>th</sup> October 2019



**Report of:** Alan Stubbersfield

**Title:** Response to Council Minute on Special Educational Needs & Disabilities

**Ward:** All Wards are affected

**Officer Presenting Report:** Alan Stubbersfield

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## **Recommendation:**

Members are recommended to note the information, seek any necessary clarifications and consider as a context for future reports.

## **The significant issues in the report are:**

Performance in Special Educational Needs & Disabilities (SEND).



## 1. Summary

A Scrutiny planning meeting has called for a response to a council minute of September 2018 which made reference to concerns about the then current financial and legal issues, delivery of SEND duties and outcomes for pupils. The action plan called for will now appropriately be finalised in the light of findings of a local area inspection of SEND which is current at the time of writing, and whose findings will remain confidential by the time of the meeting and for some time afterwards.

## 2. Context

The overarching SEND strategy was considered by the Scrutiny Commission at its July 2019 meeting. The context of the current SEND position was extensively covered in the Scrutiny report of March 26. The report commented on these issues:

- Historical background for SEND legislation
- 2014 Act, 2015 Code of Practice and 2010 Equality Act
- Impact of SEND reforms
- High Needs Block pressures and LGA analysis
- National findings of Ofsted and the Care Quality Commission
- SEND in Bristol

The report's conclusions noted:

*Bristol's experience with SEND reflects in many ways the national picture. LAs' local teams have been placed under great pressure by inherent conflicts in the system, which are identified in the report. That pressure appears to have been exacerbated following the SEND reforms. Authorities have struggled to manage those pressures, notably the budget pressures, and Bristol's attempts to do so have been well publicized with the 2018 judicial review. Similar legal actions are also in train elsewhere in the country.*

*In that context, colleagues in Bristol show great dedication and determination to support vulnerable pupils, worried parents and schools pulled in conflicting directions. The resulting outcomes for pupils are mixed, with some successes but persistent "performance gaps", as in many areas.*

*With an area inspection of SEND expected, much has been done to address issues identified in a peer review of late 2017. Officials from the Department for Education and National Health England visited in November and noted creditable improvements. However what is also apparent is that the increased demands on Bristol's SEND systems in the past year have outstripped the LA's capacity to process assessments and produce EHCPs in the 20-week timescale required.*

*Recent activity has increased Education Psychology capacity since January; there are now 30 fewer on their waiting list that would otherwise have been the case. The SEND casework team capacity is similarly being addressed.*

A noteworthy comment from LGA research reflected on the conflicts which local authorities are faced with in managing special educational needs:

*...when a system runs on a demand-led basis, against annual budgets that are fixed and ring-fenced, there is almost no amount of money that will be enough...there are structural features of the current SEND system which mean that there will continue to be a significant risk of overspending the high needs block, even if budgets were very significantly increased...Local authorities have all the responsibility for maintaining high needs expenditure within budget, and yet have almost no hard levers with which to effect this. The continued viability of the system relies too much on the ability of local government to cajole partners to enter into a collaborative, inclusive approach to developing and delivering local provision for SEND, without the powers to sustain such an approach in face of misaligned incentives... an important factor in managing costs is maintaining a sufficient and efficient core team to carry out statutory assessment, oversee EHCP reviews and provide a strong case-work function.*

Council minute of September 2018:

The lengthy 2018 minute raises the following points:

- High Needs Block budget reduction reported in January but not in February papers
- National concerns about High Needs Block, reflected locally
- Judicial Review critical of Bristol City Council
- Performance issues including SEND tribunal, assessment decisions and pupil outcomes

### **3. Commentary**

#### High Needs Block

In the event no reduction was made to High Needs Block, nor is any planned. There is an established 3-pronged plan for deficit recovery which has been rehearsed for example in Schools Forum: (1) take opportunities to make savings (2) shift funds between funding blocks (3) lobby parliament. Resulting actions taken to date have achieved a balance in the Dedicated Schools' Grant (DSG), with all three above taken to balance the books. Meanwhile a spending review announcement has increased DSG funding, but behind all that remain questions about the sustainability of the HNB position, with HNB spend exceeding the allocation to Bristol. Financial and other details are in Schools Forum papers which provide regular updates on High Needs Block.

Meanwhile processes of review have been undertaken and planned in respect of HNB funded activities including Top-Up funding, Sensory Support, Early intervention Bases and Bristol Hospital education Service.

In the context of the national picture noted here, it is not surprising that difficulties are experienced in Bristol, that people feel under great pressure to find solutions, nor indeed that any attempts to resolve them are seen as controversial whether through implications for exceeding budget or containing spend.

#### Judicial Review

The 2018 judgement was critical of Bristol, as noted in the 2018 minute. A subsequent judgement in an analogous case has cast doubt on councils' obligations in this area; a High

Court case in March dismissed the case against Surrey County Council, brought to challenge its £21m SEND reduction (see below). This calls into question the proposition that Bristol's 2018 budget processes were illegal, but of course the subsequent developments were not known in September 2018. Notwithstanding all that and its doubts at the time, Bristol had never taken the view that it should appeal its JR decision, because the council has not seen it appropriate to take action which would thus place it in opposition to parents. Review processes noted above have emphasised stakeholder engagement and consultation, the latter being a key point from the judicial review.

*In the case of Hollow v Surrey CC the court held that the Judge in the Bristol case was wrong when he said there was a general duty to consult where it was fair to do so. The court in Surrey (and a Hackney case) decided that previous accepted principles applied ie the duty to consult arises where there has been a promise to consult, an established practice of consultation or where a failure to consult will lead to conspicuous unfairness.*

*Section 27(3) Children and Families Act 2014 imposes a duty to keep provision for young people with SEND under review, to consider the sufficiency of the provision and, when doing so, to consult with listed people including SEN children and parents. In the Bristol case the Judge held that the decision to significantly reduce the SEN budget requires consideration of the adequacy of the remaining provision and therefore the duty to consult under S.27 applies. In the Surrey case the court held that this was incorrect. S.27 only requires a global review of sufficiency from time to time, linked to the authority's local offer. The review and consideration required by S.27 does not need to be carried out every time a local authority makes any alteration to the SEND services it provides or whenever it makes a budget decision in relation to such services.*

## Performance

### *Tribunal*

National Ministry of Justice information tells us, now that full year data is available for 2018:

Bristol mediations	37	Comparator LAs	20
% proceeding to appeal	21.6%		40.7%
Appeal rate	1.1%		1.7%
2014-18 rate change	1.8 – 1.1%		1.9 – 1.7%

The figures suggest that Bristol has had a high number of mediations, which have been relatively successful in avoiding tribunals. Actual numbers look the same ( $37 \times 21.6\% = 8$  =  $20 \times 40.7\%$ ) but as a rate per population the actual appeal rate was slightly below comparators in 2014 and more so latterly. An interim mediation and tribunal officer was appointed in early 2019 and has been successful in increasing mediation as intended, that is, as a way of avoiding tribunals by resolving disputes and thus meeting needs on an agreed basis.

### *Assessments*

We know that such agreements have been elusive in too many cases, and complaints about late assessments as well as their substance have been too frequent. Confidence of parents

and schools has been impacted, and the council has understood the priority for better performance particularly in this area. Changes in capacity of the assessment team as well as its working methods are now priorities.

It was asserted in 2018 that Bristol's refusal rate for statutory assessment was unusually high. Current analysis is that overall, the proportion of requests for assessment which were agreed increased by 10% in 2017 and 19% in 2018. The proportion of EHC needs assessment requests that have been agreed increased over the last 3 years from 46% in 2016 to 75% in 2018.

The context here is of increasing demand outstripping capacity to meet the deadlines expected in the SEND Code of Practice. The council has recognised that the SEND assessment and casework team has been under-resourced and has agreed funding in July 2019 to increase capacity. This links to the LGA reference quote above (p3). An interim manager was appointed in July 2019 and is in the process of restructuring the team and recruiting additional staff to provide a dedicated assessment team. Audit and business analysis is identifying ways forward. An internal restructure of the Education Directorate is also intended to lead to the appointment of new Heads of Service in Autumn 2019.

Performance reporting on SEND functions became the subject of an internal investigation reported to cabinet in July. Several actions will flow from that, subject to confirming that the detail is matched with any recommendations of the current SEND inspection. Examples of actions being taken to improve performance are below.

### *Pupil Outcomes*

#### End of Key Stage Outcomes

Updated academic outcomes data for SEND is summarised below. The general expectation is that performance in an LA area can reasonably be compared with others having similar demographic characteristics, referred to as Statistical Neighbours. The proposition of 2018 that SEND performance was poor overall cannot now be supported by this evidence. The realistic aspiration is that we want all areas to improve consistently and be better than Statistical Neighbours. What we see below is improvements, but not across the board, and areas of performance above, equal to and below statistical neighbours such that a description "broadly in line" is more accurate than "poor".

Whilst schools should be commended for improved outcomes, for example for pupils on SEN Support, some concerns remain over performance of pupils with EHCPs in primary, with some areas of progress and Level 3 (broadly equivalent to "A" Level) attainment at age 19. Some of those issues might reflect the characteristics of Bristol's SEND population.

For example, data also shows that there is a relatively low proportion of pupils with EHCPs in Bristol primary schools. It should follow that those pupils would not have equivalent needs to the higher proportions of such pupils nationally, and therefore that we might reasonably expect their outcomes to be different. It would also appear that if this is true, it is not at a cost to performance of pupils on SEN Support, where Bristol performance is typically at benchmarks. These are hypotheses rather than conclusions, but supported by evidence here.

#### Outcomes Summary

## Early Years

- SEN Support - improved performance: equal to Statistical Neighbours (SNs) and better than England

## Key Stage 1

- SEN Support - improved and equals SNs & England for **Reading & Writing** but not **Maths**
- EHCP - outcomes lower than SNs & England for R & W but better & improved for M

## KS2

- SEN Support - improved and equal to SNs & England
- EHCPs - declined and lower than SNs & England...Progress issue

## KS4

- SEN Support - outcomes & progress comparable with SNs & England  
- Attainment 8 & Progress 8 both above SNs
- EHCP - Attainment 8 above SNs & below England;  
Progress 8 below SNs & England
- Children in Care - good and improved at KS2 & 4

Post 16 EHCP & NEET > SNs...

SENs aged 19 & Level 2 qualified - performance is good, but not at L3

## Attendance and Exclusions

Where performance causes greater concern is in attendance and exclusions, in the context of poor attendance in Bristol generally. This is demonstrated by high levels of persistent absence (less than 90% attendance), poor attendance and high rates of fixed period exclusions.

Permanent exclusions are low.

- There have been increasing and high rates of persistent absence (missing 10% or more of their possible sessions) for children with EHCPs (34%), well above comparators and the England average of 25%.
- There is poor attendance for children with SEND especially for children with EHCPs for whom there is an 11.5% absence rate (England average 8.5%).
- There is also a high absence and persistent absence rate (40%) in special schools.
- In Bristol we perform poorly for fixed period exclusions compared to National LAs. This has been the case for the last three years, but in the last year there has been a significant reduction in fixed term exclusions in special schools (a rate of 36.84 down to 25.30).
- There have been very low numbers of permanent exclusions for children with SEN support and no recent permanent exclusions for children with EHCPs.

## LA responses to SEND Performance

A detailed action plan addressing the issues will be confirmed following publication of findings of the SEND inspection and the 90 day period for the formal response to it – which takes us to February 2020. Meanwhile timeliness and quality of assessments are known to be key issues; relevant actions are noted under “assessments” above. Behind that leadership, governance, performance management and use of data will feature as

they would in any improvement plan. Examples of provision likely to contribute to the planned actions are given below.

The *Alternative Learning Provision (ALP) Hub* undertakes strategic and operational work with schools on citywide exclusions, Alternative Provision, early intervention, social, emotional and mental health provision and systems. The work of the Hub successfully reduced the number of secondary permanent exclusions for children with SEN support from 28 to three in 2016 and has maintained this level to date. Permanent exclusions from special schools were reduced to zero in 2016 and this position has also been maintained.

*A new Education Welfare Commission has been agreed in relation to supporting schools with attendance.* The commission has been reviewed to support a renewed attendance strategy and provides:

- A universal offer to all schools that will develop the school workforce and link attendance and safeguarding through the 3 attendance network meetings each academic year. These meetings will provide updates on attendance issues, provide guidance and support and develop the skills and expertise of attendance leads.
- Needs-led attendance clinics, run three times per year, that will provide schools with one to one support from an Education Welfare Officer for specific cases of persistent absence.
- An attendance toolkit providing schools and attendance leads with advice, guidance and model policies and processes to promote attendance.

#### *Behaviour Insights Team.*

Guidance will be shared with schools based on the research pilot developed by the Behaviour Insights Team who have been working with a group of schools on approaches that impact positively on attendance rates.

#### *Partnership Working: ALP Hub and Safer Options Team*

From September 2019 the Safer Options Team will have an alert about every Fixed Term Exclusion in Bristol. They will cross reference these with other teams and offer support / advice / intervention.

#### *Inclusive Practice – developments*

- Bristol Inclusion Panel

- This is an example of partnership working between all secondary schools and the LA , delivering Fair Access functions. Its collaborative work has led to the significant reduction on permanent exclusions from those schools. The summer 2019 report on the panel's activity notes successes but also the concomitant scale of Bristol's use of alternative provision and concerning levels of fixed term exclusion.

- A new commission provided for the Education Psychology service to:
  - Hold an enhanced annual consultation meeting with a particular focus on exclusions and attendance.
  - Support the LA in undertaking its statutory function to identify CYP who may

- have SEND.
  - Support the LA in identifying schools/ colleges who are at risk of non-compliance with statutory duties and who are at risk of failing against the Ofsted framework on SEND pupil progress, outcomes or other.
  - Promote the graduated response to SEND in schools (assess, plan, do, review).
- Bristol Schools' Partnership development of ACE Aware & Trauma Informed Practice in Bristol Schools
  - Providing match funding (50%) of training costs for 1 school staff member per setting to attend and complete the Diploma in Trauma and Mental Health-Informed Schools Practitioner Status courses led by Trauma Informed Schools UK and hosted at Briarwood Special School. First cohort to start May 2019 and second cohort to start June 2019
  - Diploma in Trauma and Mental Health-Informed Schools Practitioner Status - <https://www.traumainformedschools.co.uk/diploma-in-trauma-and-mental-health-informed-schools-practitioner-status>
  - The training is a ten day programme over two terms and covers:
    - The neuroscience and psychology of child and adolescent mental health and ill- health
    - What do trauma and mental health-informed schools and communities do?
    - Bodies, minds, behaviour and learning
    - The healing power of talking about feelings and making sense of painful life experiences
    - Direct work with children and teenagers
    - Work with other school staff / community workers
  - All participating schools in receipt of the match funding to agree to join a working group to establish and agree principals, processes and an action plan over 2019-20 (initially) that will support development of collaboration between:
    - a) The participating schools/settings and Bristol LA and MAT support services – Phase 1
    - b) A wider network of Bristol schools/settings and Bristol LA and MAT support services – Phase 2
    - c) A developing network of regional schools and Bristol/other LA and MAT support services – Phase 3

### 3. Policy

*SEND actions link to the SEND strategy previously seen by the Scrutiny Commission. The strategy supports the council's One City Plan and other strategies supporting special educational needs and vulnerable groups.*

### 4. Consultation

#### a) Internal

*As indicated in the report*

#### b) External

*As indicated in the report*



## 5. Public Sector Equality Duties

- 5a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
    - tackle prejudice; and
    - promote understanding.
- 5b) The resolution of issues illustrated in concerns expressed in 2018 and subsequently is fundamentally about reflecting stakeholders’ wishes, reducing social and educational segregation and giving better access to full curriculum opportunities.

### Appendices:

None

### LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

#### Background Papers:

Previous reports referred to in the “context” section above