

Children's and Adults' Care and Education Committee

13 June 2019

Kingston Education Commission

Report by the Interim Director of Children's Services

Relevant Portfolio Holder: Children's Services including Education (Councillor Diane White)

Purpose

To consider the outcome of the Education Commission's review into the provision of Education Services in the Royal Borough of Kingston upon Thames

Recommendations

To **resolve** that

1. the report of the Education Commission attached at Annex 2 of this report is noted;
2. the recommendations set out in the report and the action plan at Annex 3 be accepted ;
3. a report with an update on the progress on the Action Plan addressing its recommendations be submitted to the Committee's meeting on 12 November 2019.

Benefits to the Community:

The Council is seeking to apply the insights provided by the Education Commission for the continuing improvement of its Children's Services to benefit the learning and care of the borough's children.

Key Points

- A. This report presents the findings and recommendations of the Kingston Education Commission which was established in 2018 to take an independent view of the financial and delivery challenges surrounding the delivery of special educational needs provision in Kingston. Further information about the Education Commission and its method of working is set out in **Annex 1** of this report and the report of the Commission is attached as **Annex 2** of this report. The findings / issues arising (abridged) from the Commission are listed in paragraph 24 of this report and the Commission's recommendations (abridged) are listed in paragraph 25 of this report. (The full text of issues arising and recommendations can be found in the full report of the Commission at Annex 2). An Action Plan addressing the recommendations of the Education Commission report is attached at **Annex 3**. Paragraphs 26 to **33** set out progress already achieved since the Education Commission's review. An update on the SEND Transformation Plan is attached at **Annex 4** of this report.
- B. The Royal Borough of Kingston Council (RBK) is statutorily responsible for the delivery of Children's Services, which, under the Education Acts, includes ensuring sufficient schools for and meeting the educational needs of children resident in the borough. Legislation in recent years has reduced the role of the LA and strengthened that of schools and of central government through the Department for Education (DfE).
- C. The main roles of RBK as a local authority (LA) at present are to:
 - ensure sufficient school places are available by building new or extending existing schools;

- balance the supply of school places across Kingston through school reorganisation proposals;
- meet its statutory obligations with respect to children and young people aged 0-25 who have Special Educational Needs and Disability (SEND);
- assess the need, and make provision for, home to school transport;
- provide specific support services for schools;
- provide education for children who have been excluded from school or who are unable to attend school;
- identify children missing from education, provide education welfare services and enforce school attendance;
- co-ordinate and administer school admissions
- assist the government in implementing initiatives and legislation relating to schools, children and families;
- allocate finance to schools, in consultation with the Schools Forum

- D. In Kingston, the delivery of Children's Services in its entirety (encompassing the provision of education services and of social care services) is undertaken by way of contract, on the Council's behalf, by a Community Interest Company limited by guarantee - 'Achieving for Children' ("AfC"). The joint owners of AfC are RBK (40%), the London Borough of Richmond upon Thames (40%) and the Royal Borough of Windsor and Maidenhead (20%).
- E. There is a general acceptance that there has been a marked improvement in the delivery of social care services since this time. It is also of note that education standards in the Borough are good or better. The main area of concern is in respect of SEND, where there exists a significant and continued overspend while performance and outcomes have been poor.
- F. SEND is largely funded through a discrete element (the High Needs Block) of the Dedicated School Grant (DSG), a fund provided by the Department for Education (DfE). Whilst expenditure on Children's Services in Kingston has generally been in line with expectations, there has been a growing overspend within the 'High Needs Block' of the DSG since 2013/14. Largely as a consequence of this pressure in the High Needs Block, the fund fell into a cumulative deficit position in 2015/16. As at the end of 2017/18, this cumulative DSG deficit was £10.69m and the forecast overspend for 2018/19 as at the end of November 2018, was £1,998,808.
- G. This approach is not sustainable. So significant is the level of expenditure above the Council's ability to meet it that it may threaten the ability of the Council to fund the wider range of services for which the General Fund is expected to provide.
- H. During the Commission's work, the Council received an unfavourable Ofsted/Care Quality Commission joint inspection report regarding the implementation of the special educational needs and disability reforms set out in the Children and Families Act 2014. Since the new inspection framework was introduced, just under half of all local areas inspected so far have been required to produce a 'Written Statement of Action' setting out how partners will respond to the findings of the inspection. This rose to 80% in the year in which Kingston was inspected. The Council, with the support of AfC and the Kingston Clinical Commissioning Group (KCCG), have already submitted their Written Statement of Action. This was approved by this Committee in December 2018.

- I. The issues in this borough can only be understood within the wider national context of problems in the funding of Special Educational Needs and Disabilities; this perspective is set out in paragraphs 6 - 19 of this report, including the LGA's analysis in its December 2018 report "Have we reached a 'tipping point'? Trends in spending for children and young people with SEND in England."
- J. The Commission formally began its work on 1 October 2018 and will close following the outcome of this Committee. The review process involved a structured programme of activity commencing with a review of background materials, the framing of questions and a first round of engagement with stakeholders. Following this a review of the outcomes from these interviews was undertaken which was developed into initial findings that were reflected back to Commissioners and stakeholders. The Commission did not act as a formal enquiry but instead its role encompassed gathering information and making recommendations through a process of collaborative engagement and exploration. Following this, there was a second round of stakeholder engagement to test these hypotheses, from which final conclusions and recommendations were developed.
- K. It is recommended that this Committee accept the recommendations of the Education Commission.

Context

Establishing the Kingston Education Commission

1. Since 2013/14 there has been a growing overspend on the High Needs element of the Kingston Dedicated School Grant (DSG). The fund fell into a cumulative deficit position in 2015/16. As at the end of 2017/18, the cumulative DSG deficit was £10.69m and the forecast overspend for 2018/19, as at the end of November 2018, is £1,998,808.
2. In October 2018, the Council received an unfavourable Ofsted / Care Quality Commission joint inspection report regarding the implementation of the disability and special educational needs reforms as set out in the Children and Families Act 2014.
3. In February 2018 the principle was agreed of inviting an 'Education Commission' to take an independent view of the difficulties surrounding the delivery of Education Services in Kingston. The Commission, which started work in October 2018, was asked to look at how the overspend occurred and to provide recommendations as to what the Council might do to deliver its education provision within the available financial envelope.
4. The cited objectives of the Commission were:
 - to ensure all key stakeholders understand their roles and responsibilities in the system and how they can collectively secure the best for our children and young people from the education funding available
 - to produce an evidence base and route map to ensure that: funding equals expenditure; all stakeholders are maximising independence and inclusion; the right support is provided at the right time; all are complying appropriately with legislation, and there is an appropriate balance between quality and resources
 - to produce a clear evidence base in respect of any underlying funding issues which will provide support to Council's approach to any future discussions on Dedicated Schools Grant

5. Detailed information about the Commission, including the approach, timescale, structure and Membership, can be found at **Annex 1** to this report.

The National perspective

(a) SEND funding

6. Concern about central government funding for Special Educational Needs and Disabilities (SEND), and its inadequacy, has increasingly been covered by the national media since the beginning of the current financial year (2018/19), including:
 - the launch of the House of Commons Select Committee (Education Committee) special educational needs and disabilities inquiry;
 - Several Judicial Reviews brought to the High Court in relation to LA funding of SEND
 - and the announcement of £350 million to top up high needs budgets for maintained schools and academies and £100 million in capital funding to create more specialist places in special and mainstream schools.

(b) Commons Select Committee inquiry

7. In 2014, the Government introduced wide-reaching changes to the SEND system, with the intention of offering simpler, improved and consistent help for children and young people with SEND. The Government claimed these changes would give families greater choice in decisions. The Select Committee's new inquiry is intended to review the success of these reforms, how they have been implemented, and what impact they are having in meeting the challenges faced by children and young people with special educational needs and disabilities.
8. The Select Committee undertook pre-legislative scrutiny of the Children and Families Bill and published its report in 2012. The current enquiry, launched on 18 April 2018, is now considering the impact and implementation of part three of the Act. Written evidence is still being accepted for this inquiry as is oral evidence ongoing.
9. The Local Government Association (LGA) in a written response to the enquiry stated, in summary, that whilst Councils have responded strongly in implementing the reforms to SEND support as set out in the Act, the association is concerned that the progress that has been made could be at risk as funding levels have not kept pace with rising demand.
10. Specifically, in respect of the level and distribution of funding for SEND provision, as well as a national increase in numbers of children and young people on EHCPs, the proportion of pupils with SEND who attend special schools has increased from 5.6 per cent in 2012 to 8.5 per cent in 2016 and the proportion in independent schools has moved from 4.5 per cent to 6.3 per cent and by their very nature, these places are more expensive than mainstream provision.
11. While there have been some small increases in high needs funding, it has been a cash-flat settlement, in line with the general schools budget, taking no account of inflation, increasing pensions contributions and sharply increasing demand. Pressure on high needs funding will increase further with the introduction of the National Funding Formula for schools that removed council flexibility to move funding from the general schools block to the high needs block of the Dedicated Schools Grant to help plug this funding gap. Schools also face funding pressures and should not be expected to meet shortfalls in high needs funding.
12. The LGA finished by outlining their concern that without additional funding being made available councils may be unable to meet their statutory duties to ensure

appropriate provision for pupils with SEND and called on the DfE to undertake a fundamental review of high needs funding arrangements, including home-to-school transport.

(c) Judicial Reviews

13. Decisions have been handed down in the first tranche of three judicial review cases where there has been a challenge to local authority SEND funding arrangements. In a case brought against Bristol City Council, the High Court ruled in August 2018 that Bristol's High Needs Block budget allocation should be quashed and Bristol was ordered to reconsider its funding allocation in this area. This was because there were proposals for savings which had not been consulted on and where there was insufficient consideration of equalities and children's welfare duties. Bristol CC did reverse those savings in addition to allocating additional funding for High Needs from underspends on future Dedicated Schools Grant.
14. In a case brought against Surrey County Council decided in March 2019, the Divisional Court rejected a challenge to the council's decision to include in its budget and MTFP savings of £21m to SEND including in particular an Area of Focus where savings of £11,694,000 were to be achieved under inclusion, commissioning, provision and transition. The challenge was unsuccessful because the Court found that there was no requirement to consult on these proposals and that there was nothing wrong as a matter of principle with Surrey's budgetary approach, which was a sensible and lawful way for the Council to plan and manage its finances. The Council had identified broad areas in which work could be done by the Council to identify ways of reducing the cost of the SEND services that it provided. As and when concrete proposals were developed to achieve the identified savings, if they would result in any variation to the services actually provided, the proposals would be consulted upon and assessed at that time.
15. In April 2019, a decision was published in a challenge to Hackney council. This related to the format of EHCPs and to the council's decisions to fund special educational provision for children with EHCPs in mainstream schools in Hackney through a banding system, and to reduce the value of each band by 5% for the 2018-19 financial year. Again the Court rejected the challenges. The Judge did not agree that there was a fundamental error in the Council's approach: there is nothing in CFA 2014 (or the 2014 Regulations or Code of Practice) which prevents local authorities from administering their High Needs SEN funding through a system of bandings. Provided the funding system secures the child's overall SEN (Section F) provision in practice, it will not be unlawful. He was satisfied that on the evidence that the reduction had been properly considered, and that the policy did not lead to the underfunding of SEN provision. There was flexibility in how schools delivered provision and managed their budgets. There was also flexibility in that children can be allocated to a different band or funding allocated between bands or over the highest band. The Court confirmed that the Children and Families Act did not require comprehensive consultation on whenever a change is made to SEN provision but that councils should review SEND provision from time to time and consult on those reviews.
16. Attention has recently shifted to an attempt by a group of parents to launch a JR of the Government's funding of the SEND system. The outcome will be of significant interest to all Councils, as even if it is unsuccessful, it will increase pressure on the government to review its funding of the system.

(d) Additional Funding from central government

17. On 16 December 2018, the Government announced that LAs would receive an extra £125 million immediately and a further £125 million in 2019-20 to top up high needs budgets for maintained schools and academies.
18. In response, the LGA has calculated that there is a £536 million high needs funding gap this year alone, more than double last year's shortfall. The organisation has also warned that councils will have lost 60 per cent of their funding compared with 2010 by next year.
19. In addition, the Government announced a further £100 million would be made available to create more specialist places in special and mainstream schools. A bid for a new 90 place special school in Kingston for children and young people with Autistic Spectrum Disorders (ASD) was approved in March 2019. The new school is due to open in September 2022.

(e) LGA commissioned research

20. The ISOS partnership was commissioned by the Local Government Association in July 2018, to quantify the current pressure on budgets for children and young people with Special Educational Needs and Disability (SEND) and to better understand the extent to which high needs spending has been supported by additional funding from other sources.
21. Late in December 2018, the findings were published in a report entitled; *"Have we reached a 'tipping point'? Trends in spending for children and young people with SEND in England."* Alongside findings that are familiar / similar to the findings of the Commission, the report highlighted four limiting constraints on Local Authorities to ensuring funding equals expenditure:
 - the very high percentage – around 85% - of expenditure tied to individual pupils and placements which cannot be released in the short term.
 - the nature of the legislation, and the weight given to parental preference in tribunal decisions and cases going to judicial review, which fetters local authorities' ability to maintain a threshold for undertaking EHCP assessments or control the trend into increasingly specialist placements.
 - limits on borrowing, limits on delegation of funding from schools and a cap on the amount that can be transferred from the schools' block into high needs makes it increasingly difficult for local authorities to create the financial headroom that would be needed to invest in the kind of early intervention and preventative activity that might be able to break the cycle of escalating costs.
 - the constraints on capital and the limitations on creating new provision leave local areas overly reliant on the non-state sector when their maintained special schools and special academies become full.

Issues arising from the Kingston Education Commission

22. The full report of the Commission is attached at **Annex 2** of this report. The Committee is invited to read this with reference to the report on the SEND Transformation Plan which was submitted to the Committee's meeting on 7 February 2019 (the agenda for which can be viewed [at this link](#) - please refer Agenda Item 6 and its Annexes) and the interim progress report which is given at **Annex 4**.

23. When RBK commissioned AfC to deliver children's services on its behalf, there is evidence that the Council transferred its statutory responsibilities and lost sight of its role, including its statutory role in children's services. The Education Commission confirmed this and the recommendations to the Council to address this failure are set out in the first section of the recommendations.
24. The 'Issues Arising' highlighted by the Education Commission are listed in full in the 'Kingston Education Commission - Report into the provision of Education Services in the Royal Borough of Kingston upon Thames' (**Annex 2**). These fall into five broad categories:
 - i) Funding of the system, both locally and nationally - and the extent to which Kingston services are funded disproportionately lower than in the rest of the country.
 - ii) Quality, timeliness and annual review process of children and young people's EHCPs.
 - iii) Lack of local provision, causing more children and young people to be placed in independent or non-mainstream settings, including outside of the borough.
 - iv) Governance and monitoring of the contract between the Council and AfC.
 - v) Understanding and fulfilment of statutory responsibilities by the Council, AfC and the CCG.

Recommendations of the Kingston Education Commission

25. The report contains more than thirty recommendations, which are set out in full in Annex 2. The recommendations fall into seven main themes:
 - i) Contract between the Council and AfC: including governance, contract monitoring and outcomes.
 - ii) Clarity over the roles and responsibilities of the Council, CCG, AfC and schools in the commissioning and delivery of SEND services.
 - iii) Relationships between the Council, CCG and AfC with parents and carers of children and young people with SEND.
 - iv) Consistency and effectiveness of annual reviews of EHCPs and personal education plans, including how they contribute to an effective transition to adulthood.
 - v) Local SEND offer: capacity, quality and information.
 - vi) Policy and practice: consistency across the system, and effective recording.
 - vii) Influence of the Schools Forum in a whole systems approach to addressing SEND

Progress since Education Commission

26. Over the last eighteen months, the funding and quality of SEND services in Kingston have been subject to extensive scrutiny. This has included the Ofsted/CQC Joint inspection which took place in September 2018, as well as several public consultations regarding both service and financial issues. The Council, AfC and the CCG have produced a three year SEND Transformation Plan and the Joint Area Inspection required the Council, AFC and the CCG to produced a Written Statement of Action.
27. This has meant that the Council and its partners were already aware of many of the issues raised by the Education Commission prior to the publication of its report, and

have already made (or plan to make) significant changes and improvements to address many of the concerns which have been highlighted in this report.

28. For example, the interim appointment of a Director of Children's Services (DCS) specifically for Kingston (rather than covering both Richmond and Kingston boroughs) has strengthened the Council's oversight of services. In addition, a SEND Partnership Board has been set up, which is chaired by the Council's Chief Executive (who has himself been a DCS), and which brings together senior representatives from the Council and its partners and DFE. The Board oversees delivery of the SEND Transformation Plan and Written Statement of Action and reports to the Health and Wellbeing Board. At the recent Annual General Meeting of the council, the Managing Director of AFC was added to the Health and Wellbeing Board to specifically address progress on SEND.
29. The Education Commission report found that the proportion of Education Care and Health Plans (EHCPs) being completed within the statutory 20 week timescale was too low. The current rate is 100% of EHCPs being completed within 20 weeks; this is well above the national average.
30. The finding that there is insufficient local provision to enable children and young people to be educated within their home borough is being addressed by the creation of 253 new specialist places across mainstream and special schools in Kingston from 2018 - 2022. This is in addition to the creation of 244 equivalent specialist places in Richmond where some Kingston children will attend.
31. Actual expenditure over the past five months has been lower than forecast; furthermore, forecast expenditure is now lower than previously. The average cost of an EHCP in Kingston has reduced during the past financial year.
32. A more detailed summary of progress in delivering service improvements is provided in an interim report on the SEND Transformation Plan at Annex 4. In addition, Annex 3 outlines how the Council will meet the recommendations in the report, cross referencing with the SEND Transformation Plan and Written Statement of Action.
33. Finally, it is worth highlighting that at 1.10 of the Education Commission report, it refers to the fact that no further issues of concern about children's services were raised. To support this view, a letter is attached from OFSTED at **Annex 5** following a focused visit to Kingston in March 2019 to inspect provision for vulnerable adolescents. This portrays a positive picture, as does a recent OFSTED inspection in Richmond of the safeguarding 'front door' which is exactly the same provision for Kingston. AfC remains one of the Government's sixteen Partners in Practice, tasked with leading improvements across the country in safeguarding practice.

Proposal and Timescale

34. It is proposed that the Committee accepts the recommendations of the Education Commission (including referrals of the report to AfC, Kingston Clinical Commissioning Group (CCG) and the Schools Forum) and that a report with an update on the progress on the Action Plan (at Annex 3) addressing the Commission's recommendations be submitted to the Committee's meeting on 12 November 2019, including progress on the review of the current AfC contract.

Resource Implications of Options

35. The SEND Transformation Plan sets out a programme of action and resource reduction to improve the local SEND offer. As this evolves, there may be spend to save requests through the budget setting cycle.

Legal Implications

36. None arising from the specific recommendations of this report.

Risk Assessment

37. The Education Commission Report has shown that there is no risk to children and service delivery identified by its review.

Equalities Analysis

38. A full Equalities Impact Assessment (EQIA) is attached at **Annex 6** to the report.

Road Network Implications

39. None arising from the specific recommendations of the report.

Environmental and Air Quality Implications

40. None arising from the specific recommendations of the report.

Health Implications

41. Recommendations 30 - 32 of the Education Commission report are for the Kingston Clinical Commissioning Group (KCCG) and are being addressed by the Health and Wellbeing Board in its oversight of the SEND Transformation Plan and Written Statement of Action.

Background papers held by the author of the report:

- Written Statement of Action and SEND Transformation Plan
- Review of the Special Educational Needs in Royal Borough of Kingston-Upon-Thames, September – December 2018

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Annexes

- Annex 1 - Summary of the methodology of the Education Commission
- Annex 2 - Report of the Education Commission
- Annex 3 - Action Plan in response to recommendations
- Annex 4 - Update on the SEND Transformation Plan
- Annex 5 - OFSTED Letter on Provision for Vulnerable Adolescents
- Annex 6 - Full Equalities Impact Assessment (EQIA)

Purpose of Commission, intent, agreed objectives, makeup, approach, timescale

Purpose and Intent of Commission

The genesis of the Education Commission was for someone to take an independent view of the difficulties surrounding the delivery of Education Services in Kingston. The Commission was asked to look at how the overspend occurred and to provide recommendations as to what Kingston might do to deliver its education provision within the available financial envelope.

The Commission, although funded by the Council, was independent in its operation. This was recognised as being important given the need to acquire the participation of a range of stakeholders, many of whom might have been concerned at the nature of the investigations undertaken and how these might impact on their autonomy or interests.

Objectives of Commission

The cited objectives of the Commission were:

- to ensure all key stakeholders understand their roles and responsibilities in the system and how they can collectively secure the best for our children and young people from the education funding available
- to produce an evidence base and route map to ensure that: funding equals expenditure; all stakeholders are maximising independence and inclusion; the right support is provided at the right time; all are complying appropriately with legislation, and there is an appropriate balance between quality and resources
- to produce a clear evidence base in respect of any underlying funding issues which will provide support to Council's approach to any future discussions on Dedicated Schools Grant

Structure and Membership of the Commission

It was specified in the original brief that the Commission was not intended to act as a formal enquiry but would gather information and make recommendations through a process of collaborative engagement and exploration.

The lead Commissioner, Tony McArdle was selected on the basis that he had no prior connection to either Kingston Council or Achieving for Children. Tony had previously been Chief Executive of Lincolnshire County Council and had also worked at Northamptonshire County Council following the financial difficulties faced by that authority. Tony was joined by two deputies, Andrew Blow, an independent Special Educational Needs (SEN) expert and Kate Bingham, an independent Children's finance expert.

The appointment of other local Commissioners on a voluntary basis was also made. The other appointed Commissioners were: Councillor Diane White (Portfolio Holder for Children's Services including Education), Councillor Maria Netley (Opposition Spokesperson for Children's Services), Dr Naz Jivani (Kingston CCG Governing Body Chair and local GP), David Archibald (Chair of the AfC Business Board and Non-Executive Independent Director of AfC), Michael Gascoigne (Headteacher Tiffin School) and Sean Maher (Headmaster Richard Challoner School).

The Commission met four times over the course of four months. At the second meeting a verbal progress report of findings to date was provided.

Review Methodology and Timeline

The Commission was formally began its work on 1 October 2018 and will close following the outcome of this Committee.

The review methodology and programme of work undertaken was as follows:

1 - 21 October 2018	Set up Commission; initial meetings; review of background materials; frame questions, discussion items, hypotheses for stakeholder engagement; arrange stakeholder engagement activity
22 October - 30 November 2018	First round of engagement with stakeholders.
1 - 31 December 2018	Review outcomes from engagement; form initial conclusions; frame additional lines of enquiry; test these conclusions; produce 'straw man' proposals for next phase; produce interim report Verbal report provided to Members and Management Team covering initial findings
7 January 2018 - 10 February 2019	Second round of engagement with stakeholders.
11 February - 28 February 2019	Conclude views; write up Final Report
13 June 2019	Final Report considered by CACE Committee

The Commission was headed up by Tony McArdle. Tony's prior experience included the role of Chief Executive of Lincolnshire County Council and he is currently the Secretary of State's Lead Commissioner for Northamptonshire County Council following Government intervention at that authority. Tony was joined by two deputies, Andrew Blow, an independent Special Educational Needs (SEN) expert and Kate Bingham, an independent Children's finance expert.

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The Commission formally began its work on 1 October 2018 and will close following the outcome of this Committee. The review process involved a structured programme of activity commencing with a review of background materials, the framing of questions and a first round of engagement with stakeholders. Following this a review of the outcomes from these interviews was undertaken which was developed into initial findings that were reflected back to Commissioners and stakeholders. There was then a second round of stakeholder engagement to test these hypotheses, from which final conclusions and recommendations were developed.