

Kingston Education Commission

**Report into the provision
of Education Services
in the Royal Borough
of Kingston upon Thames**

March 2019

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1 Introduction

- 1.1 The Royal Borough of Kingston Council (RBK), under the under the various education and children's acts, is statutorily responsible for the delivery of Children's Services, which includes the provision of education, to all children who have an address in the borough.
- 1.2 With regard to education, 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).
- 1.3 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;
 - Assist the government in implementing initiatives and legislation relating to schools, children and families;
 - Allocate finance to schools.
- 1.4 Responsibility for school attendance during the years of compulsory education rests with parents. As an alternative to a maintained school or academy a parent may choose an independent school placement or elective home education. In the case of mainstream independent school placements parents are responsible for fees associated with that placement.
- 1.5 In the case of Looked After Children (LAC) the LA carries the responsibilities of being the corporate parent and some additional educational responsibilities, as set out in Section 7 of the Local Authority Social Services Act 1970. The framework for the discharge of these statutory duties under Section 22 (3A) of the Children's Act 1989 which requires the Council to promote the educational achievement of LAC including those placed outside the authority. The Children and Families Act 2014 is of significant relevance as it is the legislation which introduced the SEND reforms, as well as inter alia strengthening the role of corporate parent and establishing the Virtual School Head. The LA is required to ensure that an officer is employed to make sure that these duties are properly discharged. This officer, called the Virtual School Head (VSH), is employed by AfC.

- 1.6 The provision and progress of every child and young person with an RBK address who has an identified SEND aged 0-25, wherever they are placed for education by the LA, remains with the LA.
- 1.7 In Kingston, the delivery of Children’s Services in its entirety (encompassing all of 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%). AfC was formed in 2014 following an unfavourable Ofsted inspection of RBK’s children’s social care services which were, at that time, being delivered directly by the Council.
- 1.8 There is general acceptance that there has been a marked improvement in the delivery of social care services since this time. Consideration of these services does not form part of our remit, but given that our engagement has naturally brought us in contact with, and prompted analysis of, closely associated issues, it is worthy of note that we have not come across anything that would suggest otherwise.
- 1.9 Data from the National Statistics for 2016-17, published in 2018 confirms that at the national benchmarks for pupil success rates in state maintained schools Kingston performs above national averages:

| Benchmark | National average attainment | Kingston attainment |
|--|---|----------------------------|
| KS4 Attainment 8 score | 46.4% | 55.5% |
| 9-5 passes | 42.9% | 61.3% |
| English Bachelorette Eng and Maths strong 9-5 passes | 21.4% | 43.8% |
| Expected standard KS2 English | 64% | 70% |
| KS2 2018 preliminary data | There are no coasting schools in Kingston | |

- 1.10 We have, again, not been made aware of anything to suggest that any specific matter is a cause for concern, other than in respect of SEND, where there is notable unhappiness over performance and cost.
- 1.11 SEND is therefore the area that we have been specifically directed to address.
- 1.12 SEND is largely funded through a discrete element (the High Needs Block) of the Dedicated School Grant (DSG), a fund provided by the DfE which sits outside mainstream funding for Council services such as those provided by the Ministry of Housing, Communities and Local Government (MHCLG), being Revenue Support Grant and redistribution of the Non-Domestic Business Rates pool, and by the

locally raised Council Tax - which together make up the Council's principal operating resource - the General Fund.

- 1.13 Whilst expenditure on Children's Services in Kingston has generally been in line with expectations, there has been a growing overspend on the 'High Needs Block' of the DSG since 2013/14. Largely as a consequence of 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 January 2019, was £1,315,465. Whilst the cumulative overspend is treated as a ring-fenced DSG reserve in the accounts, RBK prudently allow adequate general fund reserves to offset in the eventuality that the debt crystallises.
- 1.14 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 that the General Fund is expected to provide for and to continue to make appropriate provision for SEND.
- 1.15 During the course of the Commission's work, the Council received an unfavourable Ofsted / Care Quality Commission joint inspection report regarding the implementation of the disability and special educational needs reforms set out in the Children and Families Act 2014. The Council, with the support of AfC and the Kingston Clinical Commissioning Group (KCCG), have responded to Ofsted with a Statement of Action.
- 1.16 Equally, during the course of the Commission's work, the Commission has noted the stated determination of the Leader and administration to place children's services at the heart of the council's drive for improvement. We would also welcome the fact that an interim DCS was appointed specific to RBK to ensure the council and its management team are sighted on children's services and to build a bridge with AFC to ensure connectivity. The appointment of a Chief Executive with a children's services background should also bring significant knowledge and experience to undertaking the tasks required.
- 1.17 Difficulties in delivering SEND related services have, however, impacted upon relationships amongst the key organisations and individuals involved, and likewise upon confidence. We have reflected upon these concerns in our work.

2 Purpose of the Commission

- 2.1 The purpose of the Education Commission is to take an independent view of the difficulties surrounding the delivery of Education Services in Kingston. The Commission has specifically been asked to look at how the SEND related

overspend occurred and to provide recommendations as to what Kingston might do to deliver its education provision in the future within the financial envelope available to it.

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

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

3 Objectives of the Commission

3.1 The objectives of the Commission were:

3.1.1 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

3.1.2 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

3.1.3 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 the DSG.

4 Structure and Membership of the Commission

4.1 The Chair of the Commission, Tony McArdle, has been a Council Chief Executive for over twenty years and is currently the Lead Commissioner for Northamptonshire County Council, responsible to the Secretary of State at MHCLG for the Government's intervention in that Authority. He has no prior connection to Kingston. Tony is joined by two deputies, Andrew Blow, an independent Special Educational Needs (SEN) expert and Kate Bingham, an independent Education finance specialist.

4.2 Other local Commissioners have been appointed on a voluntary basis. These are; 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), and Sean Maher (Headmaster; Richard Challoner School, on behalf of the Schools Forum).

4.3 The Commission met four times over the course of four months.

5 Review Methodology and Timetable

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

5.2 The programme of work undertaken was as follows:

| | |
|-----------------------------------|--|
| 1 October - 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 December - 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 an interim report A 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 the Children’s and Adults’ Care and Education Committee (CACE); Decision of CACE reported to Council |

6 Summary of Findings

- 6.1 The Council had lost sight of its role in Education. Whilst the days of the Local Education Authority are long gone for all Councils, a range of fundamental responsibilities remain, even though in the world of Children's Services, those responsibilities are often dominated by the pressing need to meet the requirements of Children's Social Care. Indeed, it was in this arena that the Council's inability to adequately provide safe care precipitated the poor Ofsted judgements which led to the passing of the full extent of Children's Services operational delivery to AfC in 2014.
- 6.2 With operational delivery, went, in effect, the ownership of Children's Services for the Borough. It should not have done, but the mature understanding that is inherent in LAs regarding their responsibility for the provision of services, their accountability for them and the determination of future policy in respect of them appears to have become largely absent in considerations by the Council since then. The seminal Act of Parliament in this arena in recent years – the Children and Families Act 2014 – does not appear to have been given effective consideration by any policy body of the Council, in the way in which it certainly was in most, if not indeed every, other LA. It seems likely that the implicit assumption was that AfC would deal with it - which in a practical sense it did, although not very well. Yet the Act is about significant policy change with attendant financial impact, and it is properly the responsibility for the Council to understand, interpret and determine, and ultimately exercise statutory accountability for, what an effective response should be.
- 6.3 It was in 2016/17, in the face of a rapid escalation in the cost of AfC's provision of support for children and young people with SEND, that the Council began to give attention to what was evidently emerging as a problem. Bereft of any in-house expertise and knowledge, and initially unclear as to what was causing the problem, the Council was not able to speedily mount a coherent response.
- 6.4 The contract is in itself an issue. The contract between the Council and AfC does not make as clear and explicit as a contract should where the responsibilities of each party to it lie, and how each should be held to account for these responsibilities. Governance of the contract was ill-structured and weak in its effect. Changes have been made in the past couple of years, and this has somewhat improved understanding of the issues. Nonetheless, the mechanisms that would normally feature in order to ensure that the contractor (which is what AfC is, in this respect) delivers what the client (which is what the Council is) wants, and what should be done about it when it fails to do so, remain absent to an

uncomfortable degree. There is good evidence of enhanced intent, better endeavour and willingness to engage, but these developing characteristics, whilst real enough, are not an adequate substitute for contractual safeguards and a performance management regime that has teeth.

- 6.5 It seems likely that the fact of part-ownership of AfC bred some unduly comfortable confusion as to how it should be treated as a contractor. In terms of governance, the responsibilities for delivering success in the operation of a subsidiary company are distinct from those of delivering success in what any individual client of the company should expect from that company in respect of the contract that it has with it. At the most senior corporate level the symbiotic relationship between these separate responsibilities should be understood and could, as circumstances required, be managed to good effect. However, for those within the Council charged with ensuring the delivery of Children's Services (who did not functionally exist until recently), the fact that it is being carried out by AfC should be held as being as relevant, and no more so, than if they were being delivered by any external entity capable of doing so. Critically, if the person with statutory responsibility for Children's services within the Council person is not to be the DCS, then it must be someone able to challenge the DCS.
- 6.6 In the absence of clarity in the contract and of effective client control, AfC has developed operating methods for the provision of support for children and young people with SEND in Kingston which are unsustainable. The range of unsustainable characteristics (quality, performance, operating practices, finance) have become better understood during 2018 and are identified in a number of investigations and reports e.g. advice notes from Trowers & Hamblins; the Review of SEND conducted by Andrew Blow; the Ofsted focused visit letter. Each of these raise sound observations, set requirements or make recommendations for improvement. It is our view that they collectively represent the essential basis for mounting a significant change in AfC's operational arrangements, and of the relationship between AfC and its clients. That change is not yet, however, fully understood, agreed or codified. The SEND Transformation Plan is a step, but is only that. It will not deliver in full as it stands, and there is a need for AfC to examine its business processes in order for the Company to meet the inevitably stringent alterations to performance and budget adherence that the Council must require. RBK needs AfC to fully accept the need for change, otherwise the pace of improvement will be too slow, will not get to the nub of the matter, and, throughout that time, will continue to expose the Council to risk that it cannot accept and cannot afford.
- 6.7 The CCG has been an absent partner in respect of the construction and delivery of the Local Offer. It is important that Education, Health and Care (EHC) Plans cover

all of these aspects of a child or young person's needs. The lack of input on health unduly burdens education and social care with attempting to fill the gap, and makes it unlikely that the gap will be filled properly. This hampers the ability of the child or young person to fulfil their potential as they develop into adulthood. There is a need for full compliance of the CCG with RBK and AfC in the joint commissioning of SEND and the participation in assessments and reviews wherever a health need is identified.

- 6.8 The relationship between the Borough's schools and the Council in relation to SEND has been damaged. The risk that harm will spread to the wider relationship if this is not adequately addressed is a real one. The difficulties over SEND funding are a significant contributory factor. It must be the case that making improvements to the Council's management of the agenda for SEND, and to the operations of AfC, as are proposed in this report, will assist in remedying some of this problem over time. In part, however, the schools themselves will have to come to terms with the fact that elsewhere in the country, a broader vision of SEND, and the schools role in delivering that, in the application of SEN Support exists where more extensive SEND provision is made by schools from their notional SEN budget than is the case in Kingston - with attendant better outcomes - and that less rigidity in the operation of the funding blocks is helpful to that end. In addition to making structural improvements (with, it must be expected, improvements in the relationship) it will be helpful to expose the schools to knowledge of how things might change for the better with their support. In any event, there is a need to invest in improving the relationship. The Council should take the initiative in this.
- 6.9 It is regrettable, and an obstacle to progress, that the relationship between the Parents and Carers Forum that existed over recent years, and with many of the parents whose children are recipients of SEND support from the Council, via AfC, is as poor as it has been. Given that the Council is a disproportionately high funder of support for children and young people with SEND, it wouldn't be unreasonable for the opposite to be the case. It is of course difficult to capture the views of all parents since it is often those who are unhappy that tend to be to the fore when opinion is sought. Nonetheless, it is evident that there is an undue degree of frustration being expressed, when compared to the experiences elsewhere. An opportunity exists for a different relationship to be forged via the creation of the new parents/carers forum. This should not be a repeat of what has gone before. It will require an investment of effort, at Member level with appropriate officer support, and by AfC as well as by the Council.
- 6.10 The Commission spoke to a number of parents and asked them about the experience of their relationship with the Council and AfC in recent years. One

observed, to the wide agreement of others, that the most painful change had been that ‘the kindness had gone’. It must be expected that the inevitable need for applying resources effectively and efficiently can lead to that view amongst those who are disappointed not to receive the outcomes that they seek, but it was nonetheless clear to us that the handling of the processes of engagement was the cause of considerable frustration to some parents. In reviewing these processes, the Council will wish to demonstrate understanding, empathy and courtesy in engaging with parents however difficult the task, restricted the finance, or challenging the messages may be.

7 SEND - The National Perspective; Change and Consequences

7.1 Increasing Pressure

7.1.1 Although LA involvement in the delivery of education services has declined over the years, the Council retains a suite of critical functions. In the context of the austerity regime of the past decade, all Councils have experienced pressure across the range of service provision, and this has been as much true for Councils’ education responsibilities as it has in other fields of work. This pressure, and the changes it has required, has generally been managed well within the sector. The area that has been the subject of most national attention and concern, however, has been that of SEND.

7.2 Funding Arrangements

7.2.1 In 2014, the Government introduced wide-reaching changes in the SEND arena. The Children and Families Act was intended to offer simpler, improved and more consistent help for children and young people with SEND, with a clear aim of giving families and young people greater choice in decision making. Additionally, the Act extended Councils’ responsibility for young adults’ special educational needs beyond the age of 18 and in some cases to the age of 25.

7.2.2 The emergence of concerns regarding the implementation of the revised statutory framework, not least in respect of the funding available to support it, led the House of Commons Select Committee (Education Committee) to launch, in 2018, a SEND inquiry.

7.2.3 Family-led High Court judicial reviews (JRs) have also been launched into attempts by some LAs to reduce SEND funding allocations, with varying outcomes. In Bristol, the JR has been determined with the High Court ruling that the council had been wrong to make cuts to the education budget for children with SEND and ordered it to reverse the savings

made. In Surrey, the JR was dismissed, but this was after the Council reversed some of the funding reductions. In Richmond, an application for a JR was made by a parent challenging the SEND consultation carried out by the council. This was dismissed.

7.2.4 In addition, families from three LAs (North Yorkshire, Birmingham and East Sussex) have been granted leave for a JR into the legality of how the Government funds LAs for SEND provision on the basis that it is insufficient to fulfil LAs' legal obligations as set out in the Children and Families Act 2014. The case is listed to be heard in the High Court on 26 and 27 June, 2019.

7.2.5 More recently the London Borough of Richmond, one of RBK's partner LAs in AfC, launched a campaign to press the Secretary for Education to adequately fund SEND – urging parents and residents to write directly to the Secretary of State.

7.3 **The Local Government Association (LGA) Response**

7.3.1 In a written response to the Select Committee the LGA has stated, in summary, that whilst Councils have responded strongly in implementing the reforms to SEND support as set out in the Act, it is concerned that the progress that has been made could be at risk as funding levels have not kept pace with rising demand.

7.3.2 More specifically, the LGA observed that 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 EHC Plans, the proportion of pupils with SEND who attend special schools nationally has increased from 5.6 per cent in 2012 to 8.5 per cent in 2016 and the proportion in all independent schools has moved from 4.5% to 6.3%. By their very nature, these places are more expensive than mainstream provision.

7.3.3 The LGA expressed concern that 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, the increase in employers pensions contributions or the sharp increase in 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 DSG to help plug this funding gap. Schools also face funding pressures and should not be expected to meet shortfalls in high needs funding.

- 7.3.4 The LGA concluded 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.
- 7.3.5 The LGA commissioned the ISOS partnership (July 2018) to quantify the current pressure on budgets for children and young people with SEND and to better understand the extent to which high needs spending has been supported by additional funding from other sources.

7.4 ISOS Partnership Research

- 7.4.1 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 to those of the Commission, the report highlighted four limiting constraints on LAs 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 LA’s’ ability to maintain a threshold for undertaking EHC Plan 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 LAs 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.
- 7.4.2 The findings identify a significant increase in demand for EHC Plans, increasing unit cost of provisions, demographic changes, national policy

decisions and reduced SEND support in mainstream schools leading to the ever increasing gap between High Needs funding and expenditure resulted in cumulative deficits, nationally.

7.4.3 The outcomes of all of these investigations and JRs will be of significant interest to all Councils given potentially nationally applicable implications. All of these measures are increasing pressure on the government to undertake a review of the reason for increases in demand and how funding can match that demand.

7.4.4 A BBC investigation in early 2019 found that out of 136 LAs that responded, 123 have overspent on their high needs budget.

7.5 **The Government's Response**

7.5.1 On 16 December 2018, the Government announced that all 152 LAs will share an extra £125 million this year and a further £125 million in 2019/20 to top up high needs budgets for maintained schools and academies. £100 million in capital funding will also be available to create more specialist places in special and mainstream schools.

7.5.2 The additional funding was distributed to all LAs on the basis of Office of National Statistics' projections of the 2 to 18 aged population for mid-2019 in each LA, with RBK's share being £414,145 in 2018/19 and 2019/20.

7.5.3 The DfE said the revenue funding will pay for "additional teaching and other support" for pupils with more complex special educational needs, recognising "that the high needs budget faces significant pressures and this additional investment will help local councils to manage those pressures, whilst being able to invest to provide more support.

7.5.4 In response to this, the LGA has calculated that there is a £536 million high needs funding gap in 2018/19 alone, more than double last year's shortfall. The organisation has also warned that by next year councils will have lost 60 per cent of their funding compared with 2010.

7.6 **Conclusions**

7.6.1 All of this indicates that there is a recognised issue with Local Government's ability to manage the additional demands brought about by the 2014 Act, particularly in the light of the sector's funding reductions in the round and increasing demands within other service areas. It also indicates that Government recognises this and is

endeavouring to provide some additional level of support. RBK is as much affected by this national issue as is every LA.

- 7.6.2 It is, however, more of an issue for some Councils than others, and it is not immediately obvious as to why RBK is finding it a substantially more difficult issue than most. It is necessary to consider local factors in order to get a full picture.

8 SEND - The Kingston Perspective. Demand, Finance and Operational Practice

8.1 Increasing demand at a faster rate than nationally or regionally

- 8.1.1 There is an adequate level of mainstream education provision in Kingston. This responsibility is being met. It is also evident from the educational outcomes being achieved that the children of the Borough receive at least as good an education as is the case in other areas, and indeed better than is so in many cases. The Council meets its responsibilities, in the main, very well.
- 8.1.2 The single area of exception is that of SEND. The identification and delivery of SEND provision is a demand-led process. This means that the volume of service and the nature of the service is influenced by the demand that comes from the client base. In SEND the demand comes from the identified SEND of children and young people and from parents/carers. The nature and volume of that demand is influenced and mediated by the actions, assessments and reports of a number of Education, Health and Social Care professionals.
- 8.1.3 At the time of setting up AfC in 2014 and the transfer of the Council's full range of Children's Services operational delivery to AfC, the High Needs Block had a carried forward surplus of £2.24m indicating no undue pressure upon the SEND element of provision or of its funding as at the end of the 2013/14 financial year.
- 8.1.4 The base level of SEND support is provided by schools themselves from their delegated 'notional' SEN budget - funds provided from the DSG Schools Block which the Government expects to be used to provide a child with such support (up to a cost of £6,000 per child). Support beyond this level is generally provided against an EHC Plan. The percentage of RBK's children and young people supported by the schools using their delegated notional SEN budgets is presently 8.6%,

compared to 10.6% for Outer London, 11.25% for Statistical Neighbours and 11.7% for England as a whole.

8.1.5 Since 2014, Kingston has experienced a similar level to elsewhere of the rate of production of Statements of SEND (SSEN) and EHC Plans.

TABLE 1: Growth in Number of SSENs and EHC Plans (National Data)

| | 2014 | 2015 | 2016 | 2017 | 2018 | Variance since 2014 |
|---------------------|------------|-------------|--------------|-------------|--------------|---------------------|
| England | 237,111 | 240,183 | 256,315 | 287,290 | 319,819 | |
| | | 1.3% | 6.7% | 12.1% | 11.3% | 34.88% |
| Outer London | 25,379 | 26,095 | 27,659 | 30,909 | 34,193 | |
| | | 2.8% | 6.0% | 11.8% | 10.6% | 34.73% |
| Kingston | 770 | 803 | 899 | 958 | 1,042 | |
| | | 4.3% | 12.0% | 6.6% | 8.77% | 35.32% |

8.1.6 In arriving at this position, RBK has incurred a lower rate of not issuing EHC Plans following a request (18.3%), to that of England as a whole (27.15%).

TABLE 2 – Proportion of requests for EHC Plans not assessed and/or not issued in Kingston compared to England as a whole (2017-2018)

| | Requested | Decision not to assess | % not assessed |
|------------------|-----------|------------------------|--------------------------------------|
| Kingston | 171 | 24 | 14 |
| England | 64,555 | 14,486 | 22.6 |
| Assessed | | | |
| | Assessed | Decision not to issue | % not issued following assessment |
| Kingston | 143 | 7 | 4.9 |
| England | 45,205 | 3,043 | 6.7 |
| Requested | | | |
| | Requested | Not to issue | Total % not issued following request |
| Kingston | 171 | 31 | 18.13 |
| England | 64,555 | 17,529 | 27.15 |

8.1.7 EHC Plans will identify the need that they are intending to address. There are a range of areas of need. The table shows the distribution of EHC Plans across the areas of needs. These are:-

- Autistic Spectrum Disorder (ASD)
- Speech and Learning and Communication Needs (SLCN)
- Social, Emotional and Mental Health (SEMH)
- Moderate Learning Difficulties (MLD)
- Profound and Multiple Learning Difficulties (PMLD)
- Severe Learning Difficulties (SLD)
- Specific Learning Difficulties (Dyslexia, Dyspraxia etc) (SpLD)
- Hearing Impairment (HI)
- Visual Impairment(VI)
- Multiple Sensory Impairment (MSI)

TABLE 3: the distribution of EHC Plans across the areas of needs

| Data | September 2018 | | | April 2019 | |
|-----------|---------------------|----------------|----------|---------------------|----------------|
| | Number of EHC Plans | % of EHC Plans | | Number of EHC Plans | % of EHC Plans |
| | Kingston | Kingston | National | Kingston | Kingston |
| ASD | 388 | 34.5 | 28.2 | 422 | 35.1 |
| SLCN | 236 | 21.0 | 14.6 | 259 | 21.6 |
| SEMH | 149 | 13.2 | 12.8 | 163 | 13.6 |
| MLD | 115 | 10.2 | 12 | 124 | 10.3 |
| PMLD | 17 | 1.5 | 4.3 | 19 | 1.6 |
| SLD | 48 | 4.3 | 12.5 | 50 | 4.2 |
| SpLD | 52 | 4.6 | 3.5 | 57 | 4.7 |
| HI | 21 | 1.9 | 2.5 | 21 | 1.7 |
| VI | 12 | 1.1 | 1.4 | 14 | 1.2 |
| MSI | 2 | 0.2 | 0.3 | 4 | 0.3 |
| Not Known | 27 | 2.4 | - | 0 | 0.0 |
| Other | 11 | 1.0 | 2.5 | 16 | 1.3 |

- 8.1.8 This table shows the data at September 2018 when the SEN review was initiated and the updated data for 1 April 2019. It can be seen that the data shows strong consistency with continued growth in ASD and SLCN.
- 8.1.9 The proportion of plans produced in RBK in respect of MLD; PMLD; SLD; SpLD; HI; VI and MSI are in line with the national average and what might be expected from the Income Deprivation Factors Affecting Children Index (IDACI) data (see paras 8.13 and 8.14).
- 8.1.10 However, the proportion of plans in respect of Autistic Spectrum Disorder (ASD) and Speech and Learning and Communication Needs (SLCN) are significantly higher than would be expected, and those addressing Social, Emotional and Mental Health (SEMH) needs are also above the national average.
- 8.1.11 This distribution raises questions regarding the effectiveness of early intervention and the way in which schools are using their notional SEN budgets to create environments in which children and young people with different ways of learning can flourish and enable them to learn effectively, creating resilience and high levels of academic self-esteem.
- 8.1.12 Given that funding follows the interpretation of demographic data expecting that Kingston would have a very low incidence of SEND, the data for Kingston for ASD, SLCN and SEMH is not only anomalous, it will be the generator of a significant budget pressure.
- 8.1.13 Kingston places 10.8% of children and young people with EHC Plans in independent special schools compared to 3.7% of LAs across England as a whole. These are frequently in expensive residential placements outside the Borough. Many of these residential placements are derived not from their EHC needs but due to prohibitive travel times. The high level of this provision contributes significantly to the overspend.

TABLE 4 - percentage of Kingston placements in independent, free, academy and mainstream schools compared to national figures (National Data)

| Provision | % of EHC Plans | | |
|------------------------------------|----------------|----------|------------|
| | Jan 2018 | | March 2019 |
| | Kingston | National | Kingston |
| Mainstream Free School | 1.7 | 0.4 | 1.7 |
| Mainstream School Independent | 1.2 | 1 | 1.3 |
| Special School Academy Free school | 23.4 | 9 | 26.4 |
| Special School non-maintained | 2.1 | 1.2 | 1.9 |
| Special School Independent | 10.8 | 3.7 | 10.2 |
| Post 16 Specialist college | 1.4 | 1.3 | 1.3 |

8.1.14 This table shows the data at September 2018 when the SEN review was initiated and the updated data for 1 April 2019. It can be seen that the data shows strong consistency.

8.1.15 As at December 2018 the average cost of each of the current 113 independent and non-maintained special school placements was £47,578 including travel and social care costs, amounting to a projected cost of £5,376,381 for the full year.

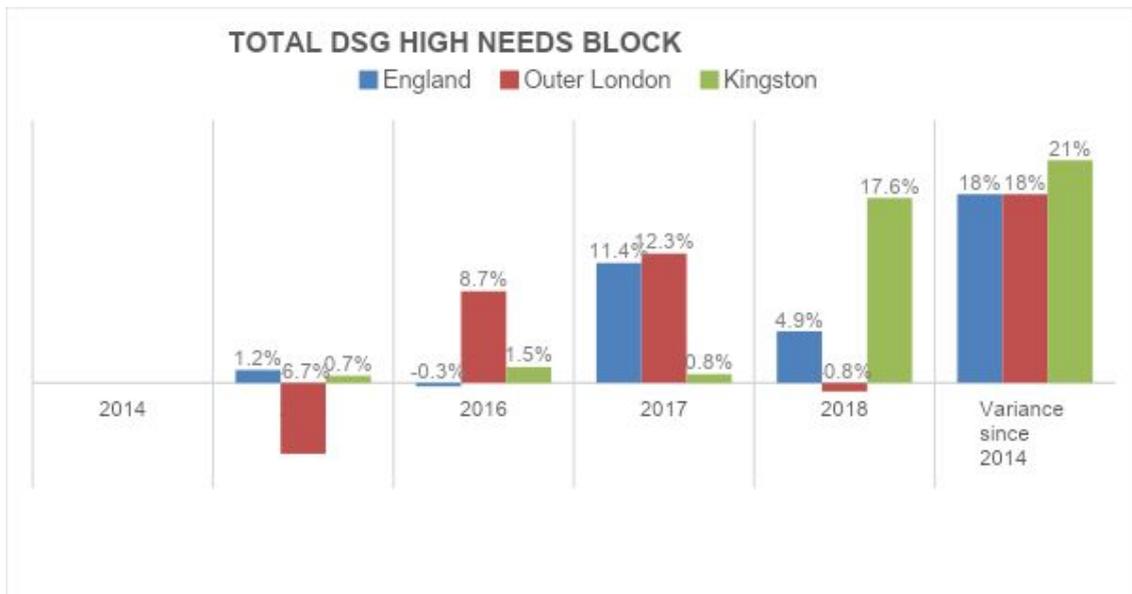
8.1.16 When this is compared to an average cost of £28,432 per place at an in-borough special school, this gives a difference of £19,146 per place. This amounts to £2,163,498 for all 113 places.

8.1.17 Table 5 illustrates the significant variance in the increase in funding over the period 2014 to 2018, based on the total amount of High Needs Block received, in RBK, regionally and nationally. The RBK allocation of £22.27 million in 2018/19 is **before** the injection of £3 million additional funding by the DfE. This additional allocation, (which is one-off and does not affect future High Needs Block allocations) brings the overall increase above the increase experienced both nationally and regionally.

TABLE 5: Total DSG High Needs Block (£m)

| | 2014 | 2015 | 2016 | 2017 | 2018 | Variance since 2014 |
|---------------------|--------------|--------------|--------------|--------------|--------------|---------------------|
| England | 5,183 | 5,247 | 5,230 | 5,827 | 6,114 | |
| | | 1.2% | 0.3% | 11.4% | 4.9% | 18% |
| Outer London | 670.65 | 625.44 | 680.10 | 763.92 | 757.72 | |
| | | -6.7% | 8.7% | 12.3% | -0.8% | 18% |
| Kingston | 18.37 | 18.50 | 18.78 | 18.94 | 22.27 | |
| | | 0.7% | 1.5% | 0.8% | 17.6% | 21% |

GRAPH 1: Total DSG High Needs Block



8.2 High Needs Block per EHC Plan

8.2.1 Table 6 shows that in RBK the funds available per EHC pupil has reduced by 17% in line with the National and Outer London average funding reductions which are comparable at 13% and 16%, respectively.

TABLE 6: High Needs Block Per EHCP

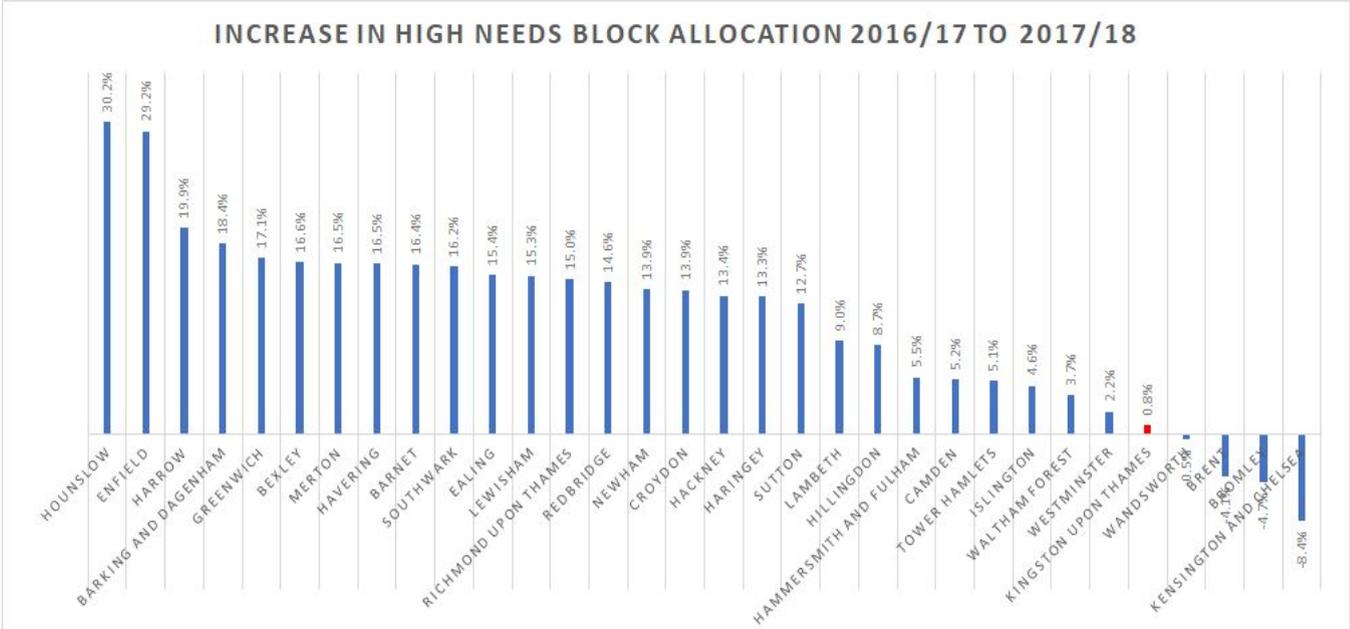
| | 2014 | 2015 | 2016 | 2017 | 2018 | Variance |
|---------------------|---------------|---------------|---------------|---------------|---------------|-----------------|
| England | 21,859 | 21,846 | 20,405 | 20,283 | 19,117 | |
| | | -0.1% | -6.6% | -0.6% | -5.7% | -13% |
| Outer London | 26,425 | 23,968 | 24,589 | 24,715 | 22,161 | |
| | | -9.3% | 2.6% | 0.5% | -10.3% | -16% |
| Kingston | 23,858 | 23,035 | 20,888 | 19,765 | 19,704 | |
| | | -3.5% | -9.3% | -5.4% | -0.3% | -17% |

8.3 High Needs Block between 2016/17 and 2017/18

8.3.1 Prior to the introduction of the DSG in 2005/06, school funding was based on levels of deprivation and of additional educational needs (using indicators such as: income related benefits, ethnicity, language and birth weight); population sparsity and area cost adjustment. Following its introduction, the DSG was distributed on a spend plus methodology. Therefore, LAs with low levels of funding in 2005/06 would have had relatively low levels of deprivation and Additional Educational Needs and that low level of funding has been locked in ever since.

8.3.2 The High Needs Block was created in 2013/14 and the allocation was effectively frozen with small additions for population growth etc. Further, with School Forum approval, funds from the Schools and Early Years Block could be transferred to the High Needs Block – resulting in LA High Needs spend being more than the amount of DSG provided and realignment of the grant was undertaken in anticipation of the Higher Needs National Funding Formula, and of a restricted ability to transfer funds thereafter. Graph 2 indicates that many LAs anticipated this and maximised their High Needs allocation. Through this exercise, RBK’s baseline was reduced whereas, e.g. Richmond’s was increased. There is no explanation in either LA’s School Forum papers as to why this occurred.

GRAPH 2: Increase in High Needs Block

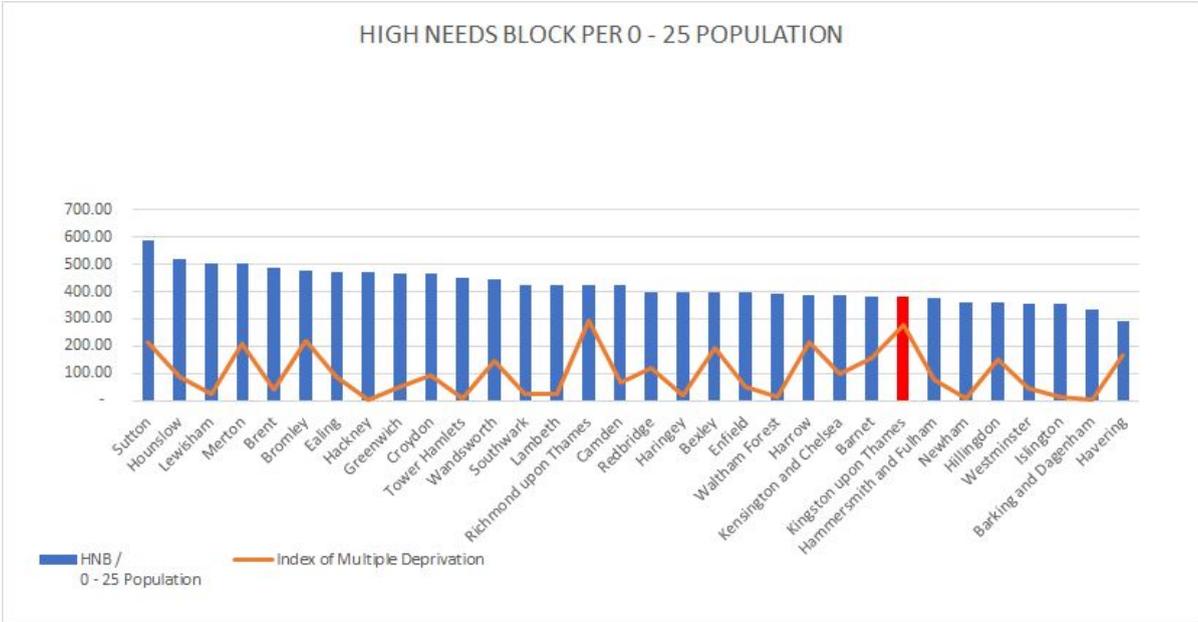


8.3.3 From 2018/19, the DfE has begun to phase out the use of historic funding and is moving to formulaic funding – based on indicators Table 7 below. In addition, the amount of other block funding that can be transferred to the High Needs Block has been severely restricted to 0.5% of the School Block and that flexibility may be withdrawn when the full National Funding Formula is implemented in full.

8.4 High Needs Block per 0–25 Population (All London) compared to Index of Multiple Deprivation

8.4.1 Graph 3 below illustrates the 2018/19 High Needs Block allocation for each London LA on a per 0-25 population basis (excluding the additional two year SEND funding announced by the DfE in December 2019). Alongside this is the rank for the indices of deprivation (2015), with a rank of 1 being the most deprived, and the area ranked 326 is the least deprived. The graph indicates the randomness of the High Needs Block allocation in terms of population.

GRAPH 3: High Needs Block Per 0 - 25 Population



8.5 Discrepancy between funding and incidence

8.5.1 A further consideration is that the proxy factors or indicators used to calculate the allocation of High Needs Block funding are as below in Table 7. Proxy factors are numerical data factors which are considered to impact on the funding needs of a LA in a particular aspect of their work.

TABLE 7: Proxy factors or indicators used to calculate the allocation of HNB funding

| Proxy factor | SEN weighting (90%) | Alternative provision weighting (10%) | Combined weighting |
|---|---------------------|---------------------------------------|--------------------|
| (C) Population factor | 50% | 50% | 50 |
| (D) Free school meals (FSM) eligibility | 8.33% | 25% | 10% |
| (E) IDACI | 8.33% | 25% | 10% |
| (F) Bad health | 8.33% | 0% | 7.5% |
| (G) Disability | 8.33% | 0% | 7.5% |
| (H) Key stage 2 low attainment | 8.33% | 0% | 7.5% |
| (I) Key stage 4 low attainment | 8.33% | 0% | 7.5% |

- 8.5.2 It can be seen that there are two deprivation factors (FSM) and IDACI, two health factors and two attainment factors. Low attainment has been, historically, statistically connected to deprivation factors.
- 8.5.3 Existing or historic EHC Plans are not proxy factors in the Formula. Consequently growth rates in previous years do not impact upon allocated funding.
- 8.5.4 The underlying assumptions are that relatively affluent areas have low incidence of SEND. The increase in ASD diagnosis in Kingston does not seem to follow that pattern and has no evident explanation.
- 8.5.5 In Kingston there are 98 sub-regions when considering the Indices of Deprivation Affecting Children. (IDACI) The index uses a scale of 1 -10 where 1 is the most deprived and 10 is the least deprived.
- 8.5.6 In Kingston on the basis of the Index of Multiple Deprivation:
- 58 out of 98 sub-regions in the top three least deprived:
 - Income - 48 out of 98 sub-regions in the top three least deprived
 - Employment - 71 out 98 sub-regions in the top 3 least deprived
 - Education and skills - 67 out of 98 in the top 3 least deprived
 - Health and deprivation - 85 out of 98 in the top 3 least deprived
 - Income deprivation affecting children – 23 out of 98 in the top 2 least deprived, and 2 sub-regions in the bottom most deprived.
- 8.5.7 On the basis of this data RBK would be expected to have a very low incidence of SEND and is being funded as such. In this context the data for ASD, SLCN, SEMH appears anomalous.

8.6 **Overspend of the Dedicated Schools Grant**

- 8.6.1 The DSG has been overspending since 2014/15 and the cumulative DSG deficit currently sits at £10.69m.

TABLE 8 - High Needs Block

| Financial Year | £'000 |
|-------------------------|---------|
| 2012/13 outturn | 2,064 |
| 2013/14 outturn | 176 |
| 2013/14 carried forward | 2,240 |
| 2014/15 outturn | -1,411 |
| 2014/15 carried forward | 829 |
| 2015/16 outturn | -2,487 |
| 2015/16 carried forward | -1,658 |
| 2016/17 outturn | -4,825 |
| 2016/17 carried forward | -6,483 |
| 2017/18 outturn | -4,208 |
| 2017/18 carried forward | -10,691 |

8.6.2 The Medium Term Financial Plan (MTFP) 2018/19 - 2022/23 identified a DSG budget totalling £137.749m for 2018/19. The breakdown was as follows, with a revised budget as at Month 10 (January 2019):

TABLE 9 - Dedicated Schools Grant (DSG) for 2018/19

| DSG Block | Original budget | | Revised Budget (month 10) | |
|-------------------------|-----------------|------------------|---------------------------|------------------|
| | Final | After Recoupment | Final | After Recoupment |
| | £'000 | £'000 | £'000 | £'000 |
| Schools | £98,564 | £50,488 | £98,564 | £49,514 |
| Central School Services | £955 | £955 | £955 | £955 |
| High Needs | £21,865 | £16,305 | £23,701 | £18,141 |
| High Needs - advance | £3,000 | £3,000 | £3,000 | £3,000 |
| Early Years | £13,365 | £13,365 | £12,487 | £12,487 |
| | | | | |
| Sub total | £137,749 | £84,113 | £138,707 | £84,097 |
| Carried Forward | -£10,691 | -£10,691 | -£10,691 | -£10,691 |
| Total | £127,058 | £73,422 | £128,016 | £73,406 |

8.6.3 At month 10, the High Needs Block is predicted to overspend for 2018/19 by approximately £1.315m. The breakdown is as follows:

TABLE 10 - High Needs Block Predicted Overspend 2018/19 (Month 10)

| Item | Budget | Projected Outturn | Overspend |
|---|----------------|-------------------|---------------|
| | £'000 | £'000 | £'000 |
| Special schools and unit places | £1,286 | £1,476 | £190 |
| Early Years Units | £102 | £119 | £17 |
| Top Ups mainstream and academy | £9,850 | £9,543 | -£308 |
| Independent placements | £5,019 | £5,517 | £498 |
| Targeted High Needs | £300 | £300 | £0 |
| Post 16 | £3,205 | £3,810 | £605 |
| Early Intervention | £297 | £297 | £0 |
| Therapies | £0 | £158 | £158 |
| Central High Needs | £1,081 | £1,136 | £55 |
| Total | £21,141 | £22,356 | £1,215 |
| Future demand allowance | | | £100 |
| Total High Needs Block including future demand allowance | | | £1,315 |
| | | | |
| Recoupment | £5,560 | £5,560 | £0 |
| | £26,701 | £27,916 | £1,315 |

8.6.4 The budget setting protocol of not setting a budget where it is known that expenditure will be incurred is unhelpful. For example, as the council chose not to set a High Needs Block budget for therapies the entire spend under that item is an overspend of £158k. However, this does not detract from the overspend as a whole as the available funds are finite.

8.6.5 The budget for pre-16 independent school placements is a historically set figure which is adjusted upwards where an increase in Government funding allows. The budget has been split out during the year between pre and post 16 to enable more detailed monitoring but it is acknowledged that both the budgets are still not adequate to meet the

cost of existing and future demand that is expected during the year even after allowing for the proposed cost reduction strategy. The figure given is one that has been reconciled to the level of Government funding for the year even though additional budget is evidently required.

- 8.6.6 It is not reasonable to recognise that demand will exist without either explaining how it will be managed downwards to fit within the budget, or the budget increased to meet it. The pressure may well be one that the Council believes is unreasonable for it to bear, but it cannot simply wish it away, and must ensure it has a Medium Term Financial Strategy which is sustainable and able to meet all of the service demands.

8.7 **Review of Special Educational Needs**

- 8.7.1 A stated objective of the related, yet separate 'Review of the Special Educational Needs in the Royal Borough of Kingston upon Thames September – December 2018' (Andrew Blow) was to identify where RBK and AfC were going beyond what is required as their statutory duty or where they can strengthen their approach to maximise independence and improve the management of parental expectations. Amongst the findings, the Review identified that the Local Offer, reflected in the 'Golden Binder', is not compliant with the 2014 Act and that RBK is vulnerable in that it is not exercising its statutory function in providing SEND services that are compatible with the provision of efficient education for others and delivery of the efficient use of resources.
- 8.7.2 The Local Offer does go beyond what is statutorily required. This has contributed significantly to the High Needs Block overspend. Changes have been made to the 'Golden Binder' in the course of the past year in order to tighten up on these failings, but more changes are necessary. The way in which assessments are carried out, reports are written and the EHC Plan itself is worded needs to demonstrate the 'Golden Thread' from assessments, through reports to the Plan, and to the outcomes in the Plan; thus enabling the LA to exercise its responsibility to appropriately meet the needs of the child and to be able to demonstrate this if challenged.
- 8.7.3 The findings of the Ofsted Local area inspection report in October 2018 of the implementation of the Children and Families Act 2014 supports these views which are further supported by additional independent

legal advice regarding the wording of the Local Offer and the professional practice that accompanies that wording.

8.7.4 Ofsted found that EHC Plans are of poor quality. The main reasons for this are:

- Weaknesses in the processes for ensuring that health professionals contribute to and check draft EHC Plans before they are finalised
- A consistent lack of outcomes and/or provision that are specifically tailored to the individual needs of the child or young person at the centre of the EHC Plan
- The process of drafting EHC Plans, including some schools taking responsibility for writing the EHC Plan and/or sections of it, puts an overemphasis on educational outcomes and provision. This means that, at times, there is a disregard for the detail needed for the required health and social care provision and/or outcomes
- There were too many transfers of statements of special educational needs to EHC Plans that were issued prior to the 31 March 2018 statutory deadline where professionals knew that they were not fit for purpose and would need an early annual review.
- Inspectors found numerous examples where the process of drafting EHC Plans, annual review processes and amendments to EHC Plans were not consistently being undertaken in line with the SEN Code of Practice (CoP).
- Parents and providers told inspectors that they have to ‘chase’ or ‘insist’ that specific provision is included in the final plans. They report that it takes far too long to hear back from the local area.

8.8 The SEND Transformation Plan

8.8.1 In order to return RBK to a position where funding equals expenditure, the SEND Transformation Plan for 2019/20 to 2021/22 was presented at the Children’s and Adults’ Care and Education Committee (CACE) and submitted to the DfE towards the end of November 2018. It is

anticipated that the Plan will be subject to regular review, and the latest version went to CACE in February 2019.

8.8.2 It is our view that the Plan as it currently stands is not capable of delivering the cost reductions that it seeks to achieve in two fundamental ways:

- securing approximately £5 million from transfers to the High Needs Block over a two year period from 2020/21; and
- realising over £8 million cost reduction from the programme of annual EHC Plan reviews.

8.8.3 We accept that the Plan should be the key vehicle for use by all partners in achieving the turnaround necessary. It will require the identification of improvements beyond those proposed so far in order to meet the shortfall that we expect to see occur. In our recommendations in this report we identify a range of improvements, some of which should lead to quantification of cost reductions and we would propose that these are incorporated in a later iteration of the Plan, produced at the earliest opportunity.

9 Issues arising

9.1 There is a national issue over the total amount of money in the system to support SEND. The evidence, and the Government's response to the pressures emerging suggests that this may well be so, and that there should be a revision to the national funding arrangements. RBK can reasonably support the lobbying that is being led by the LGA and to which other Authorities are adding their own voices and are campaigning for. That said, RBK needs to take steps to address the fact that its difficulties arise from factors beyond those experienced by every other Authority.

9.2 The funding provided to the Council by the Government is calculated on the basis of demographic data which suggests that the Council should have a below-average demand for SEND support and EHC Plans. While, as with any funding formula, there is scope to disagree over the weighting given to specific criteria within it - and in this instance, RBK is disadvantaged due to the weight given to factors of deprivation - there is, in reality, little evidence from which to make a case that Kingston is significantly underfunded.

9.3 The fact that the overall percentage of EHC Plans is in line with elsewhere in England therefore suggests that either Kingston has a higher need for EHC Plans than the demographic data suggests and/or that children and young people are moving to an EHC Plan at a lower level of SEND than in the country as a whole.

9.4 Given that there is little evidence upon which to challenge the demographic data, the latter case is more likely to be true. Furthermore, since the borough is

achieving higher than average education results as a whole (as in para 1.8), whilst having a national average of children with EHC plans, this also suggests that there are simply too many EHC plans. All of this data supports the view that the levels of funding for SEND align with the demographics and that the demographics should be generating far fewer SEND children. As a consequence, funding being provided for a below-average number of children is being applied to a higher than expected number of recipients, and, indeed, to a high average cost.

- 9.5 The high average cost is linked in part to the high number of independent special school placements. The level of reliance placed on the independent sector, at significant cost, is not abating. This is not sustainable.
- 9.6 The number of EHC Plans completed within the 20 week period is low and the quality of plans is not as good as it should be. In part this is because too many plans are written by schools, without support from EHC specialists or, where applicable, health professionals.
- 9.7 The Kingston CCG has a statutory responsibility that has not been met. The absence of health input is a factor in terms of clinical input to EHC Plans and in terms of resource to support pupils. EHC Plans are insufficiently well written to demonstrate a Golden Thread from the assessment of needs and barriers to learning through intervention and support to individualised outcomes from which schools can develop short-term targets for the child's Individual Education Plan. These weaknesses are a contributory factor in the overprovision in Plan content.
- 9.8 The supply of special place provision in the Borough is inadequate to handle the numbers in receipt of Plans. Should the number of Plans be reduced to the expected level, it is arguable that there will still be an under provision of places. The Council has recognised this, and an application is in place to create additional provision. It is important that every effort is made to ensure that this application is successful.
- 9.9 It takes too long to place children. This is one consequence of slow assessment. As a result, available places are often taken up by pupils from other Boroughs. This, combined with the shortage in the number of places available inevitably forces consideration of out-of-borough provision.
- 9.10 In-borough place provision is inadequately marketed at present. This results in insufficient information being available to parents, and the consequent attractiveness to parents of well-marketed independent suppliers. It also means that there are sometimes vacancies in facilities in schools within the Borough.
- 9.11 There is a significantly higher than average proportion of placements of children with EHC Plans in independent and non-maintained specialist settings which has a very significant impact on the High Needs Block overspend.

- 9.12 Annual reviews of plans are poorly resourced. This means that there is insufficient challenge over the extent of plan content and of progress. The process is not focused on a child's strengths - but is instead focused on deficit (what the child cannot do rather than what they can do). This is a major failing with significant consequences both for the educational progress of pupils and for the ongoing costs of provision.
- 9.13 The 'Golden Binder' - the material put together by AfC in order to make what the 2014 Act requires to be the 'Local Offer' to parents and children seeking SEND support has significant shortcomings in respect of how it makes that 'local offer'. Whilst the 2014 Act places parental and young person preference as the starting point of considerations over the nature of provision, the wording in the Binder has been misleading as to how that expression of preference should sit with other factors of significance, such as the existence of appropriate local provision and of financial affordability. This has introduced weakness into the position of the RBK and has left it unreasonably exposed to challenge, and ultimately excessive cost.
- 9.14 Head teachers feel that there is a lack of staffing consistency and continuity in respect of the staff that appear in schools to work with SENDCOs. (However, if there were better systems in place, then this would not be a matter of such significance).
- 9.15 The contract between RBK and AfC leaves financial risk wholly with RBK. There are no incentive mechanisms requiring AfC to reflect the Council's financial position in its decision making or operational procedures. The Council and AfC need to move to more of a risk-sharing model.
- 9.16 The provision of data to the Council is not adequately specified in the contract. Data produced is not therefore that which is necessarily needed and it is not consistently coherent, so that comprehensive and reliable information on SEND can be produced and analysed in order to plan, and for RBK to hold AfC to account (Kingston and Richmond's data is sometimes conflated).
- 9.17 The governance arrangements for the contract between RBK and AfC are inadequate for the purposes of the Council satisfying itself that it is meeting its statutory duties - not simply in terms of education provision, but in meeting the wider responsibilities around its fiduciary duty and for securing best value. The arrangements for meeting the responsibilities of ownership of AfC and for ensuring that it meets the requirement to deliver against the contract which the Council holds with it are separate and distinct.
- 9.18 The 'client-side' resource deployed by the Council is minimal and not equipped with sufficient specialist expertise to perform the role of contract oversight. Professional expertise resides with AfC, but the Council should equip itself to be

able to appropriately challenge that expertise and hold it to account for delivering the contract appropriately.

- 9.19 The implications of the Children and Families Act 2014 on the statutory responsibilities of RBK and the CCG had not been fully understood by either party. This has been a critical failing.
- 9.20 Therapy provision is a good case study in how proper partnership between the CCG and the LA can improve performance and generate a saving over current performance.
- 9.21 The provision of Speech and Language Therapy (SALT) and Occupational Therapy (OT) are very often an element in EHC Plans. They are also a key element in meeting children and young people's needs.
- 9.22 At present the shortage of provision of these therapies to schools is a significant element why schools in Kingston have smaller than average numbers supported at SEN Support, with an average number of children with EHC Plans when the indicators suggest that there should be less than this proportion. Also, because schools, including Kingston special schools, cannot implement the SALT indicated in EHC Plans, parents are successful in seeking an out-of-borough and independent placement that can provide these therapy inputs, and at an appropriate level.
- 9.23 When the CCG and the LA work appropriately together, including agreed protocols which correctly identify the element of the funding to support a child that each service should provide, which is not the case at the moment where CCG are not funding at the correct level nor making the appropriate level of therapy support available, all schools should be able to provide the necessary support.
- 9.24 As one of the key reasons that parents go to tribunals and seek out of borough placements is to gain access to therapies, retaining more children in borough schools will result in savings. In addition, the SALT provision should be cheaper as the option to train staff and only use more expensive therapists for assessments, reviews and advice and training will work at lower staff costs. An additional benefit will be that by spreading the skills wider through the staff, SALT will be delivered through the whole day curriculum rather than in 1:1 and small group environments providing greater opportunities for children to learn faster and in greater depth and breadth.
- 9.25 AfC managed the introduction of the Act's requirements, but it did so without ensuring that either statutory agency understood the Act's requirements and accountabilities, and without ensuring that either was responding appropriately to meet these. It can of course be argued that it was not AfC's job to do this, and that must be correct in a legal sense. In terms of the overall failures which the system

has suffered, however, AfC was responsible for the integrity of what was delivered and in an intelligent strategic partnership - which such a contract should surely be - there should have been a coordinated approach to keeping all partners informed, engaged and contributing to the outcomes.

9.26 The lack of engagement with the detail of the Children and Families Act 2014 has resulted in policy, the wording of the Local Offer, guidance documents and practice making Kingston vulnerable to legal challenge resulting in additional costs.

9.27 The Schools' Forum meetings can be more widely focused. Its primary function at the moment is to take funding decisions, which it does in isolation from the fullest complexities of service provision and the funding environment. In other LAs, specific 'Block' working groups will consist of a combination of practitioners and administrators, drawing upon a deeper understanding of the issue, in order to take a more collaborative approach to the identification of options to resolve any existing or emerging issues.

10 Recommendations

It is recommended that RBK (the Council):

1. Introduces a clear separation of governance in respect of its responsibilities to ensure the success of AfC as a commercial subsidiary from those of ensuring delivery of AfC's contract for the operation of Children's Services.
2. Equips itself with a 'client-side' capability for performance management of the Children's Services contract (and, in the short term, the SEND Transformation Plan). The role of the Director of Children's Services (DCS) is central to this issue. The DCS is, by legal requirement, a Council employee and is the officer to whom the Council must look to assure itself that the Council's duties in respect of these matters are being met. How the DCS is deployed and their managerial role vis-a-vis AfC employees has been a matter lacking clarity of accountability in the past and the resultant confusion has been a contributory factor to the difficulties that have been experienced. There can be no room for such lack of clarity in the future. The Council must be in a position to rely on the DCS delivering the Council's requirements and maintaining the Council's interests, however the day-to-day responsibilities of the post are arranged. The value in the DCS being part of the Council's Corporate Management Team was also lost in the past and this value should be re-secured. The Council will furthermore need to engage staff with education and social care experience together with those with appropriate contract management skills available to it to properly manage the contract.

The challenge in being able to recruit a DCS to purely deliver the responsibilities of the post via a contractual arrangement rather than via the direct management of a Children's Services Department is understood. It may be that sharing a DCS with another Authority would provide one realistic option for overcoming this difficulty. If any alternative arrangements are arrived at, these should be without detracting from the DCS's absolute responsibility to act as a statutory officer of the Council, and in protection of the Council's position, in the first instance.

3. Reviews the contract with AfC so as to make immediate improvements in securing better outcomes and value for money, in particular to agree an appropriate and pragmatic performance management regime for the remaining duration of the contract. Such an arrangement should also form a core part of any future outsourced contractual arrangement.
4. Seeks to agree with the London Borough of Richmond (and, as appropriate, with the Royal Borough of Windsor and Maidenhead) common objectives, contract management arrangements and operational procedure norms so as to make readily transparent and manageable each Council's operation of their contract with AfC
5. Instructs (via its mechanism for part-ownership of AfC, and preferably in concert with the other part-owners), the Company to undertake a review of its operating model in respect of SEND at least, in order to make itself fully fit for purpose in the delivery of its contract for RBK and indeed any other client that it has or may have in the future.
6. Sets up a mechanism for informal and regular engagement with schools. This should occur at both Member and officer level, be wholly supported by or operated with AfC, and, at least in the medium term, be intensive. It should involve regular school visits, meetings with school sectoral interests and be reflected in the reports and engagement with the Schools Forum. It should be a means of providing support and enrichment to the Schools Forum, and a feature of the broadening of its role.
7. Supports and nurtures the new parents/carers forum so as to provide a ready and speedy conduit between the Council (and AfC) with parents and carers.
8. Seeks to enter into a discussion with DfE so as to further the Department's learning from all of these experiences and in doing so agree with DfE any flexibility that may be possible in the future financial regime. This is particularly important given the potential for funding formula changes that have a detrimental effect upon Kingston. In the light of these changes to make the case for amendments to the formula to remove or reduce those

elements most detrimental to Kingston, and present a revised formula accordingly.

9. Fulfils its statutory responsibilities with respect to engaging with the Clinical Commissioning Group (CCG) and other partners as identified in the Code of Practice (January 2015) (CoP) including joint commissioning to ensure that there are sufficient services to meet the needs of the local area, as set out in the CoP and in furtherance of the Joint Strategic Needs Assessment, Children & Young People: Special Educational Needs and Disabilities, April 2018.
10. Given the need for rapidity of change, 'relaunches' the approach to SEND in the Borough, including making clear that in the light of the financial challenges, the Council will continue to meet its obligations and that children and young people with SEND will have their needs met but that this will be done in the most cost-effective way in the interests of all taxpayers

It is recommended that Achieving for Children:

11. Reviews, redrafts and agrees with RBK, the CCG and other Health Partners, the policy and practice guidelines for SEND that AfC will implement for the Council. These guidelines must be articulated in the Kingston Local Offer currently published as the 'Golden Binder' and must be fully compliant with the Children and Families Act 2014 thus providing a secure challenge against inappropriate requests for provision, and ensures placement that constitutes the efficient use of resources.
12. Ensures that there is a consistent wording in the SEN Information Reports published by all mainstream schools in the Borough describing the provision that is ordinarily available to support children and young people. This wording must be compliant with the CoP and consequently with the 'Golden Binder'. This wording must fully reflect the Kingston and AfC policy and practice guidelines.
13. Ensures that information to parents and young people contains the clear expectation that the majority of children and young people have their education needs, including special educational needs, met through what is ordinarily available including through SEND Support.
14. Confirms with all mainstream schools a consistent learning experience for children with SEND at each of the levels of High-Quality Teaching, SEND Support and thresholds for EHC Plan application. Provide support and training for schools to enable them to more effectively meet the needs of more

children within early intervention and SEND Support, thereby enabling more children to become effective independent and resilient learners, and reducing the need for higher cost interventions and EHC Plans.

15. Develops and implements, with the CCG, a set of agreed protocols for the partnership delivery, including funding, of Health inputs which are universal, targeted and specialist in order to support the wellbeing, educational development and pathways to adulthood 0-25. These protocols to include the early intervention in SALT and other therapies incorporating training and support for teachers and teaching assistants to incorporate SALT and OT development across the whole-day curriculum rather than just extraction and small group work, thus building early resilience and independence.
16. Ensures that the Local Offer gives clear information to parents of the CCG offer, including speech and language and other therapies and how these might be accessed within Kingston settings and schools at an early intervention stage as well as through EHC Plans in local schools.
17. Develops with the Educational Psychology Service, SEND Service, partner services, schools and parents/carers a strength and capability focused approach to SEND rather than the prevailing deficit-focused model. This model to inform other recommendations as appropriate.
18. Ensures that EHC Plans are processed within the statutory timeframe and that the support plans and documentation are formatted to give a seamless document progression and clear record from early support to the issuing of the plan. The evidence trail of these plans and accompanying reports must fully support the decisions made by the LA to either issue or not issue an EHC Plan and a placement where appropriate. This evidence trail must be sufficiently rigorous to withstand challenge through the tribunal system.
19. Ensures that through the use of comprehensive, coordinated and reliable data combined with high quality assessments and EHC Plan writing and market intelligence, AfC is able to make strategic decisions regarding the provision needed to meet the SEND needs in the Local Area.
20. Undertakes joint planning and provision, including pooled budgets and personal budgets, with the CCG and other partners, including mainstream and special schools and academies, in order to provide educational options, including the provision of therapies, that are attractive and accessible for parents/carers and children and young people so that the desire for out-of-borough and independent placements is reduced and maintained at a

level commensurate with that suggested by the proxy indicators, and the wish of parents to have a local school for their child or young person.

21. Focuses on the presenting issues of the child, particularly in the area of ASD, SLCN and SEMH and targets interventions on the underlying causes of challenging behaviours rather than the behaviour itself, thus enabling an increasing number of children and young people to be successful in their learning and social inclusion within a mainstream school setting.
22. Ensures that all EHC Plans are reviewed annually. The EHC Coordinator responsible for the EHC Plan should attend the annual reviews where there is a significant change in needs, intervention, funding or placement, or where the school and/or parent think it otherwise desirable. In all cases there should be clear evidence that interventions have a positive impact upon mitigating the barriers to learning experienced by the child or young person and there is a reduction of inputs over time resulting in a number of cases in the EHC Plan being ceased with support, if needed, being provided by SEND Support. Given that there have been excessive assessments and inappropriate placements made in the past, reviews of the current cohort of children should determine whether needs can be reduced and whether opportunities exist for bringing children back into in-house, in-borough, provision. The provision of personal budgets for access to therapies should also be considered.
23. Ensures that all children with SEND at the SEND Support stage have their personal education plans reviewed at least annually.
24. Ensures that its operational procedures secure transitions through post-16 to adulthood. It is expected that pathways to adulthood are planned for 'from earliest years', and this should be reflected in EHC Plan annual reviews.
25. Progresses the Transformation Plan recommendations and supplements the Plan with additional measures to enable RBK to be confident that its statutory responsibilities are increasingly secure.
26. Reviews the existing proformas against alternative models and in partnership with schools and stakeholders agree a borough-wide format. To explore existing software options used elsewhere in England to enable schools to use a consistent electronic format which will allow for version control and conversion to an EHC Plan where necessary.
27. Gathers information and case studies including from previous Tribunal case and the experience of headteachers from mainstream and special schools. On the basis of this data to identify a development programme, including a business case for developing the provision in mainstream and special schools

within the borough, to deliver savings against expensive independent and out-of-borough placements.

28. Identifies, using comparative information from other LAs as appropriate, the key features of an IT data system that will deliver the necessary strategic SEND reports and a full data commentary on individual cases including financial information for RBK, and deliver a report identifying the most cost-effective way of putting such a system in place.
29. Ensures that there is an open and constructive dialogue between the parent/carer forum and RBK as commissioner and AfC as deliverer of services and other agencies and providers including schools, facilitated by AfC, which enables parents to make a valued and valuable contribution to the spectrum of provision within the borough.

It is recommended that the CCG:

30. Works with AfC to be compliant in exercising its statutory responsibility with respect to partnership working with RBK to develop shared practice to support the needs of children with SEND at all levels of need including agreed protocols for shared funding between CCG and health providers and with education, children's and adults social care to enable partners to support children and young people as required on the four pathways to adulthood from earliest years.
31. Ensure, by way of provision of the appropriate professional support and of adequate resources, that assessments and reports are prepared in a timely way to support the EHC Plan process.
32. Ensure that there is sufficient Speech, Language and Communication and other Therapies available to support children and young people at early intervention (SEND Support) stages as well as for those with EHC Plans. This therapy support to provide training for teachers and support workers in schools and settings as well as working directly with the children and young people themselves.

It is recommended that the Schools Forum:

33. Considers the value in expanding membership of sub committees or working groups to cover specialist areas (such as High Needs) in order to broaden the base of the Forum's work to include collaborative consideration of existing and emerging issues as they relate to the funding environment.

34. Annually, consider the need and scope for reallocation of funds from the Schools Block into the High Needs Block, in order to make optimum provision for all Kingston children and young people.
35. Facilitate and support all schools' commitment to the recommended whole system approach to the use of the DSG and the application of the DfE recommended levels of balance requirements.

11 List of Officials Interviewed - Evidence Base (parents and members of the public were also interviewed)

| Royal Borough Kingston upon Thames (RBK) | |
|--|--|
| Elizabeth Brandill Pepper | Lead Commissioner for Children’s Services |
| Mike Hirst | Transformation Finance Manager |
| Stephen Taylor | Director Health and Adult Services |
| Councillor Maria Netley | Opposition Spokesperson for Children’s Services |
| Roy Thompson | Interim Chief Executive |
| Councillor Alison Holt | Portfolio Holder for Finance |
| Councillor Kevin Davis | Leader of the Opposition |
| Councillor Diane White | Portfolio Holder Children’s Services including Education |
| Pauline Maddison | Interim Director of Children’s Services |
| Gary Marson | Team Leader Democratic Support |
| Quentin Baker | AD Law and Governance |
| Councillor Christine Stuart | Councillor Chessington South Ward |
| Councillor Liz Green | Leader of the Council |
| Genine Whitehorne | Assistant Director Contracts and Commercial (RBK) |
| Victoria Goddard | Assistant Director (Shared Finance Services), Resources |
| MP’s | |
| Rt Hon Sir Edward Davey MP | Member for Kingston and Surbiton |
| London Councils | |
| John O’Brien Caroline Dawes Clive Grimshaw Guy Ware | London Councils |
| DfE | |

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|--|--|
| Graham Archer | Director of Children's Social Care, Improvement and Learning |
| CCG | |
| Dr Naz Jivani | Chair Kingston CCG |
| Tonia Michaelides | Managing Director, Kingston and Richmond CCG's |
| London Borough Richmond upon Thames | |
| Paul Martin | Chief Executive, London Borough Richmond upon Thames |
| AfC | |
| Ian Dodds | Managing Director |
| Lucy Kourpas | Director of Finance and Resources |
| Jo Sullivan-Lyons | Senior School Improvement Adviser and Strategic Lead for Educational Inclusion |
| Catherine Holt | Annual review Officer for AfC |
| Rob Henderson | Former Director of Children's Services |
| Eamonn Gilbert | Associate Director Commissioning |
| Wendy Bolsover | Service Manager, Special Educational Needs and Disability |
| Ashley Whittaker | Special Projects - Director |
| Matthew Paul | Associate Director, School Place Planning |
| Charis Penfold | Director for Education Services |
| Sarah Cox | EHC Coordinator Assistants Team Leader |
| Helen Underwood | Intelligence Analyst |
| Laura Martin | Tribunals and Disagreement Resolution Manager/Deputy Service Manager (Acting), Special Educational Needs |
| Hannah Webber | Specialist Lead Advisor for Autism and SLCN |
| Sarah Lambe | Principal Educational Psychologist |
| Rob Dembrey | Early Years Consultant SEND |

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|--------------------------|---|
| Eleanor Hughes (Roberts) | Early Years Advisory Team Manager and Early Years Service Deputy |
| Scott Gardner | Senior Management Accountant - SEND |
| Teachers | |
| Mike Gascoigne | Headteacher Tiffin School |
| Sean Maher | Headteacher Richard Challoner School |
| Ben Walsh | Headteacher St Philip's School Chessington |
| Deborah Walls | Executive Headteacher, Coombe Academy |
| Leigh Edser | Headteacher Dysart School |
| Julia James | Headteacher Bedelsford School |
| Ash Ali | Headteacher Chessington School |
| Rachel Seivright Nye | Headteacher, Tolworth Junior and Infants School |