Memorandum for Education Select Committee on the Birmingham Education Commissioner’s and DfE/EFA’s investigations

Contexts

Education Commissioner

1. Representations and evidence received by the Department for Education and media coverage arising from the “Trojan Horse” document (purporting to be a letter setting out the process for Islamists to gain control of schools) have renewed the focus on Birmingham City Council’s (BCC’s) capacity and capability to support schools in the city and to ensure that all children are able to receive a good education.

2. As more individuals come forward to share their experiences, the uncertainty in the local community rises. There is a compelling need to establish a clearer understanding of what has happened and what should happen next.

3. Although the school landscape is varied, with increasing numbers of academies (both those sponsored by chains and those who choose to move away from the maintained sector and set up their own academy trust) and free schools in Birmingham, BCC still retains responsibility for the majority of schools in the city as well as for the safe guarding of all children in all schools. BCC also retains responsibility for the provision of governor services to maintained schools and may provide these to academies and free schools as a bought in service, and may provide these to academies and free schools as a bought in service.

DfE/EFA

4. The Due Diligence and Counter Extremism Division (DDCED) was established in late 2010 to deliver DfE’s commitments in the government’s Prevent strategy, and to carry out financial and non-financial due diligence on those applying to set up free schools. The government is very clear that there is no place for extremists in any school. The Division therefore works to ensure that children and young people are safeguarded from extremists and extremist views in schools or in out-of-school-hours learning, and stop young people from becoming radicalised or acting on extreme views.

5. The Education Funding Agency (EFA) is responsible for monitoring the performance of open academies and free schools, in particular against their funding agreement.

The School Commissioner’s terms of reference

6. To further investigate the allegations and the representations and evidence received to date, and by drawing on a range of further material and evidence, to establish fully what has happened in the schools of concern; to understand the implications for the school system both in
Birmingham and more widely with a view to making recommendations to ensure that schools in Birmingham are well-governed and that Birmingham’s children are adequately safeguarded from exposure to extremist views or radicalisation.

7. The Commissioner’s five priorities are to:

   a) Investigate the allegations and representations and evidence received to date so as to further establish what has happened in the schools of concern, with particular reference to governance;
   b) gather and scrutinise further evidence from a range of sources, also looking beyond governance to the issue of child safeguarding more broadly;
   c) understand the implications for the school system both in BCC and in Birmingham more widely;
   d) identify any necessary actions which should be taken by BCC and more widely; and
   e) understand what capacity might be needed in Birmingham to undertake any necessary actions identified.

DfE/EFA’s terms of reference

8. None. All activities are carried out as part of normal official departmental business.

The statutory responsibilities engaged

Education Commissioner

9. The Secretary of State has the power, under section 497A(4B) of the 1996 Education Act, to direct that a local authority to act in a way in order that the Commissioner can carry out the responsibilities set out in the Terms of Reference. For example, to:

   a. provide such assistance as the Secretary of State or the Commissioner may require;
   b. cooperate with the Commissioner, including, upon his request:
      i. seeking from any school which they maintain information or documents;
      ii. facilitating access by the Commissioner or persons acting for him to the premises of any school which they maintain or any member of staff or pupil at any such school;
   c. on request, allow the Commissioner at all reasonable times, access:
      i. to any premises of the local authority;
      ii. to any document relating to the local authority; and
      iii. to any employee or member of the local authority, which appears to him to be necessary for achieving the purpose and carrying out the responsibilities set out in the Terms of Reference;
   d. provide the Commissioner with such reasonable amenities, services and administrative support as he may reasonably require from time to
time for the carrying out his responsibilities in accordance with the Terms of Reference, including:

i. providing officers’ time or support;
ii. providing office space, meeting rooms or computer facilities;
e. cooperate with government officials in relation to implementing this Direction.

**DfE/EFA**

10. DDCED’s activities are undertaken under normal Department of State business of the DfE. EFA’s investigations into some of the schools were carried out under the terms of the funding agreements with the academy trusts involved.

**Number of staff involved**

11. An SCS-led team of around 14 people working on this full-time or nearly full-time, comprising a mix of civil servants and other expert resource, with additional expertise (eg legal support) as required.

12. Some of the people supporting the Commissioner’s work are drawn from the DDCED, which currently has 20 members of staff. They, among other things, conduct due diligence checks on individuals involved in running schools.

13. Nine members of staff (four from the EFA and five from the DfE itself) with expertise in education, due diligence, finance and compliance were involved in the investigations at the academy trusts involved.

**Mode of operation**

14. The Commissioner is working with BCC to conduct interviews with relevant council officers, staff in (schools implicated in the ‘Trojan Horse’ letter) a range of schools, and individuals who have come forward with information in order to gather evidence relevant to the five priorities in his ToR.

15. The Commissioner is working closely with Ian Kershaw (Independent Adviser), appointed by BCC to conduct an independent review of its discharge of education functions.

16. The Commissioner will provide the Secretary of State a final report of his findings in July.

**Reports or other outputs so far**

17. It is expected that the Commissioner will submit his report to Secretary of State in July. BCC has appointed Ian Kershaw as an Independent Education Advisor to carry out a review of how it has been discharging its statutory education functions. He will report direct to BCC but the department will of course be interested in the findings from this and we
have requested that they share it. It is expected that BCC will publish Mr Kershaw’s report, and the Secretary of State will no doubt be mindful of the findings in considering the appropriate response to the Commissioner’s report.

18. The EFA conducted an investigation into the Park View Education Trust, which includes Park View, Golden Hillock and Nansen schools. EFA also carried out a similar investigation into Oldknow Academy. The EFA’s reports of the reviews were published on 9 June and are available at: https://www.gov.uk/government/publications/review-of-oldknow-academy-trust

**Action following Ofsted reports and advice note to SoS**

19. Ofsted has inspected 21 schools in connection with the ‘Trojan Horse’ allegations. This comprises the inspections of the 15 schools of concern which Secretary of State commissioned in April, in addition to the three Academies Ofsted had already inspected in March. In week commencing 28 April, Ofsted inspected a further three schools on the request of the HMCI. Ofsted published the inspection reports on 9 June.

**DfE/EFA**

20. As a result of Ofsted reports on the 21 schools, and EFA’s reports on their investigations, all published on 9 June, the Secretary of State:

- wrote on 9 June to four schools (Park View, Golden Hillock, Nansen and Oldknow) setting out that he is minded to terminate their funding agreements;
- asked Birmingham Council to review their history on the ‘Trojan Horse’ issue, and directed them to co-operate with Peter Clarke’s investigation;
- asked HMCI to examine the practicalities of allowing any school to be inspected at no notice; and
- asked the DfE’s Permanent Secretary to investigate how the department dealt with warnings both since the formation of the current Government in 2010 and before.

**The timetable for completion**

21. The Commissioner will spend approximately four days a week (over the three-month period from 15 April to 31 July) to gather, analyse the evidence and write his report to the Secretary of State.

22. DfE and EFA activities will be ongoing as part of normal official business.

**Steps taken to ensure co-ordination with other investigations**

23. BCC’s Terms of Reference for Ian Kershaw’s work specifically includes the requirement for him to work with the Commissioner and the department on
the ‘Trojan Horse’ investigations. So far, the Commissioner (Peter Clarke) has had the co-operation of BCC’s Independent Adviser (Ian Kershaw). They are working closely together and sharing relevant information in discharging their respective functions. At BCC’s invitation, Mela Watts, Director of Free Schools, sits as an observer on the Council’s Review Group to which Mr Kershaw is reporting.

24. The department is conscious that some of the issues identified in Professor Le Grand’s report, particularly concerning safeguarding of children are relevant for Peter Clarke’s and Ian Kershaw’s investigations. We are therefore aligning the Education Commissioner’s work with that of the Commissioner for Children’s Social Care in Birmingham in the implementation of Professor Le Grand’s report. Given the potential implications for the wider safeguarding of children, we are keen to learn relevant lessons and ensure that there is a holistic response to any systemic problems that might become apparent.