

Executive Scrutiny Board

22 October 2018

Minute Extract

50/18 Call In of Council Cabinet Decision 94/18

The Board received a late item in relation to the call-in of Council Cabinet decision 94/18 (Special Educational Needs and Disability (SEND) Provision in Derby). The Chair outlined the call-in procedure and invited a signatory of the call-in notice to address the Board.

The signatories raised concerns with regards to the decision to reallocate the funding provided to Central Community Nursery School and Lord Street Nursery School to a single Early Years Inclusion Fund; this included the decommissioning of enhanced resource school places.

It was noted that the signatories agreed with the need to support children with SEND in mainstream settings, but that there remained a need for enhanced resource school places and that the two nurseries in question were centres of excellence.

It was stated that in the opinion of the signatories, the human right to education for early years children with severe disabilities was not being fulfilled, either under the current or proposed arrangements. Furthermore, it was argued that a record of options considered had not been provided in the original report and that relevant issues had not been taken into consideration.

The Board questioned the signatory of the call-in notice, particularly with regard to respect for human rights. It was stated that no alternative plans were in place for early years children and that it was vital that support and intervention for children with SEND took place as soon as possible. It was suggested that expecting nurseries to make their own individual arrangements was not sufficiently specific to fulfil the human right to education.

The Cabinet Member for Children and Young People was invited to address the Board. It was stated that in their opinion, the council's decision-making principles had not been breached.

With regards to respect for human rights, the Cabinet Member refuted that there had been a lack of regard as outlined in the call-in notice, stating that the proposals ensured that parents had options available locally for early years children with SEND and that the two nursery schools in question remained eligible for the Early Years Inclusion Fund. Furthermore, it was stated that the proposals had been consulted upon extensively and a full record of other options considered had been provided as part of Appendix 2 of the original report.

It was argued that the issues highlighted in the call-in notice as not being taken into account had been considered by Council Cabinet. The Cabinet Member rejected the suggestion that the removal of enhanced resource places would result in the two nurseries in question being unable to comply with the SEND Code of Practice.

Moreover, it was suggested that the recommendations from Executive Scrutiny had been carefully considered but were not deemed appropriate in the circumstances; it was stated that this in itself did not constitute a breach of decision making principles. The Cabinet Member concluded by stating that in their opinion the decision was informed, justifiable and lawful.

The Board questioned the Cabinet Member, seeking clarity on whether staff in other early years settings had been trained in the identification and assessment of children with SEND. It was stated that each setting would have a Special Educational Needs Coordinator (SENCO), with the support offered set out in the Graduated Response Strategy also approved by Council Cabinet on 10 October.

Members asked the Cabinet Member whether they were satisfied with the detail on pupil pathways contained within the report and queried whether it was possible to establish an inclusion fund whilst maintaining the enhanced resource places at the two nurseries. The Cabinet Member stated they were satisfied with the report and believed it created a fairer situation across localities.

Further questions were received in relation to respect for human rights, with members of the Board suggesting it was unfair for children under four with SEND to be treated differently to older children. The Cabinet Member again refuted that there had been a lack of regard for human rights, as outlined in the call-in notice.

Clarification was sought on the extent to which briefings were held with officers and Cabinet colleagues following the recommendations made by Executive Scrutiny. The Cabinet Member stated that the decision represented a more transparent and consistent approach to early years SEND provision and confirmed that briefings took place with both officers and other Cabinet Members prior to the meeting on 10 October.

The signatory of the call-in notice and the Cabinet Member were invited to sum-up. The signatory requested that the report was sent back to Council Cabinet, to make specific proposals on how the needs early years children with SEND would be met. The Cabinet Member reaffirmed their opinion that there had been no breach of the decision making principles and that the resolutions made were proportionate, justifiable and lawful.

The Board were invited to make final statements. Some members argued that the council's decision making principles had been breached, citing lack of consultation with those directly impacted by proposals to decommission enhanced resource places. It was suggested that the expertise of practitioners needed to be fully considered in a decision of this magnitude. Moreover, some members felt there had been disregard for the recommendations made by Executive Scrutiny.

The Board agreed that early intervention remained of vital importance, with some members suggesting that there was widespread support for maintaining enhanced resource places at Central Community Nursery School and Lord Street Nursery School.

The Chair thanked members for their contributions and stated that due consideration

had been given to the matters in question. Members of the Board were asked individually to state whether they felt the council's decision making principles had been breached in relation to the three reasons stated in the call-in notice.

The Executive Scrutiny Board resolved:

- **To uphold the call-in of Council Cabinet decision 94/18 on the following grounds:**
 - **That respect for human rights had not been demonstrated**
 - **That a record of options considered and giving reasons for that decision were not provided**
 - **That relevant issues were not taken into consideration**
- **To refer Council Cabinet decision 94/18 to Council Cabinet for reconsideration at the earliest opportunity.**

MINUTES END