

By: Joel Cook – Democratic Services Manager  
To: Scrutiny Committee, 25 January 2023  
Subject: Scrutiny SEND Sub-Committee – Proposed Terms of Reference  
Status: Unrestricted

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Summary: The Scrutiny Committee, at its meeting on 7 December, resolved to establish a Sub-Committee to consider KCC's SEND provision.

The proposed Terms of Reference for this Sub-Committee are appended to this report.

## Recommendation

The Scrutiny Committee is asked to:

- **Approve** the proposed Terms of Reference of the SEND Sub-Committee;
  - **Agree** to review the Sub-Committee after one year.
  - **NOTE** the suggested arrangements for progression, subject to engagement with the Sub-Committee Chair and Spokespeople designate.
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## 1. Introduction

- a) Following the Special Educational Needs and Disability (SEND) Transport Lessons Learned Review report and the Kent local area inspection by Ofsted and the Care Quality Commission (CQC) for children with SEND, the Scrutiny Committee considered that it would be appropriate to establish a dedicated sub-committee to provide targeted overview and scrutiny of SEND provision in the county. At its meeting on 7 December, the Committee confirmed its approval, in principle, to the establishment of the sub-committee subject to detailed arrangements being presented for final agreement. This report and the appended Terms of Reference set out the proposed approach for progression and implementation of the requested sub-committee.
- b) The sub-committee would be a formal committee of the Council and would exercise the functions of the Council's Scrutiny Committee in relation to KCC SEND provision. As a formal committee, it would be subject to all Access to Information regulations and requirements, as set out in legislation and the Constitution. It would meet in

public with published agendas and reports. As with any committee, it would have the ability to consider matters in private where relevant exemption or confidentiality criteria apply.

- c) Future key decisions relating to SEND would continue to follow the Council's decision-making process as set out in the Constitution, including consideration of proposed decisions by the Children's, Young People and Education Cabinet Committee and the analysis of existing management plans by Governance and Audit Committee.

## **2. SEND Sub-Committee Details**

- a) The purpose of the sub-committee would be to undertake normal Scrutiny Committee activity specifically in matters related to the Council's provision of and arrangements for SEND. As per s21 of the Local Government Act 2000, the Scrutiny Committee may set up sub-committees to exercise some of its functions. Members will be familiar with the Select Committee arrangements, which are one example of the Scrutiny sub-committee process. However, it is expected that the work of the sub-committee will be broader in scope and will not work toward the development of subject focused reports. Key outcomes of the sub-committee's work will be engagement with key parties involved in the provision and use of SEND services, the development of recommendations for improvement and the holding to account of the Executive for SEND policy, strategy and delivery.
- b) It is therefore anticipated that the sub-committee will consider a range of key issues linked with the provision of SEND services by the Council. Alongside a scoped initial work programme, agenda planning will be supported on an ongoing basis through the general arrangements allowing for Members to request items within the Scrutiny remit to be placed on the agenda – when specific issues are identified that fall within the SEND scope of the sub-committee, they will be scheduled for consideration at an appropriate meeting – the detailed arrangements of dates, times, required attendees and requested reports to be determined through discussion between the Chair and Spokespeople of the sub-committee, supported by Democratic Services.
- c) Taking account of views expressed and endorsed by the CYPE Cabinet Committee and Scrutiny Committee, it is suggested that the sub-committee could, among other matters, scrutinise progress made against OFSTED reports relating to SEND provision as well as exploring how the relevant circumstances arose. A range of SEND related matters have already been raised at various committee meetings and these will all be scoped as part of initial agenda setting and work planning, taking note of where monitoring or review responsibility has already been allocated (e.g. consideration and monitoring of SEND Transport Review Management Plans by Governance & Audit Committee).
- d) Support for the sub-committee will be provided by Democratic Services who will liaise with external partners, KCC staff and Executive Members as required. As per the debate at the 7 December 2022 Scrutiny Committee meeting, the resources required to support the establishment and operations of the sub-committee will require the suspension of Short Focused Inquiries until further notice.

- e) Where the sub-committee, having considered specific SEND related issues as part of a formal meeting, resolves to make recommendations to the Executive or request further information, this will be progressed via Democratic Services updating the relevant parties and confirming required next steps. It should be emphasised that recommendations put forward by the Scrutiny Committee are a vital part of the local government governance system, however, ultimate responsibility and decision-making for matters within the Executive portfolio (such as SEND services) remain with the Executive. On that basis, where recommendations are put by the Scrutiny Committee, the expectation and requirement are that the Executive explains its response in a transparent manner but it does not have to comply.
- f) It is also important to highlight that general responsibility for commenting and advising on proposed actions by the Executive are, under the Council's current governance structure, the responsibility of the Cabinet Committees. Noting the points highlighted at both CYPE Cabinet Committee and Scrutiny Committee, there was a broad acceptance among Members that it was unsustainable to maintain multiple concurrent reporting routes through different committees on identical issues. Therefore, the expectation is that the sub-committee will consider past activity, progress against previous commitments or statements made by the Executive (e.g. outcome and performance assessments on past Key Decisions in relation SEND) fulfilling the scrutiny functions of the Council, while the Cabinet Committee will fulfil the Executive advisory function and continue to consider and make recommendations on SEND related Executive decisions still to be taken or other future proposals.
- g) These arrangements are without prejudice to the call-in system detailed in legislation and the Constitution. Where call-ins of decisions taken in relation to SEND are deemed valid, they will be considered by the main Scrutiny Committee in accordance with existing constitutional rules. All Members of the Sub-Committee will be notified of any call-ins and will be able to attend the Scrutiny Committee meeting as observers or guests.

### **3. Membership**

- a) Membership of the sub-committee is to be politically proportionate, based on the Council's previously agreed proportionality arrangements for Scrutiny sub-committees. It would therefore comprise 10 Members; 7 Conservative, one Labour, one Liberal Democrat and one Green & Independent. In addition, the sub-committee, when exercising powers in relation to education functions, will include Church Representatives (paragraph 7 of Schedule 1 to the Local Government Act 2000) and Parent Governor Representatives (paragraph 9 Schedule 1 to the 2000 Act) with voting rights. While SEND now sits within the Education and Skills Cabinet portfolio, the details of any item under consideration will determine the application of the above Education representative membership requirements – therefore they should not be expected or required to attend every meeting of the sub-committee.

- b) Recognising views expressed by the Scrutiny Committee, the Membership is to be drawn from all non-Executive Members. This mirrors the requirements for the main Scrutiny Committee whereby all Cabinet Members are prohibited from serving on the Scrutiny Committee and Deputy Cabinet Members are prohibited from serving Select Committees (by extension any relevant Scrutiny Sub-Committee) that will consider matters within their Executive Portfolio – in this case, SEND.
- c) Substitutions, noting the above eligibility requirements, would be permitted in accordance with normal committee arrangements. As with all formal committee meetings, all Members of the authority are entitled, under s16.21 of the Constitution, to attend and observe meetings of the sub-committee. In addition, where Members not serving as ordinary or substitute members of the Committee wish to participate, they should contact the Chair (and Democratic Services for meeting preparation purposes) in advance of the meeting, as per s16.21 of the Constitution.
- d) There would be a standing invitation to up to two Kent PACT representatives per meeting to attend as observers, with an expectation of participation being permitted depending on the issues under consideration.

#### **4. Conclusion**

- a) Taking account of the comments and input from Members at various committees, the above proposals have been developed to provide a measured approach to delivering focused Scrutiny activity for the SEND portfolio by making use of and highlighting the significant statutory power afforded to Scrutiny Committees. It will offer a clear identified forum for required formal Member consideration of key issues and risk areas relating to SEND, thus minimising duplication across Scrutiny and Cabinet Committee activity. The annual reporting of the sub-committee's work to the Scrutiny Committee will provide an opportunity for that Committee to consider and highlight, where it deems appropriate, any significant recommendations or risk issues identified by the sub-committee.
- b) Should the Scrutiny Committee agree to the progression and implementation of the sub-committee in line with the above arrangements, the date for the inaugural meeting of the SEND Sub-Committee would be proposed for late February. This would both allow for the confirmation of the normal committee arrangements such as election of Chair and provide an opportunity to formalise any provisional workplans developed through Member engagement prior to the meeting. The Sub-Committee would be expected to meet as and when relevant SEND items are identified but a schedule of planned sessions would be organised to accommodate forward planning of a manageable work programme – final details of this would be subject to determination by the Chair of the sub-committee, in consultation with the spokespeople.

#### **5. Appendix**

SEND Sub-Committee – terms of reference.

## 6. Recommendation

The Scrutiny Committee is asked to:

- **Approve** the proposed Terms of Reference of the SEND Sub-Committee;
- **Agree** to review the Sub-Committee after one year.
- **NOTE** the suggested arrangements for progression, subject to engagement with the Sub-Committee Chair and Spokespeople designate.

### Contact Details

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