

2016/17 audit of The City of Edinburgh Council

Report on Edinburgh schools



ACCOUNTS COMMISSION 

Prepared by Audit Scotland
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Commission findings

- 1. The Commission accepts the Controller of Audit's report on a matter arising from the 2016/17 audit of City of Edinburgh Council. The report covers matters related to the large scale closure of schools in Edinburgh following the collapse of a section of brickwork wall at Oxgangs Primary School in January 2016.**
- 2. We note the conclusion of the Controller that there were serious faults in the procurement, design and construction of the schools covered by the contract in question. We also note his agreement with the external auditor's conclusion that the council responded in a fast, transparent and comprehensive way.**
- 3. We note that the council subsequently identified similar faults to those identified in this case elsewhere in its estate. This signifies the importance of all councils in Scotland undertaking regular, comprehensive structural risk assessments and inspections on public buildings to ensure the safety of service users.**
- 4. We are aware of the substantial amount of learning already taken forward as a result of various inquiries and reviews, most notably the report of the independent inquiry led by Professor John Cole CBE. We want to underline the lessons to be learned by every council, especially given in this case the significant impact on service users. The auditor noted that there were fundamental and widespread failures of quality assurance processes of various contractors and sub-contractors involved in the construction of these schools. It is vital, therefore, that councils, as clients in these contracts, ensure appropriate scrutiny and oversight. Such arrangements include ensuring there is a clear understanding of the roles and responsibilities of all parties involved in such control and assurance, including the building standards and clerk of works functions.**
- 5. In a wider sense, we have reported in other audit work on the resource pressures on councils' regulatory services such as building standards. While there is no evidence that lack of resources played a part in this case, we underline the need for councils to ensure that standards of quality and service in these areas and access to appropriate expertise is maintained. Public confidence in such vital services is crucial, and we will maintain an interest in how such services are sustained.**

Background

1. The Code of Audit Practice requires auditors at the conclusion of each year's audit to produce a report summarising the significant matters arising from the audit. For local authorities, these reports are addressed to elected members and the Controller of Audit.
2. I have received the annual audit report for City of Edinburgh Council for 2016/17 from Scott-Moncrieff, the appointed auditor. It provides an update on a number of significant matters in which the Accounts Commission has an interest. One area relates to the large scale closure of schools in Edinburgh following the collapse of a section of brickwork wall at Oxgangs Primary School. I have therefore decided to use the reporting powers available to me to bring this issue and subsequent developments to the Commission's attention.
3. Oxgangs Primary School was one of the 17 schools included within a Public Private Partnership (PPP) agreement entered into by the council with Edinburgh Schools Partnership Limited. The collapse of the wall occurred at an early hour in January 2016 and there were no injuries. However, in different circumstances, considerable injuries or even fatalities may have resulted. Subsequent surveys of the estate covered by this PPP agreement resulted in the temporary closure of all 17 schools and the need to put in place temporary arrangements for educating over 8,300 primary, secondary and nursery pupils.
4. This report provides an update on the matters highlighted in the auditor's annual audit report, an extract of which is included as Appendix 1.

Annual audit report 2016/17

5. The auditor's annual audit report on the City of Edinburgh Council was considered by the Council's Governance, Risk and Best Value Committee on 26 September 2017 and by the full council on 26 October 2017. The report has also been published on Audit Scotland's website.
6. I would draw the Commission's attention to the following points (in relation to the issues) arising in relation to the Oxgangs Primary School incident.

Action by the City of Edinburgh Council

7. In their report, the auditors summarised the findings of the independent inquiry undertaken by Professor John Cole CBE into matters relating to the closure of Edinburgh schools. The Cole report was published in early 2017 and constitutes a comprehensive review of:
 - the background to the contract and the Oxgangs incident, the construction of the school buildings, the management and quality assurance processes involved and the subsequent handling of the incident by the council. It also included specific and wider recommendations coming out from the findings of the inquiry and made 40 recommendations which the council has been addressing since the report was published.

Progress in addressing the recommendations was reported to the Corporate Policy and Strategy Committee of the council in December 2017. The Committee noted the positive progress that was being made and the intention to report further within the next 12 months.

8. The council has continued its risk based programme of inspections of other council buildings to identify whether similar issues exist across the council property portfolio. At the end of January 2018, of the 154 properties where assessments had been completed, 19 properties had been identified as having issues similar to those identified at Oxgangs School. Remedial work to address the defects identified on these buildings (which include schools, libraries, community centres and care homes) is ongoing. The exercise to review all of those properties identified in the first tranche of risk assessments, ie. council buildings and extensions constructed since 1995, will be completed by March 2018. Based on the findings of the tranche one investigations, a workshop was held in January 2018 to inform the approach to addressing the structural investigations into older council properties. The 19 properties identified with defects included those financed through the traditional publicly funded route and those financed through a Public Private Partnership (PPP) and Non-Profit Distributing (NPD) route.
9. The Cole report identified that a number of schools constructed under this PPP contract had opened without completion certificates (or their equivalent) being issued; which constitutes a breach of the statutory requirements for the occupation of new buildings. Completion certificates or their equivalent remain outstanding for two schools. I understand that relevant applications have now been submitted by Edinburgh Schools Partnership Limited and the council is considering these.
10. During the investigations following the incident at Oxgangs, a number of fire-stopping defects were identified in the schools covered by this contract. Remedial work has been undertaken and the council is working with an independent fire and risk contractor to ensure all remedial work is compliant with the appropriate fire regulations. Edinburgh Schools Partnership Limited has confirmed that no immediate risks remain in relation to the fire defects identified. The council and its own independent fire safety expert agree with this assessment. Checks are being undertaken on other PPP schools and no immediate fire safety risks have been identified. This assessment has also been confirmed by the council's fire safety expert.
11. With regard to the additional costs incurred by the council as a result of the Oxgangs incident, the final settlement agreement has yet to be signed. The agreement identifies a final position of £5.176 million of unitary charges being withheld by the council to reflect the unavailability of schools. This compares with £3.1 million of direct costs incurred by the council in relation to the Oxgangs incident.
12. The council has been proactive in sharing information on the issues identified as a result of the Oxgangs Primary School incident, including the risk assessment and approach taken to address the failings identified across the schools and wider council estate. Information has been passed to: Scottish Futures Trust (SFT), the Scottish Government, other local authorities

and relevant user groups. In addition, discussions and presentations have been made to relevant professional groups and associations to share the lessons learned.

Related developments

Action by the Scottish Parliament

13. The Scottish Parliament's Education and Skills Committee ('the committee') undertook a short inquiry on School Infrastructure in June 2017 and published [a report on its findings](#) in October 2017. The report made a number of recommendations to the Scottish Government and other relevant bodies, including the Scottish Funding Council, the Scottish Council of Independent Schools, Colleges Scotland and Universities Scotland. The recommendations to the Scottish Government focused on the need to ensure devolved public bodies studied the Cole Report and review their own estates in light of the findings, and reviewing the Scottish Government's Construction Manual. The committee also requested that the Scottish Government keep it informed of the work the government was undertaking with the construction industry and highlighted a number of areas that should be considered within the context of that work. These areas included public bodies having access to appropriate expertise and the need to employ clerks of works on capital projects. The committee also made recommendations on sharing information on building faults and on training and qualifications.
14. The Parliament's Local Government and Communities committee also published [a report on Building Regulations and Fire Safety in Scotland in October 2017](#). While the committee's initial work was focused on building standards following on from complaints to MSPs from a number of individuals relating to private house builders, both the Cole Report and the fire at Grenfell Tower in London led to the committee widening its scrutiny. The committee noted that the recommendations of the Cole Report relating to school buildings had been considered as part of the Education and Skills committee's inquiry. The committee held a debate in the Parliament's chamber on its report on 23 November and the Minister for Local Government and Housing responded to the committee's report recommendations in late December 2017.

Action by the Scottish Government

15. The [Minister's November 2017 response](#) to the Education and Skills Committee's School Infrastructure report set out the actions taken by the Scottish Government since the time of the initial Oxfords incident, with a particular focus on actions after publication of the Cole report. Key actions noted in the response were:
 - SFT had highlighted the findings of the Cole Report to chief executives of public bodies shortly after its publication, drawing attention to the need to consider approaches to assurance in light of the report.
 - The Scottish Government was engaging with UK Government and other devolved administrations.

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- Construction Scotland had formed a working group to address the key issues identified in the Cole Report.
 - The Scottish Government's Construction Manual was being updated to include, among other things, the lessons from the Cole Report.
 - Building Standards would undertake research to underpin a review of the current methods of checking compliance with building regulations on projects.
 - Based on detailed responses received from all local authorities, the Scottish Government was reassured that local authorities had taken all steps necessary to ensure the fire safety of their schools.
16. Both the Edinburgh schools incident and the Grenfell tragedy have led to Scottish ministers initiating a number of actions. A [Ministerial Working Group](#) is overseeing a review of building and fire safety regulatory frameworks, and any other relevant matters. The Ministerial Working Group has established two [building standards Review Panels](#):
- Review Panel on Building Standards (Compliance and Enforcement) in Scotland – the panel is chaired by Professor John Cole and predominantly involves representatives from the building and construction sector in Scotland. The panel met for the first time in late November 2017.
 - Review Panel on Building Standards (Fire Safety) in Scotland – the panel is chaired by Paul Stollard and involves representatives from both the public and private sectors in Scotland, as well as representatives from other countries, including the other UK devolved administrations. The panel met for the first time in late October 2017.

Other developments

17. I would also draw the commission's attention to two other developments that, while not directly related to the Oxfords Primary School incident, sit within the same broad service area:
- Across the wider council estate there has been a history of under investment. The council has recognised the poor condition of many council buildings and the significant levels of backlog maintenance required. The council's Finance and Resources Committee received a condition survey report in January 2018, which identified a requirement to spend £153 million over the next five years to address these issues. The council has allocated additional revenue funding, totalling around £35 million, and additional capital funding, totalling £48.9 million, to an existing allocation of £70 million, to address the necessary work over five years, starting in 2018/19.
 - Over the last year, the Scottish Government's Building Standards Division has undertaken audit work on the council's building standards service. The Scottish Government is in ongoing discussions with the council about the findings of the audit work. The council will look to align any relevant findings with improvement plans arising from both its own work on the school buildings issue and the pieces of work being coordinated by the Scottish Government's review groups.

The auditors will consider the council's progress on both of these issues as part of their ongoing monitoring.

Conclusion

18. The incident at Oxfords Primary Schools revealed serious faults in the procurement, design and construction of the PPP schools covered by this contract. These faults could have had led to life-threatening consequences. In responding to the incident, I agree with the auditors' conclusion that the council responded in a fast, transparent and comprehensive way to the challenges it faced.
19. Defects have been identified in other schools and buildings within the council estate as a result of the work undertaken in response to the Oxfords incident. These defects are being addressed by the council. This incident highlights the importance of regular, comprehensive structural risk assessments and inspections to be undertaken on public buildings to ensure defects are identified and remedied.

Appendix 1

Extract from the City of Edinburgh Council 2016/17 Annual Audit Report to the Council and Controller of Audit

Edinburgh Schools

In 2001, the council entered into a Public Private Partnership (known as PPP) for the provision of school buildings, maintenance and other facilities with Edinburgh Schools Partnership Limited (ESP). This arrangement was subsequently supplemented by a further agreement in April 2004, requiring ESP either to replace or substantially renovate ten primary, five secondary and two special schools, together with one close support unit and a community wing, and to maintain these schools to a set standard.

On the morning of Friday 29 January 2016 a section of brickwork wall at Oxgangs Primary School (one of the PPP schools), weighing approximately 9 tons, collapsed onto the pathway below. Due to the early hour, no one was in the vicinity of the wall that collapsed and no injuries resulted. However in slightly different circumstances this event could have resulted in considerable injury or even fatalities. Subsequent structural surveys undertaken across the remainder of the PPP estate resulted in the temporary closure of a total of 17 schools and two other facilities in early April, with the last schools not reopening until August.

Managing the Emergency School Closures

The need for the temporary closure of schools was identified three days before the schools were due to return from Easter Holidays. The council's incident management team quickly put in place a communications strategy and parents, stakeholders and the media were informed about the closures. The Communities and Families department, working with parents, pupils, head teachers and schools staff, the PPP contractors and other public sector agencies arranged temporary arrangements to be put in place for over 8,300 primary, secondary and nursery pupils. This was a huge undertaking which involved a relocation strategy across alternative accommodation and the transportation of pupils across 61 alternative schools.

Responsibility for rectifying the issues at Oxgangs Primary School and the issues subsequently identified across the PPP estate lay with ESP. The council agreed that an independent inquiry should be held into matters relating to the closure of Edinburgh schools. The council appointed Professor John Cole CBE, to lead the independent inquiry. The report of the inquiry was published in February 2017 and concluded that:

- the council had a sound rationale for their decision to adopt the PPP methodology for the funding and procurement of the PPP schools
- the primary cause of the collapse of the wall at Oxgangs school was poor quality construction in the building of the wall and the failure to achieve the required building requirements in relation to the wall ties particularly in the outer leaf of the cavity wall. The

issues were ultimately the responsibility of the design and build contractor in charge of the site

- there were fundamental and widespread failures of the quality assurance processes of the various contractors and sub-contractors, who built or oversaw the building of the PPP schools
- an appropriate level of independent scrutiny over the PPP contract by the council was missing
- the council failed to appreciate the demands of the PPP process and as a result under-resourced the team that represented or advised the client side in the PPP contract relationship
- there was a misunderstanding within the council of the role of Building Standards in the monitoring of construction quality.

The decision to close all 17 PPP schools required the council to relocate over 8,300 pupils within the shortest possible time. Within 12 days of this decision, alternative teaching accommodation, transport and catering arrangements had been put in place for all pupils. The inquiry concluded that this was a remarkable feat to have achieved within an extremely short time.

The inquiry report also identified a number of specific or wider lessons which could be learnt by the council, the construction industry and public bodies generally.

The council has agreed and is implementing a detailed action plan which addresses the 40 separate recommendations included in the report. The council's response to the action plan includes: the resourcing of full-time clerks of works on all projects with a value in excess of £2m, greater emphasis being applied to ensure procured design and construction services are quality checked and a recognition of the limitations of true risk transfer on PPP/Design Build Facilities Management type projects notably in relation to reputational risk and disruption to services.

Since the PPP problems the council has carried out a risk-based assessment on properties on the council estate. The risk assessment has led to a programme of inspections to cover whether similar issues existed on any other council properties. The inspections are currently in progress but, to date, five properties have been identified which have similar problems and work has been undertaken to remedy these.

Additional costs incurred by the council as a result of PPP incident

Under the PPP contract, the council pays ESP a monthly "unitary a charge" which covers both the provision of facilities management services and reimbursement of capital expenditure and interest associated with upfront construction. The temporary closure of all schools under the PPP contract led to the unavailability clauses coming into effect. This resulted in unitary charge amounting to £5.36 million being withheld by the council. A final negotiated settlement has been agreed in principle with ESP. As a result there will not be any overall direct cost to the council from this incident.

Overall conclusion

Having been faced with a very serious incident impacting on a large number of pupils across a significant number of schools the council responded in a fast, transparent and comprehensive way to the challenges it faced.

The wall collapse at Oxfords Primary School revealed very serious defects in the construction of the school and other schools under the PPP contract. Other similar defects have been found in a small number of other council buildings. The Cole inquiry identified that the primary failure to achieve the required building requirements lay with the contractor in charge of the site. However there were significant failings by the council in the scrutiny and quality assurance arrangements put in place during the construction of these schools. Wider lessons were also highlighted for the construction industry and public sector.

Source: Scott-Moncrieff report

2016/17 audit of The City of Edinburgh Council

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