**Schools Forum – 19th June 2019**

**DSG HIGH NEEDS Deficit Financial Recovery PLan**

1. **Introduction**
	1. In the financial year 2018-19, the local authority (LA) reported a total overspend of £4.139m on the DSG arising primarily from pressure on High Needs funding. The overspend on the High Needs Block alone was £3.688m.
	2. The original 2018-19 DSG grant regulations required all local authorities to submit a recovery plan if their overspend was more than 2% of the total DSG grant in any year.
	3. The Department for Education (DfE) and the Education Skills Funding Agency (ESFA) noted that over the last two years, more LAs were reporting a cumulative DSG deficits. They announced in July 2018 that they would consult on changing the DSG from 2018-19 onwards.
	4. The ESFA published the consultation outcome in March 2019, and the new regulations require LAs to submit recovery plans if they go into a 1% overall deficit. The 1% is calculated based on the latest published DSG allocations for 2018-19, gross of recoupment, as at the end of the 2018-19 financial year.
	5. This paper:
* Identifies increased pressures on the High Needs Budget.
* Outlines the Council’s plan for preparing a DSG Deficit Recovery Plan.
1. **Pressures on High Needs Budget**
	1. National Issues on SEND and SEND Funding

The Department for Education has two key priorities for SEND:-

* Embed the SEND reforms, to deliver the wider benefits, culture and improved experiences envisaged by the 2014 Act.
* Ensure the services and provision in local areas can meet special educational needs.
	1. Identified Pressures on High Needs Budgets Across England

The DfE have identified that there a several reasons why local authorities across England are experiencing increased pressure on their High Needs Budgets. These are:-

* An increase in the demand for EHCPs.
* Increasing demand for special school and independent school places.
* Less children with EHCPs have their needs met in mainstream school.
* Parental preference and statutory right to appeal to SEND Tribunal.
* Growing pressure for provision for young people aged 16-25.
* Pressure on wider Local Authority budgets (e.g. social care, SEN transport).
	1. Increase in the Demand for EHCPs – the National Picture

There has been an increase in the total number of EHCPs maintained by English Local Authorities:

* 11.3% between 2016 and 2018.
* 16.8% more new EHC plans issued in 2018 than in 2017.
* Local Authorities agree to more EHC needs assessments following requests - 78% agreed nationally.
* In 2017-18, 93.3% of all EHC needs assessments led to an EHC plan.
* 2017 has the highest number of EHC plans held by LAs – 319,819 (2.9% of 5-16 population)

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Table 1 – Comparison no. of EHCPs by Year and Age Group in England

|  |  |
| --- | --- |
| **Area** | **% Change in EHCPs held from 2017 to 2018** |
|  **ENGLAND** | **+11.3%** |
|  North East | +9.8% |
|  North West | +11.0% |
|  Yorkshire and Humber | +12.5% |
|  East Midlands | +10.4% |
|  West Midlands | +12.6% |
|  East | +11.1% |
|  London | +11.2% |
|  South East | +11.8% |
|  South West | +10.3% |
| **Medway** | **+10.7%** |

Table 2 – Comparison of growth in EHCPs held by region 2017-18

* 1. Increasing demand for special school and independent school places.

The Children and Families Act 2014 secures the general presumption in law of mainstream education in relation to decisions about where children and young people with SEN should be educated, and the Equality Act 2010 provides protection from discrimination for disabled people.

Nationally there has been an increase in the demand for special school and independent school places as less children with EHCPs have their needs met in mainstream school.

This may be due to an increase in the complexity of needs of children but it is also suggested that the pressure on mainstream school budgets results in schools feeling less able to support children who have EHCPs.

The cost of this trend is estimated at an increase of £277m over 4 years across England.

Table 3 - Changing Patterns of SEN Placements in England

* 1. Less children with EHCPs have their needs met in mainstream school

Damian Hinds, Secretary of State for Education, in his speech at to the Association of Directors of Children’s Services conference, 5 July 2018 said:-

“*We know there has been a steady movement of children with special educational needs out of mainstream schools and into specialist provision, alternative provision and home education. At the same time, rates of exclusion have begun to rise*.

*This is not okay. SEND pupils are not someone else’s problem. Every school is a school for pupils with SEND; and every teacher is a teacher of SEND pupils. And all schools and colleges – alongside central and local government – have a level of responsibility here, it cannot just be left to a few*.”

*I am clear that specialist provision can be the right choice for those with more complex needs. But mainstream schools and colleges – with the right support and training – should also be able to offer strong support for many more children and young people with EHC plans, as well as high quality SEN Support for those without plans. So I want to both equip and incentivise schools to do better for children and young people with SEND”*

In Medway 36.7% of children Education, Health and Care Plans are taught in mainstream classes compared with the national average of 46.7%. This ranks

Medway 122 out of 151 for inclusion nationally, and 3rd from the bottom compared with our statistical neighbours.

As a consequence of this, more children and young people who have an EHCP are placed in resourced provisions, special school and independent school places. This puts pressure on special school places and the High Needs Budget.

* 1. Parental preference and statutory right to appeal to SEND Tribunal.

Parents, who lack confidence in mainstream education for their children who have EHCPs seek the Tribunals agreement to special or independent provision, and these cases are very difficult for local authorities to defend. The SEND Reforms and the weight given to parental preference at SEND Tribunals and Judicial Reviews reduces the ability of local authorities to maintain a threshold for undertaking EHCP assessments or control or predict their use of specialist and independent provision.

1. **Growing pressure for provision for young people aged 16-25.**
	1. The SEND reforms in 2014 brought a large new cohort of young people into the remit of the high needs block as EHCPs were extended to include young people up to the age of 25. Young people over the age of 16 constitute 23% of all EHCPs nationally and 17% of the high needs expenditure.
	2. Medway currently supports 708 young people aged 16-25 who have EHCPs and this represents 30% of the plans maintained by Medway.
2. **High Needs Budget Sufficiency**
	1. The National Picture

As part of the research completed by the ISOS Partnership for their report “Have We Reached Tipping Point? Trends for Children and Young People with SEND in England”, a survey of 93 English LAs was completed. It concluded that the gap between the high needs block allocation and their high needs expenditure rose from £123m in 2015-16 to £287m in 2018-19. Over the same period the average expenditure by local authority has increased from £38m to £45m.

Individual local authorities reported an average net deficit by the end of 2018-19 will stand at £3.4m with the largest being reported at £21.3m.

The percentage of LAs reporting a High Needs Funding deficit has risen from 34% in 2015-16 to 74% in 2018-19.

The local authorities that reported they were not in deficit in 2018-19 stated that they predicted they will reach “tipping point” over the next two years.

* 1. High Needs Budget Sufficiency in South East England

As part of the SE19 Network partnership, that includes all 19 local authorities in the south east region of England, an annual questionnaire was completed to assist with benchmarking. The questionnaire asked all 19 South East Local Authorities if they were overspent on their High Needs Budget and, if so, by what percentage.

**In 2017-18 :-**

10 of the 15 Local Authorities in the South East Region who declared their position said that they had overspent their High Needs Budgets. The overspends reported ranged from 1.2% to 11%.

**In 2018-19 :-**

15 of the 17 Local Authorities in the South East Region who declared their position said that they had overspent their High Needs Budgets. The overspends reported ranged from 3% to 21%. This indicates that the vast majority of local authorities in south east England are struggling to meet their statutory duties towards SEND pupils within their allocated High Needs Budgets and that there are more LAs reporting an overspend of larger percentages in 2018-19 than during the last financial year.

There is growing evidence that the government is recognising a possible funding gap. In December 2018, the Government announced:

* an additional £250 million of high needs funding – £125 million for 2018-19 and 2019-20; this equates to an additional £677,199 in each year for Medway;
* a further £100 million top-up to the Special Provision Capital Fund for local
* authorities in 2019-20 – Medway’s additional allocation is yet to be confirmed

In addition to this, a package of long-term research and analysis has been commissioned from SEN Futures to provide evidence for the government on the impact of current SEN provision on children and young people’s outcomes, and to assess the value for money of SEN provision in England.

In May 2019 the DfE announced a “Call for Evidence on SEND Funding”. In this announcement they DfE stated that “*they aware of concerns about the funding allocated for young people with special educational needs and disabilities (SEND) in England, and are looking carefully at how much overall funding will be needed in future years”.*

This call for evidence is an invitation to consider other aspects of the funding arrangements that:

* could be changed to help local authorities, schools, colleges and other providers in their support for young people with SEND, those requiring alternative provision (AP) and those at risk of exclusion from school, and
* may not be helping us get the most value from the resources available.

This consultation closes in July 2019.

These announcements and the additional funding are welcome but in the short term do not solve our current deficit on the DSG.

1. **Pressures on High Needs Budget in Medway.**
	1. In line with the national picture, Medway has significant pressure on its High Needs Budget. There are four main reasons for this including:-
* increase in the demand for EHCPs
* Top-Up Funding for children and young people who do not have an EHCP
* Increase in demand for places for children who have been permanently excluded from school
* Lower than national number of children with EHCPs being supported in mainstream schools
* Lack of special school places in Medway resulting in increase demand for independent school placed and out of area places.
	1. Increase in the Demand for EHCPs in Medway Council
	2. Table 3 shows the actual and predicted number of EHCPs maintained by Medway Council. This shows an average increase of 9.6% since 2016 but an increase of 11.6% between March 2018 and March 2019. If we conservatively estimate that we will experience an increase in demand of 9.6% over the next 2 years, we will see an increase of 497 EHCPs.

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| --- | --- | --- | --- | --- | --- | --- |
| As at March 31st each year | **2016****(actual)** | **2017****(actual)** | **2018** **(actual)** | **2019 (actual)** | **2020****(forecast)** | **2021****(forecast)** |
| Under Age 5 | 70 | 56 | 62 | 70 | 78 | 85 |
| Aged 5-10 | 556 | 564 | 561 | 684 | 723 | 793 |
| Aged 11-15 | 730 | 750 | 768 | 873 | 982 | 1076 |
| Aged 16-19 | 382 | 467 | 602 | 590 | 672 | 736 |
| Aged 20-25 | 8 | 39 | 83 | 118 | 129 | 142 |
| **Total** | **1746** | **1876** | **2076** | **2335** | **2584** | **2832** |

Table 3 – Growth in EHCPs in Medway by Year and Age Group

* 1. It is anticipated that the growth in the number of EHCPs Medway maintains will add the following pressure to the High Needs Budgets.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year**  | **Estimated No of EHCPs at end of financial year (based on an average 9.6% increase)** | **Increase Number of EHCP from previous financial year** | **Additional pressure on High Needs Budget at average cost of £10k per EHCP** | **Cumulative pressure on High Needs Budget** |
| **2019-20** | 2584 | 248 | £2,480,000 | £2,480,000 |
| **2020-21** | 2832 | 248 | £2,480,000 | £4,960,000 |
| **2021-22** | 3103 | 272 | £2,720,000 | £7,680,000 |
| **2022-23** | 3400 | 297 | £2,970,000 | £10,650,000 |
| **2023-24** | 3726 | 326 | £3,260,000 | £13,910,000 |

Table 4 – If an average 9.6% increase in EHCP occurs over next 5 years

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year**  | **Estimated No of EHCPs at end of financial year (based on an average 11.6% increase)** | **Increase Number of EHCP from previous financial year** | **Additional pressure on High Needs Budget at average cost of £10k per EHCP** | **Cumulative pressure on High Needs Budget** |
| **2019-20** | 2584 | 248 | £2,480,000 | £2,480,000 |
| **2020-21** | 2884 | 300 | £3,000,000 | £5,480,000 |
| **2021-22** | 3218 | 334 | £3,340,000 | £8,820,000 |
| **2022-23** | 3591 | 373 | £3,730,000 | £12,550,000 |
| **2023-24** | 4008 | 417 | £4,170,000 | £16,720,000 |

Table 5 – if an average 11.6% increase in EHCPs occurs over next 5 years

* 1. These figures assume an average per EHCP support cost of £10k. The reality is that this will be significantly higher as more children are placed in independent schools due to the lack of sufficient special school places in Medway and the low numbers of children in Medway who have their needs met at mainstream school.
	2. Funding for Children who have High Needs but no EHCP

In 2014, Medway started to offer funding to schools and colleges for pupils who have SEN Needs but who do not have an EHCP. This was done with the aim to reduce the number of EHCP requests and assessments received by the LA from schools and colleges.

The number of EHCPs maintained by Medway has grown by approx. 1000 since 2014.

There is a statutory duty on the LA to fund support for students who have high needs, however, most LAs meet this duty via EHCP funding and only fund children who do not have an EHCP in exceptional cases.

In 2018-19, a total of 331 pupils who do not have an EHCP were supported at a cost of £833k.

The average amount of Top-Up Funding awarded to a pupil in 2018/19 was £1,258 for a 6 month period. The majority of these pupils had repeated periods of 6 month high needs funding.

The SEN Team currently receive approximately 10 applications for top-up funding for pupils who do not have an EHCP from schools per week.

* 1. Pupil Referral Units

Whilst there is a predicted decrease in the number of children who are permanently excluded from Medway Schools in 2018-19, there are still a high number excluded and these children are places in pupil referral units or alternative provision often independent provision. A recent review of alternative provision and PRUs in Medway recommended an increase in the number of PRU places available and a change in the way children at risk of exclusion are supported.

Medway currently funds 52 places at The Rowans and 54 places at Will Adams Pupil Referral Units at a cost of £1.1m on place funding and £1.4m spent on Element 3 funding.

The number of places at The Rowans has increased by 13 for 2019-20 increasing the place funding cost by further £130k.

No top-up has currently been agreed for additional places at The Rowans but if 13 x £12k were agreed = £156k additional pressure giving a total additional pressure on PRU places of £286k.

* 1. Lower than national number of children with EHCPs being supported in mainstream schools

The ISOS report states that a range of recent national policy decisions have resulted in an environment in which mainstream schools are not rewarded or incentivised for being inclusive. The accountable regime in place currently i.e. progress 8, inspection focus and changes to the national curriculum have not rewarded inclusive schools and have, arguably incentivised schools to take a less inclusive stance.

In Medway 36.7% of children with EHCPs are taught in mainstream classes compared with the national average of 46.7%. This ranks Medway 122 out of 151 for inclusion nationally, and 3rd from the bottom compared with our statistical neighbours.

As a consequence of this, more children and young people who have an EHCP in Medway are placed in resourced provisions, special school and independent school places.

* 1. Lack of special school places in Medway resulting in increased demand for independent school placed and out of area places.

The unit cost of supporting children with EHCPs is rising, primarily because of the trend for children who have EHCPs to be educated in more specialist forms of provision as children who have SEND move out of mainstream provision into special schools.

There are five special schools in Medway. They are all full and most are operating over their commissioned place numbers. The constraints on capital and the limitations on creating new provision locally increases the reliance on independent school placements.

Medway submitted a bid for a new special free school in autumn 2018 and this was not agreed by the DfE.

1. **DSG Deficit Recovery Plan**
	1. Medway Council is required to submit a DSG Deficit Recovery Plan.
* Recovery plans are due to be submitted to the ESFA in by 30 June 2019.
* Local authorities that have an overall cumulative DSG deficit of 1% or more at the end of the 2018 to 2019 financial year are required to submit a Recovery Plan.
* The DSG Deficit Financial Recovery plan should look to bring the overall DSG account into balance within a maximum of three years (this could be extended on an exception basis).
* As DSG funding is ring-fenced, there is no requirement for local authorities to top-up the grant from general funding or from non-ring-fenced revenue reserves.
* The recovery plan will include evidence explaining the reasons for the deficit, the pressures on the budgets and the plans to be put in place to address these.
* The support from Schools Forum has to be noted in the plan.
	1. Current position on the DSG
* The current position is that we are have a deficit on the DSG of £4.139m at the 2018-19 year end. This would represent approximately 1.98% of our total allocation.
* The current position on the high needs block is that we have a deficit of £3.688m at the 2018-19 year end. This would represent approximately 10% of our total allocation.
* This means that a DSG Recovery Plan will need to be formally submitted to the DfE by 30th June 2019.
* 19/20 projections indicate further in-year overspend similar to 18/19.
1. **The Plan to Address the DSG Deficit**
	1. Actions already being taken:-
* A Joint SEND Strategy is being consulted on. This has been led by the multi-agency SEND Improvement Board. The actions within the strategy and accompanying plan underpin our Inclusion Strategy and are aimed at increasing the inclusion of children with SEND locally, reducing the number of children placed in out of area schools. This would reduce the pressure on the high needs budget.
* A School Brainstorming Meeting was held in June 2019 with a view to engaging schools in developing alternative approaches to tackling the high needs pressure. A full consultation will be conducted later in the year.
* We have been more rigorous in our information gathering and decision making when we receive a request for an EHCP and this has helped us to slightly reduce the number of requests that we agree for assessment. If we have evidence that the child does not require an EHCP we are then working intensively with the school and parents to ensure the child is receiving appropriate support under SEN Support levels. The number of assessments agreed has reduced.
* We have initiated a number of projects with mainstream schools to encourage the inclusion of children who have special needs and will be working on an “Ordinarily Available” document that will describe clearly what support a child with SEND can expect to receive in a mainstream school.
* We review the outreach service contracts to ensure we have value for money.
* We have worked with providers to increase the offer of Supported Internships for young people from 8 in 2017-18 to 32 2019-20. Supported Internships are taken up by young people who may have gone to specialist colleges and are a more effective and efficient way of supporting a young person into work. This reduces our costs when providing places for 19-25 year olds.
* We have reviewed the non-direct support costs from the High Needs Budget and have attributed a fairer allocations of these costs to other council budgets to reduce some of HN Budget pressure. This has resulted in a cost avoidance of £1.8m in one year and a total of £5.4m over 3 years.
* We have obtained agreement from the Schools Forum to a transfer of £0.855mfrom schools block to the High Needs Budget.
* We continue to work with social care and health partners to ensure that placements are joint funded where appropriate. We have developed a template to ensure we obtain clearer advice for EHCPs from health colleagues.
* We have recently reviewed the costed provision maps we use to calculate top-up/Element 3 funding to ensure that we are offering fair funding that considers what is already available to a child in school as part of the SEN Support offer. We have also agreed with schools that we no longer backdate top-up money for children who do not have an EHCP. This has resulted in a reduction in the funding allocated but also more timely and transparent funding.
* We have completed a forecast of our future need for special school and resourced provision places. This will inform a 5 year commissioning plan which will ensure that we have sufficient places in Medway to meet the growing demand. This will reduce our need to place children out of area and reduce the pressure on the High Needs Budget. There is significant pressure on special school places and this has increased due to our special free school bid being declined. This will increase our need to use independent schools, adding additional pressure to the High Needs Budget.
	1. Proposed further Actions and Potential Cost Avoidance
* Set up a High Needs Budget Working Group with school representatives to review the Element 3 Top-Up Bands for Resourced Provisions and Special Schools and consider reduction of 5% to all bands or other proposals. This could result in a reduced spend from the High Needs Budget of £522,500 per year from 2020-21 resulting in a reduced spend of £1,045,000 over 3 years.
* Agree with schools to retain the agreed hourly rates for TA/HLTA/Teacher on Provision Map at 2018-19 rates.
* Ensure all children and young people who are attending residential school placements and who are potentially eligible for Continuing Health Care funding are referred to Clinical Commissioning Group for a Continuing Health Care Assessment. This may result in an increase of approximately £167k per annum contribution to these placements from the CCG resulting in a £334k spend reduction on the High Needs Budget over 3 years.
* Consider how SEN Outreach Services are funded from 2020-21. We currently commission two schools in Medway to provide outreach services to other schools to assist them to support children who have learning difficulties, autism and behavioural difficulties. These services cost £405k to commission and benefit approximately 200 children per year. We could consider a model where schools use their SEN Notional budget to continue to fund this service or other funding models. The saving to the High Needs Budget would be approximately £810k over 3 years.
* Review the current provision of Element 3 (Top-Up) funding for children who do not have an EHCP with a view to ceasing this for all but the most exceptional cases. In 2018-19 we used £833k to provide support to children who do not have an EHCP. If cease providing support in this way from 2020-21 we could avoid £1.16m over the 3 year period or higher if stopped completely.
* Review any vacant places at Resourced Provision and ensure that ESFA are advised that we do not wish to re-commission these places via High Needs Return. This is an exercise that we complete annually in order to submit the Sen High Needs Return to ESFA. There are potentially approximately 15 places that could be reduced next year leading to a saving of £150k. It is envisaged that we will be requiring increasing amounts of Resourced Provision places and this saving would be for one year only.
* Agree with Resourced Provisions and Special Schools that, if they have vacant commissioned places, the £10k per vacant place will be deducted from the Element 3 monies payable.
1. **Consultation**
	1. Legal advice is being sought to determine the extent of the required formal consultations to support the recovery plan.
2. **Recommendations**
	1. Schools Forum is being asked to:-
* Note the requirements of the DSG Deficit Recovery Plan.
* Note that there is no requirement for the Council to subsidise the DSG from general funding.
* Note the content of the DSG Deficit Recovery Plan including the actions to be taken to recover the deficit over the next 3 financial years.
* Agree the actions to be taken to recover the deficit over the next 3 financial years.

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