

SCRUTINY COMMITTEE

Tuesday, 9th July, 2019

10.00 am

Council Chamber - Sessions House





AGENDA

SCRUTINY COMMITTEE

Tuesday, 9th July, 2019, at 10.00 am

Ask for: Joel Cook/Anna Taylor

Council Chamber - Sessions House

Telephone: 03000 416892/416478

Membership

Conservative (9): Mr A Booth (Chairman), Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour, Mr P V Barrington-King, Mrs P M Beresford, Mrs R Binks, Mr G Cooke, Mr R C Love, OBE and Mr J Wright

Liberal Democrat (2): Mr R H Bird and Mrs T Dean, MBE

Labour (2) Mr D Farrell and Dr L Sullivan

Church Mr D Brunning, Mr J Constanti and Mr Q Roper

Representatives (3):

Parent Governor (2): Mr K Garsed and Mr A Roy

Tea/coffee will be available 15 minutes before the start of the meeting

County Councillors who are not Members of the Committee but who wish to ask questions at the meeting are asked to notify the Chairman of their questions in advance.

Webcasting Notice

Please note: this meeting may be filmed for the live or subsequent broadcast via the Council's internet site or by any member of the public or press present. The Chairman will confirm if all or part of the meeting is to be filmed by the Council

By entering into this room you are consenting to being filmed. If you do not wish to have your image captured please let the Clerk know immediately.

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

A - Committee Business

- A1 Introduction/Webcast Announcement
- A2 Substitutes
- A3 Declarations of Interests by Members in items on the Agenda for this Meeting
- A4 Minutes of the meeting held on 8 May 2019 (Pages 7 - 12)

B - Any items called-in

None for this meeting

C - Any items placed on the agenda by any Member of the Council for discussion

- C1 10.00 - 11.30* Potential impact on KCC and School Finances of High Needs Budget Overspend and Deficit Recovery Plan (Pages 13 - 34)
- C2 MOTION TO EXCLUDE THE PRESS AND PUBLIC FOR EXEMPT BUSINESS

That, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 3, 5 and 6 of Part 1 of Schedule 12A of the Act.

“Information relating to the financial or business affairs of any particular person (including the authority holding that information), unless it is required that the information be registered under the Companies, Friendly Societies, Industrial and Provident Societies, Building Societies or Charities Acts.”

“Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

“Information which reveals that the authority proposes:

- (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or***
- (ii) to make an order or direction under any enactment.”***

EXEMPT ITEM

(During this item the meeting is likely NOT to be open to the public)

- C3 11.30 - 13.00* Regional Growth Fund Investments (Pages 35 - 46)

Benjamin Watts
General Counsel
03000 416814

Monday, 1 July 2019

**Timing of items as shown above is approximate and subject to change.*

KENT COUNTY COUNCIL

SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Council Chamber - Sessions House on Wednesday, 8 May 2019.

PRESENT: Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour, Mr P V Barrington-King, Mrs P M Beresford, Mrs R Binks, Mr R H Bird, Mrs T Dean, MBE, Mr D Farrell, Mr R C Love, OBE and Mr J Wright

ALSO PRESENT: Mr P W A Lake, Mr M D Payne, Mr H Rayner, Mr M Whiting and Mr M E Whybrow

IN ATTENDANCE: Mr J Cook (Scrutiny Research Officer), Mrs A Hews, Mr P Lightowler (Head of Public Transport) and Mr A Loosemore (Head of Highway Operations)

UNRESTRICTED ITEMS

56. Apologies and Substitutes

(Item A2)

1. Apologies had been received from Mr Booth, Mr Cooke, Dr Sullivan and the Parent Governors and Church Representatives.

57. Minutes of the meeting held on 3 April 2019

(Item A4)

RESOLVED that the minutes of the meeting held on 3 April 2019 were a correct record and that they be signed by the Chairman.

58. Select Committee Update

(Item A5)

1. Joel Cook provided Members with reassurance that following establishment of the Knife Crime Select Committee work was underway with the first formal meeting taking place on 9 May 2019. Mr Barrington-King, who was the Select Committee's Chairman designate, explained that within 48hrs of the approval of the Select Committee he had convened a meeting with officers, it was considered that the position of the Select Committee was unique and pathfinding. It was intended that the Select Committee would conclude by October 2019 and Members would proceed with diligence. At a productive early cross-party meeting Members had identified key witnesses and testimonials to empower the Committee to make contributions and recommendations.

RESOLVED that the Committee note the positive progress of the Select Committee.

59. KCC managed road closures for utilities works

(Item C1)

Mr Whiting (Cabinet Member for Planning, Highways, Transport and Waste), Mr Payne (Deputy Cabinet Member for Planning, Highways, Transport and Waste), Mr Loosemore (Head of Highways Asset Management) and Mrs Alison Hews (Streetworks Manager - East) were present for this item.

1. At the invitation of Mr Whybrow who, jointly with Mr Bird, had asked for this item to be placed onto the Scrutiny Committee agenda, the Officers introduced their report.

2. Andrew Loosemore briefly explained the New Roads and Street Works Act 1991 (NRSWA) under which Utilities Companies had to install and maintain apparatus in the highway. Under the Traffic Management Act 2004 (TMA) Highway Authorities had a duty to co-ordinate such activity.

3. KCC operated a Permit Scheme across the whole road network alongside a Kent Lane Rental Scheme (KLRS) operating on 5% of the most traffic sensitive streets of the primary network. The Lane Rental Scheme accrued around £1million per year and regulations meant that the scheme funds could be used to offset reasonable costs and the surplus went into an innovation fund which funded projects that fulfilled the key criteria.

4. The duty on Highway Authorities was to coordinate works and to mitigate traffic disruption, not to prevent disruption.

5. Alison Hews explained the temporary road closure process to Members, this was managed by the Street Works Team. The agenda pack contained the paperwork required to close roads.

6. Mr Whybrow thanked the officers for their report and for their verbal explanation, it was considered that there was a lack of public understanding around who was responsible for road closure and he asked whether signage could be improved? Andrew explained that it was mandatory to have a signboard on site which should include a reference number, name and contact details of the responsible company. KCC could issue a default notice if the sign was not present.

7. In response to a question over coordination between utilities companies Alison explained that the council would always push for collaboration if it was aware of multiple works on the street, these were often emergency works which were difficult to coordinate. A discount was offered to utilities companies if they could work collaboratively, it was beneficial to companies to share costs.

8. In response to a question over the extent to which KCC could specify remedial action and whether this was patching or full coverage. Andrew explained that there was a national consultation on the conditions imposed by the Highways Authority, this included a proposal to increase the work guarantee from two years to five years, this was a substantial document which set out the qualities and standards for utilities companies.

9. Andrew Loosemore set out the inspection regime to Members, this did not prevent the team from making unscheduled inspections.

10. Referring to the Lane Rental Scheme, this was run under Transport for London and Kent was the only other authority who ran the scheme. The rules around the Lane Rental Scheme were set out in legislation and the Lane Rental Board decided where surplus funds were spent.

11. In relation to coordination of highways works KCC had a quarterly Highway Authorities and Utilities Committee (HAUC) meeting. Prior to this companies had to submit a return of all planned main schemes. At that meeting representatives looked for opportunities for collaborative working.

12. Andrew Loosemore offered to discuss with Members, outside of the meeting, any issues or ideas relating to signage or street works.

13. Andrew Loosemore explained that KCC decided which roads were designated as traffic sensitive and this was affected by bus routes, sorting routes and a raft of criteria. Andrew confirmed that utilities companies were only responsible for reinstating the area that they disturbed.

14. A Member requested that officers give thought to how early Members got notified about controversial closure notices affecting their wards and divisions.

15. A Member asked that road works around Christmas be avoided due to the effect this had on businesses. Members also asked that there be a dedicated direct contact number for KCC to report defects.

16. In response to a question Andrew Loosemore explained that there was no option to use the Lane Rental Scheme surplus for wider reinstatement, however Members could put forward suggestions on innovation ideas to Highways District Managers.

17. In response to a question about utilities companies and contractors adhering to the law KCC did its best to ensure compliance with the rules and served notices where utilities companies did not meet all the requirements.

18. Members recognised that there was little spare capacity on Kent's road network, roadworks had a big impact and it was recommended that KCC look at good practice around the UK and abroad.

19. A Member commented that road closures or lane closures could be a good opportunity for litter or verge cleaning.

20. Members offered thanks to the team for their hard work and useful discussion at the Scrutiny Committee meeting.

21. The Cabinet Member together with the Committee Chairman thanked the Committee for requesting the item and for the good discussion, he offered his thanks to the team who worked hard to minimise the disruption and issues.

RESOLVED that Mr Whiting, Mr Payne, Mr Loosemore and Mrs Hews be thanked for attending the meeting and for answering questions. The Scrutiny Committee note the contents of the report and the additional information in Appendices 1 and 2.

60. KCC Supported Bus Services in Sevenoaks

(Item C2)

Mr Lake, Member for Sevenoaks Rural South, Mr Rayner, Member for Malling West, Mr Whiting, Cabinet Member for Planning, Highways, Transport and Waste and Phil Lightowler, KCC Head of Public Transportation were present for this item.

1. Mr Lake introduced this item and set out the background to his request to place this item on the Scrutiny Committee agenda. This included the 5 most highlighted themes from the consultation being:

- a. Impact on elderly
- b. No Alternatives
- c. New Developments/Social Housing
- d. Social Isolation
- e. Access to Work

2. Phil Lightowler set out the background to the Cabinet Member decision to implement changes to selected bus services in Sevenoaks from April 2019. This decision was based on the proposed reduction to Socially Necessary Bus Services (SNBS) of £455k. there was no statutory requirement for Local Authorities to provide funding for SNBS.

3. KCC had asked Go-coach to monitor capacity on the 404 service, there were standing passengers but this was not over capacity and it was usual for the Local Authority to maximise the full capacity of the vehicle. If more entitled children used the service this would be reviewed to ensure capacity. It was accepted that this was a sensitive issue which had impacted some people, KCC's approach had been to make a saving for KCC that had the least impact and was mitigated by other services being present.

4. Members asked whether the survey would be reviewed in the summer as this was undertaken in the winter, Phil Lightowler stated that KCC had not received complaints from schools or parents about capacity issues. However Inspectors were sent out often to review services.

5. A Member considered that there was a need to look closely at the whole bus network.

6. In response to a query about how children were impacted Phil Lightowler explained that the data for September starters was available, this would be combined with current loadings which would indicate if there was sufficient capacity.

7. A Member commented on the changes made to the bus service in Thanet, there had been no complaints about the commercial route that had been put in place. There were concerns that there might be a need for a rethink of transport for children.

8. The Cabinet Member concurred that there was a need to review and to be more efficient around spending the available money. There was a cross-party member group looking at bus transport.

9. There was uncertainty about how the feedback from the pilot schemes was being used, was there an intention to develop a taxi service?

10. Referring to community transport options only one Tonbridge and Malling Parish Council had put forward an application.

11. The Chairman asked Mr Lake whether he was satisfied with Phil Lightowler's suggestion that he reviewed routes over the next couple of weeks and reported back. Mr Lake confirmed that he welcomed the continuing conversation and would very much like to explore further the taxi service.

RESOLVED that Mr Whiting and Mr Lightowler be thanked for attending the meeting to provide information and answer questions and that no formal comments be issued by the Committee.

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REPORT

From: Roger Gough, Cabinet Member for Children, Young People and Education

Peter Oakford, Cabinet Member for Finance and Traded Services

To: Scrutiny Committee

Date: 9 July 2019

Subject: **Potential impact on KCC and School Finances of High Needs Budget Overspend and deficit recovery plan**

Summary:

The pressure on the High Needs budget within Kent has been identified as the highest revenue budget risk. The demand for Special Educational Needs & Disability (SEND) support is rising and at a much faster rate than the school age population, and the Council's Dedicated Schools Grant (DSG) budget is overspending the High Needs Block (our latest forecast is by £14m in 2019-20) and has already accrued a deficit on the DSG reserve (£6.5m as at 31 March 2019). Corresponding pressure on some of KCC's non-DSG SEND related budgets, e.g. SEN Home to School transport, is also being experienced. Meeting the needs of children and young people with SEND within available resources is becoming ever more challenging.

This report sets out the scale of the issue within Kent, what the national picture looks like, the reasons driving the pressure and explores some of the options (which are somewhat limited) we have to help reduce the pressure. Ultimately, we believe that the overspend and deficit can only be resolved with a significant boost in funding and regulatory changes.

This paper also provides information on the recently introduced Department for Education (DfE) requirement to complete a Dedicated Schools Grant (DSG) deficit recovery plan.

1. Introduction

- 1.1 The High Needs Block (HNB) is part of the Dedicated Schools Grant (DSG). It is a separate block from schools, Early Years and some central services for schools as illustrated in diagram 1 below which shows the 2019-20 DSG allocations for KCC. This report focuses on the HNB budget pressure. The purpose of this block is to support the educational attainment of children and young people with special educational needs and disabilities (SEND). The HNB funds payments to maintained schools and academies (both mainstream

and special), independent schools, further education colleges, specialist independent providers and pupil referral units. Some of the HNB is retained by KCC to support some of the statutory services associated with SEND.

Diagram 1 - Total DSG allocation for Kent in 2019-20 = £1,218.981m

Schools Block	High Needs Block (HNB)	Early Years Block	Central School Services Block
£918.759m	£205.120m	£81.410m	£13.692m

Source: DfE DSG allocations published on gov.uk website (last updated 27th March 2019)

- 1.2 The annual HNB allocation for each Local Authority is calculated using a national funding formula (NFF), set by the DfE, which consists of a basket of different data sources. The basket includes; pupil population, disability living allowance, children in bad health, low prior attainment, free school meals and deprivation (IDACI). The combination of these factors is not beneficial for Kent as they provide a lower level of funding than we have traditionally spent on High Needs. The DfE recognised this with the introduction of a historic spending factor within the NFF for High Needs, which effectively tops the funding received to the historic level. This is sometimes referred to as a floor funding. However, looking forward, it also means we attract very little by way of annual increases until such time as the historic funding/floor funding has been fully eroded by increases in the other funding rates.

2. Kent Position - Financial

- 2.1 Table 1 below sets out the financial position (expenditure, funding and in year overspending) of KCCs High Needs budget for 2018-19 and 2019-20. These figures are explained in more detail in the paragraphs below the table.



Table 1	2017-18	2018-19	2019-20
	£'m	£'m	£'m
Outturn	202	210.6	
Current forecast			228
Funding from DfE	-182	-197	-201.6
Additional funding from the DfE (Share of £125m)	n/a	-3.5	-3.5
Sub Total – HNB funding provided by the DfE	-182	-200.5	-205.1
Transfer from Schools Block	-8.5	-4.4	-9.0
HNB Budget	190.5	204.9	214
In year High Needs overspend	11.5 deficit (actual)	5.7 deficit (actual)	14 deficit (forecast)

- 2.2 In 2017-18, the HNB provided by the DfE was £182m. We moved £8.5m from the Schools Block into the HNB, which consisted of a £5m increase in our mainstream budget from a reduction in Schools' notional SEN budgets. This transfer was to recognise the full impact associated with a change in the eligibility threshold introduced in April 2015. The remaining balance of £3.5m was funded from the unallocated DSG balance after honouring school budgets (a.k.a. headroom). In total, therefore, our HNB budget in 2017-18 was £190.5m.
- 2.3 The authority spent £202m in 2017-18, which represents an overspend of £11.5m. This overspend has been transferred into the DSG reserve at the end of the financial year. However, we were able to reduce the impact of this overspend through a one-off transfer of £10m from the PFI equalisation reserve, as illustrated in table 2 below.
- 2.4 In 2018-19, the HNB provided by the DfE was £197m. Two increases have subsequently been confirmed. Firstly, we have moved 0.5% of the Schools Block into the HNB, which equated to £4.4m (this was within the DfE rules). This was a locally taken decision by KCC and the Schools' Funding Forum. Secondly, the Secretary of State announced in December 2018 an additional HNB allocation of £125m, of which KCC received just over £3.5m. So, in total, the 2018-19 High Needs budget stood at just under £205m.

- 2.5 The authority spent £210.6m in 2018-19, which represents an overspend of £5.7m. This overspend has been transferred into the DSG reserve at the end of the financial year, as illustrated in table 2 below.
- 2.6 At the start of the 2018-19 financial year, the DSG reserve was £2m in deficit. This deficit balance has increased by a further £5.7m due to the 2018-19 overspend on High Needs. The deficit was then reduced slightly by a net underspend from other items (e.g. Growth Budget) by £1.2m, meaning we ended the 2018-19 financial year with an accumulated deficit of £6.5m.
- 2.7 The ability to accurately forecast costs in future years is very difficult. However, if the trend over the last 12 months continues, the initial expenditure forecast for 2019-20 would be £228m. This is based on a +7% increase.
- 2.8 In terms of funding, the DfE have recently confirmed that the HNB for 2019-20 is just over £201m. Added to this is the continuation for one further year of the additional £125m, meaning we receive an additional £3.5m, meaning the starting budget for HNB is £205m. Finally, we transferred 1% of the Schools Block into High Needs. This is based on us repeating the 0.5% we transferred in 2018-19 (which has not been baselined) and transferring a further 0.5% in 2019-20. The 1% transfer, which equates to approx. £9m, was supported through an all school consultation, by the Schools' Funding Forum and approved by the Secretary of State. This means the High Needs budget for 2019-20 now stands at £214m. Compared to the forecast spend in paragraph 2.5, this would leave an overspend in the region of £14m, which under current policy would transfer to the DSG reserve.
- 2.9 The DSG reserve is one of KCC's earmarked reserves included on the balance sheet. Earmarked reserves are designed to be in surplus and their principle purpose is to smooth irregularities over consecutive years rather than face spending pressures within the annual revenue budget through an in-year transfer from the reserve. They are not designed to fund on-going budget pressures due to their one-off nature. The DSG reserve is a ring-fenced reserve with transfers in and out only to revenue DSG budgets.
- 2.10 The position of the DSG reserve at the end of the 2018-19 financial year is a deficit of £6.5m (as explained in paragraph 2.3 above). Assuming the forecast for 2019-20 is correct, the accumulated deficit on this reserve is likely to rise to over £20m by 31 March 2020. This deficit reserve balance sits alongside other Council reserves, most of which carry a surplus balance. This means that the net surplus balances held in these other reserves are temporarily funding the deficit on the DSG reserve – this is sustainable in the short term but there comes a point, as the deficit rises, when this becomes unsustainable and brings into doubt the financial resilience of the Council, particularly where

the value of the deficit exceeds the net surplus balance from school rollovers, as these are the reserves that are ring-fenced to the DSG.

- 2.11 Table 2 shows the growth in the accumulated deficit balance on the DSG reserve during 2018-19 and the forecast growth in 2019-20 based on the current trajectory.

Table 2 – DSG reserve history over the last three years showing the growth in the accumulated deficit balance		£'m
2017-18	Starting deficit balance as at 1 April 2017	1.8
	2017-18 overspend on the High Needs Budget as shown in table 1 above	11.5
	Transfer from PFI Equalisation Reserve (one-off)	-10.0
	Net underspend on other items transferred to the DSG reserve (e.g. Growth budget)	-1.2
	Closing deficit balance as at 31 March 2018	2.1
	<i>Note: closing balance from one year is rolled over to the start of the next year</i>	
2018-19	Starting deficit balance as at 1 April 2018	2.1
	2018-19 overspend on the High Needs Budget as shown in table 1 above	5.7
	Net underspend on other items transferred to the DSG reserve (e.g. Growth budget)	-1.3
	Closing deficit balance as at 31 March 2019	6.5
	<i>Note: closing balance from one year is rolled over to the start of the next year</i>	
2019-20	Opening deficit balance as at 1 April 2019	6.5
	Forecast 2019-20 overspend on the High Needs Budget as shown in table 1 above	14.0
	Net movement on other items	?
	Forecast closing deficit balance as at 31 March 2020	20.5

Note: deficit figures are shown as positive figures in this table.

- 2.12 In addition to this budget pressure on the DSG High Needs placement budget, the Council has also seen similar pressure on its SEN Home to School Transport budget, which is funded from the Council's base budget. Table 3 shows the growth in the Special Educational Needs (SEN) Home to School Transport budget since 2016-17. The figures in table 3 includes all associated payments arranged by the Council to transport children and young people with SEN to schools and colleges, all payments to special schools who manage their own transport arrangements, independent travel trainers and personal transport budgets. Overall the budget has increased by £8.2m (35%) over this four-year period. This increase arises from a mixture of inflation and demand pressures.

Table 3	SEN HTST budget	Year on year increase		Avg. Pupil numbers	Year on year increase	
2016-17	£23.760m			4,627		
2017-18	£25.772m	+£2.012m	8.5%	4,854	227	4.9%
2018-19	£28.674m	+£2.902m	11.3%	5,294	440	9.0%
2019-20	£31.990m	+£3.315m	11.6%	5,800	506	9.6%

- 2.13 The other non-DSG SEND related budgets which have experienced pressure over the last four financial years are Education Psychology Service and SEN assessment & staffing, albeit to a lesser extent than the SEN transport budget.

3. Reasons behind the growth in demand within Kent

- 3.1 There are a number of factors that are putting pressure on the High Needs budget. The significant rise in demand for statutory assessment and the issuing of EHCPs has been a national trend since 2014 and the increase and volume are unprecedented. Please note that the data used in the following bullet points has been obtained from a variety of different data sources and in some cases, it has not been possible to be consistent with the different points in time:

- An increase of 33%, between 2016 and 2018, in the number of children and young people with an Education, Health & Care Plan (EHCP).
- Reduced parental confidence in mainstream school SEND provision, evidenced by rising demand for EHCPs and special school placements.
- The number of requests for an EHCP assessment over the last three years has grown significantly.
- A growing number of children and young people accessing High Needs funding are being educated in special schools (both maintained and independent) rather than mainstream. This is evidenced in table 4 below.

Table 4 – Number of Children and Young People in receipt of High Needs Funding	2016-17	2017-18	2018-19	Change over the 3-year period	% change
Special schools	3,649	3,854	4,197	+548	+15.0
Independent and non-maintained	562	726	796	+234	+41.6
Post 16 independent colleges	61	70	72	+11	+18.0
OLA maintained special schools	107	121	152	+45	+42.1
Sub Total (1)	4,379	4,771	5,217	+838	+19.1
Resource Provision (formerly SEN Units)	884	890	985	+101	+11.4
Mainstream	2,222	2,341	2,292	+71	+3.2%
FE Colleges	800	805	805	+5	+0.6
Specialist Independent Providers	55	250	169	+114	+207.3%
Sub Total (2)	3,961	4,286	4,251	+291	+7.3%
Grant Total	8,340	9,057	9,468	+1,128	+13.5%

- Table 4 shows that there has been a 41.6% increase between 2016-17 and 2018-19 in the number of children with EHCPs attending Independent Non-Maintained Special Schools (INMSS). This represents an additional budget pressure on the HNB funding as these placements tend to be for those children and young people with the most profound and complex needs; we are currently spending around £36 million on INMSS placements. This is illustrated in table 5 below which shows the average cost of a placement in each type of institution.

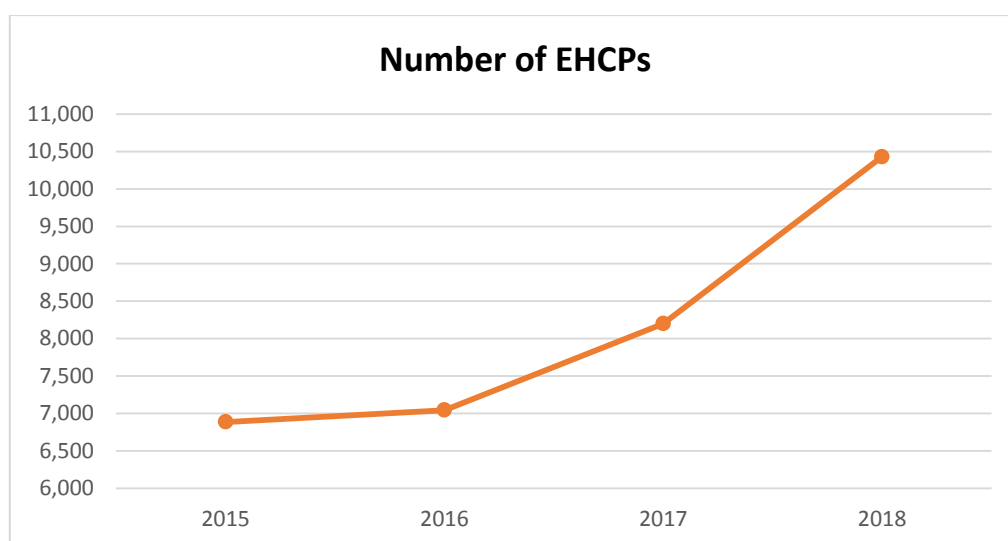
Table 5 – Average cost of a High Needs placement by type of institution	£'000
Special schools	18.8
Independent and non-maintained	44.9
Post 16 independent colleges	73.2
OLA maintained special schools	34.7
Resource Provision (formerly SEN Units)	13.6
Mainstream	7.7
FE Colleges	11.1
Specialist Independent Providers	13.2

- There has been a dramatic increase in the number of EHCPs identifying Autistic Spectrum Disorder (ASD) need; 47% of children in Kent Special schools have ASD which is far higher than the national rate of 25% (Source: Local Area SEND Report from DfE). This has resulted in increasing pressures on special school places for ASD which cannot be met and has led to the need for placement within the independent sector.
- The extension of pupils' statutory SEND from 0-25, where previously it was 5-18, was not funded by the Government and it is contributing to the pressure on HNB funding. More specifically, the addition of young people over the age of 19 having EHCPs has put extra pressure on the High Needs budget without sufficient additional funding.
- A significant rise in the number of appeals to SEND Tribunals.
- The percentage of pupils with EHCPs in Kent is higher than nationally with 3.1%, compared to 2.9% respectively.

This combination of factors has placed a significant pressure on the HNB budget.

Budget pressures resulting from changes in demand for specialist provision between 2015-18

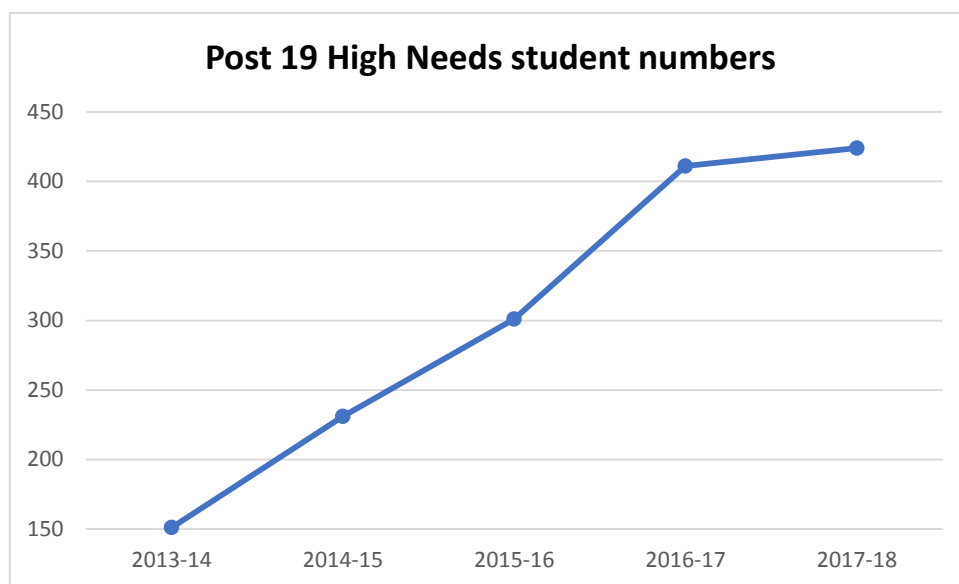
- 3.2 The graph below shows that EHCPs have increased from 6,884 in 2015 to 10,431 in 2018. The growth has continued in the first half of 2019 with the current number of EHCPs standing at 12,371. This represents an increase of just under 80% since 2015, and the graph clearly demonstrates that the rate of increase in 2017 and 2018 is much greater. The number of requests for statutory assessment has increased by 81% during the last 18 months. These assessments are costly and time consuming to complete, but the on-going costs to the HNB is one of the primary reasons why the budget is under such pressure. The growth is almost entirely accounted for by parental referrals which have grown to three out of every four referrals received.



Please note that it is not possible to reconcile the number of children and young people with an EHCP to those who attract High Needs Funding for two reasons. Firstly, there are a number of children in mainstream and college settings who attract High Needs Funding without an EHCP (as the costs of supporting them exceed the £6,000 threshold). Secondly, there are a number of children and young people in these same settings who have an EHCP but do not attract High Needs funding as their costs do not exceed the £6,000 threshold.

Post-19

- 3.3 The Children and Families Act 2014 and the accompanying SEND Code of Practice 2015 has enabled more young people to choose to remain in education up to the age of 25 (previously limit was age 18). No explicit funding was allocated by Government to meet this change in eligibility or the subsequent rise in demand and consequently, costs are escalating.
- 3.4 The addition of young people over the age of 19 having EHCPs has put extra pressure on the HNB funding without sufficient additional funding.



- 3.5 The graph above shows that the number of young people in this category was 151 in 2013-14, but by 2017-18, this figure was 424, an increase of 180%.

Mainstream pupils with High Needs

- 3.6 The system we have in place for supporting High Needs pupils in mainstream school settings has been designed to support inclusion. During the summer of 2017 we introduced some emergency in year management action. This was required due to the level of the forecast pressure on this budget. This action, which was supported by the Schools' Funding Forum, applied to all

new claims of funding from September 2017. All new claims were subject to a 30% reduction, with payments commencing from 1st December.

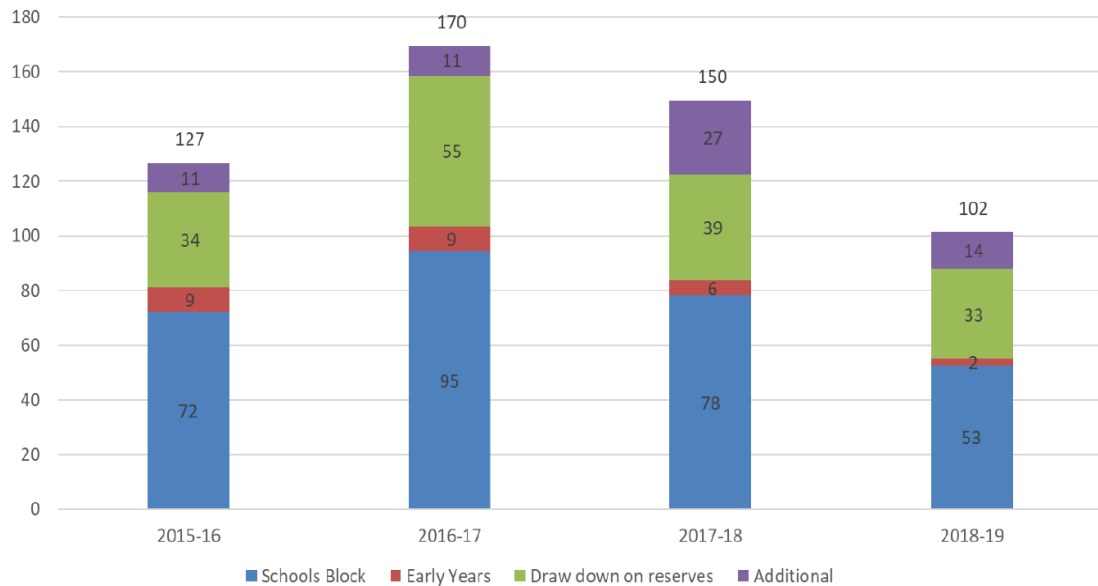
- 3.7 In relation to changes in the provision of mainstream pupils with High Needs, we reviewed and introduced a new system in 2017. The review aimed to:
- To ensure the high needs top up budget is more predictable and more closely linked to patterns of need.
 - The budget will continue to fund the top up required by schools to support the pupils with the most profound and complex needs that may otherwise warrant statutory assessment.
 - To ensure the budget is also used well in tandem with other resources such as Local Inclusion Forum Team (LIFT) and the Specialist Teaching and Learning Service (STLS) to get the best outcomes for pupils.
 - To develop a new funding model to ensure HNF can be managed within the available resources.
- 3.8 The review of High Needs funding identified a range of best practice and also wide variations in the uses of the funding and levels of applications for similar schools.
- 3.9 The best practice identified in many schools is where there is a whole school approach, all teachers take responsibility for SEND and where pupils are mostly supported in the classroom with maximum access to quality first teaching or in small group settings, through differentiation and additional adult support. In some schools there was over reliance on providing one to one support with a Teaching Assistant, and an over reliance on High Needs funding to make the necessary provision.
- 3.10 The changes introduced included a new Needs Specific Top Up funding model from April 2018 and a more streamlined application process began slightly earlier in January 2018. A table showing the Needs Specific Top Up funding rates which apply to mainstream schools and academies is attached at appendix 1.
- 3.11 Although the new system for mainstream high needs has only been for just over a year, we are confident that the HNF system is working well and therefore the number of High Needs pupils in mainstream schools is not contributing to the current budget pressure.
- 3.12 On a broader front, we need to help mainstream schools support more high needs pupils. If Kent schools were supported to be more inclusive, the authority would avoid paying expensive independent placement costs and be able to use some of this saving to provide additional support to mainstream schools through enhanced needs specific top up rates to fund specialist interventions.

4. National Picture

- 4.1 In December 2018, the Local Government Association and ISOS Partnership published a report titled [Have we reached a 'tipping point'? Trends in spending for children and young people with SEND in England](#). This report's conclusions and findings were informed by an online survey that was completed by 93 local authorities, and fieldwork in 9 representative local areas. In summary, the national picture experienced in many other local authorities, of rising demand and increased budget pressure, mirrors the experience in Kent.
- 4.2 Some of the key conclusions and findings are shown below.
- a) Nationally the number of people with a statement of SEND or requiring an Education Health and Care Plan (EHCP) has risen by 35% between 2014 and 2018.
 - b) the total annual gap between HNB allocations and their high needs expenditure rose from £123m in 2015-16 to £287m by the end of 2018-19, an increase of 133%.
 - c) The gap between high needs funding and high needs expenditure means that councils have been topping up High Needs budgets from other sources such as schools block transfers or use of reserves. This has, to some extent, masked the severity of the funding issue until relatively recently. Local Authorities and Schools Fora that have been managing their budgets prudently have had to use a significant amount of contingency funding to plug the gap. Chart 1 below shows the magnitude of transfers into High Needs Budget, with the majority from transfers from Schools Block and drawing down from historic DSG reserves.

Chart 1

Inputs into High Needs Budget
£MM, 2015-19



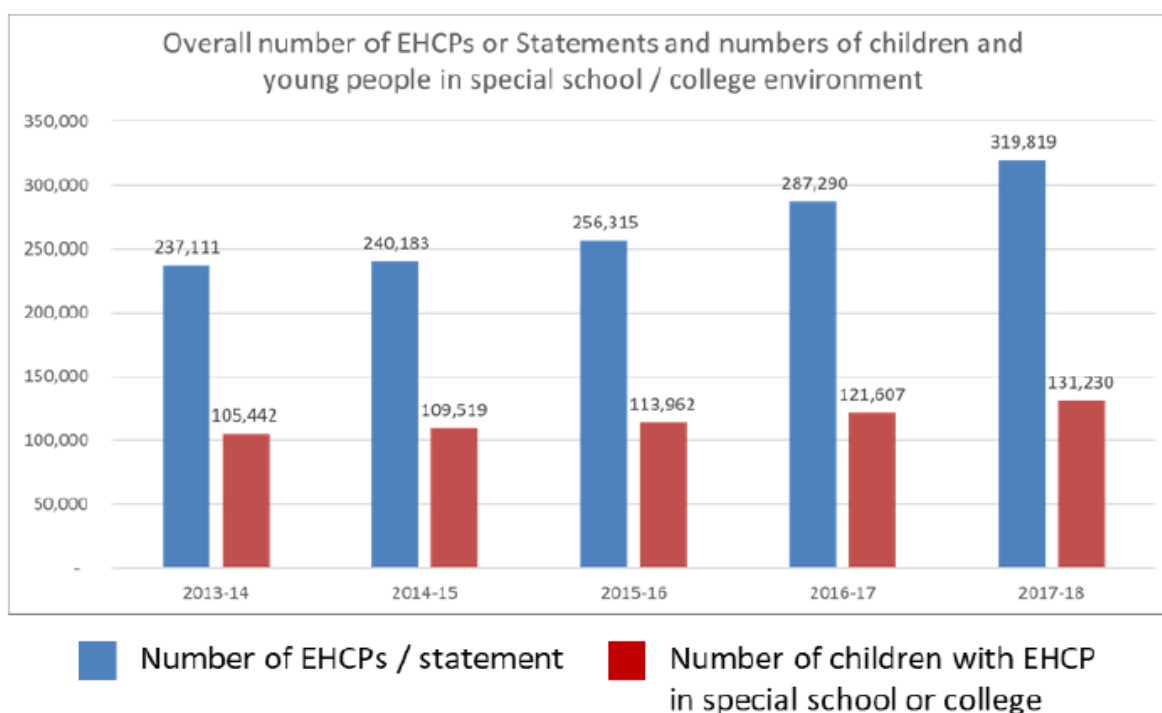
- d) Chart 1 shows a decline in drawn down of reserves in the last two financial years and that appears to reinforce, that for a number of LAs, reserves are exhausted.
- e) Despite the transfers, the net effect of increasing demand has left local government with a significant and increasing deficit in the DSG account. For example, chart 1 shows the total transfers into the HNB (from schools' block, reserves and other) of £102m in 2018-19, which is far short of the £287m funding gap referred to in 4.2 b). It is not clear how this deficit is being met, in many cases, as in Kent, there is likely to be a growing deficit balance in the DSG reserve.
- f) For individual LAs, the average net deficit is £3.4m at the end of 2018-19. Within this is a significant range, with the largest at £21m. The LGA/ISOS report suggests that for the 93 authorities who responded, the end of this financial year will see a cumulative deficit of £314m. Its important to note that this cumulative deficit position is after local authority transfers from schools' block, draw down of LA reserves, etc.
- g) The percentage of Councils reporting a deficit has increased from 34% in 2015-16 to 74% in 2018-19.
- h) The research identified four main factors contributing to the rising numbers of children and young people requiring support.
 - (1) The 2014 SEND code of practice encapsulated ambitious and far-reaching changes to the scope and focus of responsibilities for the education of children and young people with SEND. The new code raised parental expectations, whilst also increasing the range of LA responsibility from 0 to 25. Increased post 16 responsibilities was

the single most cited factor contributing to the growth in high needs spending.

- (2) The rise in the number of children and young people requiring support for SEND is significantly greater than that of the total pupil population. The research suggests this arises from a combination of advances in medical science, the impact of adverse child experiences and early life trauma, rising levels of poverty among families with children and better diagnosis of some conditions.
- (3) National policy decisions which, taken together, have not created an environment in which mainstream schools are rewarded or incentivised for being inclusive. The research recognises that some mainstream schools are very inclusive but do so largely through a sense of moral purpose, rather than financial reward. The accountability and inspection regime that is currently in place incentivises schools to be less inclusive.
- (4) Finally, the research highlights the impact of funding pressures across the education and children's services landscape.

4.3 The survey results show that over the last five years, authorities have seen rapid and unprecedented rise in demand for services for children with SEND. Data published by the DfE show that between 2014 and 2018 the number of children and young people with an EHCP or statement of SEN increased by 35% from 237,111 to 319,819. This is illustrated in Chart 2 over the page. This is in stark contrast to the previous five years in which growth stood at just 4%. Survey responses also indicated that the growth is showing no signs of abating.

Chart 2



- 4.4 The report also shows us that there are an increasing proportion of children and young people with an EHCP being supported in special school provision (and a decreasing proportion in mainstream).

Chart 3

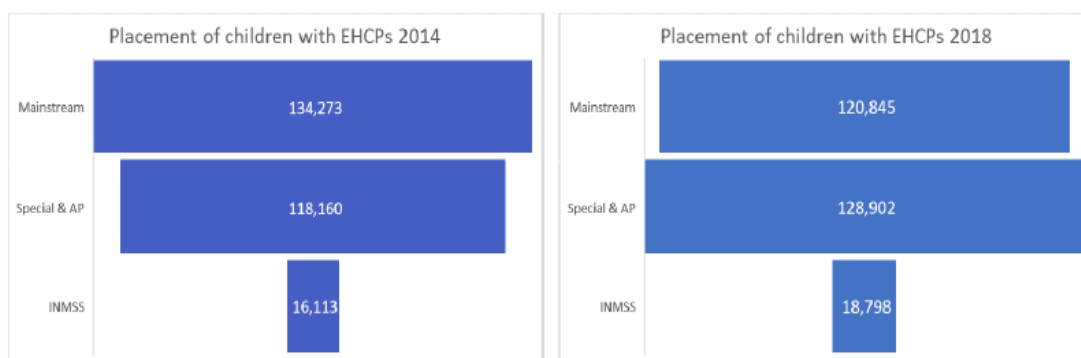


Chart 3 above tells us that

- Upwards drift in terms of placements of children and young people with EHCPs into increasingly costly forms of provision.
- Funding constraints, accountability pressures and curriculum changes in mainstream schools reducing capacity to make good quality provision for children with SEND.

- More mainstream schools saying that they are unable to meet needs and more parents losing confidence in the ability of the mainstream sector to cater for their children's SEND.
- More requests for special provision, leading to special schools becoming full.
- Need to source additional places in INMSS, coupled with increasing parental preferences for INMSS largely supported at tribunal.

4.5 KCC have spoken to a number of other County Councils to obtain a comparison of their in-year HNB budget forecasts for 2019-20 and impact on their DSG reserves. Table 6 below provides the key findings from this exercise.

Table 6

LA Name	DSG Reserve 2019-20				Deficit balance at 31 March as a % of 2019-20 DSG	
	Deficit balance at 1 April	High Needs overspend	Other (note 1)	Deficit balance at 31 March	All blocks (note 2)	HNB (note 3)
Kent	£6.5m	£14m		£20.5m	1.7%	10.0%
Surrey	£18.6m	£27m	-£10m	£35.6m	4.2%	24.1%
Hampshire	£13.7m	£14m		£27.7m	2.9%	23.9%
Cambridge shire	£7.2m	£6.1m		£13.3m	2.9%	19.4%
Essex	£3.8m	£3.9m		£7.7m	0.7%	5.5%

note 1: 'Other' relates to underspends on other DSG blocks e.g. Early Years

note 2: This is the measure used by the DfE to determine whether a DSG deficit recovery plan is required (please see paragraphs 5.10 onwards)

note 3: DfE published figures (excluding transfers from Schools Block)

5. Action already taken and future options

5.1 KCC and the Schools' Funding Forum have consistently referred to the three-legged stool analogy as the solution to the high needs challenge we face. The three-legged stool consists of;

- lobbying central government on two matters; increased funding in both the short and medium term, and structural changes to government policy to help reduce the demand

- b) transferring funding between the blocks within the DSG.
 - c) review of KCC policies and processes (a tightening of the gate keeping) to deliver savings locally
- 5.2 KCC has been working with school leaders, the Schools' Funding Forum, the Local Government Association (LGA) and the f40 Group (the 41 lowest funded education authorities) to lobby Government to accept that the current funding settlement for High Needs is insufficient to address the needs of the most vulnerable children.
- 5.3 The Cabinet Member and Corporate Director for Children, Young People and Education met with Nadhim Zahawi MP, Parliamentary Under Secretary of State for Children and Families on 25th March 2019. This was followed with a letter outlining a number of observations and structural change suggestions:
- It goes without saying that more money is needed for High Needs however the system risks being overwhelmed by increased demand unless accompanied by structural changes.
 - We believe there is scope to revisit the regulations around how the SEN Tribunal works, in relation to parental choices for Independent and Non-Maintained Special (INMS) schools, to remove inbuilt incentives for parents to choose this provision and for INMS schools to increase costs to win at Tribunals. This could include revising the right of parental 'choice' of provision in the 2014 Act. In addition, Tribunals could be required to consider 'efficient use of resources' in weighing a parent's choice of provision against that offered by the local authority (similar to The Education Act 1980, Admission to Schools).
 - INMS schools only have one customer – local authorities, usually after a Tribunal decision or conceded before a hearing. The incentives on these schools are perverse – the more they spend on therapies and additional services, the more likely they are to win Tribunals or concessions before Tribunal. This makes traditional commissioning impossible. As they have no other customers and are effectively 100% state funded, why not Academise all INMS schools and bring them within the state sector?
 - The expansion of responsibility to the age of 25 is a growing concern for many authorities. We have extrapolated our current cohort of children and young people in maintained and independent special schools and based on current take up of this offer to remain in these institutions until they are 25, the additional cost to Kent would be circa £200m over the next 8 years (excluding inflation). This is an additional burden that requires new funding. There is a strong case for a specific 'ask' for this as part of the next Spending Review settlement, since the introduction of the age extension was not accompanied by additional funding.
 - The current incentives for Mainstream schools, particularly those Secondaries who are admission authorities, are not to be inclusive for young people. The Timpson review addresses some of this in relation to exclusion but falls short of giving local authorities meaningful new powers in relation to admissions, exclusions, off rolling, part-time timetables and elective home education. The combination of academisation, league

tables, previous Ofsted frameworks, high needs funding and the first £6k, all work to disincentivise schools to be inclusive of students with SEND. The DfE needs to strengthen the hand of LA's through regulation to reverse these incentives.

- 5.4 In terms of action we have taken locally, for SEND pupils placed in mainstream schools, we now provide need specific top up funding rates to eligible children and young people. Further detail on this element of High Needs is contained within section 3 of this paper, and the rates we pay are shown in appendix 1. The rates for 2019-20 were set based on previous years payments for each need type and reduced by 20%. This reduction was agreed with the Schools' Funding Forum and was in response to the budget pressure at this point in time.
- 5.5 For FE Colleges, we have negotiated a block payment arrangement for 2018-19 and 2019-20, which provides the same amount of funding per college as 2017-18. For this early confirmation and certainty in funding, colleges are expected to absorb inflationary pressures and provide support to any growth in the number of post 16 young people with High Needs. This innovative arrangement is being held up by the DfE as a way forward for other authorities to follow. It also is worth adding that the relationship with this sector has improved considerably compared to 18 months ago when we were subject to a judicial review challenge from one college.
- 5.6 The Cabinet Member for Children, Young People and Education wrote to all Kent MPs on 27 November 2018 to set out the scale of the challenge we face and to provide evidence of the impact the High Needs pressures has on the quality of education children receive, schools, other providers and the Local Authority.
- 5.7 In Kent we have developed a SEND Strategic Action Plan to better address the relationship between learner need, outcomes, provision and cost. This plan is not about cutting the budget, as we believe this will be counter intuitive. It is instead designed to ensure that the whole school system is as inclusive as possible, ensuring children can access appropriate local provision and we make the most efficient use of the available resources. The Plan is aimed at:
- Improving parental confidence in local provision, ensuring that parents receive consistent messages from schools and support services about the ability of local schools to support their children appropriately.
 - Publicising the graduated pathways of support across Children, Young People and Education that already exist to support children with SEND (without the need for an EHCP).
 - Improving the quality and consistency of EHCPs.
 - Building capacity and an inclusive ethos in mainstream schools to improve teaching and confidence in supporting more children with higher levels of

need.

- Robustly scrutinising the decisions to place children in Independent Non-Maintained Special School (INMSS) provision and redirecting, where possible, to local maintained schools' provision. Where INMSS placements are agreed, they need to demonstrate that the net cost is lower than local provision. Tighter commissioning arrangements will be put in place to drive down the cost of INMSS placements in future.
- Increasing Education Psychology (EP) capacity to process statutory assessments (this pressure is funded from KCC's base budget, not DSG).
- Increasing the number of local special school places, through the development of specialist facilities in mainstream schools, free schools or the Capital Programme.
- Developing an innovative block payment funding arrangement with FE colleges, that provides stability in High Needs funding to both parties.
- Reviewing whether there are other ways KCC can incentivise inclusive practice within a national system and limited resources.

5.8 However whilst the impact of the SEND Action Plan will help mitigate some of the funding pressure, the constraints on us mean that the ability to manage within budget going forward is very unlikely.

5.9 The four key constraints are as follows:

- i) approx. 85% of expenditure is tied to individual pupils and placements which cannot be released in the short term.
- ii) the weight given to parental preference in tribunal decisions and cases going to judicial review
- iii) the limits imposed by the DfE on annual increases to HNB, de-delegation and transfers between blocks
- iv) constraints on capital funding leave the state overly reliant on non-state sector provision when their maintained special schools become full.

5.10 Finally, it's worth noting that the DfE consulted at the end of 2017 to introduce tighter reporting requirements of LAs whose DSG reserve goes into deficit. The DfE have now responded to the consultation and decide to introduce, from the end of 2018-19 financial year, tighter reporting requirements on local authorities who have a deficit in their DSG account.

- 5.11 The key points to these new reporting requirements are as follows:
- to require LAs, whose accumulated DSG reserve deficit balance exceeds 1% of their total DSG allocation (before academy recoupment) to produce a recovery plan to bring the DSG reserve account into balance within three years. For Kent this equates to just under £12m and the accumulated deficit on 31 March 2019 equated to 0.55%.
 - To be clear the requirement of the recovery plan is to demonstrate two things:
 - that we can bring in-year spending in line with in-year funding, and
 - fully repay the accumulated deficit on the DSG reserve account
- 5.12 Three of the authorities mentioned in table 6 exceeded the 1% at the end of 2018-19 and the DfE have confirmed that in total 33 authorities were in this position.
- 5.13 The DfE recognise that this may prove difficult for some LAs, and where this is the case, they would be open to receipt of evidence explaining the problem and may accept a recovery plan that leaves some or all of the accumulated deficit on the DSG reserve account to date outstanding. In all cases they expect LA's recovery plans to demonstrate how they will bring in-year spending in line with in-year funding.
- 5.14 A recovery plan will need to be presented to the Schools' Funding Forum and agreed with the S151 officer. We have had an initial discussion with the Schools' Funding Forum on 3 May 2019 as we anticipate exceeding the 1% threshold by the end of 2019-20 financial year (see paragraph 2.7 above for the latest forecast). The Forum's view is that we should include all management action that we are already working on as part of the SEND Strategic Action Plan (as mentioned in paragraph 5.6 above), but we should avoid including action which may give a short term saving but, in all likelihood, result in an increased budget pressure in the medium to long term. For example, we should not consider cutting the funding rates to Special Schools, Specialist Resource Provision or further cuts to mainstream. In all cases, the funding rates have effectively been frozen since 2010-11 at flat cash levels and schools in receipt of this funding have had to make year on year efficiency savings to offset inflationary pay and contract price increases. Schools have risen to this challenge but to consider reducing the funding rates would lead to the financial sustainability of these schools being called into question, and the increased probability of a greater number of future placements into more costly independent institutions.
- 5.15 KCC's current policy does not allow the topping up of DSG from other council funding. This means that any overspend on the High Needs budget must be consumed within the totality of future DSG allocations. However, as the government moves towards the introduction of a National Funding Formula for schools, they've introduced a number of changes to the operation of DSG within local authorities that restrict our ability to manage the budget holistically. The specific restrictions to note are as follows:

- On school budgets, we have a Minimum Funding Guarantee calculation that sits alongside the Local Funding Formula (LFF) calculation. Its introduction and design are to provide stability in funding for an individual school from one year to the next. This means that we cannot simply reduce the funding rates provided to schools in the LFF as the MFG protects the vast majority, currently 98.5%, of the per pupil funding from one year to the next.
- Any movement in funding from the Schools Block to the HNB is one-off in nature and the movement is capped at 0.5% of the Schools Block. Transfers in excess of this require an all school consultation, discussion with the Schools' Funding Forum and finally the Secretary of State approval. We believe in transferring 1% between blocks in 2019-20 is probably the maximum transfer we could have achieved, striking a balance between recognising the pressure on High Needs whilst at the same time making progress in moving towards implementing the schools national funding formula.

6. Recommendations

- 6.1 The Scrutiny Committee is asked to consider the report, and in particular, note the actions that we have already undertaken as set out in section 5 of this paper. Finally, the Scrutiny Committee is asked to comment on what further action they believe KCC should consider and/or take.

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Appendix 1 - Mainstream Needs Specific Top Up Funding Rates 1 April 2018

Need Type	Rate 1	Rate 2	Rate 3	Rate 4	Rate 5	Rate 6
Communication & Interaction Difficulty (e.g. ASD)	£1,297	£3,352	£5,029	£6,815	£8,421	£10,437
Hearing Impairment	£2,066	£3,916	£5,376	£7,139	£9,002	£10,118
Moderate Learning Difficulty	£938	£2,335	£3,548	£5,058	£6,591	£8,827
Multi-sensory Impairment	£1,899	£3,325	£4,851	£7,878	£9,602	£11,818
Other Difficulty/Disability	£2,512	£5,849	£7,730	£9,449	£10,047	£11,747
Physical Disability	£1,653	£4,901	£6,986	£9,069	£10,240	£12,204
Profound & Multiple Learning Difficulty	£3,340	£5,225	£6,786	£8,661	£10,047	£12,062
Severe Learning Difficulty	£1,724	£3,802	£5,347	£6,756	£8,528	£11,135
Social, Emotional & Mental Health	£1,845	£4,120	£5,942	£7,595	£9,172	£11,032
Specific Learning Difficulty	£539	£2,266	£3,661	£5,381	£6,907	£8,760
Speech & Language Disorder or Impairment	£1,200	£2,899	£4,444	£6,087	£7,911	£10,445
Visual Impairment	£3,493	£5,290	£6,591	£8,276	£9,727	£12,204

N.B. These rates will be subject to regular review

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