

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Cabinet Member for Education and Skills

DECISION NUMBER:

24/00120

For publication [Do not include information which is exempt from publication under schedule 12a of the Local Government Act 1972]

Key decision: YES / NO

Key decision criteria. The decision will:

- a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
- b) be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions – which will include those decisions that involve:
 - the adoption or significant amendment of major strategies or frameworks;
 - significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.

Subject Matter / Title of Decision

Special Educational Needs (SEN) Funding System

Decision:

As Cabinet Member for Education and Skills, I agree to:

- APPROVE the funding arrangements for the Communities of schools' process as per [Key Decision](#) and as set out in this report.
- APPROVE the transition arrangements of the Special Educational Needs (SEN) funding system for state funded schools between April 2025 and September 2026.
- NOTE that the development and establishment of the long-term plan to adopt an overarching SEN funding policy and system, will be subject to further governance and decision making in consultation with schools.
- DELEGATE authority to the Corporate Director of Children, Young People and Education, in consultation with the Cabinet Member for Education and Skills to implement the funding arrangements for the Communities of schools process as per [Key Decision - 24/00026 - The Locality Model for Special Educational Needs Inclusion](#)
- DELEGATE authority to the Corporate Director of Children, Young People and Education, in consultation with the Cabinet Member for Education and Skills to proceed with transition arrangements, between April 2025 and September 2026.
- DELEGATE authority to the Corporate Director of Children, Young People and Education to take other necessary actions, including but not limited to entering into contracts or other legal agreements, as required to implement the decision.

Reason(s) for decision:

Background

As part of Kent County Council's (KCC) work to address relevant areas of weakness of the two most recent Ofsted SEN inspection's, an independent review of funding for children and young people

with SEN in Kent mainstream schools was undertaken in 2022. The review formed part of KCC's work to improve the lived experience for children and young people with SEN, and that of their parents, carers, and families.

The national direction of travel indicates that the majority of children with SEN can have their needs fully met by their mainstream school and be funded through a school's normal annual budget allocation, which includes the presumption the school will allocate funding to support children with SEN. Whilst each school will make its own local choices as to how much of its budget is spent on supporting SEN, the Local Authority (LA) is required to estimate the proportion of a school's annual budget that could notionally be attributed to support SEN (defined as the SEN Notional Budget). For a small proportion of children in the county, where the additional costs of supporting a child exceeds £6k, the LA currently operates four different funding systems in Kent to determine the contribution towards these additional costs in state-funded schools:

- Mainstream school High Needs top-up funding rate: a claims-based system, where schools can apply for additional funding where costs of additional support is greater than £6k. These applications can be made for children with an Education, Health and Care Plan (EHCP) or those on SEN Support.
- Specialist Resource Provision (SRP) top-up funding rate: there is a unique average rate for each provision based on the primary need type of children supported and the size of the setting. The first £6k of cost is paid to the provision as core funding with the remainder paid as top-up funding (in line with DfE requirements)
- Special school top-up funding rate: each special school has a unique set of average funding rates for each different primary need of child supported, based on the size and other school related factors. The first £10k of the place funding is paid to the setting as core funding, with the remainder paid as top-up funding (in line with DfE requirements)
- Exceptional Pupil Need (EPN) funding rate: a claim-based system used by SRPs and special schools to apply for additional funding where the average top-up rates are not sufficient. Whilst a proportionately smaller area of spending, EPN claims have increased significantly in the past 2 years.

What is being proposed?

The proposal is to continue to develop a single overarching model for Element 3 top-up funding for allocating funding to state-funded schools, that aims to: provide equity within the SEN system, offer sustainability for the future, and support improved outcomes for Kent's children and young people who have SEN. Aligning with the development of the Continuum of Need and Provision, the funding model will ensure the HNB supports the whole system, offering reduced bureaucracy, increased flexibility and transparency, and swifter delivery. Using the principles of the locality model to build peer-to-peer moderation, along with continued LA oversight, will support the greater sharing of innovative approaches for more cost-effective support for children with SEN. Setting standard tariffs and defined Community budgets will allow greater budget control over the contributions made to state-funded schools to meet the outcomes of children with SEN.

Financial Implications - KCC

Total spending on mainstream top-up, SRP and special school places is forecast to be approximately £225m in 2024-25. Top-up funding for mainstream schools is forecast to be approximately £50m and includes funding for SEN Support services for individual children (equating to approximately 40% or £20m) along with funding for children and young people with an EHCP. Total funding for SRPs and special school places is approximately £175m of which £80m (46%) relates specifically to Element 3, top-up funding, whilst the remainder relates to core placement funding (not in scope of this proposal). This is funded from the HNB of the DSG which is a specific ring-fenced education grant from the DfE. This spending forms part of the School Budget Key Service Line within the KCC Budget.

KCC is one of a number of LAs which have a DfE Safety Valve Agreement to support with the highest overspends on SEN services to achieve a financially sustainable longer-term position. Kent's

annual overspend on the HNB had progressively grown to over £50m by 2022-23, resulting in an accumulated deficit of nearly £150m. The agreement meant the DfE would make additional contributions of £140m, alongside an £82m contribution from KCC itself, to pay off the estimated accumulated deficit and help to balance the high needs budget by 2027-28. In return for this, KCC must implement actions intended to resolve the in-year overspend and achieve future financial sustainability. The Safety Valve agreement has avoided the need for KCC to otherwise impose up to £222m of spending reductions on SEN services over the equivalent period.

The Kent Safety Valve agreement states:

- “The authority agrees to implement the DSG management plan that it has set out. This includes action to:
- 3.1. Implement a countywide approach to ‘Inclusion Education’, to further build capacity in mainstream schools to support children and young people with SEND, thus increasing the proportion of children successfully supported in mainstream education and reducing dependence on specialist provision
- 3.7. Ensure there is sufficient and consistent capacity across the county to support children with severe and complex needs in their local area where possible
- 3.8. Develop a school/area-led approach to commissioning of SEN Support services (Locality Based Resources), to better respond to the needs of children and young people with SEND” (page 2 and 3 DfE DSG ‘Safety Valve’ Agreement: Kent)

Financial Implications – Schools

Special schools: The council is required to set out the basis of the special school budgets (including the methodology for allocating Element 3 top-up funding) in accordance with the budget setting process for primary and secondary schools (publication by 28th February of the preceding financial year) and in accordance with the DfE High Needs Operational Guidance, which includes a requirement to implement a “minimum funding guarantee”, which protects excessive reductions to the per pupil rate, the protection is set each year by the DfE and any changes to this protection level would require Secretary of State approval. Further consideration to reasonable levels of protections through the maximum gains and losses approach will be made as part of the implementation phase and subject to a future key decision.

Mainstream schools with SRPs: A similar maximum gains and losses approach will be used to transition to the new funding model for SRP places, in the same way as special schools, although there is no requirement by the DfE for the Council to do this. Further proposals will be provided as part of a future key decision.

Mainstream schools: In a similar way as SRPs, there is no requirement by the DfE for the Council to provide a level of protection to pre-existing contributions towards the support for SEN in schools, however, a level of protection has been offered as part of the transition period in 3 ways, whereby:

- Schools will continue to receive a direct contribution for existing children with an EHCP with higher levels of support (greater than £6k Element 3 top-up)
- The distribution of the Community budgets will be based on 75% historic allocations for HNF top-up and 25% formula (in the first year). With the formula introduced in full in the third year
- Schools will have the option to ring fence their Community budgets so that approximately 50% to 75% of the value of historic allocations to individual schools will continue to be made for the first year (Sept 25 to Aug 26)

Legal implications

LAs must follow government guidance on distribution of their HNF Block and work under the SEND Code of Practice 2015, these guidance documents were used in the development of the funding model proposed. Links are provided below in the ‘Supporting Documents’ section. The Code of Practice states that:

- “Schools are not expected to meet the full costs of more expensive special educational provision from their core funding [...] the responsible local authority, usually the authority

where the child or young person lives, should provide additional top-up funding where the cost of the special educational provision required to meet the needs of an individual pupil exceeds the nationally prescribed threshold.”

In addition to the Code of Practice, the DfE has also published operational guidance for the administration of LAs HNF budgets (the “Guidance”). The Guidance states that LAs should plan for HNF budget, gives advice on what can be provided, and information on which costs LAs are not expected to contribute to as part of any HNF allocation.

In particular, the guidance provides that:

- local approaches to the use of HNF budgets should be planned as far as possible in the context of strategic agreement with schools and the commissioning local authority
- local authorities must treat children with high needs on a fair and equivalent basis when making arrangements for their funding, regardless of the school placement setting
- local authorities are responsible for decisions regarding the level of top up funding, since they have the statutory responsibility to secure the SEN provision specified in an EHCP
- decisions made by local authorities should be evidence-based, having regard to the actual costs of schools offering provision for pupils with high needs, and should reflect those relevant costs (including the provision required by individual pupils as well as the costs of overall provision for children with SEN, such as the costs of buildings)
- local authorities may calculate funding for a cohort of pupils, and apply banding, which can provide certainty for schools
- local authorities must ensure that they are satisfied that the final allocation of funding is sufficient overall to secure suitable SEN provision and keep the funding under review accordingly.

The DfE guidance confirms that a clearly understood and consistently applied local ‘banding’ framework for element 3 top up funding is important, and that even where provision is specified in an EHCP, there is no statutory requirement that a local authority must pay top-up funding at a particular rate requested by a school or college.

When implementing a system for the distribution of element 3 top up funding, KCC must apply the following principles:

- the funding system operated must be sufficient to secure a child’s overall SEN provision (in Section F of the EHCP) in practice
- the funding system itself must be based on evidence, and not lead to the insufficient funding of SEN provision in Kent
- schools have a degree of flexibility in the way that SEN provision is delivered within their school budgets and
- flexibility is to be built into KCC’s policies including, the funding allocations being reviewed annually, to consider whether additional funding may be required to secure the provision required for particular children.

KCC is subject to statutory sufficiency duties under the Education Act 1996 (the “1996 Act”), including to secure that efficient primary education and secondary education are available to meet the needs of the population in its area. This includes ensuring that sufficient school placements, in number, character and equipment are available in Kent to provide all pupils the opportunity of appropriate education.

KCC is also subject to duties under the Children and Families Act 2014 (the “2014 Act”), to keep under review the educational provision for children and young people with special educational needs or disability and consider the extent to which its provision is sufficient to meet the educational needs of its population. If an Education, Health, and Care Needs Assessment identifies a need for SEN provision to be made, an EHCP must specify the SEN provision required and KCC will be under a duty to secure that provision. A parent or young person has the right to request the authority to

secure that a particular school or other institution is named in the EHCP.

KCC also has a duty under the 2014 Act ‘to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes’.

Ongoing advice will be sought from Legal Services as required during the implementation phase of the decision.

Equalities implications

An equality impact assessment (EqIA) was provided as an appendix to the school consultation and the Executive Decision report.

The changes to SEN Element 3 top-up funding for state-funded schools will not affect funding for early years pupils and Post-16 pupils, along with other post 16 establishments (pupils educated those outside of sixth form in state funded schools) or pupils in the Independent and Non-Maintained special schools at present. Funding processes for these age groups will remain unchanged whilst the new 5-16-year-old age group process is implemented.

The funding model EqIA will regularly be reviewed as the model is adopted and will be kept under review as implementation progresses.

Cabinet Committee recommendations and other consultation:

- The Children’s and Young People Cabinet Committee consider the decision on 16 January 2025
- Kent School consultation 19 November to 6 December 2024
- School Funding Forum 2 December 2024 and 10 January 2025

Any alternatives considered and rejected:

Three other funding model options were considered:

- Option 1 - to maintain the current funding systems
- Option 2 - to solely implement a Tariff funding system
- Option 3 - to solely implement a Locality Model funding system

Option one was discounted as unsustainable for Kent. Existing systems for allocating the funding from the HNB of the DSG are not currently performing well in Kent. There are currently four different systems for allocating SEN top-up funding to support children with high needs attending either special schools, SRPs or mainstream schools. Leading to lack of transparency and equity as to how funding is allocated to settings for children with comparable requirements for support or specific provisions. This is also being reflected in the increase in exceptional claims for individual children in SRP and special schools, where their average funding rates are no longer sufficient. The current system is also heavily dependent on the use of the “primary need” type of a child to determine the funding rate which is being impacted by waiting times for diagnosis and does not reflect the level of support required. During the time these systems have been in operation, the level of overspend on high needs has continued to increase, with higher numbers of EHCPs being requested and demand for more specialist provision continuing to increase, whilst previous OFSTEDs have identified SEN outcomes were not being achieved. This further indicates how our current methods for distributing SEN funding to schools is not sufficiently aligned to meet the required levels of support.

Option two was discounted as a viable ‘one single’ model for Kent due to tariff systems¹ tending to be used in conjunction with individual funding allocations for children (those with EHCPs) rather than

¹ Tariff system: a set of rules and funding levels

for wider operations and funding of SEN Support in mainstream. The inflexibility this system would bring were considered too restrictive for SEN Support services in the county and would be unsupportive of innovative use of resources (for mainstream) if used on its own. Merits were noted however in the stability a tariff model could offer smaller cohorts of pupils with higher levels of need.

Option three was discounted as a viable 'one single' model for Kent because the flexibility was considered too much for the whole system at the current time; the county needs higher levels of financial oversight and accountability due to the sustained levels of overspend in the HNB. Merits were noted however in the innovative and adaptive way it could serve mainstream schools for pupils with wider support needs.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

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signed

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date