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**From: Rory Love, Cabinet Member for Education and Skills, and Sarah Hammond, Corporate Director of Children, Young People and Education**

**To: Children, Young People and Education Cabinet Committee**

**Subject: Special Educational Needs Funding System**

Decision no: *24/00120*

**Key Decision:**

- It affects more than 2 Electoral Divisions
- It involves expenditure or savings of maximum £1m

**Classification:** Unrestricted

**Past Pathway of report:** None

**Future Pathway of report:** None

**Electoral Division:** All Divisions

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**Is the decision eligible for call-in?** Yes

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**Summary:** This report details the findings of (and proposed way forward after) a school consultation into how Special Educational Needs (SEN) funding paid by the Council to state-funded schools should be delivered in Kent. This activity is closely linked to the implementation of other Special Educational Needs transformation projects including, a locality model for school inclusion, the Specialist Teaching and Learning Service review, the special school and Specialist Resourced Provision reviews.

**Recommendation(s):**

The Children's, Young People and Education Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or **MAKE RECOMMENDATIONS** to the Cabinet Member for Education and Skills on the proposals as set out in the Proposed Record of Decision (PROD).

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**1. Introduction**

- 1.1. Special Educational Needs and/or Disabilities (SEND) can affect a child or young person's ability to learn. They can affect their behaviour or ability to socialise, their reading and writing, their ability to understand things, their physical ability and their concentration levels. Children may be eligible for SEN Support (support given in school, such as speech therapy) or have an Education, Health and Care Plan (EHCP) (a plan of care for pupils who have

more complex needs). A child or young person of compulsory school age has SEN if he or she has (a) a significantly greater difficulty in learning than the majority of others of the same age, or (b) a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools.

- 1.2. Kent County Council (KCC) is responsible for the distribution of Special Educational Needs (SEN) funding to schools and colleges to enable a pupil with high needs to participate in education or training (referred to as Element 3 top-up funding in this report<sup>1</sup>). This funding is intended to contribute towards the delivery of support to children where the level of additional support required to access education exceeds £6k. Where a funding contribution is agreed this is expected to be fully funded from the High Needs Block (HNB) of the Dedicated Schools Grant (DSG), provided by the Department for Education (DFE).
- 1.3. The method for allocating SEN funding by the Local Authority (LA) to support pupils in either a mainstream school, Specialist Resource Provision (SRP) or special school has not been fundamentally reviewed for a number of years, with the last significant funding review of special schools and SRPs taking place in 2010, and mainstream school funding reviewed in 2018. The combined spending on SEN top-up funding in mainstream schools and the total costs of places in SRPs and special schools equates to approximately 57% of the total High Needs Grant Income in 23-24. Therefore, it was important to review the current system for allocating funding and whether it was still aligned to, and supported the aims of, the wider SEN Transformation programme in Kent (including actions identified in both the Accelerated Action Plan, Safety Valve and Countywide Approach To Inclusive Education (CATIE) strategy).

## **2. Key Considerations**

- 2.1. This report sets out the proposals for the ongoing development of a new single overarching SEN funding model for the payment of Element 3 top-up funding for state-funded school high needs support in mainstream, SRP, and special schools. The proposals set out the principles of implementing a model whereby funding allocations for individual (or groups of) children with SEN are more closely aligned to the level of adaptation to the curriculum required. With funding allocations agreed either by the LA using a tariff, graduated according to level of adaption required, or by schools through the Community of schools (locality model) for mainstream children on SEN Support or with lower-level support needs. See Appendix 4.
- 2.2. The review of the current funding arrangements for state-funded schools is closely linked and informed by the implementation of other SEN transformation projects including, the locality model for school inclusion, the Specialist Teaching and Learning Service (STLS) review, the special school and SRP reviews. The future funding model for the payment of Element 3 top-

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<sup>1</sup> Schools can also refer to this as High Needs Funding or Element 3

up funding to state-funded schools has been aligned with the underpinning principles of these associated projects.

- 2.3. This review and proposals are also set in the context of wider SEN transformation in response to previous SEN OFSTED outcomes along with implementing actions in-line with Kent's Safety Valve agreement to address the overspend in the HNB of the DSG. With current annual overspending expected to be brought under control by utilising a more collaborative, transparent system, which will work together to create stability and ensure future financial sustainability. Whilst the historic deficit is expected to be paid off through additional contributions from both KCC and the DfE, which have already helped to reduce the accumulated deficit from £147m in 22-23 to £96m by March 2025, with further reductions expected in future years.
- 2.4. With payments to state-funded schools to support children with SEN accounting for 57% of the spend on HNB of the DSG in 2023-24, with spending increasing by 76% (c£103m) in the past 5 years, the future funding model for these payments must be sustainable over the longer term. Changes to the funding model are not intended to cost more but to redistribute funding to schools more equitably based on the level of adaption required to meet the needs of children and young people with SEN, and to place closer control by KCC around the HN budget available to support SEN in state-funded schools.
- 2.5. Whilst this paper focuses on Element 3 top-up funding contributions made by the LA to state-funded schools to support children with SEN, this is in the context that all mainstream primary and secondary schools receive funding to support SEN provision in their school, using their overall school budget (Element 1 and Element 2 funding). The DfE define this element of the school budget as the SEN Notional Budget. Kent schools have benefitted from an increase in their SEN Notional Budgets from £80.3m in 2017-2018 to £190.3m in 2024-2025. While this funding is not 'ring fenced', KCC has drafted further guidance to assist schools to use this funding more effectively.

### **3. Background**

- 3.1. Following the publication of the SEN review in March 2023, the direction of travel of the national government elected in July 2024 is to build on the recommendations from the Green Paper and take a community-wide approach, improving inclusivity and expertise in mainstream schools, as well as ensuring special schools cater to those with the most complex needs.
- 3.2. As part of KCC's 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.
- 3.3. The review found KCC had the highest HNB of all the shire counties (£734 per resident, compared to an average of £614), with spend exceeding annual budget allocations. As a result, KCC built up the significant overspend (see 1.2) which is unsustainable. Despite this higher-than-average allocation, KCC

had seen little impact on improved school experience and outcomes, or parental satisfaction. Even with the increased amount of funding spent on supporting pupils with high needs, demand for specialist provision and places continued to grow. This suggested the current system was not working as well as it could to get the best outcomes for pupils.

- 3.4. A suite of reports on the county's SEN Transformation were presented at the Children's, Young People and Education Cabinet Committee on 16 May 2024, one of which related to the structures that would support increased local collaboration, ([Report Pack - Item 8a, p53-80](#)). After public consultation the **decision** was taken in August 2024 by the Cabinet Member for Education and Skills to proceed with the locality model implementation ([Locality Model for Special Educational Needs Inclusion | Let's talk Kent](#)).
- 3.5. Part of adopting a locality model in Kent for SEN Inclusion, now called the Communities of schools, was to establish how the HNB of the DSG would be delivered in Kent to meet the agreements made in the [Safety Valve](#) with the DfE.
- 3.6. Implementing structures like the Communities of schools within a new locality model and embedding updated thresholds within a Continuum of Need and Provision will strengthen and empower the system to make collaborative decisions, utilise resources more easily and swiftly, in a more consistent way.
- 3.7. 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 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.
  - 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.

3.8. The proposal is to implement a single overarching model for Element 3 top-up funding for allocating funding to state-funded schools (see Appendix 4), 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.

3.9. KCC launched a funding consultation after completing the following activities:

- Gaining the key decision in August 2024 to proceed with the locality model for mainstream schools
- Reviewing SRP provision countywide
- Reviewing special schools across the county (which included consultation with parents and young people)
- Considering other LA funding models, the SEN Code of Practice 2015, other DfE guidance (High Needs Funding 2025-26 operational guidance) and national reviews (High Needs Budgets: effective management in local authorities, Research report, June 2022) (*both reports linked in Section 13*)
- Undertaking a series of workshops with a range of headteachers

The consultation was needed because:

- There is a need to move to a financially sustainable model to ensure that KCC can continue to provide a good quality education that meets the needs of all children with SEN
- There is a need to move from four different models of Element 3 top-up funding to one model which encompasses the whole system for state funded mainstream schools, state funded mainstream schools with SRPs, and state funded special schools (see section 3.7 for a summary)
- There is a need to give schools time to understand the model and the implications for their current provision and for future provision
- There is a need to bring equity to how KCC funds schools and to move away from the current individual 'claims based' system which is dependent on 'need type', diagnosis, and relies on individual officer decisions

3.10. The consultation was designed to seek views from schools on proposed changes specifically in relation to Element 3 top-up funding

arrangements for children with SEN in all schools and academies in Kent. The changes are designed to promote inclusive practice and incentivise a culture of local collective responsibility whereby children with SEN can be provided for and welcomed locally.

- 3.11. KCC went out to schools between the 19 November and 6 December 2024 to consult on the following points:
- The **principles** of a single funding system for the future (see Appendix 4)
  - The **formula** for how KCC will calculate the funding for the Communities of schools to implement the Localities model for mainstream schools
  - How funding is used to meet the needs of children who have significant needs in special schools, SRPs and mainstream schools
  - How to support schools to **transition** from one model to another
- 3.12. 221 individual responses were received, 1 collective response from Diocese of Canterbury and 1 collective response received from Kent Association of Leaders in Education (KALE).
- 3.13. A full analysis, and KCC's response to the findings, can be found at Appendices 1 and 2.
- 3.14. The key findings and proposed recommendations are outlined below. For ease, these have been split between special schools and SRPs, and Mainstream schools, reflecting the difference in how this overarching model for funding is intended to be implemented in the different settings.
- 3.15. Overall, the reoccurring theme from schools was how they felt they could not agree with proposals as they could not model the impact of the proposals for their individual school, and so did not feel they could support them.
- 3.16. Where financial information was provided (for example: indicative Community budgets based on the proposed formula vs current funding allocations), this was not considered sufficient. As set out above, the intention of the consultation was to seek views on the **principles** of how Kent's HNB should be distributed in future, in a fair and equitable way, to state-funded schools to contribute towards the support arrangements for children with SEN, within the funding envelope we have available. Final rates cannot be determined until pupils have been assessed and mapped against the Continuum of Need and Provision. Funding descriptors aligned to the relevant part of the Continuum of Need and Provision can then have a funding amount assigned, based on the number of pupils mapped at each tariff. We explicitly did not include specific rates now, on the advice and experiences of other LAs, to avoid the risk of misleading schools by supplying notional rates that may be determined to be unaffordable once the distribution of children against the tariff was fully understood.
- 3.17. Instead, it is expected the calculation of the specific funding allocation rates would be completed as part of further stages of work, which will be informed by the outcome of the consultation and finalising the funding descriptors to be applied by KCC, in-line with the financial envelope. This work is planned to take place during 2025, ready to set the rates for

publication at their usual time of release to schools. This will be undertaken with full engagement with schools and other relevant stakeholders. These rates and budgets would then be reviewed each year, in-line with the affordability within the HNB, and subject to an annual key decision (in-line with the rest of school budget cycle).

3.18. Following analysis of the feedback from the consultation, KCC has prepared a series of responses to address where further action is needed, and where refinements are required for full implementation. See Appendix 2.

3.19. **The proposed recommendations for special schools and SRPs:**

- To proceed with the next stage of implementing a tariff model for funding SRPs and special schools, including finalising the proposed descriptors which will apply
- To plan to implement the funding model from September 2026
- Implementation will focus on developing the tariff funding rate model during 2025 which will be subject to further key decision (in-line with normal school budget setting processes). In response to the consultation, further consideration will also be given as to whether different tariff rates should apply to mainstream, SRP, or special schools and whether size/other factors should be considered
- Implementation will also consider the financial impact of the change in the funding model to individual schools. A maximum gains and losses approach will be developed to support transition (in response to the consultation) and will be subject to further key decision.

3.20. **The proposed recommendations for mainstream schools:**

- To proceed with the next stage of implementing a tariff model for determining the funding pathway of children with an EHCP in mainstream schools
- To plan to implement the tariff model from September 2026 rather than the April 2026 in-line with SRPs and special schools (in response to the consultation)
- The next stage of work will focus on developing the tariff funding rates structure and descriptors for children with higher levels of support during 2025 (with the same considerations as SRPs and special schools). These will be subject to further key decision in-line with normal budget setting processes)
- Each Community of schools will have a budget, managed and administered by KCC, where schools will make recommendations to allocate funding to individual or groups of schools (or to KCC commissioned services) focused on services to support children on SEN Support and for children with an EHCP with lower-level support needs (where additional costs of support exceed £6k)
- Schools will still be expected to fund the first £6k of additional support in-line with DfE guidance (except where a school may be eligible for SEN notional top-up, not subject to this consultation or key decision)

- The methodology for calculating each Community budget will be based on 50% population and 50% deprivation factors of which IDACI<sup>2</sup>, number of Looked After Children and low prior attainment will be included as part of the basket of indicators. The inclusion of low prior attainment factor is in response to the consultation feedback. The use of historic allocations to support transition to the new formula budget will be phased out over 2 years
- Further consideration will be given to a future option which could recognise and amend Community budgets based on number of children supported locally rather than at SRP or special school (either state-funded or independent)
- Transition model for implementation of Community budgets will be implemented from April 2025 and will be in place until the new funding model is fully implemented
- The current claim system for mainstream Element 3 top-up funding will cease from April 2025, with existing claims for individual children continuing to be paid directly to schools until August 2025 (with the no requirement to renew)
- Existing rates for children with EHCPs (above £6k) will continue to be paid directly to schools until August 2026 (until the new funding model is fully implemented)
- The Community budgets will be implemented from September 2025; to support all children on SEN Support and for children with an EHCP with lower-level support needs (for the transition period this is defined as a child with an EHCP whose existing Element 3 top-up allocation is less than £6k). The Community budget will also consider new EHCPs issued during the transition period. A level of protection to existing claims will be offered until August 2026 to support transition to new model (see 3.21)

3.21. In response to the consultation where greater elements of protection have been requested, four options have been developed for the implementation of the Community budgets:

**4 solutions for Community Budgets (introduce protection):**

- A. Proceed as per the consultation – **no further protection** - SEN Support cases and low support EHCP cases (under £6k) access funding via Community of school referrals from September 2025.
- B. Change in response to consultation – continue with Community budgets for all SEN Support cases and low support EHCP cases but **apply a level of protection to all existing claims** (the exact level will be determined based on affordability but is expected to be around 50% to 75%) until August 2026.
  - Communities can opt out to remove this protection and start with the full model from September 2025 (or April 2025 if they want to be early adopters if all processes are in place).

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<sup>2</sup> Income Deprivation Affecting Children Index



- For Communities who opt to implement the protection, it means schools will work together to consider funding requests for a much smaller budget aimed at new applications or further contributions to support existing cohorts of children, where that may be requested.
- C. Change in response to consultation – continue with Community budgets for all SEN Support cases and low support EHCP cases but **apply protection to all SEN Support cases greater than £6k** until August 2026 (in the same way as EHCPs).
- Therefore, Communities focus on referrals with current HNF of less than £6k in first year – plus all new cases.
- D. Change in response to consultation – **implement a 3-month delay to decision-making for existing cases** through the Community of schools starting from January 2025 to enable further time for school resource planning and establishment of groups.

3.22. The preferred solution is B above, which allows Communities who are ready to make the changes start work within their Communities sooner. This will allow targeted work to be done with those Communities who may still need more time for implementation. This option also allows protection for SEN Support in schools.

#### 4. Options considered and dismissed, and associated risk

4.1. 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

4.2. 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 Element 3 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.

- 4.3. Option two was discounted as a viable 'one single' model for Kent due to tariff systems<sup>3</sup> tending to be used in conjunction with individual funding allocations for children (those with EHCPs) rather than 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.
- 4.4. 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.
- 4.5. Options considering Community of school implementation are outlined under section 3.21.
- 4.6. In addition, consideration was also given at an early stage whether Element 3 top-up funding was limited to children with an EHCP only, and contributions towards individual children on SEN Support or other discretionary services in mainstream schools was ceased altogether. This was discarded on the basis that whilst the historic practice of contributing towards SEN Support services in Kent had not reduced the demand for EHCPs (as had been the original intention), the underlying principle should still be retained, and that an investment in SEN Support should continue but there needed to be greater visibility on the extent of expenditure, its impact, and for spend to be more closely aligned to the budget available. Primary and secondary schools are currently investing 1.2% of their school budget to support services for greater inclusion in mainstream education, this is avoiding more excessive cuts to discretionary services such as SEN Support. This should be the starting point when determining the budget that can be afforded for these related services (see section 5.5).

## **5. Financial Implications**

### **5.1. 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.

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<sup>3</sup> Tariff system: a set of rules and funding levels

5.2. 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.

5.3. 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)

5.4. Kent must implement a sustainable approach to HNF to meet the DfE Safety Valve agreement and to ensure financial sustainability in this area moving forwards; the proposed SEN funding model in conjunction with the wider locality model is expected to build the robust governance and monitoring processes required to implement the necessary new approaches outlined in the agreement through the use of one overarching funding model across mainstream, SRP and special schools. The model will allow the Council greater control over the total contributions to schools to support children on SEN Support and children with an EHCP by setting standard tariff rates for contributions for individual children, and to set the budgets available for the Communities of schools. The tariff model will help to ensure resources within the HNB are more proportionately allocated to state-funded schools based on the level of curriculum adaptation required to meet the needs of children and young people with SEN. It is noted the descriptors to be applied and the rates for the tariff model are yet to be determined and will be the subject of a further key decision. To reduce the financial risk associated with unaffordable tariff rates, these tariffs will be proposed after the distribution of children across the tariff is better understood.

5.5. Investment in services for SEN Support, funded from the HNB, needs to be considered in the context of the total budget available. Budget setting for

2025-26, includes the proposals to transfer 1.2% of the primary and secondary schools to invest in services to support inclusion in mainstream schools including Element 3 top-up funding for children on SEN Support along with other related services. This equates to approximately c£16.5m for 25-26. This transfer is expected to continue each year the Council remains in deficit on its HNB and avoids the requirement for cuts to discretionary services.

5.6. The final Community budgets for Sept 25 to Aug 26 will be confirmed in April 2025 to schools, along with confirmation of the contributions to be paid directly to schools for children with an EHCP with allocations greater than £6k up until August 2026. This will need to be aligned with the end of the current process and based on final affordability. Draft budgets will be issued as part of the school budget setting process (to be published by end of Feb 2026).

### **5.7. 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 28<sup>th</sup> 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.

5.8. **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.

5.9. **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. Operating guidance has been prepared to ensure that Communities stay within allocations
- Communities will have the option to maintain their current proportionate levels of spending within their financial envelope, so that a portion of the

value of historic allocations (equating to approximately 50%-75%) to individual schools can continue to be made for the first year if they choose (Sept 25 to Aug 26)

- 5.10. The first and third bullet points above will allow mainstreams schools to budget for the minimal amount of funding they will receive in-line with the normal budget process for schools. Community of schools' meetings are intending to start from April 2025 to support decision-making for the remainder of the budget for implementation from September 2025.
- 5.11. Within the consultation response, and wider feedback, schools have repeatedly raised concerns over the financial impact the new model may have, leading to greater numbers of redundancies with higher levels of uncertainty. Other schools have already been implementing plans (in some cases over several years) to review their approaches to SEN and implementing alternative strategies to reduce the potential financial impact of these changes.
- 5.12. In terms of the financial risk to the Council, the LA is not responsible for the payment of redundancies, or associated pension costs, for academies or free schools. The LA is responsible for the payment of redundancies and associated pension costs for maintained schools in-line with the prevailing scheme of financing schools (where the restructure is required to avoid a deficit) but a recent [key decision](#) is intending for these costs to be fully met by maintained schools in the future – implementation is progressing. Schools Financial Services (administered by The Education People) will continue to work with schools to offer support to avoid deficits and reduce the impact of funding changes.

## 6. Legal implications

- 6.1. 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.”
- 6.2. 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.
- 6.3. 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.

6.4. 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.

6.5. 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.

6.6. 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.

6.7. 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.

6.8. 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'.

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

## **7. Equalities implications**

7.1. An equality impact assessment (EqIA) was provided as an appendix to the school consultation and linked as Appendix 3 to this report.

7.2. 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.

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

## **8. Data Protection Implications**

8.1. The project has completed the DPIA screening tool and a DPIA assessment is required. This is underway and advice will be sought from the Directorate Information Governance Lead as it progresses.

8.2. Data protection implications will be considered at all stages of the project.

## **9. Other corporate implications**

9.1. Undertaking this work will support Framing Kent's Future through:

- Priority 1: Levelling Up Kent and our commitment to maintain KCC's strategic role in supporting schools in Kent to deliver accessible, high quality education provision for all families, specifically: Maintain improvement support services for all Kent schools, including maintained schools and academies, to maintain Kent's high-quality education system.to maintain the current funding systems
- Priority 4: New Models of Care and Support and our commitment is to support the most vulnerable children and families in our county, specifically: Respond to national policy changes on SEND provision, work with SEND families to rapidly improve the service provided to SEND children and work with mainstream schools so more can accept and meet the needs of children with SEND, increasing choice and proximity of school places.

9.2. Undertaking this work will support Securing Kent's Future by:

- Supporting Objective 1 in bringing the budget back into balance through cost avoidance achieved by supporting more children in mainstream schools from the outset of their statutory education and avoiding the use of non-maintained independent special school placements.
- Objective 3 looking at policy choices and the scope of the Council's ambitions maintaining discretionary services that add value and support outcomes the council is seeking to achieve, where we must be more rigorous in assessing the value of those services, and where necessary re-scope the council's ambition and interventions to something that is proportionate and affordable.
- Further transforming the operating model of the Council (Objective 4) through a greater focus on understanding and demonstrating impact will enable more effective decision making about how and where to focus the use of resources.

9.3. A decision on the SEN Element 3 Funding Model will impact (and be impacted by) the implementation of other SEN transformation projects including, the locality model for school inclusion, the STLS review, and the SRP reviews.

## 10. Governance

10.1. This consultation has been around designing and implementing a funding model which allows transparency and accountability for all parts of the system.

10.2. The proposals regarding how SEN is funded in schools have been designed on the principles of equity of access to provision, so that SEN needs can be met in the right place and the right time, whilst still ensuring KCC can meet its statutory duty to fund provision outlined in EHCPs.

10.3. The proposed decision will delegate authority to the Corporate Director for Children, Young People and Education, to implement the funding arrangements for the Communities of schools process building on the locality model [Key Decision - 24/00026 - The Locality Model for Special Educational Needs Inclusion](#) and progress the transition arrangements of the Special Educational Needs (SEN) funding system for state funded schools between April 2025 and September 2026.

10.4. Following consultation with schools the council will work towards the establishment of one overarching SEN funding policy and system to ensure financial sustainability of the High Needs expenditure.

10.5. A further decision will be taken in due course on the long-term SEN funding system.

10.6. Accountability for statutory functions in relation to Safety Valve sits with Corporate Director for Children, Young People and Education. Responsibility sits with the Director for Education and Special Education Needs.

## 11. Conclusions



- 11.1. As part of the ongoing transformation of SEN in Kent, a public consultation has been undertaken on the principles of a new way for the local area to work together to improve the provision and outcomes for children with SEN in Kent. This [key decision](#) was taken in August 2024.
- 11.2. In order to resource this new way of working, a further consultation was undertaken to seek views on a formula for the distribution of funding to Communities of schools and on the establishment of a tariff system which would clarify how schools can access funding to provide for children who have the most complex needs. The consultation also sought views on how those needs could be defined. The outcomes were clear that there was broad agreement on the principles of the model and schools gave clarity on where more work was needed for the system to function easily.
- 11.3. The proposed SEN funding model in conjunction with the wider locality model is expected to build the robust governance and monitoring processes required to implement the necessary new approaches outlined in the agreement through the use of one overarching funding model across mainstream, SRP and special schools. The model will allow the Council greater control over the total contributions to schools to support children on SEN Support and children with an EHCP by setting standard tariff rates for contributions for individual children, and to set the budgets available for the Communities of schools. The rates for the tariff model are yet to be determined and will be the subject of a further key decision.

## **12. Recommendation(s):**

- 12.1. The Children, Young People and Education Cabinet Committee is asked to CONSIDER and ENDORSE or MAKE RECOMMENDATIONS to the Cabinet Member for Education and Skills on the proposals as set out in the Proposed Record of Decision (PROD):
- 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.

### 13. Background Papers

- [Code of Practice 2015](#)
- [High Needs Funding 2025-26 operational guidance](#)
- [DFE HN Budget case study report.pdf](#)

### 14. Appendices

- Appendix 1: PRoD
- Appendix 2: SEN Funding System Consultation Analysis
- Appendix 3: SEN Funding System Consultation KCC Response
- Appendix 4: SEN Funding System Equality Impact Assessment
- Appendix 5: SEN Funding System Visual Proposed Model

### 15. Contact details

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