
Executive Decision

Review of Mainstream Funding for SEND

Children, Young People and Education Scrutiny Commission

Decision to be taken by: City Mayor

Decision to be taken on/Date of meeting: 17th February

Lead director/officer: Tracie Rees

Useful information

- Ward(s) affected: All
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- Report version number: 0.6

1. Summary

- 1.1 The purpose of this report is to seek the City Mayor and Executive approval to implement a fairer funding model across all the mainstream schools with effect from September 2022 that provide support to children and young people with Special Educational Needs and Disabilities (SEND). The report proposes to increase the current banding arrangements to reflect the child's needs as detailed in Option 3.
- 1.2 A 12-month transition period, during which time, all schools will receive the increased banded rates. Those schools facing a reduction will receive 50% of their losses for a 12-month period at a cost of £1.63m.
- 1.3 The Mainstream Schools currently receive additional funding for pupils with high levels of SEND (where those costs exceed £6,000 per pupil) from the High Needs Block (HNB) of the Dedicated Schools Grant (DSG).
- 1.4 The additional funding is paid in two parts, the first being a per pupil top up dependent upon the individual pupil needs. The second payment being an additional SEND payment which is intended to support the school's overall notional SEND budget. The methodology for both payments is the same regardless of whether the pupil has an EHCP (Education Health and Care Plan) or not. The payments are known as either 'mainstream top-ups' or 'element 3' payments.
- 1.5 There are currently around 1,250 pupils receiving this funding and expenditure in 2020/21 (800 with plans, 450 without) at a total cost of £11.8m. This is 20% of the High Needs Block (HNB) expenditure and second only to special school placement in magnitude. The amount of funding paid out for mainstream top ups has increased at an average rate of 25% since 2015/16, with the result that total top up expenditure has increased more than three-fold since 2015/16. During the same period the total number of pupils with EHCPs has nearly doubled (1.84 x) during the same period to 2,990 at January 2021.
- 1.6 There is substantial evidence that the additional SEND top up payment does not fairly distribute funding to those schools that need it. This report proposes ending this and instead paying out more funding based on individual pupil needs.
- 1.7 We undertook an extensive informal engagement followed by a formal consultation with schools, parents and other stakeholders between March and December 2021 to discuss the issues around top up funding and to help shape an alternative funding methodology that is more focussed on pupil need.
- 1.8 Following our considerable communication, the informal engagement only received minimal responses, although those who did respond, believed that funding should be child centric, distributed fairly and more transparent. Despite being requested, schools were unable to provide other suggestions for a more equitable and sustainable funding mechanism.
- 1.9 The responses from the informal engagement shaped the design of the formal consultation. An extensive communication plan was implemented to ensure all stakeholders were aware of this proposal and the importance of their input into the consultation. In our communications, we outlined the proposed funding

methodology, the impact of the changes to the funding and the introduction of new processes. We received 132 responses, from which there were 56 responses on behalf of schools, 57 responses from parents, and 19 from school governors, LCC staff and members of the public. (see appendices 1 and 2)

- 1.10 Following the consultation, and in light of the challenges to the existing HNB budget and the need to ensure that the funding is distributed equitably across all schools, it has been determined that we should remove the additional SEND top up element of the funding and provide schools with enhanced per pupil top up payments that are solely based upon children and young people's needs.
- 1.11 The proposed funding arrangements are not intended to reduce the overall level of funding available for high needs pupils within the mainstream schools. However, there will be a significant change in the distribution of funding to schools under this proposed fairer funding methodology. The changes should also reduce the rate of year-on-year growth in this additional funding.
- 1.12 We are now seeking Executive approval to start implementation from September 2022.
- 1.13 Following the analysis of the formal consultation, which indicates schools' significant concerns around managing the change in funding. We are recommending the approval of a 12-month transition period, during which time, all schools will receive the increased banded rates. Those schools facing a reduction will receive 50% of their losses for a 12-month period, as calculated as of December and paid in two fixed instalments.
- 1.14 No approval is required from the DfE for any changes agreed following this consultation.
- 1.15 Whilst it was important for us to capture the thoughts of parents and carers, the main audience for this report were the professionals who directly deliver support and manage budgets.
- 1.16 It has been inferred, based upon the extensive consultation communication programme and significant anecdotal evidence, that where stakeholders have not responded to the consultation survey, they have accepted the proposed funding changes.

2. Recommended actions/decision

- 2.1 To implement the revisions to SEND support funding for mainstream schools from September 2022 by enabling the removal of the additional SEND top up funding and increasing the individual banded rates, as detailed in option 3.
- 2.2 In response to the consultation, to agree that £1.63m of transitional funding be paid from the High Needs Block for a one-year period only to those schools that would see a reduction in their funding level under the new arrangements. The transitional period would be from September 22 and August 23 and the payments will be 50% of the funding reduction. This arrangement takes into consideration academic year employment cycles and allows optimum planning time for schools' budgets.

2.3 To note that the £1.63m transitional payment will add to the Council's High Needs Block cumulative deficit.

3. Scrutiny / stakeholder engagement

3.1 The following stakeholders will be briefed during the proposed consultation:

- Lead Members: Feb – April 22
- City Mayor/ Executive Ward Councillors/ Scrutiny: Feb 22 – Mar 22
- LCC/SCE Staff: March – April 22
- Unions: Feb – March 22
- Schools Forum: Feb 22
- LPP/EIP: Feb – April 22
- All Schools: Feb – Mar 22
- School Governors: Feb 22
- PCF Mar 22
- BMF Mar 22
- SENDIASS: Mar 22
- SEND Improvement Board: parents/carers January 22
- Health – CCG: March 22
- SENCo Network: Feb – April 22

4. Background and options with supporting evidence

- 4.1 Pressures on the HNB is a recognised national issue, which is well documented across local government. The pressure on the Dedicated Schools Grant (DSG) has led to more and larger overspends in recent years. Figures from the Department for Education (DfE) show that there are now 430,697 children with an education, health and care plan (EHCP) in England, an increase of 10% from 2020.
- 4.2 The 2019/20 s251 published (local authority budget) data reports total local authority net in-year overspends on HNB budgets of 10.8% of the funding allocations or £593m. 138 out of 152 LAs (91%) had an in year overspend.
- 4.3 The DSG is a specific grant, and the conditions of grant make clear that it can only be spent on the Schools' Budget, and not on other aspects of local government expenditure. But where there is an overspend on the DSG, local authorities could decide to fund that from general resources. This has led some local authority Chief Finance Officers to conclude that if their DSG account is in deficit, they need to be able to cover the deficit from the authority's general reserves. However, changes in Government policy have meant that moving funds from other resources or general reserves is no longer possible.
- 4.4 The forecast over-spend for the HNB in Leicester for 2021/22 is forecast to be nearly £8m. Whilst the DfE have provided additional funding to the HNB in 2021/22, the increases have not kept pace with the continued growth in demand particularly in the numbers of pupils with SEMH and ASD.
- 4.5 The in-year overspends in the HNB in recent years have been funded from the LA's DSG reserves. However, these reserves are forecast to move into a deficit position at the end of 2021/22, a deficit which will continue to grow whilst demand continues to exceed the available funding.
- 4.6 The continued and on-going pressures on the DSG has been acknowledged by the DfE. Following consultation in 2019 the government changed the School and Early Years Finance Regulations to make it clear that the DSG is a ring-fenced specific grant separate from the general funding of local authorities. Any deficit an authority may have on its DSG reserve account is expected to be carried forward to the next year's schools' budget.
- 4.7 The DfE's intention is that deficits should be recovered from future DSG income. The DfE are expecting those LAs who have a deficit balance on their DSG reserve account to produce a management plan to at least eliminate their in-year deficits on the HNB.
- 4.8 In response to the cost pressures exerted on the HNB and the forecast deficit on the DSG reserve account the LA is undertaking a review of all areas of HNB expenditure. The intention of these reviews is not specifically to cut costs. Instead, these reviews are intended to ensure that the available funding is distributed fairly and equitably and that the services commissioned provide value for money.
- 4.9 Between March and June 2021 an extensive informal Engagement took place with key stakeholders (see appendix 1). The following options in relation to alternative funding methodologies were discussed with schools, parents and key stakeholders:
 - Option 1- continue with the existing funding method of both a per pupil-based top up payment and an additional SEND top up payment.
 - Options 2- maintain the additional SEND top up payment but at a lower level.

- Option 3 - provide schools with enhanced per pupil top up payments based on pupil need and remove the additional SEND top up payment altogether.

In addition to this we also asked key stakeholders and schools if they had any suggestions to enable us to design a consultation going forwards. Whilst the 3 options were not discussed individually, it was very clear that schools wanted a system that was fair, and child centred. No further suggestions were made by schools on alternative methods of funding

- 4.10 The responses from the Engagement informed the design of a 3-month Consultation that started in September. Again, an extensive communication plan was implemented (see appendix 2) to ensure that all stakeholders were aware of the funding proposal and the importance of their input. (A summary of the output can be found in Appendix 3)

Overall, 132 responses were received, with the vast majority from parents and schools. Schools that gained from the proposed change to the funding model felt that the new model was fairer, simpler, and more transparent, schools that faced a reduction in funds felt that the model was simpler and transparent but did not feel it was fair. The majority of responders felt that the new model would not support inclusion, however, it was also felt that inclusion should be a whole school ethos and not a policy that should be linked to finances. Parents were concerned about the impact the changes would have on the support their children currently received and were worried that their child may have to go to a special school. Overall, it was felt that whilst the rationale behind the changes made sense, additional transition time and interim financial relief should be given to those schools that face reductions in funding to help them manage the change and plan

5. Detailed report

5.1 Mainstream schools are expected to fund up to the first £6,000 per pupil of the additional costs of providing support to pupils with all levels of SEND from their schools' block delegated budget which is calculated using the national schools funding formula. Much of this additional support will be for low levels of SEND which cost less than £6,000 per pupil.

5.2 The local authority provides 'top-up' funding where the level of SEND support required costs more than £6,000 per pupil and this is paid for from the HNB. This top-up funding means that many higher needs pupils can be appropriately supported within the mainstream system. Currently this funding is provided to approximately 1,250 pupils with 800 having EHCPs and 450 without. The rate for each band is identical regardless of whether the pupil has a plan or not.

5.3 Appendix 4 provides a breakdown of the HNB expenditure over the past 6 years. The spend on mainstream SEND support top up funding was £11.8m in 2020/21, the second largest single item of expenditure and 20% of total expenditure. Total mainstream top up expenditure has increased three-fold since 2015/16 and this compares to a near doubling in the total number of pupils with EHCPs during the same period.

5.4 The current methodology for top up funding to schools has two parts:

- Per pupil top up payment.
- Additional SEND top up payment.

5.5 Per pupil top up

5.5.1 In 2013/14 when the national school funding formula was introduced it was proposed locally and agreed with Schools Forum that top up funding would be based on a banded system. Banding is a way for local authorities to allocate levels of top-up funding for securing special educational provision for those children and young people with SEND.

5.5.2 Pupils and students with high needs are those who have additional support assessed by the local authority as costing more than £6,000 per annum and for whom the local authority is paying top-up funding to the school.

5.5.3 The funding for schools is allocated as follows:

Element 1 is a per pupil amount paid from the school's block fund, Element 2 is the schools notional SEND budget and is also paid from the school's block fund, Element 3 is a top up payment paid from the high needs block.

Element 1 and 2

Type of funding	
Element 1	Per pupil amount
Element 2 (Contribution from the schools notional SEND budget.)	£6,000

Element 3

Element 3 funding is made up of 2 parts. The 1st part is a banded rate based on per pupil need and the 2nd part is an amount paid once the higher needs threshold (please refer to 5.6.3) has been exceeded. This amount is up to an additional £15,000 over and above the banded rate.

Type of funding	Band 1	Band 2	Band 3
Element 3 Part 1 Individual top up	£2,272	£5,636	£8,900
Element 3 Part 2 Additional SEND top up (Applied if 40% of the notional SEND budget has been exceeded.)	£15,000	£15,000	£15,000

5.5.4 The majority of LAs provide individual pupil funding using a banded system.

5.5.5 Where pupils are not being assessed for an EHCP, schools submit applications for additional top up funding and these are assessed by a panel which includes representatives from school SENCos, Educational Psychology, SEND SS and Finance. Schools must demonstrate that they are spending more than £6,000 on additional resource and evidence the pupil's needs. Schools have been allowed to use their own cost rates to calculate their additional expenditure and this determines which support band the child is assigned to. The panels meet monthly and process around 40 requests per meeting.

5.5.6 Whilst a statutory assessment is required for an EHCP, the method of allocating additional resource is the same as above. A separate Resource Allocation Panel (RAP) meets fortnightly and includes school SEND coordinators, SEND SS (Specialist Teachers), LA Education Care and Health Inclusion Officer (ECHIO), Educational Psychologist, parent representative, health representative, social care representative and is chaired by the Special Education Service (SES) Service Manager. There are between 25-30 cases per meeting.

5.6 Additional SEND top-up payments

5.6.1 Local authorities, on a discretionary basis can provide supplementary support funding to the school in addition to the individual banded rate for the pupil. This support was intended to compensate those schools that retained greater numbers of high needs pupils in their schools compared to other schools with similar levels of SEND. Such schools will be spending more of their own budget on the first £6,000 of costs for a high needs pupil and so may be disadvantaged financially by being inclusive and retaining more high-level SEND pupils than other schools.

5.6.2 To calculate the additional SEND top-up the council first of all identifies how much budget the school has to support the general level of SEND within the school. The Council calculates the proportion of this notional SEND budget that is being used for high needs pupils and makes the additional payment to the school to ensure that this proportion doesn't exceed a particular threshold.

5.6.3 This results in additional payments of £15,000 per high needs pupil being paid once a certain number of high needs pupils is reached in the school. This means that some schools will receive £15,000 plus up to £8,900 for the banded rate for every additional high

need pupil. Other schools however, with a greater level of notional SEND budget will only receive the banded funding of up to £8,900. (See Appendix 5 for an example.)

5.6.4 This approach was thought to be appropriate when it was introduced in 2013/14, based on the information at that time. The notional SEND budget is based on indicators within the school's pupil population such as deprivation and prior attainment. However, there is now good research and practical evidence to show that the level of funding for general SEND within a school budget is not a reliable indicator of the incidence of SEND within a school. Therefore, basing the calculation of additional SEND top up payments on the proportion of the notional SEND budget that a school has, is flawed.

5.6.5 The result of this approach is that funding is unfairly distributed. For example, a sample of schools which each have 8% of their pupils on roll having a requirement for SEND support (as identified by the school) actually have notional SEND budgets within a much larger range of between 2.8% and 12.4% of their total budgets. (Refer to Appendix 6). As a result of the support payments being based on the notional SEND budget, schools with the same actual incidence of SEND in the school receive very different additional SEND top up payments.

5.6.6 The current method of calculating additional SEND top-up payments not only produces an unfair funding distribution, but it also results in an unsustainably rapid rise in overall costs. This is because once the number of high needs students in a school reaches a certain threshold, additional payments are made at the rate of £15,000 per additional pupil, nearly double the highest banded rate. The additional top up payments have increased by 25% in 2020/21 compared to 2019/20; banded payments however have only increased by 11% over the same period. This rate of increase is unaffordable given the pressures on the HNB.

5.7 Other LA approaches

5.7.1 Appendix 7 includes details of 6 other LA approaches to funding mainstream SEND top ups. All of these LAs operate an individual pupil led banding system similar to the Leicester City approach. Of the 6 LAs:

- 5 of these LAs also provide an additional supplementary payment.
- 2 of these LAs link that payment to the level of general SEND budget.
- 3 of these LAs link any additional payments directly to the number of high needs pupils.

5.7.2 The individual banded rates are not significantly dissimilar to Leicester's rates. The amount of funding for additional discretionary payments is far less generous than our approach. For the 2 LAs that do use the general SEND budget, they assume that all of this budget has to be consumed on paying for the first £6,000 worth of costs before any additional payments are made.

5.7.3 Compared to these LAs, Leicester is unique in the way additional payments are calculated and far more generous. Nevertheless, a number of these LAs are still looking at revising their approach to support funding as a result of continued pressure on their HNB.

5.8 The following proposals for a revised system were presented to mainstream schools and settings during our engagement. Schools were requested to suggest other suitable or alternative proposals for funding.

5.8.1 Option 1 – continue with existing funding method.

For the reasons outlined above this is not considered equitable and is not a sustainable funding model and therefore is not recommended.

5.8.2 Option 2 – Increase the existing threshold level at which additional SEND top up payments are paid.

The evidence (outlined in Appendix 9) strongly suggests the notional SEND budget does not reflect the actual incidence of SEND in schools and it is not therefore recommended as a basis for funding at any threshold level.

5.8.3 Option 3 – Provide support to schools with enhanced per pupil top up payments that are based on the actual number of high needs pupils in the school and their associated costs. The funding released from not using additional top up payments that are based on the notional SEND budget will be used to increase the existing banded rates and so directly contribute to the actual costs incurred by schools.

5.9 No further funding models were proposed by schools, therefore of the options that were considered, it was felt that option 3 was the only viable proposal to be included within the formal consultation. This model has a number of benefits as it:

- Addresses the inequities and unsustainability of the current system.
- Allows us to increase pupil-based funding.
- Links funding more directly to individual pupils and their needs and delivers more funding to those schools with high needs pupils.
- Increased accountability on schools to demonstrate the impact of funding on pupil outcomes.

5.10 This proposal aims to remove the second element of the current system which results in payments to schools that exceed the threshold of their notional SEND budget to high needs pupils. This element cost £4.5m of the total £11.8m spent on mainstream top ups in 2020/21.

5.11 In the proposed changes, elements 1 and 2 will remain the same. However, for element 3, the individual top up payments have been increased and the additional SEND top up has been removed.

Type of funding	Band 1	Band 2	Band 3
Element 3 – an increased per pupil top up (banded rate)	£2,630	£8,383	£12,698
Element 3 – additional SEND top up	Removed	Removed	Removed

The increased rates we pay for the bands and the proposed new rates are shown below:

Band	Current	Proposed	Increase	% Change	School Contribution	Total	Equivalent TA Hours Per day
Band 1	£2,272	£2,630	£358	16	£6,000	£8,630	3
Band 2	£5,636	£8,383	£2,747	49	£6,000	£14,383	5
Band 3	£8,900	£12,698	£3,798	43	£6,000	£18,698	6.5

n.b. Please note these totals do not include the minimum funding guarantee per pupil amount (Element 1)

- 5.12 A detailed description of how the new bands are calculated is in Appendix 9. The bandings are driven by the equivalent Level 2 TA support hours required. Based on the feedback from the engagement we have reviewed the processes around Element 3 applications and will be encouraging schools to adopt more flexible approaches to the use of funding in order to demonstrate improved outcomes for CYP.
- 5.13 Based on the high needs pupils in 2020/21 this allocation method would distribute 86% of the total banded rate plus notional SEND budget subsidy that was paid out in 20/21. When the new methodology is fully implemented, £1.8m would be available for future growth and the other measures outlined from paragraphs 5.17 onwards below.
- 5.14 Changing the funding methodology will result in a significant change in the distribution of funding received by schools. Some schools will gain, and some will lose funding. On a like for like basis using the 2020/21 high needs pupil cohort, 58 schools would gain under the new arrangements and 44 would see reduced funding. A summary of the overall impact and a full list of schools showing the change in funding for the financial years 2022/23 and 2023/24 using 2020/21 pupil data is included in Appendix 10 and 11 for illustration purposes only. The actual level of funding for these years will of course be entirely dependent upon the actual number of pupils in those years.
- 5.15 We appreciate that these changes will present a challenge to some schools, but it must be emphasised that this will correct what is currently an unfair funding system. To mitigate the effects, we are proposing a number of measures outlined below.
- 5.16 As part of the change in funding methodology one of our priorities is to make the use of top up funding more effective to support schools with our broader strategic aim to improve practice for inclusion. We also want to improve the monitoring of the identification of children with SEND for top up funding and review more systematically the quality and type of provision, the use of funding and the outcomes achieved.
- 5.17 To do this, and to support schools with the transition, the local authority has appointed a SEND Inclusion Quality Manager and two SEND teachers. This new team will work in close partnership with schools to support changes as a result of this review and resource can be aligned and coordinated with the wider school improvement agenda and in particular the Special Leaders in Education, the Teaching Schools and the Closing The Gap programme.
- 5.18 The Inclusion Quality Manager will establish systems and processes that will provide accountability once a top up allocation has been made. The team will also support school SEND Coordinators when making applications so that they are effective and of a high quality, through direct support and training. In addition, the Quality Manager will support schools to account more effectively for how the resources are spent and to develop implementation plans, which schools will co-produce with families, which describes the outcomes to be achieved and the measures of progress to be used. Through this investment in advice and training the local authority will make the assessment of need more consistent and maximise the use of the resources available.
- 5.19 Those schools that are more affected by the change in funding methodology would be the first to engage with new Inclusion Quality Team to look at how existing resources are being deployed and how this can be managed. (See Appendix 12)

- 5.20 The majority of the consultation responses are in favour of the new system on the grounds that it is a fairer way of allocating funding. However, those schools that will see a lower level of funding under the new system also said that they need more time to adjust. We have listened to the comments and concerns and in response, therefore, it is recommended that an additional fixed sum is paid to these schools to cover the first year of implementation, September 2022 to August 2023. This payment will be in addition to the revised banded rate payments.
- 5.21 It is proposed that the additional payment is 50% of any reduction in annual funding for 2021/22 that would have been incurred by the school if the new revised funding system had been in place for that year, as opposed to the current system. The calculation will be based on the pupil cohort as of December 2021 and there would be further adjustments to the calculation as a result of any changes in pupils/pupil circumstances in the period January 2022 to March 2022/.
- 5.22 Calculating fixed sum payments now will give the schools and the LA certainty over the level of additional funding for schools and the additional burden on the LA's HNB. It is felt that a 50% contribution strikes a fair balance between affordability for both the LA and schools. Moreover, it means that schools will still need to begin making adjustments as soon as possible towards the ultimate revised funding levels but it will allow them additional time to make those adjustments compared to our original consultation proposal.
- 5.23 The additional payments will add a very significant additional cost to the HNB of £1.63m compared to the original consultation, adding to the cumulative HNB deficit. This is because we are allowing the schools that receive a fairer funding level under the new system to keep that gain during the transitional period, whilst giving schools that are facing reductions certainty about the protection they will receive.
- 5.24 The fixed sum payment will be split across two financial years, with 7/12ths in September 2022 and 5/12ths in April 2023. All schools that see a reduction in E3 funding will receive an equal percentage of their reduction in funding.

	Financial Year 2022/23						Financial Year 2023/24					
	Apr 22		Aug 22	Sept 22		Mar 23	Apr 23		Aug 23	Sep 23		Mar 24
Allocation method	Old System			New System			New System					
Additional Payment	None			Fixed Protection Payment 1			Fixed Protection payment 2			None		

(See appendix 13).

- 5.25 The transitional support payments have been based on payment schedules produced in December 2021, and will help schools plan their budgets for the next 2 years. The fixed sum payment will be split across two financial years, with 7/12s in September 2022 and 5/12s in April 2023
- 5.26 Schools have been made aware of the potential reductions as part of the formal consultation. All schools have been provided with a financial calculator to enable them to forecast accurately their potential funding in September 2023. In addition, they have been

offered support from the Inclusion and Quality Team, which as yet not all schools have taken up.

5.27 We have listened to the comments and concerns raised in the consultation and believe this option fairly shares the financial impact of the proposed changes between the LA and the schools and at the same time gives schools time to manage their school budget and prepare for the full implementation.

5.28 Subject to an executive decision. The revised system would be fully implemented from September 2023.

6. Financial, legal, equalities, climate emergency and other implications

6.1 Financial implications

6.1.1 The financial implications of the proposed changes are covered extensively in the body of the report. *Martin Judson, Head of Finance*

6.2 Legal implications

6.2.1. Part 3 of the Children and Families Act 2014 sets out the duties placed on Local Authorities for children and young people in England with SEND.

High Needs Block (HNB) funding provides the funding for support packages for an individual with special educational needs in a range of settings. The purpose of the HNB is to ensure equality and equity of opportunity for all children and young people irrespective of their need. Banding is a way for local authorities to allocate levels of top-up funding for securing special educational provision for those children and young people with SEND. These are not statutory arrangements, and each local authority will have its own mechanism for allocating funding.

There is a statutory requirement for the Council to consult with Schools Forum when making important decisions around schools and funding. This report seeks Executive approval to implement the proposed changes in September

The Public Sector Equality Duty requires the Council to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. The proposed consultation should be used to help identify where revision to the proposal might be needed to take account of the impact to individual school budgets and/or pupils and to ensure continued equality of opportunity for those affected.

The results of the consultation should be analysed, prior to any final decision being made, to ensure that any decision making is lawful, follows a fair process and is reasonable.

It is recommended that further legal advice is taken as the proposals are developed.

Julia Slipper, Principal Lawyer, Education & Employment. Tel 0116 454 6855

6.3 Equalities implications

6.3.1 Under the Equality Act 2010 (including the local authority and schools), have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

The proposal seeks approval to consult formally with mainstream school to remove the additional SEND top up element of the funding and provide schools with enhanced per pupil payments that are only based upon children and young people's needs.

The proposed funding arrangements are not intended to reduce the overall level of funding available for high needs pupils within the mainstream schools. However, there will be a significant change in the distribution of funding to schools under this proposed fairer funding methodology.

As the proposal is focused on SEND funding for mainstream schools, the protected characteristic of disability is highly relevant to the proposal however other protected characteristics should also be considered to ensure that there are no unintended disproportionate impacts, or if disproportionate impacts are identified, they are appropriately mitigated.

It is important that any funding reforms are applied to all schools consistently in supporting opportunity for all children, irrespective of their background, ability, or need.

The public sector equality duty, so far as it concerns age, does not apply to the exercise of a function relating to the provision of education to pupils in schools, including those pupils over the age of 18.

The proposals have the potential to impact pupils, non-teaching staff and teaching staff. In order to demonstrate that the consideration of equalities impacts has been taken into account in the development of the proposals and as an integral part of the decision-making process, an Equalities Impact Assessment is underway and will be updated to reflect the outcomes of the informal engagement which has taken place with schools, parents and other stakeholders. The possible or actual impacts of continuing to provide funding in the same way as it is provided has been considered as part of the impact assessment.

The proposed option 3 was consulted on formally in September 2021 with schools. We need to ensure any consultation/engagement process is fair, accessible and proportionate.

Schools are also subject to the PSED and have responsibilities to prevent discrimination against and ensure the fair treatment of all children and young people with disabilities. In addition, employers have duties under the Equality Act 2010

The consultation findings and recommendations on the proposal will support the collation of information required to enable decision makers in paying due regard to the PSED.

Any recruitment should be carried out in line with LCC recruitment policies.

Surinder Singh, Equalities Officer Tel 37 4148

6.4 Climate Emergency implications

6.5 Other implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

7. Background information and other papers: background information and other papers are within the appendices.

8. Summary of appendices:

Appendix 1 - Pre-Consultation Communication Plan

Appendix 2 – Post Consultation Communication Plan

Appendix 3 – Consultation Summary

Appendix 4 – Summary of HNB

Appendix 5 Charts of details of current distribution of funding

Appendix 6 – Illustration of the correlation of notional SEND budget

Appendix 7 – Other LA's methodology

Appendix 8 - The argument against using the notional SEND budget

Appendix 9 - Revised Banding methodology

Appendix 10- Comparison of total high needs funding using current and proposed formula

Appendix 11 - Chart of comparison of total high needs funding using current and proposed formula

Appendix 12 - Audit and Quality Assurance Process

Appendix 13 FAQ's