

**Meeting:** Council

**Date:** 26<sup>th</sup> September 2019

**Wards Affected:** All

**Report Title:** Additional Funds for Special Educational Needs and Disabilities Compliance

**Is the decision a key decision?** Yes

**When does the decision need to be implemented?** October 2019

**Cabinet Member Contact Details:** Cordelia Law, Lead Member for Children's  
[Cordelia.law@torbay.gov.uk](mailto:Cordelia.law@torbay.gov.uk)

**Supporting Officer Contact Details:** Rachael Williams, Assistant Director Education Learning and Skills. [Rachael.williams@torbay.gov.uk](mailto:Rachael.williams@torbay.gov.uk)

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## **1. Proposal and Introduction**

1.1 The Special Educational Needs and Disability Code (SEND) came into effect on 1<sup>st</sup> September 2014. It represented the biggest change to arrangements for pupils with additional needs in a generation and aimed to integrate education, social care and health support in order to improve outcomes for children and families. The SEND Code imposes a range of statutory obligations upon local authorities which are extensive in scope and prescriptive in nature.

1.2 Torbay Council used its existing resources to meet many of the duties within the code. However there are some key elements of the SEND duties that were not resourced or addressed within the arrangements put in place in 2014, resulting in the Local Authority not being able to meet the full range of obligations within the code. The report sets out the duties that are placed on the Local Authority and the current performance in each area. The Local Area will be subject to a Special Educational Needs and Disabilities Area Inspection conducted by Ofsted and the CQC by July 2020. This process will test health, social care and education's response to the legislation. This report sets out what is required for education to be further compliant with the code.

## **2. Reason for Proposal and associated financial commitments**

2.1 The Local Authority is responsible for ensuring that children and young people with special education needs are adequately identified and supported. The demand within the service has increased since the introduction of the SEN code in 2014. There has been a 77% increase in the number of requests for statutory assessment and a 51% increase in the number of Education Health and Care Plans that have been issued. The Local Authority has not altered its resource allocation to the service during this time. The Local Authority working with its School Forum are working collectively to reduce a deficit budget within the Higher Needs Block of the Dedicated Schools Grant. The work of the education department

is critical in ensuring that this money is directed to the most appropriate children and young people and that the decisions regarding the support provided gives the best value for money.

2.2 The Local Area will be subject to a Special Educational Needs and Disabilities Area Inspection conducted by Ofsted and the CQC by July 2020. This process will test health, social care and education's response to the legislation. This report sets out what is required for education to be further compliant with the code.

2.3 To ensure we are moving towards compliance with the code it is recommended that members allocate up to £200k from the Comprehensive Spending Review reserve within 2019/2020 and members allocate up to £650k into the base budget for education in 2020/2021. This will enable the recruitment of Education Psychologists, SEN Caseworkers, Education Health and Care Plan Co-ordinators, Amendment Officers, SEND Commissioners, Monitoring Officers and Business Support.

2.4 However given the Council's overall financial position such an investment in this service in 2020/21 and future years will inevitably have to be funded from reductions in other services. Therefore the sums outlined in this report are maximum allocations. The Assistant Director Education, Learning and Skills in consultation with the Chief Finance officer will work proactively to mitigate any increases in cost while moving to compliance with the SEND Code. The funding allocation required for 2020/21 will be included in the final budget proposals for 2020/21.

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### **3. Recommendation(s) / Proposed Decision**

3.1 The Education budget is allocated up to an additional £200,000 from the Comprehensive Spending Review Reserve in 2019/2020. The Education budget is rebased from 2020/2021 with an additional maximum investment up to £650,000.

### **Appendices**

### **Background Documents**

## Section 1: Background Information

1.

### **What is the proposal / issue?**

Torbay Council used its existing resources to meet many of the duties within the code. However there are some key elements of the SEND duties that were not resourced or addressed within the arrangements put in place in 2014, resulting in the Local Authority not being able to meet the full range of obligations within the code.

A full appraisal of the existing staffing structure, compared to the delivery of duties at a minimum level has been conducted. This appraisal demonstrates that an additional 15.5 FTE staff members are required. These posts will be made up of Education Psychologists, SEN Caseworkers, Education Health and Care Plan Co-ordinators, Amendment Officers, SEND Commissioners, Monitoring Officers and Business Support.

In order to do this the council will need to allocate an additional £300k from reserves in 2019/2020 and rebase the education budget by £650k from 2020/2021.

2.

### **What is the current situation?**

This section of the report provides an overview of the duties and tasks required under the SEND Code and provides

#### **2.1 Request for new Education Health and Care plans and decision to proceed to an EHC needs assessment.**

A request for a new EHC plan can be initiated by a child's parents, a young person over the age of 16 and a person acting on behalf of a child or young person, such as an educational establishment, social worker, health professional or early years practitioner.

Following a request, the Local Authority must make and communicate the decision to proceed or not to the child's parents or young person within 6 weeks of receiving the request. To inform this decision, SEN officers must consult with the young person. In Torbay this is conducted through a face to face meeting.

In addition to seeking the views and evidence from parents, the SEN officers also have to notify and seek information from all agencies connected to the child/young person. This includes but is not exclusive to the health service (all relevant departments), social care, education (early years, schools, colleges). This is currently conducted via the sharing of reports (appendix templates).

In considering whether an EHC needs assessment is necessary, the LA needs to consider whether there is evidence that despite the education provider taking relevant and purposeful action, the child or young person has not made expected progress. The task of gathering this information and creating a rationale for the decision is conducted by case work officers. A fortnightly multi-

agency panel then takes the final decision. Currently 100% of parents and young people are informed of the decision to proceed or not in the six week timescale.

Torbay has a high number of children/young people with a statement or EHC plan. Torbay 4.4% compared to a national figure of 2.9%. Torbay has reviewed the criteria for securing a plan and subsequently reduced the rate of initial requests that convert into a plan. Currently 80% of initial requests convert into a plan compared with 90% at the start of the new duty. There is an increasing rate of requests for new EHC plans at both a national and local level. Torbay currently receives around 280 requests for an assessment for an EHC plan.

Where a decision is taken to not proceed with a plan, the case work officer meets with the parents and/or young person to discuss the rationale for the decision and ensure appropriate support can be provided through SEN support or a universal service.

**2.2 Following the decision to proceed to a plan, the Local Authority must conduct a detailed EHC assessment and issue the EHC plan within 20 weeks.**

In seeking advice and information, the SEN officers undertake additional work with parents and young people to understand their views and aspirations. They also support the parents or young person to understand the range of assessment information and to help them to make an informed decision about whether existing advice is satisfactory.

This process includes gaining detailed information from education, psychological advice, social care advice, youth offending team, early help, and virtual school for LAC and disability services.

The Local Authority co-ordinates the request and collection of all advice and takes the lead role in sharing this information with parents and young people.

Torbay currently receives timely advice from Education (83%). The local area health services have been challenged in the delivery of advice in a timely manner. Current performance is at 60% in the six week timescale. Challenge by Assistant Director has improved compliance from a position of 0%, but further improvement is needed.

The current Social Care information provided is becoming more fit for purpose, but we are failing in our duty to provide a full social care assessment as part of the EHCP process. Work has been conducted to establish a new process, this went live on 1<sup>st</sup> November 2018, the process includes using the MASH as a single point of contact, with the MASH allocating the task to the correct part of the social care system. The process now includes a return being provided by the allocated social worker if the case is opened, a return being provided by targeted help or social worker if the case is closed recently or a telephone assessment to families that are not known to the services. The effectiveness of this process will be closely monitored and reported to the SEND board.

### **2.3 Issuing an Early Health Care Plan**

By using the EHC assessment information, the SEN officer then completes the writing of the statutory plan. As a statutory minimum, EHC plans must include;

Section A – The views and aspirations of the child and his or her parents or the young person

Section B – The child or young person's special educational needs

Section C – The child or young person's health needs which are related to their SEN

Section D – The child or young person's social care needs which are related to their SEN or to a disability

Section E – The outcomes sought for the child or young person

Section F – The special educational provision required by the child or young person

Section G – Any health provision required

Section H – Any social care provision required

Section I – The name of the school to be attended

Section J – Details of any personal budget allocated

Section K – The advice and information gathered during the assessment

The Local Authority must issue a draft plan to the child's parents and young person at least 15 days prior to the 20 week deadline. In issuing the draft plan, the SEN Officers must make time to meet parents if requested and be available to discuss the content. When changes are requested to the draft plan, the plan is then amended and issued as the final EHC plan. The final plan has to be issued by the 20<sup>th</sup> week.

Torbay currently issues 42% of plans within the 20 week timescale but fails in its duty to meet all parents, the team are now meeting 1 in 10 parents. The process used also enables plans to be issued where all returns have not been received, this results in redrafting plans closely after the initial plan is issued. The SEND operational board ceased this practice in October 2018.

### **2.4 Reviewing an Early Health Care Plan**

In discharging its duties the EHC plan should be actively monitored by the Local Authority and as a minimum there should be an official review every 12 months. To enable this to process to take place, the Local Authority is required to provide a list of all EHC plans to be reviewed to the education provision before the start of each term. The process should gather and assess information from all parties listed in the plan and involve the setting of new interim targets for the coming year. The review should be conducted with the

parent and young person. Following a review, the plan should be altered if appropriate. At this point, it might also be relevant to cease and EHC plan.

Torbay currently has 1334 EHC plans. The Local Authority provides a list to education providers however it is currently failing in its duty to monitor, review and re-issue plans on an annual basis, we have recently recruited two SEN Monitoring Officers and an EHCP writer. This team will start work on compliance from September 2019.

The lack of dedicated resource to complete an annual review process, results in an issued plan becoming quickly outdated. The process of reviewing and re-issuing plans would also provide a natural opportunity to reconsider the resource allocation, the continuation of specialist placement and a collective decision to cease an EHCP. Without this function the Local Area is locked into financial commitments that are becoming unviable.

Currently the Local Authority takes action to attend the review meeting where placement breakdown may occur. These crisis reviews are called to deal with emerging issues and avoid placement breakdown.

Forward thinking Local Authorities are currently considering the use of digital resources to support the annual review process. The Local Authority already uses a digital platform through Open Objects, this resource could be extended to include the digital transfer and processing of annual reviews. This would require an investment of £30k in year one and an on-going investment of £10k for the maintenance of the licence.

## **2.5 Resolving Disagreements**

The SEN framework is complex and involves numerous decisions and recommendations. At each point in the process, there is a right of appeal and access to independent support services. To ensure early resolution the Local Authority has to make available an SEND information, Advice and Support Service (SENDIASS) that is available to those with an EHC plan or SEN initial enquirers. The Local Authority also has to offer mediation to discuss EHC needs assessments and plans. Torbay currently benefits from a peninsular mediation service. Parents and young people also have the right to an appeal with the Tribunal.

Torbay has a high satisfaction rate and most concerns are dealt with effectively through early resolution processes. There have been three cases taken through formal mediation and five tribunals since the code came into effect.

## **2.6 Local Offer**

Local Authorities must publish a Local Offer setting out in one place information about provision that is available across education, health and social care for children and young people that have SEN or are disabled.

The Local Offer must provide clear, comprehensive, accessible and up to date information about the available provision and how to access it and be inclusive and

Be inclusive and responsive to local needs and aspirations by directly involving children, young people and their parents in its development and review.

	<p>Currently the Local Authority has an online directory that is hosted on the Family Information Service portal. The Local Offer is visited on an annual basis to ensure it is up to date. The Local Authority does not currently have a mechanism or resource to involve children and young people in its design, development or review.</p> <p><b>2.7 New Post 16 Duty</b></p> <p>The Children and Families Act in 2014, introduced a new duty to extend the entitlement of an EHC plan to post 16 pupils up to the age of 25 years.</p> <p>This duty has resulted in fewer plans ceasing as age 16 and an increase in requests for EHC plans at this stage.</p> <p>To date, the Local Authority has issued or continued 344 EHC plans for post 16 pupils. These plans are subject to the same assessment and review arrangement. This has enabled young people to access further education and receive a range of high quality education programmes.</p> <p>This duty has not only resulted in additional assessments but has required the Local Authority to work with a number of providers to produce an accessible range of post 16 provisions. Currently the department works to assess and issue the plan, however there is no capacity to review the plan.</p>
<p><b>3.</b></p>	<p><b>What options have been considered?</b></p> <p>The Education Service has moved resources around the system to ensure a degree of compliance with the code, this has included using the support and expertise within the wider education system and requesting schools hold meetings without the Local Authority.</p> <p>To work towards compliance an investment into the service is the only viable option.</p> <p>To ensure that the investment request is kept to a minimum, the education service will undertake a full service re-design to maximise the impact of the new posts.</p>
<p><b>4.</b></p>	<p><b>What is the relationship with the priorities within the Partnership Memorandum and the Council’s Principles?</b></p> <p>Priorities:</p> <ul style="list-style-type: none"> <li>• Thriving People and Communities</li> </ul> <p>Principles</p> <ul style="list-style-type: none"> <li>• Reduce demand through prevention and innovation</li> <li>• Integrated and joined up approach.</li> </ul>

<p>5.</p>	<p><b>How does this proposal/issue contribute towards the Council's responsibilities as corporate parents?</b></p> <p>Looked After Children are often identified as having special educational needs. The children will benefit from an improved response to having their needs assessed and ensuring an up to date education, health and care plan is in place to support their education and care planning.</p>
<p>6.</p>	<p><b>How does this proposal/issue tackle poverty, deprivation and vulnerability?</b></p> <p>Analysis of Special Educational Needs data demonstrates that 50% of children within an Education Health and Care Plan live within our most deprived communities. A timely and comprehensive assessment of needs will help to tackle the disadvantages faced and ensure an appropriate allocation of resources and provision.</p>
<p>7.</p>	<p><b>How does the proposal/issue impact on people with learning disabilities?</b></p> <p>Further compliance with the SEN code of practice will ensure that children and young people with identified special educational needs and disabilities are identified and supported. The code also ensures that there is effective provision until the age of 25 and good transition planning into adult services where the threshold is met.</p>
<p>8.</p>	<p><b>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</b></p> <p>The Local Authority SEN team work in partnership with the Voluntary and Community sector. This includes the commissioning of services from the providers within the VCS community and also the identification of children and young people that access community lead provision.</p> <p>The proposal will increase the opportunity to co-produce activities/provision with the VCS. Currently the work that can be conducted is limited by the capacity of Local Authority staff, the new structure will enable more formal opportunities for commissioning and have a community engagement focus. For example the establishment of a Young People SEND Champion Group.</p>

## Section 2: Implications and Impact Assessment

9.	<p><b>What are the financial and legal implications?</b></p> <p>The proposal seeks additional investment into the education budget. The recommendation is for a £300k in 2019/2020 with an additional £650k added to the base budget from 2020/2021.</p>
10.	<p><b>What are the risks?</b></p> <p>The Local Authority will not be fully compliant with the 2014 SEN code. The processes can be tested through ombudsman investigations and SEND Tribunals.</p> <p>The Local Area will be subject to a Special Educational Needs Inspection conducted by Ofsted and CQC. This will take place before July 2020. A failure to demonstrate compliance with the code, may result in the need for an improvement plan, this would determine the level of resource required.</p>
11.	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>Not applicable</p>
12.	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>Torbay has a higher than national rate of children and young people with special educational needs. Currently 4.4% of Torbay's population has an Education Health and Care Plan compared to a national average of 2.9%.</p> <p>Torbay's School Forum have been taking action to consider how to best meet children and young peoples need within the financial envelope provided. Over the last 12 months the School Forum have been enacting a financial recovery plan which has been agreed by the Department for Education. In order to drive the recovery plan, there needs to be sufficient central resources, to assess needs, support and challenge practice within education, health and social care. The plan in place is comprehensive and built upon good practice taken from other Local Areas, policy initiatives and research conducted by the Education Endowment Fund.</p>
13.	<p><b>What are key findings from the consultation you have carried out?</b></p> <p>The Local Authority has consulted with schools, key stakeholders, health and social care on two major policies regarding SEND. The SEND strategy and Higher Needs Recovery Plan both demonstrate the need to have early</p>

	<p>identification, the meeting of needs at the lowest level of intervention and the development of the Local Area system to ensure children can be effectively supported within their communities. The increase of capacity with the Education Service team will enable the two plans to be enacted at a greater pace and with more effective support.</p> <p>If the recommendation is taken forward, we will conduct a full consultation with all staff through a HR process.</p>
<b>14.</b>	<b>Amendments to Proposal / Mitigating Actions</b>  Not applicable.

## Equality Impacts

15.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	The proposal will ensure that children and young people with Special Educational Needs and Disabilities are identified at the earliest opportunity		
	People with caring Responsibilities	The proposal will support families to ensure that their needs are adequately assessed.		
	People with a disability	The proposal will support the identification and provision provided for children and young people with disabilities.		
	Women or men	The proposal will support all genders.		
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>	The proposal will support all ethnic backgrounds.		
	Religion or belief (including lack of belief)	The proposal will support all religions and beliefs equally.		
	People who are lesbian, gay or bisexual	The proposal will support the identification of children and young people who need support.		
	People who are transgendered	The proposal will support the identification of children and young people who need support.		

	People who are in a marriage or civil partnership			The proposal will have a neutral impact on those in a marriage or civil partnership.
	Women who are pregnant / on maternity leave			The proposal will have a neutral impact on women who are pregnant/on maternity leave.
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	The proposal will enable further identification and support to children living in deprived communities or with vulnerabilities.		
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	The proposal will help to identify children and young people with special educational needs and disabilities at the earliest opportunity and will impact on the Local Authority ability to engage with health services for co-ordinated planning.		
<b>16.</b>	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	There will be no detrimental impacts to wider council systems. The additional staff will be able to engage more widely on whole service priorities and issues.		
<b>17.</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	There will be no detrimental impacts on other public services. The additional staff will be able to offer valuable support and co-ordination. The education sector will benefit from having access to greater expertise.		