

Schools Forum Meeting Agenda

Thursday, 10 March 2022 at 9.00 am
to be held in Held Via Microsoft Teams

Membership

Stewart Biddles
Lisa Finn
Sally Timmins
Steven Hulme
Mike Lock
Clive Star
Jim Piper

Tim Stephens
Jayne Jones
Steve Margetts
Alex Newton
Kelly Sooben
Sarah Tomkinson
Ken Kies

1. **Apologies/Changes to Membership**
2. **Minutes of the last meeting** (Pages 3 - 6)
3. **Financial Report** (Pages 7 - 12)
4. **Safety Valve** (Pages 13 - 14)
5. **Written Statement of Action SEND** (Pages 15 - 20)
6. **Latest SEND Statistics** (Pages 21 - 26)
Matt Gifford & Grace Beer, Education Business and Performance
Team
7. **Secondary/Special School consultation process**
Dorothy Hadleigh

For information relating to this meeting or to request a copy in another format or language please contact:

Mike Freeman, Clerk
01803 2078579
Michael.freeman@torbay.gov.uk

8. **EHE legal advice decision** (Pages 27 - 48)
9. **New financial regulations regarding out of area placements** (Pages 49 - 53)
Dorothy Hadleigh
10. **Significant change process** (Pages 54 - 56)
11. **Future meeting dates**
- Thursday 5th May, 09:00
 - Thursday 16th June, 09:00

Provisional dates for 2022/23:

- Thursday 13th October, 09:00
- Thursday 24th November, 09:00
- Thursday 19th January, 09:00
- Thursday 23rd March, 09:00
- Thursday 4th May, 09:00
- Thursday 15th June, 09:00



Minutes of the Schools Forum

20 January 2022
Held via Microsoft Teams

-: Present :-

Stewart Biddles (Chair) Primary Academy Rep; **Lisa Finn (Vice-Chair)** Secondary Academy Rep; **Tim Stephens**, Primary Academy Governor; **Alex Newton**, Secondary Maintained Head; **Jim Piper**, Primary Academy Deputy Head; **Mike Lock**, Special Schools Head; **Jayne Jones**, Early Years Rep; **Steven Hulme**, PRU; **Steve Margetts**, Secondary Academy Head; **Clive Star**, Secondary Academy Rep **Ken Kies**, Primary Academy Head; **Sally Timmins**, Secondary Academy Governor

-: Also in attendance :-

Rachael Williams, Assistant Director for Education, Learning and Skills; **Rob Parr**, Principal Accountant; **Dan Hamer**, Head of Vulnerable Pupils; **Dorothy Hadleigh**, Head of SEN; **Sarah White**, Early Years Finance Officer; **Michael Freeman**, Clerk

1. Apologies/Changes to Membership

Apologies were received from Martin Phillips and Nancy Meehan. Kelly Sooben of South Devon College has now been appointed as our Post 16 representative, Kelly will be joining the forum in place of Dan Hallam at our next meeting.

Stewart shared that unfortunately Adam Morris has had to take early retirement on medical grounds, a new Primary Maintained Governor is being sought. The forum thanked Adam for his time and commitment to School Forum and wished him well for the future.

2. Minutes of the last meeting

The Minutes of the last meeting held 25th November 2021 were agreed as a true record.

3. Financial Report

The Forum heard from Rachael, who presented an updated projected position of the local area for 2020/21. DSG (Dedicated Schools Grant) funded activities are now forecast to be overspent by £3.325m, an additional pressure of £123k since the November's Forum. The most significant area of increase is in the Other

packages including SEND budget line, Rachael explained that this is due to the volume of new requests being received.

The Early years autumn headcount is currently being processed; this block is discussed in further detail in item 5 of this meeting.

The Higher Needs block remains the area of most concern, there has been an increase of £68k in Independent Special School Fees and £146k in the Other packages including SEND block. Members noted the findings of the report and agreed to continue to work with the Local Authority through the Higher Needs Recovery Block to enact the financial recovery plan.

4. Special School Allocation 2022/23

Rachael and Rob Parr, Principal Accountant, informed members that a supplementary grant will be available in 22/23 (provisionally £2.7m for Torbay) for maintained schools and academies, allocations at school level will be released in spring 2022. Special schools do not receive the supplementary grant mentioned above, but instead an additional Higher Needs Block allocation of £830k has been allocated for 22/23.

As School Forum has previously agreed that Special Schools should benefit to the same level as the increases given to Primary and Secondary schools, a model for allocating funding was proposed to ensure Special Schools receive an equivalent amount to the supplementary Grant allocated to Primary and Secondary in 22/23. The methodology was using the 21/22 Primary & Secondary data to calculate an allocation for each school if the Supplementary Grant had been allocated in 21/22. This allocation was then taken as a percentage of the overall school funding across Primary & Secondary, this created an overall percentage increase of 2.88% which has then been applied to Special School Funding through increased top-up values.

After discussion, members felt that the proposal was in the interest of fairness towards Special Schools, and a vote was held as follows:

To allocate £334,226 (40.27% of the additional Higher Needs Block) to Special Schools using the funding methodology described:

For: 12 Unanimous
Against: 0
Abstain: 0

Whilst agreeing to the proposals outlined, members were asked to note that there could be some challenge from the ESFA, who may query why the LA is allocating 40% of its growth when we are not yet at a balanced budget.

5. Early Years Funding Rates for 2022-2025

Members heard from Sarah White, Early Years Finance Officer, who presented an update on Early Years funding.

Whilst there is no change to the National Funding Formula, The budget has provided the Local Area with increased rates, as per the Government's Autumn Budget announcement and Spending Review. Torbay has been allocated the minimum increase with an additional 21 pence per hour for 2 year olds and 17 pence per hour for 3 and 4 year olds.

Using the methodology outlined by Sarah in her report, Hourly rates for Torbay children will now be set at:

3&4YOs = £4.15 per hour

An increase of 14 pence per hour compared to the current rate of £4.01

2YOs = £5.17 per hour

An increase of 13 pence per hour compared to the current rate of £5.04

The forum noted the findings of Sarah's report, and thanked her for her time.

6. Schools Forum and HNRG Workshop next steps

Rachael gave some feedback from the joint School Forum/Higher Needs Recovery Group workshops that have taken place since the last Forum. It was discussed whether the HNRG's remit was too wide reaching, and Rachael proposed to members that the group be split up into smaller groups tasked with looking at each individual budget line.

Members were unanimous in agreement to this proposal, but felt that the groups needed to be a mechanism to affect changes and not just a place to share ideas. It was felt important that there should be no disconnect between the Forum and the working groups, therefore each working group should have one member of Forum on it.

Action – Rachael to write to HNRG members explain the changes agreed today.

Action – Rachael to seek volunteers for the new groups.

7. Local Area SEND Inspection

Members were shown a joint letter from the CQC (Care Quality Commission) and Ofsted detailing their findings from the recent SEND inspection. Whilst the report notes good practice in Early Years and Special Schools, it was felt that some schools did not understand the graduated response approach. Rachael clarified to members that feedback was largely based on responses from parents that are significantly challenging and really give a call to action for change that is needed across the system. The inspectors did not report back on individual school visits but used the information from visits to inform the recommendations overall.

Rachael explained that a written statement of action is now being drafted by officers, the deadline for this to be submitted to CQC/Ofsted is 28th April. This will be a multi-agency response, and Rachael informed members engagement with the Regional Schools Commission has started in preparing this and ensuring we are aligned in priorities. Members requested that the work of School Forum be embedded into the statement and asked whether there are any examples from other local authorities. Dorothy explained that she is already talking to colleagues in Swindon regarding ideas. The written statement of action will include input from both parent and children and young people, as well as input from the Chief Executive and multi-agency partners from Health and Social Care.

Members acknowledged that the report is challenging, and recognised the need for change. Joint working at all levels will be the main challenge, and members requested some input from Senior LA officers at a future Forum to discuss any proposed changes.

8. Items for next meeting

9. Future meeting dates

- Thursday 10th March, 09:00
- Thursday 5th May, 09:00
- Thursday 16th June, 09:00

Financial Report School Forum 10th March 2022

Introduction

The following report contains a detailed breakdown of the projected position of the Local Area for 2020/2021. The report enables members to note the outturn position and the significant factors contributing toward the spend. The report covers the following items

- Forecast outturn position 2021/2022
- Contextual information regarding Early Years Block
- Contextual information regarding Higher Needs Block
- Position and Recommendations

Forecast Outturn Position 2021/22

Dedicated Schools Grant (DSG) funded activities are currently forecast to **overspend by £3.234m**.

The following table details the main areas of both over and under spend. Many of these budgets are demand led and will be monitored during 21/22 and revisions reported accordingly.

Budget Heading	Budget	Actuals to date	Projected Outturn	Over / (Under) Spend
Early Years 2, 3 & 4 yr old payments – PVI's & Academies	£5.596m	£5.043m	£5.705m	£109k
Estimated budget from ESFA for changes in Early Years pupil numbers between pupil count dates				(£80k)
Early Years – ALFEY	£270k	£274k	£285k	£15k
Early Years – Pupil Premium & Disability Access Fund	£128k	£56k	£79k	(£49k)
Early Years – 5% retained element	£345k	£283k	£306k	(£39k)
Joint Funded Placements	£550k	£497k	£530k	(£20k)
Reclaim from ESFA of Early Years pupil number variations between 20/21 and 21/22 lower than anticipated.				(£11k)
Recovery of funding from schools for Excluded Pupils, Medical Tuition Service and Elective Home Education	(£250k)	(£116k)	(£140k)	£110k
Independent Special School Fees	£3.100m	£3.148m	£3.313m	£213k
Other packages for EHCP pupils and SEND personal budgets	£1.401m	£1.249m	£1.596m	£195k
Payments to / recoupment from other authorities for Special School places	(£260k)	(£145k)	(£230k)	£30k
Medical Tuition Service / Virtual School / Hospital Tuition / Vulnerable Students Team	£1.503m	£1.338m	£1.383m	(£120k)
School contingencies (Rates, planned pupil growth, NQT induction etc)	£308k	£308k	£309k	£1k
EHCP in-year adjustments (see separate paper for details)	£340k	£887k	£887k	£547k

Special Schools / High Needs in-year adjustments (see separate paper for details)	£600k	£503k	£505k	(£95k)
School Intervention / Commissioning (includes School Improvement Grant)	£145k	£90k	£91k	(£54k)
Business Support	£195k	£175k	£180k	(£15k)
Other – including Admissions, EAL / Travellers, Advisory Teachers, SEN contracts				(£103k)
Deficit DSG budget set for 21/22	(£2.6m)			£2.6m
Total – Forecast Outturn Position 21/22				£3.234m

The area of significant volatility remains the Higher Needs Block.

Early Years Block

The Early Years census is in the process of being administered. The data has not yet been completely checked and verified internally and there is still a significant amount of cross-LA checking which needs to take place before the following indications can be formalised.

However, a report has been generated through the DfE Collect system which enables an initial forecast adjustment and outturn for the Early Years budget.

As a result of the pandemic, the ESFA made some changes to the methodology to calculating the final budget for the financial year 2021-22 and the adjustment received in July each year. The funding for this financial year has been based on actuals, with actual headcount attendance data being provided to the ESFA for the summer term and autumn term 2021. The final budget is therefore calculated as follows:

Five-twelfths of the May 2021 count PTE numbers (to cover Apr 2021 to Aug 2021)

Four-twelfths of the October 2021 count PTE numbers (to cover Sept 2021 to Dec 2021)

Three-twelfths of the January 2022 census PTE numbers (to cover Jan 2022 to Mar 2022)

The table below demonstrates this and provides the final PTE figures for the year using the extraordinary submissions for summer and autumn 2021 and the initial census report figures for January 2022:

		2YO	3YO Uni	3YO ext
May-21	5/12	137.50	774.70	322.66
Oct-21	4/12	123.00	419.00	182.66
Jan-22	3/12	83.56	394.79	177.72
	Total	344.06	1588.49	683.03

The figures above have been used to calculate an estimated budget adjustment, received in July 2022. The table below demonstrates this and the financial impact:

	Current budget PTE	Actual PTE	Adjustment to PTE	Adjustment £
2YO	333.87	344.06	10.19	£31,140.13
3YO U	1593.18	1588.49	-4.69	-£11,873.67
3YO ex	659	683.03	24.03	£60,821.45
				£80,087.91

The data shows that the Local Area could expect a positive adjustment of just over £80k.

This estimated adjustment figure has been included in the forecast outturn position data. Overall, the EY budget for 2, 3 and 4 year olds is expected to be overspent by £29k.

Higher Needs Block

Torbay continues to have a greater number of children requiring additional support up to and including a special school place than the funds available in the higher needs block can meet. Although the normal pressures on additional requests for support remains, there has been some changes within the blocks reported at the previous forum.

The most significant changes are within

Independent Special School Fees with a decrease of £55k from the previous report

This is as a result of an Independent Special School Placement ceasing.

Other packages for ECHP and SEND personal budgets with a decrease of £76k from the previous report

Following the final terms commitments being confirmed and some provisions that had been projected forward no longer being required the budget has reduced.

School Contingencies with an increase of £42K from the previous report (to a balanced budget position on this cost line)

The budget has now been spent in line with the commitments that were set out by school forum for rates, planned pupil growth and ECF inductions.

Reporting table on EHCP Allocation above £6k

The other area of growth can be noted in the comparator report below.

Education, Health & Care Plan Funding for 20/21 & 21/22			
	20/21	21/22	Increase / (Decrease)
Number of pupils with EHCP	470	463	(7.00)
Number of FTE's with EHCP	429	407	(22.00)
	£	£	£
Funding below £6k allocated through school formula elements	2,554,879	2,426,210	(128,669)
Funding above £6k allocated as a top-up per eligible pupil	2,122,040	2,206,696	84,656
EHCP Contingency	350,000	340,000	(10,000)
In-Year adjustments			
April	16,946	214,516	197,570
May	(104)	92,973	93,077
June	(11,737)	76,491	88,228
July	4,062	52,297	48,235
August	42,398	32,649	(9,749)
September	115,109	281,701	166,592
October	72,833	43,591	(29,242)
November	50,539	43,590	(6,949)
December	16,915	30,737	13,822
January	(11,583)	(4,276)	7,307
February	15,276	22,417	7,141
March	0	0	0
Total - In-Year adjustments	310,654	886,686	
Projected (underspend) / overspend	(39,346)	546,686	
Notes			
Based on April 21 - Feb 22 in-year adjustments, and the same allocation for the remainder of the financial year as 20/21, it is anticipated the EHCP contingency will overspend by			546,686

[illegible]

Position

The final outturn position of the Local Area continues to be of significant concern. The position remains volatile and continued actions need to be taken to try and mitigate spend.

The cumulative overspend of the DSG is now £5.825m

The projected cumulative outturn position at the end of 2021/2022 would be £9.059m

Recommendation and Decisions

It is requested that Schools Forum:

1. Note the financial position and continue to work with the Local Authority through the mechanism of the Higher Needs Recovery Group to enact the financial recovery plan.

Rachael Williams

Divisional Director Education, Learning and Skills



Department
for Education

Date: 17 February 2022

By email: anne-marie.bond@torbay.gov.uk

Cc: martin.phillips@torbay.gov.uk nancy.meehan@torbay.gov.uk

Dear Anne-Marie Bond,

‘SAFETY VALVE’ INTERVENTION PROGRAMME 2022-23 FOR LOCAL AUTHORITIES WITH LARGE DSG DEFICITS

GE DSG DEFICITS

I am writing to notify your authority that you will shortly be invited to take part in the ‘safety valve’ intervention programme with the DfE in 2022-23 financial year. The aim of the programme is to agree a package of reform to your high needs system that will bring your dedicated schools grant (DSG) deficit under control.

Context

We are aware that, over recent years, pressures on high needs budgets have contributed to many local authorities accruing deficits on their DSG. The right response to tackling this is a multi-faceted approach which looks to the heart of the issues, taking in the significant increases in high needs funding that have been provided nationally; reform from the upcoming cross government SEND review; and targeted intervention for the local authorities who have struggled the most.

As a result of the 2021 Spending Review, nationally the core schools’ budget will be increasing by £7 billion by 2024-25, compared to 2021-22, including a total £4 billion increase for schools and high needs next year. As a result, we announced on 16 December that high needs funding for children and young people with complex needs is increasing in the next financial year by £1 billion, to over £9.1 billion in total.

This unprecedented increase of 13% comes on top of the £1.5 billion increase over the last two years. Nonetheless, we know that in some areas the additional high needs funding will not, on its own, be enough to eliminate DSG deficits and enable authorities to manage themselves sustainably.

We began the safety valve intervention programme in 2020-21 and have continued with further authorities in 2021-22, targeting the local authorities with the highest DSG deficits. The programme requires local authorities to

develop substantial plans for reform to their high needs systems, with support and challenge from the department's expert team, to rapidly place them on a sustainable footing. If a local authority can demonstrate sufficiently that their DSG management plan creates lasting sustainability, including reaching an in-year balance as quickly as possible, then the department will enter into an agreement with the authority (subject to Ministerial approval).

Through that agreement, the local authority is held to account for the delivery of their reforms and savings targets via regular reporting to the department. Contingent on delivery of the reforms set out in the agreement, the department will help the local authority with additional funding over time to contribute to eliminating the historic deficit.

Participation

We are expanding the programme in 2022-23 to work with a larger cohort of local authorities. Torbay has been selected as one of the local authorities to take part in the programme in 2022-23, as it has one of the highest percentage DSG deficits in the country.

We will run two rounds of the intervention programme in 2022-23. Your authority has been selected to take part in the second round of the intervention programme, which will begin in September. We will write to you with a formal invitation and further detail about the programme and timelines in the spring. In the meantime, we expect you to prioritise the development of your DSG management plan. The Education Skills Funding Agency (ESFA) will be in touch to request your latest DSG management plan for review in the coming months. This review will support and prepare your authority for the subsequent safety valve intervention programme, and we request that you prioritise working with the ESFA on your plan.

Alongside this expansion to the safety valve programme, the department will also be introducing a new support programme called Delivering Better Value (DBV) in SEND. This will provide £85m over 3 years to support a wider cohort of local authorities. It will provide dedicated support and funding to help these local authorities reform their high needs systems, addressing the underlying issues that lead to increased pressure and putting them on a more sustainable footing. The safety valve programme will target the local authorities with the highest DSG deficits, including your local authority, whilst the DBV programme will target LAs with substantial but less severe deficit issues. You will therefore not receive an invitation to the DBV programme.

We will be in touch with further detail about the safety valve programme and timelines in due course. In the meantime, please do get in touch if you have any questions at Safetyvalve.PROGRAMME@education.gov.uk.

Torbay Integrated Response to the Inspection of Services for Children and Young People with Special Educational Needs and Disabilities (SEND)

Post Inspection Meeting with the Department for Education and NHS England/ Improvement

8th February 2022



TORBAY COUNCIL

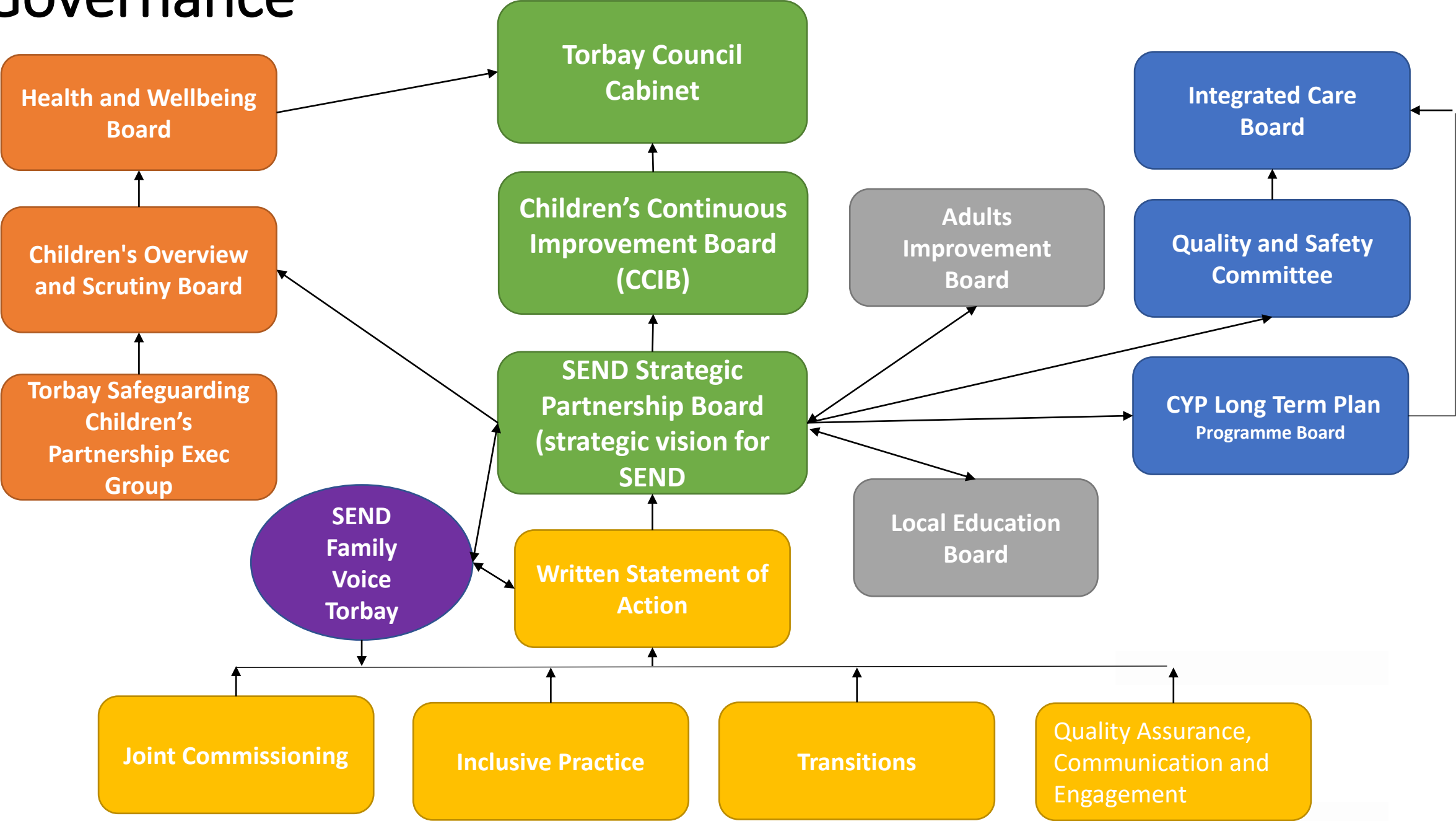
Together for
Devon
Health and care working in partnership with local communities
in Plymouth, Torbay and the rest of the county

Partnership Commitment

- We have heard the message our children and families have given us through the inspection
- We will work determinedly for a **child friendly Torbay** where children and young people with SEND and their families experience a well-planned continuum of provision from birth to 25
- We will aim high so that all children and young people with special educational needs and disabilities are able to **reach their full potential, receive the right support, at the right time**, with **choice and control** so that they can **lead fulfilling lives**.
- We will align our resources to drive sustained improvement

Governance

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4 Pillars of the Improvement Programme

Co-production, Organisational & Workforce Development – Cultural Change

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Responding to the Inspection Findings- Critical Success Factors



Progress and next steps

We have publicly accepted the findings of the SEND Inspection and commit, as a SEND partnership, to develop further our work with parents, carers, children and young people to ensure the support needs of the cohort with SEND are met

We are engaging with children and young people to hear their views and thoughts

We have begun a process of renewal with our relationship with existing parent / carer groups to understand themes coming from parents and identify ways forward

We are continuing to review and revise the self-evaluation to ensure that it captures more accurately and fully our evidence-based understanding of children, young people and families with SEND.

As a partnership we have taken the action to commission an independent review of our governance arrangements

Continuing to understand how we better align resources to support children and young people with SEMH, particularly when they first present, to prevent escalation into crisis and exclusion

We have taken action to ensure that the Head of the Learning Academy reviews and revises the QA systems and processes within SEND and adult services.

We will refresh the JSNA to include a specific section on SEND with key performance indicators

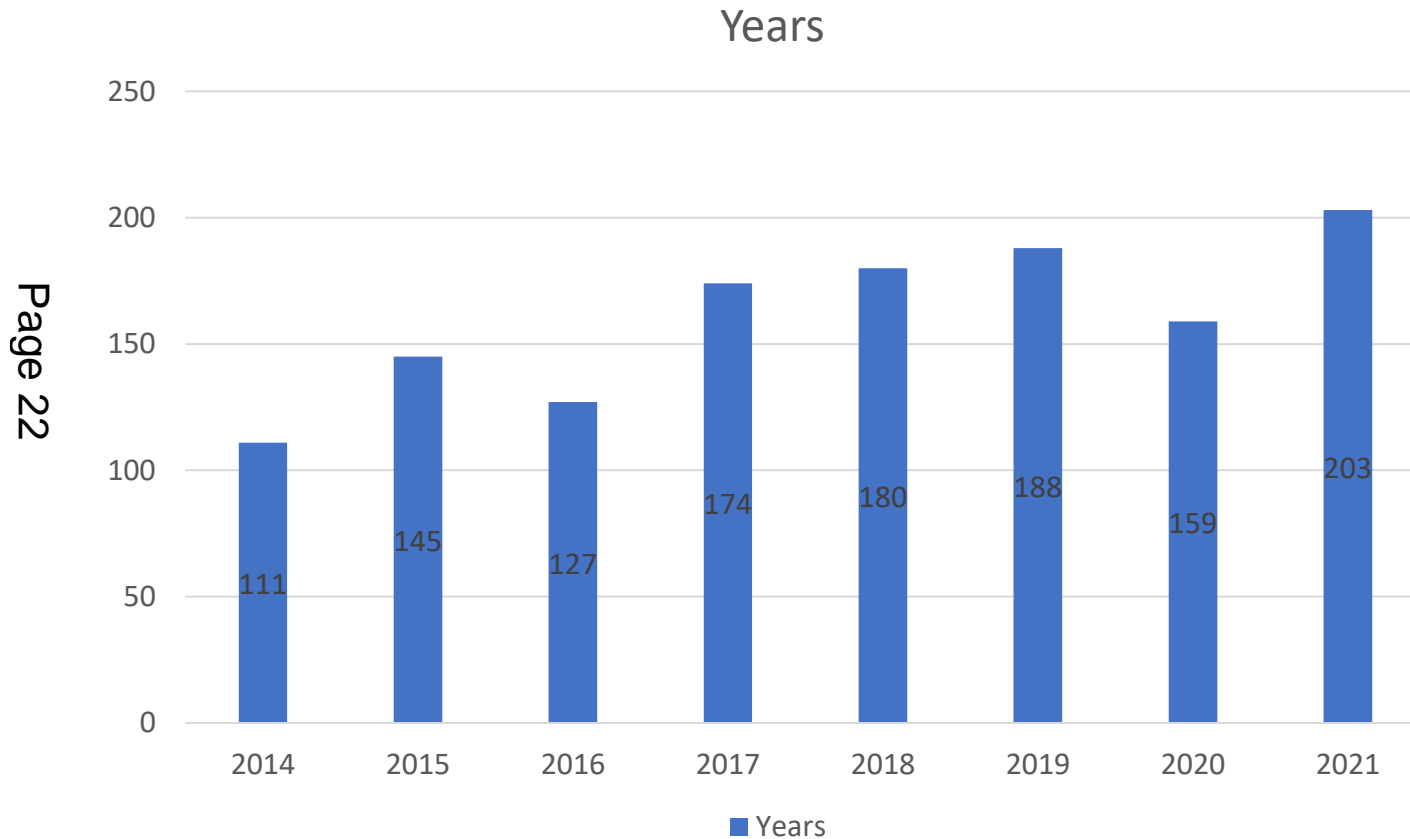
Radically revised the membership and terms of reference of the SEND strategic Partnership Board

Agreed increased resource and joint funding: *(2 strategic leads SEF & WSOA, project support, auditor, young researchers, increased DCO funding, support PCF, commission a young peoples voice programme)*

Request for Statutory Assessment Data

March 2021

Number of new statement and EHC plans combined - Torbay

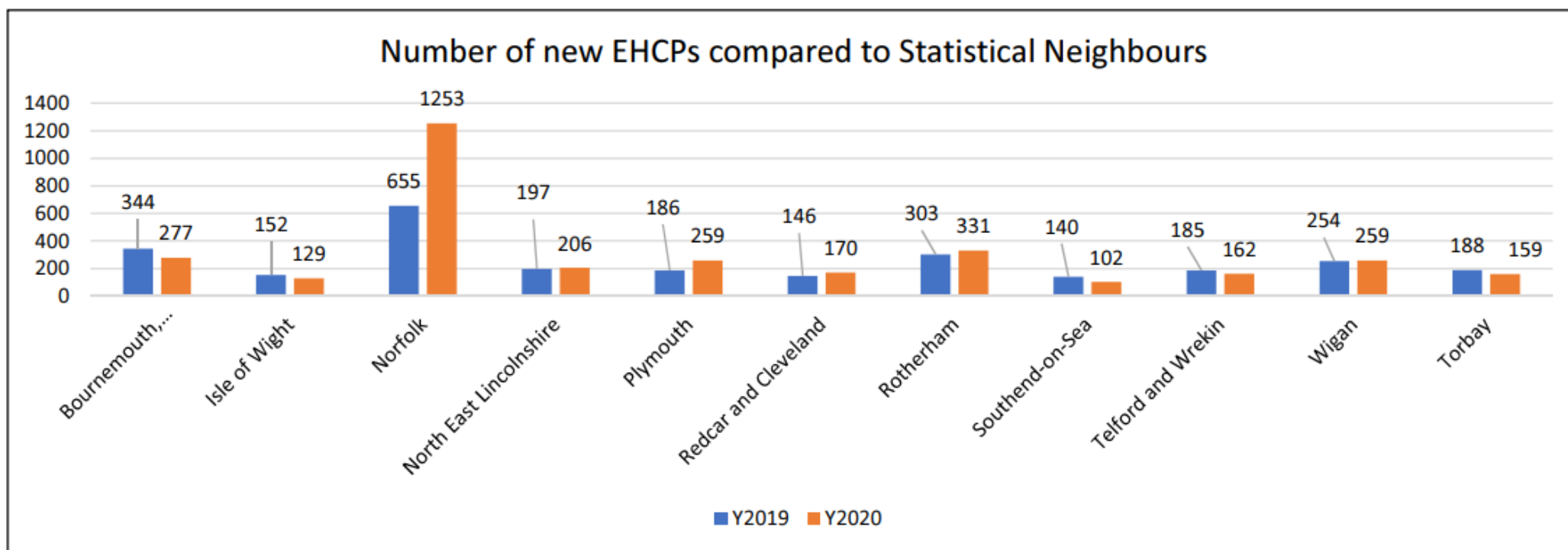


The number of new plans issued within a calendar year has increased from 111 in 2014 to 203 in 2021 (+59%).

Data taken from SEN2 census submitted in 2022 – Data is yet to be released from DfE. England comparison not yet available, due in May 2022.

Number of new EHCPs compared to Statistical Neighbours

Data is yet to be released from DfE. England comparison not yet available, due in May 2022.



4 out of 10 of Torbay's Statistical Neighbours group had a decrease in the number of new EHC plans issued. Overall the group average (not including Torbay) showed an increase in new plans of 23%, however this is significantly skewed by Norfolk who reported a 91% increase. If Norfolk are removed from the calculation then the group showed a decrease of -1%.

% of Pupils with Statements of (SEN) or (EHC) Plans

Data is yet to be released from DfE. England comparison not yet available, due in May 2022.

Local Authority, Region and England	2014	2015	2016	2017	2018	2019	2020	2021	Change
Torbay	4.00	4.20	4.40	4.50	4.80	5.00	5.30*	5.50	0.20
South West	2.80	2.80	2.70	2.70	2.80	3.00	3.30	3.80	0.50
Statistical Neighbours	3.14	3.06	3.06	3.13	3.37	3.49	3.63	3.92	0.29
England	2.80	2.80	2.80	2.80	2.90	3.10	3.30	3.70	0.40

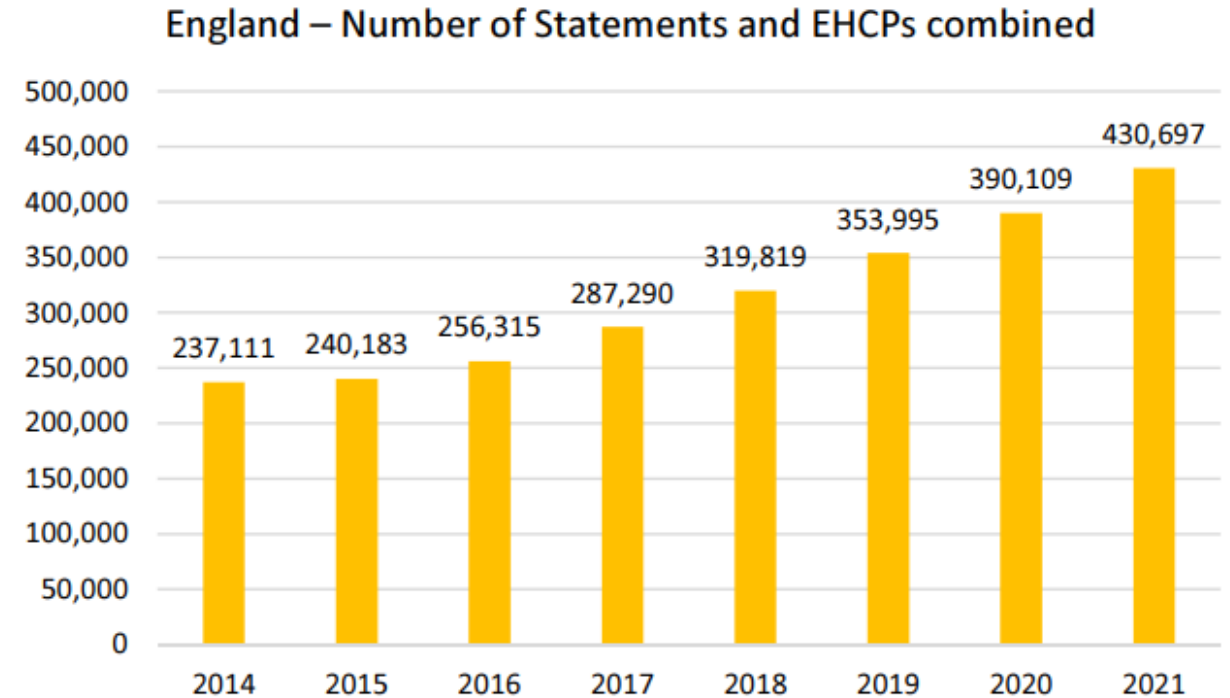
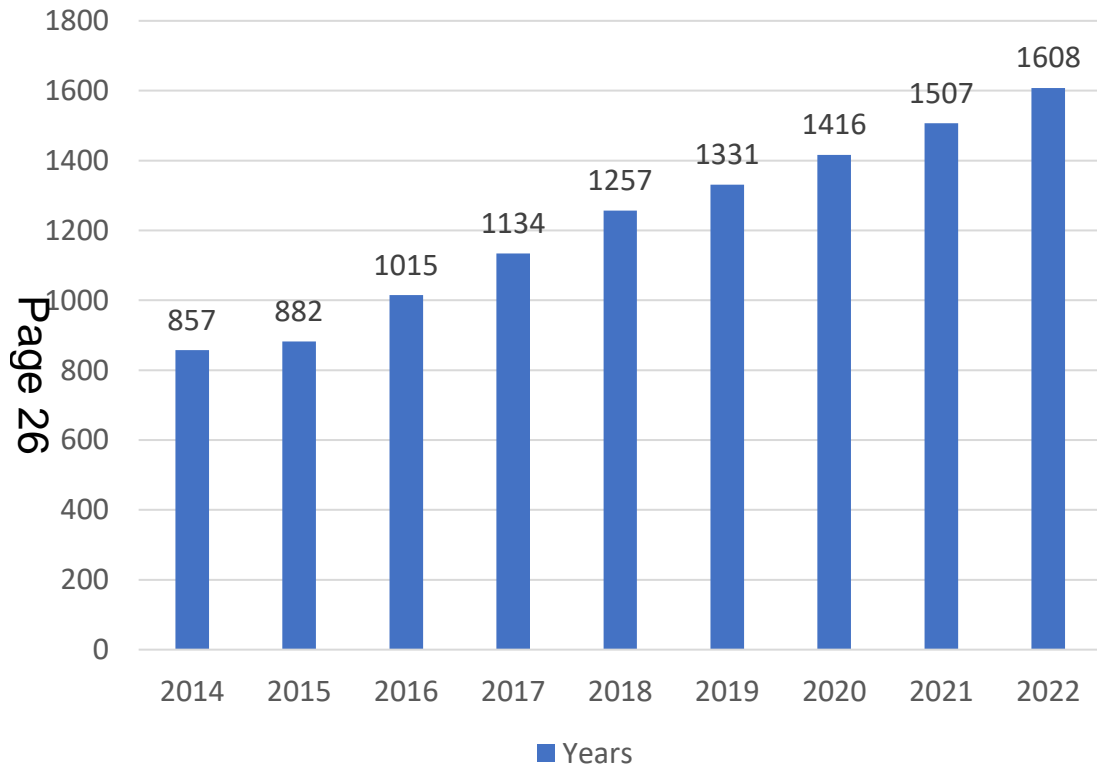
**Note, due to an incorrect submission on Spring 2020 school census the LAIT shows Torbay as 4.4 in 2020. Actual number is 5.3% as denoted above (a 0.3% increase)*

The Torbay % of pupils with a statement or EHCP has risen each year since 2014. Torbay remains a significant outlier compared to national, regional and statistical neighbours groups.

Request for Statutory Assessment (RSA) numbers

<u>Total number of RSA requests in:</u>				
	2019	2020	2021	2022 *Jan-Feb
New Requests	317	201	301	56
Refused to Assess	97	51	89	10
Assessments stopped	4	0	0	0
Refused during assessmer	0	0	1	0
No EHCP following assess	13	11	7	0
Assessments completed	203	139	162	0
Assessments progressing	0	0	42	46
Final EHCP Issues	187	160	203	13

Number of Statements and EHCPs combined



Source: <https://explore-education-statistics.service.gov.uk>

The total number of EHC plans that Torbay maintain has risen from 857 in 2014 to 1608 in 2022, an increase of 61%.

Data taken from SEN2 census submitted in 2022 – Data is yet to be released from DfE. England comparison not yet available, due in May 2022.

EHE Legal Advice Decision – School Forum 10th March

Please find attached the legal advice around recharging for EHE students. I can only apologise for the delay but, acting on the advice of the Head of Legal Services, we have sought confirmation that the position is still as it was during the 2018/19 consultation. This is for the following reasons:

1. We were advised that we needed to complete due diligence due to the timeframe that had passed.
2. The colleagues who gave the original advice no longer work in the Authority and we no longer have that expertise in house.
3. There has been a period of 4 years between the original advice and the new assessment.

The main findings of the advice are:

1. Schools Forum is not acting ultra vires in making decisions around schools funding, including recharging, on behalf of all schools.
2. The charging for services is lawful and allowed within guidance.
3. The charging for specific education psychology assessments is not in line with the guidance.

With the above in mind I would like to propose that Schools Forum make the following decisions:

1. In line with the advice, Schools Forum recognises that the local authority will continue to charge as per the amended decision of 2021 in that it will charge for specific activity to support a named child who moves to Elective Home Education for the remainder of the academic year in which they move to EHE.
2. This will not include any charging for Educational Psychology services associated with these children whilst EHE.
3. The Local Authority will return funding (£1,648) to schools where there has been a specific charge for EP services.

Best wishes

Dan Hamer

Head of Vulnerable Pupils

IN THE MATTER OF SCHOOLS FUNDING ARRANGEMENTS

INITIAL ADVICE

INTRODUCTION

1. I am instructed by Torbay Council to advise as to the lawfulness of its arrangements whereby schools' budgets are 'recharged' in respect of pupils who are withdrawn from the school roll in that academic year and home-educated. These were previously approved by the local Schools Forum in 2018 and again in 2020.
2. I understand that the local Schools' Forum ('SF') has raised concerns about this on behalf of affected schools [REDACTED]
[REDACTED] It has been suggested that the use of the funding is *ultra vires* because the students concerned are not 'receiving education funded by a local authority other than at a school which is maintained by that authority'. It is also contended that the Schools Forum had no power to approve this arrangement which is said to entail 'fines...levied against a school as a sanction'.
3. The context is that the Council faces pressures on its education budget. The current arrangements were justified on the basis that where children are no longer being educated in a school, it would be anomalous for that school to receive funding in respect of those pupils, because funding designed to follow pupils should follow the child to secure that they receive an appropriate education and because there could otherwise be perverse incentives created to 'off-roll' children. Conversely there may be objections on grounds that unplanned changes in funding harm the effective budgeting/planning and staffing of schools at the level of each institution, to the detriment of pupils educated there. In particular, [REDACTED] has pointed out that where the vacant place is subsequently filled by another child, or a home-educated child joins the school midway through the year, the school does not then receive an additional payment. I would emphasise that this Advice is not about the policy merits of the current arrangements, but is confined to their lawfulness.
4. This Initial Advice is necessarily preliminary and at a high level because I have not been provided with sufficiently specific details to reach a concluded opinion on all aspects. It also deals only with the current financial year at this stage. I do not believe that there was any material difference in the 2020 funding regulations, but have not consulted all previous relevant statutory instruments and grant conditions.

FACTS

Background

5. This is an area bedevilled by acronyms and jargon.
6. I am told that the funds in question derive ultimately from general taxation from H.M. Treasury in the form of the 'dedicated schools grant' ('DSG') under s.14 of the Education Act 2002, which is paid to each local authority according to a formula. Whilst this 'national funding formula' ('NFF') is currently used to calculate the DSG paid to the authority based on a notional funding level for each school, it is then up to the authority to determine how to then allocate its education funding within its own area.¹
7. Local authority expenditures include spending on to schools and for education otherwise than at school ('EOTAS'), including elective home education ('EHE').
8. The NFF comprises various factors, which are each tweaked from one year to the next.² In 2021-22, the various elements in the formula comprise:
 - (a) 'schools block' funding
 - (b) Central school services block ('CSSB')
 - (c) 'High needs block' ('HNB')
 - (d) Early years block'.
9. The 'schools block' funding comprises:
 - (a) 'school-led funding' /premises funding including a fixed lump sum, an allocation based on 'sparsity' (based on catchment area), and funding related to historical factors such as public finance initiative contracts;
 - (b) 'basic per pupil funding' calculated using the numbers of pupils in particular age cohorts recorded in the schools' census for the previous school year ('age-weighted pupil unit' or 'AWPU') with a minimum per-pupil level;
 - (c) Additional needs funding based upon deprivation as reflected in an 'Income Deprivation Affecting Children Index or 'IDACI', low prior attainment, English as an additional language and pupil mobility;
 - (d) An 'area cost adjustment' ('ACA') to take account of geographical variation in labour market pay rates for teaching and non-teaching staff; and
 - (e) transitional protection for local authorities in the form of funding floors/capping of reductions based on previous years' DSG.

¹ Central government policy is to apply a single national formula in future and remove local authorities' discretion over allocations.

² I have had regard to Department for Education, *The national funding formula for schools and high needs 2021-2022* (July 2020).

There is a detailed Technical Note (July 2021) on how the various factors are quantified and calculated.³

10. The 'high needs block' NFF is based on the following:
- (a) A basic entitlement set at £4,660 per pupil, then weighted by ACA;
 - (b) A historic spend factor;
 - (c) An ACA-weighted element computed using proxy factors for additional needs (population, disability living allowance, children in bad health, low attainment, free school meals and IDACI),
 - (d) a funding floor factor,
 - (e) an adjustment for import/export of pupils,
 - (f) a hospital education funding element, and
 - (g) various other supplements (e.g. for teacher pensions).
- This is again supported by a Technical Note (dated 2019) with a detailed methodology.

Conditions of the DSG funding

11. The terms and conditions of the DSG funding are set out on the central government website.⁴ Those for 2021-22 state inter alia:

'2. Terms on which the grant is paid

The formal terms of grant given by the Secretary of State under section 16 of the Education Act 2002 state that:

1. We will pay the grant as a ring-fenced specific grant and it must be used in support of the schools budget as defined in the School and Early Years Finance (England) Regulations 2021. It can be used for no other purpose.

2. At the end of the 2021 to 2022 financial year the Chief Finance Officer (CFO) of the local authority is required to append an additional note to the statement of accounts confirming the deployment of the DSG in support of the schools budget as required by the Accounts and Audit (England) Regulations 2015. The CFO is also required to confirm the final deployment of the DSG in support of the schools budget.

3. The Secretary of State reserves the right to recover the grant where there is evidence that a local authority has used it for any purpose other than to support the schools budget or has failed to comply with any other condition of grant.

[...]

3.1 Purpose of the grant

The grant is paid in support of the local authority's schools budget. It is the main source of income for the schools budget.

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003310/2022-23_NFF_schools_block_technical_note.pdf

⁴ <https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2021-to-2022/dsg-conditions-of-grant-2021-to-2022>

Local authorities are responsible for determining the split of the grant between central expenditure and the individual schools budget (ISB) in conjunction with local schools forums. Local authorities are responsible for allocating the ISB to individual schools in accordance with the local schools' funding formula.

Local authorities can add to the schools budget from local sources of income, subject to the provisions below.

[...]

3.4 Allocation of grant to schools by local authorities

Local authorities retain responsibility for setting the overall level of their ISB [individuals schools budget] and for determining schools' budget shares, subject to the School and Early Years Finance (England) Regulations 2021.

[...]

3.5 Transfer of funds between DSG funding blocks

The following conditions apply to the transfer of funds between the four DSG funding blocks:

1. Subject to the paragraphs below, local authorities must not allocate money designated in the DSG settlement tables as schools block to items of spend other than budget shares for mainstream primary and secondary schools (excluding funding for nursery classes and for places reserved for pupils with special educational needs), or money retained centrally for growth in schools, as defined in Schedule 2 to the School and Early Years Finance (England) Regulations 2021.

2. Local authorities may allocate up to 0.5% of money designated as school block, excluding the amount transferred into the schools block from the Teachers Pay Grant (TPG) and the Teachers' Pensions Employer Contribution Grant (TPEG), to other items with the consent of the schools forum.

3. Local authorities must consult with all local maintained schools and academies if they propose to allocate schools block money to other items. The schools forum must take into account the outcome of that consultation before deciding whether to give their consent.

4. The local authority can apply to the Secretary of State for permission to allocate schools block money to other items if they do not secure the consent of the schools forum as above, or if they wish to allocate more of the schools block money to other items than would be permitted under paragraph 11.2. In the case of the Secretary of State giving such permission, this may be for all or part of the sum requested by the local authority and may be given subject to conditions.'

The Council's local arrangements

12. I was not provided with full details of the Council's overall local schools funding formula by my instructing solicitors.

13. The Council's Schools Funding website contains a document entitled 'Scheme for Financing Primary, Secondary and Special Schools Effective From 1st April 2021' ('the Scheme'). Within this, the main relevant chapter is Section 2A ('Primary & Secondary Schools') and the sub-heading 'The Funding Formula – How the Formula Works'. Paragraphs 2.3–2.4 state that 'the funding is determined by the allowable factors set nationally by the DfE' and refer to these. Paragraph 2.19 then reads:
'In-year budget adjustments to school funding are not permitted, apart from the areas listed below: *Permanently Excluded pupils *Education, Health & Care Plans above £6k... *Nursery Funding *Enhanced provision... *Pupil Premium...'
14. Paragraph 2.25 ('Charging policy for provision other than mainstream schools') then reads as follows:

'2.25 Charging policy for provision other than mainstream schools

Behaviour Assessment Places – If places are available at Burton Academy or the Mayfield (Chestnut) Centre, they may be applied for via the Pupil Referral Panel. Each referral will be a 12 week place which will be charged at £6,500 for each 12 week block. Places will be charged termly in arrears.

Medical Tuition Service – Provision arranged by the Local Authority is charged at the same rate under section 19 regardless of the provision. The charge is £6,000 / 38 weeks a year = £157.89 a week. The service will be charged for termly in arrears. It is charged pro rata to allow schools to maintain places and in the expectation that schools will continue to provide SEN and safeguarding support for the student and plan for reintegration as soon as possible.

Elective Home Education - The local authority will use the Elective Home Education register to calculate the number of weeks to be charged. This register is maintained using EHE visit records and the 'Additions and Deletions from School Roll' submissions provided by schools.

The register will be deemed an accurate record.

As such it is incumbent on schools to inform the Student Services team as soon as they add or delete a child from roll or become aware that a child has left the local area.

An example of the charge is listed below, schools will only be charged for the elements of funding which apply to the pupil...

...E.g. If Primary pupil was eligible for FSM / Ever 6 and Pupil Premium, but not EAL & Low Attainment, the charge would be MPPF £4,180, FSM £455.83, Ever 6 £569.78 & PP £1,345 = £6,550.61 divided by 38 weeks = £172.38 per week. Therefore the charge for the Summer Term would be 12 weeks x £172.38 per week = £2,068.56

This service will be charged for termly in arrears.

Students moving to Elective Home Education who have an agreed offer of a place at another school (that the Local Authority have been notified of at the time of removal from roll) will not be charged.'

15. I am told that 'recoupment and recharging' of 'high needs block' and 'schools block' funding is applied where children are withdrawn for *inter alia* EHE and permanent exclusion. This policy was agreed to by the Torbay Schools Forum on 1st October 2018. The recoupment is of the per-pupil elements of the school's funding, i.e. the basic and additional needs elements (if any) of the 'schools block' funding for that pupil, and the per-pupil element of HNB funding.
16. The 'recharge' is made termly in arrears on a week-by-week basis using the Council's EHE Register. I am told that '[t]he charges go back into the high needs block to partially cover incurred costs due to EHE'.
17. The funds obtained from the 'recharging' have been used to fund:
 - an additional EHE Officer,
 - the Torbay Mediation Service,
 - Educational Psychology provision,
 - 'Year 11 provision – 9 places' (not further specified);
 - an 'EHE Day for Families', and
 - specific support for individuals.No further detail has been provided, although I requested details.
18. Recoupment was made at 50% of the sum otherwise due in the year 2020/21 because of Covid19 (as approved by the Schools Forum at a meeting on 8 October 2020), and was then reapplied at the previous full level.

Secretary of State's guidance

19. The Secretary of State publishes statutory guidance on 'Schemes for financing local authority maintained schools' (last updated April 2021).⁵ This states:

'This guidance lists the provisions which a local authority's scheme must, should or may include. Schemes need not follow the format used in this guidance, except for the text of directed revisions.'
20. Section 8 of the guidance provides guidance on '[t]he charging of schools budget shares'. This says:

'The scheme should contain a provision which allows the budget share of a school to be charged by the local authority without the consent of the governing body only in circumstances expressly permitted by the scheme, and requires local authorities to consult schools as to the intention to so charge, and notify schools when it has been done.'

⁵ <https://www.gov.uk/government/publications/schemes-for-financing-schools/schemes-for-financing-local-authority-maintained-schools>

Schemes may provide for a disputes procedure for such charges.

Although the right of local authorities to protect their financial position from liabilities caused by the action or inaction of governing bodies by charging budget shares is well established, the government is anxious to ensure that schools are clearly aware of the circumstances in which this may happen.

Schemes must therefore list the circumstances in which such charging is permitted. The main ones are given below, and local authorities may add others or omit some if they consider them unnecessary.

It may be useful to remind schools that the local authority cannot act unreasonably in the exercise of any power given by the scheme, or it may be the subject of a direction under section 496 of the Education Act 1996.

For each of these circumstances the local authority would have to be able to demonstrate that they had necessarily incurred the expenditure now charged to the budget share. This means that where the local authority cannot incur a liability because the statutory responsibility rests elsewhere, no charging is possible. Therefore, the position on charging will vary between categories of school....'

A list of circumstances is given where action or inaction by schools may lead to local authorities incurring expenditure, such as premature retirement costs, works in repairs or remediation of school property, legal costs or services provided by the authority to the school.

RELEVANT LAW

Grants by the Secretary of State

21. Sections 14–16 of the Education Act 2002 provide as follows (my underlining):

14. Power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or children etc

(1) The Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) may give, or make arrangements for the giving of, financial assistance to any person for or in connection with any of the purposes mentioned in subsection (2).

(2) Those purposes are—

(a) the provision, or proposed provision, in the United Kingdom or elsewhere, of education or of educational services;

(b) the provision, or proposed provision, in the United Kingdom or elsewhere, of childcare or of services related to childcare;

(c) enabling any person to undertake any course of education, or any course of higher education provided by an institution within the further education sector;

(ca) enabling any person to receive any training for teachers or for non-teaching staff;

(d) providing for a person's maintenance while he undertakes such a course;

(e) the promotion of learning or research;

(f) the promotion of the use of educational buildings or facilities for purposes other than those of education;

(g) the provision of any form of training for teachers or for non-teaching staff;

(h) the promotion of the recruitment or retention of teachers or non-teaching staff;

(i) the remuneration of, or provision of other benefits to, teachers or non-teaching staff.

(j) the promotion of the welfare of children and their parents;

(k) the provision of support for parenting (including support for prospective parents).

(2ZA) In subsection (2), "training for teachers or for non-teaching staff" includes—

(a) any training or education (whether or not constituting higher education) with the object of fitting persons to be teachers or non-teaching staff, or better teachers or non-teaching staff, and

(b) any assessment related to the award of a qualification or status to teachers or non-teaching staff, or prospective teachers or non-teaching staff.

(2A) In subsection (2)(j), "children" means persons under the age of twenty.

(3) In this section—

“education” includes—

(a) vocational training (including the preparation of young people for employment in general), and

(b) social and physical training (including the promotion of the development of young children),

but , except in subsection (2ZA)(a), does not include higher education, and “educational” shall be construed accordingly;

“educational services” includes administrative, advisory, organisational, training or information services related to education;

“non-teaching staff” means persons who are not teachers but who—

(a) are employed at, or otherwise engaged to work at, a school or an institution within the further education sector,

(b) are employed by, or engaged to provide services for, a local authority for purposes connected with the authority’s education function], or

(c) are employed by any person in connection with the provision of education or childcare;

“teacher” does not include a teacher at an institution within the wider higher education sector, unless, in relation to a registered higher education provider within the meaning given by section 3(10) of the Higher Education and Research Act 2017, the institution is also an institution within the further education sector.’

15. Forms of assistance under section 14

(1) Financial assistance under section 14 may be given in any form.

(2) Assistance may, in particular, be given by way of—

(a) grants,

(b) loans,

(c) guarantees,

(d) incurring expenditure on the provision of equipment for the benefit of the person assisted, or

(e) incurring other expenditure for the benefit of the person assisted.

(3) Assistance given under section 14 to a local authority may not be given by way of loan or guarantee.

[...]

16 Terms on which assistance under section 14 is given

(1) Financial assistance under section 14 may be given on such terms as the Secretary of State (or, as the case may be, the National Assembly for Wales) considers appropriate, subject to —

(a) subsection (2B) (which relates to institutions within the higher education sector), and

(b) section 175(3B) (which relates to institutions in England that provide further education).

(2) The terms may, in particular, include provisions as to—

(a) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State (or the National Assembly for Wales), and the manner in which that is to be done;

(b) the giving by the person receiving assistance of financial assistance to other persons on such terms as that person or the Secretary of State (or the Assembly) considers appropriate, subject to subsection (2B);

(c) circumstances in which any payments made by virtue of terms included by virtue of paragraph (b) are to be repaid, or otherwise made good, to the person receiving assistance from the Secretary of State (or the Assembly), and the manner in which that is to be done;

(d) the keeping, and making available for inspection, of accounts and other records.

[...]

(3) The person receiving assistance must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State (or, as the case may be, the National Assembly for Wales).

(4) Section 15(2) applies to financial assistance required by virtue of subsection (2)(b) as it applies to financial assistance given under section 14.'

Powers of the Secretary of State

22. Section 496 of the Education Act 1996 provides for the Secretary of State to give directions to a local authority as to the performance of duties or the exercise of discretions under that Act, to prevent them acting unreasonably. Section 497 of the 1996 Act provides for him to give directions to local authorities where he considers them to be in default in respect of a duty under that Act. Section confers powers on the Secretary of State to give directions to local authorities where he is satisfied that they are failing to perform any education function either at all or to an adequate standard. The term 'education functions' is defined by Schedule 36A to include functions conferred on them under the Education Acts (defined by s.578 to include the EA 2002 and the SSFA 1998)

Schools forums and schools budgets

23. The School Standards and Framework Act 1998 ('SSFA 1998') governs the setting of maintained school budgets.
24. Section 45(1) of the SSFA 1998 provides that every maintained school shall have a budget share which is allocated by the authority which maintains it. The term 'maintained school' includes, for this purpose, a foundation school such as The Spires College (subsection (1A)).
25. Section 45A SSFA 1998 provides in material part (my underlining):
- '45A Determination of specified budgets of local authority**
- (1) For the purposes of this Part, a local authority's "non-schools education budget" for a relevant period is the amount appropriated by the authority for meeting all education expenditure by the authority in that period of a class or description prescribed for the purposes of this subsection.
- (1A) In subsection (1) "*relevant period*" means a financial year or such other period as may be prescribed.
- (2) For the purposes of this Part, a local authority's "schools budget" for a funding period is the amount appropriated by the authority for meeting all education expenditure by the authority in that period of a class or description prescribed for the purposes of this subsection (which may include expenditure incurred otherwise than in respect of schools).
- (2A) The amount referred to in subsection (2) includes the amount of any grant which is appropriated, for meeting the expenditure mentioned in that subsection, in accordance with a condition which—
- (a) is imposed under section 16 of the Education Act 2002 (terms on which assistance under section 14 of that Act is given) or any other enactment, and
- (b) requires that the grant be applied as part of the authority's schools budget for the funding period.
- (3) For the purposes of this Part, a local authority's "individual schools budget" for a funding period is the amount remaining after deducting from the authority's schools budget for that period such planned education expenditure by the authority in respect of that period as they may determine should be so deducted in accordance with regulations.
- (4) Regulations under subsection (3) may—
- (a) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority's schools budget;
- (b) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely—
- (i) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations, and
- (ii) such other conditions as may be so specified or determined.

(4A) Regulations under subsection (3) may also make provision–
 (a) enabling any expenditure falling outside any classes or descriptions of expenditure prescribed by virtue of subsection (4)(a) to be deducted from the authority's schools budget if the deduction of such expenditure is authorised, on the application of the authority, by the authority's schools forum or the Secretary of State, and
 (b) enabling any limit or condition that would otherwise apply by virtue of subsection (4)(b)(i) or (ii) to be varied or excluded, on the application of the authority, by the authority's schools forum or the Secretary of State.
 [...]
 (7) In this section "*education expenditure*" means expenditure incurred by a local authority in connection with the performance of their education functions.

26. Under s.47(1) of the SSFA 1998,
 'For the purposes of this Part a maintained school's budget share for a funding period is such amount as the local authority may determine, in accordance with regulations, to allocate to the school out of the authority's individual schools budget for that period'
27. Under s.47A of the SSFA 1998, every local authority must establish a schools forum in accordance with regulations, which is to advise the authority on the setting of schools budgets and have such functions as may be imposed by or under the Act.
28. Section 48(1) of the SSFA 1998 provides that each local authority shall maintain a financial scheme dealing with such matters connected with the financing of the schools maintained by it as are required to be dealt with in the scheme by or by virtue of any provision in Part II of the Act or regulations made by the Secretary of State. Subsection 48(3) provides that where there is any inconsistency between the statutory financial scheme and any other rules or regulations made by the authority which relate to the funding or financial management of schools which they maintain, the terms of the scheme prevail.
29. Subsection 48(4) SSFA 1998 enacts Schedule 14, which provides for revisions to the authority's financing scheme to be prepared having regard to guidance of the Secretary of State, following consultation with headteachers and governing bodies of its maintained schools, and submitted to its schools forum for the forum's approval in accordance with regulations (esp. paras 2A(3) and 2B(1)).
30. Section 24(4) of the Education Act 2002 provides for regulations to make provision as to federations of maintained schools.

Finance Regulations

31. There have been a number of different sets of regulations made under Part II of the SSFA 1998, which generally each applied to a particular financial year only. The

current set are the Schools and Early Years Finance (England) Regulations 2021 ('the 2021 Regs') which apply in the financial year beginning 1st April 2021 (reg.1(2)).

32. Section 142(8) and (9) of the SSFA 1998 provide that the SSFA 1998 is to be construed as one with the Education Act 1996 unless a particular definition is given for the purposes of the SSFA 1998. Expressions in subordinate legislation made under the SSFA bear the same meanings as in the parent Act (s.11, Interpretation Act 1978). This means that some expressions in the 2021 Regs fall to be interpreted by reference to the Education Act 1996.

Schools Budget

33. Regulation 6 of the 2021 Regs provides (my underlining):

'6.— The schools budget

(1) The classes or descriptions of local authority expenditure specified in paragraph (2) and Schedule 2 are prescribed for the purposes of section 45A(2) of the 1998 Act and the determination of a local authority's schools budget, subject to the exceptions in regulation 7.

(2) The classes or descriptions of local authority expenditure are—

(a) expenditure on the provision and maintenance of maintained schools and on the education of pupils at maintained schools;

(b) expenditure on the education of children at independent schools, non-maintained special schools, pupil referral units, at home or in hospital, and on any other arrangements for the provision of primary and secondary education for children otherwise than at schools maintained by a local authority;

(c) all other expenditure incurred in connection with the authority's functions in relation to the provision of primary and secondary education, in so far as that expenditure does not fall within sub-paragraphs (a) or (b);

(d) expenditure on the education of—

(i) persons provided with further education who are aged under 19 and have special educational needs; and

(ii) persons provided with further education who are aged 19 or over but under 25 and are subject to an EHC plan, in so far as that expenditure does not fall within sub-paragraphs (a) to (c); and

(e) expenditure on early years provision, in so far as that expenditure does not fall within sub-paragraphs (a) to (d).'

34. Schedule 2 includes:

' 31.

Expenditure on support services for children who have attained compulsory school age and for young people who are subject to an EHC plan or have a statement of special educational needs, and for such children and young people with special educational needs who do not have such a plan or statement.

[...]

34.

Expenditure incurred in relation to education otherwise than at school under section 19 of the 1996 Act or in relation to a pupil referral unit, where the expenditure cannot be met from the sum referred to in regulation 14(3) and, in the case of an alternative provision academy, where it would be unreasonable to expect such expenditure to be met from the general annual grant paid to such an academy by the Secretary of State.

40.

Expenditure on the provision of special medical support for individual children and young people in so far as such expenditure is not met by an NHS Trust, NHS foundation trust, Clinical Commissioning Group or Local Health Board

[...]

41.

Expenditure (other than expenditure referred to in Schedule 1 or any other paragraph of this Schedule) incurred on services relating to the education of children with behavioural difficulties, and on other activities for the purpose of avoiding the exclusion of pupils from schools.

[...]

56.

Expenditure on the provision of tuition in music, or on other activities which provide opportunities for pupils to enhance their experience of music.

[...]

57.

Expenditure incurred in enabling pupils to enhance their experience of the visual, creative and performing arts other than music.

58.

Expenditure on outdoor education centres, but not including centres wholly or mainly for the provision of organised games, swimming or athletics.'

Non-schools budget

35. Regulation 4(1) provides that the 'non-schools education budget' comprises classes or descriptions of expenditure specified in Schedule 1, items treated as part of the non-schools budget under regulation 8(13) which grants local authorities some discretion in relation to particular categories of the schools budget, and 'any expenditure which falls outside the classes or descriptions of expenditure specified in regulation 6 and Schedule 2 (the schools budget)'. Regulation 4(2) provides that 'expenditure referred to in paragraph (1) includes expenditure on associated administrative costs and overheads'.

36. Schedule 1 includes the following:

- (a) 'Expenditure on services provided by educational psychologists' (para 1);
- (b) 'Expenditure in connection with—(a) the provision of parent partnership services (that is, services provided under section 32 of the 2014 Act to give advice and information to parents of children with special educational needs), or other guidance and information to such parents which, in relation to pupils at a school maintained by the authority, are in addition to the information usually provided by the governing bodies of such schools; and (b) arrangements made by the authority with a view to avoiding or resolving disagreements with the parents of children with special educational needs.' (para 5).

Budget shares formula

37. Regulations 10 and 11 provide for the local authority to set its own local formulae to determine maintained schools' budget shares, providing in material part:

10. — Formulae for determination of budget shares etc. for certain maintained schools and early years providers

(1) A local authority must, before the beginning of the funding period and after carrying out any consultation required by regulation 9(2), decide on the formula which it will use to determine the budget shares for schools which it maintains (other than special schools, pupil referral units and nursery schools, and in relation to nursery classes in schools maintained by it).

(2) A local authority must use the formula determined under paragraph (1) in all determinations of school budget shares in respect of the funding period.

[...]

(7) A local authority may not change its formulae after the funding period has begun.

(8) The formulae must be determined in accordance with Part 3 of these Regulations.

[...]

11. — Determination of allocation of budget shares etc. for the funding period

(1) Except as provided for in paragraphs (2), (4) and (9), not later than 28th February 2021, a local authority must determine the budget share for each school which it maintains, using the formula referred to in regulation 10(1) in accordance with Part 3 of these Regulations.

[...]

(11) Save as provided in this regulation and in regulations 16 (special arrangements for pupils in maintained nursery schools and nursery classes and children receiving relevant early years provision), 19 (Risk Protection Arrangement), 20 (differential funding), 26 (sixth form funding), 27 (new

schools, merged schools and closing schools), 28 (federated schools), 29 (excluded pupils), 30 (correction of errors and non-domestic rates) and 31 (alternative arrangements), the authority must not redetermine a school's budget share or the amount allocated to a relevant early years provider.'

38. Regulations 13–20 within Part 3 of the 2021 regs include mandatory requirements, criteria and factors which must be included in the local funding formula for setting budget shares. I shall not set these out in full, but they are highly prescriptive. Regulation 21 then provides as follows (my underlining):

'21. Additional requirements, factors or criteria

(1) In order to determine the budget shares for schools maintained by it (other than special schools, pupil referral units and nursery schools), a local authority—

- (a) must comply with the requirement for minimum per pupil funding set out in regulation 22, and
- (b) may take into account in its formula any or all of the requirements, factors or criteria mentioned in Part 1 of Schedule 3.

(2) For the purposes of—

- (a) complying with the requirement mentioned in paragraph (1)(a), or
- (b) taking into account the matters mentioned in paragraph (1)(b),

the date for ascertaining pupil numbers or proportions is 1st October 2020, unless these Regulations provide otherwise.

[...]

(4) The requirements, factors and criteria set out in Schedule 3 may not be taken into account by a local authority on the basis of actual or estimated cost unless otherwise stated in that Schedule.'

39. Part 1 of Schedule 3 includes at paras 3–15 distinct 'single per pupil amounts' for pupils of different ages related to various factors (e.g. attainment, English as an additional language or being in care; sparsity) calculated as specified in the various paragraphs. Regulation 1(5)(e) provides that for the purpose of the Regs, 'a reference to the number of pupils at a particular key stage is a reference to the number on 1st October 2020, unless otherwise stated'.

Provision for redetermination of budget shares

40. Regulation 29 of the 2021 Regs makes mandatory provision (at paras (1) and (2)) for the redetermination of an excluding school's budget where it permanently excludes a pupil. This is the amount that would be attributable to the pupil multiplied by the number of complete weeks left in the funding period, divided by 52, plus any financial adjustment order. Paragraph (7) of regulation 29 applies paragraphs (1) and (2) 'where a pupil leaves a maintained school (other than a special school, a pupil referral

unit, or a place which the authority has reserved for children with special educational needs) for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.’

41. Regulation 30(1) provides:

‘(1) A local authority may at any time during the funding period redetermine a maintained school's budget share, or the amount allocated to a relevant early years provider, for the funding period or any previous funding period in order to correct an error in a determination or redetermination made under these Regulations or any previous regulations made under sections 47 or 47ZA of the 1998 Act, whether arising from a mistake as to the number of pupils at the school or otherwise, and any such redetermination will take effect in the next financial year following the funding period.’

42. Regulation 31 allows for the local authority to request the Secretary of State to authorise deviation from the terms of the Regulations.

Provision as to contents of financial schemes and their approval

43. Regulation 32 of the 2021 Regs and Schedule 5 thereto make provision relating to financial schemes. A scheme prepared by a local authority under section 48(1) of the 1998 Act must deal with the matters connected with the financing of schools maintained by the authority set out in Schedule 5. These matters include (per para 2) ‘amounts which may be charged against schools’ budget shares’.
44. Under regulation 33, the scheme may not come into effect unless approved by the schools forum (with or without modifications), but any dispute may be referred to the Secretary of State for resolution by him. Regulation 34 provides that the Council must publish its scheme on a website accessible to the general public.

ADVICE

45. I have not been presented with a document containing the Council’s financing scheme under s.48 of the SSFA 1998. Charges to schools’ budget shares must be dealt with in that scheme. Given that the recharging policy has been approved by the Schools Forum, in what follows I assume that it was comprised in the statutory finance scheme.
46. In broad terms there are 2 key questions: (1) whether the Council can ‘recharge’ schools’ budgets where pupils cease to attend and are taken off the school roll as part of its local funding formula, and (2) whether the expenditures that the money was spent on were lawful. If the answer to either question is ‘no’, the question arises (3) as to how the consequences should be addressed.

(1) Is an in-year deduction/charge to take account of actual pupil numbers on a week-by-week basis lawful?

47. Whilst there is no case law on this point, in my view the Council is entitled to make charges as spelled out in its Scheme as a matter of principle.
48. Section 47(1) of the SSFA requires that the local schools budget share allocations must be determined in accordance with regulations.
49. Regulation 10(8) requires the budget share formulae to be determined in accordance with Part 3. Regulation 21 (1)(b) states that the authority 'may take into account in its formula any or all of the requirements, factors or criteria mentioned in Part 1 of Schedule 3'. In my opinion, paragraph (1) of this regulation cannot have been intended to be non-exclusive so as to allow the authority to come up with its own alternative criteria instead. If that had been intended, it would not have spelled out in such fine detail how the various factors in Part 1 of Schedule 3 were to be determined, including the deeming date of 1 October 2020 (reg.21(2)) and the prohibition against using actual or estimated costs for the purpose of determining the Part 1 Schedule 3 factors (reg.21(4)). Instead, Part 3 of the Regulations must be read as forming a self-contained comprehensive code, allowing for deviations only in accordance with the procedure in regulation 31 which allows for ministerial approval of alternative arrangements.
50. Regulation 10(2) and (8) then make clear that the statutory formulae must be used in all determinations of budget shares for the relevant period, and the formulae must not be changed mid-year.
51. Regulation 30(1) also makes clear that any redetermination for correction of errors (which must mean miscalculating pupil numbers as at the date of 1st October 2020, rather than the actual numbers) only takes effect from the next funding period.
52. The foregoing points mean that the Council cannot devise school budget shares by reference to actual numbers of pupils who have been withdrawn in any given week. However, this does not answer the question posed.
53. The 'recoupment' policy for EHE pupils has been incorporated into the Scheme under s.48(1) SSFA 1998. The 2021 Regs provide by reg.32 and Schedule 5 para 2 that the s.48(1) SSFA statutory finance scheme must deal with the amounts which may be charged against schools budget shares. Implicitly, this allows local authorities to take funding away from budget shares that would otherwise be kept by the schools in question, where such has been agreed in a scheme approved by the schools forum or Secretary of State. The statutory requirement for approval of the local schools forum or Secretary of State provides a safeguard for the protection of the schools.

54. The term 'amounts which may be charged' is not defined, and it is an ordinary English phrase which is sufficiently broad to encompass any pecuniary charges which have been agreed to by the Schools Forum and are reasonably set for a proper purpose in public law terms having regard to the statutory framework.
55. In this case, a proper purpose must mean one that is sufficiently related to the authority's own liabilities/expenditure, reflects costs actually incurred by the Council; is sufficiently related to its lawful functions or responsibilities and reasonably charged to the school education budget. A charge that had nothing whatsoever to do with the school (e.g. raiding the schools budget to pay for town planning enforcement or domestic bin collections), or was totally unrelated in amount, would be unlawful.
56. In my view, as long as the charges are aimed in aggregate at costs recovery of amounts actually spent (or reasonably projected to be spent) on sufficiently related activities or services, it is reasonable to set charges at a fixed tariff. By analogy, a local authority is entitled to charge for provision of a leisure centre and to charge a flat rate subscription or entrance fee notwithstanding that some customers use the facilities more than others.
57. In this case, the charges are made to reduce the school budget share where a pupil has been withdrawn from that school for EHE. Whilst the decision whether to withdraw the child is the responsibility of the parents rather than the school's governing body, the charge is directly related to schools' per-pupil funding levels and (in principle) should be related to the Council's duty to make exceptional provision for suitable education for children who may not otherwise receive this (s.19 of the Education Act 1996), provided the money is used to fund a Council service where there is a reasonable link between the withdrawal of the children and the demand for the service that is funded.
58. Although such charges are not part of the policy of the Secretary of State, being contemplated neither in the NFF for setting budgets nor in the statutory guidance, nevertheless they are not irrational or wholly unreasonable in public law terms. In my opinion, the High Court would not interfere in what is fundamentally a policy decision whether to make such charges.

(2) Are the expenditures financed by the monies concerned lawful?

59. The terms of the DSG require the funds to be spent in support of the 'schools budget'. This cannot include support provision of advice and information about SEN provision, nor provision of educational psychologists or other categories of expenditure in Schedule 1 to the 2021 Regs. The funding of educational psychologists from the DSG Grant is therefore unlawful without ratification by the Secretary of State.
60. However, the 'schools budget' may include any money spent on education of children otherwise than at school, including at home; on 'support services for children of compulsory school age' with SEN; on 'services relating to the education of children with behavioural difficulties'; on music, arts and outdoor sports activities or tuition;

and expenditure incurred 'in connection with' the provision of primary and secondary education (see regulation 6 and Schedule 2 to the 2021 Regs).

61. I do not have sufficient details to definitively advise whether the other items of expenditure are lawful because I have not been provided with details as to the precise role of the 'EHE Officer', precisely what the funded Torbay Mediation Service activities are, or what the 'EHE Day' comprises. However, funding of educational places or support services for children is likely to be lawful.

Summary and Next Steps

62. In my opinion it is lawful in principle to charge schools' budget shares with an amount equivalent to per-pupil funding where that pupil is withdrawn to EHE, so long as the money is then spent on a sufficiently related purpose, and within the terms of any grant by the Secretary of State. This is subject to the agreement of the schools forum, and any individual school governing body which is unhappy may also petition the Secretary of State to intervene and give a statutory direction to the Council to revise its Scheme.
63. It is lawful in principle to spend the DSG on education of children who are being educated at home; services related to the education of children with behavioural difficulties; support services for children with SEN; or functions reasonably relating to the provision of primary or secondary education otherwise than in schools (but not themselves constituting such education) (reg.6 of the 2021 Regs and Schedule 2 thereof).
64. It is not lawful to spend the DSG on services provided by educational psychologists without a special authorisation from the Secretary of State, because these services are expressly part of the non-schools education budget (para. 1, of sched.1 to the 2021 Regs), and the general terms of the DSG make clear that it must be spent on the schools budget. Such expenditure is therefore contrary to s.16(3) of the Education Act 2002.
65. I am not able to advise definitively on whether all the items of expenditure to which the 'recoupment' has been redirected fell within the schools budget so as to be within s.16(3) of the Education Act 2002, because full details have not been supplied to me.

Next steps

66. The Council should check whether all items funded by the charges for EHE pupils have been properly spent on items qualifying as part of the 'schools budget', and sufficiently relate to the withdrawal of children from schools for EHE.
67. The Council will be answerable to the Secretary of State for the remainder, and may need to write to him to request retrospective authorisation, or be liable to repay the monies to the DfE from other revenue sources.

68. Expenditure on educational psychology services cannot be funded from the DSG because it falls outside the 'schools budget'. The Council's Chief Finance Officer will have been required to sign an assurance statement confirming deployment of the DSG towards the schools budget in previous years pursuant to the terms of the DSG, and they may need to issue a corrected statement to the Department for Education.
69. To keep my costs within bounds, this Advice is confined to the current financial year. I have not checked the terms of all previous sets of regulations and DSG grants. If so instructed, I would be pleased to check those, or to advise further on particular items of expenditure.

DAVID GRAHAM
24 January 2022

Francis Taylor Building,
Temple,
London EC4Y 7BY

Briefing Paper – Funding changes for Post 19 students with SEND

Context

The High Needs Funding operational guidance, describes how the financial and academic year high needs funding system will work for all types of provision. It is primarily for local authorities, schools and colleges but will also be useful to anyone with an interest in high needs funding. High needs funding is provided to local authorities.

High needs funding supports provision for pupils and students with SEND, from their early years to age 25, and alternative provision for pre-16 pupils who, because of exclusion, illness, or other reasons, cannot receive their education in mainstream schools.

In the 2021 to 2022 Guidance there have been changes and further clarification which everyone needs to be aware of, particularly for children and young people who move between local authorities and cared for children and care experienced young people with EHCP's. This is mentioned in detail in Annex 2 of this guidance.

What is the most significant change?

The most significant change is that Post 19 provision for young people accommodated under the Care Act 2014 with an EHC plan will fall under the LA where they are regarded as resident. Therefore, if a young person aged 19 to 25 has been accommodated under the Care Act 2014, in a permanent residential care placement in a different local authority area, it is likely they will have moved into the area of the 'new' local authority, unless there are factors indicating otherwise. Therefore, for the purposes of the [Children and Families Act 2014](#), the 'new' local authority would be responsible for securing and maintaining any EHC plan. This would include any costs which arise as a result of this change of residence.

This will result in some students previously the responsibility of Torbay to be transferred over to the Local Authority where they will now be permanently resident. Torbay may also find that there are students which suddenly become Torbay's financial responsibility when the student becomes 19 years of age.

What will be considered as part of any request?

Liaison between Authorities will need to occur to ensure agreement is in place prior to the final transfer, as we would not wish for the student to be disadvantaged or be 'lost' in the transfer.

Children and Adult Services in both Areas will need to be involved in the transition pathway in order to ensure all aspects are taken into account. The student and 'responsible adults'

will need to be informed of the changes in order that they are aware of the new 'responsible body'.

What will be the impact for Torbay?

It is difficult to predict the financial implications of these changes, as the complexity of the individual cases will play a factor in the funding outcomes. An estimate is that this will be no more than 5 students each year transferring to another area, and possibly 1-2 students becoming the responsibility of Torbay.

There will be some Post 19 students where the Education, Health and Care Plan will be transferred to the Local Authority where the student will now be seen as permanently residing. This may also mean that Torbay acquires the responsibility that have been placed by another Authority, and may now be seen as a permanent resident within Torbay.

To ensure that risks can be identified and mitigated we will need to: -

- Ensure all involved are aware of these funding implications and where the funding responsibility lies.
- Be aware of young people who may no longer be our responsibility /become our responsibility.
- Agree clear processes which encompass these changes, ensuring all partner agencies are aware of the responsibilities they will have, and consider how they encompass these changes within their organisations.

Dorothy Hadleigh
Head of Service, SEND

***Extract from High Needs Funding 2021 to 2022 Operational guide published
February 2021***

Annex 2 : Responsibility for children and young people who move between local Authorities

Local authorities are responsible for conducting the education, health and care (EHC) plan needs assessment and, where necessary, issuing EHC plans and securing the provision specified, for children and young people who are in the local authority's area ([Section 24\(1\) Children and Families Act 2014](#)). Local authorities should fund any special educational provision for children and young people with EHC plans from the high needs block of the dedicated schools grant (DSG), which is allocated on a formulaic basis, including factors relating to the characteristics of the children and young people resident in their area (further information can be found in the [high needs national funding formula: technical note](#)). Therefore, responsibility for special educational needs (SEN) and high needs funding is normally based on where the child or young person lives.

Under the [Children and Families Act 2014](#), local authorities are responsible for children and young people with SEN who are 'wholly or mainly resident' in their area. These duties are based on where the child or young person lives and not on where they are educated. Where a child or young person is educated outside the area of the local authority where they usually live, the local authority in whose area the child normally lives is responsible for conducting the EHC needs assessment and issuing an EHC plan, where necessary, and for securing and funding that provision. Some children and young people may require residential educational placements (particularly those with the most complex needs). In such cases, the guidance states that the child or young person continues to be considered as living in the area of the local authority that placed them in the residential provision (since a residential school or college placement, even for 52 weeks of the year, is educational provision and not a place where a child or young person lives, i.e. the child or young person will remain resident at their family home) and, therefore, they would continue to have the duty to maintain any EHC plan.

Where a child or young person moves from the area of one local authority into the area of another (for example, changes where they usually live), the 'new' local authority becomes responsible for meeting the statutory SEN duties (as detailed in the [SEND Code of Practice](#), section 9.157 to 9.162). This may happen where a child's family moves, or in the event that a young person decides to remain living where they have been educated. If the child or young person already has an EHC plan, the 'old' local authority is required to transfer the EHC plan to the 'new' local authority on the day of the move, or within 15 working days of becoming aware of the move. The 'new' local authority then becomes wholly responsible for maintaining the plan and funding the specified educational provision. The 'new' local authority must review the EHC plan within 12 months of the plan being made or being reviewed by the old authority, or within 3 months of the plan being transferred (whichever is later). The 'new' local authority may conduct a new EHC needs assessment, regardless of when the previous EHC needs assessment took place, since local variations may mean that arrangements in the original EHC plan are no longer appropriate.

Looked after children (LAC)

Guidance states:

Looked after children (LAC) are those who have been taken into care or who are being provided with accommodation by a local authority in its statutory role under the [Children Act 1989](#). More than half of LAC have some form of SEN, and it is likely that a significant proportion of them will have an EHC plan. A significant proportion of LAC live with foster parents or in a children's home and attend schools in a different local authority to the local authority that looks after them. The [Care Planning, Placement and Case Review Regulations 2010](#) distinguish between the "responsible authority" (the local authority that looks after the child) and the 'area authority' (the local authority in which the child is placed). Local authorities who place LAC in another local authority's area (for example with foster parents) need to be aware of that authority's SEN and disabilities local offer if the children have SEN. Where an assessment for an EHC plan has been started, the assessment must be carried out by the authority where the child lives (is wholly or mainly resident), which may not be the same as the authority that looks after the child, as set out in section 10.8 of the [SEND Code of Practice](#). If a disagreement arises, the authority that looks after the child will act as the 'corporate parent' in any disagreement resolution.

When a local authority places a LAC with an EHC plan in another local authority's area (for example with foster parents), the local authority where the LAC lives (is wholly or mainly resident) becomes responsible for maintaining their EHC plan (including paying any top-up funding), in the same way as any child or young person who moves from one local authority's area to another.

The policy intention behind this is that the local authority where the child lives knows their local schools and educational provision better, so they are better able to assess whether the child needs special educational provision on top of what is ordinarily available.

The [Inter-authority Recoupment \(England\) Regulations 2013](#) permit the local authority where a LAC with an EHC plan lives to recoup the cost of primary or secondary education, which includes additional special educational needs and disabilities (SEND) educational provision (for example, the costs of top-up funding), from the local authority responsible for looking after the child. Recoupment of education costs will not normally be appropriate, however, as from 2018 the high needs funding formula and associated arrangements have been designed to ensure that local authorities' allocations of funding for SEND are based on the characteristics of the children and young people living in their area, including any LAC. In addition, there are adjustments to reflect the costs relating to the movement of pupils and students living in one local authority area who receive their education in another authority area.

Inter-authority recoupment may remain appropriate in some circumstances, however, following mutual understanding and agreement on how the costs of educating LAC are funded through the local authorities' respective funding allocations. It should be noted that the recoupment regulations do not provide for recoupment of costs of further education (FE) provision and so costs of additional SEND provision for young people in FE cannot be recouped in this way.

Post-19 provision for young people accommodated under the Care Act 2014

313: For a young person aged 19 to 25, the local authority where they live is responsible for conducting any EHC needs assessment, issuing an EHC plan where necessary, and for securing and funding that provision.

314: Children cease to be 'looked after' when they are over the age of 18 (some children will cease to be looked after at 16 or 17 and others will continue to be looked after until their eighteenth birthday). The [Inter-authority Recoupment \(England\) Regulations 2013](#) apply only to LAC (up to their eighteenth birthday), and so do not apply to those aged 19 or over. Once they are no longer looked after, the recoupment regulations no longer apply. This should not matter as the local authority where the young person lives will have been funded through the high needs funding formula to meet the costs, in the same way as for any other young person who lives in their area.

315: Some care leavers will remain living with their former foster parents past their eighteenth birthday in 'staying put' arrangements, but they are no longer 'looked after'. The local authority which 'looked after' a child remains responsible for meeting their leaving care duties regardless of where the young person may now be living in England or Wales (section 23A(4) of the [Children Act 1989](#)).

316: This includes providing the young person with support for the expenses associated with living near where they are seeking work, working, or receiving education or training.

317: Decisions on adult social care placements may change the local authority responsible for making SEN provision. It is the department's view that, where a young adult is accommodated under the [Care Act 2014](#) in a residential adult social care placement (as opposed to residential education) made on a long-term basis (for example, with the intention that it is to be permanent for the foreseeable future), it is likely to be considered to be a change in the adult's residence. Therefore, if a young person aged 19 to 25 has been accommodated under the Care Act 2014, in a permanent residential care placement in a different local authority area, it is likely they will have moved into the area of the 'new' local authority, unless there are factors indicating otherwise. Therefore, for the purposes of the [Children and Families Act 2014](#), the 'new' local authority would be responsible for securing and maintaining any EHC plan.

Briefing Paper - Creation of new SEND places in Academies

Context

The Regional Schools Commissioner, Hannah Woodhouse has written to all Southwest Directors regarding the expectations and processes required to take forward the opening of any new provision within academy schools. The letter is in response to the rising need to provide more specialist provision for children with SEND. As all local areas are now planning and considering how to make best provision for the following academic year and beyond, the Regional Delivery Directorate (RDD) has set out the expectation and guidance for making a significant change.

What is a significant change?

Significant changes are anything that will impact on the school's structure, organisation or physical environment, usually by the change in the number or type of provision that is offered. In the context of SEND provision the majority of these changes fall into three categories

- Changes to the number of pupils in special school
- Change in type of SEN provision in a special school
- Changes affecting SEN units or resourced provision in "mainstream" schools.

The guidance allows for a threshold increase to Special schools to 20 pupils or 20% of places, whichever is smaller, without the need for a significant change process.

Any changes to SEN units or resource bases will need to go through a significant change process.

Why might we need to use the significant change process in Torbay?

To meet the needs of children and young people we have established several resourced provisions within our mainstream schools. These cater for children and young people with ASC, Hearing Impairments and Anxiety and Social, Emotional and Mental Health (SEMH).

We are also developing new provision for primary aged pupils with SEMH attached to a trust.

We also have a high number of special schools that work in partnership to accommodate needs flexibly.

What will be considered as part of any request?

All proposals will be considered against all the available options, with a view to the strongest possible school locally being asked to expand first, rather than those which do not currently demonstrate strong leadership or quality of provision.

The considerations that would be taken into decision making are: -

Quality	<p>Schools that have poor outcomes for children or concerns recorded by Ofsted about current provision should not be putting in requests.</p> <p>Clear evidence will need to be submitted as to how specialist expertise, as well as agreements with the LA on the level and type of need to be catered for.</p>
Deliverability and Timeliness	<p>The application needs to be timely to enable the process to go through either a fast track or full business case approval process. The application must be timely for a suitable recruitment plan, comprehensive curriculum, and transition arrangements after the approval process.</p> <p>The process requires a minimum four-week period of consultation by the applicant with all stakeholders. Local Authorities must be consulted in all applications and make a written recommendation.</p>
Suitability	<p>The provision cannot conflate a range of types of needs or involved arrangements not generally appropriate for Special provision</p>

What will be the impact for Torbay?

The desire to place provision in high quality academies will continue to be at the centre of all decision making. For the majority of our requests the process will continue to bring about the outcomes we require for our children and young people. Torbay has always engaged the RDD team in early conversations regarding any provision that is being established and in the main this has brought about the necessary change.

For some applications in addition to quality the local area will need to increase provision based on the availability of capital assets, geographical location, and community need. For many of our providers the growth of the provision within their school community would be supportive of improving their outcomes.

Recent experience of conducting a significant change process, demonstrated that there can be a challenge to the plan based on historic information. For example, poor outcomes that are now three years old (with no ability of the school to show more recent progress) was a factor in refusal.

To ensure that risks can be identified and mitigated we will need to: -

- Plan any increase in numbers one year prior to any admission
- Not increase numbers once these are set (unless in the 20% category permitted for special schools)
- Work with our trusts to be able to submit a full business case with all the necessary information to be able to meet the approval expectations.
- Continue to use our regular RDD conversations to raise future proposals and ensure that these are co-produced.
- Ensure that any proposals are inclusive of the specialist resources that might be required to deliver to the identified group of needs.
- Create clear admission criteria and ensure that this is adhered to when placing children and young people in the SEN units or resourced provisions.

Rachael Williams

Divisional Director Education, Learning and Skills