

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.

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