



**MINUTES FROM HIGHER NEEDS RECOVERY GROUP MEETING HELD ON
25th May 2018**

<p>Present: Roger Hughes, Rachael Williams, Andy Dempsey, Rob Parr, Matt Gifford, Daniel Hamer, Ken Kies, Sandra Wright, Mike Lock, Brian Chapman, Samantha Meyer, Stephen Kings, Mark Eager, Steven Hulme, and (Magenta Guthrie - notes)</p>	Actions
<p>Apologies</p>	
<p>Julie Chubb, Sheena Wright, Dorothy Hadleigh, Adam Morris, John Demeger, Siobhan Grady, Gail Rogers</p>	
<p>1. Welcome and Introductions</p>	
<p>Roger went through the apologies, John Demeger and Sheena Wright also sent their apologies since the agenda was sent out. Roger welcomed Stephen Kings, CEO of Bay Education Trust.</p>	
<p>2. Review of previous minutes</p>	
<p>Roger asked if everyone was happy that the minutes of the last meeting were accurate, Brian agreed. Roger asked if anyone wanted to raise anything and went through each page, Roger asked a question about page 2 of the minutes around the progress of the jobs for the EHCP monitoring officers, Rachael said that we now have the grading's for the post so can advertise them hopefully straight after half term. Roger said we do not need any further updates on this. Roger asked about the letter from Ofsted, Rachael said the letter was discussed at the Secondary Heads meeting but we were not able to share it as it has not yet been received.</p> <ol style="list-style-type: none"> 1. Andy hasn't been able to confirm attendance yet, Rachael sent a list of dates to Alison of meetings that we would like her to attend, Andy has communicated the group's expectations of Alison attending. Rachael met with Alison and agreed that Alison would attend the HNRG. Andy added that he thought one of the things Headteachers wanted was a greater voice within the Council, Rachael has been promoted to Assistant Director of Education, Learning and Skills from 1st June and will be a permanent member of the Council's SLT. Andy asked Rachael to write a letter detailing her appointment as Assistant Director. 2. Rachael apologised that the report on joint funded placements had not been circulated, it will be circulated with the minutes of this meeting. 3. Andy spoke with Jo Olsen (Devon), nothing material to report back at this point. Approach to placing SEN pupils is an issue for both Plymouth and Devon, Andy will come back with something in due course. 4. This was covered under action 1 	<p style="text-align: right;">Rachael</p> <p style="text-align: right;">Rachael/ Magenta</p>

<ol style="list-style-type: none"> 5. Matt reported that a report on ceasing EHCPs cannot be done, Roger and Rachael agreed prior to the meeting commencing that it is not worth someone creating a system to create a report. Rachael fed back that our Capita system doesn't demonstrate when plans are ceasing, but we know from intelligence within our SEN team that plans are being ceased because of an age or if they move out of area. Until we have annual review systems in place the report wouldn't demonstrate anything to this group. Also, a request from this group to have this report is not possible yet as we do not have the mechanism within the Council to write this report. Roger asked if Capita cannot produce this report, can it be done through the annual review? 6. At the June Schools Forum meeting a decision will be taken around the MFG formula 7. Dan gave an update; the 3 stage model is still ongoing, we are awaiting DfE's feedback, Dan wrote to them last week around the legality. Dan will be talking to them at the South West exclusions forum which is next month. Rachael added that Dan presented the model at both the Secondary Heads meeting and the TAPS meeting, both sectors have had the opportunity to respond. Dan said we have only had 1 written response so far. Rachael reminded everyone that if they wish to have a view on this, they need to feedback before the June Forum where a decision will be made. Roger asked if it had been sent electronically and asked Dan to send separately to the TAPS minutes with a response deadline. 8. Covered in above action 9. Following the last meeting, we needed quick decisions regarding the Pilots for Play Torbay and PCSA, enough responses were received from Forum members in favour of both pilots to go ahead. Roger fed back that there were 8 or 9 yes's, no abstentions received. 10. Covered in above action 	<p>Dan</p>
<p>3. Update on Play Torbay Pilot</p>	
<p>Dan gave a verbal update, Play Torbay and Youth Trust are working with 7 students around reintegration into maintained mainstream places. They have contacted all schools involved. There have been some issues around locations where some of the children should not be on Play facilities who are co-located with schools where they have existing problems. The work starts across half term with families and on Monday after half term with children. Rachael said we will bring back an update after week 5 at the meeting on 5th July and at the end of the pilot a report to say if the pilot was successful. Rachael said that in setting up that process, some of the children initially identified are no longer involved due to the schools not willing to wait for the provision to be put in place. There is still a challenge that although we are putting an offer to schools to help them to maintain the placement, some children have not lasted long enough in their current school. Andy added that the ultimate stress test will be does it help maintain a universal place, unless there is a greater appetite and we have fewer children in the high cost part of the system, it will crash.</p>	

<p>4. Update on PCSA Pilot</p>	
<p>Rachael gave a verbal update, this was agreed through Forum to set up the 6 place provision at PCSA with the support of Stephen and his trust. So far, 3 pupils have been identified, there were 6 however the other 3 were not out of area so have not been given a place. 1 of the 3 identified would have been given a place at Ratcliffe and 2 are returning from On Track, 1 of the pupils is year 8, the others are year 7. There are still 3 places available. Each of the placements are currently £50K, we still need to work with PCSA to identify the cost, the Element 3 will need to be looked at when the children come into the provision, but it could be potentially a saving of £25k per placement as an annual fee. Andy said that there should be a cost avoidance model, we need to demonstrate this is a good outcome for the child. The 3 places that are still available are being kept open for children currently out of area not to fill capacity.</p>	
<p>5. Discussion paper on financial recovery options</p>	
<p>Rachael went through the contents of the paper; at the last meeting we agreed to look at what other local areas were doing and wanted to look at the types of actions that we would need to take in order to recover the position. In 2016/17 we had a £439k recovery position, this was increased by £1.528m (overspend on Higher Needs block) in 2017/18. We were fortunate that some of the overspend was offset against underspend and reserves and was brought down to £614k. The current trajectory of overspend for 18/19 is in the region of £1.6m, therefore we are looking at potentially £2m worth of savings to get to a balanced budget this year. Panel see's around 10 children each week, requests are coming in which will add to the position. Last year we dealt with some of the deficit through the virement, we applied the maximum virement of 0.5% and rather than seek a disapplication to get above 0.5%, this group was established to work towards a balanced budget. The report sets out serious actions to get to a position to recover some of the debt. The report contains the outcomes of 27 virement applications that were made last year. We haven't been able to find the percentage each of these achieved, Bath and North East Somerset 0.9% agreed without Schools Forum, South Gloucestershire achieved 8% with agreement of Schools Forum. Through the regional groups, Rachael and Rob will try to find out some more figures. The report demonstrates what we can consider as a local area.</p> <p>We can consider 3 options; to reduce the agreed per pupil top up paid by the LA, reduce the number of independent school placements, or reduce/not exceed the commissioned capacity within specials schools and alternative provision. There can be no negotiations on the core funding. Some LA's have already cut Element 3 funding, although this has not yet been tested legally. The report shows how we have increased the Element 3 top up over a number of years. This increase is without increasing the unit values. There are currently around 424 pupils receiving the top up.</p> <p>11 pupils placed on joint packages with Social Care, of which Education are picking up around 25% of the total cost. Lots of work has been done around proportion Education are funding, Rachael gave an example of a child moving out of area,</p>	

Education can meet his needs in area therefore we are meeting the Education costs up to that level.

The chart demonstrates we have a higher number of children taught within special schools or alternative provision than most local areas and the national average. We hear that schools require Element 3 top up above what other schools need because we don't have sufficient special school places or alternative provision in the local area, however, the chart demonstrates we have more availability than most local areas.

In the next chart, the 250 pupils does include the post 16 provision at Combe Pafford, numbers pre 16 have not changed. There has been significant growth since January 2015 for the majority of provisions. The LA's view is that these have been needed for the following reasons; complex needs, complex pupils moving into the area, increase in exclusions, stronger pushback from mainstream schools to admit or maintain pupils and tribunal decisions.

The impact of making these changes is demonstrated in the next tables. We haven't included a reduction in independent placements, this can be done, the reason is there is an independency between Health and Social Care, what we can change around that is limited. Not proposing a 100% reduction in Element 3, this is the current spend. South Devon College's Element 3 figures are; £204,624 currently received, 3% reduction £6,139, 5% reduction £10,231, 10% reduction £20,462. Potential total savings of 3% reduction £135,000, 5% reduction £225,000, 10% reduction £450,000.

Rob informed Rachael this morning that we have added another £100,000 this week to the table on page 7 (*number of pupils Apr-18*) due to another 4 pupils being placed this month. There are 588 special school and alternate provision places commissioned but we are currently using 609.

This hasn't been modelled based on the impact of the decisions and we have not looked at it from an individual pupil point of view. Haven't looked at cost shunts, element 3 reducing further cost down the line i.e. more exclusions, written from a financial perspective. We can opt for a disapplication, however we need a recovery plan to submit with this and a disapplication cannot be repeated year after year. Andy said that is the responsibility of the Section 151 Officer who is the Council's financial officer to ensure the Council delivers a balanced budget, he will have no choice if schools don't take action to seek a disapplication to the full amount. The DfE will see we have a prevalence of children in the high cost part of the system of almost twice the national rate and ask why is that happening, they may support rather than a Council going bust and issuing a 141 notice as the Council do not have the reserves to deal with the deficit. The LA will act in its own interest at some point because it does have a lawful duty to deliver a balanced budget, the sense is this will be 2019/20.

Roger asked if we need a 3 year plan, it was agreed this is what is needed. Rachael said the plan would have to go alongside the plan for virement. Roger said the plan has to deal with the deficit and the continuing pressure, the plan needs to look at saving £1.5-£2m a year. Andy said there is a degree of urgency due to the change to the schools funding formula, current rules will call into question a forum like this,

Rachael

therefore we only have around 1 year to make the disapplication. Stephen said the figure that jumps out of the paper to him is the 2.6% (*referring to pupils in special schools as a % of total pupils per area*), why is it as high as it is? Rachael said some of the questions in the first meeting were around this, part of the reason is down to historic decision making, there is a cohort of children moving through the system, there is a high prevalence of children with EHCP's when they enter reception. We need to look at our threshold for decisions, some of this is tested through an audit process, although at the moment this shows there is medical evidence to back this up, children out of area moving in with plans already in place. The secondary behaviour leads visited Blackpool and it was discovered that they do things quite differently. The chart shows children with EHCPs within a special or AP, we are moving towards Burton not having any children with an EHCP. Mike said that historically Torbay has always been high, we need to implement a range of measures some of which we can be put in straight away, for example a cap on numbers. Need to be careful when comparing, in Plymouth there are no post 16 specialist provisions, it would be a truer comparison if we could show post 16 and pre 16 figures. Rachael said that she thinks the chart shows up to KS4 but will check this out.

Rachael

Dan said that if we look at year 11 leaving Burton and the number going into those places, there is 1 place on commissioned numbers left. Sandra added that the likely outcome of reducing funding to keep more complex children in mainstream schools is that they will be excluded which will then put additional pressure onto AP's. Mike said we need to make sure the most complex are in the special schools, we are not doing enough to get the high cost placements back into the local area. Mark supported that the model happening at PCSA seems to be a brilliant model. Dan said at the secondary heads meeting, when he presented the 3% model there were questions raised. Andy said we can push back on this as if it is passed through Schools Forum, it will need to be adopted by all schools. This says there is a lack of inclusivity in the system, twice the national rate. The options we can control are the top up elements, commissioned places and holding the line at thresholds.

Rachael spoke about the thresholds, currently there are 4 mediations happening and a tribunal case that is looking at our threshold applications. Brian has been Chairing the panel for the last few weeks and can testify it is a robust discussion. Brian added that in 2014 when the new code of practice came in for SEN, he visited a few places to look at their models and our thresholds matched almost perfectly with those LA's.

Steven said approximately 10 people that are funded at the highest rate in AP of £19,500 are due to taking cannabis onto the school site and are now stuck in the system. Schools are automatically excluding for a relatively minor offence. Dan said there is support from SENDIASS, 2 of those are going to appeal. Rachael said this is the importance of Dan's post- to challenge these decisions.

Mike came back to £200,000 on 4 pupils at On Track, if they are there for 2 years that is £400,000. Ken said that Eden Park would be prepared to replicate the model at PCSA providing suitable accommodation can be found and it is funded appropriately without the school itself topping it up. Ken asked why there is not an offer for schools in Torbay to replicate this?

Rachael agreed, some Headteacher's have come back to say they would also be willing to set up a provision but most of them would need investment. Some of the problem is around our capacity to go out and have those conversations, there is also an issue around the capital cost of stepping up those provisions. At PCSA the money is coming from the SEND Capital pot- £125k a year given to the LA. The area resourced base model is part of Dan's plan of having the peer group challenges. The whole system needs to not generate new placements. We need a system that enables children taught out of the area to return and access these places.

Mike asked about a line in page 4- 'there remains limited contribution from health into the cost of complex packages', do we know how much of Health we are paying? Andy said we have raised this with health, a panel has been set up to review contributions, Education are due to attend after half term. In Social Care, out of 320 packages for LAC, Health are contributing to 2 of those packages. Rachael said our focus will be on SEMH as we are above national for SEMH EHCP plans and the therapeutic offer. There is an element of both it not being provided and it being provided but Education are paying. Rachael said the contribution of the Health appendix C into the EHCP process is limited, you then cannot quantify what the investment from Health should be as you cannot identify the need. The CCG Commissioner for SEND is now part of the audit process.

Mike asked about the new positions to challenge the annual reviews, this was covered in the actions at the beginning of the meeting, it is a central Council investment. Brian said that when you complete an annual review, you don't have to explain how you are spending the Element 3. Andy said we need to look at what are the most impactful actions that we can take that don't de-stabilise the system and that bring us more in line with other areas. Sam said identifying children early and supporting them and their families from an early age is key, the top up element allows that to happen, there would be a knock on for primary schools if this was reduced. Mark said that within 8 secondary schools, there are pockets of where those complex pupils are, in Blackpool, they would be spread across more schools, you cannot underestimate the complexity of the concentration element, reducing the funding would hit those schools where those children are, you are then going to create a system of fear where the schools that need the funding the most will be at a disadvantage. It could create more pupils coming out of the system as the inclusive schools won't be able to support the more complex pupils. Andy agreed with Mark, it needs to link with the agreement Dan is trying to forge. Some schools were resisting 3% whilst other schools are taking 10-15%. We need to get the equity right before adjusting the unit income. Mike said that the virement has to be an option, some schools if they like it or not will be contributing. Sam said that it wouldn't just be those schools that take more complex children getting a cut, its all schools, if you have more children you take a bigger cut and if you have less you take a smaller cut. Dan said this is the reason for creating peer challenge groups, its less problematic if you are within a school and you exclude a child, if you have to justify it at panel, it makes it harder.

Roger said, now we have a plan, we can go for a virement. Rob said schools wouldn't see it because the top slice happens before it goes to schools. Andy said it doesn't address the underlying behavioural issues, it would be a significant figure of around 6-8%, this can be linked with the debate around how PEX's are handled and inclusivity.

Rachael added that we need to cap commissioned places and leave available places in the SEMH provision. Roger said we are where we are because of the change in the system, we would take it out of next year's funds before we allocate it to schools. Rachael said that there are too many people in Torbay requiring this type of provision. The panel receives the majority of applications through a school requesting it, there has to be some work within the school around meeting the child's needs with SEN support. Matt said that our tribunal rate is really low which could indicate we just say yes. Rachael said the mediations and tribunals take a lot of officer time, we do need to look at SEN resources, we are reliant on a small work force that would need to increase to make these changes. Brian said that Element 3 has not increased since 2011, between Element 2 and 3, PCSA receive around £400k, they spend over £550k meeting the needs of those pupils. If you take off the Element 3, you can look at when the school withdrew some of the SEN funding, the applications for EHCP's increased, request for places like Burton increased, PEX's increased. You could find that you have more EHCP applications if you take away funding to support schools. Andy said a continuation of what is currently being done is not an option. Legal advice needs to be sought around cutting the top up Element, Roger said it is the option that saves the largest amount of money. Rachael said we need to decide which options we are going to choose, no virement and reduce top ups, or virement with other actions. Mike said we want to keep the virement option open until we have the high cost spending under control, as we may not need a virement. Andy said as it stands, Schools Forum would be removed in 2020 so virement will not be an option. Mike asked if we could do a high virement this year. The plan that goes with the virement needs to detail actions for dealing with deficit in the future. Rob said that North Somerset are invoicing their schools over 5 years for the amount above the virement agreed.

Roger said we have the makings of a plan to go alongside the virement application. We should be able to make the application in 2019/20. £600k left from last year, £1.6m projection for this year is £2.2m. We also need to deal with the pressures moving forward until the actions start to take effect. Andy said the paper needs to shift its focus to be a whole system proposal. The proposal would be; a capped approach towards places, a link to 3% allowance around pupil movement outside admissions round, out of area places back in to the local area, adjustment to the top up is a potential for later, model a full virement and a virement at different levels. Rachael said that people do believe they are acting within the system, during TAPs, Dan received an email about excluding a pupil from a Head in the room. Rachael's ask of Andy as DCS is to provide the capital for schools to create the resource bases and consider SEN Central Capacity to undertake the work to challenge and support. Dan said that some schools have set up provisions independently, we need to be equitable in recognising the schools that have done it themselves. Rachael said we can push Health, what is the offer from them if we keep children locally?

Roger summarised Andy's points; cap on places, 3% model, dealing with out of area children, keep top up adjustment back if needed, deal with the rest with a virement in 2019. Sandra said that lots of schools are picking up Health and Social Care costs, for example schools employing family support workers, purchasing play therapy. Andy answered that Torbay's rate of Children in Care is higher than others, 20% of the population have been known to Social Care. There are too many children in our care. The spend on 300 children is £5m+, we spend £13.5m on Social Care placements.

<p>The biggest gap institutionally is Health contribution. Rachael said that there are historic costs around Social Care not contributing, leaving no option than to issue an EHCP. The big gains won't be around Education in the Health contribution it will be with regard to contribution to joint funded placements.</p>	
<p>Roger asked Rachael to summarise the actions:</p> <ul style="list-style-type: none"> • Model virement • Pull together narrative report to present to wider school community, include aspect around the challenge and holding people to account • Work on capital investment needed- are there a group of children that can return into the local area • Cap on places in special schools • Work on 3% model • Governors briefing on their role in challenging exclusions 	<p>Rachael</p> <p>Rachael</p> <p>Andy/ Rachael</p> <p>Rachael</p> <p>Dan/ Rachael Rachael</p>
<p>The above need to be proposed as a recovery mechanism to schools in September. The recovery mechanism needs to be agreed by Schools Forum. All papers/outcomes of the above to be brought back to the next meeting on 5th July.</p>	
<p>The next meeting is 5th July at 9am in Tor Hill House, mezzanine room 4</p>	

Summary of actions	
Andy asked Rachael to write a letter detailing her appointment as Assistant Director.	Rachael
<i>(report on joint funded placements)</i> Rachael apologised that this has not been circulated, it will be circulated with the minutes of this meeting.	Rachael/ Magenta
(3% model) Dan to send separately to the TAPS minutes with a response deadline.	Dan
3 year recovery plan to submit alongside application for disapplication	Rachael
Rachael to check if the chart shows up to KS4 <i>(page 4)</i>	Rachael
Model virement	Rachael
Pull together narrative report to present to wider school community, include aspect around the challenge and holding people to account	Rachael
Work on capital investment needed- are there a group of children that can return into the local area	Andy/ Rachael
Cap on places in special schools	Rachael



Work on 3% model	Dan/ Rachael
Governors briefing on their role in challenging exclusions	Rachael