

HAMPSHIRE COUNTY COUNCIL

Decision Report

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| Decision Maker: | Executive Member for Education and Skills |
| Date: | 24 February 2021 |
| Title: | Proposal to move to a SEN Banding Framework for Education, Health and Care Plans' (EHCP) top-up funding |
| Report From: | Director of Children's Services |

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Purpose of this Report

1. The purpose of this report is to seek approval from the Executive Member for Education and Skills to move to an SEN Banding Framework for the allocation of Education, Health and Care plan (EHCP) top-up funding to mainstream schools.
2. This report summarises the proposed changes to the current system for top up funding for Education, Health and Care plans (EHCPs) and the public consultation responses. It highlights the areas of concern that were raised and mitigating actions.

Recommendation(s)

3. That the Executive Member for Education and Skills notes that:
 - the proposed Banding Framework, in combination with the separately published guidance about SEN support in mainstream schools, is intended to enhance outcomes for children and young people by enabling access to a broader range of support and promote a young person's independence.
 - this proposal aims to bring the funding in line with best practice that schools have adopted.
 - this system moves away from hours of learning support assistance and assigns funding against a broad range of best practice provisions that matches specific types and levels of need.

- based on the financial modelling completed, the impact of this change on a school's budget would not be significant. Individual mainstream schools would retain the flexibility to pool and draw on their overall budgets and would continue to be legally required to use their best endeavours to provide for all children and young people's SEN including those who are subject to an Education, Health and Care plan. Similarly, the County Council would maintain its ultimate duty to secure the provision in EHC plans. The proposal is not intended, or expected, to lead to a reduction in the High Needs budget used to fund top-funding for EHC plans in mainstream schools.
 - from public consultation, overall, respondents prefer the proposed banding mechanism to the existing funding mechanism and the majority also agree with the proposed bands that could be applied. Perceived strengths of the approach included potential improvements to the range of provision to support children with SEN, the potential to help them become more independent and the greater simplicity for service users' families
4. That the Executive Member for Education and Skills approves the proposal to move to a SEN Banding Framework.

Executive Summary

5. The County Council holds an amount of funding from the High Needs Block budget on behalf of local mainstream schools, which it then allocates upon its production of an Education, Health and Care Plan (EHCP) to a school for the delivery of the provision set out in the EHCP. This is called top-up funding and it is provided as "learning support assistance" from which the provision in the EHCP is to be implemented.
6. Many mainstream schools use a wide repertoire of approaches to meet the needs of children and young people with an EHCP. This proposal brings the funding in line with best practice that schools have adopted.
7. In December 2018, the County Council decided to review its top-up funding for mainstream schools. The 2018 review found that the preferred system for the majority of local authorities is a Banding Framework.
8. This system moves away from hours of learning support assistance and assigns funding against a broad range of best practice provisions that matches specific types and levels of need.
9. An eight week public consultation on the proposal to move to a banding funding model was undertaken to seek views on this approach. The specific details of this can be found at point 7 of this report. A number of parent engagement sessions were also undertaken. Overall, respondents preferred the proposed banding mechanism to the existing funding mechanism and the majority also agreed with the proposed bands that could be applied.

Perceived strengths of the approach included potential improvements to the range of provision to support children with SEN, the potential to help them become more independent and the greater simplicity for service users' families.

10. However, there were concerns raised by parents particularly that a change in funding mechanism may lead to a reduction of funding and support for their children and reduce the accountability of schools to provide support for their children. This report confirms that there is no proposed reduction in funding, in fact, there will be an increased top up budget allocation next financial year.
11. It also notes that schools will continue to be required to provide the support required through an Education, Health and Care plan and considers routes to address the broader issues that parents have raised with regards the accountability of schools.
12. In light of the broad support for the proposal through public consultation and mitigating factors in relation to concerns raised, this report proposes that the Executive Lead Member approves the proposal to move to the SEN Banding Framework.

Contextual information

Top-up funding for Education, Health and Care Plans in mainstream schools

13. The County Council holds an amount of funding from the High Needs Block budget on behalf of local mainstream schools, which it then allocates upon its production of an Education, Health and Care Plan (EHCP) to a school for the delivery of the provision set out in the EHCP. This is known as 'Element 3', or 'top-up' funding. The current amount of funding allocated in the 2020/21 budget is £10.3m.
14. Under the current arrangement, an amount of top-up funding is provided as "learning support assistance" from which the provision in the EHCP is to be implemented. This amount is based on the calculation of an equivalent amount of funding for a number of Teaching Assistant hours. This is often mistakenly interpreted as hours of one to one support for the young person with the EHCP.
15. Many mainstream schools use a wide repertoire of approaches to meet the needs of children and young people with an EHCP. This proposal brings the funding in line with best practice that schools have adopted.

16. Evidence¹ shows that, on its own 1:1 support from a Learning Support Assistant is not the most effective way to support children and young people with SEN as outlined within the research. From a financial perspective, it is also inefficient as there are no opportunities to gain economies of scale, for example, by being able to share staff expertise between children and young people across the class or school.
17. The proposed SEN banding framework is aimed at allocating resources to mainstream schools, in a way that offers them greater flexibility to organise provision and would support children and young people with EHCPs to become more independent and achieve better outcomes.
18. In December 2018, the County Council decided to review its top-up funding for mainstream schools as its arrangement (known in Hampshire as 'hours of learning support assistance') was out of step with other local authorities' practice.
19. The 2018 review found that the preferred system for the majority of local authorities is a Banding Framework. This is where the top-up funding is set into bands of increasing value against an agreed set of criteria. The amount provided to the school is a best fit of the required provision in the EHCP matched against the appropriate criteria in the Banding Framework.
20. Having consulted with the Hampshire Schools Forum, and with its support, the County Council undertook a review of other local authority banding approaches, with a view to developing its own. This identified East Sussex County Council's banding matrix as a model of good practice.
21. The County Council then convened a multi-disciplinary group of educators and related professionals to investigate East Sussex County Council's banding matrix in more detail. The group comprised headteachers, teachers, special educational needs co-ordinators (SENCOs), local authority officers, specialist teacher advisors, educational psychologists, NHS commissioners, NHS therapy managers and parent representatives.
22. The group found it to be a well-considered and established approach that closely matched the ambitions of Hampshire County Council and mainstream school leaders in Hampshire. The group considered that East Sussex County Council's matrix needed only small changes to reflect some aspects of Hampshire's particular context. As such the County Council

¹ *Deployment & Impact of Support Staff project (Blatchford, P., Bassett, P., Brown, P., Martin, C., Russell, A., and Webster R. London: Department for Children, Schools and Families) and Education Endowment Foundation meta-research*

requested, and was granted, permission from East Sussex County Council to adopt its matrix and adapt it for Hampshire's use.

23. Following financial modelling of the banding values, stress-testing research was undertaken with 40 schools across the county in May 2020. The primary purpose of the research was to determine the feasibility of the banding values against current EHCP's. Additionally, the research sought to determine the support and readiness within Hampshire schools should the proposed framework be accepted.
24. The financial stress testing returned 94% support for the proposed framework. Overall, the banding values and the descriptors against the bands were supported.
25. It is suggested that this report is considered alongside the SEN Banding Framework public consultation and technical document – please see Appendix 1.

The proposed SEN Banding Framework

26. Please see Appendix 4 for a visual representation of the proposed framework.
27. The County Council is proposing that an agreed Banding Framework will simplify the process of allocating top-up funding so that schools and parents are clear on what is being provided and why. Allocating top-up funding against an agreed framework is a transparent process where both schools and parents can see how the allocation of top-up funding has been determined.
28. The Banding Framework would not be used to determine the provision that a young person requires. This would still be determined through the EHC Needs Assessment process.
29. The proposal only covers the top-up funding that mainstream schools receive for children with more complex SEN requiring an EHC plan and not the core funding of mainstream schools.
30. The proposal is not intended, or expected, to lead to a reduction in the High Needs budget used to fund top-funding for EHC plans in mainstream schools. The total cost of provision set out within an EHCP would continue to be met jointly from the school and the Local Authority's High Needs budget.
31. It is anticipated that the proposed Banding Framework, in combination with the separately published guidance about SEN support in mainstream schools, would enhance outcomes for children and young people by

enabling access to a broader range of support and promote a young person's independence.

32. All formal routes of appeal relating to EHC plans and provision will continue to be available in their current form.

Finance

33. There is no proposed reduction to the mainstream schools top up element of the High Needs Budget. The proposed budget for 2021/22 is £12.2m, which is an increase of £1.9m from 2020/21.
34. The financial stress testing research undertaken in May 2020 tested the feasibility of the banding values. This research tested the banding values against live EHCP's in 40 mainstream schools. The overall support for the proposed banding framework was at 94%, suggesting the bands were deemed sufficient to meet needs. Concern was raised in the consultation when this level of financial analysis was not possible.
35. The money allocated to a school through their notional SEN budget is not affected by this proposal.
36. The banding proposal will only apply to new EHCPs initially and therefore will not reduce existing funding.
37. There may be a change to the funding for an individual EHCP at the point of annual review, which is the same as the current system, if the evidence suggests it is appropriate to do so.
38. The band for each EHC plan will be determined on a best fit arrangement to the provision described in section F of the EHCP. The value may, therefore, be slightly higher or slightly lower than the current funding level and through the new model, schools will gain extra flexibility in how they use this money to ensure greater efficiency and support better outcomes.
39. Based on the financial modelling completed, the impact of this change on a school's budget would not be significant. Individual mainstream schools would retain the flexibility to pool and draw on their overall budgets and would continue to be legally required to use their best endeavours to provide for all children and young people's SEN including those who are subject to an EHC plan. Similarly, the County Council would maintain its ultimate duty to secure the provision in EHC plans.

Consultation and Equalities

Public consultation methodology

A full analysis of the public consultation can be found in the Findings Report at Appendix 3

40. An eight week public consultation on the proposal ran from 12 October 2020 to 11:59pm on 6 December 2020.
41. The consultation was communicated to residents and stakeholders through a range of channels that included:
 - social media posts drawing attention to the consultation and linking to the consultation web page on the Hampshire County Council website;
 - a press release to media organisations in Hampshire, as well as shared with County Councillors and MPs in Hampshire, Hampshire Parent Carer Network (HPCN) and SENDIASS;
 - via County Council briefing communications to Hampshire's district authority chief executives, which were also circulated to County Councillors and MPs in Hampshire;
 - a school communication sent to head teachers by the Assistant Director, Education and Inclusion, Children's Services;
 - attendance by County Council officers at seven Hampshire Parent Carer Network (HPCN) meetings where the proposed funding mechanism was described, questions were answered, and the group was encouraged to circulate details of the consultation with their membership; 244 people participated across these events;
 - internal communications with County Council employees; and
 - the County Council's newsletter to Hampshire's town and parish councils.
42. A dedicated webpage providing full details of the consultation timeframe, links to the main and Easy Read consultation documents, a summary presentation and the response questionnaire was published for the launch of the consultation.
43. A dedicated in-box was specifically set up during the consultation to deal with particular enquiries which were addressed as they came in and for submissions to the public consultation which were submitted via email.

Findings from the consultation

44. There were 218 responses to the consultation Response Form, all of which were submitted online:
 - 137 were from individuals;
 - 80 were from organisations or groups (of which 71 were from a nursery, school, college, or place of education); and
 - One did not indicate either way.

45. There were also five separate unstructured responses (received via letter or email) that were received within the consultation period; these responses are also included in this report.

Key findings from the formal consultation

46. Overall, respondents preferred the proposed banding mechanism (134 of 218 responses) to the existing funding mechanism (69 responses), and the majority also agreed with the proposed bands that could be applied (143 of 215 responses).

47. Support for the banding mechanism and the bands proposed was highest amongst nurseries, schools, colleges, and places of education, with 60 of the 71 establishments that responded preferring the banding mechanism and 64 agreeing with the proposed bands.

48. Most comments explaining respondents' support for the proposed banding mechanism mentioned the benefits it could deliver (62 of 78 comments), such as that flexibility (41 mentions) and ease of understanding (18 mentions) may improve.

49. Respondents from households that included children or young people with SEN were more likely to prefer the existing funding mechanism (36 of 58 responses). However, they were less likely to disagree with the actual bands proposed (26 of 57 responses disagreed, whilst 24 agreed), suggesting that it is the change in mechanism they oppose, rather than the proposed allocation of support within it.

50. Reasons given for preferring the existing framework mostly referenced anticipated disadvantages of the proposed mechanism (27 of 47 comments), such as views that there is not enough clarity on what support may be provided to support children with SEN (12 mentions), and that parents may lose control over their child's provision (five mentions).

51. Respondents tended to agree with most of the suggested benefits of the proposed mechanism that were referenced in the consultation, recognising the potential improvements to the range of provision to support children with SEN (134 of 217 respondents agreed), the potential to help them become more independent (127 of 217 respondents agreed), and the greater simplicity for service users' families (111 of 216 respondents agreed). Recognition of these suggested benefits was highest amongst responding places of education.

52. Broadly more respondents disagreed (88 of 218) than agreed (84) with the suggestion that the proposed mechanism would deliver the funding necessary to support a child's needs. However, this was not the view of the schools and nurseries (14 of 71) that responded and who are the group that are best placed to determine this.

53. 95 respondents agreed that the proposed approach would simplify the process of undertaking EHC Plan assessments and just over half of that number, 55, disagreed. Schools and nurseries felt most strongly that the process would be simplified.
54. Almost half of the 140 comments that described impacts of the proposals related to impacts on children (67), most commonly (42) that they may not receive the necessary support, 60 comments also described impacts on schools and SEN Coordinators, where 25 mentioned increased flexibility and 22 mentioned negative impacts on school budgets.
55. Most of the further comments provided (82 of 118 comments) related to funding of SEN, where 33 mentioned the need for funding for SEN services to be maintained or increased, 23 mentioned more clarity was needed on the proposed banding system, and 16 mentioned a need to engage with parents on how SEN support is funded.

Parent engagement sessions

56. The public engagement programme consisted of three formal events, which were attended by 81 participants, and four informal events which were attended by 55 participants. In response to the wider issues identified across these events, two further events were arranged which were attended by 108 participants. Each of the events was hosted and facilitated by the Hampshire Parent Carer Network.
57. Between 16-25% of questions and comments raised at the formal events were directly related to the proposed framework. The questions and comments outside of this figure were classified as wider SEN or local issues. The issues raised are summarised below alongside the key themes from the consultation responses.
58. A full equalities impact assessment can be found in Appendix 2.

Other Key Issues

59. There were important wider issues identified as part of the consultation process, in particular the public engagement events.
60. These will be addressed as part of the wider SEN Service strategy.
61. The SEN Service is currently undertaking EHCP quality improvement workstreams as part of the current SEN Service Strategy. This workstream includes improving the content of EHCP's to include more robust quantification and specification.

62. The SEN Service also continues to develop the EHC Hub and work with contributors to the EHC Needs Assessment to improve the quality of advice to inform the content of EHCP's. The Hub development is also integral to the improved management of EHCP annual reviews, which contribute to better monitoring of EHCP implementation.
63. In addition to this, the SEN Service has committed to regular parent-led public sessions with HIAS and SENDIASS where parents can ask questions on SEN matters.
64. Further work will be undertaken between the SEN Service, settings and parents to address the wider issues raised during the consultation process. This will focus on building the understanding and relationship between parents and schools, strengthening co-production so that parents are not left feeling that they need to hold schools to account for the provision their children receive. This work will be undertaken in partnership with the Hampshire Inspection and Advisory Service (HIAS). The development of a comprehensive change management plan will support this activity plus the delivery of a programme of engagement which includes training; engagement with parent groups; and a communication strategy.

Conclusions

65. If agreed, the framework will become effective from 1 April 2021 and will apply to EHCPs agreed for assessment after this date. Existing EHCP's will be reviewed against the framework and a banding value determined over 3 years in academic years 1, 5 and 8.
66. Current funding arrangements would remain in place until then.
67. A training programme will be rolled out for both County Council officers and for settings which informs on the framework and the banding structure.
68. Overall, respondents preferred the proposed banding mechanism (134 of 218 responses) to the existing funding mechanism (69 responses), and the majority also agreed with the proposed bands that could be applied (143 of 215 responses).
69. While the conclusion can reasonably be drawn that the majority support exists to accept the proposed framework, work is also required to address the concerns identified through the consultation process. This work is described in the sections above.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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| Hampshire maintains strong and sustainable economic growth and prosperity: | yes |
| People in Hampshire live safe, healthy and independent lives: | yes |
| People in Hampshire enjoy a rich and diverse environment: | yes |
| People in Hampshire enjoy being part of strong, inclusive communities: | yes |

Other Significant Links

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| Links to previous Member decisions: | |
| <u>Title</u> none | <u>Date</u> |
| Direct links to specific legislation or Government Directives | |
| <u>Title</u> Children and Families Act 2014 | <u>Date</u> |

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| Section 100 D - Local Government Act 1972 - background documents | |
| <p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p> | |
| <u>Document</u> | <u>Location</u> |
| Banding Framework Consultation Proposal | Appendix 1 |
| Equalities Impact Assessment | Appendix 2 |
| Consultation Findings Report | Appendix 3 |
| Banding Framework Infographic | Appendix 4 |

EQUALITIES IMPACT ASSESSMENT

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

A full Equalities Impact Assessment can be found in Appendix 2.