

Leader's Decision Supplemental Agenda

Date: Wednesday 7 June 2023

. Agenda - Part I

6. **Funding for Education Health and Care Plans (EHCP) 2023-24** (Pages 3 - 16)
Report of the Director of Children's Services.

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Ref PHD 11-2023/24

**Report for: Portfolio Holder
Decision**

**Subject: Funding for Education Health and
Care Plans (EHCP) 2023-24**

Responsible Officer: Peter Tolley - Director of Children's Services

Portfolio Holder: Leader of the Council

Key Decision: Yes - expenditure in excess of £500k.

Power to be exercised: Paragraph 3 of the Appendix to Executive Procedure Rules

Exempt: No

Urgent: Yes

Wards affected: All Wards

Enclosures: None

Section 1 – Summary and Recommendations

This report sets out proposals to increase funding for Education Health and Care Plans (EHCP) for children and young people with special educational needs for the financial year 2023-24.

Recommendations:

The Leader of the Council is requested to agree the increase funding for 2023-24 for Education Health and Care Plans by 10%.

Reason (for recommendations): To increase the funding to mainstream schools to provide support to pupils with an Education Health and Care Plan.

Section 2 – Report

Introductory paragraph

1. The Dedicated Schools Grant (DSG) is a ring-fenced grant of which the majority is used to fund individual school budgets in maintained schools, academies, and free schools in Harrow. It also funds Early Years nursery free entitlement places for 2-, 3- and 4-year-olds in maintained council nursery classes and private, voluntary, and independent (PVI) nurseries as well as provision for pupils with High Needs. The High Needs Block includes funding for Special Schools, Education Health and Care Plans (EHCP) for pupils with SEND in mainstream schools, and funding for Additionally Resourced Mainstream Schools.
2. In February 2023, Cabinet approved funding increases for in borough SEND provision as follows:
 - Additionally Resourced Mainstream (ARMs) provision – 10% increase per place/top up
 - EHCPs in mainstream schools – 3.4% increase per matrix band/hourly rate
3. In addition, special schools in Harrow were given an increase of up to 3% per pupil compared with the 2021-22 place/top up funding and an additional allocation of 3.4% increase from the High Needs Additional Grant. These were mandated increases by the DfE.
4. At Schools Forum on 7 March 2023 schools accepted the increases for ARMs and special schools but expressed significant disappointment at the 3.4% increase for mainstream EHCPs. Schools Forum, on behalf of the wider school community, judged that funding has not kept pace with increasing staffing costs resulting from pay inflation. Whilst the proposal for 2023-24 was intended to be an interim increase pending the outcome

of funding reviews to take place in 2023-24, schools did not accept this increase.

5. This report sets out proposal to increase the funding provided to mainstream schools for Education Health and Care Plans for pupils with special educational needs.
6. This decision contributes to the Council's priorities:
 - A council that puts residents first
Providing high quality local educational provision for all pupils including those with SEND in mainstream schools increases parental preference, inclusion and gives all children and young people the opportunity to have the best start in life and to achieve their potential and employment prospects.
 - A place where those in need are supported
Ensuring Harrow Council fulfils its statutory duties to provide sufficient school places in its area including those with special educational needs.

Options considered

7. The following options have been considered:

Option 1: Do Nothing – this would not a viable option because the schools have said that they are not able to deliver this provision without the increase for EHCPs.

Option 2: To increase the funding for EHCPs 2023-24 by 10% as an interim increase during 2023-24 and undertake the funding reviews to inform the funding level for EHCPs for 2024-25.
8. Option 2 is the preferred option which is being proposed for implementation.

Current situation

Schools Forum

9. In their consideration of the EHCP 3.4% increase per matrix band/hourly rate increase, Schools Forum noted that, from their independent gathering of data, other local authorities fund mainstream EHCPs at a significantly higher rates than Harrow which creates a disadvantage for Harrow pupils and Harrow schools. In addition, schools reference the cost of a Teaching Assistant grade G2 and that the increase in costs for this post has been 22% since 2018-19 (9% between 2018-19 and 2021-22 and 13% in 2022-23). During this time funding for EHCPs has been increased by 1.25%. Whilst funding for EHCPs does not directly correlate to the number of hours a Teaching Assistant (TA) is employed,

the funding is largely provided to enable schools to employ TAs to support pupils with EHCPs. They also noted that Harrow pays a higher rate for Harrow residents educated in out of borough mainstream schools as LAs are required to pay the funding rates set by the other LA.

10. Comparison of funding between LAs for EHCPs is not that straightforward since some LAs (including Harrow) use a banding matrix which will differ between LAs. For those LAs using hourly rates, some fund schools over 38 weeks, others over 52 weeks so not comparable on the face of it.
11. However, as an interim arrangement it is proposed to increase EHCP funding by 10% compared with 2022-23 funding levels. The original proposal of 3.4% was an additional cost to the High Needs Block of £362k. The revised proposal would be an additional cost of £823k compared to 2022-23, thus a further £461k compared with the proposal of 3.4% agreed by Cabinet in February 2023.

Funding Reviews

12. Over the last few years, the LA has committed to reviewing SEND funding for in-borough provision. There is a general view from schools that funding has not been significantly increased for many years and has not kept pace with increasing costs particularly in relation to pay inflation and for ARMS settings in particular. The SEND provision includes Education Health and Care Plans (EHCPs) in mainstream schools, Additionally Resourced Mainstream Schools (ARMS) and special schools. In this context it is expected that the three reviews will identify that additional funding is required across all areas from the High Needs Block
13. Consultants have been appointed to undertake the reviews and engage with a range of stakeholders including headteachers, SENCOs, business managers, parents etc. The reviews need to be completed and a consultation to be conducted during the Autumn. The consultation outcome will be reported to Cabinet and the final funding levels will be agreed by Cabinet in February as part of the Council's Budget setting process, with any proposals to be funded from the HNB.
14. With full engagement and contributions from schools, the funding reviews will establish the funding for special schools, ARMs and EHCPs and consider the points that Schools Forum have raised. Beyond the proposal in this report to increase EHCP funding for 2023-24 there is no mechanism to increase funding.
15. An updated SEND Strategy will be presented to Cabinet in 2023 and will refresh the actions being taken to mitigate the deficit which includes:
 - opening more ARMS provision at mainstream schools
 - changing the character of special MLD schools to take more children with SLD

- continued support to mainstream schools to make provision for more pupils with EHCPs
 - exploring further options to create in borough specialist provision including increased post 16 opportunities
 - a stronger focus on integrated work with other agencies, including health services, to ensure that children with SEND have needs met locally
 - more integrated approaches to school attendance, including for children with SEMH challenges so that more intensive provision is not required
16. In addition, better local provision enables home to school travel strategies and new operative models to reduce impact on the general fund from SEN Transport

Ward Councillors' comments

17. There are no Ward Councillor comments because the proposals in this report affect all Wards.

Performance issues

18. Schools in Harrow perform well in comparison to national and statistically similar local authorities. The vast majority of primary schools and secondary schools are judged 'good' or 'outstanding' by OfSTED. As at 31st December 2021, 93% of Harrow's primary and secondary schools are judged 'good' (49%) or 'outstanding' (44%), in line with 93% in London (49% Good, 44% Outstanding) and above 87% nationally (68% Good, 19% Outstanding) (Source: Ofsted Data View).
19. The Education Act 2011 maintains a focus on driving up standards in schools and emphasises the responsibility with the schools directly for their improvement.
20. The Local Authority continues to monitor key education indicators. The indicators are used locally to monitor, improve and support education at both school and Local Authority level. They are also used as part of the information provided to the Department for Education.

Environmental Impact

21. There are no environmental impacts in this report

Data Protection Implications

22. There are no data protection implications in this report.

Risk Management Implications

23. Risks included on corporate or directorate risk register? **No**
24. Separate risk register in place? **No**
25. The relevant risks contained in the register are attached/summarised below. **N/A**

26. The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Reputational Risk to the Council – schools refuse the increase and to accept pupils with SEND	<ul style="list-style-type: none"> ▪ Secure an interim increase as proposed in this report. 	Amber
Increase deficit on the HNB	<ul style="list-style-type: none"> ▪ Increasing provision in Harrow to reduce reliance on out borough placements 	Amber

Procurement Implications

27. There are no procurement implications in this report.

Legal Implications

28. The Children and Families Act 2014 defines Special Educational Needs and Disability (SEND) in the following way:

A child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.

- (2) A child of compulsory school age or a young person has a learning difficulty or disability if he or she—
- (a) has a significantly greater difficulty in learning than the majority of others of the same age, or
 - (b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

29. The legal duties introduced in The Children and Families Act 2014 place responsibilities on the local area partnership (the local authority, health partners, settings, schools and colleges) to identify and meet the needs of children aged 0-25 who have SEND. How the Act should be interpreted is set out in the SEND Code of Practice 2015. The duties and reforms to the SEND system introduced in 2014 aspire to achieve an integrated 0-25 system spanning education, health and care, driven by high ambition and preparation for adulthood.
30. The High Needs Block supports certain provision for children and young people with special education need and disabilities (SEND). The High Needs Block also provides the resources for place funding; top-up funding for institutions and funding for high need services delivered by the local authority. It is the responsibility of the local authority to propose

and decide the allocation of High Needs Block funding. The School's Forum is consulted on any proposed changes and informs the governing bodies of all consultations.

31. Under the School Standards and Framework Act 1998 every local authority must, in accordance with regulations, establish for their area a body to be known as a schools' forum.
32. The purpose of a schools' forum is– to advise the relevant authority on such matters relating to the authority's schools budget as may be prescribed by regulations.
33. Schedule 2 of The School and Early Years Finance (England) Regulations permits a local authority to use high needs funding to provide additional or targeted support for children and young people with special educational needs and disabilities.
34. Sections 45-53 of the School Standards and Framework Act 1998 sets out the funding framework governing schools finance.
35. The statutory framework for school financing and DSG is set out in the [High needs funding: 2023 to 2024 operational guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103111/high_needs_funding_2023_to_2024_operational_guide.pdf). In particular Section 6.1 Transfers between blocks of the DSG
36. Transfers between blocks can be made from the high needs and the central school services blocks. Movement from the early years block can be made in compliance with the early years pass through rate conditions, details of which can be found in the [early years entitlements: local authority funding of providers operational guide](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103111/early_years_entitlements_local_authority_funding_of_providers_operational_guide.pdf). The schools forum must be consulted on all transfers between blocks. The schools block is ringfenced which means that this block must be spent for the purposes specified in the conditions of grant. Local authorities retain the ability to transfer up to 0.5% of funding out of the schools block, with the agreement of the schools forum.
37. Formal permission from the Secretary of State (a disapplication of the DSG conditions of grant) will be required for transfers out of the schools block above 0.5%, or any amount without schools forum approval; this applies to any transfers even if approval has been given in previous years. Local authorities should consult with local maintained schools and academies; the schools forum should take these views into account before making their decision.
38. The deadline for local authorities to submit a block movement disapplication request is 18 November 2022. Further details, including the disapplication proforma and supporting documentation can be found in the [movements between blocks section](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103111/movements_between_blocks_section_of_the_schools_operational_guide_2023_to_2024.pdf) of the [schools operational guide: 2023 to 2024](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103111/high_needs_funding_2023_to_2024_operational_guide.pdf).

39. Most proposals by local authorities to move funding from their schools block arise because of pressures on their high needs budgets. In view of the increases in high needs funding local authorities are continuing to receive, we expect them to carefully consider the impact of these increases when making decisions on block movements.

Section 6.2 - DSG Management Plans

40. A significant number of local authorities have been incurring a deficit on their overall DSG account, largely because of overspends within their high needs block. The [DSG: conditions of grant](#) set out that any local authority with an overall deficit on its DSG account at the end of the financial year, or whose DSG surplus has substantially reduced during the year, must be able to present a plan to the department and cooperate in handling that situation by:
- providing information, as and when requested by the department about its plans for managing its DSG account in the 2023 to 2024 financial year and subsequently
 - providing information, as and when requested by the department about pressures and potential savings on its high needs budget
 - meeting with department officials, as and when they request to discuss the local authority's plans and financial situation
 - keeping the school's forum updated regularly about the local authority's DSG account and plans for handling it, including high needs pressures and potential savings

Non-statutory guidance

[Creating sustainable high needs systems - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

1. LAs should invest properly in SEND leadership
2. LAs should review their joint commissioning arrangements
3. LAs should ensure joint accountability for those with SEND and finance responsibilities
4. LAs should review their capacity for SEND support
5. LAs should review their current staffing levels and structures for SEND casework
6. LAs should review and further develop their approaches to partnership with key stakeholders
7. When creating new specialist provision, LAs should be clear about the expected range and levels of need that this will cater for.
8. Investment should be targeted at strengthening inclusion in mainstream provision
9. LAs should set out more clearly their expected pathways for young people
10. LAs should learn from positive examples of innovative approaches to mainstream funding

Financial Implications

41. The High Needs Block (HNB) has a cumulative deficit brought forward from 2022-23 of £4.007m. At the end of 2022-23 there is an in-year reduction in the deficit of £1.384m which reduces the cumulative deficit down to £2.623m to be carried forward in 2023-24. In line with government directive, the HNB deficit is held outside of the Councils revenue budget and set against reserves, it is not a charge to the General Fund.
42. The three-year projected position on the HNB in 2023-24 to 2025/26 is as follows:

Projections	Spend
Deficit brought forward 1 April 2022	£4,006,867
2022-23 in year surplus	-£1,384,105
Deficit carried forward 31 March 2023	£2,622,762
2023-24 in year deficit projection without funding proposals	£1,053,301
2023-24 ARMS & EHCP funding proposals agreed Feb 2023	£653,888
2023-24 Correction to Special School funding	£98,700
2023-24 Additional EHCP funding proposal for approval	£461,388
Cumulative deficit 31 March 2024	£4,890,038
2024-25 in year deficit projection	
2025-26 in year deficit projection	£4,494,359
Cumulative deficit 31 March 2026	£10,581,762

43. The figures above assume that there will be a projected 100-120 additional pupils with EHCPs per annum, that additional ARMs will be opened and there will be 20 additional special school places in September 2023 but assume beyond 2023-24 that provision in the borough will be at capacity and thus the majority of additional children would need to be educated out of borough at Independent Non-Maintained Specialist Schools (INMSS).
44. This is where the significant spike in spend is projected to occur from 2024-25 as a disproportionate number of the additional growth in children would have to be placed at INMSS provision.
45. The cost of INMSS provision is estimated to increase to around £70,000 compared to £30,000-£35,000 in Harrow special school provision and £20,000-£25,000 in ARMs resources. The average cost of a mainstream EHCP is £10,000-£15,000. If schools decide not to continue providing ARMs provision or agree to open new provision, then the projected deficit figures above will be significantly higher as pupils who could go to ARMs provision would go to Harrow special schools and pupils who could go to Harrow special schools would have to go to INMSS provision.

46. In February 2023 Council approved an increase of 3.4% to EHCP's, £362k. This report recommends a revised increase of 10% at a total cost of £823k. This cost is outside of the Council's revenue budget and is held against the Council's reserves. The full cost is included in the full cost projections detailed in the table in paragraph 43.
47. Mitigating actions as part of the current SEND strategy and proposed updated SEND Strategy are set out at paragraph 15

Equalities implications / Public Sector Equality Duty

48. Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:
49. *A public authority must, in the exercise of its functions, have due regard to the need to:*
 - (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
 - (b) *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
 - (c) *Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
50. *Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:*
 - (a) *remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
 - (b) *take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
 - (c) *Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
51. *The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
52. *Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:*

- (a) *Tackle prejudice, and*
- (b) *Promote understanding.*

53. *Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*
54. *The relevant protected characteristics are:*
- *Age*
 - *Disability*
 - *Gender reassignment*
 - *Pregnancy and maternity*
 - *Race*
 - *Religion or belief*
 - *Sex*
 - *Sexual orientation*
 - *Marriage and Civil partnership*
55. Harrow's schools are successful, inclusive and provide a diversity of provision. Disability is one of the protected characteristics and this increased funding will enable improved provision to children with ECHPs. The school expansion programme will ensure sufficient school places for the increasing numbers of children in Harrow and will build on the successful provision that already exists in Harrow's schools. By acting to ensure all children in Harrow have access to a high-quality school place, Harrow is promoting equality of opportunity for all children and young people. A high-level equality impact assessment has been undertaken and has shown a positive impact for the protected characteristics of age and disability.

Council Priorities

56. The recommendation contributes to the Council's priorities: "A council that puts residents first", and "A place where those in need are supported".

Section 3 - Statutory Officer Clearance

Statutory Officer: Dawn Calvert

Signed by the Chief Financial Officer

Date: 30 May 2023

Statutory Officer: Jessica Farmer

Signed by the Monitoring Officer

Date: 26 May 2023

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 25 May 2023

Head of Procurement: Neale Burns

Signed on behalf of the Head of Internal Audit

Date: 30 May 2023

Chief Officer: Senel Arkut

Signed by the Corporate Director

Date: 25 May 2023

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqlA carried out: NO

EqlA cleared by: N/A

Section 4 - Contact Details and Background Papers

Contact: Patrick O'Dwyer, Director of Education, patrick.odwyer@harrow.gov.uk

Background Papers: None

For Leader

* I do agree to the decision proposed

* I do not agree to the decision proposed

* *Please delete as appropriate*

Notification of disclosable non-pecuniary and *pecuniary* interests (if any):

[Should you have a *disclosable* pecuniary interest, you should not take this decision.]

Additional comments made by and/or options considered by the Portfolio Holder

Signature:
Leader

Date:

Call-in waived by the Chair of Overview and Scrutiny Committee

YES - The decision will enable the immediate engagement of schools in the Special Educational Needs and Disabilities (SEND) Funding Reviews, which inform funding for 2024-25.

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