

Councillor James McInnes  
Cabinet Member for Children, Schools & Skills



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Right Honourable Justine Greening MP  
Secretary of State for Education  
Department for Education  
Sanctuary Buildings  
Great Smith Street

12 October 2016

Dear Secretary of State,

## **RE: Fair Funding for Schools and High Needs Block**

Devon County Council (DCC) has for many years pushed for fair funding for Devon schools and I am delighted that the government has committed itself to moving to a fairer system of funding allocation for children in schools.

I would however like to share with you some serious concerns, that the first stage of the Department for Education's 'Fair Funding' consultation raised for us, in relation to the high needs block.

We are ultimately worried that not enough funding will be made available for the high needs block. Ensuring a good education for some of our most vulnerable children and young people is a complex task. The proposal to base future high needs block budgets on historic spend does not recognise changing needs and the associated rising costs of supporting vulnerable young people. The proposed approach to high needs block funding also underestimates the role that Local Authorities play in relation to high needs provision and it takes away the flexibility of transferring funds between different funding blocks – a flexibility that over the recent years has been absolutely critical in making ends meet.

We have drawn up the attached detailed briefing that sets out these concerns in more detail and outlines the current pressures that we face in Devon in relation to our high needs block budget. It is important to stress that the intense pressure on the high needs block budget experienced in Devon is reflected across other counties. This is evident from the recent letter sent to you in your capacity as Secretary of State from the F40 campaign. DCC is part of the F40 campaign which has successfully focused national attention on local authority areas where schools are funded at levels well below the national average. The F40 campaign highlights concern regarding high needs spending pressures and we have attached this letter for your information.

In your future consideration of these important issues we would highlight the following:

- Not all children are in mainstream schools or settings. Mainstream schools cannot meet the needs of the most complex children. This group of children therefore cannot access education funding through the schools block
- The number of children with complex needs is rising as well as the need for highly specialist centres and expertise, which means that costs are escalating

- The cost of addressing and supporting the mental health of young people is significant
- The proposal to base future high needs block budgets on historic spend does not recognise changing needs and funding constraints across agencies
- The high needs block plays a key role in securing provision and championing the needs of the most vulnerable children

I hope you will take this briefing into consideration and please don't hesitate to contact me if you would like any additional information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James McInnes', written in a cursive style.

James McInnes

## Briefing on Fair Funding and the High Needs Block

Devon County Council (DCC) has for many years pushed for fair funding for Devon schools and we welcome the government's commitment to moving to a fairer system of funding allocation for children in schools. However, the first stage of the Department for Education's (DfE) 'Fair Funding' consultation raised serious concerns for us in relation to the future approach to the high needs block.

Later this autumn, The DfE will issue a further consultation on 'Fair Funding' for schools. We are expecting this second consultation to contain firmer proposals on restructuring the Delegated Schools Grant (DSG) into four different funding blocks. These blocks will be:

**The Schools Block:** allocated directly to schools on a nationally determined pupil led formula.

**Early Years Block:** used to fund all early years places across a wide range of providers from child minders, schools to PVI's.

**Central Services Block:** replacing a small 'top slice' of the DSG and the Education Support Grant to fund some core education functions.

**The High Needs Block:** funding used to provide places and access to vulnerable students and those with SEN(D).

The Fair Funding proposals contain two significant changes. Firstly, there are changes to the way local authority education facing services are funded and secondly, there are changes to future opportunities for flexibility across the DSG outside budgets allocated directly to school budgets.

### **Changes to the funding for local authority education services**

Changes are proposed to the funding the local authority receives for statutory school facing services; such as School Admissions, Education Psychology, Elective Home Education and Education Welfare, SEND Assessment and other services that ensure vulnerable children access educational provision. The proposed changes underestimate the role that Local Authorities (LAs) play in relation to high needs provision and it is likely that any rising pressures within the High Needs, Early Years and Central Services Block would need to be funded from local authority core funding if costs exceed the allocated budgets.

### **Loss of flexibility to transfer funds between different funding blocks**

The consultation proposal is that there cannot be any movement between the DSG's four funding blocks and that funding cannot be moved to offset shortfalls in the other blocks. The Schools' Forum have used underspends in one block to address pressures in other blocks moving funding to address priorities. Their decisions have been based on the principle that funding is used for the education of Devon's children. One example was additional funding allocated to Early Years where there was a shortfall in the funding of two and three year old places.

DCC is part of the F40 Campaign which has successfully focussed national attention on local authority areas where schools are funded at levels well below the national average. Whilst the F40 campaign has primarily highlighted financial shortfalls within school budgets, it has recently begun to raise issues around funding for centrally managed budgets. This core funding is used to secure support and educational provision for vulnerable children and particularly those students who do not attend mainstream schools or are unable to access their education in another setting. The F40 campaign has most recently written to you in your

capacity of Secretary of State to highlight concern regarding high needs spending pressures. We have attached this letter in Annexe A to underline that our experience in Devon is reflected in similar experiences in other shire counties.

The significant pressures on the high needs block in Devon are outlined in detail below in order to illustrate the worries we have in relation to the suggested future approach to high needs block funding. The rising costs of supporting vulnerable young people has not been factored into the ideas framed within the initial Fair Funding consultation, nor in the proposed 'locking down' of the high needs block based on historical spend. The rising numbers and more complex needs of our most vulnerable students have to be assessed and met. This is a statutory responsibility that cannot be sidestepped because the budget envelope has been exceeded. In Devon we are continuously seeking better value including reviewing contracts, developing new local provision, and offering independent travel training and developing alternative employment routes. We are in constant dialogue around funding with other partner agencies that are also under pressure from public sector cuts. Ultimately, we are extremely concerned that, based on current and future growth trends, there is simply not enough funding available for the high needs block.

In your future consideration of these important issues we would highlight the following:

- Not all children are in mainstream schools or settings. Mainstream schools cannot meet the needs of the most complex children. This group of children therefore cannot access education funding through the schools block.
- The number of children with complex needs is rising as well as the need for highly specialist centres and expertise, which means that costs are escalating
- The cost of addressing and supporting the mental health of young people is significant and is the subject of intense national debate and scrutiny.
- The proposal to base future high needs block budgets on historic spend does not recognise changing needs and funding constraints across agencies
- The high needs block plays a key role in securing provision and championing the needs of the most vulnerable children

### **The High Needs Block (HNB)**

High Needs funding is intended to provide the most appropriate support package for an individual with Special Educational Needs (SEN) in a range of settings, taking account of parental and student choice, whilst avoiding perverse incentives to over identify high needs pupils and students. It is also intended to support good quality alternative provision for pupils who cannot receive their education in schools.

As has been already clearly highlighted above, rising demand and escalating costs of supporting vulnerable children has resulted in the High Needs Block coming under tremendous pressure which is of great concern; both locally and nationally. The Devon High Needs Block has a current pressure of £3.8m in 2016/17 and £4.5m in 17/18. Devon allocates 91% of the High Needs funding directly to schools, early years and other education settings to fund provision for students with SEN. All settings are reporting huge pressures

within their own budgets and are also finding it hard to meet the changing needs and rising numbers of children with SEN.

Schools can apply for extra funding (Element 3) which brings additional resources to support individual pupils who may not require a statutory assessment (Education, Health and Care Plan). Element 3 funding requests from schools have risen significantly in the last year and this element of the HNB has a current overspend of £375k. There is also pressure within Element 2 funding within Schools of £296k. As the number of Individual Assigned Resources increases, this creates pressure on the Element 2 funding available within Schools and any shortfall is funded from the High Needs block.

Requests for statutory assessments (EHCPs) have risen significantly since 2015/16 with an increase of 51% on the same time last year (Quarter 1 of the financial year). Every EHCP will bring additional resources to support that child. Schools and parents seek statutory assessment where school based capacity is limited to protect allocated resources for that child. Devon has a higher than average number of children with Statements and EHCPs which may reflect persistently, at least in parts, poor levels of funding for our schools over a long period of time.

## **Factors leading to current pressures in the HNB**

### **1. Rise in incidence and addressing more complex needs**

There are more children living with complex needs and many are living far longer than they would have done a generation ago. We are also seeing more children with highly complex and multiple conditions who require very high ratios of support (often 24 hours a day) specialist therapeutic input and significant behaviour management, which means a high cost or residential independent placement. Their needs often go beyond the specialist offer within our local special schools which means a residential or independent specialist school placement. The most specialist care and intensive support programmes are primarily for children with Autism and those with significant emotional and mental health issues.

### **2. The SEN Code of Practice**

The new Code of Practice has many strengths and the more transparent and multiagency approach has been welcomed by both professionals and families. Requests for a statutory assessment are open to any parent, student or education setting but the process to agree or to refuse an EHCP, is labour intensive and time consuming, due to the complexity of information required and the different internal agreement processes across agencies.

The funding of services to support residential care provision and health services is not always made available by partners. However the statutory duty placed on local authorities includes the naming of the school and extending the range of preference that **must** be named to include specialist independent provision This has led to the whole cost of a child's placement falling to the HNB bringing further pressure on this budget.

### **3. Changes to Post 16 and post 19 eligibility**

New legislation has enabled disabled young people to choose to remain in education up until the age of 25. No additional funding was allocated to local authorities to meet this change in eligibility or the inevitable rising demand.

In 2014, only 122 students chose to pursue education beyond the age of 19. This year we have had 171 requests which have not been budgeted for. Many of these young people wish

to move into residential settings whereas previously they have been living at home and accessing local courses. Our data shows that 122 Post 19 students with SEND attend local colleges of FE at a cost of £479k. Only 49 young people over 19 years of age are placed with independent specialist providers but at a cost to Education of £2.3m. These young people are not always the most complex, as many will have been placed as a result of a tribunal or strong parental preference.

For those students with SEND aged between 16 and 19 years old, 228 are attending local FE colleges at a total cost of £613k whereas 91 young people attend specialist settings at a cost to Education of £4.9m per annum.

#### **4. Tighter regulation and market failure**

The cost of provision offered by independent providers is far higher than for local special schools who are also struggling with the new national funding arrangements for special schools. It must be recognised that most of the youngsters attending independent specialist schools or colleges have the most complex needs and therefore will require more expensive care packages. Independent Special Schools cannot be decommissioned by Local Authorities as the EFA has prevented Local Authorities doing this. Devon has expanded its special schools by 120 places since last January. Despite this, Devon special schools are already full with waiting lists. More complex needs and too few places results in the need for expensive independent placements. We are currently expanding and improving Post 16 provision in local special schools and also developing more opportunities for supported employment and independent living.

Tighter regulation by Ofsted, particularly around care and safeguarding, has led to a much higher incidence of market failure. In the county of Devon, only 67% of independent special schools are judged to be good or better compared to 85% nationally. Devon's policy is to try to place our students only in 'good or better' providers and where they are safe. This means that places are at a premium and at high cost in a reducing and fragile market place. We are seeing a growing number of our most complex students being refused places and more students whose contracts are being terminated at short notice.

We are now providing more personalised and bespoke packages for individuals who cannot be placed in an education with care setting, or who are waiting to be accepted by a new provider. These are at a very high cost often in excess of £300k per child per annum.

#### **5. Hospital placements, emotional and mental health**

In 2013 the Government top sliced all DSG budgets for Hospital Tuition with the intention that it would only be given to those local authorities that had hospitals that provided education. For Devon, this amounted to a hospital budget of £250k. Children with extremely fragile mental health can be admitted into independent specialist hospital facilities such as The Priory. NHS England manage the care provision and have directed the providers to recover education costs from local authorities. These placements are made by various professionals within the NHS service and the Local Authority has a statutory duty to fund education within this provision. Providers have therefore been charging DCC £175 per day which equates to £33k per annum for every young person against allocated EFA funding of £18k per annum. When we have challenged the high cost of educational provision the provider has threatened to terminate the education and allow us to refuse to arrange a personal package. The difference, between funding allocated by the EFA and the cost of education, has to be met from the HNB (which has not been budgeted for) even if that child is placed because of a health issue and does not have special needs. We currently have 6 students in tier 4 beds at a cost of £75,700 in financial year 2015/16.

A rising number of young people are unable to access mainstream education due to anxiety or other emotional well-being issues. DCC has the statutory responsibility to ensure these children are able to access education and this involves individualised programmes funded through the HNB. A high percentage of these students do not have special education needs or learning disabilities. Around 600 students were absent from school for more than 30 sessions just last term. We estimate that 80% of these youngsters suffer with anxiety issues.

The cost of personalised support for students, with emotional health issues, who are placed with our local support service, is met by the HNB. Based on consistent, historical data, DCC commissioned 90 medical places from this service. At one point last year over 260 children were taking up medical places. This is consistent with national upward trends in this area of need. However, the costs of this change are not fully accounted for within a historic budget setting process.

## **6. Alternative provision for children who are excluded from school**

The numbers of students placed in alternative provision has grown significantly but many students in our Pupil Referral Units (part of our Personalised Learning Service) are medical placements or are waiting to be placed in a specialist setting.

Devon uses a small number of local 'Alternative Providers' (APs) alongside our own commissioned PRUs for children with significant behaviour issues. Whilst exclusions have risen in all age groups, Devon is broadly in line with national trends.

Places and individualised programmes provided by APs, are all funded through the HNB. The cost of personalised transport has also risen to meet the needs of these young people and the different destinations and settings they attend. Many cannot travel in larger vehicles or on public transport due to their condition/need or their proximity to the nearest centre. Devon's personalised transport budget accounts for 34% of the total school transport budget (£21m) which is forecasting an overspend of more than £1.2m in the 2016/17 financial year. The cost of transport cannot be taken from the HNB and must be funded from a DCC budget.

## **Annexe A: Letter from the F40 campaign to the Secretary of State for Education Justine Greening**

Right Honourable Justine Greening MP  
Secretary of State for Education  
Department for Education  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT  
2016

22 September

Dear Secretary of State,

### **High Needs Spending Pressures**

In recent months quite a few members of f40 have raised concerns about the pressures they are experiencing on High Needs spending. These concerns were sufficient that f40 agreed to undertake some informal research to check the overall position.

We invited all forty one member authorities to tell us what specific pressures they are experiencing and twenty one responded, painting a very worrying position across the country. The attached spreadsheet presents in an easy to follow way the specific situation in each of the twenty one local authorities.

In a nutshell, it is clear that most authorities have a deficit in the High Needs block which is being filled either by the last of their reserves or movements from other blocks. The first stage Fair Funding consultation, held in March this year, implied that movement from other blocks will be unlikely in the future, so this is a big worry for the future and one that will have big implications for our most vulnerable pupils.

Other key findings were:

- There is an increase in numbers of pupils and costs for independent school places.
- There are increasing numbers of Post 16 places needed, but no additional funding in the High Needs Block to pay for them.
- There's an increased demand for Post-19 placements, with pupils then coming back into the High Needs Block system. Parental expectations that an EHCP automatically continues to age 25.
- Some LAs are seeing significant increases in the need for special school places. There is a view that there is banding creep, although it may be that less complex pupils are now staying in mainstream, placing more complex, more expensive pupils in special schools (with the knock on effect of higher funding to each school). This is not viewed as bad, but does introduce a pressure on the Higher Needs Block.
- More EHCPs are being requested as a result of recent changes to the system. The costs are massively increasing.



- Some LAs are experiencing difficulties in transition to EHCPs and management of annual review processes.
- There's an increased number of exclusions from school.
- Some LAs are seeing reduced social care contributions.

I do hope that you will take the time to examine this research in order to fully understand the scale and nature of the pressures that are being experienced by local authorities, and take it into consideration for the changes planned for the High Needs Block.

Yours sincerely

A handwritten signature in cursive script that reads "Ivan Ould".

Ivan Ould  
Chair of f40  
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