



SCRUINITY COMMISSION - 15TH MARCH 2023

SEND – SERVICE AND FINANCE UPDATE

REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES, DIRECTOR OF ENVIRONMENT AND TRANSPORT AND DIRECTOR OF CORPORATE RESOURCES

Purpose of the Report

1. The purpose of this report is to provide an overview of the provision of support provided by the Council to children and young people with Special Educational Needs and Disability (SEND) following a request made by the Commission at its meeting in November 2022. The report sets out the position regarding current SEND services and provides an update on the Transforming SEND and Inclusion in Leicestershire (TSIL) programme, the financial pressures faced in this area and wider impacts on SEND transport services.

Policy Framework and Previous Decisions

SEND Services

2. The primary legislation regarding children and young people with SEND is the Children and Families Act 2014. The 0-25 SEND Code of Practice (2015) is the statutory guidance that sets out how local authorities and Clinical Commissioning Groups must work together to support children and young people with special educational needs.
3. The financial framework for pupils with High Needs and the Dedicated Schools Grant (DSG) are laid out within the School and Early Years (Finance) Regulations and associated guidance issued by the Department for Education.
4. In December 2018 the Cabinet authorised a consultation on the High Needs Block development plan, including proposed development of enhanced and expanded SEND provision across the County.
5. In October 2019 the Cabinet was advised of the progress of the High Needs development plan and on 5 November 2019, a report was considered by the Children and Families Overview and Scrutiny Committee summarising the national and local context relating to SEND along with an overview of the plans to continuously develop and improve services to support children and families who are experiencing SEND.

6. On 21 January 2020, the Children and Families Overview and Scrutiny Committee considered a report that provided an overview of the Ofsted and Care and Quality Commission (CQC) SEND Inspection Framework. An update was provided on 1 September 2020 following the local area SEND inspection that took place in Leicestershire in February 2020, resulting in a Written Statement of Action. The report gave an update on the progress of the High Needs Block development programme.
7. On 2 November 2021 the Children and Families Overview and Scrutiny Committee considered a report that provided an overview on progress against the Written Statement of Action. That report also included a further progress report for the High Needs Block development programme.
8. In March 2022 the Government set out its ambitions for changes to the SEND system and opened a period of consultation on the proposals which Leicestershire has responded to. The Green Paper, 'SEND review: right support, right place, right time' proposes some fundamental changes to the SEND system, including:
 - a. A single national SEND and Alternative Provision (AP) System
 - b. Excellent provision from early years to adulthood
 - c. Reformed and integrated role for alternative provision
 - d. System roles, accountabilities and funding reform
 - e. A National framework for funding SEND
9. In November 2022, the Children and Families department was reinspected as a follow up to the local area SEND inspection that took place in Leicestershire in February 2020 by Ofsted and the Care Quality Commission (CQC). A full update on this reinspection was provided to the Children and Families Overview and Scrutiny Committee on 24th January 2023.
10. A report providing an update on the Transforming SEND and Inclusion in Leicestershire (TSIL) programme setting out activity since commencement in August 2022, achievements and progress made, as well as some information about the current financial position in relation to the programme was presented to the Children and Family Services Overview and Scrutiny Committee on 7th March 2023.

SEND Transport

11. Updated Home to School Transport policies for both Mainstream and SEND students were published by the Council in September 2018 and were introduced from the start of the 2019/20 academic year. There have been no subsequent policy changes.
12. In September 2019, the Cabinet considered a report which detailed the implementation of the Council's Home to School Transport Policies. A judicial review on the SEN policy for 16–18-year-olds delayed implementation of Personal Transport Budgets (PTBs) until the start of the 2021/22 academic year.
13. Leicestershire County Council's Strategic Plan 2022-2026 (approved by the County Council in May 2022) notes that there are two tiers of support for children with special educational needs (SEND): 'SEND Support' and 'Education, Health and Care Plan' (EHCP). It noted that demand for EHCPs for children with SEND has also increased

significantly, leading to rising demand for specialist SEND provision.

Financial Overview

High Needs Funding

14. Local authorities receive the High Needs Dedicated Schools Grant (DSG) for the purpose of funding places for children and young people with SEN and services to support them such as Specialist Teaching Services and inclusion support for pupils excluded or at risk of exclusion from school.
15. The level of grant allocated to an authority is calculated using a national formula containing a number of factors including the number of children and young people placed in specialist provision, the 2-18 year old population, other factors deemed to be a proxy indicator of the incidence of special educational needs in a local authority area and the level of expenditure measured in 2017/18. In determining the factors to be used within the formula the Department for Education (DfE) took a policy decision not to use the number of Education, Health and Care Plans (EHCP's) to avoid authorities using the number of plans to influence their funding allocations.
16. A further factor affecting an authorities High Needs DSG allocation is the application of a 'funding floor' which since the inception of the formula in 2018/19 has guaranteed local authorities receive a minimum increase in annual funding. Leicestershire is funded at the funding floor which for 2023/24 is £2.9m and 2.9% of the funding allocation. Whilst this funding is reducing annually it should be noted that this allocation is the amount that Leicestershire receives above the funding generated by the High Needs National Funding Formula. The DfE has given local authorities their working assumption of annual increases of 3% and whilst grant allocations for 2024/25 onwards are uncertain this assumption has been factored into the current MTFS.
17. The High Needs DSG can only be used to support expenditure as defined within the School and Early Years Finance (England) Regulations. Local authorities may only contribute to the grant with the permission of the Secretary of State and are required to carry forward any surplus or deficit on the grant to future years. In addition to the High Needs DSG other 'Blocks' of the DSG also contribute to the DSG reserve, notably funding for revenue growth in schools. The DfE judge an authorities financial performance by the overall DSG deficit, not just the High Needs DSG deficit.
18. A statutory accounts override is in place which means that DSG deficits does not have to be funded from local authorities' revenue budget. This override is in place until March 2026. However, any deficits are an unfunded financial liability which if unresolved over this period poses a significant risk to financial sustainability.

The High Needs Financial Position in Leicestershire

19. Leicestershire has recorded a deficit on the High Needs element of the DSG since 2018/19 and is predicted to continue do so over the period of the MTFS for

2023/24 to 2026/27. The current financial position is set out in the following table:

| | 2023/24 £,000 | 2024/25 £,000 | 2025/26 £,000 | 2026/27 £,000 |
|--|------------------|------------------|------------------|------------------|
| High Needs Dedicated Schools Grant | -105,082 | -108,225 | -111,462 | -114,797 |
| Placement Costs | 112,643 | 121,137 | 131,606 | 143,376 |
| Other HNB Cost | 10,029 | 10,029 | 10,029 | 10,029 |
| Commissioning Cost – New Places | 417 | 90 | 90 | 0 |
| Invest to Save Project Costs – TSIL | 939 | 0 | 0 | 0 |
| Total Expenditure | 124,028 | 131,256 | 141,725 | 153,405 |
| Funding Gap Pre Savings | 18,946 | 23,031 | 30,263 | 38,608 |
| TSIL Programme Defined Opportunities | -3,112 | -8,596 | -14,863 | -21,522 |
| Benefit of Local Provision and Practice Improvements | -2,515 | -2,803 | -3,115 | -3,115 |
| Total Savings | -5,627 | -11,399 | -17,978 | -24,637 |
| Annual Revenue Funding Gap | 13,319 | 11,632 | 12,285 | 13,971 |
| 2019/20 Deficit Brought Forward | 7,062 | | | |
| 2020/21 High Needs Deficit Brought Forward | 10,423 | | | |
| 2021/22 High Needs Deficit Brought Forward | 11,365 | | | |
| 2022/23 High Needs Deficit Brought Forward Estimate | 10,876 | | | |
| Cumulative High Needs Funding Gap | 53,045 | 64,677 | 76,962 | 90,934 |
| Surplus (-ve) / Deficit Other DSG Blocks | -7,347 | -8,347 | -9,347 | -10,347 |
| Dedicated Schools Grant Surplus (-ve) / Deficit | 45,698 | 56,330 | 67,615 | 80,587 |
| Surplus / Deficit as % of Total DSG | 7% | 9% | 10% | 12% |

20. Despite achievements and improvements made as a result of the previous High Needs Development Programme, including significant investment and delivery of additional specialist school places within Leicestershire, considerable challenges remain in the SEND system.
21. As this is a significant national issue the DfE has established a three-tier intervention/ support programme for authorities with DSG deficits. These are, the Safety Valve Programme (tier 1), the Deliver Better Value in SEND programme (tier 2) and intervention and support programme (tier 3). In respect of these interventions/programmes:
- 13 authorities have agreed Safety Valve Agreements with the DfE. This means that the DfE will, in return for local authorities delivering specific activities to create sustainable SEND services and contributing additional

resources including an expectation of a funding transfer from the Schools Block to High Needs Block DSG, provided additional DSG.

- 55 local authorities have been invited to the Delivering Better Value in SEND (DBV) programme. Leicestershire is with Tranche 1 of 3 Tranches in this programme.
- The remaining 83 authorities are subject to discussions with the DfE on their individual positions.

22. The DfE set out requirements for local authorities to maintain a management plan to recover any DSG deficit. In Leicestershire this requirement has been served by the High Needs Development Plan and now through the Transforming Special Needs and Inclusion in Leicestershire programme (TSIL). Whilst there is no requirement to submit this plan to the DfE it can be expected that its monitoring will become a feature of Leicestershire's involvement in the DBV programme. Updates will also be presented to the Schools Forum.
23. It is forecast that the DSG reserve will remain in deficit for the period of the MTFS as a result of the continued and increasing overspend on high needs. This will partially be offset by the accumulation of funding allocated to the Authority to meet the revenue costs of new and expanding schools. Overall, the High Needs DSG deficit for 2023/24 is projected to be £53.0m rising to £90.9m in 2026/27. The overall DSG deficit is forecast at £45.7m (7% of DSG) rising to £80.6m (12% of DSG) in 2026/27.
24. Whilst the TSIL programme will deliver further savings in future years outside the current MTFS period, the financial position is clearly unsustainable and remains the most significant financial risk for the Council.
25. The TSIL programme is the key approach to create a sustainable SEND system that will meet the needs of children and young people with SEND at the right time and in the right place.
26. The cost of SEND placements in mainstream and special schools, and enhanced resource bases attached to mainstream schools or independent special schools accounts for 90% of the total expenditure. The remaining 10% funds services such as specialist teaching and services to support pupils excluded or at risk of exclusion from schools. For 2023/24 expenditure is 118% of the High Needs DSG.

Financial Position for SEN Transport in Leicestershire

27. Whilst the costs of direct SEND support are met from High Needs DSG, the costs of home to school transport falls to the County Council's revenue budget. Whilst not every child with an EHCP will be eligible for home to school transport, both are significantly affected by trends and variations in pupil demand.
28. The following table sets out the financial performance of the home to school transport budgets and anticipated expenditure over the period of the 2023-27 MTFS. Whilst the per pupil daily cost is expected to remain relatively stable over the period, the year-on-year increase in all pupil growth results in an additional budget requirement of £4.3m over the next four years. SEN Transport costs fall to be met from the local authority budget and are outside the scope of the DSG.

| Year | Number of school days financial year | Number of pupils AS AT November 21st | Demand +/- | Demand +/- | Budget (Includes Fleet) | Actual Annual Expenditure | Actual Daily Expenditure | Annual cost per user | Daily cost per user |
|---------|--------------------------------------|--------------------------------------|------------|------------|-------------------------|---------------------------|--------------------------|----------------------|---------------------|
| 2018/19 | 198 | 1,757 | 81 | 4.83% | £10,294,716 | £11,324,256 | £57,193 | £6,445.22 | £32.55 |
| 2019/20 | 195 | 1,910 | 153 | 8.71% | £11,307,261 | £13,410,510 | £68,772 | £7,021.21 | £36.01 |
| 2020/21 | 191 | 2,157 | 247 | 12.93% | £14,398,843 | £11,765,713 | £61,601 | £5,454.67 | £28.56 |
| 2021/22 | 197 | 2427 | 270 | 12.52% | £17,343,732 | £15,873,652 | £80,577 | £6,540.44 | £33.20 |
| 2022/23 | 188 | 2,561 | 134 | 5.52% | £18,428,650 | £20,653,402 | £109,859 | £8,064.58 | £42.90 |
| 2023/24 | 188 | 2,703 | 142 | 5.54% | £20,853,962 | | £110,925 | £7,715.12 | £41.04 |
| 2024/25 | 188 | 2,921 | 218 | 8.07% | £21,560,125 | | £114,682 | £7,381.08 | £39.26 |
| 2025/26 | 188 | 3,124 | 203 | 6.95% | £23,020,125 | | £122,447 | £7,368.80 | £39.20 |
| 2026/27 | 188 | 3,354 | 230 | 7.36% | £25,130,125 | | £133,671 | £7,492.58 | £39.85 |

29. SEND Transport budget growth has been calculated in line with the anticipated growth of pupils with an Education, Health and Care Plans (EHCP). In addition, growth of 2% per annum has been added to reflect the increasing need to provide transport for those with more complex needs as identified by individual risk assessments carried out by the County Council.
30. In 2022/23 the SEND taxi budget is currently forecasting an overspend of £2.3m (primarily due to market conditions, inflation and non-achievement of savings). Between June and November 2022, 95 SEN taxi contracts were handed back by providers on the basis they were unable to deliver for the contracted cost. This is contributing to a substantial rise in costs when the contracts are retendered due to driver shortages, fuel costs and market shrinkage. These factors are impacting not only the Council's ability to commission external services, but also to develop alternative in-house provision at potentially reduced cost. Work is currently underway to assess SEND transport provision to remove the budget overspend in future years and achieve further savings.
31. Any impact on SEND transport budgets arising from the development of additional local SEND provision is unable to be quantified at this point and will be closely monitored particularly if children move from residential provision requiring weekly transport to local provision requiring daily transport.

SEND Services in Leicestershire

Education Health and Care Plans (EHCPs)

32. Increasing demand in the local SEND system continues to affect the financial position of the High Needs Block of the DSG and the ability to deliver assessments within statutory deadlines. Between 2016 and 2020 there has been a 54% increase in the number of children and young people requiring an EHCP in Leicestershire. This compares to a national increase over the same period of time in England of 38% and in the East Midlands of 32%. At the same time, funding has not increased in line with this local trend. This trend continued through 2021 and 2022, with a further 38% growth in the number of children supported with an EHCP.

33. This increasing demand continues to create drift and delay in the Special Educational Needs Assessment (SENA) service and means that currently statutory deadlines, as set out in the SEND Code of Practice (2014), are not being met. In turn, this has continued to lead to a large number of complaints being received from parents and carers and concerns raised by local education settings. The number of appeals against decisions and growing number of cases going to tribunal, often leading to the Courts overturning the decision of the Authority, also continues to be an issue.
34. There are some historical and demand-related reasons for this increase which are set out below:
- School Funding reform 2013 (which reinstated the link between proving need and money).
 - SEND reform in 2014 which led to:
 - widening of age responsibility (0 to 25 years)
 - significant rise in expectations amongst all stakeholders in the system
 - Increased responsibilities for the local authority
 - Ongoing budget pressures on schools, therefore reducing schools' capacity to effectively support children in mainstream school.
 - The introduction of new SEN capacity in Leicestershire which cannot keep pace with the rise in demand, leading to continued over reliance on external placements and leaving Leicestershire's average cost higher than our comparator authorities.
 - Increased numbers and recognition of Social Emotional and Mental Health and Autism need.
 - Increased unit cost per pupil as a consequence of an increase in the complexity of children coming into the system.
 - The deficit in High Needs Block DSG funding which does not fully provide for all of the duties and responsibilities now imposed on local authorities.
 - Increased number of cases going to tribunal (+12% in 2019) the majority of which rule against the Authority.
35. In recognition of these ongoing demand-related issues, the Transforming SEND and Inclusion in Leicestershire (TSIL) programme has sought to identify areas of work for prioritisation and new ways of working within the SENA service to try and alleviate and resolve these pressures in the short-term. This includes looking at best deployment of resource within SENA and other internal services and addressing sufficiency challenges in the local SEND system. Further detail regarding the programme is set out further below.

Leicestershire SEND Sufficiency

36. The Education Act 1996 sets out a statutory duty on local authorities to secure sufficient school places, which they must do with regard to securing special educational provision for children and young people with SEND, as well as those requiring Alternative Provision (AP). If needs cannot be met within state-funded school places the local authority may then need to use Independent Specialist Provision (ISP) which are unlikely to deliver best value and are not necessarily local to the child.

37. In Leicestershire between 2017 and 2021 551 additional places in special schools and Designated Specialist Provisions (DSP) attached to mainstream schools have been created in a strategy to increase sufficiency and reduce the need for ISP places. However, demand for places has simultaneously grown, therefore using up this added capacity and resulting in around 387 pupils in ISP. There remains significant pressure on places at all Leicestershire area special schools. Some DSPs have been unable to meet the needs of the specific pupil cohort, particularly where children's attainment levels are well below their peers or have a different primary need to the specialism. Clear forecasting of SEND needs in different localities is crucial to better support the future expansion of places.
38. For 2022-24 the DfE allocated a capital grant of £16.5 million to the County Council to support the creation of SEND places and mainstream inclusion. This can only be used for capital works, not revenue, so any change in strategy needs to be matched by SEN funding policy in order to be effective (such as creating accommodation for a school inclusion base). £5.2 million of this grant has been allocated towards creating 166 additional places in special schools, satellites and DSP leaving an unallocated balance of £11.3 million. In the current environment this might be sufficient to build one special school and support some minor projects.
39. On 2nd March the DfE announced the County Council was successful in its application for funding for a 90 place Special Educational Needs School in Quorn. This will add significant capacity for children with communication and Interaction Needs and is due to be opened in September 2026. A further DfE funded 60 place special school, The Bowman Academy being built for children with social emotional and mental health difficulties, is due to open in September 2024. In addition to this there are 130 additional specialist places already planned to become available at various points up to September 2024 for children in Leicestershire with SEND.
40. Planning further expansion will be informed by the outcomes of the TSIL programme. Planning will also be influenced by the results of a new School Annual Capacity Survey (SCAP) for the DfE extended to specialist places this year – the methodology for this is still under review nationally. The geographical spread of future additional specialist places will be planned with a focus on meeting children's needs within their own communities and reducing travel. This is dependent on improving the flexibility of local provision and their ability to meet a range of needs (as specific SEND requirements vary from year to year) and harness the support of existing local specialist provision. There is also dialogue with bordering local authorities to consider inter dependencies, as the nearest or most suitable provision may not always lie within Leicestershire.

Transforming SEND and Inclusion in Leicestershire (TSIL Programme)

41. In August 2022, the Department embarked on a refreshed change programme for SEND and Inclusion; Transforming SEND and Inclusion in Leicestershire (TSIL). This programme replaces the former High Needs Block development programme and whilst it builds on previous activity it has a wider focus on taking a whole system approach to support inclusion in mainstream schools wherever possible. In addition, a third-party partner (Newton Europe) has been commissioned to support the programme, provide challenge to the system and ensure effective child-centred delivery. The programme is aiming to sustainably improve outcomes and experiences for children and young people, which over time will help mitigate the

current trajectory of spend. The financial impact of the programme can be seen below.

42. Based on the current trajectory of growth the TSIL programme is expected to deliver £32.1m in financial benefits to 2028/29 with £21.5m delivered over the period of the 2023/24 MTFS. The timescale for the delivery of benefits reflects the complexity of the system change needed to deliver them.

| | 2028/29 Benefit £,000 | 2023/24 – 2026/27 MTFS £,000 |
|--|-----------------------------|---------------------------------------|
| The right level of Children and Young People in mainstream provision | | |
| The right level of provision for Children and Young People in mainstream provision | 7,371 | 5,668 |
| The right level of CYP in specialist settings | | |
| The right ratio of Children and Young people supported in LCC and independent specialist provision | 22,759 | 13,989 |
| The right cost of independent provision | 399 | 315 |
| The right cost of provision following EHCP reviews and Health contributions | 1,560 | 1,530 |
| Total | 32,059 | 21,502 |

43. Central to the programme is working collaboratively with a wide range of parents and carers, young people, leaders and staff across the education system (early years, mainstream, specialist provision and Further Education) and health, to design and implement an inclusive system that puts independence, outcomes, and educational achievement at the centre. Another key feature of the programme is the desire to involve children and young people and their parents/carers and families as much as possible. It is critical that they are at the heart of the programme and plans for the future of the SEND system in Leicestershire and that they are involved in the designing and development of the work.
44. A diagnostic was undertaken in late 2021 to understand the challenges and difficulties in the local SEND system and to inform programme planning for the TSIL programme. Given the expected complexities of the programme the decision was taken to commission a third-party with relevant expertise in leading complex change and transformation programmes that was not available from within the Council. Following a compliant tender process, the work was awarded to Newton Europe. Newton Europe are now working alongside colleagues from the Council's Transformation Unit and staff within Children and Family Services as a united

programme team. A report setting on the outcome of the diagnostic, securing the strategic partner and the work to be undertaken was taken to the Children and Families Overview and Scrutiny Committee in September 2022.

45. Using the evidence and data from that diagnostic, which highlighted the biggest challenges to meeting the needs of children and young people in the right place at the right time, the delivery of the programme has been structured around four key workstreams:
 - I. Inclusive Practice in the System [Inclusive Practice]
 - II. Decision Making and Ways of Working [Service Transformation]
 - III. Digital and Performance [Accurate Information]
 - IV. Communication and Engagement [Communication & Engagement]

46. These four workstream areas are interconnected and are underpinned by a set of principles:
 - a) Maintain a focus on children and young people
 - b) No one person or organisation can solve the problems alone
 - c) Shift to a mindset of collective responsibility
 - d) Work in genuine partnership
 - e) Foster good working relationships
 - f) Improved and honest communication
 - g) Define roles and responsibilities
 - h) Set clear expectations
 - i) Make transparent and robust decisions
 - j) Support children and young people early and close to home

47. The TSIL programme has now moved into the design phase where potential improvements and changes are tested and understood before being implemented across the system. A key principle of the approach in different workstreams is 'design by doing' rather than a 'desktop design'. This means trialling and iterating new ways of working in order to maximise the impact as soon as possible. The timescales and many of the key outcomes of the programme are detailed in the timelines provided in the appendix attached to this report.

48. A number of reports have been presented to the Children and Families Overview and Scrutiny Committee outlining progress against the programme (see background papers below). The most recent detailed overview of progress to date and plans for future activity was provided to the Committee on 7 March 2023. Representatives from Newton Europe attended this meeting to answer members questions and an update on that discussion will be provided to the Commission at its meeting. To ensure member oversight, further updates on progress to this Committee are planned throughout the year.

49. In recognition of the fact that the TSIL programme needs to both be addressing future sustainability for the SEND system in Leicestershire as well as current demand issues, there has been concentrated activity around internal service transformation. This has focused on where improvements can be identified to ensure that the management of Assessments and Reviews is based on robust decision-making processes and is achieved within statutory timeframes. The way in which communication between stakeholders (including parent and carers) and the

Authority can be improved is also a key area of work. Further details of this work can be found in the report presented to the Children and Family Services Overview and Scrutiny Committee on 7 March 2023. There is also work on-going in response to these issues as a response to a recent SEND Local Area Inspection (see also report on this reinspection was provided to the Children and Families Overview and Scrutiny Committee on 24th January 2023).

SEND Transport in Leicestershire

National position

50. In March 2022 the County Councils Network produced a report – Home to School Transport The Challenges in the Counties¹ – that has sought to examine the cost-drivers and pressures in delivering home to school transport across the 36 councils in its membership. The report addresses two related but distinct services: a) mainstream home to school transport; and b) home to school transport for children with SEND. It seeks to raise issues highlighted by its member councils in the current climate, factoring in the impact of the Covid-19 pandemic, and aims to highlight the range of challenges that county authorities are presently facing in delivering this vital service. It concludes by setting out a set of recommendations.
51. The four main factors that county authorities identified were driving up costs in SEND home to school transport are summarised as follows (all are consistent with local pressures in Leicestershire):
 - a) Increased demand;
 - b) Young people presenting with more complex needs who require specific transport;
 - c) A lack of suitable local placements in specialist schools, meaning young people have to be transported further; and
 - d) Inflation and other cost increases.
52. The report provides key performance information that enables local benchmarking with national results (see Figure 1 below for details), as follows:
 - a) Data from the 28 councils who supplied information shows that their SEND home to school transport expenditure rose from £260.5m in 2016/17 to £346.9m in 2020/21, an increase of 33%. To put this figure into context, it equates to around 11% of the average county authority's entire children's services budget.
 - b) In 2020/21, the participating authorities spent £254.2m on taxis, Private Hire Vehicles and minibuses, which equates to 72% of their total SEN home to school transport spend.
 - c) In March 2022, fuel prices reached record highs, with petrol prices on average reaching £1.67 a litre and diesel costing £1.79 a litre. These increases have had a significant impact on the costs for providers of home to school transport, whom local authorities commission to provide these services. As a consequence, in the first few months of 2022, county authorities have reported that providers were retendering for contracts early, with these retendered contracts coming back at up to 20% higher than previous contracts.

- d) In 2016/17, there were 41,185 SEND pupils using the service, but by 2020/21 that number had risen to 51,558, an increase of 25%. It is likely that these increases will continue into future years.
- e) The average yearly cost per SEN pupil increased from £5,893 in 2016/17 to £6,099 in 2020/21, representing an increase of £206 per head. This data was based on information from 21 county authorities.

| Metric | CNN Report (28 Councils) | Leicestershire |
|---|--------------------------|------------------|
| Increase in SEN transport expenditure 2017-21 | 33% | 28% |
| SEN transport expenditure % of CYP budget | 11% | 15% |
| Expenditure % on contracted transport | 72% | 74% |
| % Increase on retendered contracts in 2022 | 20% | 14% |
| % Increase in students travelling 2017-21 | 25% | 34% |
| Increase per student 2017-21 | £206 | -£272 (Covid-19) |
| Average PA cost per SEN pupil 2021 | £6,099 | £5,455 |

Figure 1 – Comparison of Leicestershire to CNN (28 Councils) on key metrics

Safeguarding

53. There is a multi-layered approach to children's safeguarding in Leicestershire in respect of SEN Transport, described below in Figure 2:

| | |
|------------------------|---|
| District Council level | Taxi licences are granted by district councils. In addition to assessing whether an individual is a 'fit and proper person' to hold a licence, all licensing authorities are required by statutory guidance to have robust systems for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees. |
| Parental Checking | The Council encourages parents to check identification documents and to report any concerns to the Council via https://www.leicestershire.gov.uk/roads-and-travel/buses-and-public-transport/report-an-issue-with-transport-services or telephone the Customer Service Centre on 0116 305 0002. |
| Contract Monitoring | The Council has its own team which has responsibility for contract monitoring issues. The Council undertakes checks to make sure the individuals working on the routes are carrying the appropriate ID, via both random and targeted field inspections. |

Figure 2 – Safeguarding hierarchy

Drivers and escorts verification

54. Both district councils and county councils respectively have responsibility for ensuring that those who participate in transporting vulnerable persons are subject to Disclosure and Barring Service (DBS) checks. District councils oversee the licensing of taxi drivers and county councils are involved in commissioning transport services to enable children to access education.
55. As a general observation licensing requirements in relation to taxi drivers by district authorities has been significantly tightened up in recent years. Under Section 177 of the Policing and Crime Act 2017, the Secretary of State for Transport was authorised to issue guidance to public authorities as to how their licensing functions under taxi legislation should be exercised, so as to protect children from harm. Licensing authorities have a statutory duty to have regard to that guidance.
56. The Department for Transport's statutory guidance expects licensing authorities to obtain enhanced DBS checks. All Leicestershire district councils require DBS checks as part of their licensing application processes. The law in relation to the licensing of taxi drivers has been further tightened up by legal requirements to record and share information¹.
57. Accordingly, the County Council is entitled to expect that all licenced taxi drivers employed on its transport contracts would have been subject to DBS checks and ongoing monitoring.
58. To the extent that the Council commissions transport services for vulnerable persons (including children with SEND issues) it is, what is known as, a "regulated activity provider". A regulated activity provider is **an organisation or individual** responsible for the management or control of regulated activity (paid or unpaid) and makes arrangements for people to work in that activity. This will usually be an employer or a voluntary organisation.
59. The law in relation to regulated activity providers is set out in a number of statutes. However, the most significant of these is the Safeguarding of Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 and related regulations.
60. Some children with SEND needs are entitled to support from an escort and since these persons are not subject to DBS checks through the district authority's processes, the County Council requires all escorts to be subject to DBS checks. This requirement is enforced under the Council's contracts with providers.

The legal position regarding parents who have mobility cars but still utilise the Council's SEND transport service

¹ Home-to-School-Transport-The-Challenge-in-Counties-1%20(4)

61. A local authority cannot use the fact that a parent receives a mobility element of their Disability Living Allowance (DLA)/Personal Independence Payment (PIP) as a reason to refuse home to school transport. The Local Government Ombudsman reported in 2017 that “the families of some children with special educational needs or disabilities may be in receipt of the higher rate of the mobility component of Disability Living Allowance. The Department for Education has confirmed in Parliament that being in receipt of this allowance does not necessarily confer eligibility for free home to school transport but neither does it preclude it if the child is an eligible child”.
62. For context, similar legal advice exists for Adult Social Care service users, which provides that “Many local authorities are likewise stating that they do not provide help with travel costs because individuals should pay for this from the mobility component of their DLA (or PIP etc). This is equally unlawful – and the fact that the mobility component must be disregarded for the purposes of the Care Act 2014 charging regime makes no difference; there are comprehensive reasons why the mobility component is disregarded for virtually all central Government and local government income assessment purposes. While it is correct that the mobility component of DLA (or PIP etc) could be used to pay for transport to a day centre, it is however, a non-sequitur for a council to state ‘it is therefore available to cover the cost of this transport’. Therefore, it could be argued that because a person receives basic Income Support, it is therefore available to cover the cost of that person’s meal at the Savoy”².
63. In 2012 the Department of Health was sufficiently concerned about local authorities adopting policies of this kind that it issued policy guidance to clarify the position. It referred to evidence that ‘some local authorities were taking the mobility component into account when considering what social services to be provide’. The guidance remains directly applicable to equivalent situations that arise under the Care Act 2014. It states that the “Department would like to make the position clear that: (...) local councils have a duty to assess the needs of any person for whom the authority may provide or arrange the provision of community care services and who may be in need of such services. They have a further duty to decide, having regard to the results of the assessment, what, if any, services they should provide to meet the individual’s needs. This duty does not change because a particular individual is receiving the mobility component of Disability Living Allowance”³

What guidance are parents/carers given on how to raise relevant concerns or issues with the SEN transport team? How are these concerns monitored and actioned?

64. Contact points for the transport teams are communicated annually through generic communications at the start of the application window in February each year. During the application process, parents receive auto generated communications with appropriate contacts and signposting at each stage of their application. Parents receive confirmation of their transport arrangements and contact points each year. For general queries and concerns once transport is arranged parents can contact the Customer Service Helpdesk where concerns will be logged with the transport team. There is also a contact form on the Council’s website. Queries and concerns are logged, triaged and responded to at officer level where appropriate.

² <http://www.lukeclements.co.uk/resources/transport-to-social-care-services/>

³ <http://www.lukeclements.co.uk/resources/transport-to-social-care-services/>

Escalated complaints are directed to the corporate complaints process via the Council's website.

65. A number of reports providing an update on progress regarding SEN Transport for the academic year 2022/23 have been presented to the Highway and Transport Overview and Scrutiny Committee, the most recent being in January 2023. This set out the challenges faced by the service and actions being taken in response.

Circulation under the Local Issues Alert Procedure

66. None.

Equalities Implications

67. There are no Equalities implications directly arising from this report. Within the report, there is reference to a number of on-going programmes of work and activity and as these develop any potential equalities and human right issues will be addressed in line with LCC policy and procedure (such as completing EHRIAs).

Human Rights Implications

68. There are no Human Rights implications directly arising from this report.

Recommendation

69. The Committee is asked to note and comment on the update now provided.

Background Papers

SEND Services

Reports to the Children and Families Overview and Scrutiny Committee:

7 March 2023 – Transforming SEND and Inclusion in Leicestershire (TSIL) Programme
<https://politics.leics.gov.uk/documents/s175229/TSIL%20-%20CF%20OSC%20070323.pdf>

24 January 2023 - SEND Local Area Reinspection
<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MIId=7190&Ver=4>)

6 September 2022 – SEND and Inclusion
<https://politics.leics.gov.uk/documents/s170911/SEND%20and%20Inclusion%20CFS%20OSC%20060922.pdf>

2 November 2021 – Written Statement of Action and High Needs Block Development
<https://politics.leics.gov.uk/documents/s164367/FINAL%20SEND%20rpeort.pdf>

1 September 2020 – SEND Inspection and High Needs Development Plan Update
<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MIId=6182&Ver=4>

21 January 2020 – Local Area Inspection of Special Educational Needs and Disabilities
<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MIId=6179&Ver=4>

5 November 2019 – Overview of Special Educational Needs and Disabilities Improvements

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MId=5685&Ver=4>

The Green Paper, 'SEND review: right support, right place, right time'

<https://consult.education.gov.uk/send-review-division/send-review-2022/>

Transforming SEND and Inclusion in Leicestershire Website

<https://www.leicestershire.gov.uk/education-and-children/special-educational-needs-and-disability/transforming-send-and-inclusion-in-leicestershire#:~:text=What%20is%20the%20Transforming%20SEND,with%20SEND%20and%20their%20families>

SEND Transport

Report to the Highways and Transport Overview and Scrutiny Committee:

26 January 2023 – Special Educational Needs School Transport Service Update

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1293&MId=7171&Ver=4>)

9 June 2022 – Special Educational Needs Transport Service – Provision Briefing

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1293&MId=6734&Ver=4>

Report to the Cabinet 16 December 2022 – Provisional Medium Term Financial Strategy 2023/24-2026/27 <https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6746&Ver=4>

County Council's Network – The Challenge in Counties

<https://www.countycouncilsnetwork.org.uk/councils-face-difficult-decisions-as-spirallingfuel-prices-impact-on-school-transport-services-report-warns/>

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Appendices

Appendix – TSIL Timelines