



CABINET – 22 NOVEMBER 2024

**PROPOSED TRANSFER OF FUNDING FROM THE SCHOOLS BLOCK
TO THE HIGH NEEDS BLOCK OF THE DEDICATED SCHOOLS
GRANT**

REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES

PART A

Purpose of the Report

1. This purpose of this report is to note the outcome of the consultation exercise on a proposed funding transfer from the Schools Block to the High Needs Block of the Dedicated Schools Grant (DSG) and the establishment of a Special Educational Needs and Disabilities (SEND) Investment Fund and the decision made by the Schools Forum on the matter and to authorise the Director of Children and Family Services to seek a decision from the Secretary of State on the proposed transfer.
2. Local Authorities are able to transfer 0.5% of funding from the Schools Block to the High Needs Block of the DSG following consultation with schools and the approval of the Schools Forum. If Schools Forum does not approve, or if a transfer in excess of 0.5% is being sought, local authorities can seek formal permission from the Secretary of State to disapply sections of the School and Rarely Years Finance England Regulations which govern the use of DSG.

Recommendations

3. It is recommended that -
 - a) The outcome of consultation on the proposed funding transfer from the Schools Block to the High Needs Block of the Dedicated Schools Grant and establishment of a SEND Investment Fund be noted;
 - b) The decision of the Schools Forum to refuse the transfer be noted;
 - c) The Director of Children and Family Services be authorised to seek permission from the Secretary of State to allow the proposed transfer.

Reasons for Recommendation

4. To note the views of consultees and the decision of the Schools Forum.

5. Delegation to the Director will enable permission to disapply the restrictions on transfers between blocks to be sought from the Secretary of State within the specified timeline which together with the establishment of SEND Investment Fund would enable SEND capacity to be built in mainstream schools and reduce demand for specialist school places.

Timetable for Decisions (including Scrutiny)

6. The Schools Forum received a report on 18 June 2024 which set out the Council's intention to seek a 0.5% transfer of funding from the Schools Block to the High Needs Block of the DSG for 2025/26, the reasons for it, and the approach to be taken. A further report was presented on 17 September confirming the approach and that a consultation exercise would take place with all Leicestershire maintained schools and academies on the establishment of a SEND Investment Fund from the transfer.
7. The Schools Forum considered the outcome of the consultation at its meeting on 4 November and rejected the proposed transfer.
8. The Children and Families Overview and Scrutiny Committee at its meeting on 5 November considered a report on the proposal and was advised of the outcome of the Schools Forum meeting the previous day. The comments of the Scrutiny Committee are set out in Part B of this report.
9. An application to the Secretary of State for disapplication of the restrictions needed to be submitted by 18 November 2024. A provisional application has been submitted to the Secretary of State which will be confirmed, amended, or withdrawn depending on the Cabinet's decision. A decision from the Secretary of State would be expected by mid-January 2025 prior to the issue of individual school budgets.

Policy Framework and Previous Decisions

10. The decision on a transfer of funding is vested under legislation to the Schools Forum following consultation with mainstream schools and academies. Local authorities are able to seek approval from the Secretary of State should the Schools Forum not approve the transfer or if they are seeking a transfer in excess of 0.5%.
11. The Transforming SEND and Inclusion in Leicestershire (TSIL) programme was established to ensure that children and young people with SEND receive support at the right time and in the right place through the transformation of SEND services. The reset of the SEND system through TSIL is underway, and it is appropriate now to consider a reset of the SEND finance system which allocates funding to both schools and local authorities for their respective SEND responsibilities; these proposals are key to reducing a significant overspend within the High Needs Block of the DSG which is forecast to be c. £102m at the end of the 2027/28 financial year.

12. The Cabinet at its meeting in November 2019 considered a report on a proposal to transfer up to 0.5% from the Schools Block to the High Needs Block. The Cabinet noted the outcome of consultation on the matter and that the Schools Forum had opposed the proposal and agreed that the transfer would not be pursued further at that time, authorising the Director of Children and Family Services to engage with schools to develop alternative solutions to address the High Needs Block deficit. However, the Cabinet noted that should the deficit continue it might be necessary to consider further measures, including a funding transfer, in the future.
13. The Cabinet at its meeting in June 2021 considered a report on progress with delivery of the High Needs Block Development Plan, the worsening financial position and proposed consultation on a transfer of funding from the Schools Block DSG to the High Needs Block. The Cabinet agreed that an application should be made to the Secretary of State to make the transfer should the Schools Forum refuse the request. The request was refused by the Secretary of State citing a lack of evidence of investment in mainstream schools. The proposed transfer for 2025/26 addresses this point through the establishment of the SEND Investment Fund.
14. The Cabinet at its meeting on 13 September 2024 considered a report on the Council's Medium Term Financial Strategy (MTFS) and Budget Monitoring and noted the significant financial challenges facing the Authority. The report highlighted that without new interventions the High Needs Block deficit was expected to increase over the next MTFS period, creating a significant and unresolved financial risk for the Authority.

Resource Implications

15. There are significant resource implications for the proposals for both schools and the Local Authority.
16. To deliver the funding from the transfer requires adjustments to be made to the National Funding formula (NFF) allocations made to individual schools. This is undertaken through capping the annual funding gains received by mainstream schools. Whilst this is not a reduction in current cash funding, schools are likely to receive less than real terms funding for 2025/26. Additionally, because of the way the NFF allocated funding as well as protections within it, the impact at schools varies considerably.
17. Whilst the proposals are a reduction in the level of funding received between 2024/25 and 2025/26 with school funding decisions for the next financial year yet to be released, the impact for schools was illustrated on current year data which shows that had the transfer occurred for 2024/25 65% of primary schools and 82% of secondary schools would have received a reduced level of funding (the remaining schools are subject to protected funding). The maximum impact was a reduction in the annual funding gain of -4.5% per pupil for each primary and -1.3% per pupil for each secondary with an average of -0.5% per pupil. The precise impact for each school will only be able to be assessed once the data for 2025/26 school budgets is received and processed in mid-December.

18. The financial position of the High Needs DSG is a significant risk to the Local Authority where a financial deficit of £102m in 2027/28 is forecast. This is clearly an unsustainable position.
19. The Budget announcement of 30 October 2024 gave details on a national increase of £3.3bn in core schools funding; £1bn of that for High Needs which is an overall increase in funding of 10%. Should this be distributed in proportion to current funding that could equate to an additional £7m for Leicestershire. However, the DfE has since confirmed a minimum increase of 7% per head of population which would yield just £2.7m with £480m allocated to meet the cost of the 2024 teachers pay award. This could provide some respite to the financial position but would not provide a full resolution particularly given the potential impact of the employers NI increase in the supply chain and the increase in the National Living Wage, so other mitigation needs to continue to be pursued. The full detail of the 2025/26 DSG settlement is not expected until early December.
20. Local authorities are required to carry forward DSG as an unusable reserve through the continued use of a Statutory Accounts override and may only now contribute to DSG with the approval of the Secretary of State. The accounts override legislation is confirmed to March 2026 when it is expected to end. Unless further legislation changes this, from this point local authorities will be required to make financial provision for the deficit.
21. Nationally there is growing concern on the sustainability of the current SEND system with almost all local authorities in England in a deficit position, with research concluding that the provision of additional funding alone will not provide a solution. This proposal for a transfer and creation of a SEND Investment Fund represents the redistribution on funding within the Leicestershire SEND system which will enable the development of sustainable and consistent interventions and support which will deliver improved pupil outcomes and a more effective use of resources offering future financial benefits.
22. As set out above the DSG Schools Block is ring-fenced in line with the DSG conditions of grant and a transfer between blocks of up to and including 0.5% is permitted with the approval of the Schools Forum following consultation with local maintained schools and academies. Transfers without School Forum approval or in excess of 0.5% may only be made with Secretary of State permission following an application to disapply the School and Early Years (England) Funding Regulations and associated grant conditions. The Council is required to submit evidence to support its application including a DSG management plan covering multiple years, budget pressures justifying the transfer and other factors. Requests are considered on a case-by-case basis applying these criteria to assess the strength of the council's application:
 - (a) Strong evidence that a further transfer remains necessary to address significant cost pressures.

- (b) Specific and detailed plans which demonstrate that the transferred funding would contribute to addressing cost pressures in a sustainable way, such as 'invest to save' options.
- (c) Strong evidence of a marked and recent transfer of financial responsibility for children with high needs from the Schools Block to the High Needs Block, for example through a significant increase in permanent exclusions requiring the local authority to make more alternative provision or a significant increase in the proportion of children with EHC plans placed in specialist settings rather than mainstream schools.
- (d) A strong plan outlining the actions that the local authority will take to ensure a sustainable SEND sector, and how the transfer will impact this work.
- (e) A good level of support from local schools and the Schools Forum for a transfer, including a breakdown of local consultation.

23. The Director of Corporate Resources and Director of Law and Governance have been consulted on this report.

Circulation under the Local Issues Alert Procedure

24. None.

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PART B

Background

25. High Needs DSG is provided to local authorities for funding for pupils with SEND where needs cannot be met in mainstream schools and for other SEN support services such as Specialist Teaching Services and support for pupils at risk or those excluded from schools. In addition to that schools receive a Notional SEN budget within their school NFF allocation for high-incidence, low-cost SEN.
26. The Council's TSIL programme has delivered the redesign of the SEND system in Leicestershire to ensure children receive the right support at the right time and in the right place. The proposal to effectively reset the SEND Finance system is a natural progression.
27. Schools Forums were established under the Education Act 2002 to give schools a voice in the disbursement of funding for schools. Subsequent legislation has changed their role but they continue to represent the views of Headteachers and Governors across all school phases and school type. The Forum has some decision-making powers and a significant consultative role in all aspects of the Schools Budget.
23. The Schools Forum received a report on 18 June 2024 setting out an analysis of the SEND funding system and the Council's intention to develop a SEND Investment Fund to be funded from a 0.5% transfer of funding from the Schools Block to the High Needs Block.
28. The initial scope of the proposed SEND Investment Fund together with the proposed funding transfer was presented to Schools Forum on 17 September in line with the launch of a consultation with all Leicestershire's maintained schools and academies. The SEND Investment Fund will enable capacity to be built within mainstream schools to address the SEMH issues as seen locally and indeed nationally. Funding will remain within the mainstream sector who will benefit from its activity and will ensure the co-production of sustainable solutions to improved pupil outcomes to the benefit of all children and young people, and their parents and carers in Leicestershire whilst being an effective use of funding.
29. The feedback from the consultation overwhelmingly opposed undertaking the Schools Block Transfer and there was little support for the development of a SEND Investment Fund. However, this needs to be balanced against the growing demand for High Needs Support and the huge and increasing deficit facing the Local Authority which is unsustainable. Cost reductions are outstripped by this demand which is out of line with that being encountered in other local authorities. Whilst the High Needs position is a concern nationally as well as locally, local actions are necessary and one of those to be considered is a more targeted use of the funding across the SEND system through a transfer of funding. This is a process that has been successfully undertaken in other authorities albeit most, but not all, with the support of their schools and with

Schools Forum approval. There simply is no more funding that can be introduced to address the current problems, and the financial position is totally unsustainable.

30. The County Council has proposed a funding transfer action twice before, the latter in 2020 sought Secretary of State approval which was not granted on the basis of no onward investment in mainstream provision.

Consultation

31. The consultation was online with paper copies available if requested. Consultation ran from 17 September to 20 October 2024 to ensure compliance with the national timeline set by the DfE.
32. In total of 70 responses to the consultation were received which represented 23.3% of Leicestershire maintained schools and academies. In addition a further 15 email responses were received, including one from the Schools Forum.
33. The responses to the proposals within the consultation are summarised below:
- a. **To what extent do you agree or disagree with our proposal to create a SEND Investment Fund to enable investment in targeted actions to improve pupil outcomes?**
83% of responses strongly disagreed with the proposal, and 15% either strongly agreed or agreed. The key points in the responses concerned the local authority's ability to administer a fund effectively and the financial impact of a 0.5% transfer on schools. The responses largely present a view of the funding transfer rather than the establishment of the SEND Investment Fund. The responses are not supportive of a transfer, question the Local Authority's capacity and ability to deliver and set out affordability issues for schools. These are important factors for consideration. There were no comments on the specific proposal to establish a SEND Investment Fund.
 - b. **To what extent do you agree or disagree that Social, Emotional and Mental Health (SEMH) should be the initial focus of a SEND Investment Fund?**
65% of responses strongly disagreed with the proposal and 21% either strongly agreed or agreed. The individual responses largely disagreed with a funding transfer, together with comments on how an Investment Fund would operate and some comments agreeing that SEMH was a pressing need.
 - c. **Do you have any comments on how a SEND Investment Fund should be delivered and governed?**
Responses to this question largely focused on disagreement with the proposed 0.5% funding transfer.

d. **To what extent do you agree or disagree with our proposal for an annual funding transfer of 0.5% to Establish a SEND Investment Fund?**

86% of responses strongly disagreed with 9% either strongly or tending to agree. Comments refer to the uneven impact at schools with schools with higher SEND needs contributing more to the transfer.

Views of the Schools Forum

34. The Schools Forum received a report on the consultation outcome at its meeting on 4 November together with the Council's detailed response to each, summarised as;
- a. School underfunding and reducing school budgets: whilst Leicestershire schools have parity of funding nationally, many schools have not seen real terms increases, and whilst the proposals cap gains between years the proposals present a cut in funding for 2025/26 at a time where schools are experiencing significant financial challenges.
 - b. Mismanagement of High Needs: there was a perception that the high needs deficit results from mismanagement by the Local Authority rather than a factor of rapidly increasing demand and therefore increasing costs. Local authorities have a statutory duty to support children and young people with identified SEND needs.
 - c. Lack of faith in the Authority to manage a SEND Investment Fund: the Council would co-produce the structure, operation and governance of the Fund with schools. The Fund would be focused on meeting the needs of pupils with Social, Emotional and Health (SEMH) needs which are a significant driver of Education, Health and Care Plans (EHCPs). Pupils with this need are overrepresented both in EHCPs and other SEND and inclusion support services.
 - d. Some schools would lose more than others, with those with high levels of SEND losing the most: the inbuilt protections within the NFF limit the actions that can be taken to reduce school funding in order to gain the transfer yield. Analysis shows no correlation between school funding and levels of SEND in individual schools.
 - e. Investment in TSIL is not delivering change: benefits from TSIL can be evidenced but whole-system change can only be delivered over the medium and longer term.

Comments of the Children and Families Overview and Scrutiny Committee

35. The Children and Families Overview and Scrutiny Committee considered a report on the proposed transfer and creation of an Investment Fund at its meeting on 5 November.

36. The Committee noted the outcome of consultation and the Schools Forum's decision to refuse the transfer, which reflected continued opposition to the proposal since it first received a report on the matter in June. Consultation feedback on the proposed SEND Investment Fund was largely focused on disagreement to the transfer per se. The Schools Forum had been clear that it opposed the transfer as it would represent a decrease in funding for schools. It would support funding going to schools to support SEND inclusion but not by utilising a Schools Block Transfer in order to create a fund for this.
37. The Director of Children and Family Services advised members that it was intended to submit a report to the Cabinet regarding pursuing the transfer with the Secretary of State as the High Needs deficit facing the Authority was not sustainable.
38. In response to questions, the Director explained that the funding transfer would not be used simply to offset the High Needs deficit but to enable measures to reduce the number of EHCPs being issued and support SEND inclusion in schools (as had been done by other local authorities), and it was proposed that the Investment Fund would be governed by schools. Details of the planned Fund remained to be confirmed, as it had not been progressed further in light of opposition to the transfer.
39. Members noted that a previous request for a funding transfer had been refused as no evidence of reinvestment in mainstream schools had been provided. The Director advised that the Council continued to work with schools to develop inclusive SEND provision and should the Secretary of State approve a funding transfer then further consultation would be held with schools on an Investment Fund. She explained that ideally the Council would have waited for the new Government's approach to SEND provision/funding to be clarified but in order to comply with statutory processes and deadlines for the 2025/26 Schools Budget timetable as set by the DfE it was necessary to submit a provisional application to the SoS by 18 November which could be confirmed, amended or withdrawn dependent upon the decision of the Cabinet.
40. The Scrutiny Committee noted the report and asked that the Cabinet be advised of its comments.

Conclusion

41. Whilst the comments from both schools and Schools Forum are valid, particularly in relation to the financial position of schools, the Council's financial position is such that necessitates seeking a transfer of funding, which in many local authorities is undertaken annually.
42. This leaves no option for the Council but to seek to progress with the transfer of 0.5% from the Schools Block to the High Needs Block of the DSG and use that funding to establish the SEND Investment Fund. Undertaking this will allow for targeted actions to be co-produced with school leaders and increase capacity and support for schools to help reduce demand on the SEND system in Leicestershire in a structured way and using evidence-based actions.

Equality Implications

43. A number of comments throughout the consultation responses refer to schools with higher number of SEND pupils being impacted by the proposals and the disproportionate impact of the transfer across Leicestershire Schools. It should be noted that a transfer with the establishment of the SEND Investment Fund would ensure that all funding stayed within mainstream schools. A transfer taken directly to the High Needs Block would also ensure that funding sat within the SEND system to meet the ever-growing costs of placements.
44. Within the nationally set financial framework for school funding, the only option of removing funding from the Schools Block to High Needs is by capping per pupil funding gains between years. Given that per pupil funding is protected at a level only slightly above the Age Weighted Pupil Unit (AWPU) as the only universal funding received by all pupils, funding gains are delivered within the NFF additional factors which are largely related to deprivation measures. There is no correlation between the level of pupils at individual schools recognised as having SEND and the pupil population as recorded on the School Census upon which the NFF is based.
45. The County Council is required to comply with the duty under section 149 of the Equality Act 2010 when making decisions about disapplication proposals. Section 149 places a duty on local authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations when making decisions and delivering services. The DFE expects local authorities to have considered, consulted and explained the specific equality impacts their proposals might have in the disapplication request.

Human Rights Implications

46. There are no human rights implications arising from the recommendations in this report.

Background Papers

Report to the Schools Forum 18 June 2024 - Resetting the SEN Finance System
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=7734&Ver=4>

Report to the Schools Forum 17 September 2024 - SEN Investment Fund and Schools Block Transfer
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=7957&Ver=4>

Report to the Schools Forum 17 September 2024 - School Financial Standing
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=7957&Ver=4>

Report to the Schools Forum 21 November 2023 - 2023/24 Notional SEN Review
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=7631&Ver=4>

National Audit Office - Support for children and young people with special educational needs

<https://www.nao.org.uk/reports/support-for-children-and-young-people-with-special-educational-needs/>

Department for Education - Delivering Better Value in SEND Phase1 Insight Summary

https://cdn.prod.website-files.com/63b6e5debb4b0114060dc226/66421eaae18cb50ccc378780_66421a046d5569ec0ad11674_DBV%20-%20Phase%201%20Insights%20Summary_Website%20v1.0_Final.pdf

ISOS Report for the Local Government Association - Have we reached a 'tipping point'? Trends in spending for children and young people with SEND in England

<https://www.local.gov.uk/have-we-reached-tipping-point-trends-spending-children-and-young-people-send-england>

Report to the Cabinet on 23 June 2023 - Transforming Special Educational Needs and Disabilities (SEND) and Inclusion In Leicestershire (TSIL) Programme Update

<https://cexmodgov01/documents/s177139/Cabinet%20Report%20TSIL%20June%202023%20v.8.pdf>

Report to the Cabinet on 13 September 2024 - Medium Term Financial Strategy: Budget Monitoring and MTFs Refresh

<https://cexmodgov01/ieListDocuments.aspx?CId=135&MId=7509>

Report to the Schools Forum on 4 November 2024 - Resetting the SEN Finance System

<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=7978&Ver=4>

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