

Title of report: High Needs Budget 2022/23

Decision maker: Cabinet Member for Children and Families

Meeting date: 31 March 2022

Report by: Strategic Finance Manager

Classification

Open

Decision type

Key

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

To approve the £19.7m Dedicated Schools Grant (DSG) high needs budget for 2022/23.

Recommendation(s)

That:

1. **A balanced high needs budget for 2022/23 having regard to the views of Schools Forum be approved as follows;**
 - a. **Complex needs funding £2,285,745;**
 - b. **Independent special schools £2,920,000;**
 - c. **Special school commissioned places £1,743,000;**
 - d. **Special school top-up funding**
 - i. **Base funding £3,826,000;**

- ii. inflation at 6% for tariffs D - F £279,560;
- e. **Post-16 top-up funding £1,600,000;**
- f. **Mainstream school top-up funding**
 - i. **Base funding £2,863,000;**
 - ii. **inflation at 3% on tariffs A - C £135,890;**
- g. **Nurture provision for 5 primary and 1 secondary schools including outreach, full year costs £372,100;**
- h. **Autism and Language Units 56 commissioned places at £6,000 each £336,000**
- i. **Autism and Language units top-up funding**
 - i. **base funding £362,432;**
 - ii. **inflation at 3% £10,873;**
- j. **Early years top-up funding £150,000;**
- k. **Pupil Referral Service 50 commissioned places at £500,000;**
- l. **Pupil Referral Service top-up funding 40 pupils at tariff band D2 £9,338 (less income recovery from schools) net budget £239,555;**
- m. **Pupil Referral Service – additional 10 outdoor places at £15,643 i.e. £156,434;**
- n. **H3 Home, Hospital and Hub top-up funding**
 - i. **Base funding £397,000**
 - ii. **inflation 3% £4,491;**
- o. **Pupil Referral Unit additional support for**
 - i. **Phasing out TLR allowances, three years from September 2021 £35,000;**
 - ii. **Temporary split site allowance £38,000;**
 - iii. **Pupil Referral Unit support fund £50,000;**
- p. **SEN protection scheme for primary and secondary schools with a cap at £158 x NOR (number of roll at Oct 2021) £517,000;**
- q. **Teachers Pay Grant allocations**
 - i. **Special schools and PRU 466 places at £660 per place £307,560;**
 - ii. **Central SEN Support services £52,000;**
 - iii. **NI 1.25% levy for 466 places at £100 per place £46,600;**
- r. **High needs contingency/contribution to reserves £0;**
- s. **SEN support services including 3% inflation uplift as marked ***
 - i. **Additional Needs Management* £209,863;**

- ii. **Complex Learning Communications* £114,897;**
 - iii. **Equalities team – inclusion* £271,855;**
 - iv. **Hearing Impaired Team* £419,725;**
 - v. **Managed moves £5,000;**
 - vi. **Business support £73,000;**
 - vii. **DSG Services* £129,677;**
 - viii. **Behaviour Support Service – match schools de-delegation £37,500;**
- t. **Charges and income**
- i. **Excluded pupils (AWPU)/ Hospital offset by compensating reduction in PRU top-ups £0;**
 - ii. **Local authority recoupment -£211,508;**
 - iii. **Transfer from schools block -£507,224;**
 - iv. **Transfer from Central services block -£75,000.**

Alternative options

1. Schools Forum supported the proposed high needs budget at their meeting on 18th March and supported the plans for a secondary autism hub run by an existing school to provide for those students whose autism and anxiety needs are greater than can be met at the existing base and further asked that the 18 post-16 pupil places deducted at source by the Education and Skills Funding Agency be questioned. The Budget Working Party has been consulted on different options with the proposed budget plan, for example, higher or lower inflation rates could be applied to top-up tariffs. Any amendments would need to have regard to available funding, relevant regulations and the council's statutory duties in supporting children and young people with high needs. It should be noted that the Budget Working Group considered the proposals set out in this report on 4 March 2022 and were content with the budget proposals.

Key considerations

2. The report sets out the forecast overspend of £0.65m on high needs in 2021/22 due to an overspend of £0.9m on the independent out of county schools budget; the resulting reduction in DSG reserves is from £0.4m to a £0.25m deficit. The Department for Education (DfE) has allocated £18.9m within DSG and a supplementary grant allocation of a further £0.8, in total £19.7m which is a £2.6m increase compared with the final 2021/22 high needs allocation.

3. The high needs budget for 2022/23 ensures that grant income and expenditure are matched and seeks to provide a balanced budget. Avoiding intervention by the DfE will depend on ensuring that the emerging deficit remains within 1% of DSG, i.e. remains below £1.4m, achieving this will depend very much on containing expenditure at or near budget for the out county independent special schools expenditure and mainstream school top-up payments. The Budget Working Group will monitor the financial position closely throughout the year. Additionally much will depend on the recommendations of the imminent DfE SEND review publication due before the end of March 2022.

4. This report proposes a high needs budget for 2022/23 to ensure that the high needs funding allocation is spent as effectively as possible whilst recognising the absolute duty to ensure that pupils needs are met as required by Section 42 of the Children and Families Act 2014. The views of Schools Forum are sought on the proposed budget plan prior to seeking cabinet member approval. The high needs budget for 2022/23 will be set at a net £19.7m after the transfer of £0.582m from the schools block and Central School Services and deductions passported directly to academies and post-16 providers by the Education and Skills Funding Agency

High needs budget

5. The schools consultation paper set out the known high needs cost pressures for the high needs block for 2022/23 and was based on an increase of £2m in the net high needs allocation. Schools Forum agreed a transfer £0.5m from the schools block and £0.75m from the central services block in order to continue sufficient funding for the SEN protection scheme.

6. The consultation with schools in the autumn term included initial proposals for the high needs block based on an expected increase in funding of £1.95m. The actual increase confirmed by DfE is £2.6m, which is £0.65m more than expected and it is proposed to vary the initial budget proposals as follows;

(a). Increased costs (£1.3m)

- additional £0.4m for independent out-county special schools bringing the final allocation for 22/23 to £1.15m to provide for the overspend and 2 additional places
- additional off-site alternative provision for the PRU £0.15m
- special schools and PRU costs if increase in NI by 1.25% proposed £100 per place at £0.05m
- Overspend and growth in mainstream school top-ups £0.7m
- Contain SEN protection costs at the funding transfer value of £0.517m e.g. revised cap at £158 x NOR so nil cost increase.

(b). Cost reductions (-£0.65m)

- Increase of 10 special school places (not 20 as originally proposed) -£0.1m
- Delete contingency -£0.1m
- Delete special schools MFG – not required as tariffs increased for 21/22 -£0.1m
- Reductions in underspending budgets -£0.15m
- Full cost of SEN protection scheme met from increased schools block transfer -£0.2m

Full details of each budget line are set out in the appendix and specified in the recommendations.

7. The PRU management committee have requested that due to building constraints an increase in outdoor provision for pupils to be educated offsite. In addition it has been agreed that the PRU will be responsible to income recovery from schools and keep the income, expected to be at least £160,000 pa, with a compensating saving in the excluded pupils budget. This is more efficient as the PRU has all the administrative records to be able to raise timely charges to schools.

8. Costs continue to increase for the SEN protection scheme and Schools Forum agreed an increased transfer from the Schools Block of £507,224. Expenditure in 2021/22 is forecast as

- The current scheme cap is 150 x NOR and expenditure forecast at £545k
- With a cap of 155 x NOR expenditure is forecast at £500k.

- With a cap of 158 x NOR expenditure is forecast at £480k
- With a cap of 160 x NOR expenditure is forecast at £456k

Additional growth in the scheme costs is expected in 2022/23 and it is likely that an increase to a cap of 158 x NOR expenditure will contain expenditure within the transferred funds from the schools block. It would be surprising if recommendations were not made within the SEND review about how local authorities can best support inclusion in mainstream schools and a review of Herefordshire's methodology for 2023/24 may be necessary. As such an interim adjustment and setting the scheme cap at 158 x NOR would seem prudent.

9. The SEN protection scheme acts as an "insurance" scheme to ensure that those schools with higher than average numbers of high needs pupils are fairly funded for their threshold costs. The SEN notional budget is part of each school's delegated budget and is paid from the Schools Block of the DSG. High Needs Matrix

10. The Budget Working Group (BWG) received a presentation on the 4 March 2022 summarising the current budget position, the proposed high needs budget for 2022/23 and the final proposals for the high needs matrix. The presentation is set out in Appendix 1.

11. Key points highlighted included:

- Overspend of £0.65m forecast for high needs 2021/22 arising from overspends of £0.9m on independent out county schools and £0.7m on mainstream high needs top-ups
- The overspend will result in a DSG deficit of approx. £0.25m at year end
- Significant budget increases proposed for out-county independent schools (£1.15m) and high needs top-ups for mainstream schools (£0.7m)
- Inflation allocations of 3% for tariffs A-C and 6% for tariffs D-F
- The DfE SEND review is expected to be published prior to Easter and can be discussed with the BWG at the next meeting on 17 June.

12. In discussion of the presentation and proposed budget, the BWG noted that;

- The post pandemic impact on pupils' social development has had a massive impact in schools, the BWG particularly highlighted delayed speech and language development, lack of socialisation skills e.g. sharing and co-operation with other pupils. Headteachers also highlighted increased social, emotional and mental health needs throughout the full age range from early years to secondary.
- BWG welcomed the early proposals to establish a secondary autism hub by an existing school to fill an identified gap in local provision, that in the medium term would help reduce the out-county spend.
- The high needs deficit was reflective of national trends and Herefordshire had done well to remain in surplus until now.

13. The BWG supported the proposals set out in the draft paper to schools forum with the above comments and were content for the budget proposals to be considered at the next meeting of the schools forum on 18 March. Schools Forum endorsed the high needs budget at their meeting on 18 March.

Community impact

14. The recommendations will provide a high needs budget for 2022/23 that continues to meet the needs of pupils within the DSG funding allocated to the council.

15. These services contribute to delivery of the following ambitions in the adopted County Plan for 2020-2024:

Community

- a. Ensure all children are healthy, safe and inspired to achieve;
- b. Protect and improve the lives of vulnerable people.

16. These services also support the pledges set out in the Children and Young Peoples Plan 2019-2024 in:

- c. Keeping children and young people safe;
- d. Improving children and young people's health and wellbeing;
- e. Helping ALL children and young people succeed.

Environmental Impact

17. This is a consultation with Schools Forum on school and high needs funding and will have no direct environmental impacts. School governing bodies and trustees are responsible for deciding on expenditure and they will be encouraged to minimise waste and resource use in line with the Council's Environmental Policy.

Equality duty

18. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows: A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

19. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relations to any of the nine "protected characteristics" (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes, for example the provision of nurture provision to meet pupil needs.

Resource implications

20. The recommended high needs budget for 2022/23 has been constructed so that income and expenditure are balanced. The forecast overspend of £0.65m in 2021/22 will reduce DSG balances from a surplus of £0.4m to a deficit of £0.25m which is within the 1% limit above which DfE intervention is necessary.

21. High needs budgets for future years will depend on the DSG funding allocated by the DfE.

Legal implications

22. This is a key decision which can be taken by the Cabinet Member under the provisions set out in section 3.3.15 (i) of section 3 of the council's constitution. Schools Forum is consulted in an advisory capacity.

23. The council must consult the schools forum annually regarding a number of schools budget functions including the following:-

- Amendments to the school funding formula
- Arrangements for the education of pupils with SEN, in particular the places to be commissioned by the council and schools and the arrangements for top-up funding
- Arrangements for the use of PRUs and places to be commissioned by the council and schools and arrangements for paying the top-up funding
- Administrative arrangements for the allocation of central government grants paid to schools via the council. It is also good practice for the council to inform schools forum of proposals for central spend on the high needs block provision.

24. The council has statutory duties to deliver provision for children and young people with high needs which includes special educational needs and disabilities from early years to age 25.

25. The DSG is a ring fenced grant from the DfE, the majority of which is used to fund individual school budgets in maintained schools, academies and free schools. This includes the provision for pupils with high needs in both special and maintained schools

26. Changes to the high needs funding provision could leave the council open to legal challenge, through ombudsman complaint, appeal to the Special Education Needs and Disability Tribunal, or Judicial Review if children, young people or their families feel that specialist provision is not being met. The risk of Judicial Review is reduced due to the increase in tariffs.

27. Section 42 Children and Families Act 2014 provides that where a council maintains an EHC plan for a child or young person, the council must secure the specified education provision. Therefore the council must comply with this statutory duty.

Risk management

28. The BWG reviews all proposals in detail prior to making recommendations to the Schools Forum. This two stage process helps ensure greater scrutiny of budget proposals and mitigate against any risks that may be identified. Any identified risks will be monitored and managed by the Children and Families directorate jointly with Schools Forum. Specifically financial risk will be managed throughout the year with the BWG.

29. The government has changed the conditions of grant for the Dedicated Schools Grant so that the council would be required to seek permission from the Secretary of State should it wish to fund a DSG deficit from the council's general funds. Effectively this change in regulations transfers responsibility for DSG deficits to the Department for Education (DfE) and absolves the council of any contribution. Further information on the new deficit recovery process is expected from the DfE in due course, possibly included as part of the forthcoming SEND review report. Although local

authorities will continue to have to seek approval for DSG recovery plans from the DfE, it is not at all clear how a deficit might be recovered if it is not from increased high needs block grant from DfE.

30. The investment in nurture provision is a longer term preventative measure which attempts to mitigate demand for higher cost provision and keep the high needs costs within the available budget. The use of such preventative measures was supported by the BWG and also by schools as set out in Q2 (g) in the responses below.

Consultees

31. All schools have been consulted on the proposals as part of the autumn schools budget consultation and the responses were reported to Schools Forum in January 2022. The deadline for the budget consultation was extended to the end of the autumn term and despite the extension, as at 28th December, four replies had been received from one secondary school and three primary schools. These can be summarised briefly as two schools supporting the initial high needs budget proposals, one school supporting additional special school places but not out-county independent special school placements commenting that local provision is to be preferred. The SEN protection scheme was strongly supported by 3 of the 4 schools. A comments was received suggesting that the number of places for the new Beacon College should be finalised, which following agreement of 46 places with the DfE in November has been done. A presentation of the budget proposals was given the Herefordshire school leaders webinar on 10 January.
32. The Budget Working Group were consulted on 4 March 2022 and their comments are included in paragraphs 11-13 above.

Appendices

Appendix 1 High Needs Budget presentation to the Schools Forum on 18 March 2022

Background papers

None identified

Report Reviewers Used for appraising this report:

Governance	Sarah Buffrey, Democratic Services Officer	Date 11/02/2022
Finance	Louise Devlin	Date 07/02/2022
Legal	Ruth Whittingham	Date 09/02/2022
Communications	Luenne featherstone	Date 08/02/2022
Equality Duty	Carol Trachonitis	Date 04/02/2022

Risk	Chris Jones	Date 10/03/2022
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Approved by	Ceri Morgan	Date 10/03/2022
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Glossary of terms, abbreviations and acronyms used in this report.

BWG Budget Working Group (of Schools Forum)

CAMHS Children and Adolescent Mental Health Service

DSG Dedicated Schools Grant DfE Department for Education

EHCP Education Health Care Plan

ESFA Education and Skills Funding Agency

NOR Number on Roll, typically at a school

PRU Pupil Referral Unit H3 Home and Hospital Teaching Team (Hub, Home, Hospital)

SEN Special Education Needs

SEND Special Education Needs and Disability