

Title of report: High Needs Budget 2023/24

Decision maker: Cabinet Member - Children and Families

Decision date: 31 March 2023

Report by: Schools 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 Dedicated Schools Grant (DSG) net high needs budget for 2023/24 and amendments made to the Schools Budget 2023/24 regarding revised basic education funding for primary and secondary pupils as part of the validation process with DfE as recommended by Schools Forum.

Recommendation(s)

That:

1. A deficit high needs budget of £0.64m for 2023/24 be recommended to the Cabinet Member for Children's and Families as follows;

a. Complex needs funding

i. base funding at the agreed 3/7th funding share	£2,285,745
ii. an expected overspend of	£400,000

b. Independent special schools	£3,550,000
c. Special schools	
i. Local authority school places	£1,740,000
ii. Additional place funding at £1,000 for 390 places	£390,000
iii. Special school top-up funding plus 3.4% inflation	£3,903,000
iv. tariff matrix amendments re behaviour	£50,000
v. Additional place funding at £256.40 for 390 places to provide an additional 1.25% inflationary increase and to note a corresponding increase to the high needs deficit	£100,000
d. Post-16 top-up funding	£2,100,000
e. Mainstream school top-up funding includes 3.4% inflation	£3,630,000
f. Nurture provision	
i. 5 primary and 1 secondary schools full year costs	£372,100
ii. North Herefordshire outreach summer term (5/12th)	£10,417
iii. North Herefordshire outreach autumn/spring terms subject to review by BWG at	£14,583
iv. secondary pilot at Earl Mortimer College for three years until March 2026 at	£40,000
g. Resource bases at Hampton Dene and Bishops schools	
i. 56 places at £6,204 including MFG at 3.4%	£347,425
ii. 56 top-up tariff funding at £8,272 including MFG	£463,230
h. New provision Autism and Language Units from June 2023 including set-up costs	
i. 4 bases x 8 places at £6,000 per place	£160,000
ii. 32 top-up funding at £8,000 average per pupil	£213,333
iii. Additional per pupil funding as not in October census 32 pupils at average £4,500	£120,000
iv. Inflation at 3.4% to comply with MFG	£16,773
i. New Provision – additional 10 places for special schools through offsite accommodation	
i. special school 10 places at £11,000 per place	£110,000
ii. special school 10 top-ups at £8,000 per pupil	£80,000
iii. 9 full time and 6 part-time reception/ nursery places commissioned from April 23	£132,000
iv. 12 top-up funding at £10,500 from September	£73,500
v. Running costs £30k pa from June 23	£25,000
vi Set-up costs	£5,000
v. to note the detailed cost estimate is £140,000 greater than the initial estimate contributing a further £140,000 to the deficit budget	
j. Early years top-up funding	£150,000
k. Pupil Referral Service	
i. 60 places including 10 places at Dinedor at £10,000 per place	£600,000
ii. Teachers Pension Grant at £660 per place and £340 MFG per place	£60,000
iii. top-up funding 60 pupils at tariff band D2	£573,120
iv. less assumed income recovery from schools	£200,000
v. Phasing out TLR allowances, three years from September 2021	£35,000

vi. Temporary split site allowance whilst on split sites	£38,000
vii. former Pupil Referral Unit support fund deleted as not used	£0
v. H3 Home, Hospital and Hub top-up 50 half time places at £5,500 including TPG at £330 and MFG at £170 at total cost	£275,000
vi. 25 tariffs at tariff C4 £6,168 plus 3.4% inflation	£159,443
vii. the remaining 25 half time places recharged to schools as the school receives full funding for the pupil whilst on the school roll	
I. SEN protection scheme for primary and secondary schools with a cap on a school's contribution set at £175 x NOR (at Oct 2022)	£616,000
m. High needs contingency/contribution to reserves	£109,038
n. SEN support services including 3.4% inflation MFG uplift as marked *	
i. Additional Needs Management*	£217,000
ii. Complex Learning Communications*	£118,803
iii. Equalities team – inclusion*	£281,100
iv. Hearing Impaired Team*	£434,000
v. Managed moves	£5,000
vi. Business support	£59,000
vii. DSG Services*	£134,100
viii. Behaviour Support Service – match schools de-delegation	£37,500
o. Charges and income	
i. Local authority recoupment	-£100,000
ii. Transfer from schools block	-£616,000
iii. Transfer from Central services block	-£80,000
p. the revised per pupil values for the schools budget for 2023/24, be approved as follows;	
i Primary per pupil value increased from £3,361 to £3,376	
ii Secondary Key Stage 3 per pupil value increased from £4,738 to £4,760	
iii Secondary Key Stage 4 per pupil value increased from £5,340 to £5,366	

Alternative options

1. The Budget Working Group (BWG) and Schools Forum have been consulted on the proposed budget plan and recommends the deficit budget to the Cabinet Member for approval. No alternatives have been considered as it is a requirement of the Childrens Act (2014) that children's needs must be met regardless of funding availability. The proposed budget is considered to minimise the increase in the cumulative high needs deficit due to the service demand pressures exceeding the funding allocated by government whilst investing in measures designed to reduce longer term pressures and in line with the agreed deficit management plan.
2. Additionally the DfE has specified a Minimum Funding Guarantee (MFG) of 3.4% to apply to special schools for both tariff and place funding which further erodes any value in the development of alternative options. 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. None have been identified. It should be noted that the Budget Working Group supported the proposals as set out in this report at their meeting on 3 March 2023. Following extensive debate Schools Forum agreed at their meeting on 17 March 2023 to recommend to increase of £256.40 per place, equivalent to a £100,000 increase to the budget in order to provide an additional 1.25% inflationary increase in addition to the MFG at 3.4% to ensure the special schools

settlement is more comparable with the 6% per pupil increase given to mainstream schools. Schools Forum carefully considered the balance between the need for an additional inflationary increase with the resultant increase in the high needs deficit.

Key considerations

3. The report sets out the forecast overspend of £0.7m on high needs in 2022/23 due to significant overspends regarding Complex Needs Funding (£0.4m), Post-16 top-ups (£0.3m), mainstream school top-ups (£0.3m) and SEN Protection (£0.2m) offset by savings elsewhere in the budget. As a consequence the DSG deficit is expected to rise from a £0.25m deficit to at least a £1m deficit. The Department for Education (DfE) has allocated a net £22.5m within the Dedicated Schools Grant (DSG) after deductions at source for special academy and Further Education College places which is a £3.6m increase compared with the initial 2022/23 high needs allocation from DfE.
4. The initial high needs budget for 2023/24 inevitably requires a deficit budget of £0.4m before the inclusion of potential 2023/24 in-year overspends from the ever increasing cost pressures. Advice from the DfE indicates that the deficit will continue to grow in the short term. Future reduction of the deficit will depend on appropriate increases in DfE funding and progress on increasing in-county provision in order to reduce the need for more expensive out-county placements. The Budget Working Group will monitor the financial position closely throughout the year. Much will depend on the successful implementation of the DfE SEND policy however it is difficult to see how increased cost pressures arising from increased demand for school top-ups at 15%pa and inflation, currently running in excess of 10%pa can be fully funded from DfE's considerably more modest 3% annual budget increase for the high needs block funding .
5. This report proposes a practical high needs budget for 2023/24 to ensure that the deficit is minimised and funding 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 2023/24 will be set at a net £22.5m after the transfer of £0.616m from the schools block and £0.08m from Central School Services.
6. The schools consultation paper set out the known high needs cost pressures for the high needs block for 2023/24 and was based on an increase of £2m in the net high needs. However much has changed since the consultation paper was drafted in the summer of 2022 and the high needs 2023/24 budget has required extensive remodelling to cover the increasing demand for high needs services and the increasing level of overspend.
7. Costs continue to increase for the SEN protection scheme and Schools Forum agreed an increased transfer from the Schools Block of £616,000. Expenditure in 2022/23 is forecast at £776k. Modelling for 2023/24 indicates that with a cap on the individual school's contribution of 175 x number on roll then expenditure in 2023/24 is likely to be contained with budget.
8. 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. Costs of the SEN Protection scheme continue to rise and will be above the level of the 1% transfer from the Schools Block that Schools Forum can approve in 2024/25. Future options will be developed with the BWG during this year and will include
 - a. setting the cap to keep the cost of the scheme within the 1% transfer value,
 - b. seeking support from schools for a transfer greater than 1% in order to apply to the Secretary of State for approval

- c. amending the operation of the scheme to target support on those schools with the greatest need
 - d. consideration of whether planning for an overspend is sensible in order to keep more pupils in mainstream schools compared with the increased risks of greater costs from more out-county places.
9. The Budget Working Group (BWG) received a presentation on the 3 March 2023 summarising the current budget position, the proposed high needs budget for 2023/24. The presentation is set out in Appendix 1.
10. In discussion of the proposed budget, the BWG noted that;
- A deficit budget was not unexpected as it has been clear for a number of years that in common with most other local authorities Herefordshire would inevitably incur a deficit
 - The BWG supported the responsible budget approach designed to minimise the growth of the deficit and the expected additional cost to the council when the DfE's statutory accounts override is removed in March 2026.

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11. In addition as part of the validation checks undertaken with the DfE an underspend on the MFG was identified due to the impact of Bredenbury transferring from the local authority schools section to the academy schools section – which reordered academy schools and moved budgets around resulting in an overstatement of the Minimum Funding Guarantee within the DfE's funding model.
12. When corrected the revised schools budget was improved so overall it is a 0.75% deduction from the full NFF rather than the agreed 1%. The per pupil values were increased as follows;
- a. Primary per pupil value increased from £3,361 to £3,376
 - b. Secondary Key Stage 3 per pupil value increased from £4,738 to £4,760
 - c. Secondary Key Stage 4 per pupil value increased from £5,340 to £5,366
13. Fourteen schools on the MFG or the Minimum per Pupil level Funding are not affected.

Community impact

14. The recommendations will provide a high needs budget for 2023/24 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 2023/24 is a deficit budget of £0.64m which will increase the forecast £1m DSG deficit at March 2023 by a further 60% and this is prior to any in-year overspends.
- 21. The DfE have extended the statutory accounts override until March 2026 and at this point Herefordshire Council will become responsible for funding the deficit. A high level deficit forecast indicated a deficit of £10m by March 2026 and £30m by 2030 was likely based on the experience of other local authorities from 2016-2022. It is expected that the planned actions identified by Herefordshire will reduce this growth in the deficit although more work on demand forecasting is being undertaken in order to determine the full impact of the agreed measures.
- 22. High needs budgets for future years will depend on the DSG funding allocated by the DfE.

Legal implications

23. 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.
24. 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.
25. 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.
26. 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
27. 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.
28. 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

29. 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 Childrens and Families directorate jointly with Schools Forum. Specifically financial risk will be managed throughout the year with the BWG.
30. 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 until the statutory accounts override expires in March 2026.
31. 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 will be undertaken with the support of the BWG as funding permits.

Consultees

32. 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 2023. However the high needs budget presented to schools forum varies significantly from that envisaged in the consultation with schools. The SEN protection scheme continues to be strongly supported by 4 schools. A presentation of the budget proposals was given the Herefordshire school leaders webinar on 10 January and no amendments were suggested.
33. The Budget Working Group were consulted on 3 March 2023 and Schools Forum on 17 March 2023. Their comments are included in paragraph 10 above.
34. A political group consultation was held on 23 March 2023. Councillors recognised the challenges faced and indicated their support for the approach taken.

Appendices

Appendix 1 High Needs Budget presentation to Budget Working Group 3 March 2023

Background papers

None identified.

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Sarah Buffrey, Democratic Services Officer	Date 08/03/2023
Finance	Wendy Pickering	Date 09/03/2023
Legal	Pooja Nahar	Date 07/03/2023
Communications	Luenne Featherstone	Date 06/03/2023
Equality Duty	Click or tap here to enter text.	Date Click or tap to enter a date.
Procurement	Lee Robertson	Date 10/03/2023
Risk	Click or tap here to enter text.	Date Click or tap to enter a date.
Approved by	Darryl Freeman	Date 17/03/2023

Please include a 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
H3 Home and Hospital Teaching Team (Hub, Home, Hospital)

NOR Number on Roll, typically at a school
PRU Pupil Referral Unit
SEN Special Education Needs
SEND Special Education Needs and Disability
TPG Teachers Pension Grant