



NORTH YORKSHIRE SCHOOLS FORUM

Date of meeting:	Thursday, 26 September 2019
Title of report:	DfE Call for Evidence and Current Consultations
Type of report: Delete as required	For information only
Executive summary: Including reason for submission	Summary of NYCC response to the call for evidence on SEND and AP and information of 'live' DfE consultations.
Budget / Risk implications:	None
Recommendations:	Schools Forum members are asked to note the contents of the report.
Voting requirements:	None
Appendices: To be attached	Appendix A: Response to Call for Evidence on SEND and AP
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1.0 PURPOSE OF THE REPORT

- 1.1 The Department for Education have issued a number of consultations recently which are summarised in this paper. Details of all DfE consultations can be found here: https://consult.education.gov.uk/consultation_finder/

2.0 FUNDING FOR SEND AND THOSE WHO NEED AP: CALL FOR EVIDENCE

- 2.1 The DfE launched a consultation on SEND and AP funding on 3 May 2019 with a closing date of 31 July 2019. A Government response has not yet been published. The consultation submission from the local authority is detailed at **Appendix A**.

3.0 IMPLEMENTING MANDATORY MINIMUM PER PUPIL FUNDING LEVELS

- 3.1 Launched on 10 September 2019 with a deadline of 22 October 2019. The DfE is consulting on how to implement the minimum per pupil funding levels in the National Funding Formula (NFF) on a mandatory basis in 5 to 16 school funding. This means that every local authority will have to use the factor in their local funding formulae from 2020-21. Following the consultation, this will be reflected in the School and Early Years Finance (England) Regulations.
- 3.2 The consultation focuses on how to implement the change, seeks views on technical and operational arrangements and covers:
- the methodology used to calculate the minimum per pupil levels in local funding formulae;
 - the circumstances in which local authorities can request to disapply the use of the minimum per pupil levels;
 - considerations for delivering this change at a local level;
 - with regard to the public sector equality duty, the impact of the proposals on different groups of pupils, particularly those with protected characteristics.

- 3.3 The consultation is most pertinent to local authorities, who hold responsibility for the formulae, and maintained schools and academies, as recipients of the funding.

- 3.4 The DfE intend to publish the results of the confirmation in November 2019.

4.0 EXTENDING THE ACADEMIES RISK PROTECTION ARRANGEMENT (RPA) TO LA SCHOOLS

- 4.1 Launched on 9 September 2019 with a deadline of 4 November 2019. The DfE is considering extending the risk protection arrangement (RPA) currently operational for academy trusts (ATs) to the local authority maintained school (LAMS) sector. The consultation exercise seeks views on extending the RPA to LAMS provision and will allow those with comments, views or concerns to express them. The Government will then make a decision on whether the RPA should be extended to LAMS in England.

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- 4.2 The DfE commenced the risk protection arrangement (RPA) on 1 September 2014, for academies, on an opt-in basis, as an alternative to commercial insurance. The RPA project was initiated to help reduce the cost of protecting academies against risk. The DfE is now looking at the potential to extend the RPA to LAMS in England in order to help reduce the cost of protecting them from risk.
- 4.3 The DfE are proposing that in principle the coverage of the LAMS arrangement and the cost per pupil should be the same as for the current RPA. As in the academy arrangement, costs for special schools and alternative provision (pupil referral units) would be expressed per place rather than per pupil. The arrangement rules set out the basis of membership, the risks covered and the process for making claims.
- 4.4 Academy trusts in membership of the RPA contribute to the RPA by having an amount deducted from their General Annual Grant before it is paid to them. In line with this approach, the DfE are proposing that where individual governing bodies of LAMS join the RPA, the financial mechanism will be an adjustment to their budget share and a corresponding adjustment to the local authority's Dedicated Schools Grant (DSG). In order to achieve this the DfE proposes to amend Parts 2 and 3 of the new School and Early Years Finance Regulations to introduce a new formula factor of membership of the RPA which will result in a negative adjustment to the school's budget share. Local authorities would be required to use this factor. The DfE would then make an equivalent negative adjustment to the local authority's DSG.
- 4.5 The DfE propose that it will also be possible for all LAMS in a LA to join collectively by agreeing through the Schools Forum to de-delegate funding, as they currently can for purposes including insurance. In that case we propose the LA would apply for membership on behalf of all of the schools, though LAMS would become individual members and make individual claims. In that case the LA will be holding the money and only an adjustment to its DSG will be needed.
- 4.6 We propose also to make directed revisions to local authorities' schemes for funding schools so that wherever the scheme refers to insurance it also refers to membership of RPA for LAMS as an alternative.
- 4.7 The consultation document does not specify when the DfE will publish the results of the consultation.
- 5.0 FINANCIAL TRANSPARENCY OF LOCAL AUTHORITY MAINTAINED SCHOOLS AND ACADEMY TRUSTS
- 5.1 Launched on 17 July 2019 with a deadline of 30 September 2019. This consultation attempts to outline the current financial transparency arrangements for academy trusts and maintained schools, and to consider possible changes. The DfE is seeking to improve transparency in the financial health of LA maintained schools, and believe that a number of transparency measures currently used in the academy trust sector could be adapted for LA maintained schools.
- 5.2 The consultation document refers to a number of issues which are summarised below:

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<p>Issue 1 – making public where local authorities are failing to comply with deadlines for completing assurance returns and financial collections. This includes the Schools Financial Value Standard (SFVS) – the local authority’s Chief Financial Officer must sign a statement of assurance to the department to show the number of schools that complied with the standard. In 2017-18, only 29 out of 14,395 failed to complete the SFVS. The Chief Financial Officer must also sign an assurance statement on the annual Dedicated Schools Grant (DSG).</p>	<p>Proposal 1 - if a local authority fails to comply with more than two deadlines from the following collections, we propose to publish the name of the local authority on GOV.UK:</p> <ul style="list-style-type: none"> - School Financial Value Standard (SFVS) - Dedicated Schools Grant CFO assurance statement - Consistent Financial Reporting - Section 251 Budget - Section 251 Outturn
<p>Issue 2 – local authorities can withdraw delegation from schools for financial reasons or issue a notice of financial concern. LA also recover funds from fraud investigations but do not report the value of money recovered.</p>	<p>Proposal 2a – the DfE proposal to collect the number of schools with suspended budgets and notices of financial concern through the existing DSG assurance statement signed by the local authority CFO at the end of the financial year.</p> <p>Proposal 2b - LAs would be required to report to DfE on the amount recovered from investigating fraud. The LA would have to provide details of the nature of the case, and the steps the LA has put in place to prevent further misuse of the DSG. The DfE would also challenge those LAs who the DfE think have not made sufficient efforts to recover DSG.</p>
<p>Issue 3 – Maintained schools are not required to provide local authorities with 3-year budget forecasts.</p>	<p>Proposal 3 – Revising the scheme for financing schools to make it a requirement for maintained schools to provide LAs with three-year budget forecasts.</p>
<p>Issue 4 – Strengthening Related Party Transactions (RPTs) arrangements in maintained schools.</p>	<p>Proposal 4a: Making schools append a list of Related Party Transactions to their response to the new question in the Schools Financial Value Standard (SFVS) about their arrangements for managing RPTs, so that the information goes to the local authority and can then be passed on to the department</p>

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	<p>Proposal 4b: Making a directed revision to the statutory Scheme for Financing Schools to require schools to report all RPTs, or RPTs above a certain threshold, directly to the local authority.</p> <p>Proposal 4c: Making a directed revision to the statutory Scheme for Financing Schools to require schools to seek permission from the local authority to enter into RPTs above a certain amount.</p>
<p>Issue 5 – Maintained Schools internal audit is too infrequent. Schools are within the overall audit arrangements determined by the local authority’s statutory section 151 officer. Cycles for auditing maintained schools vary between LAs.</p>	<p>Proposal 5 - Making a directed revision to the scheme guidance to require that every maintained school be subject to internal audit at least every 3 years.</p>
<p>Issue 6: Strengthening arrangements to help schools that are in financial difficulty. There is currently no requirement for LAs to report to DfE their actions to address financial difficulty and effective resource management in specific schools.</p>	<p>Proposal 6a: Make a directed revision to the scheme for financing schools requiring schools to submit a recovery plan to their maintaining authority when their revenue deficit rises above 5%.</p> <p>Proposal 6b: Collect information on the number of recovery plans in each LA through the DSG annual assurance return from the CFO.</p> <p>Proposal 6c: Formalise the approach to working with LAs and include a request for high level action plans from some LAs:</p> <ul style="list-style-type: none"> - Share published data on school balances and school characteristics - Targeted monitoring and support from DfE to ensure LA support and challenge from DfE - Action plan and increased monitoring
<p>Issue 7: There is not enough transparency when it comes to reporting high pay for school staff</p>	<p>Proposal 7: all LA maintained schools should be required to publish annually on their websites the number of individuals earning over £100K in £10K bandings. This usually refers to all remuneration (i.e. including employer pension contributions).</p>

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Issue 8: There is not enough transparency when it comes to reporting maintained school income and expenditure. The DfE believe it would add significantly to transparency if there were a requirement for individual schools to publish annually on their websites their latest CFR statements.	Proposal 8: all LA maintained schools should be required to publish annually on their website their latest Consistent Financial Reporting statement of income, expenditure and balances.
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5.3 The consultation document also states that “..there is one area in which arrangements for maintained schools are currently more rigorous than for academy trusts.” The Self-Assessment tool for academy trusts (similar to the SFVS for LA maintained schools) is widely used by academies but is not currently mandatory. The DfE have decided to make the Self-Assessment Tool mandatory for academies with effect from the end of the academic year 2018/19. This is not a consultation question.

6.0 NEXT STEPS

6.1 The Local Authority will be preparing careful responses to the multiple consultations. Schools are asked to note the consultations and to note the option of preparing a response where they feel it impacts on them.

STUART CARLTON

Corporate Director – Children and Young People’s Service

NORTH YORKSHIRE COUNTY COUNCIL**Call for Evidence: Funding for SEND, and those who need alternative provision****Response from North Yorkshire County Council**

There is a crisis in SEND funding; demand has risen at a significant pace for children and young people assessed as requiring Education, Health and Care Plans (EHCPs). Failure to sufficiently fund the policy reforms in 2014 and a continued lack of funding from the Department for Education (DfE) in the following five years has confirmed SEND as a funding and lobbying priority for local government.

The call for evidence is intended to be a wide-ranging review of financing Special Educational Needs and Disabilities (SEND), alternative provision, those at risk of exclusion, SEN for students in post-16 education, early intervention to prepare young people for adulthood, and partnership working to support children and young people with complex needs. The breadth of the review risks failing to deal with the many issues in any meaningful depth yet omits to seek views on special schools, expensive independent and non-maintained provision, SEN transport or SEND capital financing arrangements.

The 'elephant in the room' is, of course, that the call for evidence does not seek evidence on the chronic funding shortfall in high needs. It is numb to the question of the overall quantum of funding and perpetuates the view that the Department simply does not understand the funding crisis that they have created and failed to respond to. Waiting for a spending review – of imprecise timing - on the overall quantum available for high needs or school funding compounds this perception.

North Yorkshire County Council will not be completing the multiple-choice questionnaire devised to make it easier for civil servants to analyse results. Instead, this response has been written to provide the Department with a more rounded view of the issues facing local authorities.

Demand Pressures

There is a clear gap between assessed need and funding. Statistics published by the Office for National Statistics (ONS) clearly show a rapid increase in the number of children assessed as requiring EHCPs since 2015. Funding has not kept pace with this demand increase; indeed, in North Yorkshire, there has been a real-terms decrease in funding. Whether or not the Department or HM Treasury can see any evidence of the impact of the reforms is a moot point; the 2014 reforms have stimulated demand and should be appropriately funded.

In 2019-20, North Yorkshire County Council will cross-subsidise the shortfall in funding from the Department by £7.6m rising by at least £2m each year for the next two years – a total of at least £28.8m over three years. This is unsustainable and requires a fundamental review of the overall quantum of funding. However, this alone will not remedy the crisis; the distribution of high needs funding is inequitable and unfairly penalises children and schools in North Yorkshire. It clearly fails to deliver against the new burdens policy.

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At a national level, the f40 education fairer funding campaign group (comprising the 42 local authorities who are among the lowest funded for education) estimate that an extra £3.12bn will be required for High Needs by 2022/23.

Distribution

Half of the high needs national funding formula is based on the historic spend factor locking in previous funding disparities meaning that rising demand is not reflected in allocations. It cannot be right that, with a 50%+ increase in demand since 2015, the high needs funding formula continues to place North Yorkshire on the funding floor – in effect, assuming that North Yorkshire has too much funding! The funding floor has risen by less than inflation meaning that there has been a real-terms reduction in funding. A child in North Yorkshire will receive comparatively less than a child in other parts of the country despite having exactly the same complex need or diagnosis and/or exactly the same assessment. For example, funding per head in the London Borough of Sutton (£556 per head) is almost twice that of North Yorkshire (£283 per head). Whilst the Department will point to proxies of need, it fails to address the cost drivers of organising and delivering SEND provision efficiently and locally in a sparsely populated rural area.

Funding provided by the DfE in December 2018, whilst welcome, barely made a dent in the level of overspending; a £1.2m temporary contribution to an overall underlying overspend of £6.1m.

Local Decision-Making

The Department has strangled local decision-making through restrictions in how local authorities can manage pressures effectively. Increased centralisation of education funding decisions are exemplified by:

- ringfencing schools block funding creating rigidity in the system;
- local authorities are required to seek Secretary of State approval for transferring funding between blocks;
- tightened requirements for local authorities to prepare recovery plans for DfE officials to review;
- annual budget allocations that are late - only ever confirmed in June (three months into the financial year) – that hinder schools and local authorities from planning effectively.

Mainstream School Funding

Proxies for additional needs funding in the schools national funding formula include measures of deprivation and low prior attainment. These are poor proxies of need. How is deprivation a good proxy indicator for assessed medical needs? The benefit for additional needs funding is often lost amidst the application of floors and ceilings (e.g. capping, minimum funding guarantee, minimum per pupil levels of funding). It is not difficult to see why 'notional' SEN funding can be difficult to explain and how it might be perceived to lack transparency. Notably, the proxies fail to provide a sparsity factor for small, rural schools. Equally, it would be a mistake to require schools to ring-fence their 'notional' SEN allocation for spending on SEN as it would hinder the efficient running of schools.

The Institute for Fiscal Studies (IFS) report that there has been an 8% real-terms decrease in schools funding since 2010. Insufficient school revenue funding alongside a lack of capital

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investment in schools and the unchecked strength of parental voice have fuelled an increase in expensive independent school provision. SEN Tribunals - which can often rule in favour of expensive independent school provision - lack accountability in balancing quality of provision with the financial consequences of both education and transport costs – yet the code of practice is clear that provision needs to be “good enough”.

Special School Funding

The call for evidence appears not to seek the views of special schools nor does it look at issues with financial arrangements for special schools. Yet, the funding formula prescribed by the Department has failed to keep up with inflation; the base funding of £10,000 per place introduced in 2013, would now be worth £11,250 assuming 2% p.a. compounded inflation. This is contributing to increasing financial distress within special schools. Special schools are not provided with the benefit of lump sums or sparsity factors afforded to mainstream schools.

Independent and Non-maintained schools

Although the call for evidence cites the increase in the number of young people attending special school rather than mainstream schools, it appears less concerned about the increase in young people attending independent and non-maintained schools. These are often expensive provision and although they have a place within a mixed economy of provision, we remain concerned that:

- they can often represent poor value for money as places are used simply because local provision cannot physically provide additional places. This is felt more acutely in rural areas where ensuring that there is local provision often results in diseconomies of scale.
- the Department mandates that local authority maintained schools and state funded academies are funded as per the national funding formula yet allows independent schools to ‘name their price’. This can fuel offers which are appealing to parents but may overstate the support that a child/ young person actually needs.

Despite the collective purchasing power of government, the Department has offered little action in relation to the spiralling cost of independent and non-maintained provision.

AP/ PRS funding

It is surprising that the DfE have included Alternative Provision and Pupil Referral Services within the call for evidence when the ink on the final report of the Timpson Review has barely dried. The Government has accepted all of the recommendations. North Yorkshire County Council is generally supportive of the measures outlined in the Timpson Review; establishing greater shared accountability with schools to avoid exclusion wherever possible. Why then, the call for yet more evidence?

Early Help and Children’s Services

Within the context of high needs, there is little that incentivises schools to be inclusive. The funding system should prioritise preventative provision over permanent exclusion; schools should be held accountable for the results of permanently excluded children and elective home education where they were the last school to have a child or young person on roll. Financial incentives should also sharpen the focus of school leadership to make the life-changing decision to permanently exclude – yes, Headteachers should retain a power to

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exclude but that decision should not be made in a financial vacuum, or with a perverse financial incentive.

Ofsted's accountability measures should have clear regard to the level of inclusion within schools and should, perhaps, be a threshold/ qualifying question.

The call for evidence seeks views on the early intervention measures that local authorities could put in place. Yet there is no mention that the Department cut first a number of individual grants which were then rolled into Early Intervention Grant (EIG). This was then further reduced and re-established within Revenue Support Grant (RSG). This too, was reduced before disappearing altogether. Some revenue streams were removed from EIG and added into Dedicated Schools Grant (DSG), and subsequently ring-fenced (e.g. disadvantaged two-year old funding). The Department also decided to withhold c.£150m to fund central project initiatives. Other new funding streams have appeared, often time-limited or with attached conditions (e.g. Troubled Families programme and Adoption Reform Grant) – specific initiatives without a systems-wide policy framework. It is not surprising then that the picture of early intervention initiatives across the country is fragmented.

Transport, Capital and Health

The DfE also fails to consider the High Needs funding system in its entirety; looking only at those issues which it thinks falls within the remit of the Dedicated Schools Grant (DSG). SEN Transport costs have risen by over 100% in North Yorkshire as a direct consequence of the 2014 SEND policy reforms. Funded by council taxpayers and business rates, HCLG is clearly cross-subsidising DfE policy reforms. The call for evidence is silent on the issue of SEN transport despite this affecting many rural authorities.

Health funding appears to be ad-hoc and differs between local areas. What work has the Department undertaken with the Department of Health and Social Care to review the patchwork of financial contributions to local authorities? Consistency and equity must be brought to bear on this issue.

Restricted capital funding has perpetuated a lack of investment in special schools. The local authority rations limited school capital funding to prioritise essential maintenance across the school estate but with a mounting maintenance backlog, maintaining the fabric of special schools is a challenge and does not provide much-needed improvements in special and mainstream schools. North Yorkshire received the absolute minimum level of funding from the Special Provision Capital Fund. We have used this funding creatively, primarily to increase the number of places available but a much greater sum is required to fulfil the ambitions of both the 2014 reforms and the Strategic Plan for SEND in North Yorkshire.

Recommendations

It is becoming evident that the Department does not truly grasp the scale or pace of the funding crisis. There appears to be a lack of urgency in their actions and a numbness to the financial issues facing schools and local authorities. This response to the call for evidence recommends that:

1. DfE properly fund the policy decisions on SEND by increasing the overall quantum of funding available for high needs. It is not sufficient to wait to see evidence of the impact of the legislative change; it is, without doubt, the legislative change that has caused an increase in costs for schools and local authorities.

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2. DfE engage with HCLG to better understand the extent of the cross-subsidy of their policy reforms – there is little point in HCLG consulting local authorities on fairer funding only for DfE to raid HCLG funding.
3. It is essential that DfE review the distribution of funding for High Needs which is more forward-looking and reflects the unavoidable higher cost of delivery in rural areas as well as a timely assessment of need.
4. DfE should review and benchmark Health contributions to SEND in different local authorities and work with the Department for Health and Social Care and local authorities to ensure consistency and equity in funding arrangements.
5. DfE should move away from determining annual budget allocations and ensure a multi-year settlement that enables local authorities and schools to plan effectively.
6. DfE should seek to apply funding controls to independent and non-maintained special schools to assist local authorities in avoiding high-cost placements