



Department  
for Education

# **Provision for children and young people with special educational needs and disabilities, and for those who need alternative provision: how the financial arrangements work**

## **Call for Evidence**

**Launch date: 03 May 2019**

**Respond by: 31 July 2019**

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# 1. Introduction

1.1 We are inviting interested individuals and organisations to consider aspects of the financial system for special educational needs (SEN) and high needs funding in England that may be adversely influencing local authorities, mainstream schools, colleges and other education providers in their support for children and young people with SEN, those who are disabled, those who require alternative provision (AP) and those at risk of exclusion from school.

1.2 We have received many representations concerning the adequacy of funding for special needs. We understand that the overall amount of funding available is the most pressing concern for many schools and local authorities. The total funding available for high needs will be carefully considered in the forthcoming spending review. This call for evidence is intended to focus on a related issue: how the current available funding is distributed, and what improvements might be made in future. It seeks information about whether there are aspects of the funding system that are driving up costs without improving outcomes for the young people concerned. As schools, colleges and local authorities have looked hard at their budgets in recent years, we have heard more about aspects of the financial arrangements that can work against those seeking to ensure that suitable provision is made, and want to understand what changes could be made that enable the right support to be given at the right time and at the right cost.

1.3 We would welcome views on specific areas of concern that have been drawn to our attention as well as on other aspects of the funding and financial arrangements that may not be helping us to get the most value from the resources available.

1.4 The questions we would like answers to are set out in a separate online survey. Please respond using this as other forms of response will not be as easy to analyse. As you respond to the online survey questions, please read the rest of this document. You don't have to answer all the questions, but in any case it would be very helpful if you would answer the initial questions so we can see whether you are responding on behalf of a particular type of organisation, or from a specific local authority area in England.

## Who this is for

1.5 This call for evidence is for:

- Local authorities
- Schools and colleges
- Any other interested organisations and individuals

## Issue date

1.6 The call for evidence was issued on 03 May 2019.

## Enquiries

1.7 If your enquiry is related to the policy content of the call for evidence you can contact the team via email:

[HighNeedsFundingReform.Consultation@education.gov.uk](mailto:HighNeedsFundingReform.Consultation@education.gov.uk)

If your enquiry is related to the DfE e-consultation website or the process in general, you can contact the DfE Ministerial and Public Communications Division by email: [Consultations.Coordinator@education.gov.uk](mailto:Consultations.Coordinator@education.gov.uk) or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

## **Additional copies**

1.8 Additional copies are available electronically and can be downloaded from: [GOV.UK DfE consultations](#).

## **The response**

1.9 The results of the call for evidence and the Department's response will be [published on GOV.UK](#) following analysis of the responses later in 2019.

## 2. About this call for evidence

2.1 In December 2018, having heard from some schools about the difficulties they encounter in providing support for their pupils with special educational needs (SEN) costing up to £6,000 per annum before they are able to access additional support from their local authority, the Secretary of State announced that there would be a wider call for evidence.

2.2 We have heard local authorities', schools' and colleges' concerns about the rising costs of provision for children and young people with SEN and those who are disabled, and about the reducing availability of specialist advice and support. We will be looking carefully at how much overall funding is required nationally ahead of the next government spending review.

2.3 This call for evidence is not directly about how much funding is needed or about the statutory processes for meeting complex needs. Rather, it is intended to focus on understanding how current funding is distributed, including how it enables mainstream schools to make provision for their pupils with additional needs, and on improvements that could be taken forward in future. The funding system is intended to support schools in fulfilling their statutory duty to use their best endeavours to meet the needs of children and young people with SEN.

2.4 The call for evidence is also looking at factors in the current funding system that may be contributing to the escalation of costs, without necessarily securing better long-term outcomes for pupils and students.

2.5 We are extending this call for evidence to:

- aspects of the funding system for pupils who are excluded as well the funding of alternative provision (AP);
- the post-16 funding arrangements for young people with SEN. Although there are significant differences between the 5 to 16 funding system and the 16 to 19 funding system, it is important that we understand the picture across all provision for children and young people with SEN.

2.6 Our ambition for those with SEN, those who have disabilities, and those who are placed in AP or are at risk of exclusion from school, is exactly the same as for every other child and young person – to achieve well in school and college, find employment and go on to live happy and fulfilled lives. The objectives of our financial and funding system are therefore that it:

- supports decisions being taken centred around the needs of the child or young person, and what provision will best address those needs, rather than principally for administrative or financial reasons;
- supports early intervention, especially where that can stop problems growing, and therefore minimise future costs;

- facilitates children and young people staying in mainstream schools<sup>1</sup> and colleges, where they can provide suitable provision;
- avoids creating undue financial pressure for schools, colleges and other providers where they identify a child or young person has SEN or accept a child or young person with SEN on to their roll;
- delivers value for money in the use of public funding, with appropriate transparency and accountability in the system to secure the best outcomes with the resources available; and
- helps schools, colleges and local authorities to manage within the resources available to them.

2.7 However, we are concerned that aspects of the current system may be causing:

- decisions to be taken primarily to avoid financial pressures from falling on a particular institution, by transferring costs elsewhere;
- a continuing drift from mainstream school provision to special school and alternative provision, which is raising overall costs to the system without improving the outcomes for children;
- disproportionate pressure falling on some mainstream schools and colleges, especially if they get a reputation for providing good SEN support, or are small and so cannot easily manage exceptional costs within their budget;
- over-emphasis on securing an education, health and care (EHC) plan to guarantee a particular level of financial support, rather than on making the special educational provision necessary to meet the needs of the child, with or without an EHC plan.

2.8 We are looking for evidence about the extent to which these concerns are justified, and any other effects of the current system that are acting to prevent achievement of the objectives outlined in paragraph 2.6 above.

2.9 Annex A sets out further information about the current high needs funding arrangements. There are no specific questions on the high needs and other funding that supports children aged under 5, but we would welcome any evidence on this aspect of funding for these younger children who have SEN or who are disabled. Local authorities are currently required to set up an SEN Inclusion Fund to support early years providers in meeting the needs of individual 3 and 4 year old children with SEN; and the Disability Access Fund provides support to providers to enable eligible 3 and 4 year old children to access the free entitlements (at a rate of £615 per eligible child per annum).

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<sup>1</sup> There is a presumption in law that children with SEN will be educated in mainstream schools subject to certain conditions.

2.10 We also want to gather views about how some of the more technical and structural aspects of the funding and financial system could be improved or changed, so that we can be sure the available funding is used to secure suitable provision and deliver value for money. It is important that professionals (teachers, educational psychologists, SENCOs and others) working in local authorities, schools, colleges and elsewhere, who are responsible for making provision for children and young people do not face unnecessary structural barriers. We need funding and financial arrangements that encourage all those working and caring for our most vulnerable children and young people to support and help them prepare for adult life, and to contribute to a sustainable system in the future.

2.11 We will want to ensure that any improvements we introduce as a result of this call for evidence are consistent with:

- the wider system of support and ambition for children and young people with SEN and disability that was introduced by the Children and Families Act 2014; and
- the duty on local authorities, under section 19 of the Education Act 1996, to secure suitable education (at school or in AP) for those children of compulsory school age who would otherwise not receive it.

2.12 As well as suggestions for improvements, we also want to hear about examples of good practice and aspects of the current system that have a positive effect, that we should make sure we protect.

## **Respond online**

2.13 To help us analyse the responses please use the online system wherever possible. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

## **Other ways to respond**

2.14 If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may request a word document version of the form and email it or post it.

### **By email**

[HighNeedsFundingReform.Consultation@education.gov.uk](mailto:HighNeedsFundingReform.Consultation@education.gov.uk)

### **By post**

Call for Evidence  
Department for Education  
4<sup>th</sup> Floor Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

## **Deadline**

2.15 The consultation closes on 31 July 2019.



### 3. Funding for pupils with SEN in mainstream schools

3.1 The vast majority of children with SEN have always been taught in mainstream schools. The reforms introduced by the Children and Families Act 2014 retained the general principle that children with SEN should be taught in mainstream schools, unless more specialist provision is needed,<sup>2</sup> and extended this principle to young people in further education. Mainstream schools (along with colleges) are required to identify and address the SEN of their pupils and students, and to use their best endeavours to make sure that they get the support they need. They are also required to have regard to the SEND Code of Practice.<sup>3</sup> Chapter 6 of the Code sets out the expectations on schools around SEN support. Chapter 8 of the Code sets out expectations on everyone working with children and young people with SEN to prepare them for adult life.

3.2 Although some of the issues covered in this chapter are relevant to colleges, this chapter focuses on the school system. If you are responding to this call for evidence in relation to students in colleges, please see chapter 5.

3.3 Education funding enabling provision for children and young people with additional needs, including SEN, is currently available to schools through different funding streams, including:

- primary and secondary schools' funding, as determined through the local formula and allocated to local authorities by the national funding formula (for 5 to 16 year olds), and through the national funding formula for 16 to 19 year olds;
- special schools' place funding;
- high needs targeted and top-up funding from local authorities;
- high needs funding for local authority services;
- pupil premium grant.

3.4 We expect local authorities and schools to bring together this funding so that it works for all those children and young people who need extra help, and want to understand how improvements could be made to facilitate this and to ensure that decisions are made at the most appropriate level. Chapter 7 asks for views more generally on how budgets controlled by different budget holders can be brought together to achieve maximum impact.

### Funding for SEN through the schools funding formula

3.5 In 2013-14 greater standardisation of local authorities' funding formulae for mainstream schools resulted in the introduction of a requirement for local authorities to

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<sup>2</sup> The law on this is that a child must be educated in a mainstream school unless: the parent or young person does not wish it; or providing that education is incompatible with the provision of efficient education to other children and no reasonable steps can be taken to prevent this.

<sup>3</sup> This can be found here: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>.

delegate sufficient funding to meet the costs of SEN support up to £6,000 per pupil, per annum. In recognition of that expectation, both local funding formulae and the new schools national funding formula include factors relevant to additional needs, which act as proxies for a school's cohort of pupils who need extra support, including those with SEN. The additional needs factors in the national funding formula give schools about £6 billion nationally. This is intended to ensure mainstream schools have the resources they require as part of their core budgets.

3.6 As well as formula factors relating to deprivation – specifically pupils from low income families eligible for free school meals and those who live in areas which have a wider range of higher deprivation indicators – the schools national funding formula allocates additional funding for pupils with a low level of attainment in their previous phase of education (“low prior attainment”). This can act as a proxy for targeting SEN funding to schools, due to a strong correlation with low prior attainment, enabling them to make appropriate special provision for their pupils. The use of proxy indicators avoids any perverse incentive to over-identify pupils as having SEN if funding was allocated on the basis of schools’ assessments of pupils with SEN.

3.7 While it is optional to do so, almost all local authorities choose to use a low prior attainment factor in their own local schools funding formulae, with the funding allocated through this factor contributing to schools’ notional SEN budgets. Local authorities can choose to set the per pupil funding rate at a lower value than the national funding formula.

3.8 We would welcome views on whether local authorities’ schools funding formulae are directing funds appropriately to enable schools to support their pupils with SEN, and in particular whether the low prior attainment factor could be improved.

3.9 Currently, in both national and local funding formulae, pupils with low prior attainment attract a single value based on attainment at the end of reception (based on the Early Years Foundation Stage Profile) and the end of Year 6 (based on end-of-key stage 2 national curriculum assessments). The factor does not distinguish between pupils who are very close to national expectations, and those who are working well below these.

3.10 We are considering the possibility of tiering this element of funding to target pupils with lower attainment in mainstream assessments and, by proxy, pupils with more complex SEN. Following support for this approach when we consulted on the national funding formula in 2017, we are now exploring options for making this change from 2021-22. Any specific proposal arising from this call for evidence would be subject to further consultation.

3.11 We would therefore be grateful for views on the option of tiering low prior attainment funding in the national funding formula, and allowing local authorities to do so in their local formulae. In particular, we are interested in whether this would better target pupils in need of more support, and whether such a change would create any positive or negative impact for primary or secondary schools.

3.12 Please answer questions 1 to 4 on the online survey, about the SEN related factors in the schools funding formula.

## Targeted funding and support for SEN provision in schools

3.13 We recognise that the distribution of pupils with SEN and high needs across schools is uneven and that there are limitations to what can be achieved through proxy factors in a funding formula.

3.14 As part of the funding system in operation since 2013-14, local authorities have been permitted to target additional high needs funding to those mainstream schools with disproportionate numbers of pupils with SEN, and particularly those with high needs, where the local formula would not have given sufficient resources to meet the costs up to £6,000 per pupil.

3.15 Local authorities have reported spending £46 million in 2015-16, £67 million in 2016-17 and £57 million in 2017-18 on such targeted funding. They have budgeted to spend £57 million on this in 2018-19.<sup>4</sup>

3.16 This extra funding for mainstream schools can be added to their budgets to enable them to meet the varying needs of pupils that arise, and to recognise those schools that have developed a reputation for supporting pupils with SEN, including those that have developed a particular specialism.

3.17 Beyond publishing some examples of how local authorities distribute this funding to schools (some, for example, have panels of head teachers advising on requests from schools under pressure and others have a more formulaic allocation methodology), we have not advocated a particular approach, considering that this is something best decided by the local authority, in consultation with its schools and schools forum.

3.18 In 2015, as part of our preparation for the introduction of a high needs national funding formula, we asked Isos Partnership to look at all aspects of SEN funding. Their research report, published in July 2015,<sup>5</sup> indicated that there was a case for more guidance on the distribution of targeted funding, and we would welcome views on that. Please answer question 5 in the online survey, about the additional targeted funding for SEN.

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<sup>4</sup> This information is taken from the returns from local authorities to the department under section 251 of the Apprenticeships, Skills, Children and Learning Act 2009.

<sup>5</sup> The report can be found at this link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445519/DFE-RR470 - Funding for young people with special educational needs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445519/DFE-RR470_-_Funding_for_young_people_with_special_educational_needs.pdf)

## The notional SEN budget

3.19 To help mainstream schools with their spending decisions relating to support for their pupils with SEN, they receive a notional SEN budget: an identifiable but notional amount within each school's total annual budget share (in the case of local authority maintained schools) or annual grant (in the case of academies). The concept of the notional SEN budget originated from the implementation of the School Standards and Framework Act 1998. It has continued as part of successive school funding changes, most recently those in 2013-14 which resulted in the introduction of the requirement for local authorities to delegate sufficient funds to meet the costs of SEN support up to £6,000 per pupil, per annum.<sup>6</sup>

3.20 On the approach for calculating a notional SEN budget for each school, however, we have allowed local authorities flexibility. We publish data on how different authorities have calculated this element of school funding so that they can learn from each other in deciding their approach, and also publish data on each school's notional SEN budget.<sup>7</sup>

3.21 In their 2015 report, Isos Partnership provided helpful information on the operation of the notional SEN budget, including the £6,000 threshold, commented on the variation in different authorities' approaches to both the calculation of the budget and the way in which support was provided to pupils with similar needs, and considered options for improving the system.

3.22 In particular, they were not convinced that notional SEN budgets were performing the function they were designed to fulfil. They proposed that the department should consider using alternative methods to provide clarity for schools on how their core formula funding was made up, so as to enable them to meet the needs of pupils with SEN.

3.23 Now that the national funding formula, for both schools and high needs, is in place, we would welcome views on how helpful it is to continue with the current arrangements, and on whether we should seek to identify a notional SEN budget as part of the national funding formula for schools. We would also like views on alternative ways in which we might give clarity to schools and on what improvements could be made to the management of and accountability for spending of schools' SEN funding.

3.24 Please answer questions 6 to 8 on the online survey about mainstream schools' notional SEN budget.

## The £6,000 threshold

3.25 Before 2013-14 each local authority set their own arrangements for the allocation of additional resources to mainstream schools for those pupils who had more complex

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<sup>6</sup> The notional SEN budget is intended to support the school in making available suitable provision for children with SEN, but is not intended to cover other related expenditure, such as employing a SENCo or providing staff training on SEN.

<sup>7</sup> Data about individual schools' funding for 2018-19, including their notional SEN budgets, is set out here: <https://www.gov.uk/government/publications/schools-block-funding-allocations-2018-to-2019>.

needs. Some authorities had a low threshold above which the school would qualify for extra resources, and some had a high threshold. Often these thresholds were linked to the level of need beyond which children would be assessed for statements of SEN, leading to very different statutory assessment practice across the country, and even in neighbouring local authority areas. In many cases authorities provided the school with resources to meet the full cost of additional support, once the local cost threshold had been exceeded, creating a significant financial incentive for the school to identify costs beyond the threshold.

3.26 From 2013-14 the school and high needs funding system was changed to bring in a more consistent approach. Local authorities were required to use a more limited number of factors in their local formula and to provide schools with sufficient resources through the formula to meet the costs of their pupils' additional SEN support up to £6,000. Schools could access high needs top-up funding for the costs of support in excess of this common threshold. In this way schools would have the resources to meet the costs of supporting those with lower level needs, and – through the top-up funding – the excess costs of those with more complex needs.

3.27 For those local authorities that had previously operated a “cliff edge” approach, whereby the full costs of supporting a pupil with complex needs were met once the costs exceeded the specified threshold, the arrangements from 2013 reduced the perverse incentive for schools to argue for increased costs of support so that they would have the full costs met. The introduction of the £6,000 threshold was also intended to encourage schools to meet lower level needs without the need to “label” pupils as having SEN either to receive additional funding from the local authority or to drive placement decisions.

3.28 The £6,000 threshold was initially proposed following PwC research<sup>8</sup> 10 years ago and was introduced following consultation. The funding system ensures the same threshold is used for high needs top-up funding across mainstream and special schools (special schools receive £10,000 per place which is equivalent to the £6,000 from mainstream schools' notional SEN budget and the approximate £4,000 per pupil schools receive for all their pupils through the schools funding formula).

3.29 As a consequence of the concerns that have been expressed and the time that has passed, we believe that it is now right to consider how the £6,000 threshold is working, and whether any changes would help or hinder schools' decisions on making provision for pupils with SEN, and particularly those with education, health and care (EHC) plans.

3.30 When the £6,000 threshold was introduced, local authorities that had operated different arrangements had to make adjustments to the overall balance of schools and high needs funding. Some who were operating a higher threshold had to move funds

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<sup>8</sup> Research carried out by PricewaterhouseCoopers for the DfE in 2009 arrived at a proposed lower limit for defining a pupil as high cost of about £6,200, in addition to the basic cost of educating a pupil without SEN. The former central scheme for supporting students with SEN in colleges used a lower limit of £5,500. The round figure of £6,000 was introduced after consultation.

that had been delegated to schools back into their high needs budgets. Others that had operated a lower threshold had to transfer funds from high needs to schools.

3.31 Any change to this national threshold in future could therefore involve changing the balance between the overall funding currently allocated to mainstream schools, and the overall high needs funding block, with the likely need for consequential changes to the distribution of that funding through the schools and high needs national funding formulae. If the threshold was changed, there would also be consequences for how much special provision schools and local authorities make using the funding directly within their control, and also for administrative costs – for example if more or fewer pupils required some sort of assessment by the local authority. Respondents should bear this in mind when giving their views.

3.32 We are interested in whether there might be ways of applying the threshold differentially between schools, or targeting funding to certain schools to enable them to meet the threshold. For example, whether there are certain circumstances in which the requirement to meet the first £6,000 of SEN support costs should not apply, or in which local authorities should provide additional funding for support costs up to £6,000, as well as top-up funding for the costs in excess of £6,000 – such as for a small school or where a pupil already has an EHC plan when they are admitted to a new school.

3.33 We would need to consider carefully whether any changes to the current arrangements, intended to help schools provide support for children with SEN, would inadvertently create perverse incentives that would be unhelpful. And of course we would need to approach any change very carefully, with a clear understanding of the impact, and of how any adverse impact could be avoided.

3.34 Please answer questions 9 to 10 on the online survey, about the expectation that schools pay for the costs of SEN support up to £6,000 before accessing extra funding.

## **Provision for pupils with SEN in mainstream schools**

3.35 The Children and Families Act requires schools, other providers, and local authorities to co-operate with each other in preparing and publishing the “local offer” of provision and services for children and young people with SEN and disabilities. This must be done working with parents and young people. The local offer should include a description of the SEN support ordinarily available in each school, including primary and secondary mainstream schools, as well as additional services and provision provided by the local authority and other agencies external to the school. In addition, all maintained schools and academies must publish information on their websites about their arrangements for supporting pupils with SEN.

3.36 As part of the local offer, local authorities must set out the provision they expect schools, early years and post-16 providers to make available. This publication should create a shared understanding between schools, parents and the authority that can help to ensure that requests for an EHC needs assessment and plan are appropriate.

3.37 All local authorities are expected to keep their local offer of special provision under review, involving schools and other providers, and to plan ahead strategically to ensure good quality provision can be developed and sustained in line with available resources.

3.38 In this context, it is important that mainstream schools are clear about what special educational provision they are expected to make for pupils with SEN, from the budget calculated by the local funding formula, any targeted funding from local authorities' high needs budgets and other funding streams.

3.39 Given the financial resources available to mainstream schools through the local formula and other funding (see paragraph 3.3 above), and in the context that some schools are finding those resources stretched, we would welcome views on whether the special education provision they currently make – i.e. that is ordinarily available – is sufficiently clear for parents and how that is communicated. It would also be helpful to know how decisions are taken locally on this aspect of the local offer.

3.40 Please answer questions 11 to 15 on the online survey about the provision made for children with SEN.

## 4. Funding for pupils who need alternative provision (AP) or are at risk of exclusion from school

4.1 Local authorities are responsible for arranging suitable education for children who – because of permanent exclusion, illness or other reasons – would not receive suitable education, without such arrangements being made. Schools arrange AP for pupils through off-site directions to improve their behaviour and for pupils who have been subject to a fixed-period exclusion of more than five school days.

4.2 Local authorities are responsible for funding AP they arrange for children who have been permanently excluded from school. Schools usually contribute to or pay the full costs of AP they arrange for pupils who are on their roll. Local authorities can recover funding from schools who permanently exclude a child, but this is rarely the same as the cost of the pupil's subsequent education in AP.

4.3 The government supports head teachers in using exclusion as a sanction where it is warranted. Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. Permanent exclusion should only be used as a last resort, in response to a serious breach or persistent breaches of the school's behaviour policy, and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

4.4 In their recent research report, 'Alternative Provision Market Analysis',<sup>9</sup> Isos Partnership noted that AP funding arrangements may not support local authorities, schools, and providers in working together to invest in early intervention for a pupil who is at risk of permanent exclusion or to reintegrate pupils in AP back into mainstream settings where it may be appropriate to do so.<sup>10</sup>

4.5 Isos Partnership identified local areas where LAs, schools and APs have adopted innovative AP commissioning and funding models to plan local provision, secure best value from their spending on AP, and foster a collective responsibility for pupils in AP, and for the local AP system.

4.6 These models include:

- The devolution to schools of the local authority's high needs funding for AP, which can then be used to fund AP placements or provide support in school prior to a permanent exclusion (pages 58-59 of Isos Partnership's 'Alternative Provision Market Analysis');
- The use of panel discussions between local authorities, schools and providers, at which local leaders plan local AP and early intervention in schools, track AP use and spending, share best practice on approaches to supporting children at risk of

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<sup>9</sup> Isos Partnership's 'Alternative Provision Market Analysis' report can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752548/Alternative\\_Provision\\_Market\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752548/Alternative_Provision_Market_Analysis.pdf)

<sup>10</sup> Isos Partnership, 'Alternative Provision Market Analysis' p.67.



exclusion from school or who are ready to reintegrate back into mainstream (page 62 of Isos Partnership's 'Alternative Provision Market Analysis');

- Voluntary arrangements whereby local authorities can levy an extra charge on excluding schools (page 69 of Isos Partnership's 'Alternative Provision Market Analysis');
- Local policies requiring schools to keep children placed in AP on their roll, including after an exclusion (dual registration arrangements between mainstream and AP settings) (page 62 of Isos Partnership's 'Alternative Provision Market Analysis').

4.7 Through this call for evidence, we are seeking information on whether the funding arrangements empower local authorities, schools and providers to intervene early for children at risk of exclusion from school, to provide high quality AP and to take collective responsibility for delivering best value from the funding available for AP from the high needs and schools' budgets. We welcome all views, and are particularly interested to hear from those who have worked with, or commissioned AP for, excluded pupils and pupils at risk of exclusion.

4.8 The responses we receive will help us to build on the Government's vision for AP published in March 2018; to spread the best practice which exists in schools and AP providers; and to ensure that the funding arrangements adequately support schools and AP providers in their efforts to deliver for all of their pupils.

4.9 Please answer questions 16 to 19 in the online survey, about the funding for AP.

## 5. Funding for students with SEN in further education

5.1 Further education (FE) colleges, sixth form colleges and those special post-16 institutions on an approved list,<sup>11</sup> like schools, have a duty under the Children and Families Act to use their best endeavours to meet the needs of young people with SEN and those who are disabled.

5.2 The local offer for these young people should include what support is available for young people in FE, and it is important this sets out clear routes to employment and independent living. Local authorities need to plan ahead, with post-16 providers, to ascertain what provision is going to be needed, and how to meet the needs of all young people with SEN, both those on SEN support and those with high needs. Colleges need to be clear how they will contribute to the local offer, and they and local authorities need to agree what the college can reasonably do to support students from within their own budget and when additional resources are needed from the high needs budget.

5.3 We understand the cost pressures facing both local authorities and post-16 providers as they seek to meet the needs and ambitions of young people, and the need for appropriate levels of funding. We would, however, welcome views on whether there are other aspects of the financial arrangements that are acting as a barrier to young people accessing the support they need, regardless of the amount of funding available. We want to know whether there are ways in which the operation of the funding system is inhibiting the achievement of good outcomes,<sup>12</sup> adding to the cost pressures on local authorities' high needs budgets without preparing young people for adulthood. Please also consider the issues raised in chapter 6.

5.4 The £6,000 threshold operates in a different way in the funding system for 16 to 19 year olds. There is no notional SEN budget, although the support for students with lower level SEN is funded through the disadvantage factors in the national 16 to 19 funding formula. For those with more complex SEN, whose support costs more than £6,000, colleges and local authorities are expected to agree a package of support for their students with SEN, consisting of a number of high needs places funded at £6,000 per place, supplemented by top-up funding for those students with the most complex needs.

5.5 In most cases this place funding is deducted from local authorities' high needs budgets and paid to colleges directly by the Education and Skills Funding Agency (ESFA), but we have recently introduced more flexible arrangements whereby, if the institution and local authority agree, this can be paid by the authority without

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<sup>11</sup> Special post-16 institutions are organisations that are legally established to provide specialist post-16 education and support to young people, and are not maintained schools, academies or FE/sixth form colleges. Some have been approved by the Secretary of State to be on a "section 41" list, bringing them within the ambit of certain duties under the Children and Families Act 2014.

<sup>12</sup> Young people should be supported to exercise choice and control over their lives, including the 4 'preparing for adulthood' outcomes: moving into paid employment and higher education; independent living; having friends and relationships, and being part of their communities; and being as healthy as possible. More information on these outcomes can be found in chapter 8 of the SEND Code of Practice here: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>.

involvement from the ESFA, on whatever basis they find acceptable.<sup>13</sup> The need for local authorities and colleges (and those mainstream secondary schools with sixth forms) to agree the number of places or alternative approach to this element of funding has reduced the financial perverse incentive to identify a young person as having high needs simply to access an additional £6,000, although there is still scope for conflict where the institution and local authority cannot agree on the package of support that should be provided, or associated costs.

5.6 We would welcome any evidence that the funding or financial arrangements that currently apply to post-16 and post-19 provision are causing decisions to be made that are both unhelpful in securing the best outcomes for the young people concerned and adding to the costs of provision. We would also welcome any examples of where the flexibility in paragraph 5.5 supports better planning and decision making.

5.7 Please note that we are separately considering, in consultation with Natspec,<sup>14</sup> whether the approach to funding special post-16 institutions could be improved, and will consult during the summer of 2019 on any specific proposals for a limited number of technical changes that could be introduced for the financial or academic year starting in 2020.

5.8 The majority of young people with SEN and disabilities complete further education with their peers by age 19, and our expectation is that this should continue. However, we recognise that some young people need longer to complete and consolidate their education and training. The length of time will vary according to each young person, and judgements on when to stop or maintain an EHC plan must be made on a case-by-case basis and in accordance with the statutory tests and processes (see section 45 of the Children and Families Act 2014).<sup>15</sup> We want the funding arrangements to support young people's smooth transition into adulthood, and the next chapter focuses on some aspects that may not be helping.

5.9 Please answer questions 20 to 22 in the online survey, about the post-16 funding arrangements for FE colleges and others making provision for young people with SEN and who are disabled.

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<sup>13</sup> The £6,000 per place funding from local authorities' high needs allocations, and flexibility to allocate this on a different basis, has also been extended to mainstream school sixth forms.

<sup>14</sup> Natspec is the national association representing special post-16 institutions.

<sup>15</sup> Further guidance on our expectations with regard to young people aged 19 to 25 is set out here: <https://www.gov.uk/government/publications/send-19-to-25-year-olds-entitlement-to-ehc-plans>.

## 6. Improving early intervention at each age and stage to prepare young people for adulthood sooner

6.1 There is a duty on local authorities, under section 9 of the Education Act 1996, to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. To exercise control over public expenditure, making sure that spending decisions are reasonable and that the level of spending is not excessive, local authorities and other organisations often develop processes and systems to prioritise resources. Such arrangements, however, can lead to a delay in the commitment of funding for support costs.

6.2 We want to understand whether the current operation of the funding system is creating a financial perverse incentive to resist a commitment of resources when problems first arise, when such spending could in fact lead to a longer-term reduction in the complexity of support needed, and so longer-term savings. In a system that is intended to secure outcomes that imply a reducing need for support for many young people, as they prepare for employment and living more independently, it would be perverse if the lack of resources at one stage was leading to increasing costs later. We would therefore be keen to have good evidence that early investment can reduce costs.

6.3 As a possible example of the lack of timely support, sometimes a school or college complains that they are left to cope with limited resources and access to expertise during an education, health and care needs assessment process that lasts up to 20 weeks. They say that they have to produce unreasonable amounts of paperwork to evidence the need for extra resource. On the other hand, there may be financial reasons for local authorities' reluctance to commit extra resources during this period: once extra funding has been agreed, it is rare for this to be reduced.

6.4 An illustration of how the costs and support given to young people can significantly increase, perhaps more than necessary, can also be seen at transition points. For some children and young people whose needs increase as they get older, or whose mental or physical health deteriorates, it is of course appropriate for them to receive enhanced levels of support over time. For others, however, it could be that more focus on the achievement of outcomes relating to greater independence would lead to a reduced need for support, including at the points of transition, and to a better preparation for adulthood.

6.5 Some examples of the way that support costs can increase for a child or young person around key transition points:

- A reception class teacher in a primary school is under particular pressure because unforeseen extra resources are required for a child whose SEN is undiagnosed and unsupported, despite prior attendance at an early years setting where early support could have been given.
- A pupil with SEN nearing the end of primary school education is unprepared for the changes that a different and much bigger secondary school can bring, and the parents, who would have preferred to continue with education in a mainstream setting, opt instead for a more expensive special school.

- At the end of their schooling, a student is unable to cope with the more adult environment of an FE college, and unable to travel independently due to a lack of travel training, requiring more support to help them adapt and prepare for adulthood.

6.6 We believe in the value of educating children in mainstream settings where that is right for them and that is what their parents want. But, as noted in paragraph 2.7 above, there has been a reducing proportion of children being educated in mainstream schools, and the data shows that this has been happening over the last 10 years. We want to understand whether any lack of early intervention and resources for the right support at the right time is driving this.

6.7 Please answer questions 23 to 25 in the online survey, which ask for evidence on the extent to which the financial and funding arrangements are driving the escalation of costs, and preventing those making spending decisions from taking an “invest-to-save” approach that leads to better outcomes and ultimately to reducing costs.

## 7. Effective partnership working to support children and young people with complex needs

7.1 When different organisations are responsible for their own budgets they are of course rightly interested in how best to discharge their responsibilities within the resources available to them. Separate funding streams and budgetary control are an inevitable feature of a complex landscape of provision, based on different legislation. This, however, can create barriers which discourage the partnership working that is essential for meeting the needs of those children and young people with SEN and who are disabled, and others with complex needs. Furthermore, conflict between budget holders can increase when budgets are tight and flexibility to move funding is reduced.

7.2 Providers are responsible for bringing together a number of funding streams – for example, those noted in paragraph 3.3 above – so that they can educate the full range of pupils and students they have. In the context of EHC needs assessments and plans, local authorities have to bring together health and social care funding streams as well.

7.3 Budget holders – for example clinical commissioning groups in the NHS, budget holders within the same local authority and schools – should be encouraged to work together to contribute to meeting children’s medical needs while they are at school. As an example of where there is understood to be co-operation between budget holders locally, the report of Wakefield’s SEND area inspection stated: “Children and young people’s transition into schools and colleges is supported well by education and health professionals. Children’s community nurses and special school nurses work especially well together in schools and early years settings. They provide high-quality training about how to manage conditions such as asthma, epilepsy and diabetes. These services help schools and settings to meet children and young people’s needs which, in turn, impacts positively on their learning and the progress they make.”

7.4 Another example from Lincolnshire’s SEND inspection report shows how working together can help with transition from children’s to adult services: “The transition of services for children who have disabilities to adult social care is very efficient. Each young person has a care passport which contains information about their health and care needs and this is shared with adult social care professionals in good time. This means that young people do not have to repeat assessments or face delays in receiving care when they become an adult.”

7.5 Within the education sector, local authorities, schools, colleges and other providers should be operating within a system that encourages them to work in partnership, despite understandable concerns about the costs and consequent pressure on their separate budgets.

7.6 We are therefore keen to explore financial arrangements that would help to encourage budget holders to.

- share their resources and use appropriate pooling arrangements to most effectively meet the complex needs – and improve the outcomes – of children and young people (without arguments over who should pay for what);
- avoid taking inappropriate action to pass costs on to others, where this simply moves the cost pressures elsewhere and does not help to address the problem;

- strengthen joint leadership and strategic commissioning of services.

7.7 From the research into AP markets carried out for the department by Isos Partnership, referred to in chapter 4 above,<sup>16</sup> and the work they have done for the Local Government Association, there is evidence of good practice across the country, involving joint commissioning of services, collective responsibility for budgets and other partnership approaches.<sup>17</sup> We would welcome views on what changes we might consider, within the overall funding and financial system, and recognising the budgetary boundaries that exist, to encourage the collaborative working that is so important for meeting the complex needs of children and young people.

7.8 Please answer question 26 in the online survey, about whether the financial arrangements could support a more effective partnership approach.

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<sup>16</sup> This report can be found here: <https://www.gov.uk/government/publications/alternative-provision-market-analysis>.

<sup>17</sup> This report can be found here: [http://www.isospartnership.com/uploads/files/181108\\_LGA%20SEND\\_final%20report.pdf](http://www.isospartnership.com/uploads/files/181108_LGA%20SEND_final%20report.pdf).

## 8. Other aspects of the funding and financial arrangements

8.1 We want to ensure that those children and young people with SEN, those who are disabled, and those who are not in school or at risk of being excluded, receive the appropriate levels of provision and support to which they are entitled.

8.2 We are aware that the amount of funding that is allocated to the Department for Education, and the amount that the department allocates to local authorities and others, is very important for making good quality provision for our most vulnerable young people. Securing a sufficient amount of funding for education in future will remain a priority for the department.

8.3 But we also need to make sure that the funding and financial arrangements, irrespective of the level of funding, encourage decisions about provision that are in the best interests of all our children and young people, and that provide value for money. We would be interested to understand whether any aspects of the financial and funding arrangements, not covered in the previous sections of this document, are creating perverse incentives for decision-makers across the system. It would also be helpful to have views on those aspects of the current funding system that are actively helping the right decisions to be made, so that we can make sure that they are not changed.

8.4 If you have relevant points to make that are not being made in answer to the previous questions, please answer questions 27 to 28 in the online survey.



## **Annex A: How the current high needs funding system works**

1. High needs funding is provided to local authorities through the high needs block of the dedicated schools grant (DSG). Local authorities must spend that funding in line with the associated conditions of grant, and School and Early Years Finance (England) Regulations, which have been updated for 2019-20. High needs funding is also provided directly to some institutions by the Education and Skills Funding Agency (ESFA).
2. The high needs funding system supports provision for children and young people with special educational needs and disabilities (SEND) from their early years to age 25, enabling both local authorities and institutions to meet their statutory duties under the Children and Families Act 2014. High needs funding is also intended to support good quality alternative provision (AP) for pre-16 pupils who, because of exclusion, illness or other reasons, cannot receive their education in mainstream or special schools. The high needs funding block provides local authorities with resources for place funding and top-up funding for institutions, and funding for high needs services delivered directly by the authority or under a separate funding agreement with institutions (including funding devolved to institutions), as permitted by regulations.
3. Institutions receive funding for pupils and students with high needs in different ways:
  - a. Core funding – the annual allocation an institution receives either directly from the provider local authority (for maintained schools and pupil referral units (PRUs), based on the financial year), or from the ESFA (for academies, free schools, colleges, independent learning providers (ILPs), non-maintained special schools (NMSS) and special post-16 institutions, based on the academic year). Independent special schools do not receive an allocation of high needs funding from the ESFA, but only receive high needs funding from the local authority placing the pupil or student.
  - b. Top-up funding – the funding required, over and above the core funding, to enable a pupil or student with high needs to participate in education and training. This is paid by the local authority which places the child or young person and should reflect the additional support costs an institution incurs in making provision to meet the individual's needs. In the case of AP, top-up funding is paid by the body which commissions each place (either the local authority or a partnership or cluster of schools).
  - c. Funding under a service level agreement – where a service relating to SEN or AP has been commissioned by a local authority and is delivered by an institution, the local authority can pay for that service from its high needs budget where permitted by the funding regulations.

4. While the majority of a local authority's high needs budget is spent on place and top-up funding for institutions, local authorities can also use high needs funding to provide additional or targeted support for children and young people with SEN, as permitted under schedule 2 to the School and Early Years Finance (England) Regulations. This can take the form of additional funding to institutions, which may be paid on the basis of a service level agreement, or access to specialist services or expertise commissioned by the local authority. Such support can play an important role in enabling mainstream schools and colleges to meet a wider range of special educational needs, and supports the presumption in law that children and young people should be educated in mainstream provision, unless their special educational needs require more specialist provision.
5. Additional funding may be provided where there are a disproportionate number of pupils with a particular type of SEN. For example, a primary school may have developed a reputation for meeting the needs of high achieving pupils with autistic spectrum disorder, or pupils with physical disabilities, and it is not possible to target additional funding to the school through factors in the school funding formula.
6. Local authorities and mainstream schools and colleges should also discuss how such specialist support should be delivered when considering how to spend the high needs funding available to them. Many local authorities employ specialist teachers, funded directly from their high needs budget. Others give special schools additional funding to provide specialist support to other schools. Such arrangements are frequently accompanied by a service level agreement confirming what will be delivered in return for the additional funding.
7. There is a good deal of flexibility for local authorities in making and funding the high needs provision in their area, although there are some requirements in the Early Years Finance (England) Regulations and conditions of grant. The latter include rules on the timely payment of top-up funding to schools and colleges, and restrictions on the transfer of funding from the schools funding block of the DSG to other budgets, including high needs.
8. There are also certain processes that the ESFA operates to make sure that timely funding allocations are made to local authorities, academies, colleges and the other institutions that they fund directly, and that appropriate adjustments are made to those allocations when necessary. For more detail on the high needs funding system, including links to the relevant regulations and conditions of grant, please refer to the high needs funding operational guide.<sup>18</sup>

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<sup>18</sup> The high needs funding operational guide for 2019 to 2020 can be found here: <https://www.gov.uk/government/publications/high-needs-funding-arrangements-2019-to-2020>.



Department  
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