



## Report to Leader (Education & Skills portfolio)

**Decision Date:** 17 June 2020

**Reference number:** ED01.20

**Title:** Allocation of Top-Up Funding for Pupils with Special Educational Needs and Disabilities (SEND)

**Relevant councillor(s):** Anita Cranmer

**Author and/or contact officer:** Liz Williams Head of Finance (Children's Services)  
[elizabeth.williams@buckinghamshire.gov.uk](mailto:elizabeth.williams@buckinghamshire.gov.uk)

**Ward(s) affected:** all

**Recommendations:**

The Cabinet Member is asked to agree the following:

- a) To seek permission from the Secretary of State to be exempted from the Special Schools Minimum Funding Guarantee (MFG).
- b) Following consultation with education leaders across Buckinghamshire including head teachers, governors and senior leaders from our special and mainstream schools and pupil referral units on the mechanism for allocating top-up funding for pupils with Education Health and Care Plans (EHCPs), it is proposed that:
  - I. The recommended approach of a needs led funding system based on an adapted model for Buckinghamshire is to be implemented;
  - II. The Buckinghamshire model should be based on 5 Bands, plus an exceptional band to support provision for pupils with very complex needs;
  - III. The model should be supported by a moderation process;
  - IV. There should be a phased implementation, beginning with special schools with roll out to mainstream and further settings in future years.

- c) **That there should be a phase of transition to the new funding approach including support for schools that would see a reduction in funding under the proposed model.**

**Reason for decision:** The current provision based mechanism for funding pupils with an EHCP in Buckinghamshire allows for pupils with similar needs to be funded very differently according to the school in which they are placed. Pupils within an individual special school are funded at the same value regardless of any differential in their needs as a single top-up value for each such pupil is paid to each school. Funding for pupils with EHCPs placed in mainstream schools is based on hours of support and funding for Additional Resourced Provision (ARPs) is based on a Locator system. This means that a pupil of similar needs may be funded differently according to the individual school or type of provision in which they are placed.

The proposed option will

- i. Bring funding in line with government guidance to ensure funding is allocated on a needs led basis;
- ii. Deliver on the Council's priorities and the Local Area SEND Strategy;
- iii. Ensure the way that top-up funding is allocated is fair, simple, consistent and transparent, and enables us to plan how we meet the increasing number of pupils with EHCPs.

### **Executive summary**

- This report outlines the outcome of the recent consultation with educational establishments on proposals for the method of allocation of top-up funding for pupils with Education Health and Care Plans (EHCPs). Schools receive core funding, either through the National Funding Formula (NFF) for mainstream schools, or place funding in more specialist provision, to meet the needs of pupils with SEND. Top-up funding is that funding which is required over and above the base amount to meet the needs of an individual pupil.
- The proposal is to implement a needs led funding system based on a model adapted for Buckinghamshire using a set of descriptors adapted to the needs of children and young people in Buckinghamshire. It is proposed that the funding system is implemented on a phased basis beginning with special schools with roll out to mainstream and other settings in future years.
- The need to review the way in which top-up values are allocated is highlighted in the outcomes of Priority 7 of the current Special Educational Needs and Disabilities (SEND) Strategy 2017-20 which includes that the allocation of top-up values is reviewed and that *"consideration is given to the banding system that results in top-up funding to both mainstream and special schools."* An initial report was taken to Schools Forum in March 2019 outlining a proposed process and timeline for consideration of a needs led funding mechanism for special schools. A Needs and Provision Group was formed to develop that work and the timeline adapted to enable engagement work prior to consultation with schools.

- A consultation with schools took place in February 2020. The responses to the consultation have been analysed and 85% of respondents agreed or strongly agreed with the proposal to move to a needs led funding model.

## 1.0 Background

- 1.1. *The School Funding Reform; Arrangements for 2013-2014* confirmed that the setting of top up funding is a matter for local determination and that local authorities may choose to use local banding frameworks to manage top-up funding. These arrangements have not changed in the intervening years since 2014 and the *High Needs Funding 2020 to 2021 Operational Guide* continues to emphasise “*local authorities must treat those placed in maintained provision, in academies and free schools, in the further education sector, and in non-maintained and independent provision on a fair and equivalent basis when making arrangements for funding young people with high needs.*”
- 1.2. The current provision based mechanism for funding special schools in Buckinghamshire allows for pupils with similar needs to be funded very differently according to the special school in which they are placed. Pupils within an individual special school are funded at the same value, set for that particular school, regardless of any differential in need. A single top-up value is paid to each school calculated on the cost of the provision, which means that each school receives a different top up value irrespective of the level of need of their pupils. There is also a differing funding mechanism for pupils placed in mainstream schools, based on hours of support, and another different funding mechanism in Additional Resourced Provision (ARPs) under which funding is based on the geographical location of the provision. This means that a pupil of similar needs may be funded differently according to the individual school or type of provision in which they are placed.
- 1.3. Priority 7 of the Buckinghamshire SEND Strategy 2017-20 is to “*Develop improved approaches to monitoring and accountability, especially in relation to the use and impact of High Needs funding in schools and other educational settings*”. The stated outcomes under Priority 7 include consideration of an approach that simplifies the banding system for Top-Up funding to mainstream and special schools. The Buckinghamshire SEND Strategy was widely consulted upon at the formative stage of the Strategy.
- 1.4. In fulfilment of Priority 7 it is necessary to review the current provision and the way in which the Council uses its high needs funding in order to:
  - i. Bring funding in line with government expectations that funding is better focussed on the needs of pupils;
  - ii. Deliver on the Council’s priorities and the Local Area SEND Strategy;
  - iii. Ensure the way that top-up funding is allocated is fairer, simpler, and more consistent and transparent, and enables us to plan better how we

meet the increasing number of children and young people with SEND within the funding available.

- 1.5. A report was considered by the Buckinghamshire Schools Forum in March 2019 outlining a proposed process for reviewing the mechanism for funding special schools and developing a needs led funding system for top-up funding. This report identified an initial process and timeline for the review. At the start of that process a Needs and Provision Group was established. This group consisted of senior leaders from special schools, mainstream schools and mainstream schools with ARPs as well as officers from the local authority (SEND and Finance). The timeline was amended as the Needs and Provision Group started to carry out its work and the revised timeline was reported to Schools Forum. Regular updates were also discussed at the Meeting of Special School and PRU Head Teachers and Principals plus Officers. Consultation was then further delayed due to the general election.
- 1.6. The work of the Needs and Provision Group included a review of funding systems from other local authorities to identify good practice and a methodology that could be applied to Buckinghamshire. As part of the engagement and scoping of a new model of funding, a number of pre-consultation information and modelling events were held to include consideration of potential descriptors, assessment of pupils against descriptors and the moderation of those assessments. That work led to the development of a proposal to adapt a model from another local authority to suit the needs of Buckinghamshire.

## 2.0 Consultation with Schools

- 2.1 A consultation with education leaders across Buckinghamshire including head teachers, governors and senior leaders from our special and mainstream schools and pupil referral units was held between 13<sup>th</sup> February 2020 and 6<sup>th</sup> March 2020. Three consultation events were held across the county during the consultation period to enable information to be shared and questions to be asked. **The consultation document and consultation report are appendices 1 and 2. Further information on the consultation process is at section 9 of this report.**
- 2.2 The consultation set out 4 options:
  - Option A** – Do nothing and continue with the current way of allocating of top-up funding.
  - Option B** – Move to a needs led funding approach based on an adapted model for Buckinghamshire.
  - Option C** – Move to a needs led funding approach by drawing up a new bespoke model for Buckinghamshire.
  - Option D** – Move to a needs led funding approach by utilising an existing model from a comparator authority.

2.3 The consultation document explained that the local authority's preferred option was **Option B**.

2.4 The outcome of that consultation has now been reviewed and is summarised below:

- a) There were 59 responses to the consultation.
- b) **The majority of respondents (85%) expressed an opinion in favour of moving to a needs led funding model.** The majority of respondents also expressed a need for a more transparent and fairer way of allocating top up funding as they felt the current model was unfair. A very small number of respondents (3) disagreed with the move to a needs led funding model
- c) **The majority of respondents expressed a preference to move to a banded funding model that could be adapted to meet the needs of the children and young people within Buckinghamshire (Option B).** Respondents commented that this appeared to be a fairer, more equal and transparent way of funding than the current methodology. Some respondents whilst agreeing in principle did express some concerns about the funding each band would attract. A small number of respondents (4) expressed a preference for another option not listed in the consultation and a small number (6) felt that they did not have sufficient information to make a decision regarding the options.
- d) **Just over half of respondents agreed to a funding model that was focused around 4 bands of need.** However considering further comments received as part of the consultation and engagement events the Needs and Provision Working Group has considered increasing the number of bands. This is in response to the feedback received that the higher band was too broad for the range of provision accommodated within it.
- e) **Almost all respondents (93%) agreed with a process of moderation** to ensure that the allocation of top up funding was consistent, fair and transparent. One respondent did not agree and one did not feel they had enough information to make a decision.
- f) **The majority of respondents agreed to a phased transition to the new funding model,** however there were further comments from mainstream and special schools that as a result of inequalities around current funding, the move to the banded funding model should happen as soon as possible.
- g) **Overall the majority of comments regarding the consultation were positive about change to a new model and felt that the review of funding was overdue.** However it is recognised that whilst the majority of respondents are supportive of a move to a new model there is a certain amount of nervousness particularly regarding mainstream schools and those with ARPs. In response to this there will be further work completed in partnership with schools and those with ARPs around the application of the model in these settings.
- h) **Where concerns were raised** these were predominantly in relation to how needs would be assessed, whether 4 bands was sufficient to meet the needs of all the children with EHCPs and wanting further information about the band descriptors. The one Respondent who strongly disagreed with the

proposal to move to a needs led funding model expressed concern that the model would not provide certainty of funding required to maintain high levels of staffing to keep pupils and staff safe. The Respondent also expressed concern the proposal may breach the public sector equality duty.

2.5 The outcomes of the consultation were considered at a meeting of the Needs and Provision Group on 11th March and it is recommended that Option B - Move to a needs led funding approach based on an adapted model for Buckinghamshire, is adopted as the method for the allocation of top-up funding for pupils with EHCPs with an initial implementation in special schools..

### 3.0 The Funding Model

3.1 The proposal for an adapted model that was included in the consultation was based on 5 primary SEND needs (aligned with the four broader areas in the SEND Code of Practice, 2015):

- a) Speech Language & Communication / ASC
- b) Cognition and Learning
- c) Social, Emotional & Mental Health
- d) Sensory
- e) Physical and/or Medical

3.2 In the model initially proposed, pupils would be assessed as having a primary need from one of the five areas of SEND outlined above that fall into one of four bands:

<p><b>Band 1</b></p> <p><b>Universal and Core Funding</b></p>	<p>All pupils would be funded through the basic entitlement. Additional provision for these pupils would be funded through schools notional SEND budget</p>
<p><b>Band 2</b></p> <p><b>High Needs Block</b></p>	<p><b>Top up</b> funding from the LA for pupils with more complex, low incidence high cost needs.</p> <p>Children and young people with this level of need will be placed in a range of provision that includes mainstream settings, ARPs and special schools.</p>
<p><b>Band 3</b></p> <p><b>High Need Block</b></p>	<p><b>Top up</b> funding from the LA for children and young people with significant complex, high cost needs.</p> <p>There may be a small number of children and young people with this level of need who are</p>

	appropriately placed in either additionally resourced provision or mainstream provision.
--	--

<b>Band 4</b> <b>High Needs Block</b>	<b>Top up</b> funding from the LA for children and young people with significant complex, high cost needs.
--	--

3.3 As noted in earlier in the report, a number of the respondents to the consultation expressed a view that 4 bands may not reflect the full breadth or complexity of need that may need to be met across provision in the County. The Needs and Provision Group considered this as part of the engagement work and it is recommended that the model should be based on 5 bands. There is a further recommendation that there should be an additional “exceptional” band to recognise the most complex needs that may be met within Buckinghamshire schools. This also reflects the fact that the Council is obliged by the Children and Families Act 2014 to secure the special educational provision in an EHCP. It is therefore possible that exceptionally a pupil’s funding needs fall outside of any banding limit.

3.4 Final financial values for the bands will need to be calculated based on the types of provision associated with the bands and also need to take into account the affordability of the model following the banding and moderation process. The Needs and Provision Group has considered the principles to be applied to calculating the financial bands and in modelling financial values the basis of the initial work will be the support costs, based on additional learning support staff, required for each band. In all cases it is proposed that teaching staff would be part of the base funding for a setting (special or mainstream) and the top-up funding is to reflect additional support required on top of teaching costs. Average group sizes will be developed and proposed by the Needs and Provision Group and triangulated with indicative group sizes referenced in the DfE’s BB104 guidance: *Area Guidance for SEND and Alternative Provision*. This work will be discussed at the Schools Forum in June and taken to the next Meeting of Special School and PRU Head Teachers and Principals plus Officers.

#### 4.0 Affordability and transition

4.1 It is proposed that the model be implemented in special schools in the first instance before rolling out to other types of provision.



- 4.2 If the preferred model is adopted, it will be necessary to assess pupils against the bands and carry out a moderation process. Once the final bandings for pupils in each school are confirmed, it will be possible to finalise the funding allocated by the model.
- 4.3 The implementation of the new model is expected to result in some schools gaining funding and some schools receiving a reduction in funding in order to reflect the needs of the pupils in each school. As a result, there will need to be a phased transition to the new model. There is some flexibility within the schools budget to support this phased transition. It is anticipated that those schools who will gain funding will do so over a short phased period of up to 2 years whilst those schools who receive a reduction in funding will do so over a longer phased period, for example up to 5 years depending on the final banding outcomes. Further details of this will be taken to the Schools Forum in June and to the next Meeting of Special School and PRU Head Teachers and Principals plus Officers. For those schools receiving a reduction in funding, individual conversations will also take place with the school to support the transition process. This will ensure that no school will receive an immediate, significant reduction in funding which would impact on its ability to meet the needs of the children attending.
- 4.4 This means it will be necessary to seek permission from the Secretary of State to be exempted from the Special Schools Minimum Funding Guarantee (MFG), so that the appropriate reductions in funding, as well as increases can be managed. The MFG is the level at which funding for special schools can change from year to year. The DfE has increased the MFG from minus 1.5% to 0% for 2020-2021. Disapplication from the MFG is provided for within the High Needs Operational Guidance 2020-21 and can be applied in cases where local authorities are proposing to change their banding systems. A transition process and level of support therefore needs to be determined and Schools Forum will need to be consulted as part of the process. The following principles are key to an equitable model:
1. That gaining schools need to move as quickly as possible to the new model to ensure they are appropriately funded for the needs of pupils in the school;
  2. That schools facing a reduction in funding will have a longer transition period in order to manage reductions, with less disruption to staffing and provision.
- 4.5 This will need to be modelled and determined in consultation with schools based on the final banding. Recommendations will be made to Schools Forum in June 2020.

## **5.0 Moderation**

- 5.1 To ensure any new funding model is transparent and equitable, it is proposed that a system of moderation is implemented. The moderation process is an objective quality assurance mechanism within the Banded Funding model. It allows the Local Authority and schools to jointly apply a trusted, transparent, consistent and unambiguous model of funding for SEN across all educational settings. It also

provides on-going reliable data regarding the continuum of needs and provision across all settings in Buckinghamshire and the quality of in-house judgements made by settings with regard to the pupils with SEND that they provide for.

- 5.2 The model works by the school judging which of the 5 funding bands each of their pupils should be in, using the set of descriptors of intensity of need and provision requirement included within the model. The Banding assessment is based on the actual needs of the student and the provision in place to meet those needs: it is a best-fit model. Schools and the Local Authority then select pupils to be moderated, focusing on those that schools put forward in a particular band to ensure clarity and consistency when assessing. The school provides an evidence folder for each pupil, comprised of material that should already be available within the school. This is submitted to a panel of senior Local Authority SEN staff and a serving LA Special School Head Teacher with experience of the needs range applicable to the school being moderated. Representatives of the school present the context of each pupil to the panel, verbally, and panel members visit relevant classes. The panel then uses the contextual information together with the evidence folder and any supplementary information they request, to conclude whether the schools judgement of the Band applicable to each pupil has been validated. If two-thirds or more of the pupil's Banding is agreed, the school's judgement is validated. If two-thirds or more is not, then support is put in place to address the issues that have arisen, and a further moderation later takes place, using different pupils.
- 5.3 This will ensure that senior education leaders work in partnership with the Local Authority to quality assure the banding process. It will also mean that schools and settings are central to the process and instrumental in making it fair and consistent.
- 5.4 In the autumn of 2019, the Needs and Provision Group engaged in a moderation process to inform the model proposed as part of the consultation. Upon completion, this work has since been evaluated. The evaluation report highlighted the need for schools to work together to share examples of good practice. Overall, schools found the process of producing evidence folders and of the moderation process itself good preparation for any form of inspection.
- 5.5 It is proposed that a moderation process, based on the evaluation of the pilot, be implemented as a part of the top-up funding mechanism to ensure consistency of decision making and quality assurance of the process. Key learning points taken from the evaluation of the pilot included adaptation of the initial model used to have a sharper distinction of the provision required to address the categories of SEND and specific work around the context of BCC schools, e.g. the need for a specific working group to look at the cognition and learning descriptors and agreed a shared description across Buckinghamshire. Following this evaluation, specific workstreams were set up, led by Head Teachers from the special school sector, to address these key issues that were identified.

## **6.0 Other options considered**

6.1 The consultation with schools included 4 options.

6.2 **Option A** – Do nothing and continue with the current way of allocating of top-up funding.

#### Benefits

- Certainty for schools - each type of school is used to the current method of funding allocation and so this may support budget planning at a school level

#### Disadvantages

- Not consistent with DfE expectations of needs led top-up funding and does not meet the council's stated priorities
- Not transparent or equitable as pupils with similar needs can be funded at different rates depending on which school or provision they attend.
- It is difficult to moderate costs across different types of provision.
- The current method of funding special schools based on historical costs does not take account of the increasing need for SEND provision or the changing profile of children with an EHCP and, as such, is not sustainable in the long term.

For these reasons the local authority does not recommend Option A

6.3 **Option B** – Move to a needs led funding approach based on an adapted model for Buckinghamshire. The proposed descriptors for the bands are already used in another local authority but need to be adapted to be used within the Buckinghamshire context and mix of provision.

6.4 This is the recommended option

#### Benefits

- The model is in line with the DfE Guidance on High Needs Funding.
- The way funding is allocated will be consistent and easier for everyone to understand.
- This model will ensure that children and young people who are assessed in a particular band will be funded at the same level regardless of the setting at which their education may take place.
- It will cover all areas of needs and ensure children and young people with similar needs are funded on an equivalent basis.
- It will make sure allocation of funding is based on evidence of need ensuring a fair allocation of resources.
- It will make sure funding is allocated using clear and transparent principles.
- It will be able to be used across the continuum of universal, targeted and specialist provision for 0-25 year olds.
- It provides a sustainable model for future allocation of High Needs Funding, taking into account the projected growth in EHCPs in the county.
- The model would provide a readily available framework for assessment of need based on a methodology already being used in another local authority but adapted to reflect the mix of provision in Buckinghamshire

### Disadvantages

- This proposal is likely to result in changes to an individual school's budget share and may introduce some element of uncertainty for educational establishments.
- 6.5 The local authority will seek to minimise the impact of these changes by working with educational establishments to assess the level of need of the children in each school, through the implementation of a phased approach of changes set out above and by continuing to work with the Schools Forum and SEND Headteacher Group to provide information/ resolve any issues. For specialist provision, where top-up funding represents the bulk of the funding for an individual setting, transitional arrangements will be considered in consultation with schools and Schools Forum.
- 6.6 We would initially pilot the new model of funding with the BCC special schools and special academies from September 2020, moving to a wider roll out to all education settings as the model is developed.
- 6.7 **Option C** – Move to a needs led funding approach by drawing up a new bespoke model for Buckinghamshire. This would involve building a set of banding descriptors from scratch with the aim of achieving a needs-led system for top-up funding across all types of provision in the county.

### Benefits

- The model would be in line with the DfE expectations on top-up funding.
- The way funding is allocated would be consistent and easier for everyone to understand and ensure that children and young people who are assessed in a particular band will be funded at the same level regardless of the setting at which their education may take place.
- It will cover all areas of need and ensure children and young people with similar needs are funded on an equivalent basis.
- It will make sure allocation of funding is based on evidence of need, ensuring a fair allocation of resources;
- It will make sure funding is allocated using clear and transparent principles.
- It will be able to be used across the continuum of universal, targeted and specialist provision for 0-25 year olds.
- It will provide a sustainable model for future allocation of High Needs Funding, taking into account the projected growth in EHCPs in the county.

### Disadvantages

- Would take significant time to develop;

- May not build on best practice and experience from other local authorities where similar models are already in operation.

For these reasons, taking account of the consultation feedback where the majority of respondents wanted to see a change to a needs led funding model without any delay, option C is not recommended.

**6.8 Option D** - Move to a needs led funding approach by utilising an existing model from a comparator authority. This would involve using a funding model based on a set of general descriptors that is already being used by another local authority.

#### Benefits

- An existing model that is already in place in another local authority would provide a readily available framework for assessment of need.
- The model would be in line with the DfE expectations on top-up funding.
- The way funding is allocated would be consistent and easier for everyone to understand and ensure that children and young people who are assessed in a particular band will be funded at the same level regardless of the setting at which their education may take place.
- It will cover all areas of need and ensure children and young people with similar needs are funded on an equivalent basis.
- It will make sure allocation of funding is based on evidence of need, ensuring a fair allocation of resources;
- It will make sure funding is allocated using clear and transparent principles.
- It will be able to be used across the continuum of universal, targeted and specialist provision for 0-25 year olds.
- It will provide a sustainable model for future allocation of High Needs Funding, taking into account the projected growth in EHCPs in the county.

#### Disadvantages

- The assessment that informs the descriptors may not correlate to the assessment process used within Buckinghamshire.
- A model that has been developed for a different local authority will not take into account the mix of available provision in Buckinghamshire and so may be difficult to apply without adaptation.

For these reasons, option D is not recommended.

## **7.0 Legal and financial implications**

7.1 Top-up funding is funded from the High Needs Block of the Dedicated Schools Grant (DSG). Funding should be allocated in accordance with the *High Needs Funding 2020 to 2021 Operational Guide*. The proposed funding model is in line with the guidance.

- 7.2 The total High Needs Budget agreed for 2020-21 is £90.059 million, of which £32.2 million is spent on top-up payments for pupils with EHCPs in maintained schools and academies in Buckinghamshire.
- 7.3 The proposed changes in funding model are aimed primarily at ensuring fairer, needs led funding. The aim is not to achieve savings, save to the extent that the status quo is believed to be financially unsustainable in the long run (see Option A above). The funding model proposed is likely to be broadly cost neutral in the medium term. However it will support the Council in ensuring that high needs funding is allocated according to need, and that pupils with the highest level of need attract the most funding, regardless of the setting. In supporting our schools to meet the needs of more complex pupils it is anticipated that more pupils may have their needs met within Buckinghamshire schools and there will be less reliance on high cost external placements.
- 7.4 The Local Authorities legal responsibilities are set out in Part 3 of the Children and Families Act 2014. In particular:

Section 37 of the Children and Families Act 2014 provides:

- (1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan—
- (a) the local authority must secure that an EHC plan is prepared for the child or young person, and
- (b) once an EHC plan has been prepared, it must maintain the plan.

Section 42 of the Children and Families Act 2014 provides, as relevant:-

- (2) The local authority must secure the specified special educational provision for the child or young person.
- (6) 'Specified', in relation to an EHC plan, means specified in the plan.

- 7.5 Through the pre-engagement period and consultation the Local Authority has sought to ensure it has the information necessary to ensure the proposed model supports the statutory obligations and to make sure that children and young people have the right provision to meet their needs. If a banded model of funding is adopted, the Council fully expects that the level of funding at each band will continue to meet the needs specified in EHCPs. However, if exceptionally a child's needs could not be met at the levels of funding provided by any of the bands, the Council would be obliged to pay for them.
- 7.6 When considering consultation, the Council should be aware of the principles set out in relevant case law:
- R v Brent London Borough Council, ex parte Gunning, (1985) 84 LGR 168 identified what are known as the Gunning principles; these are that:

- Consultation must be at a time when proposals are still at a formative stage;
- The proposer must give sufficient any proposal to permit of intelligent consideration and response;
- Adequate time must be given for consideration and response; and
- The product of consultation must be conscientiously taken into account in deciding on any proposals.

These were specifically endorsed by Lord Wilson in *R (Moseley) v London Borough of Haringey* [2014] UKSC 56 and noted as a 'prescription for fairness'.

In developing proposals for the public consultation, due regard has been paid to these principles.

### 7.7 Equalities and equalities impact

S149 of the Equality Act requires public authorities in the exercise of their functions to 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.

An Equalities Impact Assessment (EIA) has been undertaken in relation to the proposal, **which is at appendix 3**. The EIA concludes that **as** the project is focused on developing a new funding model for schools/settings, any impact on service users is minimal, and transition arrangements would be put in place if the proposed model is implemented to minimise disruption to any impacted school. These arrangements would ensure children and young people are not disadvantaged. The policy aims to provide a fairer, more transparent and equitable approach to funding allocation, based on need so that children presenting with similar needs are funded at the same rate.

### 7.8 Welfare duties.

S 175 of the Education Act 2002 provides

- (1) A local authority shall make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children.

In doing so, authorities have to have regard to the Secretary of State's guidance. It is believed that the current proposals are consistent with the duty under s 175 of the Education Act 2002 as their aim is to ensure fairer distribution of resources for

the education of children with high needs, within the context of all children's EHCPs being met.

## **8.0 Corporate implications**

8.1 This proposal supports the corporate priority to protect the vulnerable.

## **9.0 Consultation and communication**

- 9.1 Consultation with Education leaders across Buckinghamshire including head teachers, governors and senior leaders from our special and mainstream schools and pupil referral units commenced on 13<sup>th</sup> February and closed at midnight on 6<sup>th</sup> March. The outcomes of that consultation are referred to in the body of the consultation report at appendix 2.
- 9.2 As part of that consultation, a consultation document and online survey was produced to seek feedback from stakeholders. This was emailed to education leaders across Buckinghamshire including head teachers, governors and senior leaders from our special and mainstream schools and pupil referral units on 13<sup>th</sup> February 2020.
- 9.3 Three events in different locations were delivered during the consultation, attended by a total of 48 people. These face-to-face sessions were a key part of the consultation and allowed teachers and other school staff to ask questions about the consultation in person. This gave the project team the opportunity to listen to the schools views directly and answer any questions.
- 9.4 In addition to these events, updates have been provided to the Schools Forum on 25<sup>th</sup> March 2019, 15<sup>th</sup> October 2019 and 3<sup>rd</sup> December 2019 and to the Meeting of Special School and PRU Head Teachers and Principals plus Officers at meetings on 2<sup>nd</sup> October 2019, 29<sup>th</sup> January 2020, 12<sup>th</sup> February 2020 and 18<sup>th</sup> March 2020.
- 9.5 On 01 April 2020, the Service Director for Education sent an email to the Head Teachers of special needs schools in Buckinghamshire. The purpose of the email was to advise the Head Teachers of the outcome of the consultation which was overwhelmingly in support of moving to a needs led system for top up funding. The email set out the steps that would be necessary for implementation for the academic year commencing September 2020 in the event that the proposed model is adopted.
- 9.6 The consultation report was published on 5<sup>th</sup> May 2020. This was emailed to education leaders across Buckinghamshire including head teachers, governors and senior leaders from our special and mainstream schools and pupil referral units and made available on the countywide online schools bulletin.
- 9.7 A further report will be taken to the next meeting of Schools Forum in June 2020 which will focus on the financial modelling outcomes and any proposed transitional arrangements.

- 9.8 The Cabinet Member decision will be circulated to the same stakeholders who received the consultation and consultation report.
- 9.9 The Local Authority kept FACT Bucks (Families and Carers Together) which is the Buckinghamshire SEND Parent/Carer Forum informed of the consultation prior to it being issued in February 2020, and of the outcome of the consultation report in May 2020. FACT Bucks have asked to be involved in the next stage of the process, looking at proposed band descriptors, and we will work them to ensure they are involved in these conversations and decision making.
- 9.10 In part due to the Covid 19 Pandemic which resulted in significant disruption for schools, there has been some slippage in the timetable and the matter being put before the Cabinet Member for a decision. Head Teachers for Special Schools, which is the proposed first tranche for implementation have been kept apprised of this situation.
- 9.11 In the event the Cabinet Member agrees with the proposal to adopt the preferred option, work has continued in parallel with the Task and Finish Group and the Heads of Special Schools to develop the model for Buckinghamshire, taking into account feedback received as part of the consultation, the engagement events and the modelling which took place with the schools. This work would ensure that if the model is adopted, there is no further slippage in the timetable for implementation. This has at all times been subject to the Cabinet Member's decision.
- 9.12 If and to the extent that any communications by Officers during this process gave the impression that this decision had already been made or that the banded funding model had already been adopted, this was an error. The Cabinet Member must disregard any implication arising from this. The decision in relation to whether to adopt the proposed banded funding model must be taken with a completely open mind as to the consultation outcome and other relevant matters set out in this report.

### **Next steps and review**

- 9.13 If the Cabinet Member agrees the recommendations the following steps need to take place to enable implementation in special schools from September 2020:
- a) Request for exemption from the MFG to be submitted as soon as practicable. May/June 2020.
  - b) Engagement with the Task and Finish Group, Schools Forum and Special School Head Teachers in relation to finalising band levels. May/June 2020.
  - c) Pupils to be assessed against the bands and moderation to be carried out to be completed by June 2020.
  - d) Calculation of band financial levels following the Schools Forum decision to enable budgets to be calculated. To be completed by June 2020.
  - e) School by school modelling to inform final transition arrangements. To be completed by June 2020.

- f) Budgets from September to be finalised during the Summer term. To be finalised following the Schools Forum meeting in June 2020.

## **Appendices**

### **Consultation document**

### **Consultation report**

### **Equality impact assessment**

### **Background papers**

Link to SEND Strategy

<https://www.bucksfamilyinfo.org/kb5/buckinghamshire/fsd/advice.page?id=ginScCY9QWo>

Schools Forum Reports

<https://buckinghamshire.moderngov.co.uk/CeListDocuments.aspx?Committeeld=637&MeetingId=9231&DF=25%2f03%2f2019&Ver=2>

<https://buckinghamshire.moderngov.co.uk/CeListDocuments.aspx?Committeeld=637&MeetingId=9233&DF=15%2f10%2f2019&Ver=2>

<https://buckinghamshire.moderngov.co.uk/CeListDocuments.aspx?Committeeld=637&MeetingId=9234&DF=03%2f12%2f2019&Ver=2>

### **Your questions and views (for key decisions)**

If you have any questions about the matters contained in this report, please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone 01296 382343 or email [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk)