

Bristol Schools Forum
High Needs Budget 2018/19

Date of meeting:	25 th September 2018
Time of meeting:	5.00 pm
Venue:	City Hall, Writing Room

1. Purpose of report

- 1.1 This report advises Schools Forum on the High Needs budget position for 2018/19.
- 1.2 A recent court judgement has the effect of quashing the original decision on the High Needs budget for 2018/19. A new decision on the budget for 2018/19 is needed. This report consults Schools Forum on the basis of the recalculated budget, prior to it being considered by Cabinet and then full Council.

2. Recommendations

- 2.1 **Schools Forum to provide any advice or comments to Cabinet and Council on the proposed approach to re-determining the High Needs Budget to £53.905m for 2018/19.**
- 2.2 **Note that the budget for 2018/19 is prepared on the basis of not disturbing other aspects of the budget and no increase to general council tax in 2018/19.**
- 2.3 **Schools Forum to advise the Authority on whether it would agree now or defer until year-end:**
- i. **to transfer the unallocated central services funding in 2018/19 of £0.566m to the High Needs Block; and/or**
 - ii. **in principle, to transfer any unspent Early Years funding at year-end to the High Needs Block.**

3. Why this report is needed

- 3.1 The Dedicated Schools Grant (DSG) is a specific and ring-fenced grant, provided by the Department for Education (DfE). It is used in support of the local authority's Schools Budget and is broken down into the following four blocks.

1. **Schools Block** primarily funds mainstream schools.
2. **Early Years Block** primarily funds early education provision in private, voluntary and independent settings, maintained nursery schools, school

nursery classes and the education of two year olds from households with low incomes.

3. **Central Schools Services Block** primarily provides funding for core educational support services that affect all schools and academies or their pupils (e.g. admissions, Schools Forum costs, some statutory and regulatory education functions and spending on on-going initiatives that were approved by Schools Forum in the past).
 4. **High Needs Block** primarily funds pupils with high needs such as pupils with Special Educational Needs and Disabilities (SEND) who may have Education Health and Care Plans (EHCP), or pupils in Alternative Provision (AP) such as Pupil Referral Units or Hospital Schools.
- 3.2 In February 2017, the Council agreed the DSG allocation which included the High Needs Block and a deficit recovery plan to achieve reductions of £7.2m over a 3 year period of which the potential savings for 2018/19 was £5.1m. The £5.1m figure represented the forecasted value of savings that would be necessary if the forecasted pressures materialised and the budget were to be delivered at the level of £50.951m that was agreed by Council in February 2018.
 - 3.3 Following the SEND Judicial Review and a High Court Ruling in August 2018, which found in favor of the claimants, the High Needs budget element of the Dedicated Schools allocation was quashed. An outline of the details of the key points of the judgement is in Appendix 1.
 - 3.4 This means that, while spending may continue on High Needs activities in the meantime, the Council has to reconsider its original decision about the High Needs budget and in addressing as appropriate the points outlined in the judgement, present the budget to Council for a decision.
 - 3.5 This report, therefore, focuses on the High Needs activity and budget, and proposes a revised 2018/19 budget for Council consideration.

4. Background to the High Needs Block

Funding (High Needs Block)

- 4.1 The recent history of the DSG arrangements for High Needs block funding has been varied. Table 1 indicates how the headline totals have changed year-on-year since 2014/15.

Table 1: Comparative Gross High Needs Budget allocations 2014/15 – 2018/19

	Gross amount of High Needs Block DSG £m	Simple change on previous year £m / (%)	Comment on funding changes	Actual & Forecast Outturn of High Needs Block DSG £m	Difference between DSG allocation and total spend on High Needs £m
2018-19	£51.0m	£0.4m / 0.8%	–£1.0m transfer of responsibilities for pupils in mainstream resource bases to Schools Block, so increase is £1.4m / 2.8%.	£54.6m	£3.6m
2017-18	£50.6m	£7.3m / 16.9%	£4.6m rebase line plus £1.6m post-16 , £0.75m population fund and £0.47m growth	£53.7m	£3.1m
2016-17	£43.3m	£0.7m / 1.6%	No change in scope of HNB between years	£50.1m	£6.8m
2015-16	£42.6m	£0.4m / 0.9%	No change in scope of HNB between years	£49.8m	£7.2m
2014-15	£42.2m			£44.7m	£2.4m

4.2 The headline figure disguises some changing responsibilities between High Needs Block and Schools Block or between High Needs Block and the Education and Skills Funding Agency’s (ESFA) Post 16 Grant. Incremental changes, taking account of agreed places or allowing for some cost or demand pressures have largely been modest.

4.3 Notably, however, there was a stepped increase in funding in 2017/18 that re-baselined the High Needs Budget for every local authority to recognise the prevailing level of spending. This accounted for £4.6m of the increase between 2016/17 and 2017/18. Recognising historic levels of spending was very helpful in managing the High Needs Block, but there has been insufficient recognition of growing demand or the additional commitments created following the SEND Reforms in 2014 by extending the age range for duties in relation to children and young people with SEND to Birth to 25 from 2-19 years, as was the case previously.

4.4 For 2018/19, the DfE have introduced a National Funding Formula to determine the amounts for each local authority differently and, on a like-for-like basis, this has produced an increase of 2.8%.

4.5 The provisional High Needs block income for Bristol has been calculated as follows:

Table 2: Components of the High Needs Block DSG funding allocation for 2018/19

Component	£m
Actual High Needs national funding formula allocation	£47.361m
Plus £4,087.90 per pupil ACA weighted base rate * 869 (pupils in special schools/ academies based on the October 2017 census)	£3.551m
Import/export adjustment £6,000 * -	-£0.031m

Component	£m
5 (net imported / exported) pupils (estimate)	
Total December 2017	£50.882m
Import/export adjustment £6,000 * 18.5 (net imported / exported) pupils (confirmed)	£0.111m
TOTAL July 2018	£51.023m

SEND performance

4.6 The tables below detail activity trends following the introduction in September 2014 of the new Children and Families Act specifying the need for consistent help for children and young people with SEND.

Table 3: Statutory Statements of SEN (as per 02 September each year until 31/05/2018 when all had to be converted to Education Health and Care Plans)

Age	2014	2015	2016	2017	2018
0-4 years	33	17	1	0	0
5 -16 years	1,619	1,388	1,016	452	27
17 -19 years	208	139	121	75	0
20-25 years	8	4	4	0	3
Total	1,868	1,548	1,142	527	30

Table 4: Education Health and Care Plans (as at 02 September each year)

Age	2014	2015	2016	2017	2018
0-4 years	0	4	37	22	16
5 -16 years	0	20	623	1,126	1,463
17 -19 years	0	2	200	390	557
20-25 years	0	0	35	107	175
Total	0	26	895	1,645	2,211

Table 5: Total number of statutory plans (as at 02 September each year)

Age	2014	2015	2016	2017	2018
Total	1,868	1,574	2,037	2,172	2,241

Table 6: Requests for Statutory EHC Needs Assessment

Year	2016	2017	2018: 7 Months only
Total requests received	514	427	402 (800+ expected for the year)
Yes to Statutory EHC Needs Assessment	239	238	282
No to Statutory EHC Needs Assessment	275	189	88
Awaiting Panel decision	0	0	32 waiting to be

			seen by Panel by 30/09/2018
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4.7 This indicates an increase of 342 Statutory Plans (18.2%) on the 2014 position, and a total of 1,868 conversions (reassessment of needs, and this time across Education, Health and Social Care, not just Education as was the case with Statements of SEN as well as drafting and writing Education Health and Care Plans) also had to take place within this period whilst all Statements of SEN were continued to be maintained.

4.8 In addition to this, 759 new ECH Needs Assessments also took place in 2016-2018 which resulted in 2,211 new EHCPs in total.

4.9 Tables 7 and 8 provide activity levels in Bristol and non-maintained special schools over the last four years.

Table 6: Number of commissioned places in Bristol's Special Schools 2014-2018, as at 31 March

	2014/15			2015/16			2016/17			2017/18		
	as @ 31st March 15			as @ 31st March 2016			as @ 31st March 2017			as @ 31st March 2018		
	Pre-16	Post-16	Total	Pre-16	Post-16	Total	Pre-16	Post-16	Total	Pre-16	Post-16	Total
TOTAL COMMISSIONED PLACES	737	124	861	740	134	874	767	148	915	749	145	894

Table 7: Number and cost of commissioned places at Independent Non-Maintained Schools

Placement type	Places 2014/15	Places 2015/16	Places 2016/17	Places 2017/18
Pre 16 INM	21	40	42	52
Post 16 INM	18	33	46	30
ISP	31	16	10	9
Total	70	89	98	91

Placement type	Spend £m 2014/15	Spend £m 2015/16	Spend £m 2016/17	Spend £m 2017/18
Pre 16 INM	£1.097m	£2.355m	£2.529m	£3.006m
Post 16 INM	£0.679m	£1.968m	£2.125m	£1.900m
ISP	£1.865m	£0.888m	£0.837m	£0.620m
Total	£3.642m	£ 5,211m	£5.491m	£5.526m

4.10 The increases in numbers and associated workload outlined in the various tables above are not unique to Bristol's Local Area Services and are reflected in the national picture of High Needs service pressures.

Rising Demand and Costs Pressures

4.11 The SEND population generally is growing in excess of the increase in birth rate, partly due to improved medical care, diagnosis and earlier identification of needs. In Bristol in 2018 1 in 14 children and young people have Special Educational Needs and or a Disability, ranging from a moderate learning difficulty to profound and multiple complex special educational needs which include sensory as well physical impairments. This has created pressure on inclusion in mainstream schools and a shortage of places in the majority of special schools in both the primary and secondary phases, despite an increase in commissioned places.

Table 9a: General Population figures

Age	2014	2015	2016	2017	2018
0-4 years	31,043	30,787	30,648	29,800	2018 data is not yet available (the ONS have not issued it yet)
5 -16 years	56,316	57,366	58,477	59,743	
17 -19 years	17,350	17,996	17,881	18,160	
20-25 years	55,741	57,981	58,838	59,332	
Total	160,450	164,130	165,844	167,035	

Table 9b: SEN Support in mainstream education settings (as per January Census data)

Age	2014	2015	2016	2017	2018
0-4 years	644	653	626	599	597
5 -16 years	7,743	6,792	6,384	6,481	6,854
17 -19 years	118	113	153	153	155
Total	9,149	7,558	7,163	7,233	7,606

Table 10: Percentage of the population identified with SEN and supported at SEN Support level in mainstream education settings

Age	2014	2015	2016	2017	2018
0-4 years	2.1%	2.1%	2%	2%	2018 data is not yet available (the ONS have not issued it yet)
5 -16 years	13.7%	11.8%	10.9%	10.8%	
17 -19 years	0.7%	0.6%	0.9%	0.8%	
Number of children and young people identified with SEN	1 in 12.3	1 in 14	1 in 14.9	1 in 14.9	

4.12 The decrease in figures in Table 10 relates to the challenges in education settings around the introduction of 'new' classifications of the four broad areas of SEND as detailed in the SEND Code of Practice 2014 and the following year when it was re-issued in 2015. This was particularly the case in terms of the identification of children of statutory school age in mainstream education settings, as is reflected in the figures above. Identification of SEND continues to be a workforce development issue across the Local Area which the

Specialist and Inclusion Services continue to address through targeted and specialist support.

- 4.13 The increase in numbers of EHCPs is of course due in large part to the extension of the age range they support from 2-19 to 0-25 introduced by the Children and Families Act 2014 and SEND Code of Practice 2015. Previously we would expect around 200 Statutory Statements of SEN per year to lapse at age 19 but the majority of these CYP are continuing in education so we are now responsible for over 300 more EHCPs than 3 years ago.

Table 11: number of statements/EHCPs ceased since 2014

Number of statements/EHCPs ceased	2014		2015		2016		2017		2018 to date	
	S	EHCP	S	EHCP	S	EHCP	S	EHCP	S	EHCP
School leavers	218	0	16	0	243	3	39	47	15	56
Transferred to another LA	6	0	6	1	21	18	8	22	0	23
Needs met without statement/plan	3	0	28	0	6	0	11	5	8	16
Other reason	5	0	1	0	0	0	0	0	1	1

- 4.14 The rising number of EHC Needs Assessments as well as EHCPs is not only impacting on costs but also on their quality and on levels of complaints and dissatisfaction. Pressure on attainment in mainstream schools as well as that on school budgets generally, is providing a challenge to inclusion as schools need to reduce the costs of staffing and additional support. Notional SEN budgets within the DSG are not ring-fenced and there is currently no agreed mechanism for monitoring this spending. The only guaranteed additional funding for pupils is the Top-Up element.

Table 12: Top up expenditure since 2014/15

Placement type	2014/15	2015/16	2016/17	2017/18
Top Up	19,276,416	22,474,908	20,832,980	22,476,931
*GFE	990,160	928,428	1,824,822	1,729,799

* *General Further Education and Specialist Colleges*

- 4.15 There is corresponding pressure for changes of placement to Resource Bases or Special Schools even where needs could potentially be met within the provision and resources generally available in mainstream settings. This can take up valuable Special School places for children with less complex needs meaning that there is then insufficient capacity to meet the needs of the most complex children. This in turn leads to high-cost independent/out of authority placements. Even where capacity in Special Schools is increased, the range of needs catered for is skewed and schools are seeking additional or exceptional needs funding for a wider range of pupils.

Why are Alternative Learning Provider (ALP) costs increasing?

- 4.16 Whilst the total number of pupils being permanently excluded in Bristol has continued to fall, the number of pupils entering LA funded ALP has risen. The majority of ALP placements is Spot Purchased and is for secondary aged pupils.

Tables' 13 a-d: Alternative Provision data

Table 13a: New ALP SPOT placements by month

	2018/19	2017/18	2016/17
April	11	13	5
May	7	5	3
June	7	11	16
July	13	5	3
August	0	0	0
September	70	27	70
October		13	7
November		10	10
December		7	6
January		18	13
February		2	9
March		2	3
Average	18	9	12

Table 13b New ALP spot placements by month

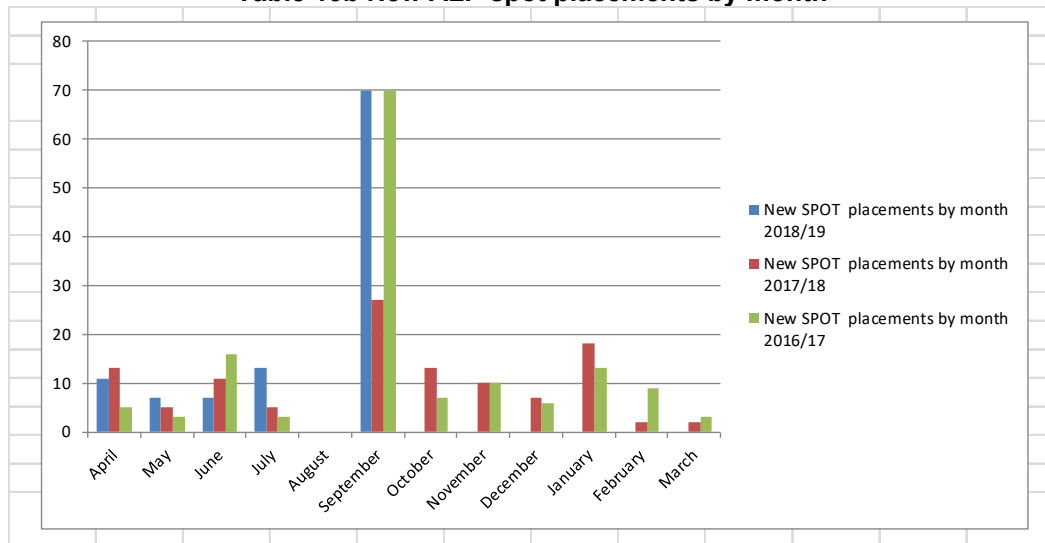
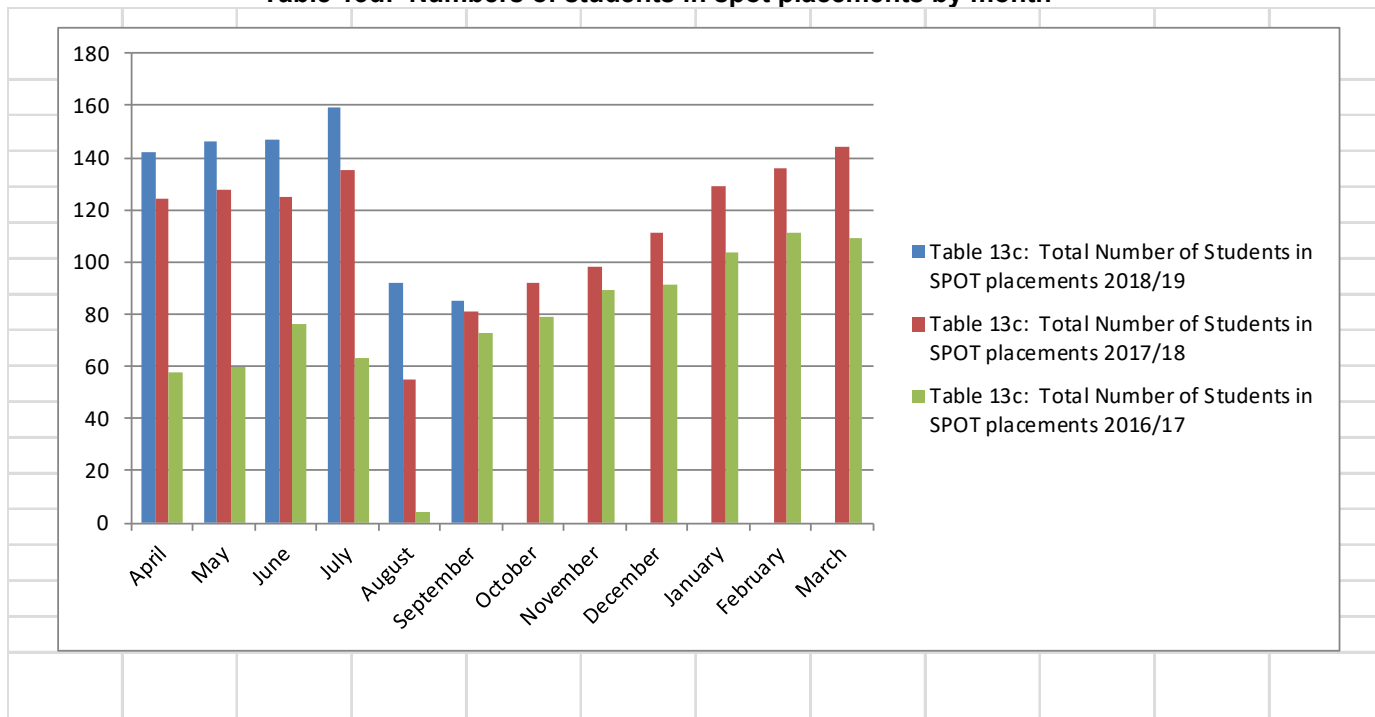


Table 13c: Total Number of Students in SPOT placements

	2018/19	2017/18	2016/17
-			
April	142	124	58
May	146	128	60
June	147	125	76
July	159	135	63
August	92	55	4
September	85	81	73
October		92	79
November		98	89
December		111	91
January		129	104
February		136	111
March		144	109
AVERAGE Pupils	129	113	76
Total net cost to HNB	801,208	£ 1,026,717	£1,004,497
Average net cost per pupil to HNB	£6,235.08	£9,072.61	£13,144.99

Table 13d: Numbers of students in spot placements by month



- 4.17 Many of these placements are jointly funded by schools to avoid permanent exclusions and there have been more placements of this type made in the last year. There has also been an increase trend in the number of very high cost placements of pupils with SEND (with EHCPs) as well as Children in Care into ALP settings or non DfE registered provision. These placements are made as there are no special school places. A number of special school placements have been unsuccessful or INM alternatives who can successfully meet needs, despite wide ranging consultations. Placements are also made in line with parental preference as well as availability.
- 4.18 Finally, the number of Primary school permanent exclusions (especially in the South of the City) has risen sharply over the past two years. Whilst there is some state funded school-like capacity available (ESFA/ DSG), there are occasions where the local authority's statutory duties to make provision for excluded pupils means that we have to commission ALP.
- 4.19 The above provides a high level summary of the increases in the number of High Needs pupils and their increased complexity of needs.

Outcomes and improvement work underway

- 4.20 The spend on children and young people with High needs has increased by 22% equating to £9.8m since 2014/15. However, the impact of this additional expenditure has not produced the desired outcomes, as reflected in the 2017 data. We are awaiting the 2018 data which has not yet been released for vulnerable groups:
- KS1 & KS2 attainment: the percentage of pupils on SEN Support meeting required standard was lower than Statistical Neighbours (SN) for Reading, Writing and Mathematics (RWM), with the difference ranging from -0.3 to -2.6 percentage points (pp). Mathematics was the lowest area of attainment.
 - KS1 to KS2 progress: progress of pupils on SEN Support was below that achieved compared to Core Cities (CC) for RWM and & SN in Writing & Mathematics, the difference ranging from -0.4 pp to -1.9 pp. Mathematics was again the lowest area of performance.
 - KS4 attainment & progress: Attainment 8 score for children and young people without SEN in Bristol (-0.1) is below that of CC (-0.08pp) & SN (-0.15pp). For SEN Support progress 8 (-0.53) is below figures for England (-0.43).
 - Type of SEND identified outliers CC and SN for Specific Learning Difficulties, Social Emotional & Mental Health, Moderate Learning Difficulty and Hearing/Visual Impairment.
 - Inclusion: EHCPs in mainstream primary is low and permanent exclusions high (22 in 16/17, 51% on SEN Support. 12 in 17/18, 80% on SEN Support.).
 - SEND Parental Survey in 2015/16 showed low confidence in systems of support for children and young people with SEND.
 - The 2018 LGA Peer Review of SEND highlighted issues with poor identification of pupils with SEND and lack of ambition for educational attainment.

- 4.21 The key challenges that we have focused on with school in 2017/18 have been:
- The fall in Ofsted Good/Outstanding judgements - Less children now have the opportunity to attend a good/outstanding school in Bristol
 - Attainment across all measures (Early Years, Key Stage 1, Key Stage 2, Key Stage 4 and Post 16) for all groups. Whilst the trajectory in many areas of headline attainment measures is positive, the gaps are still too wide between Bristol and National averages, and between groups of children and young people.
 - Outcomes for children and young people with SEND are far too low in comparison to their peers. Whilst EHCPs are increasingly reflecting a greater multi-agency approach, the ambition within these needs to reflect improved outcomes from all Local Area services.
 - Children in Care in Education are well supported by the Hope Virtual School and there is support and challenge to schools to improve outcomes for Looked After Children. However attainment continues to be an area of considerable focus, particularly at Key Stage 4.
- 4.22 Work to improving outcomes for children and young people with SEND and those with the highest needs have included the following during the past academic year:
- 4.23 The School improvement offer has been as follows:
- Maintained schools had one LA commissioned visit in the autumn term (September to December) to review the school's outcomes including those of vulnerable groups and discuss school improvement planning for the academic year.
 - Maintained schools also had the option to purchase additional visits on a bespoke basis, including support for head teacher performance management.
 - Academies had the option to purchase the above. All of the academies that did so are standalone academies.
- 4.24 The Inclusion in Education Group (previously known as the Inclusion Reference Group) drives and oversees the changes required to fully implement the SEND reforms (outlined by the Children and Families Act 2014 and the 0-25 SEND Code of Practice 2015) and has been working with officers on a series of relevant work streams (i.e. High Needs Budget support services, Top-Up funding for mainstream as well as specialist education settings, Post 16 provision for young people with SEND, and Alternative Learning models) with the key objective to ensure the High Needs Budget is sufficient to meet the needs and costs of associated with Children with SEND and that in the long term the ongoing demand is sustainable within the envelope of funding provided from the Department for Education via the National Funding Formula. The work of the IEG also involved establishing working groups that focused on the Early Intervention Base (EIB) pilot, the

development of the Bristol SEN Support Plan, driving the Local Area EHCP Improvement Plan and starting to look at new models for Top Up.

- 4.25 Special Schools also received additional workforce development around the quality of EHCP Annual Reviews as well as EHCP improvement.
- 4.26 Specialist Services and Inclusion Services have also continued to work directly with Early Years, School Age and Post 16/ GFE mainstream as well as specialist education settings to drive inclusion as well as approaches to differentiating quality first teaching through targeted support for children and young people with moderate learning difficulties, developmental delay and specific learning difficulties such as Dyslexia or Dyspraxia. These services have also offered specialist support to individual children and young people with sensory impairments, autism, and mental health needs that present with high levels of challenging behaviour in addition to high levels of school related anxiety, school refusal and high risk of permanent exclusion.
- 4.27 There are four main boards that oversee the Educational Outcomes of vulnerable children and young people in Bristol. These are the: Children and Families Partnership Board; Health and Wellbeing Board; Learning City Partnership Board; and Bristol Children Safeguarding Board. Regular reports are made to the boards around the outcomes of vulnerable children and young people and there is representation of senior education leaders on all the boards and subgroups.



- 4.28 The local authority also works with partners through the **Excellence in Schools Group (EISG)**. The group contributes to the achievement of the Learning City vision and its ambition to improve educational outcomes for all. Excellence in Schools Group members use their involvement in other forums (e.g. secondary and primary Heads Associations, MATs, teaching schools, Diocese etc.) to ensure greater coordination and coherence of the school-led system across the city. The responsibility for school improvement is a collective one and the EISG acts in accordance with the Regional Schools Commissioner's vision of a 'Local School Standards Board'. This means that school performance and progress is regularly reviewed by the group. With the support of an independent Chair, members will hold partners to account, evaluate the impact of improvement work and make recommendations and broker support where appropriate.

- 4.29 The **Monitoring, Support, Challenge and Intervention Policy** (updated for 2018) sets out the process for challenging those schools that are deemed to be causing concern. A risk assessment is carried out by LA officers to reach decisions about the support level for each school/academy based on the most recent performance data; information from the regional school's commissioner; latest Ofsted inspection reports; a one page summary SEF submitted by each school; and a self-assessment of each school's strengths using the School Self Review. In September, all maintained and academy schools are required to assess themselves against the support level criteria and establish where they believe they match the criteria. This is sent to the Head of School Partnerships and this self-assessment will also inform discussions LA officers and Excellence in Schools Group members about which level of support the school will receive.
- 4.30 Other activities to improve school performance for vulnerable children include:
- A new **School Improvement model** for 2018-20 incorporates a universal offer of an allocated Bristol Education Partner (formerly School Improvement Advisers or current Heads/NLEs) to support every primary, secondary, special school regardless of its maintained or academy status.
 - A '**Blackbox data**' agreement with schools means that schools can plan strategically based on group level data from July onwards. Transparency of data is enabling schools and the ESIG to identify where there is successful practice and potentially form school to school improvement partnerships.
 - A **Strategic School Improvement Fund** bid to improve educational outcomes in 30 of Bristol's most vulnerable schools (19 primaries and 11 secondaries) focused on 'Leadership for Learning'.
 - A **SEND Transformation Board, SEND strategy** and investment in SEND Services/ operational teams.

Outcomes and Funding

- 4.31 Insufficient funding from central government coupled with an increase in demographic pressures has meant that the past eight years have been a period of significant challenge for Education and Council budgets.
- 4.32 The scale of the ongoing challenge in both service provision, outcomes achieved and financial resources means that the way we deliver our services will need to change. The evidence above indicates the equation of quality care with higher costs is a fallacy. The impact of poor quality can be measured through the outcomes but it is also seen in spiralling costs, overspends, wasted resources and poor investments which needs to be addressed.
- 4.33 Similarly an undue focus on solely cost cutting will not deliver the changes required to improving educational outcomes for children and young people with SEND, as well as those with high needs. A collaborative approach is

required to ensure that resources are used most effectively to deliver the highest quality outcomes.

- 4.34 For the future, the High Needs Transformation plan being developed will seek to place quality at its heart and improved outcomes for the children and young people of Bristol and provide a stable platform to be able to meet the challenges ahead with ambition and confidence.

5. 2018/19 High Needs Budget position

- 5.1 In previous years, the High Needs budget has been based on the available funding, whether from the High Needs Block of the DSG, or supplemented by transfers from elsewhere in the DSG. That available resource was allocated to the various cost-centres as appropriate, often with the expectation that certain components of the budget would overspend.
- 5.2 For 2018/19, the budget was set with more visibility of the expected commitments and the level of reductions that would be necessary to balance the budget. The original budget represented the forecast spend in 2018/19 when a full assessment was done in September 2017, offset by a schedule of savings amounting to £5.1m for 2018/19. The timescales for delivery of savings on each of the components were estimated, with some measures possibly taking much longer or not being fully deliverable. This was explained in reports to Schools Forum on the High Needs budget.
- 5.3 **Table 14** provides the 2018/19 Period 4 forecasted outturn and variance against the original expenditure budget of £50.951m.

Table 14: High Needs Budget forecast 2018/19, based on originally set budget

Component	Budget 2018/19 £'000	Period 4 Forecast 2018/19 £'000	Variance £'000	Comment on variance
1. Places only	14,609	15,552	943	<ul style="list-style-type: none"> Natural changes to place numbers in individual institutions have taken place, but the reductions (mainly in FE) have been offset by increases (mainly in other specialist provision and particularly for Pre 16).
2. SEN Top-ups	22,664	24,063	1,399	<ul style="list-style-type: none"> This related to mainstream School Age Top, Special School Top Up and GFE Top Up and is based on existing commitments and fluctuations in-year (up and down). No changes have been made to special school or mainstream top-up rates, but the cost and number of new cases / changed circumstances of children and young people have increased.
3. AP Top-ups	737	985	248	<ul style="list-style-type: none"> This reflects current activity levels, including the impact of reimbursing schools for a higher charge for 12 week placements from April 2018.
4. Other SEN provision	5,904	5,962	58	<ul style="list-style-type: none"> Increase in demand for commissioning of pre-16 education Independent Non Maintained placements, both solely funded by Education as well as jointly commissioned with Social Care and Health.
5. Other AP provision	4,040	4,978	938	<ul style="list-style-type: none"> Demand and cost pressures plus impact of restoring Hospital Education £200k and Early Intervention Bases savings £450k.
6. Services	2,997	3,070	73	<ul style="list-style-type: none"> Current levels of spend on support services.
Total Commitment	50,951	54,609	3,658	<ul style="list-style-type: none"> The forecast overspend is lower than the overall savings target of £5.1m because there were some natural reductions arising from fluctuations in demand and cost or reductions attributable to changes that began during 2017/18, rather than as a consequence of the original budget decision for 2018/19.
Brought Forward	-6,300	-1,873	4,427	<ul style="list-style-type: none"> At year-end, underspends in other blocks was used to reduce the historic deficit attributable to High Needs.
Unallocated funding	2,631	2,772	141	<ul style="list-style-type: none"> The original budget planned to use some of the available resource for High Needs to reduce the historic deficit.
HNB allocated 2018/19	50,951	50,951	0	<ul style="list-style-type: none"> This is the budget allocated as part of the original budget decision in February 2018.
Total Funding	47,282	51,850	4,568	<ul style="list-style-type: none"> The overall funding available has increased mostly because of the transfer of resources to address the historic overspend at year-end.
Overspend (cumulative)	3,669	2,759	-910	<ul style="list-style-type: none"> On the basis of the current forecast spend and available resources, High Needs would end the year with a £2.8m cumulative deficit.

5.4 This indicates a total spend of £54.609m based on actual activity and expected end of year overspend of £3.658m.

5.5 The available High Needs resources for 2018/19 have increased by £4.568m since the originally set budget. £4.427m was due to underspends in the DSG at year-end. £0.141m was due to a technical adjustment to the High Needs DSG by the DfE.

5.6 Overall, the current forecast, taking account of the forecast activity and the overall available resource currently attributed to the High Needs Block, would produce a forecast overspend of £2.759m at year-end.

6. Judicial Review implications of setting a new High Needs budget for 2018/19.

- 6.1 The outcome of the judicial review, made in August 2018, is that the original High Needs budget of £50.951m and the decision to have a schedule of £5.1m savings for 2018/19 is quashed. Whilst much of the judgement focused on the need for public consultation and impact assessments covering a range of areas, we recognise that both the Services and financial position has moved on from the circumstances Council faced in February 2018. We would seek to minimise the impact created by greater uncertainty regarding future service provision and confusion that two consecutive consultations for 2018/19 and 2019/20 could create. The previous deficit recovery proposals which largely remained in development will not be incorporated in the revised 2018/19 budget for consideration by Cabinet / Council in the forthcoming meeting.
- 6.2 In determining the correct amount of the High Needs Budget for 2018/19, it is proposed to revert to past practice. **Table 15** sets out the calculations which is broken down into the following two processes.
- 6.3 The first is the **Budget Reversal**. The original budget was based on the 2017/18 DSG of £50.649m, less forecast of the following:
- A transfer of responsibilities to Schools Block (for mainstream SEN) of -£1.0m
 - Plus - indicative spending commitments calculated of £6.402m
 - Less – deficit recovery schedule of £5.1m
- This gave the actual budget agreed of £50.951m
- The quashing means that we revert to the 2018/19 DSG of £50.882m (as it was known in February 2018) and start the exercise again.
- 6.4 Many of the propositions outlined in the previous deficit recovery plan have not been progressed, however there are three savings measures which have been implemented, which the Council proposes to unwind as a consequence of the court decision. These relate to increased charges to primary schools for 12 week Alternative Provision placements, the changes made to the Early Intervention Base arrangements when the two year pilot ended in the summer of 2018 and the budget reduction to the Hospital Education service. The impact is forecasted to be up to £0.8m and this is reflected in the Period 4 forecast as outlined in table 14.
- 6.5 The second is the **Revised Budget**. **In ensuring that the budget for 2018/19 is prepared without the disruption of other aspects of the Schools or Council budget** in utilising the same principles as in previous years the proposed 2018/19 High Needs budget is built up as follows:
- We do not attempt to calculate or add commitments – we now have 2018/19 forecasted outturn
 - We do not deduct any indicative savings targets
 - £50.882m DSG, £2.000m from Schools Block and £0.700m from General Fund

- Total In-year available funding: is **£53.582m**
- 6.6 In addition subsequent changes have occurred at the year-end on Early Help (+£0.182m) and increased DSG allocation from DfE of £0.141m increases the overall figure to **£53.905m (recommendation to Full Council)**.
- 6.7 The historic deficit, which, at that point of setting the budget, was forecast to be £6.270m would have rolled-forward, however the overall position improved at year end due to:
- a) The year-end outturn was better than expected and £4.397m of underspend from across the DSG in 2017/18 was used to reduce the historic deficit in the High Needs budget; and
 - b) At year-end, it was confirmed that the final element of £0.182m funding for Early Help staffing could be used in the High Needs block.
- 6.8 The original £53.582m, therefore, would increase by £0.182m and £0.141m to produce an updated budget of **£53.905m** and a **deficit of £2.055m** for the High Needs budget.

Table 15a: The Budget Reversal - Original basis 2018/19 Budget agreed in February 2018

Details of the calculation of the original High Needs DSG budget 2018/19	High Needs DSG 2017/18	Less transfer of responsibilities to Schools Block	Add expected cost of spending commitments	Savings	Original Feb 18 decision £'000
High needs budget allocation 2018/19	50,649	-1,000	6,402	-5,100	50,951

Table 15b: The Revised Budget - Proposed revised basis for High Needs Budget 2018/19 for November 2018 Council

Impact of quashing the original decision and setting the High Needs Budget on the basis of the available funding.	High Needs DSG 2017/18	Adjustment to set new budget at available funding	Proposed post-JR reversion £'000	Impact of year-end 2017-18 £'000	Subsequent DfE change to DSG May 2018 £'000	Updated post-JR position £'000	Forecast spend 2018/19 (based on P4) £'000
DSG allocation	50,649	233	50,882				
Transfer from General Fund & Schools Block		2,700	2,700				
High needs budget allocation 2018/19	50,649	2,933	53,582	182	141	53,905	54,609

Funded from

b/f	-6,270	4,397		-1,873	-1,873
DSG	50,882		141	51,023	51,023
Transfer from Schools Block	2,000			2,000	2,000
Transfer from General Fund	700			700	700
Total funding	47,312	4,397	141	51,850	51,850
Cumulative position (overspend = +)	6,270	-4,215	0	2,055	2,759

6.9 It is currently forecasted that this position will be overspent at the end of the financial year 2018/19 by £2.759m. This needs to be viewed in the context of the overarching DSG forecasted outturn at Period 4 of £1.3m overspend, attributed to the High Needs pressure, offset by an unallocated £0.6m in Central School Services Block, a potential underspend in Early Years Block of £0.8m and a £0.1m underspend on de-delegated services.

6.10 Should this position be realised, in managing the potential future overspend on the High Needs budget Schools Forum are asked to agree, either now or at year-end to transfer the unallocated £0.6m in the School Central Services Block and 'in principle' to the transfer of any unspent monies in 2018/19 in the Early Years Block to the High Needs Block.

6.11 The Council is currently forecasting an overspend and therefore in line with DSG Guidance which applies to the grant as a whole, not to the individual blocks. The Council, would have the options of deciding how to manage that overspend at year-end, as per the terms and conditions of the Dedicated Schools Grant, and subject to the financial position at the end of the year, will be asked to decide whether to:

1. *Fund all the overspend from its general resources in the year in question*
2. *Fund part of the overspend from its general resources in the year in question, and carry forward part to the schools budget in the next year or the year after that*
3. *Not to fund any of the overspend from its general resources in the year in question, and to carry forward all the overspend to the schools budget in the next year or the year after that.*

6.12 **Appendix 2** provides details about each of the components of the previous £5.1m savings schedule and explains how officers have ensured that no policy changes that are directly consequent to the original decision of February 2018 Council stand. As outlined in 6.4 above there are three particular changes which need to be unwound due to the need for public consultation prior to any implementation of 2018/19 changes.

Further Resource implications

- 6.13 The recent loss of a judicial review regarding the High Needs Block budget for 2018/19 has brought in to focus the need for additional work to be undertaken, both to reinstate the budget but also to support future consultation and decision-making activity around items identified in the budget and service planning arrangements for the High Needs Block.
- 6.14 The additional profile and scrutiny now attached to HNB/SEND means a higher number of requests for services such as alternative formats are more likely than might originally have been planned for and this will need to be captured in the costing.
- 6.15 It is likely that the requirements for resourcing will be over-and-above the 'core offer' of the services concerned.
- 6.16 The court judgement found in favour of the claimants and the Authority will have to meet their legal costs actual figure still to be confirmed.
- 6.17 It has been indicated by the Section 151 Officer that funding for the from the above will be met from the Council's general fund reserve and to this effect details will be developed and incorporated within the report presented to Cabinet.

7. Conclusions

- 7.1 The approach outlined explains how the Judicial Review Order has made a new decision by Council necessary on the High Needs Block for 2018/19.
- 7.2 The Council has reviewed all aspects of the savings schedule of £5.1m originally planned for 2018/19 and have ensured that no policy changes arising directly from the decision of Council in February 2018 will be implemented in 2018/19 financial year. This has involved taking steps to unwind three components where some changes had been made.
- 7.3 The original budget decision of £50.951m is proposed to be replaced by a figure of £53.905m, an increase of nearly £3m. This proposed budget represents the available funding for the High Needs budget for 2018/19, and recognises that a deficit is likely to materialize which can be considered at year-end.
- 1.1 Increased demands on the High Needs Budget in terms of the numbers and level of support required to meet the needs of Bristol's children and young people with SEND as well as those with high needs is detailed in Tables 3-13, and demonstrates the pressures on those services as well as the financial resources necessary to support them.
- 7.4 Current forecast spending levels on the High Needs Budget are £54.6m at Period 4 for 2018/19. This forecast may vary for the remainder of the year as a natural consequence of individual children's circumstances (e.g. pupils

changing schools, annual reviews identifying different levels of need). The spending within the High Needs Budget for 2018/19, however, will be based on the policies that prevailed prior to the February 2018 Council decision (i.e. no policy changes or consequent savings are proposed as part of the recalculation of the High Needs Budget).

- 7.5 There are other resource implications arising from the court ruling. This includes the need to pay the claimants' legal costs and having sufficient capacity to manage the necessary service improvement work that will assist in working out how best to produce a sustainable plan for the High Needs Block in the longer term.

City Outcome:

- **Empowering and Caring:** Safeguarding and promoting the welfare of children and young people with SEND and equipping the children and young people in our care with the skills and tools to live fulfilling, successful, and rewarding lives.
- **Fair and Inclusive:** Demonstrating due regard to the need to eliminate discrimination, advance equality of opportunity and continue to improve outcomes across education, health and social care for children and young people with Special Educational Needs and/ or Disabilities aged 0-25 years. To ensure everyone has access to a high quality education with appropriate levels of support and resources. Reducing in the gap between disadvantaged pupils (including pupils with special educational needs, disability and children in care) and the Bristol Average at Key Stage 4. An increase in the proportion of young people who have experience of work/apprenticeship by school age 16.
- **Well connected:** Supporting social inclusion and community cohesion for children and young people with SEND, and their families.
- **Wellbeing:** Children and young people with SEND aged 0-25 years and their families will have access to appropriate support for their needs from birth and will be better able to co-ordinate support around the child, achieve better outcomes and make firm plans for their future. Encourage life-long learning in environments where both academic and emotional development are understood and delivered together and increase overall educational performance.

Health Outcome summary: not applicable

Sustainability Outcome summary: not applicable

Equalities Outcome summary: These proposals aim to minimise any impacts on groups by reverting to the policy position which prevailed prior to this financial year.

Impact / Involvement of partners: *What is the impact on key partners? What engagement have they had?*

Consultation carried out: *This report is part of the engagement with schools and other partners prior to this matter being considered by Cabinet and Council.*

Legal Issues: The Council's decision to set the high needs budget 'HNB' was successfully challenged by way of a judicial review claim. The outcome of the case is that the HNB budget decision for 2018/2019 will be quashed once the Order has been sealed by the Court. The basis of the decision and the full order are set out in Appendix 1 It is therefore necessary for Council to make a new budget decision for 2018/2019 and it is proposed that this will be taken at the Full Council meeting in November.

Financial Issues: The original decision on the High Needs budget, made at Council in February 2018 has been quashed by way of a judicial review order. This report sets out the current position in 2018/19 on the High Needs budget and how a revised budget to replace the original one has been calculated.

This report is proposing to reset the financial arrangements for the High Needs Block to the policy position which prevailed prior to the February 2018 Council decision. The High Needs Block includes services which are sensitive to changes in the circumstances of individual children and young people. Demand and cost

fluctuations can and do occur, so the current budget forecast position may change during the rest of this financial year.

The report explains that the Authority will have to meet the claimants' legal costs, as a consequence of the court order. , There will be on-going impacts on resources to develop service improvements that fit within the budget and service planning for the High Needs Block, including any public consultation that may be required. The financial implications of both of the above are yet to be quantified and it is anticipated that they will be met from Council's general fund reserves.

David Tully, Finance Business Partner, ACE Directorate

Appendix 1

Key points from the court order, arising from the SEND Judicial Review

- The Claimants challenged the Councils decision to set the HNB budget in February 2018 on the basis that the council had failed to consult before taking the decision and failed to take into account the impact of the decisions on groups with protected characteristics pursuant to the Equality Act 2010 . Following a Hearing at the High Court in Bristol on 24 July 2018 the Judge found in favour of the Claimants. The Judge ruled that the Council's decision of 20 February 2018, insofar as it relates to the High Needs Block budget, **was unlawful by reason of a failure to consult** (as required by *Section 149 of the Equality Act 2010, Section 27(3) of the Children and Families Act 2014* and the Common Law), was taken in breach of **Section 11 of the Children Act 2004** and finally was **unreasonable**.
- The Judge decided that the decision to set a budget carried before it a duty to consult by reason of the duty of inquiry under the public sector equality duty, section 27 of the 2014 Act and also the common law duty to consult. Due regard under the PSED (and if necessary consultation), consultation under section 27 of the 2014 Act and regard under section 11 of the 2004 Act must be essential preliminaries to any significant, sufficiently focussed, and in financial terms apparently rigid, decision to impose a reduction in spending, even if taken as part of the setting of "a budget". This decision was to cut funding to a specified area within the education budget. The Judge decided that this decision was indeed a significant, sufficiently focussed and in financial terms apparently rigid decision to engage the above duties.
- On that basis the High Needs Budget decision made by Full Council on 20 February 2018 will be overturned ('quashed')
- The Judgement requires the Defendant to **reconsider its funding allocation** in this area in the light of the resources available at the material time, **without disturbing other aspects of the budget or in particular the Council Tax calculation** and without the Court telling the Defendant **how its resources should be expended**.
- The Order when made will state that :
 - Permission to apply for judicial review is granted.
 - The claim for judicial review is allowed.
 - The decision of the Defendant on 20 February 2018 to set the High Needs Block budget is quashed however the Council is allowed to continue to spend on services funded from the HNB pending a further budget being set by Full Council in November 2018.
 - The Council will pay the Claimants' legal costs.

Appendix 2

Consideration of whether any policy changes arose directly from the Council budget decision of February 2018,

Component	Budget 2018/2019 £'000	Savings targets 2018/19 £'000	Was there a policy change arising directly from the Council budget decision of February 2018?	What action, if any, needs to be taken to comply with the court order?
1. Places only	14,609	761	NO. Business-as-usual decisions were taken in September 2017 about place numbers that have had consequent impacts on 2018/19. Such decisions are about ensuring that each institution has the right number of places allocated to them. The Local Authority will continue to consult with providers in line with ESFA guidance issued each year.	None. Natural and earlier changes will stand.
2.1 SEN Top Up GFE	22,664	466	NO. Business-as-usual decisions were made with Post 16 providers in September 2017 about the right top-up amounts for individual students that have had a consequent impact on 2018/19.	None. Earlier changes stand.
2.2 SEN Top Up Mainstream School Age		1,151	NO. The policy change which was planned to be undertaken following consultation has not been made. No changes or assumed savings on mainstream have been included in the forecast. . Top-up arrangements for 2018/19 are on the same basis as those used in the November 2017 top-up panel.	None. No consultation had begun on any changes.
2.3 SEN Top Up Special Schools & Resource Bases		1,166	NO. The policy change which was planned to be undertaken following consultation has not been made. No changes or assumed savings on special schools have been included in the forecast.	None. No consultation had begun on any changes.
3. Alternative Provision Top Up	737	150	Yes. Education settings had previously been contributing £2,500 for every 12 week Alternative Provision placement. From 1 st April 2018, this increased by £600 to £3,100. Despite the fact that the principle of paying had been established,	Reimburse schools / PRUs for the impact of reverting to the previous charges.

Component	Budget 2018/2019 £'000	Savings targets 2018/19 £'000	Was there a policy change arising directly from the Council budget decision of February 2018?	What action, if any, needs to be taken to comply with the court order?
			a full EIA and stakeholder consultation should have been completed prior to implementation.	
4. Other SEN Provision (INM/ISP)	5,904	0	NO. There have been changes to the procurement arrangements for out—of-authority placements in recent months. Nonetheless, changing the basis of procurement for out-of-borough placements is not a matter that would require public consultation as there is no proposal to change the funding. The Local Authority will continue to follow procurement legislation and internal quality assurance processes to ensure CYP with the most complex needs are placed in the right education settings that provide value for money and specialist provision specified in EHCPs.	None. No savings were proposed.
5.1 Other Alternative Provision. Share funding for Early Intervention Bases (EIBs) with schools	4,040	450	YES. Early Intervention Bases saving (£0.450m) has been reflected in the allocations for the 4 relevant institutions. An officer decision has been made about the outcomes of the 2-year pilot for the EIB project that ended in the summer of 2018	Reinstate previous funding levels until a review of the pilot and any associated consultation and equalities impact assessments are completed.
5.2 Other AP. Target saving for Hospital Education Service (HES).		200	YES. Saving on Hospital Education (£0.200m) has been reflected in their allocation, but they are treated as a maintained school for reporting purposes (i.e. variance shows as a school balance, rather than as a central balance). The HES has not yet determined how this saving would be implemented.	Reimburse the Hospital Education Service for the withheld funding.
5.3 Other AP. Restrict		350	NO. Limiting spending on external AP (saving of	None. No policy changes took place.

Component	Budget 2018/2019 £'000	Savings targets 2018/19 £'000	Was there a policy change arising directly from the Council budget decision of February 2018?	What action, if any, needs to be taken to comply with the court order?
external AP provision to budget			£0.350m) has been reflected in the budget, but the forecast is based on the level of income from schools that the AP manager and previous HoS believed was achievable. There do not appear to be any policy changes that have arisen to deliver this reduction. Reduced spend is more aspirational, based on having lower activity levels.	
6. Services	2,997	408	NO. For the £0.200m proposal that the Virtual School be partly funded by the Pupil Premium for LAC, this is merely a decision about how existing levels of activity should be funded NO. For the savings of £0.208m in commissioned services (sensory and autism support services) as no change will take place in 2018/19 and the saving will not be delivered.	None. The use of the Pupil Premium grant stands. There is already a consultation with neighbouring authorities on the future arrangements for Sensory Support Services, but no Service changes are expected before January 2020.
TOTALS	50,951	5,102		