

Full Council

13th November 2018



Report of: Alan Stubbersfield, Service Director for Education

Title: High Needs Budget 2018/19

Ward: Citywide

Member Presenting Report: Councillor Anna Keen, Cabinet Member for Education

Recommendation

Full Council agrees a High Needs Budget of £54.471m for 2018/19 financial year.

Summary

A recent court judgement has had the effect of quashing the original decision on the High Needs (Dedicated Schools Grant) budget for 2018/19 taken by Full Council in February 2018. This report explains how the proposed budget has been recalculated, on the basis of the original planned savings of £5.1m for High Needs no longer being pursued for 2018/19.

The significant issues in the report are:

The proposed budget of £54.471m is £3.520m more than the previous budget of £50.951m.

The main content of this report is included in Appendix A.1, which is the report that was despatched to Schools Forum for its meeting on 25th September 2018. Cabinet subsequently considered this matter on 2nd October 2018.



Policy

1. The proposed budget savings included in the original budget decision at Council in February 2018 have been withdrawn. This budget recommendation, therefore, represents no change on existing council policies.

Consultation

2. **Internal**
Schools Forum and Cabinet have considered earlier versions of this report.
3. **External**
Not applicable
4. **Context**
 - 4.1. The main content of this report is included in Appendix A, which is the report that was despatched to Schools Forum for its meeting on 25th September 2018.
 - 4.2. The original High Needs budget for 2018/19 of £50.951m has been quashed by a court order. Members, including Full Council, have indicated that the savings being developed for 2018/19 should no longer be a feature of the 2018/19 budget. Officers have, therefore, reverted to past practice in determining the High Needs Budget. This means that the budget is based on the Dedicated Schools Grant, rather than on an assessment of what growth and savings might be needed. The original report set out how a proposed budget of £53.905m had been calculated, but Schools Forum agreed to the transfer of a further £0.566m unallocated funding in the School Central Services Block. Cabinet agreed to that additional transfer and a total of **£54.471m** is recommended as the high needs budget for 2018/19.
 - 4.3. Most of the savings proposals set out in the report to Council on 20th February 2018 had not been pursued for 2018/19 and it is proposed that those which had been are unwound as detailed in Appendix A.1 .
 - 4.4. The Period 4 forecast for 2018/19 suggests spend by year-end of £54.6m, which incorporates the impact of undelivered and unwound savings. Members will be able to consider any balance on the High Needs Block in the context of the overall DSG as part of the consideration of the Council's final accounts for 2018/19 at year-end.
5. **Proposal**
 - 5.1. Appendix A.3 demonstrates how the original High Needs budget was calculated, taking account of possible pressures and savings. The new proposed budget sets aside both the savings and the pressures. Any savings measures which were implemented as a direct consequence of the decision of Council in February 2018 have been unwound.
 - 5.2. The recommended budget of **£54.471m** takes account of the Dedicated Schools Grant (DSG) High Needs allocation from the Department for Education for 2018/19 of £51.023m, plus £2m transferred from the DSG Schools Block, £0.7m from the Council's General Fund, £0.566m from the School Central Services Block (DSG) and £0.182m brought forward DSG from 2017/18.

Other Options Considered

6. Options that involved keeping any or all of the original savings proposals were rejected because time was needed to reconsider how best to address the long-term shortfall between the level of spending on high needs and the DSG funding provided.

7. Risk Assessment

7.1. The proposal to set the budget on the basis of the available funding and to withdraw previous savings proposals is a pragmatic way of ensuring that a budget for high needs can be set for 2018/19. This allows time to consider the future arrangements for the service through public consultation and engagement with stakeholders.

7.2. The legal comments identify the issues associated with addressing equalities matters and consultation, which were the main reasons for legal challenge to the original budget decision.

7.3. The finance comments identify that this report addresses the immediate issue about setting the high needs budget, but the longer term shortfall in the high needs budget remains.

8. Public Sector Equality Duties

8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - tackle prejudice; and
 - promote understanding.

- 8b) An equalities impact assessment has been completed for this report and can be found at appendix E. It recognises that shifting money from one part of the DSG to another benefits those receiving funding and disbenefits those foregoing funding. Nonetheless, the aim of the recommendation is to ensure that no policy changes have arisen as a consequence of the original, now quashed, decision on the High Needs budget in February 2018.

Legal and Resource Implications

Legal

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 has been quashed. The basis of the decision is set out in Appendix 1. It is therefore necessary for the Council to make a new budget decision for 2018/2019.

The matters which the Council is required to take into account include the following:-

(1) The Public Sector Equality Duty which requires the Council to have due regard to the need to (1) eliminate unlawful discrimination against people with a protected characteristic; (2) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Equalities Impact Assessment provides an analysis for this purpose. It concludes that a High Needs Budget of £54.471m (as proposed in this report) would not have adverse impacts because it would involve the withdrawal or unwinding of the savings measures which formed the basis of the quashed budget of 20th February. A high needs budget of £54.471m would also be higher than the outturn high needs spend for 2017/2018 of £53.087m.

(2) Section 11 of the Children Act 2004 which says that in taking decisions such as the one now before the Council, members must have regard to the need to safeguard and promote the welfare of children.

(3) The Corporate Strategy's aims of tackling inequality in educational outcomes and achievement gaps for disadvantaged children, including children with special needs and disabilities and from some minority groups.

Consultation

In the judicial review claim against the Council, the judge decided that, for a number of different reasons, the Council should have consulted relevant people and organisations, and considered impacts on them including equalities impacts, before setting a High Needs budget for 2018/19 which was based on savings measures which might affect them. If the Council decides that the budget for 2018/19 should be re-set at £54.471m, this would be on the basis that those savings measures are cancelled or unwound. For that reason the duty of consultation should not arise because the negative impacts about which the claimants were concerned would be reversed. (However regardless of this, it is still necessary for Cabinet to comply with the duties in (1) and (2) above, and take into account the Corporate Strategy.)

(Legal advice provided by Sarah Sharland, Litigation, Regulatory and Community Team Legal

Services)

Financial

(a) Revenue

The original decision on the High Needs budget, made at Council in February 2018 has been quashed by way of a judicial review judgement. 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.

This report is dealing with the immediate issue of setting a high needs budget for 2018/19. The longer-term issue remains of how the authority addresses the gap between the level of spending in the high needs budget and the High Needs DSG provided by the Department for Education.

The report explains that the Authority will have to meet the claimants' legal costs, as a consequence of the court order, which will be met from Council reserves. There will be on-going impacts on resources (estimated to cost in the region of £0.225m, beyond what might normally be necessary) to develop service improvements that fit within the budget and service planning for the High Needs Block, including any future public consultation that may be required.

(b) Capital

There are no capital implications of this report.

(Financial advice provided by David Tully, Interim Finance Business Partner)

Land

Not applicable

Personnel

The current proposals to reset the financial arrangements for the High Needs Block budget and to overturn the cabinet decision regarding the budget do not have any HR implications as it is currently presented.

(Personnel advice provided by Lorna Laing, People & Culture Business Partner)

Appendices:

Appendix A.1 is the report presented to Schools Forum on this matter on 25th September 2018.

Appendix A.2 is the note from Schools Forum to Cabinet

Appendix A.3 is a revised full calculation of the £54.471m recommended budget.

Appendix E is the Equalities Impact Assessment

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None