

# Decision Pathway – Report Template



**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 02 July 2019

<b>TITLE</b>	<b>Resourcing Plan for SEND Function</b>		
<b>Ward(s)</b>	All		
<b>Author:</b> Ian Clarke	<b>Job title:</b> SEND Consultant		
<b>Cabinet lead:</b> Cllr Anna Keen	<b>Executive Director lead:</b> Jacqui Jensen		
<b>Proposal origin:</b> BCC Staff			
<b>Decision maker:</b> Cabinet Member			
<b>Decision forum:</b> Cabinet			
<b>Purpose of Report:</b>			
<ol style="list-style-type: none"> <li>To inform Cabinet of the risk of the Council's non-compliance with its statutory duties to children and young people with Special Educational Needs and Disability ("SEND").</li> <li>To inform cabinet of the steps already taken to improve performance and achieve full compliance.</li> <li>To seek approval to increase capacity in the Council's SEND and Educational Psychology services in order to address serious areas of weakness in the service.</li> </ol>			
<b>Evidence Base:</b>			
<ol style="list-style-type: none"> <li>Statutory responsibilities for Special Education Needs and Disabilities ("SEND") were reformed by the Children and Families Act 2014 which placed more onerous duties on councils. Only minimal grants were made available to Local Authorities ("LAs") to support the implementation of these reforms, and this funding has now ended. The statutory duties relevant to this report can be summarised as follows: <ol style="list-style-type: none"> <li>The majority of children and young people with SEND are supported within their school through the use of delegated funding of up to £6000 per pupil per academic year. Where this resource is exhausted in respect of an individual child, the educational setting may liaise with the local authority to secure additional high needs funding; in Bristol this takes the form of 'Top Up' Funding. There is also a statutory right for institutions, parents or young people to request an Educational Health Care ("EHC") assessment to coincide with the request for funding.</li> <li>Statutory assessments of a child or young person's education, health and care are subject to strict timescales. It must take no longer than 20 weeks from receipt of a request for assessment to the issue of final Education and Health Care Plan ("EHCP"). The assessment process must include seeking information from an Educational Psychologist.</li> <li>The local authority must review the EHCP at least every 12-months through an Annual Review, and should do so more frequently for under-fives. Notification of any intention to make changes following a review must be made within four weeks of the review.</li> </ol> </li> <li>The quality of Bristol's delivery of SEND functions has been reviewed through the following mechanisms: <ol style="list-style-type: none"> <li>Local Government Association Peer Review, January 2018 ("LGA18")</li> <li>Internal thinking from new leadership effective from November 2018</li> <li>The Local Area SEND Strategic Partnership Group ("the Partnership Group");</li> </ol> <p>The reviews found that appropriate documentation was either not in place, clear or accessible (e.g. a strategy and Local Offer) and that the lines of accountability and governance weren't clear. More detail of the findings of these reviews is set out at Appendix A1.</p> </li> </ol>			

3. There has been a significant increase in the number of requests for statutory assessment over the last three years. The Council's capacity to deliver these has not kept pace with demand, with a resultant impact in failure to meet statutory timescales. As delays in assessments (and reviews) has increased, so have the number of complaints and appeals to the SEND Tribunal. Key data:
  - a. Requests for assessment increased from 247 in 2017 to 547 in 2018 – an increase of 81%. Around 800 requests are expected in 2019. The percentage of assessments which result in an EHCP has risen from 47% in 2016 to 75% in 2018. This is in part due to improvements in the Council's approach to statutory decision-making (the bar set by the statutory test is very low, so the majority of requests for assessment should be successful).
  - b. The percentage of assessments completed in 20 weeks has declined from over 89% in 2016 to below 24% in 2019 (the national average is 60%). There are 400 statutory assessments ongoing, of which 110 have not been assigned to an Educational Psychologist due to capacity not keeping pace with demand.
  - c. There are 2900 annual reviews overdue which date back to 2017, all with no notice given within 4 weeks of the review meeting. The percentage of Annual Review notices issued on time is 0%.
  - d. The rates of Absence, Exclusion and "not in education, employment or training" ("NEET") are high. There are increasingly high rates of persistent absence for children with EHCPs (34%) which is well above other national comparators (the percentage for England is 25%). There are high SEN absence rates overall (11.5%) (the percentage for England is 8.5%).
4. The increase in the number of statutory assessments, ECHPs and Annual Reviews has had the most notable impact on the SEND Casework Team and the Educational Psychology Team. In addition the withdrawal of the SEND Reform Grant has had an additional financial impact. Whilst Ofsted inspections have shown that many LAs are in a similar position to Bristol, the area's performance has moved well below those benchmarks. Delays have a direct negative impact on children and young people with SEND and their parents and carers. (Additional background detail around the delivery of Bristol's SEND function is set out at Appendix A2.)
5. New Leadership has led to improvements in the Council's SEND services, been demonstrated in the last nine months with consultant work commissioned and extra capacity in place from March 2019. Governance has been improved with the Health and Wellbeing Board now linked directly to the strategic and substantive work of the Partnership Group. Reviewing documentation and completing the Joint Strategic Needs Assessment SEND Chapter ("Needs Assessment") (describing the SEND cohort of Bristol) and Self Evaluation (describing the area's understanding of its own services) has enabled development of an informed SEND Strategy. The Partnership Group is leading on work to finalise these documents and build an action plan to drive a whole system improvement programme.
6. Substantive actions have been taken in advance of this report coming to Cabinet to address the issues outlined at paragraphs 3 and 4. Additional SEND caseworkers have been appointed on a fixed term basis, interim plan writers engaged and recruitment for additional Educational Psychologists has begun. This report exceptionally comes to Cabinet after work has commenced to address the issues identified as more recent analysis has shown that recovery can only be achieved by means of permanent recruitment and a larger spend in some areas of the business.
7. Current analysis of the outstanding numbers of statutory assessments, ECHPs and Annual Review, and the officer time required to complete these, together with the anticipated demand for the coming year has identified that in order for the Council to deal with the backlog and return to a baseline of full statutory compliance the following additional posts/funding is required:
  - a. SEND Casework Team – 6 additional officers (already recruited, fixed term for 12 months)
  - b. Interim plan writers – 2 additional officers (already recruited, fixed term for 6 months)
  - c. Educational Psychology – 5 Educational Psychologists (permanent)
  - d. NEET Staffing – 2 additional officer (fixed term)
  - e. Local Offer post - 1 officer (fixed term)
  - f. SEND Consultant – 1 post (already recruited, 12 months from March 2019)
  - g. Consultant Tribunal Manager – 1 post (fixed term for 6 months from May 2019)

- h. Dedicated Finance Business Partner Resource – additional finance resource above business as usual to develop funding models, business cases and financial tracking mechanisms for the remainder of the financial year 2019-20.
- i. Children’s Social Care – there is a need to replace the lost SEND Reform Grant funding which funded the work carried out by social care professionals in the Families in Focus team in responding to all children previous unknown to services and to enable them to meet demand for those children where a social work service is in place or required.

**Cabinet Member / Officer Recommendations:**

That Cabinet:

1. Note the actions being proposed to enable compliance with statutory duties to children and young people with Special Educational Needs and Disability (“SEND”).
2. Approve the increase in capacity in SEND and Educational Psychology services as outlined in this report to address the critical failures of statutory compliance at a cost of £1.575m over two years.
3. Agree to repurpose the earmarked reserves (set out in the “Source of Revenue Funding” section) to support the Local Authority in meeting its SEND duties

**Corporate Strategy alignment:** This work aligns with the key Corporate Strategy commitment to be Fair and Inclusive: to improve educational outcomes and reduce educational inequality, whilst ensuring there are enough school places to meet demand and a transparent admissions process.

**City Benefits:** These proposals benefit the city by enabling the Council to meet its SEND responsibilities. They are designed to promote the best possible outcomes for young people in terms of learning, social and emotional development, and wellbeing, and enable their inclusion within their community.

**Consultation Details:** There has been engagement with staff and stakeholders across and beyond the organisation in the development of these proposals. The proposals have been discussed externally with both the Chair of the parent carer forum, and at the parent carer conference on 6 June 2019.

**Background Documents:**

Part 3 of the Children and Families Act 2014 (“CFA14”)  
 Special Educational Needs and Disability Regulations 2014  
 SEND Code of Practice 2015

<b>Revenue Cost</b>	£0.989m 2019/20 £0.586m 2020/21 £1.575m Total	<b>Source of Revenue Funding</b>	There are four specific reserves which could be used to support some of this additional activity: <ul style="list-style-type: none"> <li>• Unspent SEN Reform Grant (£0.163m)</li> <li>• BX152 Litigation Reserve (£0.180m)</li> <li>• TWS Reserves transferred for School Improvement in 2017/18 (£1.100m)</li> <li>• TWS Insurance Reserves (£0.132m) to meet the balance.</li> </ul>
<b>Capital Cost</b>	N/A	<b>Source of Capital Funding</b>	N/A
One off cost <input checked="" type="checkbox"/> Ongoing cost <input type="checkbox"/>		Saving Proposal <input type="checkbox"/> Income generation proposal <input type="checkbox"/>	

**Required information to be completed by Financial/Legal/ICT/ HR partners:**

**Finance Advice:** This report identifies a package of measures to improve performance of Special Educational Needs provision in the Authority. It sets out a request for additional resources to assist in improving this situation. The table below identifies the overall additional resources sought: £1.575m of one-off initiatives over two financial years to address the most pressing issues.

Component	Extra cost 2019/20 £'000	Extra cost 2020/21 £'000	Total £'000
One-off costs	989	586	1,575

These one-off costs would be funded from specific reserves:

- **Unspent SEN Reform Grant (£0.163m)** This is the uncommitted element of this reserve from previous years and its proposed use is consistent with the purpose that the reserve was created for.
- **BX152 Litigation Reserve (£0.100m).** This reserve exists to meet any financial obligations which might arise from any decisions of a court. In this case, the SEND Judicial Review in August 2018 is one of the reasons why spend is necessary in this service.
- **Trading with Schools (TWS) Reserves transferred for School Improvement in 2017/18 (£1.100m).** The Trading with Schools service has accumulated reserves for employee absence insurance in schools over many years. In 2017/18, it was determined that £1.1m of the reserve could be applied for school improvement initiatives, but the higher priority is SEND. There are no other commitments on this reserve at present and applying £1.1m to SEND would reduce it to nil.
- **TWS Insurance Reserves (£0.212m)** to meet the balance. The total funding sought will require a call on the employee insurance reserves. The insurance reserves cover risks associated with absence and maternity cover in schools (ie the risk that the calls on this insurance budget exceed the annual contributions). At the end of 2018/19 financial year, there was £0.759m held on the balance sheet; this would reduce to £0.547m if £0.212m is applied to SEND. While there remains a risk that insurance claims may rise, resulting in a draw-down from this reserve, the likelihood of all the available reserve being needed for this eventuality in this financial year is low.

Some of the proposed initiatives have already been put in place; the 6 SEND Case Workers, the SEND Consultant, the interim plan writers are all in post and the recruitment for Educational Psychologists has also begun. These decisions have been taken by officers, but the overall resources required exceed officer delegated authority. For completeness, the whole package of measures and the financial implications have been presented for endorsement. Any decision not to agree the overall package could involve curtailing some of the initiatives which have already started.

The request at this stage is for one-off resources only, but the proposal for the additional Educational Psychologists is to recruit them as permanent employees. This is a risk, in that, after two years, there would be insufficient funding to cover the on-going commitment and either the numbers of Educational Psychologists would have to revert to their previous levels, or compensating savings would have to be made elsewhere in the People Directorate.

The issues identified in this report suggest that more sustainable longer-term solutions may be necessary, once the actions to address performance issues are implemented. It is too early to identify what those solutions would be, how much they would cost and what benefits they might bring.

**Finance Business Partner:** David Tully, 24<sup>th</sup> June 2019

**2. Legal Advice:** On 1st September 2014 the Children and Families Act 2014 came into force supported by the Special Educational Needs and Disability Regulations 2014. The Act and the Regulations impose statutory duties on the local authority requiring it to comply with specified timescales in relation to the provision of Education Health and Care (EHC) needs assessments and EHC plans.

**Legal Team Leader:** Sarah Sharland Team Leader Litigation Regulatory and Community Team, 24<sup>th</sup> June 2019

**3. Implications on IT:** There are identifiable IT implications arising from this report in two ways. 1) Provision of

equipment for new staff members and 2) the reference to “Portal Software”. There is also the likelihood of requiring data to be passed to/from third parties. Given the complexity of this area, the data handled and the scale of proposed expenditure, the IT elements (at least) of this proposal will need to be implemented via a CLB approved change project, ensuring appropriate solution design and deployment.

**IT Team Leader:** Ian Gale, 27<sup>th</sup> May 2019

**4. HR Advice:** There is an urgent need for our SEND team to have the appropriate resources and skills invested into it to enable them to fulfil their statutory requirements in relation assessments across the city. The team has had very little investment into it over the past few years, and this has now come to a crisis situation with Bristol having the worst back-log of assessments waiting to be done across England.

The new and additional staffing requests are in place for a two year period to get us in a more secure position that we can then build on and ensure it is sustainable going forward. The current proposal is to allow us to deal with the back-log as efficiently and effectively as we can, and so we need to ensure we can procure the right skills mix which will allow us to do so. During this period of transition we need to ensure that we transfer some of the skills from the temporary staff to our permanent staff, so that when we are looking to the longer term and permanent appointments some of our current employees may have developed the skills required.

There will be further work done with this service to ensure that it is sustainable going forward, fit for purpose and has the right skills mix to ensure we can meet our statutory requirements. We will need to include the appropriate staffing and resources in the next budget setting exercise, to ensure we do not end up back in the same position.

**HR Partner:** Lorna Laing, 10<sup>th</sup> June 2019

<b>EDM Sign-off</b>	Jacqui Jensen	29 <sup>th</sup> May 2019
<b>Cabinet Member sign-off</b>	Cllr Anna Keen	10 <sup>th</sup> June 2019
<b>For Key Decisions - Mayor's Office sign-off</b>	Mayor's Office	3 <sup>rd</sup> June 2019

<b>Appendix A – Further essential background / detail on the proposal</b> A1 -Findings of the SEND function Review/Local area assessment A2 – Background analysis to the proposals A3 - Education Psychology service model A4 – Proposed SEND Staffing Model and Cost	<b>YES</b>
<b>Appendix B – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix C – Summary of any engagement with scrutiny</b>	<b>NO</b>
<b>Appendix D – Risk assessment</b>	<b>NO</b>
<b>Appendix E – Equalities screening / impact assessment of proposal</b>	<b>NO</b>
<b>Appendix F – Eco-impact screening/ impact assessment of</b>	<b>NO</b>
<b>Appendix G – Financial Advice</b>	<b>NO</b>
<b>Appendix H – Legal Advice</b>	<b>NO</b>
<b>Appendix I – Exempt Information</b>	<b>NO</b>
<b>Appendix J – HR advice</b>	<b>NO</b>
<b>Appendix K – ICT</b>	<b>NO</b>