

## **Special educational needs and disabilities inquiry**

### **Evidence submitted by Kent County Council**

#### **1. Executive Summary**

- Rising demand, driven by demographics, increased incidence of need and higher expectations from parents has put the system under severe strain, and seriously compromised its ability to work effectively.
- Ensuring families have a say in the way help is given is important but the concept of parental “choice” of placement is simply not sustainable in the current financial climate.
- Real improvements have been made in the range and quality of SEN provision but the unintended consequences of the reforms are derailing the financial system and the relationship with parents and schools
- The complex health landscape is a major barrier to joint commissioning and is frustrating schools’ best endeavors.
- The unfunded extension at both ends of the scale of the statutory age range from 2-19 to 0-25 has significantly increased the burden on LA services.
- The proposals for High Needs Funding within the National Funding Formula is flawed as it will restrict funding at a time when growth in demand is at an all time high.

#### **2. Reasons for submitting evidence**

2.1 Kent County Council is submitting evidence because of our serious concerns about the unintended consequences of the SEND reforms and the way they have been implemented (against a background of severe financial restraint) which is now derailing the financial system associated with SEND as well as the relationship with parents, schools and other providers. Whilst the Children and Families Act 2014 introduced the biggest changes to SEN in a generation through the duty to ensure that the views, wishes and feelings of parents are heard there have been a range of consequences following the raising of parental expectation. The new system has created perverse incentives which the LA has little or no ability to address. We have increasing concerns that the High Needs Funding proposals within the National Funding formula will restrict funding even further. The funding envelope is simply not big enough to address the growth in demand and the system is too complicated and fragmented. This has deleterious consequences in the misallocation of inevitably limited resources and we are concerned that this situation will deteriorate further. The number of children and young people in Kent with SEND is rising faster than the underlying growth in population. Kent is now maintaining over 10,000 EHCP which represents growth of over 40% over the last 4 years.

2.2 In Kent, we have sought to learn from parents' views on their experiences in order that they may shape and influence the way in which we deliver services for the most vulnerable children and young people in our County. Parents have influenced the Kent SEND Strategy and the key decision making around services. The 'Local Offer' of services is overseen by a parent led steering group and a parent Forum influences practice and raises awareness of their satisfaction.

2.3 Over 7,000 Kent children and young people have been transitioned from Statements (and LDAs) to outcome focused Education, Health and Care Plans (EHCPs) which were co-produced with them and their parents or carers.

2.4 Kent's review of its progress in 2017 highlighted that over 4,000 Kent children and young people are benefiting from provision delivered in specialist places and achieving better progress than pupils with similar needs nationally. We have focused on reducing the number of young people with SEND who are not in education, employment or training (NEETs). We are alert to the need to prioritise children in the care of Kent as well as arranging the special educational provision for around 500 children and young people who have EHCP and are in the care of OLAs who have placed them in Kent. These are some of the most complex and vulnerable young people looked after by their home authorities. We would like Government to acknowledge that the cost of arranging provision for these 500 complex and vulnerable young people (children and young people with EHCPs) equates to or exceeds the cost of running an entire SEN service for some Local Authorities.

#### Recommendation 1

Kent believes that the funding for these OLA looked after pupils should follow them to Kent so that we can best serve their needs without having to make difficult choices about balancing the demands from OLA or Kent SEND children for scarce resources.

#### Areas for consideration

### 3 Section A Assessment of and support for children and young people with SEND

3.1 Kent has fully embedded a statutory assessment process that recognises the importance of co-production and engagement of children and young people with special educational needs and their families.

3.2 The new statutory timescales have been a challenge for professionals producing assessment reports. This has been most evident in the availability of advice from an education psychology (EP) perspective where recruitment and retention have been a key challenge locally and nationally. We are seeking to recruit more EPs with a competitive package, however we

recognise that unless the national pool of qualified EPs grows, we are merely gaining at the expense of other LAs. The Kent EP Service is operating with vacancies that by September 2018 could reach a level of 25%. Too little thought was given nationally to overall workforce planning in advance of these reforms. It would appear that there are more EPs retiring or leaving the service than entering it and the demographic profile of the workforce across the country means this problem will get worse in the immediate term. If this issue remains unaddressed then LAs will not be able to meet the statutory timescales for assessment. This can result in children awaiting admission to special school being disadvantaged simply because of a lack of professional capacity.

## Recommendation 2

We recommend an urgent review and increase in the training and supply of EPs and their role in the statutory assessment process is required.

## Recommendation 3

We recommend the exemption for children with acute SEND from statutory assessment through the use of triage where evidence and parental preference points to special school as the most appropriate provision to allow for those children to be admitted to their parent's preferred school without delay.

3.3 During the last 18 months in Kent we have seen an 81% increase in referrals for statutory assessment, which are costly and time consuming. This growth is almost entirely accounted for by parental referrals which have grown to three out of every four referrals now received. Our analysis shows a range of local factors which include:

3.3.1 Parents pursuing an EHCP because it gives them increased choice over school admission e.g. where they would not ordinarily be within distance for an over-subscribed mainstream school, or where they would like their child to have access to a unit or specialist provision within a mainstream setting.

3.3.2 Parents telling us that they believe their children's identified speech language and communication difficulties will only be eligible for therapy if they can get it specified within an EHCP. Many are clear that they are being told that they will not be able to access such support without an EHCP. NHS therapy providers have expressed concern that they are not commissioned by the CCG to meet the needs they identify.

3.3.3 Parents regularly reporting that their application for disability living allowance benefits is impacted by whether their child has an EHCP, attends a special school or is a residential pupil. This is because the DWP form asks families to attach details of the child's EHCP, which reinforces the belief amongst parents that this is a qualifying criterion.

- 3.3.4 Parent stating that they request a statutory assessment to ensure their child receives the provision required to meet their needs in school. This is sometimes encouraged by SENCOs who are struggling to have SEN resources allocated from the school budget.

#### Recommendation 4

We recommend to CCGs that health commissioned services do not use EHCP as a criterion for service, but their own clinical judgement.

#### Recommendation 5

We recommend that the DWP remove any reference to the EHCP in their forms

### 4 Section B The transition from Statements of Special Educational Needs and Learning Disability

- 4.1 As at September 2014 there were over 6,800 Kent pupils with Statements and over 400 young people who were subject to LDAs, for whom transition to outcome focused Education, Health and Care Plans (EHCPs) was necessary. Migration into Kent added to this number, and in at least one month in 2017 Statement imports into Kent from other authorities were arriving on a daily basis.
- 4.2 Kent was able to deliver its planned timetable to have transitioned all children and young people with Statements to Education Health and Care Plans by March 2018
- 4.3 Kent Parent Carer Forum were actively involved in designing the EHCP processes and documentation. Their input supported the development of training for a wide range of professionals and a quality assurance framework.

### 5 Section C The level and distribution of funding for SEND provision

- 5.1 The resources we have in Kent are considerable but even these are proving insufficient in light of our experience of the reforms. As a floor funded authority our High Needs Funding is effectively capped and will continue to be so for the next four years. This is despite the fact that we will continue to see growth in the number of children and young people with SEND continuing to rise at a rate above that of the general population

growth. Given that we have been spending substantially above the level of the DSG High Needs Block, with a higher proportion of the DSG spent on supporting pupils with complex needs than in many similar local authority areas, affordability and long-term sustainability of SEND provision have become the single biggest financial concern for Kent County Council.

5.2 When Kent first introduced high needs funding in mainstream provision approximately 800 children and young people (CYP) across Kent were receiving additional support. Funding had been delegated to all schools and the threshold to trigger exceptional provision was set at 25 hours per week. National changes introduced a new arbitrary threshold requiring all schools to make the first £6,000 of provision for any pupil with SEN. The level of demand from schools reaching this threshold far exceeded our forecasts and by 2017 the level of financial challenge had prompted a formal review to understand the context of provision as well as the individual children. We now have 2,700 children receiving support, an increase of 337%. We have sought to be inclusive by supporting high needs funding in mainstream without recourse to EHCPs, however this has not reduced the referrals for EHCPs as we anticipated. Our experience is replicated in many other authorities.

#### Recommendation 6

We recommend that the Government help alleviate some of the demand pressure within the system by increasing the £6,000 threshold to £10,000 and allow High Needs Funding to be devolved to groups of schools and partners in localities to meet the needs of children with HNF in their area.

5.3 Kent has invested significant capital sums on expanding and improving Special Schools and ensuring that new mainstream schools host SEN provision. However, the level of demand means that the Kent Commissioning Plan for school places has identified further need for new special schools in Dartford, Maidstone, Dover, Sheppey and East Kent to replicate existing provision, which is already at capacity.

5.4 At present we are spending £28 million on SEN Transport and £44 million on placements in the non-maintained sector, and costs continue to rise. This is due in part to the absence of highly specialist provision locally but in many cases, it is simply down to a lack of places in our maintained schools. We would like to reduce expenditure on both to use the funding in more productive ways. The challenge is a lack of capital funding available through the Basic Need Allocation from government. The recent Government announcement of £50m one-off capital funding nationally will not make any meaningful difference given

the context of a level of demand that requires 5 new special schools. We already face a £90.5m funding gap on Basic Need, including SEN provision, which is not subject to Basic Need funding.

#### Recommendation 7

We recommend that the Government reviews the way in which it funds Basic Need Provision for SEN pupils to reflect the need arising from growing demand.

### 6 Section C Further Education

6.1 Since 2013-14 Kent has seen the number of high needs funded students increase by 61%, with average costs growing by 26% and the total cost by 104%. The incidence of EHCPs being issued to young people aged 19+ has grown exponentially. When responsibility for these was handed to LAs we saw an increase in our base funding from the DfE of £4m compared to the actual cost of £8m and rising, not least as a result of the perverse incentives built into the FE funding model.

6.2 Nationally all schools are expected to use their best endeavours to make the first £6,000 of provision for any pupil with SEN from their existing resources. In the FE sector, there is a notable variation in that the FE provider must only evidence the cost exceeds £6,000 to seek full funding from the LA, i.e. including the £6000. This inherent perverse incentive means that FE Colleges are actively looking at how to evidence provision at a marginal cost above the threshold. In schools such an incentive does not exist.

#### Recommendation 8

Kent recommends a national review of FE funding to look at how block funding could result in greater cost efficiencies as opposed to the current per student model which is based on an inherent perverse incentive to cross the £6,000 threshold. This could drive great transparency in the cost of provision in FE.

### 7 The roles of and co-operation between education, health and social care sectors

7.1 Looking ahead we recognise that there is still much to do to ensure specialist support and easier access to health services in local schools, settings and colleges particularly to secure improvements to support for children and young people with autism and speech and language needs and to ensure health inequalities and access to key services, such as speech and language therapy and occupational therapy are addressed.

7.2 Improving the availability of health funded therapy services and the involvement of Health Visitors is critical to earlier identification and improving transitions from the Early Years and from Primary to Secondary school. The capacity of therapy and nursing services is creating inherent negative incentives for assessment. Parents who are concerned about direct therapy will say openly that they are seeking an EHCP to assure a minimum level of therapy input which would otherwise not be available.

7.3 Whilst the LA can develop more specialist provision and support for pupils with ASD, speech and language needs, success is reliant on effective joint arrangements between schools, early years settings and our partners in the Health service to identify the right children, at the right time to ensure they receive the right support to improve their outcomes.

7.4 The changing landscape within the NHS is restricting the development of a truly joined up approach to supporting children's learning. The reforms came into effect in a local context of seven distinctly separate Clinical Commissioning Groups (CCGs). With the introduction of Sustainability Transformation Plans (STPs) reshaping the landscape, there are gaps in services and wide variations in the availability of specialist services. Whilst special schools in West Kent can access commissioned specialist nursing for unstable health conditions and complex needs such as tracheostomies, eight of twelve schools elsewhere in the County are completely unable to access nursing input or training for health care procedures because the relevant CCG has simply not commissioned a service.

7.5 It is illogical that therapists are employed by the NHS, budgets are held by the CCG and yet responsibility for ensuring provision is in place for children who need it rests with the LA.

7.6 Kent schools have reported minimal health and social care involvement in annual reviews and Kent parents have expressed frustration around having to repeat their child's 'story' because professionals were unavailable. Their opinion is that the reforms have not improved accessibility, visibility or the contribution of other agencies.

## Recommendation 9

Kent would like the responsibility and associated funding for children's therapy provision transferred from the NHS to the Local Authority.

## 8 Provision for 19-25-year olds including support for independent living; transition to adult services; and access to education, apprenticeships and work

8.1 Since 2013-14 the number of high needs funded students in further education in Kent has increased by 61%. Unfortunately, the range and availability of appropriate provision has not kept pace with the statutory changes.

8.2 Kent wants to have in place a variety of vocational and technical pathways, including apprenticeships and work based training and employment. The lack of capital funding is a barrier.

8.3 Whilst most learners from mainstream and special schools can be supported in local sector colleges, for some individual students we have commissioned other sector providers and supported the provider to seek the Secretary of State's approval for the provision they can offer. For a few students, we have developed bespoke local provision as an alternative to provision which is far from home and thus avoids residential costs. In developing the relationship with providers, the key issues to emerge have been:

8.3.1 Lack of clear pathways for young people moving on from special schools and understanding of the provision available in different phases by all stakeholders

8.3.2 Providers unsure of statutory processes and timescales; unsure who they can contact when they need help

8.3.3 Lack of clarity and complex funding rules which do not dovetail with EHCPs.

8.3.4 Lagged funding issues for smaller providers who want to expand and lack of transparency about funding of elements 1 and 2.

8.3.5 Availability of placements for young people with profound severe and complex needs

8.4 If provision is not increased and EHCPs continue to rise, there is an inherent risk that more young people will become NEET.

8.5 There is a lack of clarity about the threshold for services and entitlement to adult social care provision for young people aged 19+ with profound and multiple learning difficulties who are unlikely to be economically active. This means that some parents believe there is an entitlement for young people transitioning from special school to remain in education until age 25. In cases where there is no local specialist PMLD provision at age 19+, provision is only available within a non-maintained residential college. For those whose ultimate destination will be social care provision, this is delaying their entry into adult social care provision for 2-3 years. There are significant costs to the public purse in making such arrangements.

## Recommendation 10

Kent recommends the issuing of guidance to all statutory service providers on their roles in supporting transition. This needs to be clearer that the vast majority of CYP will only require and EHCP until the age of 19 to enable them to complete their statutory education in line with their peers.

## Recommendations

1. Kent believes that the funding for these OLA looked after pupils should follow them to Kent so that we can best serve their needs without having to make difficult decisions to the detriment of Kent families.
2. There are insufficient numbers of EPs qualifying each year and we would recommend that the national limits on EPs in training are removed. An urgent review of the training and supply of EPs and their role in the statutory assessment process is required.
3. We recommend the introduction of flexibility to triage those where evidence and parental preference points to special school as the most appropriate preference in order that those children can be admitted to their parent's preferred school without delay. This is particularly so for children aged 3 and 4 who are known to multi-agency services such as Portage, Qualified Teachers of the Deaf and Visually Impaired (QTOD and QTVI).
4. We would like to recommend to CCGs that health commissioned services do not use EHCP as a criterion for service, but their own clinical judgement.
5. We would like to recommend that the DWP remove any reference to the EHCP in their forms
6. We recommend that the Government help alleviate some of the demand pressure within the system by increasing the £6,000 threshold to £10,000.
7. We recommend that the Government reviews the way in which it funds Basic Need Provision for SEN pupils to reflect the need arising from growing demand
8. Kent would like to recommend a national review of FE funding to look at how block funding could result in greater cost efficiencies as opposed to the current per student model which is based on an inherent perverse incentive to cross the £6,000 threshold. This could drive great transparency in the cost of provision in FE.
9. Kent would like to see responsibility for children's therapy provision, which has been defined in law as education e.g. speech and language, supported by

the budgets which currently sit within the NHS. If public health can be provided by the LA, therapy can too.

10. Kent would like to recommend guidance to all statutory service providers on their roles in supporting transition. This needs to be clearer that the vast majority of CYP will only require an EHCP until the age of 19 to enable them to complete their statutory education in line with their peers.