

Stage 1 Equality Impact Assessment – Initial Screening

Assessor(s) Name(s):	Steve Devlin
Directorate:	Children's Services, Education and Skills
Date of Completion:	25/11/2020

Name of Policy/Strategy/Service/Function Proposal

Proposal for a SEN Banding Framework for EHCP top up funding in mainstream schools

The Aims, Objectives and Expected Outcomes:

The Isle of Wight Council, with Schools' Forum agreement, retains a proportion of the 'high needs block' education budget to pay schools 'top-up funding' to make additional and different education provision for learners in mainstream schools with Education, Health and Care plans.

The Council's methodology to calculate and describe this arrangement, known as 'hours of learning support assistance', is out of step with other local authorities.

The Council proposes replacing this approach with a one known as a 'SEN banding framework' that aims to:

- * give schools greater flexibility to make a wider range of best practice provision to children and young people with special educational needs and disabilities (SEND) who are subject to Education, Health and Care (EHC) plans; and

- * help children and young people with SEND who are subject to an EHC plan to become more independent and achieve good outcomes.

Banding is where local authorities allocate 'top-up funding' to schools based on agreed criteria (relating to the level of SEND), using a set of bands that vary in financial value.

Please delete as appropriate:

- This is a proposal for a new, changed or removed policy/strategy/service/council function
(check whether the original decision was equality impact assessed)

Key Questions to Consider in Assessing Potential Impact	
Will the policy, strategy, service or council function proposal have a negative impact on any of the protected characteristics or other reasons that are relevant issues for the local community and/or staff?	Yes/No
Has previous consultation identified this issue as important or highlighted negative impact and/or we have created a “legitimate expectation” for consultation to take place? A legitimate expectation may be created when we have consulted on similar issues in the past or if we have ever given an indication that we would consult in such situations	Yes/No
Do different groups of people within the local community have different needs or experiences in the area this issue relates to?	Yes/No
Could the aims of these proposals be in conflict with the council’s general duty to pay due regard to the need to eliminate discrimination, advance equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not?	Yes/No
Will the proposal have a significant effect on how services or a council function/s is/are delivered?	Yes/No
Will the proposal have a significant effect on how other organisations operate?	Yes/No
Does the proposal involve a significant commitment of resources?	Yes/No
Does the proposal relate to an area where there are known inequalities?	Yes/No
<p>If you answer Yes to any of these questions, it will be necessary for you to proceed to a full Equality Impact Assessment after you have completed the rest of this initial screening form.</p> <p>If you answer No to all of these questions, please provide appropriate evidence using the table below and complete the evidence considerations box and obtain sign off from your Head of Service.</p>	

Protected Characteristics	Positive	Negative	No impact	Reasons
Age			y	
Disability	Y			The changes relate to the way a school receives funding for pupils with an Education Health and Care Plan, some of which will meet the criteria for disability.
Gender Reassignment			y	
Marriage & Civil Partnership			y	
Pregnancy & Maternity			y	
Race			y	
Religion / Belief			y	
Sex (male / female)			y	
Sexual Orientation			y	

Are there aspects of the proposal that contribute to or improve the opportunity for equality?	Yes/No
<i>If answered Yes, describe what these are and how they may be promoted or enhanced</i>	

The proposal is intended to enable mainstream schools to make a wider range of best-practice provision for learners with special educational needs and disabilities, supporting them to become more independent and achieve better outcomes.

Evidence Considered During Screening
A full 8 week public consultation on the proposal was delivered in autumn 2020. The responses to the consultation will be fully considered and help determine if, when and how the proposal goes forward. – Special Educational Needs in Mainstream Schools guidance report a1 https://educationendowmentfoundation.org.uk/tools/guidance-reports/special-educational-needs-disabilities/?mc_cid=fabea8e18c&mc_eid=6f50a25bd4 Education Endowment Foundation – Making Best use of Teaching Assistants

<https://educationendowmentfoundation.org.uk/tools/guidance-reports/making-best-use-of-teaching-assistants/>

Head of Service Sign off:	
Advice sought from Legal Services (Name)	
Date	

A signed version is to be kept by your team and also an electronic version should be published on the council's website (follow the link from the EIA page on the intranet)

Stage 2 Full Equality Impact Assessment

Assessor(s)/Name(s):	Steve Devlin
Directorate:	Children's Services, Education and Skills
Date of Completion:	18/01/2021

Name of Policy/Strategy/Service/Function Proposal

Proposal to move to a SEN Banding Framework for Education, Health and Care Plans' (EHCP) top-up funding in mainstream schools

The Aims, Objectives and Expected Outcomes:

Using the information provided in your initial screening, write a brief description of your policy, strategy, service or council function under assessment. It is important to focus on the reasons for a new or changed approach and what it intends to achieve. Include who the main beneficiaries or users are and the main groups of people with protected characteristics who are affected. State how this proposal fits with the council's corporate priorities.

It is anticipated that this proposal, if agreed, would enhance outcomes for children and young people by enabling access to a broader range of support and promote a young person's independence. This is a key ambition as set out in the Corporate Plan 2019-2022. This ambition contributes to the corporate priorities "Opportunity and Well-Being."

The Isle of Wight Council (the Council) holds an amount of funding from the High Needs Block on behalf of local mainstream schools, which it then allocates upon its production of an Education, Health and Care Plan (EHCP) to a school for the delivery of the provision set out in the EHCP. This is known as 'Element 3', or 'top-up' funding.

1. The Council is proposing that an agreed Banding Framework would simplify the process of allocating top-up funding so that schools and parents are clear on what is being provided and why. Allocating top-up funding against an agreed framework is a transparent process where both schools and parents can see how the allocation of top-up funding has been determined.
2. The Banding Framework would not be used to determine the provision that a young person requires. This would still be determined through the EHC Needs Assessment process.
3. The proposal only covers the top-up funding that mainstream schools receive for children with more complex SEN requiring an EHC plan and not the core funding of mainstream schools.

4. The proposal is not intended, or expected, to lead to a reduction in the High Needs budget used to fund provision identified in EHC plans in mainstream schools. The total cost of provision set out within an EHCP would continue to be met jointly from the school and the Local Authority's high needs budget.
5. It is anticipated that the proposed Banding Framework, in combination with the separately published guidance about SEN support in mainstream schools, would enhance outcomes for children and young people by enabling access to a broader range of support and promote a young person's independence.
6. All formal routes of appeal relating to EHC plans and provision would continue to be available in their current form.

Please delete as appropriate:

- ~~This is a new policy/strategy/service/council function proposal~~
- This is a proposed change/review to/removal of an existing policy/strategy/service/council function (*check whether the original decision was equality impact assessed*)

Scope of the Equality Impact Assessment

Include any links to a previous equality impact assessment or work delivered by another Directorate/service or partner organisation. Describe the approach to be taken in data collection, stakeholder involvement and state who the stakeholders are.

Establish your monitoring and review arrangements.

Sources of evidence may include:

- Service monitoring reports including equality monitoring data
- User feedback
- Population data – IW Facts and Figures (add link)
- Complaints data
- Published research, local or national
- Feedback from consultations and focus groups
- Feedback from individuals or organisations, other council departments, partner organisations etc

Set out any data gaps that may need to be addressed and how you plan to address them and include in your action plan.

The proposal is intended to enable mainstream schools to make a wider range of best practice provision for learners with special educational needs and disabilities, supporting them to become more independent and achieve better outcomes. The proposed framework does not remove any provision secured in an Education Health and Care Plan. The proposed framework does not mean any young person is disadvantaged.

Provision secured in an Education Health and Care Plan is determined via an assessment that is not impacted upon by the proposal. The amount of additional funding made available to a school to provide this provision is kept under review at least annually and may be changed if required based upon supporting evidence.

Analysis and assessment

Given the available information, what is the actual or likely impact on minority, disadvantaged, vulnerable and socially excluded groups? Is this impact positive or negative or a mixture of both? In particular set out how the council as a public body has met its duty to pay regard to eliminate unlawful discrimination, harassment and victimisation and advance the equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not.

The proposal is intended to enable mainstream schools to make a wider range of best practice provision for learners with special educational needs and disabilities, supporting them to become more independent and achieve better outcomes. The proposed framework does not remove any provision secured in an Education Health and Care Plan. The proposed framework does not mean any young person is disadvantaged.

Provision secured in an Education Health and Care Plan is determined via an assessment that is not impacted upon by the proposal. The amount of additional funding made available to a school to provide this provision is kept under review at least annually and may be changed if required based upon supporting evidence.

Detail what concerns were identified during any consultation exercises together with any positive impact that has been identified and how this can be promoted or enhanced. Are there any concerns from consultation and data gathering that have not been taken on board, if so, please justify and explain the reason for this.

There were 90 responses to the consultation Response Form, all of which were submitted online:

- 79 were from individuals;
- Six were from a nursery, school, college or place of education;
- One was from a democratically elected representative of a local area; and
- Four did not indicate either way.

Overall, respondents preferred the current mechanism over the proposed banding mechanism (68 of 86 responses). Responses from schools were overwhelming positive signalling agreement with the proposed banding framework. However, only a small proportion of schools responded. Previous informal consultation with and involvement of schools had already signalled overall support for the proposal. Responses from parents were generally against the new system with most preferring the old system.

Key themes identified via the consultation process and parent engagement sessions were:

1. The sufficiency of the banding values to meet needs

The financial research undertaken in May 2020 tested the feasibility of the banding values. This

research tested the banding values against live EHC's in 10% of mainstream schools. The overall support for the proposed banding framework was at 100% suggesting the bands were deemed sufficient to meet needs. Concern was raised in the consultation when this level of financial analysis was not possible.

2. That schools' individual budgets will be affected

The money allocated to a school through their notional SEN budget is not affected by this proposal. Based on the financial modelling completed, the impact of this change on a schools budget would not be significant. Individual mainstream schools would retain the flexibility to pool and draw on their overall budgets and would continue to be legally required to use their best endeavours to provide for all children and young people's SEN including those who are subject to an EHC plan. Similarly, the Council would maintain its ultimate duty to secure the provision in EHC plans.

3. The overall Schools High Needs Budget will be reduced

There is no proposed reduction to the mainstream school's top up element of the High Needs Budget. The proposed budget for 2021/22 is £1.722, which is an increase of £341k from 2020/21.

4. That the proposed framework will remove one-to-one support, and/or quantification from EHCPs

This would be addressed via the proposed Banding Framework Document which describes the use of one to one support as part of a wide range of provision. This would make clear that one to one support remains an essential provision for many pupils as part of their overall support. Where EHCPs specify one to one support in appendix F of the plan it would need to be provided.

Does the proposal have the potential to cause unlawful discrimination (for example is it possible that the proposal may exclude certain groups of people from obtaining services or limit their participation in any aspect of public life?) NO

*Set out in light of the consultation and data gathering what changes, if any you will make to the proposal **NONE***

What can be done to reduce the effects of any negative impacts? Where negative impact cannot be completely diminished, can this be justified and is it lawful?

As described above any negative feedback or impact would be addressed as described. It is believed that the funding is sufficient to fully negate the feedback received.

In addition, the Local Authority has a Statutory Duty as set out in Section 36 part 3 of the "Children and Families Act 2014" to determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

Under Section 37 of the same Act where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan the local authority must secure that an EHC plan is prepared for the child or young person, and once an EHC plan has been prepared, it must maintain the plan. These Duties are not impacted by the proposal.

Recommendations

Please summarise the main recommendations arising from the assessment. If it is not possible to diminish negative impacts to an acceptable or even a lawful level the recommendation should be that the proposal or the relevant part of it should not proceed.

- Detailed analysis and feedback has been undertaken and the main report also outlines the key mitigations that will be in place should this proposal be agreed, as detailed in previous section.
- The detailed information contained in the public consultation document clearly demonstrates that some of the feedback relates to areas not covered by the public consultation.
- The detailed information in the report also indicates some misunderstanding that the consultation was proposing to cut funding for SEN. It was clearly stated in the consultation document that this was not the case and that in fact the 21/22 budget had increased by £341,000.
- As part of the pre-consultation phase the Council undertook a stress testing exercise which indicated 100% support for the proposal.
- This proposal does not impact on the legal duties of the Council as set out in the Children and Families Act 2014 and described above.

It is therefore recommended that the Cabinet Member supports the move to a SEN Banding Framework for the allocation of EHCP top-up funding to mainstream schools.

Action/Improvement Plan

The table below should be completed using the information from your equality impact assessment to produce an action plan for the implementation of the proposals to:

1. Remove or lower the negative impact, and/or
2. Ensure that the negative impact is legal under anti-discriminatory law, and/or
3. Provide an opportunity to promote equality, equal opportunity and improve relations within equality target groups, i.e. increase the positive impact

Area of impact	Is there evidence of negative positive or no impact?	Could this lead to adverse impact and if so why?	Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or any other reason?	Please detail what measures or changes you will put in place to remedy any identified impact (NB: please make sure that you include actions to improve all areas of impact whether negative, neutral or positive)
Age	NO			
Disability	YES	No – the proposal is intended to enable mainstream schools to make a wider range of best practice provision for learners with special educational needs and disabilities with EHCPs.		The provision is secured in an Education, Health and Care Plan determined by an assessment which is not impacted by the proposal. The amount of additional funding made available to the school to provide that provision is reviewed annually and may be changed based on supporting evidence.
Gender Reassignment	NO			
Marriage & Civil Partnership	NO			
Pregnancy & Maternity	NO			

Area of impact	Is there evidence of negative positive or no impact?	Could this lead to adverse impact and if so why?	Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group or any other reason?	Please detail what measures or changes you will put in place to remedy any identified impact (NB: please make sure that you include actions to improve all areas of impact whether negative, neutral or positive)
Race	NO			
Religion / Belief	NO			
Sex (male or female)	NO			
Sexual Orientation	NO			
HR & workforce issues	NO			
Human Rights implications if relevant	NO			
Please remember - actions should have SMART targets and be reported to the Diversity Board (this should be done via your Directorate representative) and incorporated into your service/team Plans and /or objectives of key staff				

Summary	
Date of Assessment:	18 th January 2021
Signed off by Head of Service/Director	Brian Pope, Assistant Director Education and Inclusion
Review date	12 February 2021
Date published	

Publishing checklist	Yes	No
<ul style="list-style-type: none"> • Plain English – will your EIA make sense to the public? • Acronyms – check you have explained any specialist names or terminology • Evidence – will your evidence stand up to scrutiny; can you justify your conclusions? • Stakeholders and verification – have you included a range of views and perspectives to back up your analysis? • Gaps and information – have you identified any gaps in services or information that need to be addressed in the action plan? • Success stories – have you included any positive impacts that have resulted in change for the better? • Action plan – is action plan SMART? Have you informed the relevant people to ensure the action plan is carried out? • Review have you included a review date and a named person to carry it out? • Challenge – has your equality impact assessment been taken to Diversity Board/Call Over for challenge? • Signing off – has your Head of Service/Director signed off your EIA? • Basics – have you signed and dated your EIA and named it for publishing? • A signed version to be kept by your team for review and electronic version to be uploaded on to the council's website 		