

## **CHILDREN AND FAMILIES OVERVIEW AND SCRUTINY COMMITTEE**

**19<sup>th</sup> January 2021**

### **SPECIAL EDUCATIONAL NEEDS AND DISABILITIES (SEND) UPDATE; INCLUDING WRITTEN STATEMENT OF ACTION, HIGH NEEDS BLOCK DEVELOPMENT AND SEND COMPLAINTS**

#### **REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES**

##### **Purpose of the Report**

1. The purpose of this report is to provide the Committee with a progress update on work taking place across the SEND Local Area in response to the national, regional and local increase in demand for Education, Health and Care Plan (EHC Plan) Needs Assessments and the Leicestershire Local Area SEND Inspection (CQC and Ofsted), which took place in February 2020.

##### **Policy Framework and Previous Decisions**

2. The primary legislation regarding children and young people with SEND is the Children and Families Act 2014, supported by the SEND Code of Practice (CoP) (January 2015). These set out the duties placed upon Local Authorities, Clinical Commissioning Groups and expectations placed upon other agencies.
3. The revised SEND Code of Practice extended the age range of children and young people (CYP) who may be eligible for support through an EHC plan up to 25 years, introduced tighter timescales for the completion of statutory EHC Needs Assessments and set out clearer expectations upon Health and Social Care.
4. The SEND CoP recognises that the majority of children with special educational needs can (and should) have those needs supported in a mainstream setting (pre-school, school or FE College) at the 'SEN Support' stage of the CoP without the need for an EHC plan. This is important in terms of supporting children early, in inclusive local settings and also with regards to the strategic necessity to manage resources effectively, without the need for statutory processes. The service is committed to developing and supporting a local framework where the culture of all mainstream schools and providers is inclusive and staff are well equipped and supported to meet the learning needs of the vast majority of children. At the same time, the important role that special schools play in supporting children with the most complex and significant needs is recognised.

5. In December 2018, the Cabinet authorised a consultation on the High Needs Block Development Plan, including the proposed development of enhanced and expanded SEND provision across the County. Progress has been regularly reported to the Cabinet and the Children and Families Overview and Scrutiny Committee.
6. On 21st January 2020, the Children and Families Overview and Scrutiny Committee considered a report that provided an overview of the Ofsted SEND Inspection Framework. This was followed by a report in September 2020 on the outcome of the Local Area Inspection, which had directed that a Written Statement of Action (WSOA) be developed by the Local Authority and its partners. At that time views were sought from the Committee on the Written Statement of Action, which was co-produced with the Clinical Commissioning Group (CCG), parents, carers, children and young people and other stakeholders.

## **Background**

### **SEND and Inclusion Board**

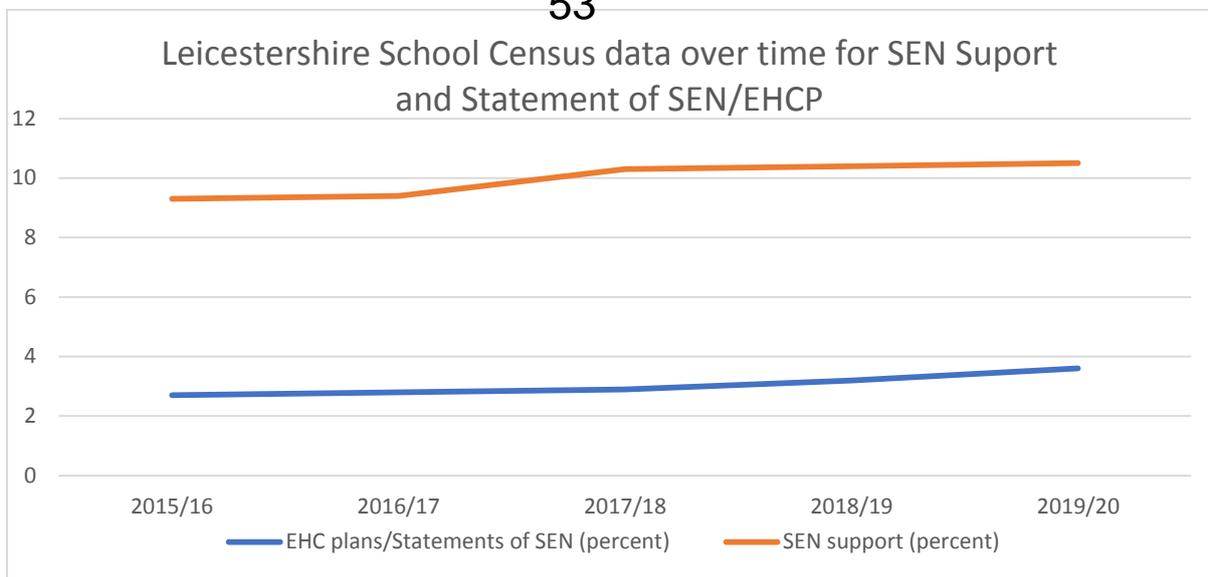
7. In Leicestershire the SEND and Inclusion Board brings partners together to ensure a joined-up approach between parents and carers (represented by the Parent Carer Forum), health, education and social care.

*Our vision in Leicestershire for children with special educational needs and disabilities is the same as for all children and young people – for them to achieve well in their education, to be cared for in safe and supportive families, participate and be involved in their communities and lead happy, safe and fulfilled lives.*

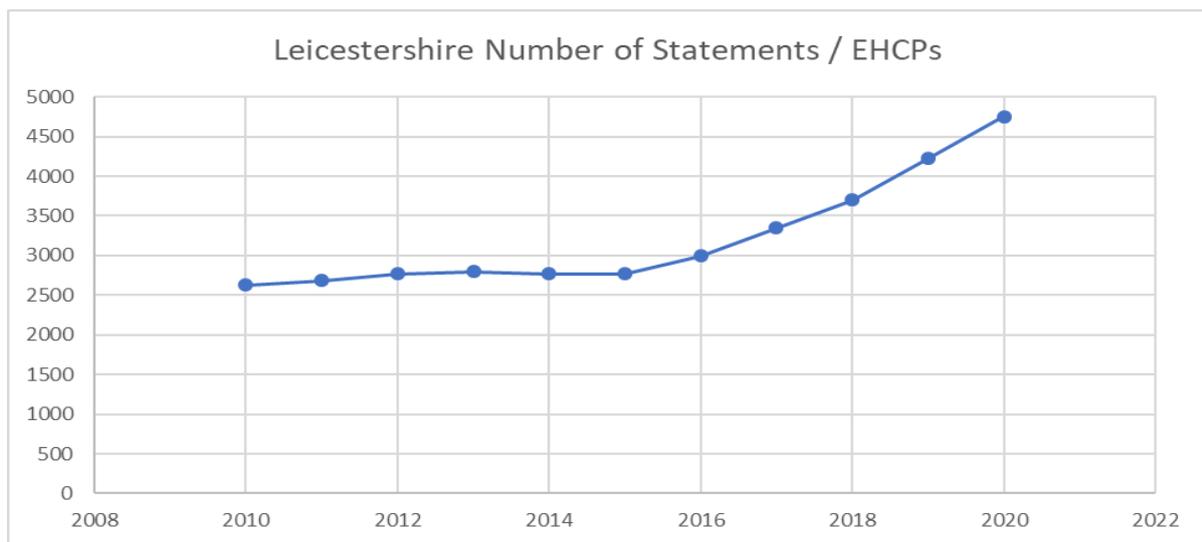
Vision taken from the SEND and Inclusion Strategy 2020 to 2023

### **Local and National Trends in SEND**

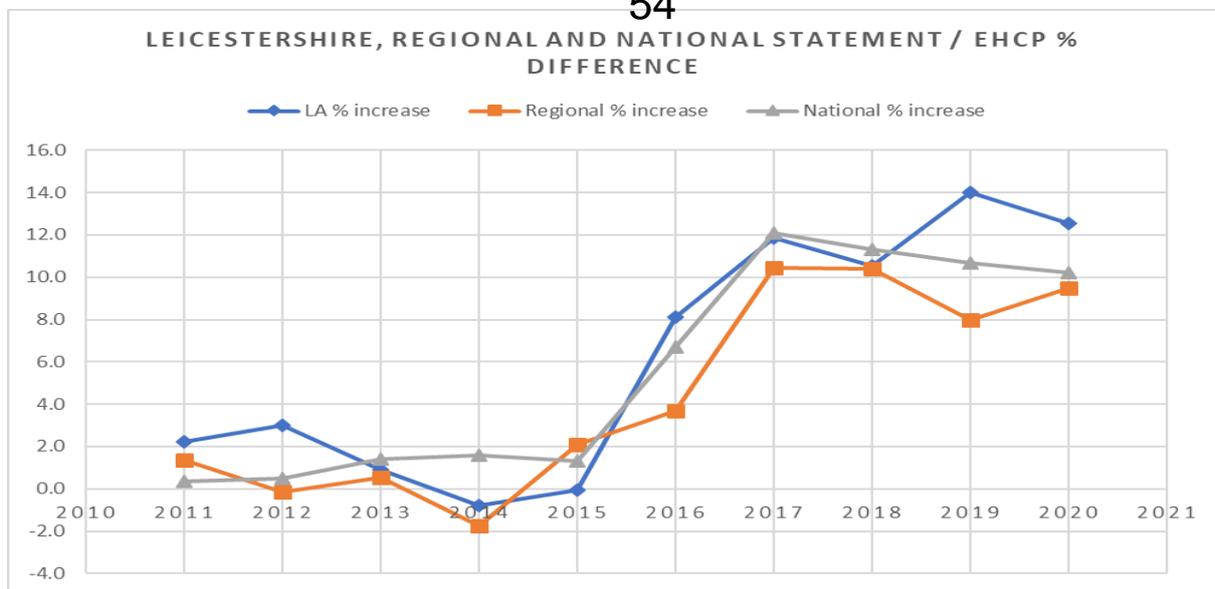
8. The latest School Census (Spring 2020), identifies that there were 105,436 pupils on roll at a maintained school within Leicestershire (aged 3 to 18 years). Of these, there are 10,439 pupils on a SEN Support plan (SEN Support stage of the CoP) and a further 3,289 children with an EHC plan. Pupils with SEND account for 13.9% of the Leicestershire school population.
9. The graph below illustrates that there was a rise in SEN Support greater than EHC plans until 2017/18 from which time the number of EHC plans have been increasing.



10. The data confirms that demand for EHC Plans has grown significantly. This follows the regional and national trend. The Department for Education (DfE) data collection for all Leicestershire EHC plans known as SEN2 (January 2020) identifies that the rate of growth has increased from 2015/16 following the implementation of the SEND reforms. The following graph shows the number of Children and Young People with EHC plans (known as Statements of Special Educational Needs prior to the SEND reform).



11. The same general pattern of growth is seen in the national and regional data. However, Leicestershire has seen a higher increase than the national and region.



### **The Local Area Inspection February 2020 – Written Statement of Action (WSOA)**

12. The Local Area SEND inspection determined that a WSOA should be produced, to focus upon two key areas for action:
- a) The absence of a clearly defined joint commissioning strategy for 0–25 SEND provision.
  - b) Systemic weaknesses in the quality of EHC plans, including: the drawing up of EHC plans; the inaccuracy with which the plans reflect children and young people’s needs; the absence of good-quality outcomes in EHC plans; the inconsistency with which plans include contributions from education and particularly health and care professionals; the lack of any formal quality assurance framework to improve new and existing plans.
13. Leicestershire’s Written Statement of Action was submitted to Ofsted in October 2020 and approved as ‘fit for purpose’ without the requirement for additional information or amendment. The Plan will be continually updated with progress against the actions and monitored every two months by the DfE Regional Advisor who, following each of these review sessions, will provide a report to the Minister for Education. This monitoring will take place for the period of approximately 18 months until the time of the next inspection. To date, feedback from the Regional DfE Advisor has been positive, commenting that it is clear that the WSOA has been well developed in close collaboration with parents, carers and all partner agencies.
14. The first of the formal monitoring meetings will take place on 21 January 2021. Between each of the formal meetings with the DfE, those colleagues leading each of the two priority areas will meet with the colleagues responsible for the actions to provide progress updates and to discuss any issues or risks.

### **Engagement with the local Parent Carer Forum (PCF) and other parent groups**

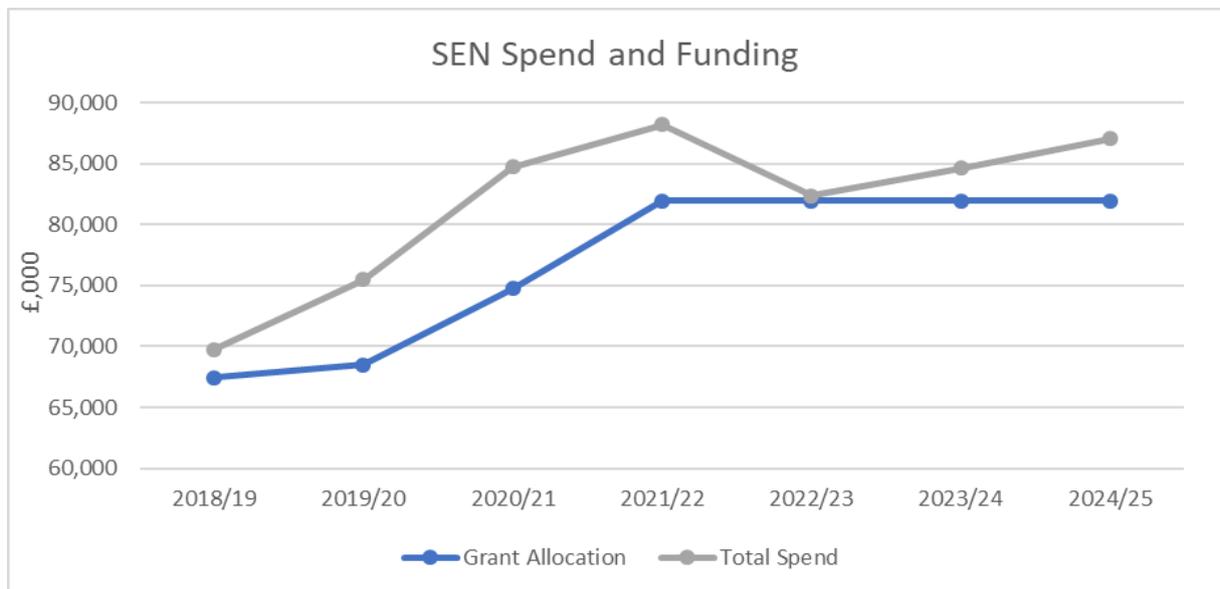
15. Throughout this calendar year the engagement and relationship between the Local Authority, Health Clinical Commissioning Group (CCG) and the Parent Carer Forum (PCF) has developed and matured, facilitated by the requirement to co-produce the Written Statement of Action and also the need to work in close

partnership to respond to the Coronavirus pandemic to provide the best possible support for Children and Young People with SEND throughout this challenging period.

16. Additionally, regular engagement of the Local Area partnerships has been established throughout 2020 through the medium of virtual meetings, regular written communications and verbal updates. This has led to a strengthening of relationships between partners, including schools and settings. Parents and carers have also been involved in the co-production of revised processes to deliver the Special Educational Needs Assessment service, as well as the development of strategy and policy across the SEND agenda and this will be built upon moving into the future.

### **The High Needs Board (HNB) Development Plan**

17. The High Needs Board Development Plan has been developed by the County Council to respond to an overspend on the High Needs Block Dedicated School Grant (DSG) and to ensure that all necessary actions are taken to address the financial position whilst ensuring that available funding for SEND is used in the most effective way to meet statutory responsibilities and support children and young people to achieve the outcomes identified in their SEN Support Plan or EHC Plan.
18. Expenditure has been above the DSG allocation for a number of years and this position is expected to remain for the medium term. Placement costs for pupils with SEN account for 90% of all DSG expenditure. Placements are made in mainstream schools, enhanced provisions within mainstream schools, maintained special schools, academies or Independent Special Schools. The growing deficit on the High Needs Block DSG is a significant financial pressure for the local authority and is expected to total £29.2m in March 2025. The profile of expenditure against grant is set out in the following chart:



**The Strategic Response to manage these pressures:**

19. To address the growing deficit, the HNB Development Plan includes a Strategic focus upon:
- a) Helping children to achieve in schools at the SEN Support stage
  - b) Whole-system review of EHC plan processes, decision making, IT Systems and SENA Service Structure, as well as
  - c) A £30m capital investment in specialist resourced provisions within Leicestershire and Special School capacity.

**Helping children to achieve in schools at the SEN Support stage:**

20. As previously mentioned, there are 10,439 pupils on a SEN Support plan (SEN Support stage of the SEND Code of Practice) compared to only 3,289 children with an EHC plan. This illustrates the strategic importance of supporting children well from the earliest stages and in making sure that staff in schools and other settings are confident and have the skills to support children with a diverse range of learning needs.
21. The Local Authority supports schools and other settings in a number of ways, including through access to support services such as Early Years' Service, Specialist Teaching Service, Inclusion Service and the Educational Psychology Service. These Services provide a range of free and 'traded' support and training.
22. All schools and academies are responsible for ensuring that they have robust arrangements in place to support SEND. The LA works closely with Headteachers, Send Coordinators and school governing bodies to support best practice. In addition, over the last 12 months the following have been developed:
23. The Leicestershire SEN Support Handbook launched in November 2020 and was downloaded 193 times; this is very positive and demonstrates that the handbook is an extremely valuable tool. It is underpinned by the SEND Code of Practice (2015), setting out how pre-school settings, schools and Post 16 providers can support most children with special educational needs through the effective use of their delegated funding, well trained staff and partnership working.
24. The Handbook brings together national and local information in one place and links to other useful information. It contains local information and guidance for schools/education providers, parents/carers and other interested parties about the support that is available to Leicestershire children and young people who have SEN or a Disability.
25. The Handbook includes important guidance for education providers on expectations about the use of Best Endeavours and Reasonable Adjustments to meet children's special needs and to support any disabilities. There are also links to useful information, legislation and an overview of school SEND funding.

26. Inclusion Forums have been established in each Locality across Leicestershire. These offer an opportunity for schools to discuss questions about how to support children with particular needs and to gain advice from a range of other professionals such as educational psychologists, health and Child and Family Wellbeing Service. These forums are useful to help people to re-frame their thinking and consider whether the child's needs have been fully identified and understood so that the right support can be put in place. It is often not just a case of 'more support' so much as how support is used.
27. Two SEND Inclusion Workers have been appointed within the Inclusion Service to specifically follow up requests for EHC plan Needs assessment during the initial six-week period. This has enabled conversations to take place between parents, schools and other agencies to better understand the reason for the request for EHC plan Needs Assessment. This has helped to take a more child-centred approach by ensuring that the right conversations are taking place with the right people to put a supportive plan together.

**Whole-System review of EHC Plan processes, decision making, IT Systems and SENA Structure:**

28. The following aspects have been reviewed and developed over the past 12 months with regards to support for those children who do require an EHC plan:
29. Annual Reviews of EHC plans take place within the school on at least a yearly basis, with schools inviting parent/carers and professionals to assess progress made against the outcomes. With rising numbers of EHC plans it has been recognised that timely consideration of amendments following an Annual Review is a priority to ensure that children receive any necessary changes to the support they need. The HNB Development Plan has included the need for extra capacity to enable an increase in SENA attendance at key Annual Reviews (such as transitions) and for the completion of amendments to plans as set out in the SEND Code of Practice.
30. An HR Action Plan was launched on 11 December 2020, proposing changes to the SEN Assessment Service team structure. The aim of the action plan is to ensure that the new SENA structure has the right combination of management oversight, casework capacity, together with senior casework input to support complex cases and Tribunal processes. Caseworkers will benefit from more regular supervision and clear case direction, together with updated guidance to promote consistent decision making. There will also be dedicated capacity to oversee performance management and commissioning functions, as well as a new role of 'Designated Social Care Officer (0.5 fte)'. The developments have been undertaken in consultation with trade unions and professional associations and are broadly 'cost neutral'. It is anticipated that the new structure will be in place from April 2021.
31. Substantial work has been undertaken between SENA, Schools, Parent Carer Forum and other interested parties, to update EHC plan formats and documentation used within the needs assessment. This will help to ensure that the correct information is submitted to enable EHC plans to truly reflect the child: their strengths and their needs, including health, social care and other aspects of support.

32. 'Element 3' of High Needs Block Funding is used to support children with SEND where they need additional support beyond what the school or setting can provide through their own delegated resources (elements 1 and 2 – an introduction to high needs funding can be found in the SEN Support Handbook referenced above). This includes children without an EHC plan (particularly where needs may not be long term) and those with EHC plans in mainstream and special schools. Work is now well underway to review and put in place an updated process for how to support children in mainstream schools. The aim is to enable children to be supported without an EHC plan where appropriate, but also for those children with an EHC plan to link funding to the outcomes identified in the EHC plan, providing schools with a level of flexibility to use the funding in a way that best reflects the needs of the child in the context of their classroom and learning.
33. The service has been working with FE Colleges to develop opportunities for a more individualised learning experience for young people with SEND. Often, in addition to the desire to undertake a particular FE course, young people also need complementary skills, such as travel training, independence and self-care. Work has been done to ensure that EHC plans are amended to reflect these needs, with timely discussions with FE Colleges and the young person, so that outcomes can be agreed, and funding put in place against the particular package of support.
34. The Local Authority has commissioned a new on-line system called 'Synergy', which will provide an on-line portal to enable families and schools to securely log in and access real-time information about a child or young person. It is estimated that up to 40% of officer time on the telephone can be taken up answering queries about progress through the EHC plan needs assessment, or the processing of Annual Reviews. From April 2021 onwards, this time will be freed up to enable a greater focus upon casework
35. A robust quality assurance framework has been developed, agreed and implemented which incorporates the monitoring of the quality of EHC plans on a two-monthly cycle with the second cycle underway. The progress of the quality of plans will be recorded as lessons are learned through the process.
36. Plans are initially audited following a discussion with the plan-writer and then audited by external partners (school representatives and parents/carers). Prior to the audit of any plan they are redacted (anonymised) to protect the identity of the child or young person. Following each moderation panel, recommendations are made for improvement of the plans where required, to be taken forward at the subsequent annual review.

### **£30m capital investment in specialist resourced provisions within Leicestershire**

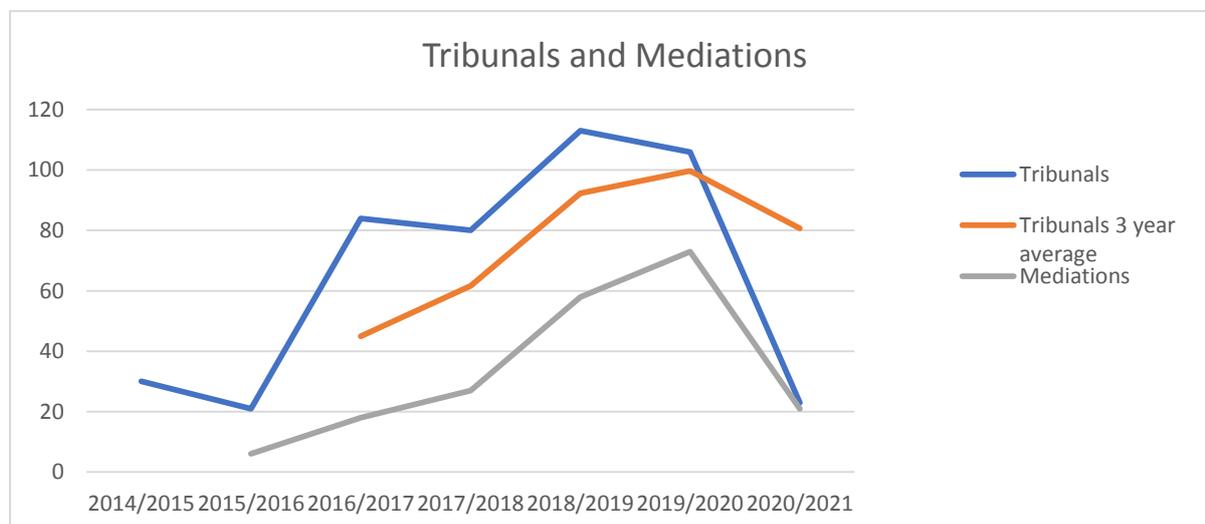
37. With regards to the comparatively small number of children whose SEND needs cannot be met within a mainstream school environment, the Service has embarked on a significant programme of capital investment, designed to ensure that children have access to sufficient local high quality cost effective specialist placements.

38. This is a significant commitment of £30 million capital investment over a three-year period, and currently encompasses 34 projects (of which all but four have now been delivered). The programme incorporates the development of 534 additional school places of which 459 are available from the autumn term 2020. Positive feedback has been received in respect of the new projects and particularly so for Foxfields Academy (Social Emotional and Mental Health), Fusion Academy (Communication and Interaction) and Oakfield Short Stay School.

### **Customer satisfaction, complaints and remedies**

39. As of November 2020, local figures show that Leicestershire maintains a total of 5,244 EHC plans (this is 0-25 years age range rather than school age and also relates to EHC plans maintained by LCC, rather than children attending LCC schools and so is a different figure to the one given earlier). The Special Educational Needs and Assessment Service (SENA) administers the EHC plan statutory assessment process. The service receives any complaints on issues that have occurred during the statutory assessment process and on-going oversight and annual review processes.
40. From the 5244 EHC plans maintained, between 24 November 2017 and 15 July 2020 164 complaints from parents and carers were made to the SENA service, (including MP/Councillor enquiries, as a formal complaint to the Corporate complaints and to the Local Government Ombudsman for Local Government and Social Care). Over this period, of the 164 complaints made, 28 became multiple complaints over a period of time, accounting for 44.7% of the complaint total. A couple of multiple complaints were made through the MP and Formal Complaint route before going on to the Local Government Ombudsman (LGO) for resolution.
41. Over the same period, eight complaints were taken up by the Local Government Ombudsman on behalf of the parents. The LGO upheld seven out of the eight parental complaints on the service. The majority of the upheld complaints also resulted in financial recompense to the family. Therefore, there is learning to take from the LGO decisions. A key area is the provision of education when a pupil is unable to attend school. The development of the Inclusion Service provides a link between the work of the SENA service and providing direct work.
42. Another key area that has been highlighted through the LGO process is provision included within the EHC plan that is not being accessed. It is the responsibility of the local authority to ensure that provision written within an EHC plan is in place and being delivered. For Leicestershire, these have been around the provision of Occupational Therapy and sensory assessments where there has needed to be specific commissioned therapy and assessments sought, as these are not available through the NHS. A review on processes within the SENA service is taking place.
43. Parental expectations can have a significant impact on the type of placement specified within the EHC plan. Parents have the right to express a preference for the school they wish their child to attend.

44. Where parents do not agree with the local authority on the content of an EHC plan, including the recommended school, there is a right of appeal to an independent tribunal but there is a requirement to enter into a mediation process as the first stage. Since the introduction of SEND reforms the number of tribunal and mediations has increased as shown in the following table. This has an impact upon officer capacity but also in relation to the placement and therefore placement cost.



## **Conclusion**

45. In July 2019 the House of Commons Education Committee reported that funding for SEND was 'completely inadequate' with local authorities facing a funding shortfall in excess of £1.0bn by 2021.
46. The County Councils' Network reports for the period 2016 -2019 that the national high needs overspend has increased by 83% and that 28 of 33 authorities responding to their survey expected a high needs deficit in 2020/21.
47. The national financial picture is worsening, and research shows that the gap between High Needs Designated Schools Grant (DSG) and expenditure is growing.
48. In a report commissioned by the Local Government Association, the Isos Partnership estimated a total national deficit on DSG to be £470m for 2018/19.
49. In October 2019 the House of Commons Education Committee contended that the DfE set local authorities up to fail by making serious errors in the way it administered funding for SEND reform and failing to provide extra money when it was needed.
50. The research is consistent in its view that there is no single reason for the problem and reports high needs deficits as a system wide problem rather than a pure financial issue.
51. In Leicestershire the scale of the challenge is recognised but the service continues to be committed to the vision to enable all learners to receive the support they need. To do this the service is focussing on a partnership approach aimed at identifying and meeting need early.

52. The SEND and Inclusion Strategy has been refreshed, taking into consideration the financial position, the needs of children and young people with SEND and the voice of parent/carers and children/young people. The five priority areas focus on three key layers of support:
1. Early help and supporting schools, pre-school and post 16 to be as effective as they can be regarding SEN Support
  2. Improved processes for EHC plan needs assessment and joint commissioning to support children with an EHC plan in mainstream
  3. Investment in local specialist provision
53. These are underpinned by:
- i. A strong Local Offer (praised by inspection)
  - ii. Investment in technology (Synergy and tools for staff to work flexibly)
  - iii. Focus on transitions (for example primary to secondary, to post 16 and from Children's to Adult services)
  - iv. Outcome focussed plans that have the child's voice at the centre and funding to deliver the outcomes
  - v. A highly skilled workforce
  - vi. A Joint Commissioning Strategy
54. As is clear from the information provided within this report, the local authority, CCG, Parents, carers as well as children and young people have worked tirelessly in co-production to improve services and provision for those with SEND in Leicestershire.
55. With the ever-increasing demand for EHC plans, SEN support in schools and wider services, such as Short Breaks, the need to continually reassess the local offer is clear.
56. The local authority now has a stable workforce to deliver its statutory duties around SEND and the CCG is also working hard to ensure an appropriate allocation of officers both in the commissioning and delivery of services.
57. The local authority is confident that the journey of improvement is well-established, and this will result in greater service user confidence and satisfaction.

### **Background Papers**

*Cabinet 22<sup>nd</sup> October 2019, Special Educational Needs and Disabilities – latest funding position (High Needs Block) and development of new provisions*

<http://cexmodgov1/documents/s148882/SEND%20Funding%20HNB%20and%20New%20Provision%20final.pdf>

*Cabinet 22<sup>nd</sup> November 2019, Special Educational Needs and Disabilities – proposed transfer of funding within Designated Schools Grant*

<http://cexmodgov1/documents/s149602/SEND%20Cabinet%20report%20FINAL.pdf>

*Children and Families Overview and Scrutiny Committee 1<sup>st</sup> September 2020, SEND Inspection and High Needs Development Plan update*

<http://cexmodgov1/documents/s155020/SEND%20Inspection%20and%20High%20Needs%20Development%20Plan%20Overview%20-%20CFS%20OSC%20-%2001.09.2020.pdf>

<https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2020/10/27/Leicestershire-Local-Area-SEND-Written-Statement-of-Action.pdf>

Cabinet 18<sup>th</sup> September 2020, *Special Educational Needs and Disabilities (SEND) and Inclusion Strategy 2020 to 2023*

<http://cexmodgov1/documents/s155475/SEND%20and%20Inclusion%20Strategy%20FINAL.pdf>

### **Circulation under the Local Issues Alert Procedure**

58. None.

### **Officer to Contact**

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### **Equalities and Human Rights Implications**

59. An Equality and Human Rights Impact Assessment Screening Tool was completed for the SEND and Inclusion Strategy. The work on the actions for the strategy will consider Equality and Human Right issues.

### **Partnership working**

60. The County Council's relationships with partner organisations and Leicestershire's Parent Carer Forum will be critical in the delivery of a whole SEND system, including the commitment to listen and develop an approach which is based on service user experiences.