

Report to: People Scrutiny Committee

Date of meeting: 11 March 2024

By: Director of Children's Services

Title: SEND Pressures

Purpose: To provide an overview of the impact of the current SEND framework on ESCC services and how ESCC are responding to increasing demands

RECOMMENDATIONS

1) That People Scrutiny Committee note the pressures that are evident within the SEND system, the impact of these national challenges in East Sussex and the actions that are being taken to address them within the legislative constraints.

1 Background

1.1 The pressures on the SEND system, at a national level, are well documented and there is much evidence of the unintended consequences of the Children and Families Act, which is the legislative framework for SEND. There are a number of changes within the legislation that have led to increased demands, the main ones include:

- A reduction in threshold for eligibility for a statutory assessment, which has resulted in far more children being issued with an Education Health and Care Plan (EHCP).
- A broadening of the remit of the statutory assessment process to include Health and Care, but with statutory responsibilities for provision (and right of redress) falling disproportionately on Education.
- A strengthening of the rights of parental preference within the legislation, but a lack of resources to meet these raised aspirations.

1.2 As a result of the above, since 2015, Local Authorities across the country have seen:

- Increases in demands for Education, Health and Care Needs Assessments
- Increases in the number of children and young people (CYP) with an Education, Health and Care Plan
- Increases in demands for specialist placements
- Increases in costs in administering the statutory processes and in the provision for children with EHCPs, especially those in the independent/non-maintained sector (INMS)
- Significant pressures on SEND budgets

1.3 Although the impact of the Children and Families Act has varied from one local authority to another, there have been some broad themes that have emerged over the last nine years which demonstrate that the overall SEND system is not operating in the way it was envisaged. This has culminated in a framework which does not deliver improved outcomes for CYP with SEND, does not enable inclusion, undermines parental confidence in local mainstream education, and has led to a significant financial pressure on councils up and down the country, many of whom now require intervention from central government. There are frustrations and pressures across the SEND system for families, schools and local authorities.

1.4 As a result of the ongoing challenges, the DfE undertook an extensive review of the SEND system, involving feedback from the full range of stakeholders, which culminated in the publication of the [SEND and AP Green Paper](#) and associated [SEND and Alternative Provision \(AP\) Improvement Plan](#) in March 2023. Although this correctly identifies some of the key issues within the current system, there is some debate as to whether the proposed solutions are the correct ones.

1.5 In advance of any legislative changes, the DfE have set up regional SEND and AP Change Programme Partnerships (CPPs) in order to test some of the proposals that are within the SEND and AP Improvement Plan. East Sussex is part of the Southeast CPP (along with West Sussex and Brighton and Hove, and led by Portsmouth,) and so we have an opportunity to be involved in the evaluation of the proposals and influence decision-making within the DfE.

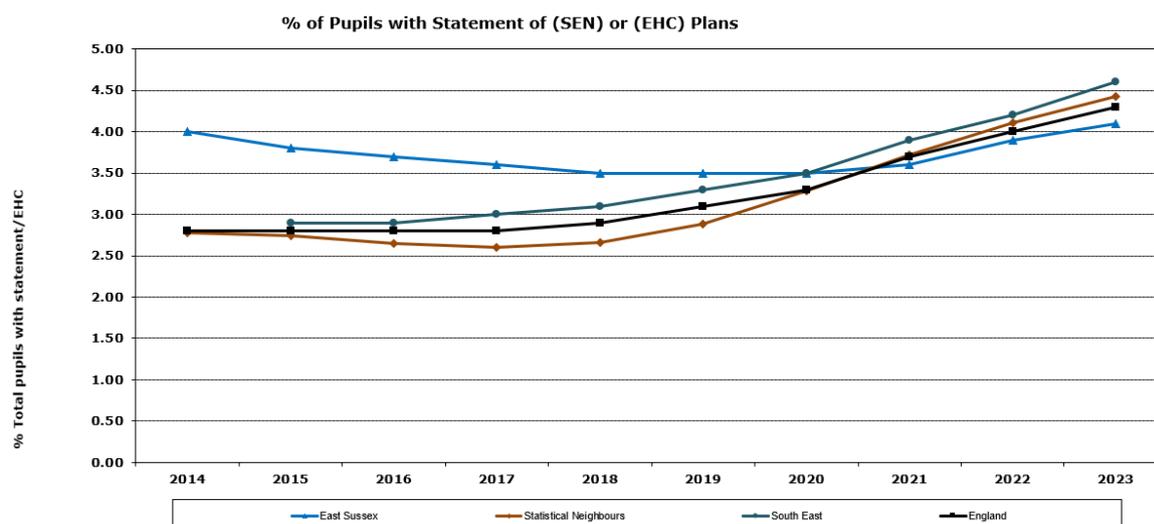
2 Supporting information

Profile of SEND in East Sussex

2.1 At the last national data count, just under 14% of pupils in East Sussex had SEND. This is slightly above national averages and has increased since 2016 when the proportion of children identified by schools as having SEND was well below national and statistical neighbour averages.

2.2 East Sussex County Council currently (at the end of January 2024) maintains just over 4,500 Education Health and Care Plans (EHCPs) across children aged 0-25. This number has increased by 1,400 over seven years and evidences the increased demand on the Local Authority to issue and maintain significantly more statutory plans in recent years.

2.3 The graph below shows the change in the proportion of school-aged pupils with an EHCP, set against national, regional, and statistical neighbour comparators. For several years East Sussex had well above the national average number of children with an EHCP; over the last three years we have been broadly in line with national figures and are, now, slightly below. This is mainly because the numbers of EHCPs, nationally, have increased at a much faster rate since 2019.



2.4 The level of demand for EHCPs across the county is high and has seen an annual increase since the implementation of the reforms. The number of requests for assessments received last academic year was 1,064; this is almost double the number that we received three years earlier (554). Although not all these requests were agreed for assessment, all of

these must follow a statutory decision-making process to determine an outcome, which is a legal duty of the Council.

2.5 All requests for assessment, and determinations of provision to be included within EHCPs, are considered by a multi-agency panel of professionals from across the Local Authority, schools and Health. This is to ensure that we have a robust decision-making process that provides a clear rationale for our decisions and is linked to the evidence submitted to the panel. To meet current levels of demand, we run two panels each week, each lasting a full day. At times of exceptional demand, we have had to increase this to three per week.

2.6 Despite these high and increasing demands, the Council's performance in completing statutory assessments within the prescribed timescales is good. The most recent national data shows that East Sussex completed 87.6% of new assessments within 20 weeks, compared to a national average of 47.7%.

2.7 Demand for specialist provision across the county is one of the biggest challenges for us as supply is currently not able to meet the number of requests. This is despite opening three new special schools across the county since 2019. Including the number of special schools in the Independent and Non-Maintained Special (INMS) sector, East Sussex has the highest number of special schools per head of school population (3.6 per 10,000 pupils) out of all 19 Local Authorities in the Southeast of England (with an average of 2.3 per 10,000 pupils). As a result of this, we have a very high proportion of our children with EHCPs placed in special schools (40.5% c.f. 34.4% nationally).

2.8 Outcomes for children with SEND across East Sussex compare poorly with national figures¹. The performance of both EHCP and SEN Support pupils was generally below average across primary. For example, EHCP pupils' performance in each of reading, writing and maths at KS1 was ranked in the bottom quartile of local authorities in England. In particular, just 7% of EHCP pupils achieved the expected or higher standard in maths, one of the lowest rates in England. At KS4, the picture is slightly better, with EHCP pupils performing well for the Attainment 8 and Progress 8 measures, but SEN Support students still falling well below average (the second lowest among statistical neighbours, and in the bottom quartile of local authorities in England).

2.9 Staying-on rates in education, employment or training for young people with SEND in East Sussex has also showed a decline. At 85.9%, the proportion of SEN Support pupils remaining in education, employment or training after KS4 was the lowest among statistical neighbours and placed East Sussex in the bottom quartile of England local authorities.

2.10 Absence rates for both EHCP and SEN Support pupils across all phases continued to be higher than the England averages, with East Sussex often ranking in the worst performing quartile of England local authorities. At 9.1%, the overall absence rate of SEN Support pupils in mainstream primary schools was the one of the highest in England, well above the England average of 7.9%. The rate of persistent absentees among SEN Support pupils in East Sussex's mainstream secondary schools was 45.6%, again one of the highest rates of all local authorities in England.

2.11 At 29.1%, the suspension rate of SEN Support pupils across all phases was higher than both the statistical neighbour and England averages and ranked in the lowest performing few local authorities in England. Additionally, at 0.21%, the permanent exclusion rate of SEN Support pupils in mainstream primary schools ranked East Sussex the second lowest among statistical neighbours and in the lowest performing quartile of local authorities in England. However, the suspension rate of EHCP pupils in mainstream primary schools was 11.0%, which was the lowest among statistical neighbours and 2.8% points lower than the England average of 13.8%

¹ Data in paragraphs 2.9 through to 2.11 is from November 2023 national comparators.

Financial Appraisal

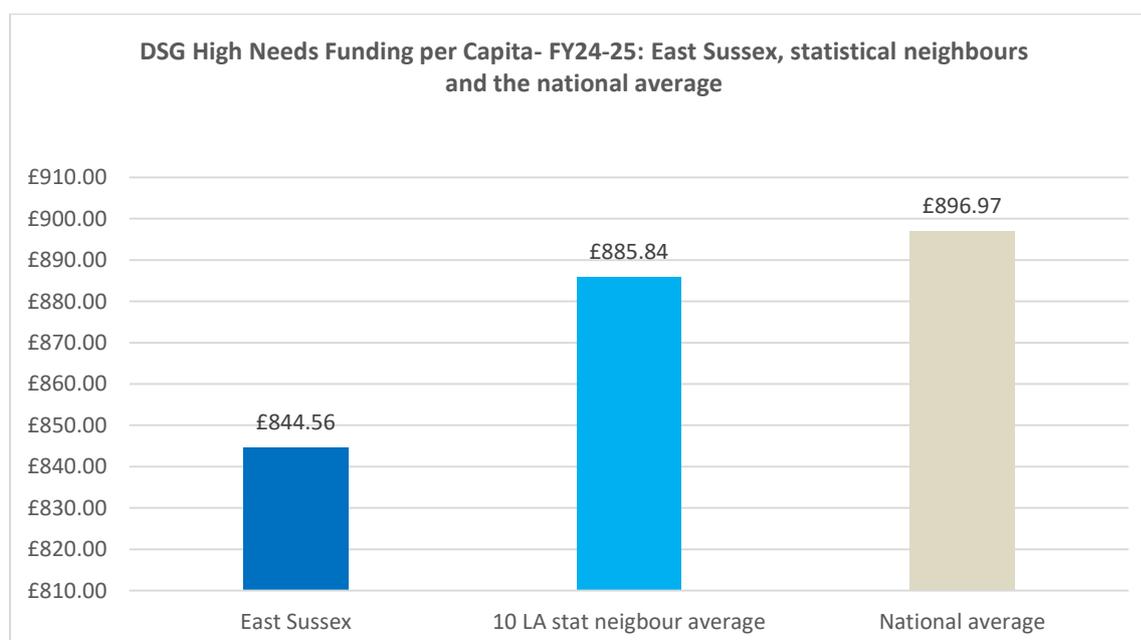
2.12 There are two elements of financial demands around the statutory SEND processes: the costs of undertaking statutory assessments to determine if a child needs an EHCP (this is a statutory function of the LA) and the costs of making provision that is outlined in an EHCP (this is funded through the schools' High Needs Block).

2.13 As outlined in 2.2 above, the level of demand for statutory assessments has almost doubled in the last 3 years yet the central government grant to account for this has not kept up. In the first years following the reforms, a New Burdens Grant was made available to the LA in order to run the statutory processes, but these have since ceased. This has meant that we have had to continually adapt how we utilise our broader staffing complement to ensure that the Local Authority is able to meet our duties consistently.

2.14 The allocation of High Needs Block funding to the Local Authority is determined by a national formula and is allocated to Local Authorities to meet specialist support and provision for pupils with SEND. This includes, amongst other things:

- Top-up funding for mainstream schools (for costs above £6k per child)
- Funding for high needs learners in Further Education (FE) Colleges
- Place and top-up funding for state run special schools and specialist facilities attached to mainstream schools
- Fees for placements in Independent and Non-Maintained Schools
- Personal budgets and packages of support for children with EHCPs not on the roll of a school
- Alternative provision for pupils who are permanently excluded from school
- Specialist support services for schools to improve expertise and inclusive practice in mainstream schools.

2.15 Although a certain element of the funding within the formula is determined by the number of pupils in special schools, overall the level of need and demand is not accounted for in the settlement to Local Authorities. This means that Local Authorities like East Sussex, where a high proportion of EHCPs are in special schools, are disadvantaged by the current funding system. Additionally (as shown in the graph below), East Sussex receives relatively less funding than national average and statistical neighbours per capita.



2.16 The biggest demand on the High Needs Block funding comes from the INMS sector, where the average placement cost is £45,000 per year, and in some cases can be as much as £300,000 per year. In the last financial year, East Sussex spent £18.1m (around 25% of our overall High Needs Budget) on approximately 400 children who attended INMS schools; this year we are forecasting to spend £22.6m on a similar number of pupils. Despite the high costs, the needs of pupils supported in INMS are, for the most part, not more complex than those in our local state-run special schools and are used when our local provision is full. An added complication with the INMS sector is that, unlike state run special schools where the costs are determined by the LA, the law requires us to pay any fee that is determined by the provider; this includes annual price increases which in many cases are above inflation levels.

2.17 The growth in demand for personal education budgets and Education Otherwise Than At School (EOTAS) packages for children with EHCPs, including an increase in the number that are directed at Tribunal, is a newer challenge for the Local Authority. These are requests from families for bespoke education packages (named in EHCPs) which are not delivered by a single education provider. Some of these will be requested where we are unable to source a school that a parent feels can meet the needs of their child, but others will be where a family feels that a bespoke education package best placed to deliver the provision in an EHCP, often following a period of protracted non-attendance or a school breakdown. In these cases, the Local Authority is either required to source, or fund parents to do so, provision that meets needs outlined in EHCPs which, in addition to educational tuition, will include a range of therapies which need to be sourced in the private sector at inflated costs. Again, this is a national issue, but is placing a significant demand on the Local Authority both in terms of costs of provision and the personnel time taken in sourcing bespoke packages. At the time of writing, 37 children in East Sussex with an EHCP are on an EOTAS package.

2.18 Since 2017, East Sussex has been relatively successful in managing costs within the overall allocation of the High Needs Block. In many other Local Authority areas, Local Authorities have regularly had to ask Schools' Forum to vire funding from the schools' block to the HNB in order to meet pressures or have been dependent on bailouts from central government through the Safety Valve Programme (which comes with additional burdens on those Local Authorities). However, in 2024/25 we are projecting, for the first time in 7 years, a pressure on the High Needs Block.

Managing Demands

2.19 Ensuring that the Local Authority has the right level of staffing to respond to statutory demands has been a key priority for us. Nationally, there have been significant challenges with recruiting to key staffing groups that are fundamental to an effective SEND system:

- Educational Psychologists (EPs): Following a recruitment challenge in 2015 where we lost a number of EPs to neighbouring Local Authorities, we have developed a long-term strategy for recruitment to staff in this group. This strategy includes creating entry-level Assistant EP posts (who we support to get ready for acceptance onto the EP training programme), offering posts to trainee EPs who are undertaking doctoral studies and being funded by one university to support their training programme. Through this we have seen a number of staff not only successfully train as EPs, but also return to East Sussex as qualified psychologists. This means that, despite a national shortage of EPs, East Sussex has a relatively low number of vacancies compared to other Local Authorities.
- Assessment and Planning Officers (APOs): These are responsible for overseeing and administering the statutory processes around Education, Health and Care needs assessments and plans. Following a loss of 50% of this staffing team just over a year ago, we have revised our strategy for recruitment and retention. This has involved breaking up different elements of the roles and employing staff to undertake specific functions. For example, we have created a team of staff to support with Annual Review processes and given a single manager responsibility for induction and Continuing

Professional Development of all our casework staff which means that workloads are more manageable and retention of staff is currently good.

2.20 In order to both manage upward pressure for special school places, and to broaden the expertise of schools in managing more pupils with SEND, we have actively developed specialist facilities, attached to mainstream schools. Since 2019, we have opened five new specialist facilities (three at primary and two at secondary) and have also expanded the number of places in two other specialist facilities. This means that we are able to support more pupils with higher levels of need in their local, mainstream school, alongside their peers.

2.21 Again, in recognition of the need to ensure that we broaden expertise and capacity in local mainstream schools and that the right children get access to special schools, East Sussex has developed a range of specialist support services that work directly with schools to improve inclusive practice. These services provide a responsive offer to schools to either support individual children or improve whole-school practice around SEND and are delivered by different teams in the Education Division.

2.22 In addition to the specialist support available to schools, last year Schools' Forum identified £5m to re-invest into school-run projects to improve inclusive practice in mainstream schools and improve outcomes for children with SEND. Schools were asked to work in partnership to bid for funding and the first of these projects have been rolled out this year. Details of the projects and the schools involved are available on our [Local Offer](#). All projects will be evaluated in terms of their impact in improving inclusive practice with a view to sharing good practice across all schools.

2.23 Although costs within the INMS sector are difficult to manage, East Sussex has had a policy of challenging all excessive levels of costs and agreeing contracts with schools where we place large numbers of pupils that provide a more cost-efficient framework for the Council. This has allowed us to manage costs more effectively in this sector than in other areas, but the recent increases in inflation have been exploited by some schools to ask for disproportionate fees or in-year rises which the council has an obligation to pay.

3. Conclusion and reasons for recommendations

3.1 Overall, the challenges within the national SEND System are having a significant impact on the Council and keeping up with demands is a big challenge for the CSD. Earlier this month, a debate was held in parliament around the current challenges and East Sussex sent a briefing to all local MPs (Appendix 1) outlining the main drivers and potential solutions that could be explored to address these.

3.2 East Sussex is working closely with our partners and stakeholders to achieve the best possible outcomes for CYP with SEND in East Sussex. We have developed a comprehensive [SEND Strategy](#), based on a comprehensive strategic needs assessment, which sets out our aspirations and how we will achieve these in partnership, across the county. This Strategy is overseen by a SEND Strategy and Governance Board which sets the strategic agenda and works to ensure that all partners in the local system help deliver the aspirations for children with SEND.

3.2 Although East Sussex is part of the national SEND and AP Change Programme and will have the opportunity to feed into any potential changes to the SEND System, it is unlikely that this will have any impact on demand in the short term. Although the SEND and AP Green Paper rightly identifies a number of the challenges within the current system, the DfE is keen to test areas which do not require legislative change and, therefore, the outcomes of the programme are not likely to deliver the transformation that the system needs.

3.3 Despite being able to manage costs relatively well to date, the next financial year is projected to be challenging for the Council, particularly in relation to the costs of provision from the High Needs Block. We are actively working with Schools' Forum to explore how we

manage these cost pressures but, with the ongoing demand for special school places, this will be a challenge moving forward.

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