

CCN Analysis

Special Educational Needs and Disabilities: The Challenge Facing County Councils

INTRODUCTION

The increasing financial pressure on local authority children's services is no secret. The County Councils Network (CCN) recently published a report commissioned from PwC showing that local authorities in England face a combined £6.4bn spending need across Special Educational Needs and Disabilities (SEND), home to school transport and wider children's social care by 2024/5 if they are to maintain the levels of service they provided in 2015/6. The report shows that the spending need, especially that which is predominantly directed to services for children with very complex needs, is expected to increase by as much as 34% over the decade.¹

More recently, funding for SEND services and subsequent overspends in the High Needs Block (HNB) of the Direct Schools Grant (DSG) have come to the forefront of the debate on the challenges facing local authorities in England. Last year, a CCN Survey found that county authorities have significantly overspent on HNB over the past two financial years (2016/17 – 2017/18) and projected more problems during 2018/9. Our survey found that although overall spending on HNB will have increased by 18% over 2016-19, the HNB overspend has increased by 83% over the same period. In order to meet the deficit councils are having to run down their DSG reserves and increasingly transfer money from the Schools' Block of the DSG which is nominally allocated to be spent on schooling for *all* children.

This briefing provides new data across three different areas affecting SEN provision in England:

- **The dramatic rise in Education Health and Care Plans (EHCP) across English counties**
- **A new survey of county authorities on their HNB overspends**
- **The impact on Local Area SEND Inspections since 2016**

CCN has prepared this short briefing to highlight its members' concerns for the system going forward, in particular focusing on how councils are coping with reforms to SEND brought in with the Children and Families Act 2014. It naturally calls for more investment from Government in this vital area to help plug the funding black hole in SEND spending which is already becoming evident. But it also draws on the experience of our member authorities to make two key suggestions for reform which may help to reduce costs in the system going forward.

¹ <https://www.countycouncilsnetwork.org.uk/new-report-reveals-councils-face-50bn-black-hole-over-next-six-years-local-authorities-warn-that-they-will-resort-to-the-bare-minimum/>

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DATA ANALYSIS: Increase in Education Health and Care Plans

New analysis of the most recent ONS figures for 2018/9 show a huge increase in the number of children in receipt of Education Health and Care Plans (EHCP) – a 47% increase since 2015.² This compares to a 4% rise in statements between 2010 and 2014.³

However, in county areas many of the sharpest rises are well above this rate – the number of EHCPs in East Riding of Yorkshire has increased by 90%; in Somerset the figure is 87%; Hertfordshire and Nottinghamshire saw rises of 72%; whilst the number of children with EHCPs in Kent has grown by 71% since the Children and Families Act 2014 was introduced.

CCN Member Council	EHCPs 2015	EHCPs 2019	% CHANGE
Buckinghamshire	3,170	4,054	27.89%
Cambridgeshire	3,099	4,198	35.46%
Central Bedfordshire	1,100	1,747	58.82%
Cheshire East	1,636	2,087	27.57%
Cornwall	2,026	2,814	38.89%
Cumbria	2,106	3,173	50.66%
Derbyshire	3,304	3,449	4.39%
Devon	3,572	5,162	44.51%
Dorset	1,452	2,392	64.74%
Durham	2,496	3,240	29.81%
East Riding of Yorkshire	1,001	1,906	90.41%
East Sussex	2,546	3,434	34.88%
Essex	7,322	8,948	22.21%
Gloucestershire	2,425	3,658	50.85%
Hampshire	4,991	8,271	65.72%
Herefordshire	579	939	62.18%
Hertfordshire	3,682	6,328	71.86%
Kent	6,884	11,763	70.87%
Lancashire	4,943	7,042	42.46%
Leicestershire	2,770	4,222	52.42%
Lincolnshire	3,280	4,654	41.89%
Norfolk	4,378	6,152	40.52%
North Yorkshire	1,728	2,825	63.48%
Northamptonshire	3,935	4,111	4.47%
Northumberland	1,458	2,058	41.15%
Nottinghamshire	1,646	2,825	71.63%
Oxfordshire	2,233	3,554	59.16%
Shropshire	1,647	1,906	15.73%
Somerset	1,125	2,102	86.84%
Staffordshire	3,400	4,835	42.21%
Suffolk	2,960	4,735	59.97%
Surrey	5,631	8,732	55.07%
Warwickshire	2,785	3,848	38.17%
West Sussex	3,362	5,297	57.56%
Wiltshire	1,992	3,349	68.12%
Worcestershire	2,381	3,502	47.08%

² <https://www.gov.uk/government/statements/statements-of-sen-and-ehc-plans-england-2019>

³ ibid

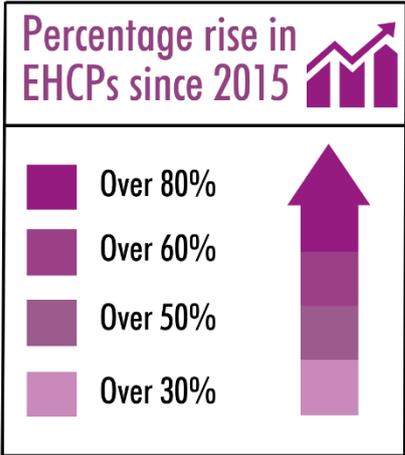
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SPECIAL EDUCATIONAL NEEDS

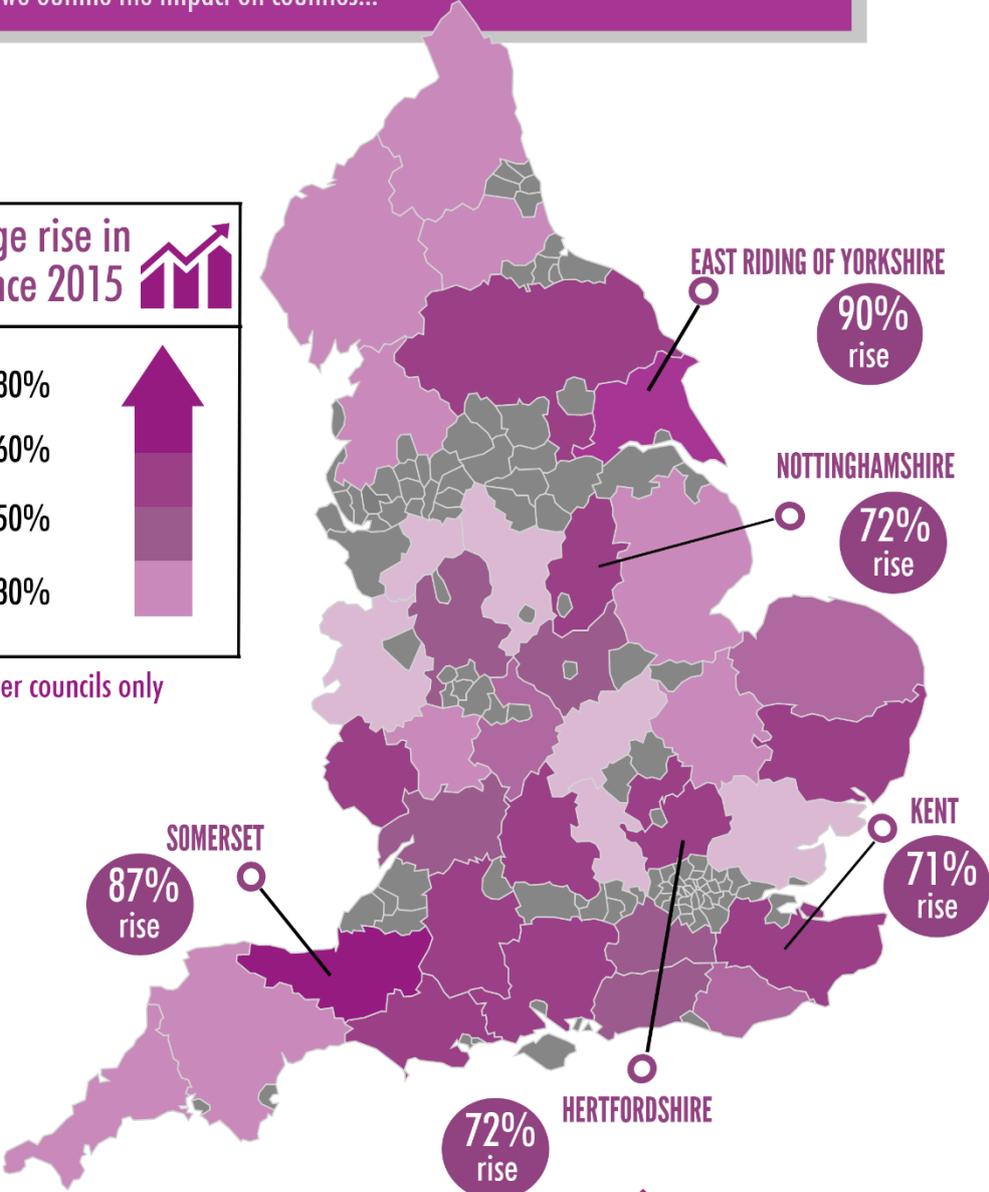
Exploring funding pressures in county areas



In 2014 the government raised the age limit of Education, Health, and Care Plans from the age limit from 19 to 25. This extended the statutory duty for councils to provide support for young people with special educational needs - but without any extra funding to account for the rise. Below, we outline the impact on counties...



*36 CCN member councils only



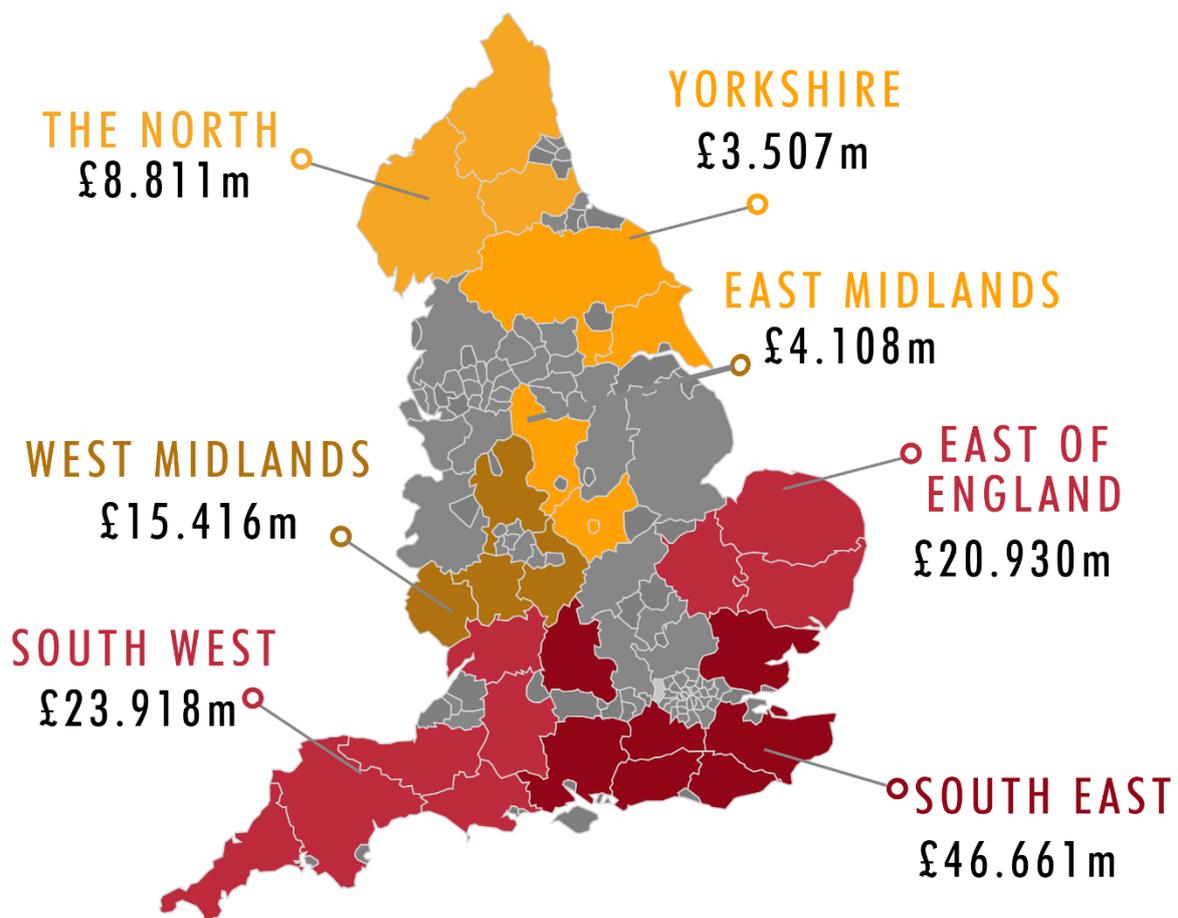
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DATA ANALYSIS: High Needs Block Overspends

In order to continue to meet their statutory duties to children with SEND, councils are having to offset the increased costs elsewhere – such as from the mainstream schools block of the Direct Schools Grant (DSG). This has now reached a crisis point with recent data collated by the Society of County Treasurers (SCT) indicating the vast majority of CCN members having overspent the High Needs Block (HNB) of their DSG during the last year with most expecting to overspend during the coming year.

From CCN's 36 county authority members responding to a survey by SCT:

- 27 out of 31 councils providing end of year figures confirmed they had overspent on the HNB during 2018/9.
- The total overspend across these 31 authorities amounted on balance to a £115m deficit.
- Together the 27 counties reporting a deficit had a total shortfall of £123m.
- 28 of 33 councils responding said they expected their HNB to be in deficit next year.



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DATA ANALYSIS: Local Area SEND Inspections since 2016

To determine the impact of growing demand on services and recent reforms on delivery, CCN has also analysed information from inspections of SEND services.

How do Local Area SEND Inspections work?

Since 2016 SEND provision has been inspected jointly by Ofsted and the Care Quality Commission (CQC). The inspection is of the local area including health and other services as well as those offered by the local authority, although the Director of Children’s Services is the main point of contact. Unlike general Ofsted children’s services or school inspections, local area SEND inspections are not ‘graded’ into four categories. Instead the area receives an appraisal of their strengths and areas for improvement in their provision. If the inspection finds significant areas of weakness in local practice then a Written Statement of Action (WSoA) is required to be submitted to Ofsted jointly by the Local Authority and the area’s Clinical Commissioning Group.⁴

Local Area SEND Inspections – What does the data show us?

In the past three years, 91 of the 152 upper tier local authority areas have been inspected in this way – with 45 having required WSoA to improve services compared to 46 that did not:



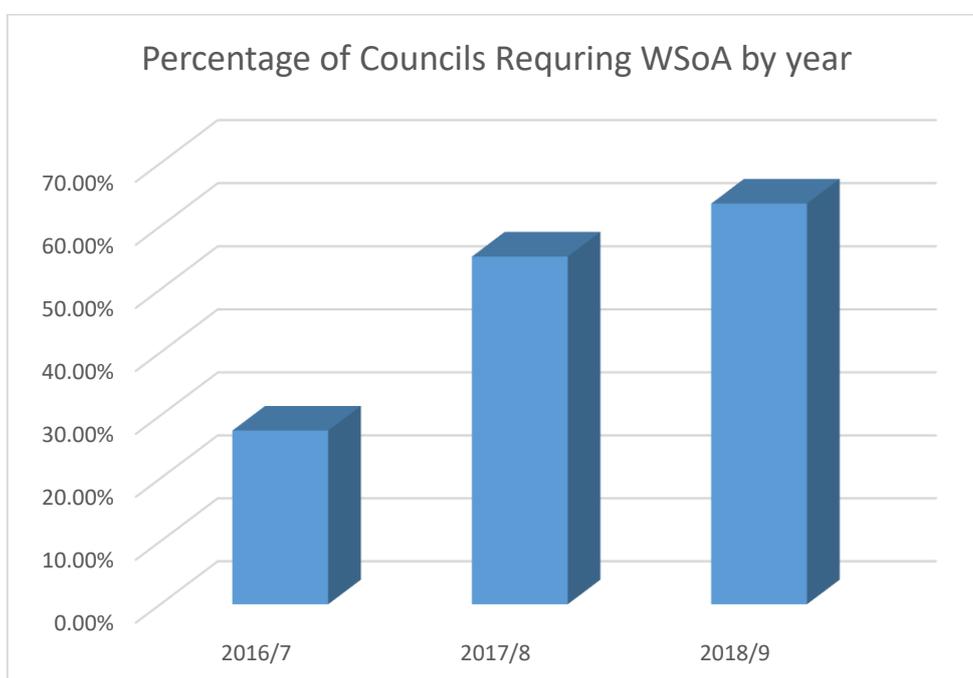
This presents a success rate of 49.5% nationally requiring WSoAs. County council areas are slightly outperformed the average with 47.4%

⁴ In accordance with the Children Act 2004 (Joint Area Reviews) Regulations 2015.

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However, when the results are broken down by year from 2016/7 to 2018/9 it is clear that more local areas are now requiring WSoAs than previously:

YEAR	No. of Inspections	WSoA Required	WSoA Not Required	Percentage WSoA
2016/7	29	8	21	27.6%
2017/8	29	16	13	55.2%
2018/9	33	21	12	63.6%
TOTALS	91	45	46	49.5%



Additionally, six areas in receipt of WSoA were re-inspected in this period (all in 2018/9) – with three (50%) having now improved to standard, but three (50%) being found to still having not addressed their weaknesses appropriately.

What is most concerning about these figures is they show the increasing difficulty that many local areas are having in maintaining the standards they would wish for children with SEND.

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POLICY ANALYSIS: Reasons behind the crisis in SEND services

The data analysis above shows a picture of SEND services nationwide struggling to cope with rising demand and rapidly accelerating costs. These factors are placing pressure on the system and have been a part of public policy discussion for some time.⁵ What this new analysis shows is that they appear now to be starting to affect councils' ability to deliver the most effective services to some of their most vulnerable children and families. This is despite the best efforts of councils to rebalance their children's services budgets which have already been drained by years of austerity.

CCN member authorities were consulted on what they believed to be the principal reasons driving the present crisis in SEND services:

- *Increasing demand*

Between 2014 and 2019 the number of children nationwide with an EHCP or Statement of Special Needs has increased from 240,183 to 353,995, an increase of 47%. This figure also does not capture any increase in the numbers of families seeking support who require assessment but do not meet the threshold for an EHCP, which nonetheless still drives the need for a response from the local authority.

Increased demand leads not only to additional service delivery costs, but also to more administration generally – which leads to further pressures on achieving assessments on time, meeting service needs locally and, ultimately, impacts on council budgets.

- *Raising of the entitlement age limit from 19 to 25*

Part of this rapid increase in demand is felt to be the extension of council responsibility for supporting young people with an EHCP from age 19 to age 25. County councils see this as a positive move for young people and their families which they are keen to support. However, the extended responsibility has not come with additional funding commensurate to the increase in demand it has created. Furthermore, this increase in demand are unlikely to be fully played out yet as more and more pupils stay on in education beyond 19 under the new entitlement – demand is projected to continue to increase in the next few years purely on this basis alone.

- *Specialist placements*

Children with EHCPs are increasingly being placed in more costly special schools rather than included in mainstream education – between 2010 and 2018 special school placements increased from 40.2% to 45.6%⁶.

Some of this increase may be due to increased pressures on school budgets meaning fewer mainstream schools are able to properly meet the needs of children with SEN in the way they would like. With an increased emphasis on parental choice under EHCPs this may be

⁵ For example in the ISOS report for the Local Government Association last year

<http://www.isospartnership.com/uploads/files/LGA%20HN%20report%20published%2012.12.18.pdf>

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729208/SEN_2018_Text.pdf

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encouraging more parents to seek higher-cost placements elsewhere, often sought through tribunal if this is against the outcome of a council assessment of need.

- *Balance of tribunal decision-making*

The move to EHCPs has placed a greater emphasis on parental choice which councils feel is being reflected in SEND Tribunal decision-making. Whilst it is right that parents should have every opportunity to express their desired views, SEND Tribunals need to find the right balance between granting what is ideally desired and what is feasible to provide for within a finite set of resources – just as parents with children in the mainstream school system need to when making choices about their education.

- *SEND transport costs*

Children with SEND are entitled to free transport to their education from their local authority. This factor has particularly strained the resources of county authorities which typically cover larger geographical areas than metropolitan authorities. CCN published an extensive report into this issue in 2018 which found counties were spending 30% more (£74m) on SEND transport than they were four years previously.⁷

- *Reduced prevention services*

Furthermore, the financial pressures from SEND – particularly those on SEN transport – are also contributing to councils having to reduce preventative services which can work to support children with milder SEN, and even help stop the manifestation of some of the more serious causes of EHCPs such as social and emotional difficulties. For example, CCN's member councils have reduced spending on Sure Start services for young children by £73m since 2015. But reducing preventative services risks creating further demand on the system in years to come as lower-level needs are not addressed properly and in time lead to more serious issues.

- *Inadequate market-shaping levers*

Local authorities do not presently have strong enough levers to shape SEND provision in their area – such as by determining mainstream SEND placements or preventing exclusions in local schools.

⁷ <https://www.countycouncilsnetwork.org.uk/exponential-rise-in-special-needs-pupils-leads-to-councils-spending-over-300m-on-transporting-young-people-to-school-last-year/>

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RECOMMENDATIONS: Policy solutions to help ease the SEND crisis

Principally this briefing shows that local authorities have taken on additional responsibilities for providing SEND at a time of increasing demand but have not yet been provided with the requisite resources to allow them to meet these responsibilities. It is an inevitable conclusion, given the pressures outlined above and the demonstrable impact they are having, that CCN must call for more funding for councils to be able to meet their duties. However, this is not the whole solution.

CCN has been consulting with its member councils on the underlying causes behind this trend. They have been unanimous in highlighting that a principal driver of these cost pressures is reforms contained in the Children and Families Act 2014. Whilst this legislation brought changes they welcome in extending the availability and choice of services for children with SEND and their families – such as raising the statutory age limit from 19 to 25 – councils have received no additional funding to enable them to cope with the increase in demand that has inevitably entailed.

In the short-term local authorities have sought to meet this demand by reprioritising funding from other areas – including from budgets intended for mainstream education. However new research for this short briefing shows that, despite these efforts, as the new reforms have rolled out budget shortfalls are having an increasingly negative effect on the quality of service provision.

Whilst additional funding may alleviate some issues in the short-term, without significant reform it is not likely to be a panacea for the deeper structural concerns inherent in the new system. Costs – many driven by well-intended reforms in the Children and Families Act 2014 – are beginning to spiral out of control. Alongside the investment needed to get councils back in the black, the Government needs to consider measures which deliver a sustainable system that balances the needs of children with SEND without compromising those of all children in an area.

The role of Independent and Non-maintained Special Schools: a monopsony effect

At present the high demand for places in Special Schools means LAs are increasingly reliant on Independent and Non-maintained Special Schools (INMSS) to meet the needs of children in their area as there are not enough places in maintained special schools. However, unlike maintained special schools INMSSs do not have incentives to keep their costs low – indeed offering a broader range of add-on services is more likely to attract parents holding an EHCP plan for their child to choose INMSS provision above equivalent maintained schools. INMSSs do this in the knowledge that, even if the council believes the costs to be more excessive compared to what could be delivered to meet the child's needs in a maintained setting, where a parent wins a tribunal the council will be obligated to pay for provision anyway using public money.

This is in danger of becoming a vicious cycle if local authorities are captured by a monopsony effect, being the only buyer of INMSS services but with no ability to keep costs down. This present failure of the market needs addressing to ensure that children with EHCPs receive the provision they are entitled to but not at a cost which prejudices the

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effective delivery of services to all children. To that end CCN proposes the following policies which could address the current imbalance in the market:

- *POLICY RECOMMENDATION 1:*

- *Clear guidance for what constitutes "efficient use of resources"*

In an ideal world, councils would like to offer every child a highly individualised education, whether they have special educational needs or not. But the reality means that with limited resources at their disposal, councils are forced to make tough choices about how to spend them as the 'gatekeepers' to the funding.

The Children and Families Act 2014 allows local authorities to refuse requests for a place in a particular school in an EHCP where they consider it is "*not an efficient use of resources*" and a suitable placement elsewhere is available at lower cost. But these decisions can be – and have been – successfully challenged at SEN Tribunal.

In light of the current funding pressures on local authorities we would encourage the Government to provide further guidance about the sort of resource differentials that should be considered "*efficient use*" to improve the speed and clarity of decision-making for local authorities, parents, and tribunals alike. In particular this should take into account how reducing the amount currently being spent on high-cost specialist placements could help councils afford to properly resource and extend the number of specialist units within mainstream schools which could cater for a wider amount of children to the same level at lower cost.

- *POLICY RECOMMENDATION 2:*

- *Create more specialist places*

Ideally councils would be able to create more maintained special school places. By increasing the amount of local schools themselves, local authorities would be better able to keep the market competitive and limit spiralling costs in the IMNSS sector.

However, CCN recognises that under the present system this is not practical, given the Free School Presumption which states that new schools must in almost all circumstances be academies. Instead CCN recommends that the Government considers 'academising' existing INMSSs. This would allow the Education and Skills Funding Agency (ESFA) to better monitor the true cost of high need SEND placements and ensure the state is getting value for money through regulating the market more centrally.

- *POLICY RECOMMENDATION 3:*

- *Increase the powers for local authorities to direct SEND placements in their area*

Responsibility for providing the highest quality education for children with SEND must be the collective responsibility of all agencies and organisations, not just the local authority. Councils need to be given greater powers to direct SEND placements in mainstream schools across their area including within academies.

The Government should assess the present system of funding for SEND in mainstream schools – including the interplay between elements 2 & 3 – to ensure that money is spent most effectively and that no perverse incentives exist to mainstream schools accepting children with SEND.

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CONCLUSION

Provision for children with SEND has been increasingly under the public spotlight in recent years. Parents and lobby groups highlight a complex system that often requires long bureaucratic and/or legal battles to secure recognition or funding for their child's needs. What is often less reported is the lengths to which local authorities are already going to meet the needs of some of their most vulnerable citizens – but with resources that are already stretched to the limit.

No local authority wants to stop children receiving an education which allows them to reach their full potential. For some children this means providing education in a different way which takes account of individual needs or disabilities. But at present it is clear the system is not working effectively when nearly two-thirds of councils inspected nationwide over the past year are found to not be reaching the expected level of service.

The Government must recognise that its well-intentioned reforms to improve services for children with SEND and their families comes at a cost. It must give local authorities the ability to deliver for these most vulnerable children in a reasonable and sustainable fashion with the necessary funding to so – and it must provide councils with the powers to better manage the limited resources they do have.

To discuss any of the issues raised in this briefing further, please contact:

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