

SCHOOLS FORUM – 21st April 2016

Title of paper:	Alternative Provision Model 2016/2017
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Summary	
<p>This report is to consult Schools Forum on the detailed proposals to move to a new model for Alternative Provision for the 2016/17 financial year. This involves the devolution of high needs funding to maintained schools and academies (referred to as schools in this document) under a service level agreement (SLA) in order to support early intervention and make provision for pupils with challenging behaviour in schools.</p>	
Recommendation(s):	
1	To give a view on the proposal to devolve funds to individual secondary schools for the 2016/17 financial year in accordance with the formula specified in paragraph 5.8, under a Service Level Agreement (SLA).
2	To give a view on the proposal that under the SLA the charge for pupils that are permanently excluded be set at £15,000 per annum (pro-rata) for 2016/17.
3	To give a view on the proposal to pilot the devolution of funds to 1 or 2 clusters of primary schools as of September 2016.
4	To note that the implementation of this model will require an estimated £5.565m from the Statutory School Reserve over the next 5 years. Of this £0.825m is already ring fenced for this area of activity within the reserve. £0.500m of this requirement is ear-marked to cover any potential risks.

1 REASONS FOR RECOMMENDATIONS

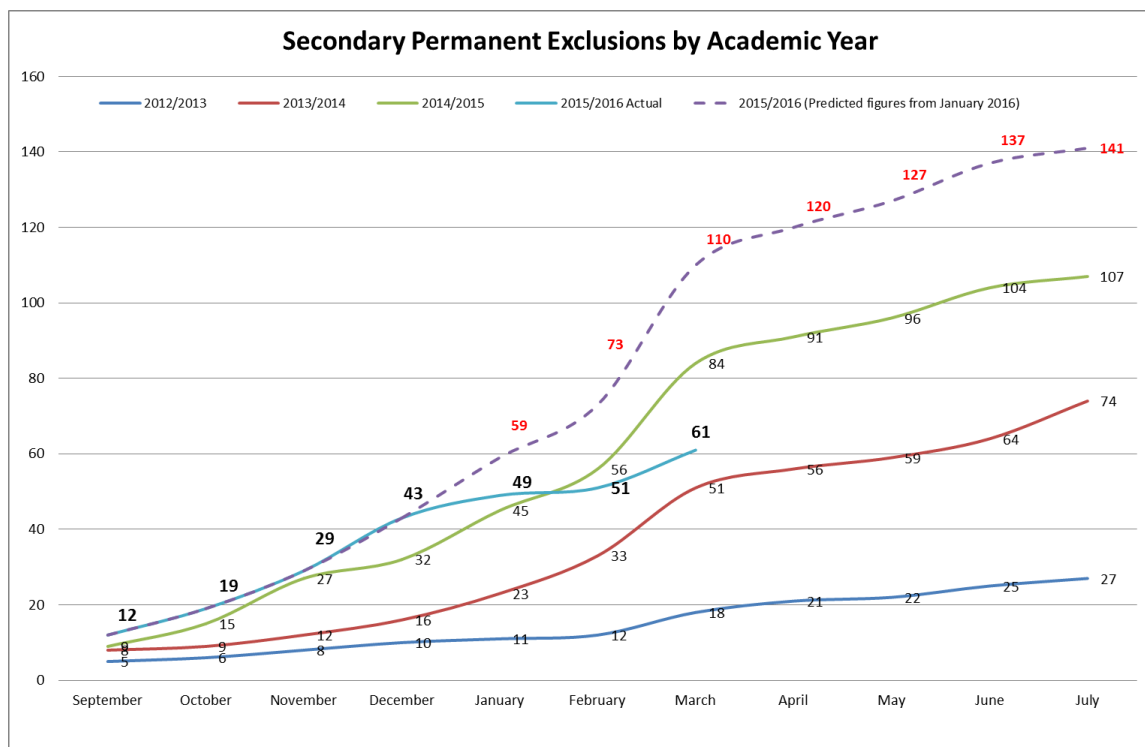
- 1.1 The current system is inequitable and is not financially sustainable.
- 1.2 The intention behind these recommendations is to put schools in charge of commissioning alternative provision to support pupils at risk of permanent exclusion in their schools. This is consistent with the national direction of travel as outlined in the White Paper and National Funding Formula and High Needs consultations.
- 1.3 It is envisaged that there will be improved educational outcomes as a result of this approach as outlined in paragraph 2.4.

- 1.4 The LA is required to consult Schools Forum over the arrangements for high needs pupils and alternative provision.
- 1.5 Consultation has been undertaken with all schools over these proposals. The Nottingham City Secondary Education Partnership (NCSEP) has indicated the agreement of secondary head teachers to the devolution proposals. Interest has been expressed by a couple of groups of primary schools in piloting the new approach in their areas.

It is the intention to implement the proposal across the whole of the secondary phase simultaneously, but to stagger the primary implementation to review the pilot cluster models. The purpose of the primary model will be to support schools in developing effective models and for all primary schools to be part of the model before April 2017. As such, full cost for permanent exclusions will be applicable to all schools through an approved service level agreement.

2 **BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 Within the 2015/16 high needs budget; £2.815m is set aside to fund Denewood and Unity Learning Centres. However, the update presented at Schools Forum on 24 September 2015 outlined the requirement to supplement this budget by up to £1.655m from the DSG reserve.
- 2.2 The annual overspend will continue to grow if the number of permanent exclusions remains in line with the average for the last 3 academic years. Modelling suggested that the cumulative overspend over the next 5 years could reach £14m, which is clearly not affordable.
- 2.3 This academic year (2015/2016) has already seen secondary permanent exclusions above the average for the last 3 years as shown in the graph below. It is important to note that primary permanent exclusions have also risen significantly over the last 3 years (on average 20 exclusions per year) including at Key Stage 1.



- 2.4 The proposal is to move to a model of devolution of alternative provision funding to schools.

Under this model, schools have all the funding and make the choice of provision for their pupils. Educational benefits of the new approach are expected to be:

- Additional funding available to schools to support early intervention and provide for the needs of pupils.
- Schools can work together to develop good practice and shared resources.
- Funding and resources to support links between primary and secondary to develop transition support.
- Better outcomes for pupils accessing quality education and provision through schools.
- More flexibility to avoid exclusion and speed of support.

- 2.5 Funding will be devolved to schools based on calculations outlined in paragraphs 5.7 to 5.11.

- 2.6 This funding will be attached to conditions outlined in a Service Level Agreement (SLA). This will include the requirement for schools to meet the ongoing costs of provision for all pupils including those that they permanently exclude. Devolved funding will be adjusted to reflect a charge for any pupils permanently excluded after 1st April 2016. The proposal is for this charge to be £15,000 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost which currently is outlined in paragraph 5.12.

- 2.7 Secondary heads are in the process of reviewing and providing feedback on the detailed contents of the SLA. It will not be possible to release funding until there is an agreed SLA and all schools have signed up. Equally, from a Local Authority (LA) perspective the proposals will require formal approval at the May Executive Board.

- 2.8 Whilst there will be a slight delay due to the above, the LA is proposing that the devolved funding allocations once released will represent the full April – March financial year 2016/17 funding and the terms of the SLA will state that the allocation is adjusted for a charge on any exclusions from April 1st 2016. Delays to the implementation date risk the affordability of the model which has been consulted on.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 The proposals have been revised considerably as a result of feedback from schools during the period of consultation.

4 OUTCOMES/DELIVERABLES

- 4.1 A model which can be taken forward for formal approval and implementation.

5 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 5.1 Under the proposed new approach, £2.815m funding that has previously been budgeted for Denewood and Unity PRUs will in future be **devolved to schools via a formula** from the high needs budget.

This allocation will be based on the premise that they will agree the SLA which will include the requirement to meet the costs of provision for permanently excluded pupils.

High level needs top-up funding for secondary pupils with Social, Emotional and Mental Health (SEMH) issues will be added to the quantum to be devolved by the same formula.

- 5.2 The devolved funding is separate from (and in addition to) schools' delegated budget shares. It remains classed as a central budget and its terms of use, is dictated by an agreement between the LA and the school.
- 5.3 Under regulation 23 of the Schools and Early Years Finance (England) Regulations a deduction is already made from schools' budget shares relating to pupils that are permanently excluded. This is a deduction relating to the formula funding received for the pupil pro-rata for the remainder of the funding period. The regulations do not permit local authorities to make a differential charge on schools' and academies' budget shares over and above this. However, a further charge can be made from devolved funding outside of the budget share, as proposed in this report.
- 5.4 The proposed charge of £15,000 (pro-rata) will therefore be deducted from the excluding school in two parts. The deduction as outlined in regulation 23 will be made to the school's budget share. A deduction will then be made to the school's devolved funding, making up the balance of the £15,000 (pro-rata).
- 5.5 These proposals are consistent with the latest Education Funding Agency guidelines (EFA High needs funding: alternative provision (AP) additional guidance 2016 to 2017 published September 2015). Paragraph 24 states:

"It is also possible for the local authority to charge for any funding that it has devolved to schools and academies for AP, outside their budget share. Devolved funding remains as a central budget under the local authority's central control and the terms of its use by schools and academies should be covered by a service level agreement with those schools/academies. We are aware that a number of authorities have closed their PRUs and now channel most AP funding through behaviour partnerships or cluster. As with other elements of high needs funding held centrally, under the conditions of grant associated with the DSG, the local authority must treat maintained schools and academies on an equivalent basis and make sure that any distribution of such funds is fair and reasonable. As an example it would not be permissible for local authorities to levy a charge on schools commissioning AP free school places if they did not levy a similar charge for places commissioned with a PRU. Local authorities are therefore encouraged to seek the agreement of the schools forum and to consult all relevant schools and academies before deciding such matters."

- 5.6 In the transition to the new approach, the High Needs (HN) budget will need to continue to support costs of provision at the PRUs for pupils previously permanently excluded as well as devolved funding for schools. New devolved allocations will therefore be reduced initially to reflect the costs attributed to these pupils.

- 5.7 This paper recommends the devolution of funding to individual secondary schools from April 2016. The secondary model is based on 75% of the behaviour PRU quantum, (£2.111m) plus £0.127m which represents the 2016/17 SEMH top-up allocations that would otherwise have been delegated to schools.
- 5.8 **Table 1** below shows the formula that will be used to calculate individual secondary school shares of devolved funding for 2016/17:
The formula devolves 75% of the funding based on Ever 6 Free School Meals (FSM) pupils and 25% based on pupil numbers.

This approach is consistent with the proposal to use both deprivation and population factors in distributing funding to LAs for AP in the proposed new HN's funding arrangements currently under consultation.

TABLE 1: SECONDARY SCHOOL SHARE FORMULA										
A		B		C		D		E	F	G
School A % share of total Ever 6 FSM secondary pupils * £1.679m	+	School A % share of total secondary pupils * £0.660m	=	School A full devolved share	-	Total PRU pupils excluded from School A * projected cost/pupil at each PRU for 2016/17	=	School A 2016/17 devolved share before floor protection	Floor is 43% of full share (C)	School A devolved funding equals higher of E or F

- 5.9 This paper recommends that up to £0.390m be made available for clusters of primary schools interested in conducting a pilot project to test and evaluate a collaborative approach to behaviour during 2016/17.

This has been calculated as 25% of the behaviour PRU quantum (£0.703m) less the estimated attributed cost for 2016/17 of the primary pupils currently on roll at Denewood PRU (£0.313m).

- 5.10 The maximum amount available to each primary cluster will be the sum of the individual shares of participating schools based on the 75%:25% Ever 6 and pupil number formula applied to the £0.390m.
- 5.11 Secondary schools and participating primary clusters will be responsible under the SLA for meeting costs associated with any pupils they permanently exclude. For 2016/17 it is proposed that the charge will be £15,000 (pro-rata).

This is below full cost and a temporary measure whilst PRU costs are being reduced. In future years the charge will be equivalent of the full PRU cost/pupil.

- 5.12 The projected full cost of pupils in Denewood Learning Centre for 2016/17 is £21,568 and in Unity Learning Centre £18,177. This is reliant on the Learning Centres making significant in-year cost savings. The Schools Forum sub-group had the opportunity to scrutinise the assumptions underpinning these unit costs at the meeting held on 10th March. Members of the sub-group wished to record their concerns about uncertainty around the strategy to ensure adequate availability of appropriate provision in the City for these pupils.

- 5.13 Devolved funding from 2017/18 will also be reduced to reflect a charge for placing pupils in provision where the HN's budget incurs a £10k per place cost. This includes AP Free school academies after the first 2 years of opening. The DfE HN's funding consultation technical note states (paragraph 7b) that the new HN's formula allocation would cover "all place funding for PRUs and AP academies and free schools except for the place funding in the first two years after a free school is established". Subject to the final DfE proposals, it is suggested that the pro-rata place cost of pupils accessing the provision during the period April 2016 – March 2017 will be deducted from the 2017/18 devolved funding.
- 5.15 Based on the numbers of permanently excluded pupils as at the end of January indicative 2016/17 budgets of £1.541m and £1.920m respectively have been issued to Denewood and Unity Learning Centres.
- 5.16 However, there have been 15 secondary pupils permanently excluded between 27th January (which was the cut-off for the data used for the latest modelling shared with secondary schools) and 31st March.

The model has been updated to reflect this increase resulting in an estimated £0.474m extra additional cost to the HN's budget over the 5 year period and a £0.264m reduction in devolved allocations to schools over the same time-frame.

Due to the floor level allocation of 43% of each school's full devolved share, the sum of 2016/17 devolved allocations is only reduced by £0.040m.

- 5.17 When setting the 2016/17 Schools Budget, the LA budgeted for a £0.170m DSG deduction relating to AP Free School places. The final 2016/17 HN's block allocation has not yet been confirmed but separate notification of the AP Free school places deduction suggests this will only amount to £0.077m. The £0.093m saving in 2016/17 together with the annual saving from the proposal to charge for AP free school places against devolved funding from 2017/18, will be used to cover the extra costs to the high needs budgets of provision for the 15 recently excluded pupils.
- 5.18 Top-up funding paid to the PRUs for any pupils permanently excluded after 1st April will be paid for mostly from the combined pro-rata £15,000 deduction to budget share/devolved funding from the excluding school. A contingency of £0.133m to support any shortfall has been created from re-allocation of high level needs funding arising from the closure of Beckhampton PRU.
- 5.19 Modelling shows that the proposals will require an estimated **additional £5.165m from the Statutory School Reserve (SSR)** over the next 5 years, of which £2.2m will be required in 2016/17.

This is based on funding being devolved to all schools including primaries from 2017/18. This reserve requirement is on top of the annual £2.815m budget for the behaviour PRUs. There is £0.825m previously ring-fenced in the reserve for the relocation of the PRU which it is proposed to re-allocate to support these proposals.

- 5.20 This will leave a total of £4.552m un-earmarked in the Statutory School Reserve (SSR).

5.21 Whilst the new model will bring the costs to the high needs budget onto a more predictable basis some risks remain including:

- Achievement and sustainability of reduced PRU costs/pupil, particularly if PRU pupil numbers fall significantly in future years
- Costs of provision for permanently excluded pupils from primary schools not initially participating in the pilot
- Costs of permanent exclusions of City pupils from County schools if a reciprocal arrangement is not achieved

It is therefore recommended that **a further £0.500m is ear-marked in the SSR** to cover potential risks, thereby reducing the un-earmarked balance to £4.052m.

5.22 The additional costs incurred over the next 5 years is due to the need to simultaneously provide new devolved funding to schools to operate the new arrangements, as well as funding the provision of pupils permanently excluded under the current system. However, these proposals will bring the costs back under control.

Recent trends in permanent exclusions suggest that the continuation of the status quo would cost significantly more. It is considered that the commissioning of AP directly by schools will lead to higher quality, value for money provision. These proposals would also align in preparation with recent government proposals of schools having a greater involvement with pupils permanently excluded and their outcomes and responsibility for alternative provision (Educational Excellence Everywhere, March 2016).

6 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

Legal Implications

6.1 This report sets out proposals to devolve funds from the high needs budget for alternative provision to maintained schools and Academies. The high needs budget for alternative provision is a sum of money provided by the Education Funding Agency (“EFA”) to a local authority over and above other education funding. In a sense it is additional funding for the specific purpose of alternative provision. As such, it is for the local authority to determine how to use it in accordance with EFA guidance. The current EFA guidance is entitled: *High needs funding: alternative provision Additional guidance 2016 to 2017* (September 2015). This budget can be devolved to maintained schools and Academies, provided maintained schools and Academies are treated on an equivalent basis, following consultation with the local authority’s schools forum (*High needs funding*, paragraph 24). In addition, *High needs funding* makes it clear that a local authority cannot charge a maintained school or Academy for the costs of a permanently excluded pupil, over and above the charge derived from the education funding regulations, unless this is pursuant to an agreement between the local authority and the maintained school or Academy (*High needs funding*, paragraph 42).

6.2 The proposals set out in this report would, if implemented, essentially entail Nottingham City Council (“NCC”) devolving its high needs budget for alternative provision to maintained schools and Academies by reference to a funding formula

that applies equally to maintained schools and Academies and only distinguishes between primary and secondary schooling. This is in accordance with *High needs funding* and is lawful. Furthermore, this would include the requirement for maintained schools and Academies to meet the on-going costs of provision for all pupils including those that they permanently exclude, with devolved funding adjusted to reflect a charge for any pupils permanently excluded after 1 April 2016. The proposal is for this charge to be £15,000.00 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost which currently is outlined in paragraph 5.12 of this report. Again, since this charge would be levied against the amount a maintained school or Academy has had devolved to it from the high needs budget for alternative provision – a form of additional funding – such a charge would be lawful. Indeed, whilst it is desirable for the sake of certainty that the charge is the subject of a commercial agreement between NCC and each governing body of a maintained school/proprietor of an Academy, since this is money devolved from a central budget that would be recouped by NCC in the event of a permanent exclusion it could be said there is no need for a formal commercial agreement, particularly as the proposals set out in this report envisage arrangements with clusters of primary schools which could result in unwieldy commercial agreements. The alternative option would be to adjust the amount down that would be devolved to the permanently excluding maintained school/Academy from the high needs budget for alternative provision in the following financial year.

- 6.3 In accordance with *High needs funding*, NCC has produced this report in order to consult with the Nottingham City Schools Forum. If these proposals are to be implemented, it is advisable that NCC seeks further legal advice as to the commercial law, education law and employment law implications of these proposals.

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Nottingham City Council

7 HR ISSUES

- 7.1 The business case proposed in this paper to move to a New Model of Alternative Provision for 2016/17, under a SLA, which has been consulted upon with relevant stakeholder, is recognised in addressing the financial challenges facing this agenda.
- 7.2 The authority and other stakeholders should be mindful of any direct or indirect impact on respective employees who are currently contracted to provide Alternative Provision services. There should be a distinction between employees of different organisations in terms of the application of each organisation's agreed employment procedures and processes.
- 7.3 If these proposals are agreed, any Nottingham City Council employees who are potentially affected either directly or indirectly, will be entitled to be formally consulted with, in line with either the policies contained within the People Management Handbook for Schools and/or the City Council's People Management Handbook. In particular, regard should be given to the policies and procedures relating to restructuring principles.

- 7.4 In addition, management will need to consider any financial cost implications to restructuring of resources and in particular to any potential cost as a result of redundancy compensation payments, release of pension benefits and pension costs relating to the Transfer of Undertaking and Protection of Employment (TUPE) regulations.

[These HR observations/comments should be cross-referenced with those provided by Legal Services]

8 EQUALITY IMPACT ASSESSMENT

- 8.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 1, and due regard will be given to any implications identified in it.

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

9.1

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 10.1 Provision and Services for Pupils with Behavioural, Emotional and Social Difficulties in Nottingham City - An Independent Review, Peter Gray 2015

Educational Excellence Everywhere, March 2016