

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

4th September 2014

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Children and Young People – Lead Cabinet Member – Councillor Mrs McCoy

Children and Families Act (Part 3) 2014 - Children and Young People with special educational needs and disabilities.

1. Summary

The Children and Families Act received Royal Assent in March 2014. Part 3 of the Act introduces significant changes to the system for children and young people with special educational needs and disabilities. The changes will be introduced from 1st September 2014 and are generally referred to as 'SEN reform'.

The implementation of the legislation will require both cultural and organisational change. There is a clear emphasis on children, young people, and parents/carers participating as fully as possible in decisions about individual care and in decisions about local provision.

The key points of the legislation are:

- Education, Health and Care Plans (EHC plans) will replace statements of special educational needs and Learning Difficulty Assessments (LDAs) for children and young people aged 0-25.
- There will be an option of a personal budget for children and young people with an EHC Plan
- There will be one category of special educational need for children and young people in education settings who do not have an EHC plan – this will be known as SEN Support.
- The Local Authority will have to publish a Local Offer setting out information about services available for children and young people with special educational needs and disabilities.
- Local Authorities and Clinical Commissioning Groups (CCGs) must make joint commissioning arrangements for education, health and care provision for children and young people with special educational needs or disabilities (SEND).

This report provides an overview of the requirements of the reform, work towards implementation of the legislation and the next steps.

2. Recommendations

Cabinet is requested to:

1. Note the work carried out in preparation for the implementation of the SEN reform legislation.

2. Note the planned next steps for work on the reform.

3. Reasons for the Recommendations/Decision(s)

SEN reform will introduce significant cultural and organisational change to the system for children and young people with special educational needs and disabilities which include statutory duties for the council and their partners.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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The implementation of the legislation will require both cultural and organisational change. There is a clear emphasis on children, young people, and parents/carers participating as fully as possible in decisions about individual care and in decisions about local provision.

The key points of the legislation are:

- Education, Health and Care Plans (EHC plans) will replace statements of special educational needs and Learning Difficulty Assessments (LDAs) for children and young people aged 0-25.
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- There will be one category of special educational need for children and young people in education setting who do not have an EHC plan – this will be known as SEN Support.
- The Local Authority will have to publish a Local Offer setting out information about services available for children and young people with special educational needs and disabilities.
- Local Authorities and Clinical Commissioning Groups (CCGs) must make joint commissioning arrangements for education, health and care provision for children and young people with special educational needs or disabilities (SEND).

This report provides an overview of the work towards implementation of the legislation and the next steps.

RECOMMENDATIONS

Cabinet is requested to:

1. Note the work carried out in preparation for the implementation of the SEN reform legislation.
2. Note the planned next steps for work on the reform.

DETAIL

Background

1. The Children and Families Act received Royal Assent in March 2014. Part 3 of the Act introduces significant changes to the system for children and young people with special educational needs and disabilities (SEND). These changes are generally known as SEN reform.
2. The reform requires a new way of working as well as changes to the system. Parents/carers, children and young people are placed at the heart of the process and play a greater role in decision making. Section 19 of the Act sets out principles on which this change is based. Local Authorities (LAs) must have regard to:
 - The views, wishes and feelings of the child or young person and the child's parents
 - The importance of the child/young person and the child's parents participating in decisions
 - The need to support the child or young person and the child's parents to facilitate development.
3. The legislation will apply to children and young people from 0 to 25 and will introduce one system for assessing and meeting special educational needs across the age range.
4. The legislation applies to Local Authorities and health partners as well as to a range of education providers and the Special Educational Needs and Disability Tribunal.
5. There is a series of regulations to accompany the legislation and a Code of Practice which is statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities. The LA must have regard to the Code of Practice.

Governance

6. The work towards implementation in Stockton-on-Tees has taken place within the governance structure set out in **Appendix 1**. This structure shows the lines of decision making and communication for the project work. The Senior Responsible Officer for the work is Lynda Brown Head of Education, Early Years and Complex Needs and the Project manager is Jane Harvey Early Years and Complex Needs Manager.
7. The main decision making body for the reform is Service Group Management Team (SGMT). Regular reports have also been provided to the Children and Young People's Health and Well Being Commissioning Group and to Children's Board. Children's Board have endorsed decisions about the use of the funding provided from Government to support the implementation of the reforms from the SEN Reform Grant and the SEND Implementation Grant.

Partnership Working

8. Key to all the work towards implementation of the reforms is working in partnership with parents/carers and with partners.
9. The LA works with Stockton United for Change (SUfC), Stockton's recognised parents' forum in implementing the reform. SUfC have been represented on the project team and working groups and have co produced the SEN reform newsletters and assisted with planning and delivery of training.

10. Both Public Health and the CCG have been represented on the project team and working groups.

Information, advice and support

11. LAs must arrange for children and young people with special educational needs and /or disabilities for whom they are responsible and their parents to be provided with information, advice and support (IAS) services. This requirement is for children and young people from 0-25 and their parents. LAs have to recognise the different needs of these groups.
12. The Code of Practice sets out the principles which need to be followed when LAs are designing IAS services.
13. Information advice and support will be delivered by the Parent Partnership Service and by the Families Information Service in Stockton.
14. The Government will also be funding Independent Supporters who will provide help directly to families of children and young people going through the new process. Funding has been made available until March 2016 for this to cover the most intensive period of transition. Independent Supporters will be independent of the LA and will be recruited by the private, voluntary and community sector.

Education Health and Care Plans

15. A key strand of the legislation is the replacement of statements of special educational need and Learning Difficulty Assessments (LDAs) with Education, Health and Care (EHC) Plans. EHC plans will have the same legal status as statements and greater rights and protections than LDAs.
16. The assessment process leading to an EHC plan will take no longer than 20 weeks. This is a shorter timescale than the current statutory assessment leading to a statement which is 26 weeks. The process will follow a more person centred approach with the child or young person at the centre and greater parent/carer involvement.
17. Following the assessment process, if an EHC plan is required, this will set out the outcomes identified for the child or young person and the education, health and care provision to enable them to progress to these outcomes. It will also name the education setting for the child or young person. An EHC plan will be reviewed yearly.
18. Where a child/young person has an EHC plan there is the option for the parent/carer or young person to request a personal budget. The availability of a personal budget will be based on the support a child or young person needs to achieve their agreed outcomes in the EHC plan.
19. A personal budget may not always be appropriate but is an option which can be requested when the Council is preparing an EHC plan or at the annual EHC plan review, and can include funding from Education, Health and Social Care as described below.
 - A personal Special Education Needs (SEN) budget is the sum of money made available by the Council when it is clear that without this additional “top-up” funding it would not be possible to meet the individual’s learning support needs. The school/college involved will already have funding for learning support across the school; only pupils or students with more complex learning support needs are likely to need a personal SEN budget. However, in some circumstances the head teacher/principal and school/college/learning provider may choose to offer some funding towards a personal SEN budget.

- A personal Social Care budget is the sum of money made available by the Council if a child or young person is assessed as needing additional and individual support at home and when out and about in the local and wider community.
- A personal Health budget refers to the budget that will be made available should a child or young person have complex, long-term and/or any life-limiting conditions. A personal Health budget may also be made available to assist with equipment costs or other health services. A personal Health budget will come from the NHS.

Personal budgets are not a new source of funding – a child or young person is only entitled to the budget available based on assessed need.

20. After a young person reaches the end of compulsory school age (the end of the academic year in which they turn 16) the right to make requests and decisions under this legislation applies directly to them rather than to their parents/carers as long as they have capacity. It is likely, however that parents/carers will remain closely involved.
21. The SEN reform legislation applies for children and young people from birth to 25. Young people will be able to have an EHC plan (subject to meeting requirements set out in the Code of Practice and regulations) until they are 25. This is a change from the current arrangements. There is however no entitlement to continued support or an expectation that those with an EHC plan at 18 must be allowed to remain in education or training from 19 to 25.
22. A process for the assessment for EHC plans has been developed in Stockton, and a format for the EHC plan. LAs can develop a local format for their plan as long as the guidance in the Code of Practice is followed. The format for the Stockton plan has been developed with parents/carers and a range of partners.
23. A pilot of the proposed EHC process and plan has also been carried out involving 5 families with children and young people aged from pre-school to post 19. All families volunteered for this. The pilot trialled the 20 week process and an initial version of the plan. The learning from this pilot has informed the process and plan format to be rolled out in September 2014.

Transition from statements and LDAs to EHC plans

24. In August 2014 there were 897 children and young people with statements in Stockton and 407 young people with LDAs.
25. The LA has to transfer all statements to EHC plans by April 2018 and all LDAs by September 2016. The process for this is slightly different for each. For children and young people with a statement a transfer review will be held to make the transition. Young people with LDAs can choose to request an EHC needs assessment at any point during the transition period.
26. The LA is required to publish a transition plan setting out how the transition from statements and LDAs will take place and must consult a number of groups including parents/carers and education providers in drawing up the plan. The plan must follow certain guidelines issued by the government.
27. Stockton-on-Tees has decided that as part of the transition plan we will:

- Front load the work so that a higher number of transfers of statements and LDAs take place in the first year (September 2014 – August 2015).
- Prioritise Children in Care with statements and LDAs for transfer in the first year. In August 2014 there were 61 children in care with statements and 15 with LDAs.

28. The transition plan for Stockton has been developed and will be published in accordance with guidelines.

Mediation and the SEND Tribunal

29. The Code of Practice promotes early resolution of disagreements about provision for children and young people with SEN. It also sets out the routes of redress for different types of concerns and complaints.

30. There is a right of appeal to the SEND Tribunal for parents/carers and young people over certain aspects of the EHC assessment process and plan. However there is a new requirement that parents and young people who wish to make an appeal may only do so after they have contacted an independent mediation adviser and discussed whether mediation may be a suitable way of resolving the disagreement.

31. Local authorities must make arrangements for mediation to be available for parents/carers and young people, and it must be independent of the LA.

32. Stockton will commission mediation services in order for the LA to meet this requirement of the new legislation.

SEN support for children with special educational needs

33. The Code of Practice sets out clear guidelines for early years settings, schools and FE providers on the process for appropriate identification, monitoring and securing further support for children with SEN. This is called SEN Support. For early years settings and schools this replaces the former categories of early years action/action plus and school action/action plus.

34. The aim of this change is to focus the system on the impact of support provided to a child or young person, rather than how children and young people access support according to the category they fit in. It will also challenge schools to improve the quality of teaching and learning for all pupils rather than inappropriately labelling some as having SEN.

35. There will be an expectation that education providers will ensure children and young people are supported through SEN Support before a request for an EHC assessment is made.

Preparing for adulthood

36. There is a strong focus in the legislation on preparing for adulthood and Chapter 8 of the Code of Practice focuses on this. Preparing for adulthood means preparing for:

- Higher education and/or employment
- Independent living
- Participating in society
- Being as healthy as possible

37. The LA has a duty to ensure that all reviews of EHC plans from year 9 (age 13/14) include a focus on preparing for adulthood and for 19-25 year olds, have regard to whether educational or training outcomes specified in the EHC plan have been achieved.

Young people in custody

38. The legislation includes new requirements for young people in custody. There will be new roles and responsibilities in relation to children and young people who have been sentenced or remanded by the courts to relevant youth accommodation in England.
39. The statutory requirements for these children and young people will commence from April 2015. The Code of Practice sets out the policy position for information only and there will be further information in due course.

The Local Offer

40. The LA must publish a Local Offer setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have special educational needs and/or disabilities including those who do not have EHC plans.
41. The Local Offer has two key purposes:
 - To provide information about the available provision and how to access it.
 - To make provision more responsive to local needs and aspirations by actively involving children and young people with special educational needs and disabilities and their parents/carers and service providers in its development and review.
42. The Code of Practice sets out in detail what should be included in the Local Offer. Guidance for LAs issued in July 2014 indicates that it is expected that September 2014 will be the start of an ongoing process with local offers developed and revised over time through regular review and consultation.
43. Stockton's Local Offer is in development for initial publication in September 2014. Work to develop the content and layout of the offer has taken place over a number of months and has involved parents/carers, young people, officers, colleagues from schools and other agencies. Links have been maintained with adults' services to ensure work is coordinated with relevant workstreams in that area.
44. Schools have a duty to cooperate with the LA to inform, develop and review the Local Offer. Schools are also expected to publish on their own website their arrangements for identifying, assessing and making provision for pupils with special educational needs and disabilities.

Joint commissioning

45. Local Authorities and Clinical Commissioning Groups (CCGs) must make joint commissioning arrangements for education, health and care provision for children and young people with special educational needs or disabilities (SEND). Guidance issued in July 2014 indicates that joint commissioning will develop over time, and that by September 2014 areas will want to focus on building strategic relationships and using them to deliver the main strands of the reform.
46. The Children and Young People's Health and Well Being Commissioning Group takes strategic responsibility for joint commissioning in the context of the SEN reform. A joint commissioning statement is being developed for publication as part of the Local Offer and work is ongoing to refresh the Joint Strategic Needs Assessment to inform Joint Commissioning.
47. The area of mediation (see paragraphs 28 to 31) is one where joint commissioning is being considered.

Communication, Consultation and Training

48. A communications plan has been in place for the Sen Reform implementation. Communication strategies have included:
- Three SEN Reform newsletters (copies of these have been sent to all members).
 - Articles in Stockton News
 - Information on the Stockton Borough Council Website
 - Three consultation and information events for parents/carers and professionals in February, April and June 2014.
 - A conference held by Stockton United for Change in March 2014.
 - Individual letters to all parents/carers of children and young people with statements or LDAs
 - Dissemination of information from the Government on the reforms to a wide audience including parents/carers, education providers, LA officers, and partners.
49. Consultation on aspects of the reform such as the EHC plan, the Local Offer and the transition plan has also taken place. The events noted in paragraph 48 have been part of this.
50. Specific consultation work has been carried out with children and young people. Youth Direction have carried out consultation with members of existing groups for children and young people with special educational needs and disabilities. Young people have also been involved in a project run by an organisation called Headliners who have been commissioned by the Government to run specific projects based on the use of film and video. This will produce a film which shows views and opinions of children and young people and parents/carers in connection with the reform. Finally consultation work with young people in schools and at Hartburn Lodge has been commissioned from Youth Focus North East.
51. Over the last year a series of briefings and training events have been held within the LA, with education providers and with partners. This has included specific training for school governors. Towards the end of the summer term this has culminated in a series of training sessions for education providers on SEN support and school requirements for publication of information, as well as on EHC plans. Training has also been provided for LA staff who may take on the coordination role for EHC assessments.

Support and capacity

52. The LA has received and continues to receive support in work on the implementation of the reform from neighbouring pathfinder LAs – Hartlepool and Darlington. Support is also provided regionally through regional SEND reform hubs.
53. The LA has received grants from the government to support the implementation of the legislation as follows:
- SEN reform grant £317 159
 - SEND Implementation Grant £182 782
54. Proposals for the use of these grants have been taken to Children's board and agreed there. They are being used to cover the following broad areas:
- Staff capacity to deliver the implementation of the reforms – particularly in respect of the transition plan, the Local Offer and information advice and support.
 - Mediation and dispute resolution
 - IT back up for the reforms (EHC plans and Local Offer)
 - Implementation of the training required and provision of guidance materials

- Parent participation
- Communications/consultation

55. The Parent Partnership Service has also secured a grant of £25 000 to support the development of IAS services.

56. A 0-25 project team has been set up encompassing staff from the Early Years and Complex Needs Team, Youth Direction and Adults Social Care to develop ways of working 0-25 in the context of the reform.

Next steps

57. The implementation of the legislation is from September 2014. Guidance issued in July 2014 includes a useful table about the phasing in of the reform – this is included at **Appendix 2**.

58. From September 2014 the LA will implement the new process for EHC assessment and the writing of plans. This will run alongside the existing system of statements and LDAs until the transition process set out in paragraphs 24 to 28 is completed. The LA will also begin to deliver the transition plan for the transfer of statements and LDAs to EHC plans. This plan will be monitored as part of performance management arrangements.

59. From September 2014 the LA will also:

- Establish an implementation group to oversee the implementation of the legislation, reporting to SGMT.
- Secure dispute resolution and mediation services
- Publish the initial version of the Local Offer however work will be ongoing to develop and review this.
- Undertake further work to develop personal budgets and what may be included in these in Stockton.
- Deliver further training for LA officers, partners and education providers.
- Deliver further communication with a further 3 newsletters planned for the next academic year.
- Continue to work with health partners on the development of joint commissioning.

FINANCIAL IMPLICATIONS

60. The SEN Reform Grant and SEND Implementation Grant (see paragraphs 53-54) are being used to support the implementation of the legislation.

61. The impact of the legislation on budgets otherwise will be monitored following the introduction of the requirements of the legislation.

62. As there will be a phased implementation it is probable that there will be further budget pressures in future.

LEGAL IMPLICATIONS

63. The Children and Families Act Part 3 places statutory duties on LAs and partners in respect of children and young people with special educational needs and disabilities. These will be confirmed in regulations and the Code of Practice.

RISK ASSESSMENT

64. The implementation of SEN reform is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.
65. As part of the management of the project a risk register has been maintained and updated and reported to SGMT.

COUNCIL PLAN THEMES

Children and Young People
Health and Wellbeing
Adults

EQUALITIES IMPACT ASSESSMENT

66. An equality impact assessment was carried in February 2014 in relation to the SEN Reform and was judged to have a positive effect. No remedial actions are required. The document has been placed in the Members' Library. A summary version of the EIA will be published on the Council's website, following Cabinet.

CORPORATE PARENTING

67. For children in care who have special educational needs and/or a disability the council needs to ensure that the responsibility as Corporate Parent is undertaken as this legislation is being implemented.
68. During the transition from statements and LDAs to EHC plans those children in care with statements and plans will be prioritised for transfer in the first year (2014-15) as noted in paragraph 27.

CONSULTATION INCLUDING WARD/COUNCILLORS

69. A range of consultation has taken place in respect of SEN reform as set out in paragraphs 48-50.
70. Members have been provided with a briefing on the reform and copies of the three SEN newsletters.

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Education related? Yes

Background Papers

Special educational needs and disability code of practice: 0 to 25 years July 2014

Implementing a new 0-25 special needs system: LAs and Partners July 2014

Ward(s) and Ward Councillors:

Not applicable

Property

No implications