

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Education and Children's Services Scrutiny Panel  
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### **PART I** **FOR CONSIDERATION AND COMMENT**

#### **THE IMPACT OF THE CHANGES IN LEGISLATION FOR CHILDREN AND YOUNG PEOPLE WITH SPECIAL EDUCATIONAL NEEDS AND DISABILITY**

##### 1. **Purpose of Report**

The purpose of this report is to provide information to the Education and Children's Services Scrutiny Panel on the proposed changes in legislation related to children and young people (CYP) with special educational needs and disability (SEND) from 0 to 25 years and the impact these legislative changes are likely to have in Slough.

##### 2. **Recommendation(s)/Proposed Action**

The Education and Children's Services Scrutiny Panel is requested to consider the legislative changes related to CYP with SEND from 0 to 25 years and the development work taking place in Slough to prepare for implementation.

##### 3. **The Slough Joint Wellbeing Strategy, the JSNA and the Corporate Plan**

- The SEND reform work is one of the key priorities within the work of the Children and Young Peoples Partnership Board.
- The Slough Wellbeing Board has signed the Disabled Children's Charter and given a commitment to deliver the outcomes by 1 September 2014 in line with the implementation of the Children and Families Bill. By signing the Charter and meeting its commitments, the Slough Wellbeing Board will be better able to meet the needs of CYP who have SEND and/or health conditions and the needs of their families.

##### 3a. **Slough Joint Wellbeing Strategy Priorities**

The SEND reform work and developments in Slough will meet the Joint Wellbeing Strategy priorities and cross-cutting themes as set out below:

- **Health**  
The SEND reforms are intended to ensure identification, assessment and early intervention with a joined up approach from those providing services including health services. There is to be a duty on Local Authorities (LAs) to promote integration between special education provision, health care provision

and social care provision where it makes sense to do so and it is likely to promote the well-being of CYP with SEND or improve the quality of special education provision for such persons within its area or for such persons for whom it is responsible outside its area. There is also a new duty on Clinical Commissioning Groups (CCGs) to jointly commission services with LAs for CYP with SEND from age 0 to 25 years. Health is a key part of the development work in Slough both from a provider and commissioner perspective.

- **Economy and Skills**

A key aspect of the reforms is to ensure outcome focussed planning is in place and that it is person centred. The new assessment process and Education, Health and Care (EHC) Plans will be in place for young people up to the age of 25 if they remain in education. This will lead to greater emphasis on the development of skills for employment and independence in adulthood. One of the principles underpinning the legislation is that LAs must have regard to:

- “the need to support the CYP, and their parents, in order to facilitate the development of the CYP and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.”

- **Housing**

The future assessment and planning work will be person centred and based on outcomes. For those young people aged 14 upwards there will be a focus on adulthood and the skills for independence. There will be a duty to consider what provision is required to assist in preparing the young person for adulthood and independent living which includes local housing options, support in finding accommodation and other housing support. In Slough there will be an emphasis on local solutions to ensure young people can remain living in their local communities.

- **JSNA**

The JSNA will be used as the tool to support the new joint commissioning duty on the CCG and LA. The JSNA, combined with the Local Offer (see 5.4 below) will ensure that any gaps in the pathways for CYP with SEND are identified and appropriate plans can be made to address these.

#### 4. **Other Implications**

##### (a) Financial

The financial implications of this initiative are unclear but it is very possible the amount promised in new funding will not be sufficient for the implementation costs and could well lead to additional costs after the two year funding period.

It is for this reason that the costs of this initiative should be kept under close review with regular reports to keep senior officers and members informed as the full financial implications become clearer.

The staff who currently co-ordinate the statutory assessment process, maintain Statements of SEN and Learning Difficulty Assessments (for young people at college) and arrange provision are funded by core budget. This is a statutory function of the LA.

Although there is a grant of £75k for each LA to support the reform work in 2013/14 and it is expected that this will also be available in 2014/15, there is no ongoing additional funding from September 2014 when the SEND reforms start to be implemented.

At this point it is not clear as to the exact cost implications of the SEND reforms. However the Pathfinder LAs have found the new assessment process to take 42 hours of officer time per assessment and this is an additional 12 hours from the current process. Therefore it is likely that there will be an increase in cost, at least in this area of the reforms. A member of the Department for Education has suggested the current process costs around £6k per assessment whereas the new EHC assessment is likely to cost in the region of £8k to £10k per assessment.

Work in Slough is aiming to provide a solution to the new assessment and planning work where the staffing costs remain within the current budget if at all possible.

The government suggests that in the long term there will be a reduction in costs for LAs and health due to joint commissioning of services, intervening earlier, providing more individualised support packages, increased integration of services and working closer with families to focus on outcomes but it is likely to be some time before this reduction in cost is evident.

Producing the Local Offer (see 5.4 below) is a huge piece of work and whilst the grant will cover the costs of the IT development work required to make the Local Offer easily accessible on-line, there is a need to keep this under review, publish feedback/comments and the responses to those comments and this will have resource implications for the Family Information Service which will require consideration once the extent of the ongoing work is clearer.

There will be a duty to offer personal budgets to parents/carers if their CYP has an EHC Plan and elements of this may be taken as a direct payment. This will require development work to embed new systems in to the process and ongoing support for families to manage their personal budgets. The grant should cover the development work but there are longer term implications for maintaining new systems. These will be explored in conjunction with adult services to ensure there is a seamless and cost effective process in place.

Allocating personal budgets and direct payments will give greater control to families but it could have an impact on the ability of the LA to commission services and this will need to be explored through the development work. There may also be implications for the partnership working with Cambridge Education as they manage the home to school transport budget which is one area that Pathfinder LAs have found suitable for direct payments.

#### (b) Risk Management

Several risks have been identified in relation to implementing the SEND reforms.

There is a risk in developing the workforce as this requires a cultural and practical shift to new ways of working. Due to the increased staff time necessary per assessment as identified above, along with a tighter deadline of 20 weeks to complete the assessment (currently 26 weeks), it will be necessary to increase the

capacity of the SEND team although the development work is looking at more creative ways to manage this and keep within the existing budget.

There will be a risk of not meeting the new statutory deadlines. Currently Slough achieves 100% of statutory deadlines in this area although there are aspects of the system e.g. the annual reviews where there can be delays in processing the documentation. There will be much tighter statutory requirements within the new system. To mitigate this risk there will be regular reviews of deadlines to highlight areas where difficulties may arise. This will also form part of the development work in designing a new staffing structure for the SEND team.

The roles within the SEND team will need to be reshaped requiring training to develop new skill sets. These changes and increased pressure could lead to a risk of increased staff turnover. To mitigate this risk a good communication plan is in place to ensure staff are aware of what is expected of them and to identify concerns as they arise.

A key element of the SEND reforms is the need for partners across education, health and social care to work closely together, along with parents and young people, to ensure a personalised plan is developed. Therefore there is a risk of staff conflict. To mitigate this risk staff need to be clear about the new assessment and planning process and the statutory duties and rights. Assessment Coordinators will need to be trained in conflict resolution and be skilled in chairing meetings. Training needs to be joined up i.e. including all professionals who work with CYP in Slough whether this be at the early help stages or at the statutory stages.

A further risk arises with the need for joint working across education, health and care services, namely the electronic systems. Each service uses separate systems, however the new legislation requires EHC Plans to be accessible to parents/carers and professionals and it will replace Child in Need Plans (social care) as well as Statements of SEN and LDAs. There is a risk that the systems in place will not satisfactorily meet these legislative demands. To mitigate this risk, experts need to develop robust systems from the outset in consultation with the users and ensure good quality staff training.

As with the current Statement of SEN, parents/carers have the right to appeal against the LA's decisions hence there continues to be a risk of legal challenges from parents/carers. This right is increased through these reforms to include young people up to the age of 25 and young people will have rights of appeal themselves. To mitigate this risk, EHC Plans should be co-produced with parents/carers and CYP, decisions must be transparent and good communication must be maintained throughout the process. Dispute resolutions will need to be available.

An overarching risk for all the SEND reform work is the increasing population of children with SEND in Slough, in line with the rising population. To mitigate this risk, a new Additional Needs Strategy will be produced to link to the school place planning but including specialist services such as speech and language therapy and health services. The rising population means there will be a need for additional provision and services as well as a larger number of assessments and plans that have to be implemented.

### (c) Human Rights Act and Other Legal Implications

The Children and Families Bill, which is in its Report stage in the House of Lords at present, is due for Royal Assent in the spring 2014. A draft SEN Code of Practice and Regulations have been published as part of this. These legislative changes must be implemented from September 2014 with a possible transition period of 3 years to transfer all current Statements of SEN to EHC Plans and 2 years to transfer Learning Difficulty Assessments (LDAs) for young people at college to EHC Plans. There are currently approximately 820 CYP with Statements and approximately 160 young people with LDAs in Slough.

The SEN reforms specify a new duty between education, health and care i.e. LA and CCG to jointly commission services/provision for CYP with special educational needs and this includes the wider population rather than just those with Statements.

Additionally the Care Bill, which is in its Committee Stage in the House of Commons (having started in the House of Lords) is being passed alongside the Children and Families Bill and this impacts on young people who are moving through in to adulthood and who meet the criteria for adult social care services. Due to the extended age range within the SEN legislation this impacts on children's and adult's care services. For example, if adult services are not ready to take on the support required for a young person with SEND, children's services will remain responsible for that provision. The Children and Families Bill also indicates that children's services will have a power to continue to make care provision available for young people up to the age of 25 provided that they have an EHC Plan, so remain in education.

The three year transition period from Statements to EHC Plans implies the possibility of further legal implications due to the need to run two systems alongside one another, the Statement of SEN and the new EHC Assessment and Plans with different statutory duties, timescales and rights of appeal.

There are no human rights act implications arising from this report.

### (d) Equalities Impact Assessment

An equalities impact assessment was undertaken at the start of the reform work. Potentially all equality groups will be affected by the proposed changes. However, CYP with SEND will be the main group affected, as well as parents, teachers and local government staff currently performing these services.

Plans are in place to mitigate any negative impact resulting from these reforms and these will be kept under review. There are many positive impacts resulting from these reforms.

### (e) Workforce

It is highly likely the SEND reforms will require changes to the current workforce; however at present the extent of these changes is unclear. The workforce will be reviewed in the summer 2014 when there will be greater clarity about the necessary skills set, structure, and volume of work following the local pilot and further information from Pathfinder LAs. There is likely to be up to a three year transition period starting from September 2014 to transfer all Statements of SEN to

EHC Plans and two year transition period to transfer all LDAs to EHC Plans. This has further implications for the workforce in running parallel systems.

There are certain roles necessary within the new assessment process which require specific skills. A detailed training programme will be required for existing staff members and any new members of staff that are employed.

Since July 2013 a part time SEND Project Manager has been employed on a fixed term contract until 31<sup>st</sup> August 2014. This role will need to be reviewed and possibly extended in relation to the transition period and will be considered as part of the wider workforce review during 2014.

In September 2013 a large proportion of school services were outsourced to Cambridge Education. At that point the SEN team remained within SBC due to the impending legislative changes and the implications on both social care and health. However, this situation will be reconsidered as part of the workforce review in the summer 2014 and a decision will then be taken as to whether further work should be outsourced to Cambridge Education if statutorily permitted.

The Local Offer development work is impacting on the workforce but the major impact will be on maintaining this as an up to date Offer with good quality and accurate data. The initial views are that additional resources may be required to manage this within the Family Information Service but this will be considered in more detail once the Local Offer has been prepared.

## 5. **Supporting Information**

### 5.1 Overall Strategy

Following the Green Paper, "Support and Aspiration: A new approach to special educational needs and disability" consultation (March 2011), and the resulting recommendations (May 2012), and draft legislation (September 2012) the senior management team were informed and have continued to be updated at regular intervals to ensure the reforms were embedded in strategic planning at the earliest point. This is also a key priority for the Children and Young People's Partnership Board.

In order to cover the extensive changes that need to be made, multi-agency working groups which include a parent/carer representative have been developed in the three key areas:

- EHC Assessments and Plans
- Personal Budgets and Commissioning
- Local Offer.

An additional working group has been set up to focus on how best to involve our CYP with SEND in this work. It is essential that CYP are involved in order that their views can inform the developments. This group will be part of the wider infrastructure of Youth Voice and will be maintained beyond the SEND reforms to ensure CYP with SEND are able to have their voices heard as much as any other group of young people in Slough.

The most recent working group has been set up to look at how to manage the electronic systems as currently education, health and care services use different systems which do not readily allow information to be shared. The legislation expects EHC Plans to be as accessible as possible to parents and professionals

alike and it is a single plan across education, health and care. There is also a need to explore how to continue to run the current system alongside the new system for the three year transition period. The systems group will also consider the requirements to run a resource allocation system and personal budgets.

There are key principles behind this reform work in Slough and these relate to:

- Participation
- Valued uniqueness
- Working together
- Informed choices
- Planning partnerships
- Birth to adulthood
- Learning and development
- Key working
- Ordinary lives
- Workforce development.

## 5.2 EHC Assessments and Plans

A flowchart of the new assessment process has been developed to include the new roles and to meet the new assessment timescale of 20 weeks (as opposed to the current 26 weeks). It is likely that this will need some further amendments once the pilot has taken place and once the work on personal budgets is complete. A draft EHC Plan format has been co-produced with parents and professionals. A pilot of the new process, involving up to 15 families, is now underway to inform the learning and development of this work.

## 5.3 Personal Budgets and Joint Commissioning

An information awareness paper has been prepared for the local Clinical Commissioning Group (CCG) and those across Berkshire. This is due to be presented to the East Berkshire CCGs in February 2014. This paper is designed to ensure the joint responsibilities are understood. The Joint Strategic Needs Assessment will help to inform local needs to support the duty to jointly commission services/provision.

There is agreement that procedures put in place for personal budgets provide a seamless approach with adult social care personal budgets and there is as much consistency as possible. The adult social care Resource Allocation System is being considered to see if this can be adapted for children's services and include elements for education and health in addition to care.

At this point it is not certain which budgets will be offered as a personal budget and direct payment and this requires further work. Legislation requires that personal healthcare budgets for those with continuing health care will be available by April 2014 whereas the education, health (non continuing care) and care personal budgets do not have to be offered until September 2014 at the earliest when a CYP has an EHC Plan.

## 5.4 The Local Offer

LAs must publish a Local Offer setting out in one place information about provision available for CYP in the area who have SEND, including those who do not have EHC Plans. The Local Offer has two key purposes:

- to provide clear, comprehensive and accessible information about the provision available; and
- to make provision more responsive to local needs and aspirations by directly involving CYP with SEND, parents and carers, and service providers in its development and review.

The Local Offer is being developed through the Slough Services Guide which currently holds the disability register and therefore many local families are familiar with this system. A contract has been agreed with Open Objects, the current web provider, to develop the Local Offer. Open Objects are working closely with the LA and health to ensure our Local Offer is widely accessible, informative and accurate.

Initially local families were consulted about the information they would like available and in what format. They have since been involved in further development of each area of information. Education settings have also been consulted through SENCo cluster meetings and information has been provided to all schools.

There are resource implications in this area as the Local Offer has to be published, kept up to date and comments have to be published alongside the LA response.

#### 5.5 Impact of the SEND Reforms

The reforms are the biggest change to legislation on SEND for over thirty years and their impact is vast, covering all elements of education, health and care services across Slough where they relate to CYP age 0 to 25 with SEND. The particular areas to note are:

- a clear link to the Early Help offer and pathway with a need to embed a culture of outcome focussed, person centred and joint working within the system;
- training for frontline practitioners working with CYP should be joined up across partners and address the above matters;
- a new statutory assessment pathway and EHC Plans to replace Statements of SEN, Learning Difficulty Assessments, Child in Need Plans and health care plans provided the CYP has special educational needs and is in education;
- the need for local education, health and care to jointly assess CYP's needs and plan and commission provision/services to meet them;
- the need for local education, health and care systems to work alongside each other to support the sharing of information and accessibility of EHC Plans;
- rights of appeal to the tribunal extended up to the age of 25 years which is likely to impact on the work required to avoid and defend appeals;
- new rights to 'direct' further education providers to admit CYP with EHC Plans which will impact on relationships with providers and the new contractual arrangements the Council has with colleges;
- the staffing structure for the statutory SEN function within the Council will need to be reviewed and amended to accommodate the new assessment process including changed roles and responsibilities. This will include the impact of running two systems in parallel for up to three years and the shortened statutory timescales;
- the need to consider the wider structure within the Council related to people with SEND;
- the introduction of a duty to offer personal budgets when a CYP has a EHC Plan of which part may be taken as a direct payment. This needs to be



developed alongside Adult Social Care and health to ensure a common approach to developing personal budgets, managing direct payments and supporting families to use these effectively;

- the implementation of direct payments could have an impact on the commissioning function of the LA;
- the very significant development work required to set out the Local Offer and to keep this up to date. This will also lead to an impact on providers, including schools, and an opportunity to develop the local market;
- the amount of time parents/carers are being asked to offer to the LA to enable the development of new ways of working to ensure that new pathways and documentation are co-produced;
- the need to establish a CYP's participation group within the overall Youth Voice infrastructure and to ensure that this is a meaningful process for CYP;
- the need to convert all Statements of SEN and Learning Difficulty Assessments to EHC Plans during the transition phase and ensure that the workforce has the capacity to undertake this additional work.

## 6. **Comments of Other Committees**

No other Committees have considered this information report.

## 7. **Conclusion**

The panel is invited to note the information and acknowledge the considerable changes to the way children and young people with SEND and their families are supported and the significant impact this will have in Slough.

## 8. **Background Papers**

- 1 Children and Families Bill 2013
- 2 Draft SEN Regulations 2013
- 3 Draft Special Educational Needs (SEN) Code of Practice: for 0 to 25 years
- 4 Care Bill 2013