

22nd March 2017

Local Government Association response to the Department for Education's stage two consultation on high needs funding formula and other reforms.

About the Local Government Association

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Key points

- The fundamental issue that needs to be resolved is that for several years the High Needs Block funding has been insufficient to reflect rising needs. In the past four years there has been a substantial increase in the proportion of pupils with special educational or disabilities (SEND) who attend specialist school setting, up from 5.6 per cent in 2012 to 8.5 per cent in 2016. The proportion in independent schools has moved from 4.5 per cent to 6.3 per cent.
- In acknowledging rising needs, the Government needs to provide additional funding to meet the pressures. Otherwise councils may not be able to meet all aspects of their statutory duties. We acknowledge the Department for Education (DfE) has provided some extra funding since 2015/16, but this has been allocated on the basis of the total number of children in an area, rather than any measure of the number of children with complex needs.
- If councils do not receive sufficient funding to cover high cost SEND, they will not have the resources to allocate extra funds to highly inclusive schools that take higher than average numbers of pupils with additional needs. Equally, mainstream schools may find it difficult to accept or keep pupils with SEND because they cannot afford to subsidise the provision from their own budgets, as they are already under significant pressure.
- The DfE has missed the opportunity to use their own independent research, undertaken by the ISOS Partnership, to develop a responsive formula, and have made some simplistic assumptions which cannot be justified. This will not target funding to the needs of individual children and young people. There are significant questions over the suitability of indicators, the weightings and timeliness of the data used.
- The potential for transfers of funding from school budgets for a limited period to fund high needs pressures may not be realised, depending on the outcome of the Schools National Funding Formula in local areas.

Introduction

The High Needs National Funding Formula (NFF) proposals will be in place for at least four years, according to the Stage 2 consultation documents. Therefore, it is essential that the NFF provides a robust and equitable method of funding provision and services for children and young people with special educational needs and disabilities and vulnerabilities.

The LGA, as an organisation representing the interests of all local authorities, is not able to comment on distributional issues for particular types of council. Our response focuses on how well the proposals for the High Needs NFF appear to meet the following criteria:

1. Sufficiency of funding and responsiveness to changes in need;
2. Accuracy in meeting the needs of children and young people with SEND or other vulnerabilities (suitability of indicators and methodology);
3. Supporting the delivery of the Government's key policy aims of inclusion, early support, efficiency and high stakes accountability for better outcomes;
4. Supporting providers and councils to deliver their responsibilities (including partnership working and local discretion/assessment);
5. Achieving consistency and linkages across the whole school funding system.

The decision to implement a funding floor, so that authorities which face a reduction in the pure formula will not face losses is positive. However, in principle we cannot support an approach that fails to deliver increases in funding commensurate with rising needs. This affects all councils, whether they face a funding freeze or limited gains. Therefore, we urge the DfE to give careful consideration to the total level of resources allocated to the High Needs Block, to achieve a match between rising demand and need.

1. Sufficiency of funding and responsiveness of the proposed system to changes in need

The fundamental issue that needs to be resolved is that for several years the High Needs Block funding has been frozen in cash terms and has not been able to reflect rising needs, except for a relatively small additional amount provided each year since 2015/16.

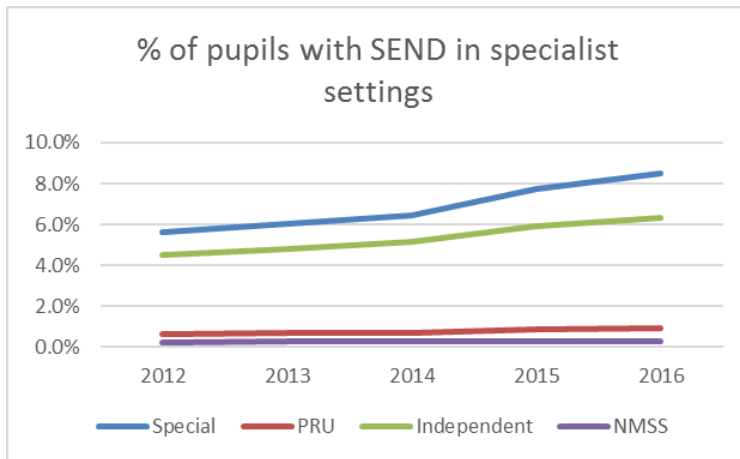
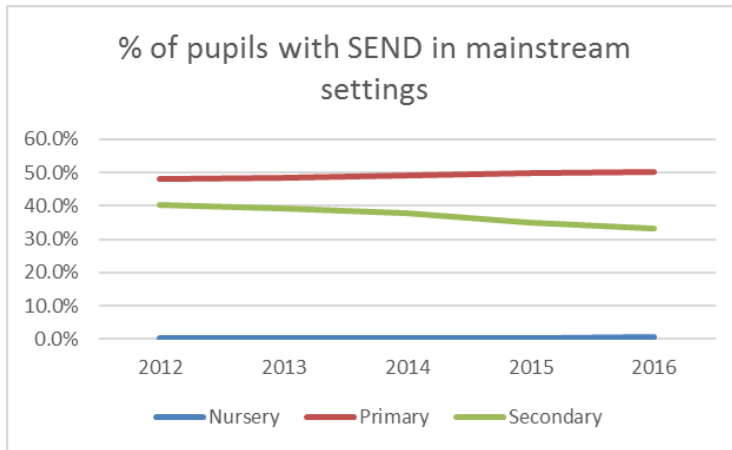
There has been a substantial increase in the proportion of pupils with SEND who attend specialist settings in the last five years, as the following graphs show. The proportion of pupils with SEND who attend special schools has increased from 5.6 per cent in 2012 to 8.5 per cent in 2016 and the proportion in independent schools has moved from 4.5 per cent to 6.3 per cent¹. By their very nature, these places are more expensive than mainstream provision.

This is because pupils in special schools have much higher needs and disabilities than those in mainstream and often need specialised equipment and therapies plus much smaller classes – those with severe autism cannot be in a class larger than 8 pupils. Independent school fees are much higher because they are children who cannot be educated even in special schools locally and it sometimes involves residential provision.

The proportion of those with SEND educated in primary mainstream settings has increased slightly, but it has fallen significantly in secondary mainstream settings over the last four years, from 40.5 per cent to 33.1 per cent.² Mainstream settings include SEN units and resource bases. The data (taken from SFR29-2016) provides evidence of a stronger incidence of high cost and complex needs.

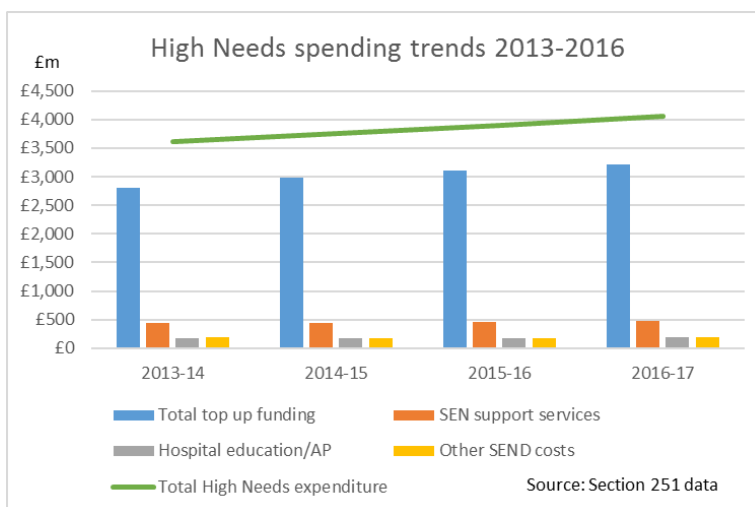
¹ <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2016>

² <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2016>



Trends in spending on High Needs

The evidence that needs have risen above the level provided for in the High Needs Dedicated Schools Grant (DSG) is supported by an examination of the trend in planned High Needs expenditure reported by councils in Section 251 statements since the Place Plus system was established. When looking at councils' education and expenditure plans since the Place Plus system was established we can see that needs have risen above the level provided in the High Needs Dedicated Schools Grant (DSG). The figures do not include place-led funding as this is not recorded separately for mainstream SEN units.



Some of the increase is attributable to the general increase in the number of pupils enrolling, but the scale of the increase in top up expenditure for cases costing above £10,000 per annum confirms that more is being spent on more complex and higher cost needs.

As is recognised in the Stage 2 consultation, the baseline exercise demonstrates that three-quarters of councils (113 councils) have transferred funding totalling £327 million from the Schools and Early Years Blocks to the High Needs Block (updated baselines December 2016)³. This represents a shortfall of around 7.8 per cent in the High Needs DSG allocations for these councils and a net shortfall of 5.1 per cent nationally including transfers in the opposite direction.

NFF responsiveness

As the evidence demonstrates, there can be no doubt that the complexity of SEND is rising, along with increases in the number of pupils with plans as a result of population changes. The DfE has failed to provide sufficient funding in recent years to reflect this change.

The NFF is unlikely to be responsive enough to the changing profile and volume of pupils with SEND for the following reasons:

- Historic spend and hospital education factors will lock in historic spend for four years (except for rare cases of new hospital provision), while the need to spend increases in line with needs;
- The population factor is not wholly responsive because it drives funding according to each council's proportion of the total, not their actual data change. It also only reflects the incidence of low cost SEND, not complex high cost needs which vary more widely.
- The following table illustrates the limited proportion of the total funding that is responsive to needs, and to more complex needs in particular, which is the area of provision most under pressure. Almost 70 per cent is not responsive to high cost needs.
- This leaves only 30.5 per cent of the total £5 billion funding as being responsive to high cost needs, which is where councils are finding the greatest financial pressures. Even these items are allocated on each council's proportion of the total so may not reflect their changes exactly.

	Frozen – not related to any change in need	Not responsive to high cost needs	Responsive to high cost needs
Basic entitlement			8.4%
Historic spend	45.5%		
Hospital education	1.3%		
Population		22.7%	
Deprivation FSM			4.5%
Deprivation IDACI			4.5%
Children in bad health			3.4%
DLA			3.4%
Low attainment KS2			3.4%
Low attainment KS4			3.4%
Import/export adj			-0.7%
	46.8%	22.7%	30.5% ⁴

³ <https://www.gov.uk/government/publications/schools-funding-arrangements-2017-to-2018> and also acknowledged in High Needs consultation document para 4.8.

⁴ We have calculated the totals for each factor as a proportion of the overall total funding; the DfE has separated out the formulaic elements, so while population is shown as 50% of the formulaic element, it is actually 22.7% of the overall total including basic entitlement, historic spend and hospital education.

By comparing the pattern of protection and gains with the movement between DSG grant and baselines for 2016/17, we can check the match between the NFF and rising needs. Of the 113 councils that transferred funding to the High Needs Block to meet the shortfall in grant over the period up to 2016/17, only 49 would see gains from the High Needs NFF, with an extra £144 million out of the total £190 million gain. The other 64 face a loss in the pure formula, attracting protection through the funding floor of £163 million out of the total £191 million floor factor.

Timing of data used in the NFF

The other issue which affects the responsiveness of funding to changes in needs is the timing of data used in the formula. For example, the use of the January 2017 census rather than October 2017 for the 2018/19 NFF causes an additional delay of a full year in the data being used. This must surely be more significant than the difference between the autumn and spring terms which is claimed as a reason for selecting January as the relevant date.

The concern over timeliness applies to the following elements:

- Basic entitlement – funding for 2018/19 will not reflect any new pupils occupying places in September 2017, let alone September 2018. The October 2017 census should be used for 2018/19, to be consistent with the Schools NFF.
- Free school meals – uses January 2017 for 2018/19 allocations. If Ever 6 is not the chosen indicator, it is not clear why October 2017 data cannot be used.
- Income Deprivation Affecting Children Index (IDACI) – based on ONS 2014 population estimates
- Children in bad health – based on 2011 census and only updated every ten years
- Disability Living Allowance (DLA) – the November update relates to May data, almost a year out of date compared to the year in which pupils need to be funded.
- Population – the estimate for mid-2018 is based on mid-2014 data. Given rising enrolment, including unpredictable and significant inward migration in some areas, using estimates for the largest formulaic element is a concern.

Policy issues in dealing with rising needs

The proposals contain two statements which show that DfE is aware of higher levels of need:

- Transfers to the High Needs Block from the other blocks are still to be permitted in 2018/19 if a council is unable to fulfil its duties from the NFF allocation, and after that point schools will be able to pool their funding to support higher cost needs;
- Capital funding is to be made available to expand existing special schools or provide new special free schools.

In acknowledging rising needs, the Government should provide additional funding to meet the pressures. Otherwise councils may not be able to meet all aspects of their statutory duties. We acknowledge the DfE has provided some extra funding since 2015/16, but this has been allocated via population, which does not target it effectively to children with complex needs. We believe the DfE needs to undertake an active review of the amount allocated for the High Needs Block on an annual basis, informed by statistical analysis of the change in need.

The willingness of schools to agree transfers of funding to the High Needs Block will largely be determined by how they fare under the Schools NFF. It could be extremely difficult to secure a transfer, especially in areas where a majority of schools will lose funding.

In the longer term, it will be challenging to get schools and academies to pool their funding, because there will be less interaction with councils as a result of direct funding from the DfE. It would be an added bureaucratic burden both on the council to request and administer the payments, and on large Multi-Academy Trusts which will have to deal with multiple council requests. A voluntary

approach is unlikely to yield consistent contributions across an area, causing an inequitable situation.

This pressure cannot be resolved if schools and academies refuse to allow a transfer or pooling of their budget shares. Councils will have no alternative but to ration the available funding, prioritising cases which need the highest levels of support to avoid the risk of costly legal action. This is likely to be detrimental to inclusive mainstream schools, some of whom will already be facing a loss from the Schools NFF.

2. Accuracy in meeting the needs of children and young people with SEND or other vulnerabilities (suitability of indicators and methodology)

The Government-commissioned ISOS report into funding for young people with special educational needs examined in detail the correlation of a basket of indicators with needs. It envisaged that all the funding would be distributed via a formula based on factors, which seek to identify need. It is striking how much the DfE proposed formula factors and weightings have departed from the ISOS recommendations and research.

Of particular concern is the proposal that 50 per cent of the formulaic element of the NFF should be allocated on the basis of population. We are concerned that the use of such a high weighting for population will create a bias towards lower level needs, because it takes no account of factors, such as deprivation, which are an indicator of higher needs. It will not provide sufficient funding for the rising number of pupils with higher and more complex needs, which have a more random incidence but can be linked to other indicators. The cost of top ups is increasing across the country and this should be reflected in the balance of funding.

Using the number of statements and EHCPs as an approximation for the incidence of high needs does not take into account the considerable variation within this group of children in the complexity of need. Measuring need by volume of plans alone is flawed. ISOS focused on the number of pupils with SEND receiving top up funding as well as the number of statements/EHCPs.

We are concerned that the proxy measures proposed in the consultation paper are not sufficiently closely linked to the characteristics of the high needs population in several respects:

- There is no low prior attainment factor for Early Years Foundation Stage (EYFS) or Key Stage 1 (KS1). Primary schools work hard to provide extra support to young children with learning difficulties and associated problems, particularly in relation to increasing cases of speech and language delay which can be improved for many children by the time they get to Key Stage 2 (KS2). However, this support comes at a cost, which is not addressed in the proposals.
- Post-16 students are not reflected in the factors for population, Free School Meals (FSM), Disability Living Allowance (DLA), or children in bad health, and for income deprivation affecting children index (IDACI) the age range only goes up to 18. There is no guarantee that in all councils post-16 levels and complexity of need will mirror pre-16 patterns.
- There is no indicator to represent mental health needs, which are strongly linked to behavioural difficulties. These often result in high cost placements in Social Emotional and Mental Health (SEMH) special schools, Pupil Referral Units (PRUs) and hospital education services' psychiatric provision.
- ISOS found that DLA was 'the most likely to offer significant explanatory power over and above measures of deprivation and low prior attainment'. Their recommendation for inclusion in the Schools NFF has been ignored. The DLA should have a stronger weighting in the High Needs NFF, as no other indicator adequately captures disability.

- It is stated that pupils with SEND are twice as likely to be eligible for FSM compared to those without SEND. The variation in patterns of registration between sectors has not been taken into account when comparing single census and Ever 6 FSM indicators. Ever 6 reflects deprivation more fairly in secondary schools because lower take up is compensated for by historic primary FSM. Yet single census FSM has been selected.
- The £4,000 rate per pupil for the basic entitlement does not reflect the £10,000 per place which the council is required to pay to special schools. While understanding DfE's wish to avoid incentives for pupils to be identified as needing special school provision, the remainder of the formula is simply not responsive enough to guarantee that the balance of £6,000 per pupil can be found in every council. The situation will vary for each council, with some experiencing a more rapid rise in demand for SEND support than others and will therefore be dependent on the data that is being used for the formulaic elements of the proposed funding formula. The formula accounts for a relatively low proportion of the total funding so it is a generic observation about lack of responsiveness, mainly because the historic spend element locks in 50 per cent of each council's current spending into the NFF for at least four years.

3. Supporting delivery of the Government's key policy aims of inclusion, efficiency, early support, and high stakes accountability for better outcomes

Inclusion

We are concerned that if councils do not receive sufficient funding to cover high cost SEND, they will not have the resources to allocate extra funds to highly inclusive schools above the notional SEN budget. The concern is that unless funding reflects needs, mainstream schools may be reluctant to accept or keep pupils with SEND because they cannot afford to subsidise the provision from their own budgets, which are already facing significant financial challenges.

The Government must progress the proposals in the Education White Paper to make schools take more responsibility for pupils with challenging behaviour, even after permanent exclusion. This approach will be essential to avoid an escalation in alternative provision costs. Early support produces much better outcomes for learners and eases the pressure on school staff and other pupils.

Efficiency

The financial health and efficiency tools need to be developed for specialist providers, who have different cost profiles to mainstream schools. It can be difficult for councils to challenge special schools on value for money, as needs and provision can vary significantly.

There needs to be an incentive for councils to direct High Needs efficiency savings to mainstream schools, so that earlier support can be provided for pupils with SEND and challenging behaviour. This will not happen if the overall High Needs allocation is insufficient.

If the notional SEN budget is removed in future, it may be difficult for councils to challenge schools on their thresholds and use of funding within budget share. Without this ability, it will be more difficult to control the level of top ups from the council's High Needs Budget.

Early support

Councils need sufficient flexibility to incentivise schools and Further Education providers to provide earlier support. Too often, SEND is not identified early enough and by the time referrals are made, it can require much more intensive support to help the child achieve; schools may struggle to find staff with the appropriate expertise or to train existing staff.

The concerns we have highlighted over the sufficiency of funding for SEND mean councils will not have enough flexibility to manage their High Needs budgets in a way that enables them to recycle funding for early support. It is likely that schools will feel it necessary to make more referrals, to secure their share of the scarce resources. This will put more pressure on the High Needs Budget, instead of the council being able to support needs at an earlier stage, encourage inclusion and prevent any escalation to costlier placements.

Accountability

The willingness of schools to take or keep pupils with SEND is often compromised because of the lack of recognition for such learners in performance tables. In addition, Ofsted inspectors do not always have an adequate knowledge of SEND and schools can be unfairly judged. This is more likely to be the case if they have an above average number of pupils with high needs, some of whom may not be able cognitively to take the tests.

4. Supporting providers and LAs to deliver their responsibilities (including partnership working and local discretion/assessment)

Health contributions

There are significant variations in contributions from health partners for children with medical needs and disabilities (with and without EHCPs in place – some with disabilities do not have SEND but need specialist support to manage their condition). ISOS recommended that joint guidance be provided between the DfE and the Department of Health (DH).

Without clear guidance and a fair system of health contributions, the current uncertainty over what schools are responsible for providing will continue. Schools frequently have to administer medication or care (for example, for pupils with colostomy bags, tracheotomies, or acute conditions such as diabetes and asthma). This can take a significant amount of staff time, often involving supporting not only the child but also parents, who can find it difficult to cope.

There is also an issue in obtaining data at an early stage from health partners on the diagnosis of conditions and incidence of disabilities e.g. in pre-term births, causing difficulties for councils in predicting trends as a basis for place planning in specialist provision. Councils need support in resolving these issues.

As the ISOS report found, councils feel that too often the High Needs Budget is viewed as the funder of last resort and some Clinical Commissioning Groups feel they do not received sufficient guidance on what health services should and shouldn't be funding. The High Needs funding system seems to include an implicit assumption that health contributions are being made. Where this is not the case, the position will be inequitable. We ask the DfE to work with DH to ensure that all health bodies are clear on their funding responsibilities, to achieve consistency at local level.

Funding arrangements for high needs places in FE provision

The starting point for the High Needs NFF is the set of baseline returns for 2016/17 planned spending submitted by councils in early 2016. Baselines for the illustrative allocations have been adjusted to include the 2017/18 transfer of £125 million from the Education Funding Agency's (EFA) FE budget to council High Needs Block allocations. This represents the Element 2 £6,000 per place paid to FE colleges and institutions (the first £4,000 is included in the national post-16 formula for every student)⁵.

⁵ <https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2017-to-2018>

This is a significant issue in analysing the impact of the NFF, because there is a problem in relation to councils' control over this element of their spending from the High Needs Budget. The council is the commissioner of high needs places in FE colleges and post-16 institutions. However, even following this transfer of funding, the EFA still has control of the Element 2 funding of £6,000 per place. Each November, councils have to submit a return to the EFA of the places required in the following academic year. If the council has evidence that fewer places are required at a college, but the institution does not agree, the EFA will award the number of places in the previous year's ILR return and recoup funding from the council on that basis.

This means the provider receives element 2 funding for more places than are required, and the council does not have the full amount for the places they need to commission elsewhere (i.e. where the students wish to attend). No funding is allocated for agreed growth. This situation is unacceptable; councils have to be able to control their budgets for commissioned placements and therefore as long as robust evidence is provided, the EFA should only recoup the funding for the number of places the councils wish to commission.

The Stage 2 consultation explains at paragraph 4.65 that the DfE is taking time to reflect on Stage 1 proposals to change some aspects of high needs place funding for colleges and other FE providers. Recent developments also need to be taken into account: area reviews, issues with plans for 19-25 year olds and the new post-16 skills plan. Paragraph 4.68 on the consultation states that the DfE will consult later with the post-16 sector on any changes for 2018/19, but it appears local authorities will not be consulted. We urge the DfE to involve councils in any proposed changes, given that they are commissioning the provision and that part of their budgets will be removed to fund the provision.

5. Achieving consistency and linkages across the whole school funding system

Movement of therapy costs into High Needs Block

The draft guidance for Section 251 statements for 2017/18 contained a statement that the cost of therapies would be moved from council's Non-Schools Budget to the High Needs Budget. There was no warning of this (Usually regulations are consulted on by the DfE in October or November and published in December so that councils can take account of any changes in their budget setting. This didn't happen this year). It later appeared in Part 5 (para 38) of the School and Early Years Finance Regulations as a High Needs Budget item. Unusually, there was no consultation on the regulations and they appeared too late for budget setting purposes.

While this will enable some councils to make a saving in their budgets, no funding has been transferred into the High Needs Budget to compensate for the extra pressure there. This will affect the baselines for 2017/18: they will not balance to the original DSG, as therapies will be added in afresh. This line totalled £9 million in the Section 251 return for 2016/17⁶.

Early Years SEND funding

The provision of the additional funding in the Early Years NFF for 2017/18 is welcomed. It will improve the ability of councils to make provision through Inclusion Funds for young children in nursery provision, including those taking up additional hours in the new entitlement for children of working parents from September. The Disability Access Fund will also improve provision for nursery aged children with disabilities.

SEN units/bases

The proposals to change the basis for funding pupils in SEN units and resource bases present a further challenge for some schools. Currently the council provides £10,000 per place, but in future

⁶ <https://www.gov.uk/guidance/section-251-2016-to-2017> Budget Summary Table file line 2.0.1

the school will receive funding in budget shares for pupils in the unit and the council will only pay £6,000 per place. This implies the school will receive £4,000 in its mainstream budget.

However, a large primary school which does not trigger many additional needs indicators might not receive £4,000 per pupil in the Schools NFF, since the basic entitlement is only £2,712 and a lump sum of £110,000 will be spread thinly over a large roll. If this is the case, the school will have to subsidise the costs.

The Code of Practice includes a presumption that children with SEND will be educated in mainstream; the use of units and bases helps to achieve this. In many cases, pupils are not segregated but spend a lot of time in mainstream classes. Units and bases are an important part of the landscape of provision and this development will pose a risk to local provision.

There are three other problems with this proposal:

- The decision to allow councils to fund empty places at £10,000 (for which no extra funding is to be given in the NFF) will create the perverse outcome that an empty place may be worth more to the school than an occupied place;
- Where a council runs a unit or base centrally, and pupils are on the roll of the host school, the £4,000 element of funding will have been removed from the High Needs Block and given to the school. The council will therefore face a shortfall in its budget for the unit.
- It is not clear what registration arrangements are assumed for pupils attending units from other schools. The council will pay budget share to the school where pupils are on main registration; if they have to pay the school with the unit for empty places which are later filled by a pupil from other schools, this will represent a duplication of funding.