

# Historic spend factor - question 1

The historic spend factor in the high needs national funding formula is the main proxy we currently use for local circumstances that can significantly affect local authorities' levels of spending on high needs, and that take time to change. This formula lump sum is calculated using 50% of each local authority's planned expenditure on high needs in 2017-18, reported by local authorities.

We now have access to actual spending data from 2017-18. We therefore propose replacing the current lump sum included in the formula calculation with an amount calculated on the basis of actual expenditure in 2017-18, as reported by each local authority.

Before answering the question below, please read section 3 of the consultation document. Annex B to that document includes further information, and for each local authority the lump sum amount that we propose to use.

Do you agree that we should replace the current lump sum included in the formula calculation with an amount calculated on the basis of actual local authority expenditure, as reported by each local authority?  
(Required)

An answer is required  Agree  Disagree  Unsure

Please provide any additional comments:

Recommended answer: AGREE

Recognition of the shortfall of funding through the historic factor is welcome going forward, but it does not recognise the cumulative deficits built up over previous years whilst the current arrangements using planned 2017-18 expenditure has been in place and the need for these to be funded.

We would, however, welcome a further change to utilising the most recent actual spend that would be available when the funding is distributed, i.e. the 2020-21 actuals, would be the most accurate method of reflecting the current situation for all local authorities, without incentivising increased future spend to attract more funding as this we would not be suggesting that the base year for the historic factor continues to be updated. At the time of consulting, the 2020-21 spend has, largely, already occurred and will have been finalised by the time that outcome of this

consultation is published. Continuing to use a 2017-18 data set, even updated for actuals, is still significantly out of date and does not reflect the financial impacts of the continued financial pressures brought about as a result of the SEND Reform Act 2014 changes where these have taken time to embed. The impact of the Tribunal system on a local authority with a low proportion of state-maintained (including academy and free) special schools has been a high placement at independent, high cost special schools out of the control of the local authority.

Additionally, updating this part of the formula, but still keeping the 12% cap, means that local authorities that have the most challenging historic difficulties continue to be underfunded and their populations disadvantaged. For instance, Norfolk would only gain about half of the actual increased spend that we had from 2017-18. Therefore, we are of the view that any gains should not be capped to avoid underfunded Local Authorities to continue to fall further into a deficit, whilst protecting the funding floor of the other LAs that do not have the same challenges.

Finally, Norfolk would like it noted that our 5-year DSG Recovery Plan has forecast a proportion of the 2022-23 part of the £7.1bn funding settlement equivalent to the sums received in 2020-21 and 2021-22. Therefore, any benefit to our long-term planning will be offset by this assumption, particularly given the 12% cap. This assumption has already been shared with the DfE.

## Historic spend factor - question 2

The historic spend element of the high needs national funding formula has remained at a cash-flat level since the introduction of the national formula in 2018-19, moving from 44% of the overall formula funding in 2018-19 to 34% in the 2021-22 formula as that total funding has increased. Some local authorities may not have been able to change their spending patterns to keep pace with the percentage reduction in this factor, despite the protection afforded by the funding floor minimum increase of 8% this and next year. We are therefore considering whether to increase the proportion of funding allocated through this factor, alongside using actual expenditure amounts.

Using actual expenditure from a more recent year, and leaving the percentage at 50%, would increase the amount of the lump sum, but we are not proposing to do this as we are clear that local authorities' actual spending now or in future should not determine how much funding they receive. We could, however, increase the significance of this factor in the 2022-23 formula, by increasing the percentage of 2017-18 spending that is applied, allowing for a more gradual rate of change in the local pattern of spending.

Before answering the question below, please read section 3 of the consultation document.

Do you think that we should increase the percentage of actual expenditure in 2017-18 included in the funding formula calculation, or leave it at 50%? Use the comments box to propose a particular increase or reduction in the percentage.

(Required)  Increase the percentage  Keep the percentage at 50%  Decrease the percentage  Unsure or other

Comments:

Recommendation: Increase the percentage

In principle, this sounds beneficial, but it is difficult for us to confirm this view without modelling available to see how this change would affect the overall calculations, including what reductions there would be elsewhere within the formula. Therefore, it is not possible to assess the overall impact on allocations without knowing where it would be taken from.

Children often remain in placements between key transition points and, where places have been prescribed by tribunals to independent provision, it is not within the gift of the local authority to change this to more cost effective state provision (even if it becomes available and it is likely to enable better outcomes for the child). Therefore, the time that it would take to change historic spending patterns is very significant given the lack of capital funding available to develop special school provision, the time that it takes build a new school and have it fully operational, and the over-riding presumption of parental choice.

Additionally, if this change is subject to the 12% cap on gains, then for some authorities there may be no benefit in doing this if it cannot increase their overall allocation (e.g. Norfolk would reach the 12% cap based on the change to actual historic data for 2017/18 alone and, therefore, may not see any further benefit from increasing the percentage).

## Historic spend factor - question 3

We are aware that the continued use of historic spend is not the perfect long term solution for reflecting the patterns of local demand and supply that affect spending on high needs, as those patterns will naturally change over time. As part of the funding formula review that we are carrying out, and for consideration as we develop that formula in the years after 2022-23, we are therefore seeking views on potential alternatives to the historic spend factor. Any new factors would need to be appropriate for a funding formula (e.g. the data used should be collected on a consistent basis) and would also need to avoid creating a perverse incentive (e.g. to spend more on a certain

type of provision so as to gain more funding, rather than to improve the quality or appropriateness of provision).

Before answering the question below, please refer to section 3 of the consultation document.

To what extent do you agree that the funding formula should include factors that reflect historical local demand for and supply of SEND and AP provision? If you have any suggestions for such factors that could eventually replace the historic spend factor, please provide these in the comments box.

(Required)  Strongly agree  Agree  Neither agree nor disagree  Disagree  Strongly disagree

Comments:

Recommendation: Strongly Agree

It is important to recognise demand within the formula.

Increasing the weighting of the basic allocation within the formula would support the higher costs of pupils in special and independent schools. Whilst it is understood that the £4k represents element 1 funding (plus the £660 is for TPG/TPECG now), those LAs with high numbers of pupils in special schools and independent schools are not allocated very much within the formula in recognition of these pupils that are generally the pupils with significantly higher costs. Historic census data could be used if it is thought that the use of such an increase would incentivise LAs to put pupils into special/independent, though this would not recognise recent growth and the longer-term impact of the SEND Reform Act well.

However, it does not seem likely that this would create incentives for LAs, because LAs would not choose to place children in special and independent placement where the child does not need it and it is not in the best interests of the child. Additionally, these places cost LAs significantly more and so LAs wouldn't just place pupils in expensive provision to drive more money into the formula.

Additionally, the impact of Tribunals is preventing LAs from managing prioritisation of placements and aligning the right provision with the right child, due to parental choice being the over-riding driver of decisions resulting in the wrong children being placed in the wrong placements for their needs. Therefore, consider including the ratio between LA use of independent/non-maintained specialist schools and use of maintained special schools; this will illustrate the higher costs incurred using independent sector (including when directed to place via the Tribunal) but will reduce over time as LA's strategies to invest in local state-funded provision increases.

As well as the above points, the basic allocation for pupils in independent schools could be funded higher than the basic allocation of state special schools, in

recognition of authorities like Norfolk that are reliant on the use of some high-cost independent provision to support demand (the cost is approximately double that of state special schools) but don't have the funding to match. Or at least fund for independent placement numbers in the short-term, whilst LA's like Norfolk try to increase infrastructure to support demand and reduce costs.

Finally, one area that could drive behaviour to support children to remain in mainstream settings, where it is appropriate, would be to include, as a proxy, the number of children on Census marked as requiring top-ups. It's not currently part of the formula, is not subject to the differences in the way ECHPs are used between regions, and does not create 'incentives' as there is a common threshold used for pupils requiring this extra support.

## Low attainment factor - question 4

The high needs national funding formula uses low attainment at both key stage 2 and key stage 4 as a proxy indicator for SEND. This figure is calculated using an average of results over the most recent 5 years of tests and exams, which for the 2022-23 formula would have meant using test and exam results from 2016 to 2020. Due to the COVID-19 pandemic, the 2020 key stage 2 tests and GCSE exams were cancelled. This has resulted in no key stage 2 data, and GCSE data that would be inappropriate to use because of the inconsistencies with the results from previous years.

We have considered using the same data as used to calculate last year's attainment formula factors, but this would mean data from more than 5 years ago. Instead, we propose to calculate low attainment by using data from 2016 to 2019, but then to double the weighting of the most recent exam data from 2019. This method could be used for a further year, assuming the 2021 test and exam results are also not able to be used for this purpose.

Please refer to section 4 of the consultation document before answering the following question.

Do you agree with our proposal to update the low attainment factors using data from 2016, and to substitute the most recent 2019 data in place of the missing 2020 attainment data?

(Required)  Agree  Disagree – calculate in the same way as last year  Disagree – other (please provide further details in the comments)  Unsure

Comments:

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Strongly Agree.

This is the fairest way, across the country, to ensure that the integrity of prior attainment as a key SEN proxy indicator is maintained; anticipating also the outcome of the National SEND Review and likely further future changes to HNB and the need to ensure funding is available across the SEN Support & EHCP cohorts to align with LA early intervention strategies..

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## SEND and AP proxies - question 5

The high needs national funding formula uses six indicators which together act as a proxy for the level of more complex SEND, and need for alternative provision (AP) in an area. These indicators include: a measure of the local population of children and young people, the two low attainment measures (key stage 2 and key stage 4) referred to in question 4, two health and disability measures (the number of children in bad health and the number of families in receipt of disability living allowance), and two deprivation indicators (the number of children eligible for free school meals and a local area deprivation measure).

Numbers of EHC plans are not be used as a robust indicator of underlying need because the way they are used varies considerably across local areas, and the number of plans is therefore not necessarily directly associated with the local authority's need to spend. The ongoing SEND review is considering whether system changes are needed, to provide more consistency in EHC needs assessment and planning process, and to improve other aspects of the SEND arrangements.

Following the SEND review, we will consider whether consequent changes to these proxies that we use in the funding formula, as well as other funding changes, would be appropriate, as it is important that the proxies used support local authorities to deliver the outcomes of

the review. At this stage we are keen to understand whether there are new factors either that could replace existing factors that have become out of date or otherwise unreliable, or that could be added to the formula to address types or prevalence of identified need, and we would welcome views.

Please refer to section 5 of the consultation document before giving your comments.

If you wish to offer ideas on factors that could be added to the current formula, or that could replace the current proxies, please provide further details in the comments box below.

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