



16 October 2023

Agenda Item 6

REPORT OF THE CHAIRMAN OF THE CHILDREN AND FAMILIES SELECT COMMITTEE

OUTCOMES OF THE REVIEW OF EDUCATION, HEALTH AND CARE PLANS

Purpose of the Report

1. To share the findings arising from the scrutiny task and finish review of Education, Health and Care (EHC) Plans with the Children and Families Select Committee.
2. To seek the Select Committee's endorsement for the review's recommendations to be submitted to Cabinet for consideration.

Information

Background

3. As part of the development of the Select Committee's work programme, the EHC Plan process was identified as an important area for a detailed scrutiny task and finish review – particularly in the context of Ofsted's and the Care Quality Commission's findings following their inspection of the local area arrangements for children and young people with special educational needs and disabilities (SEND) during January and February 2023.
4. The review of how the Council's organisational processes, structure and capacity operate was carried out to support it in fulfilling its statutory duties sustainably and efficiently in relation to EHC Plans. The review considered the full EHC Assessment process, from what is in place to mitigate the need for an Assessment request being made to the decision-making regarding placements for pupils for whom an EHC Plan has been issued.

Review Scope

5. The scoping of the review was carried out by the Chairman and Vice Chairman of the Select Committee, in consultation with the Service Director for Education, Learning and Inclusion and other officers. This work identified the key objectives for the review and set out the strategic context in which the issues involved would be considered.
6. The key objectives set out for the review were:
 - to gain an understanding of the issues and challenges surrounding the implementation of EHC Plans and the carrying out of the preceding Assessments,

- to establish what organisational processes, structures and capacity the Council has in place so that it can fulfil its statutory duties relating to EHC Plans sustainably and efficiently,
- to examine the processes being carried out at neighbouring and statistically similar local authorities in relation to EHC Plans and consider if this identifies any new learning or best practice that could be adopted, and
- to make appropriate recommendations on how the processes surrounding EHC Plans could operate more effectively at the Council to ensure that the best outcomes are achieved for children, young people and families.

Links to the Council's Corporate Plan

7. The work of the scrutiny function should always be focussed on supporting the delivery of the Council's strategic priorities, which will in turn develop the provision of the best possible services to the residents of Nottinghamshire. The work that was carried out in scoping the review identified that it would support a range of strategic priorities, as well as the strategies and policies that underpinned them.
8. The Nottinghamshire Plan 2021-31 sets out the strategic vision for the future of the county and the Council. The activity in the Nottinghamshire Plan is built around achieving a 10-year vision for a 'healthy, prosperous and greener future for everyone'. This vision is supported by nine ambitions that act as a framework for all Council activity. The scoping of the review identified that it would support the following ambitions of the Plan:
 - Ambition 1: Helping our people live healthier, more independent lives.
 - Ambition 2: Supporting communities and families.
 - Ambition 3: Keeping children, vulnerable adults, and communities safe.
 - Ambition 4: Building skills that help people get good jobs.

Local area SEND (Ofsted and Care Quality Commission) inspection Nottinghamshire 2023

9. Between 30 January and 3 February 2023, Ofsted and the Care Quality Commission (CQC) carried out an inspection of the Nottinghamshire local area to assess how effective the local education, health and care services were at identifying, and meeting the needs of, children and young people with special educational needs and disabilities (SEND) aged 0 to 25. Nottinghamshire's area SEND inspection was the first to be carried out under a new area SEND inspection framework guidance.
10. The Nottinghamshire local area inspection highlighted significant concerns about the experiences and outcomes of children and young people with SEND in Nottinghamshire.
11. The findings of the Nottinghamshire local area SEND inspection set out two areas for priority action:
 - That leaders, the NHS Nottingham and Nottinghamshire Integrated Care Board, and education, health, and care providers should cooperate to urgently identify, assess and provide for the needs of children and young people with SEND. This includes assessment of needs, timely issuing of EHC Plans and holistic oversight of these Plans through annual reviews.

- That leaders, including commissioners and providers, should act urgently to identify and address the delays and gaps in access to some health services, particularly speech and language therapy, neurodevelopmental pathways and equipment services. They should also ensure that they use available performance data to identify where gaps exist and whether actions taken to address these are effective.
12. Four areas for improvement were also identified, setting out that leaders across the partnership should:
- continue their work to gather a wider range of views of children and young people with SEND and their families so that they can use these views to inform their planning for, and evaluation of, SEND services,
 - establish effective processes for the quality assurance of EHC Plans and use these to improve the quality of new and existing Plans,
 - use performance data and information effectively to inform their evaluation and joint commissioning of SEND services, and
 - put in place the appropriate governance arrangements to deliver their SEND plans both individually and across the wider partnership.
13. The Nottinghamshire local area SEND partnership is now undertaking focussed work to improve the experiences and outcomes of children and families. The SEND Improvement Programme and the supporting action plan will take forward the learning from the Ofsted and CQC inspection process and the areas for improvement identified through the inspection. A Nottinghamshire SEND Partnership Improvement Board has also been established to oversee the improvement actions needed. This Board is chaired independently by a recognised sector expert, Dame Christine Lenehan, Director of the Council for Disabled Children.

Review Process and Activity

14. The review process was led by the Chairman of the Children and Families Select Committee, Councillor Sam Smith. Other members who contributed throughout the review process were:
- Councillor Francis Purdue-Horan
 - Councillor Robert Corden
 - Councillor Kate Foale
 - Councillor Roger Jackson
 - Councillor John Lee
 - Councillor Michelle Welsh

James McGeachie (the co-opted representative of the Roman Catholic Church in relation to education matters on the committee) also participated in the review process.

15. In undertaking the review, the Chairman and members carried out:
- evidence-gathering briefings with the Service Director for Education, Learning and Inclusion and the Service leadership team,
 - discussions with the Nottinghamshire Parent Carer Forum, and
 - desktop research and benchmarking in relation to the approach taken by other local authorities to EHC Plans and Assessments.

11. The first evidence-gathering session of the review group took place on 17 May 2023, with a second session on 22 May 2023. At these meetings, members received detailed information from the Service Director for Education, Learning and Inclusion; the Acting Group Manager and the Service Manager for Integrated Children's Disability Services; the Group Manager for Psychology and Inclusion Services; the Designated Clinical Officer; and the SEND Strategic Lead on:
- the outcomes of the 30 January to 3 February 2023 Nottinghamshire local area SEND inspection by Ofsted and the Care Quality Commission – including the identified areas of strength, improvement and priority action, the actions taken by the Service following the inspection and the upcoming next steps,
 - the current national Code of Practice and legal framework governing EHC Plans,
 - the processes in place in Nottinghamshire to support children with SEN within mainstream education without requiring an EHC Plan, the EHC Assessment processes in place and the context of partnership working with Health, Social Care and Community partners within the EHC Plan process – including what was working well and the current areas of challenge,
 - the statistical performance data for the EHC Plan process from 2018-22, and
 - the operational delivery of the EHC Assessment and Plan process.
12. Following these sessions, the review group requested and received further information on the current Service budgets, staffing levels and structures, in addition to the most recent document that mapped out the EHC Plan processes in a visual way.
13. On 17 June 2023, review group members met with the Chair of the Nottinghamshire Parent Carer Forum to explore the experiences of families supporting children with SEN and engaging with the EHC Plan process.
14. Finally, a benchmarking process began on 21 June 2023 with the following questions being submitted to neighbouring and statistically similar local authorities of Derbyshire, Doncaster, Durham, Hampshire, Lancashire, Leicestershire, Lincolnshire, Nottingham, Oxfordshire, Rotherham and Warwickshire:
- How many requests for EHC Assessments were made in 2018, 2019, 2020, 2021 and 2022, how many EHC Plans were issued as a result?
 - What percentage of notifications as to whether an EHC Assessment would be undertaken were returned to the applicant within 6 weeks of the request having been made, and what percentage of EHC Plans were issued within the statutory 20 weeks?
 - What has been the cost to the Council in fines for EHC Plans not being issued within the statutory 20-week period between 2018-22?
 - What steps has the Council taken to improve the number of EHC Plans issued within the statutory 20-week period?
 - What procedures are in place to engage with parents and carers if it becomes apparent that it will not be possible to issue an EHC Plan within the statutory 20-week period?
 - What proportion of children and young people with SEN have their needs supported in mainstream education without an EHC Plan being issued?
 - What proportion of children and young people with an EHC Plan attend a Special School, or are currently waiting for a Special School place?

- How many Educational Psychologists are employed directly by the Council, and how many are employed via agencies?
 - What proportion of the directly employed Educational Psychologists' time is allocated to carrying out statutory assessments?
15. After the conclusion of the information gathering and benchmarking processes, members reviewed the information that had been received in order to formulate their recommendations.

Review Findings and Recommendations

Recommendation One

That the Select Committee receives progress reports on the implementation of the activities being delivered to address the Areas for Improvement and Priority Action identified by the Area SEND Inspection of the Nottinghamshire Local Area Partnership.

11. The majority of Nottinghamshire children with SEN, including those with an EHC Plan, are in mainstream education. It is vital for young people to be able to access required support early and in a timely way so that an EHC Plan is not required for their particular educational needs to be met. Consequentially, the right resources should be available in the right places to ensure that mainstream schools are a supportive and inclusive environment for as many young people as possible. Schools should also prioritise maintaining implemented SEN provision where it is required to give parents and carers confidence that this provision will not be discontinued if a child accessing it does not have an EHC Plan.
12. Schools must work to integrate children with SEND effectively and flexibly so that they do not experience periods of being outside of an educational setting. Schools should engage with parents in a sensitive way on meeting a child's specific needs when reintegration is required and be aware of instances when a child may come from a family context where there are wider support needs. All safeguarding requirements must be managed effectively.
13. Early access to therapy is an important priority and requires a strong partnership approach for it to be delivered effectively. It is important that schools communicate clearly with parents and carers on the early support and funding available, but problems can arise if there is not a strong relationship between the school and the parents and carers. Comprehensive information is provided by the Council to schools on how to secure funding to support children with SEN within the mainstream environment without a child needing an EHC Plan.
14. Potentially, schools could view the EHC Plan process as a means of transferring young people from a mainstream to a special educational setting. However, Special School places should only be used for those children with the greatest needs, so there should be as many pathways as possible within mainstream education to ensure that children with SEN are not separated from their wider communities and peers.
15. In Nottinghamshire, 90% of schools are currently rated as 'good' or 'outstanding' by Ofsted. However, in addressing the areas of priority action identified in the local area SEND inspection it is vital that all partners listen to and engage with parents and carers, schools and young people on the challenges being experienced, to ensure that SEN are being identified early and met effectively within mainstream educational settings wherever possible – with clear monitoring, assurance and benchmarking processes in place.

Recommendation Two

That the Council should take all available steps to maximise its partnership working with schools to ensure that mainstream educational settings:

- i. participate fully in the early intervention agenda,**
- ii. take advantage of the available support to achieve educational environments that are as inclusive as possible for the widest range of children,**
- iii. integrate children with SEND effectively and flexibly so that they do not experience periods of being outside school, and**
- iv. maintain implemented SEN provision where it is required, to give parents and carers confidence that this provision will not be discontinued if a child accessing it does not have an EHC Plan.**

16. The statutory deadline for a new EHC Plan being issued is within 20 weeks of the request for an EHC Assessment being made. Demand for Assessments has increased significantly both locally and nationally, with some local authorities seeing requests levels doubling over the last five years. In Nottinghamshire, 524 EHC Assessment were requested in 2018 compared to 1,081 in 2022 and, during the first seven months of 2023, there has been a further 39% increase in Assessment requests compared to the same period in 2022. As such, it is proving difficult to ensure that the right level of capacity is in place to carry out the full EHC processes within the statutory deadlines, increasing the risk of complaints being made to the Local Government and Social Care Ombudsman.

17. Although the High Needs Funding Block is available to support the needs of children with SEND, this resource cannot be used for ensuring capacity to manage the EHC Assessment and review process – which is paid for from the Service's revenue budget. The current establishment of SEND services is under review internally to ensure that they are fit for purpose and to identify where rapid improvements can be made, as well as establishing how an efficient service can be funded.

Recommendation Three

That, as a result of the internal review of the Council's SEND offer, the appropriate measures and allocation of resources should be implemented to ensure that future service provision is sustainable in the context of increasing demand.

18. From 2018 to 2020, over 90% of EHC Assessments in Nottinghamshire were carried out and the resulting Plans issued within the 20-week statutory deadline. However, due to the sharply increased demand, this reduced to 44% in 2021 and 5% in 2022. Improvement work to date has resulted in 21.23% of EHC Plans being implemented within the 20-week statutory deadline between January and July 2023, which is up from 4.5% for the same period in the previous year.

19. The benchmarking process with neighbouring and statistically similar local authorities identified that a similar trend has been experienced by many other councils in the same period. Details of a number of approaches to investment and transformation to seek to improve performance levels going forward were shared, which included:

- working in partnership with education providers, local Parent Carer Forums, Public Health, the Department for Education (DfE) and other key partners in planning a recovery process,
- working with schools and other providers to deliver effective SEN support that helps to ensure that young people are referred for an EHC Assessment at the right time when required, and also reduce the number of unnecessary Assessment requests,
- reviewing decision-making and monitoring processes,
- reviewing processes in relation to the early identification of SEN,
- improving inclusion in mainstream educational settings,
- redesigning key documentation to facilitate information-gathering and timely decision-making,
- reviewing service staffing structures, including recruitment and retention,
- improving resourcing for the case management of Tribunals,
- increasing Educational Psychologist advice-giving capacity and developing external contracts with agency providers to deliver additional Educational Psychologist support over a fixed-term period,
- considering the greater use of agency capacity commissioned by educational settings, and
- introducing new case management systems to better track performance and timescales.

Recommendation Four

That the Council engages with the local authorities that participated in the benchmarking exercise that are undertaking transformation activity for the improved delivery of EHC Assessments and Plans, to consider any further measures or approaches that could also be used effectively in Nottinghamshire.

20. The challenges to delivering the timely completion of EHC Plans largely relate to the high and increasing number of applications being received. There has also been a significant impact in workload caused by the Covid-19 pandemic. There is a straightforward, electronic process to make an EHC Assessment application and the level of need that has to be demonstrated to have an Assessment carried out is relatively low.
21. The size of the Council's directly employed Educational Psychology Service is relatively small when compared to that of other local authorities. As part of the current EHC Assessment process, the Service is being asked to complete around 100 statutory assessments each month. Of these, around 30 are done by Educational Psychologists employed via an agency. To address the current backlog of required assessments, it is intended to at least double agency capacity, in addition to the implementation of other measures – though this will need to be coupled with increasing resources within the Council's Integrated Children's Disability Services so as not to simply move the backlog from one service area to another.
22. There is currently a need to use Educational Psychologists from an agency to complete the statutory assessments as the Council's Educational Psychologists have a wide range of other duties to carry out, including important early intervention work to ensure that as many young people as possible have the right support at the right time so that an EHC Assessment may not ultimately be necessary. It is vital that young people have early contact with Educational Psychologists where required, as a lack of access can result in parents and carers applying for an EHC Assessment as a means of securing psychological support, further increasing the workload in this area.

23. Additionally, if an Educational Psychologist wished to focus on statutory assessments alone, the pay for doing so in the private sector is significantly higher than that offered by local authorities, as the market environment is currently highly competitive. As a result, significant work has been carried out to ensure that the time of the Council's Educational Psychologists is being used efficiently and in the right areas, within the constraints of the resources currently available.
24. A number of schools now appoint their own Educational Psychologists to offer early support and, potentially, these staff could assist in the statutory assessment process – provided that this does not give rise to a possible conflict of interests.
25. Ultimately, effective assurance and audit processes must be maintained to ensure that in working to clear the backlog and to address the rising number of EHC Assessment requests, all statutory assessments and EHC Plans are still produced to a high standard and within the required timescales.

Recommendation Five

That the effectiveness and sustainability of the current cap on the time that Educational Psychologists employed directly by the Council spend on carrying out statutory assessments is reviewed, to ensure that it is set at the right level.

26. The amount of time that the Council's own Educational Psychologists spend carrying out statutory assessments is currently capped. This enables vital early support and preventative work to be carried out. If the Council's own the Educational Psychologists were solely focussed on completing statutory assessments, whilst enabling more assessments to be completed, this approach could undermine morale and reduce resources for vital early support and prevention work.
27. The current cap that is in place on the time that Educational Psychologists who are employed directly by the Council spend on carrying out statutory assessments enables them to carry out 50 statutory assessments a month. A further 20 statutory assessments are carried out by agency staff. Members of the review group noted that if the cap on the amount of time spent by Educational Psychologists who are employed directly by the Council was increased then more statutory assessments could be completed.

Recommendation Six

That, to manage the demand for EHC Assessments effectively, consideration should be given to an increase in resources within the Educational Psychology Service for the provision of additional Educational Psychologists, to enable further early support to be implemented within mainstream educational settings.

Recommendation Seven

That effective assurance and audit processes should be maintained to ensure that all statutory assessments and EHC Plans are produced to a high standard and within the required timescales.

28. Delays in the production of EHC Assessments and Plans can have a significant impact on families, particularly if the family is seeking a school place at an educational setting that they consider would best meet their child's specific needs, but for which the child would not meet the entry criteria without an EHC Plan. If a young person without an EHC Plan does not have any option other than to attend their catchment school, but this school is not able to meet their specific needs effectively, there is a risk of the child refusing to go to school and becoming isolated.
29. As the EHC Assessment process can be a significant challenge at a difficult time for families, every effort should be made to engage with them when the statutory deadline for the EHC Assessment and Plan will not be met. There should also be a very clear and accessible point of contact at the Council for queries and support, as it is vital to ensure that parents' and carers' voices are heard. The digital EHC Hub is an important tool for increasing the openness and transparency of the process, but care should be taken to also support families who do not have digital access. Ultimately, many families do not have the resources or the endurance to engage with the numerous and potentially difficult processes involved in securing the best outcomes for their children. As such, the Council should aim to offer as much support to these families as possible.
30. There have been very few cases of the statutory deadlines being exceeded due to parents and carers requesting a longer review period, in Nottinghamshire. Although not all exceeded deadlines have resulted in a complaint to the Ombudsman and a compensation payment being awarded, the maximum level of compensation possible has been sought through the formal complaints process in a number of cases.

Recommendation Eight

That it should be ensured that schools, parents and carers are communicated with regularly, clearly and in good time by the Council during the EHC Assessment and Plan development process (making full use of the EHC Hub), particularly if it becomes apparent that an EHC Assessment or Plan will not be completed within the statutory deadline.

Recommendation Nine

That parents and carers should have a clear and accessible point of contact at the Council for queries and support during the process of applying for an EHC Plan.

31. The Service's target is to complete 90% of the regular, annual reviews of all existing EHC Plans on time. It is vital that both young people and their parents and carers are closely involved in the review process to ensure that the Plan remains clearly focused on the child. It is important that these reviews involve all of the relevant parties – including health professionals and Council officers. The reviews are often carried out at the level of the child's educational setting, so their timely completion is not completely within the Council's control. The Council, however, must ensure that it is properly involved in the review process so that any amended EHC Plan is completed and issued in a timely way.

Recommendation Ten

That the Council should work closely with individual educational settings to ensure that the EHC Plan annual reviews are carried out with the right level of participation from health partners, other professionals and the relevant Council officers, and are completed within the required deadlines.

Recommendation Eleven

That, where an annual review concludes that the EHC Plan should be updated, the Council ensures that the amended EHC Plan is completed in a timely way.

32. Although the Council has the responsibility to ensure that all EHC processes are completed within the statutory deadlines, it does not have direct control over a number of areas of the system. It is hoped that this will be reviewed by the DfE at the national level, but this has not yet occurred.

Recommendation Twelve

That the Council should engage further with the DfE to request that the criteria for justifying the carrying out an EHC Assessment is raised, and that the existing direct liability risks to local authorities for processes outside of their control are mitigated.

33. Summary of recommendations:

- 1) That the Select Committee receives progress reports on the implementation of the activities being delivered to address the Areas for Improvement and Priority Action identified by the Area SEND Inspection of the Nottinghamshire Local Area Partnership.
- 2) That the Council should take all available steps to maximise its partnership working with schools to ensure that mainstream educational settings:
 - i. participate fully in the early intervention agenda,
 - ii. take advantage of the available support to achieve educational environments that are as inclusive as possible for the widest range of children,
 - iii. integrate children with SEND effectively and flexibly so that they do not experience periods of being outside school, and
 - iv. maintain implemented SEN provision where it is required, to give parents and carers confidence that this provision will not be discontinued if a child accessing it does not have an EHC Plan.
- 3) That, as a result of the internal review of the Council's SEND offer, the appropriate measures and allocation of resources should be implemented to ensure that future service provision is sustainable in the context of increasing demand.
- 4) That the Council engages with the local authorities that participated in the benchmarking exercise that are undertaking transformation activity for the improved delivery of EHC Assessments and Plans, to consider any further measures or approaches that could also be used effectively in Nottinghamshire.
- 5) That the effectiveness and sustainability of the current cap on the time that Educational Psychologists employed directly by the Council spend on carrying out statutory assessments is reviewed, to ensure that it is set at the right level.

- 6) That, to manage the demand for EHC Assessments effectively, consideration should be given to an increase in resources within the Educational Psychology Service for the provision of additional Educational Psychologists, to enable further early support to be implemented within mainstream educational settings.
- 7) That effective assurance and audit processes should be maintained to ensure that all statutory assessments and EHC Plans are produced to a high standard and within the required timescales.
- 8) That it should be ensured that schools, parents and carers are communicated with regularly, clearly and in good time by the Council during the EHC Assessment and Plan development process (making full use of the EHC Hub), particularly if it becomes apparent that an EHC Assessment or Plan will not be completed within the statutory deadline.
- 9) That parents and carers should have a clear and accessible point of contact at the Council for queries and support during the process of applying for an EHC Plan.
- 10) That the Council should work closely with individual educational settings to ensure that the EHC Plan annual reviews are carried out with the right level of participation from health partners, other professionals and the relevant Council officers, and are completed within the required deadlines.
- 11) That, where an annual review concludes that the EHC Plan should be updated, the Council ensures that the amended EHC Plan is completed in a timely way.
- 12) That the Council should engage further with the DfE to request that the criteria for justifying the carrying out an EHC Assessment is raised, and that the existing direct liability risks to local authorities for processes outside of their control are mitigated.

Acknowledgements

34. The Chairman and members of the review group would like to express their thanks to Peter McConnochie, Service Director for Education, Learning and Inclusion, and the Service leadership team for their support provided during the review process. Thanks are also extended to Georgina Palmer, Chair of the Nottinghamshire Parent Carer Forum, for her participation in the review process, and to the eleven local authorities that provided data for the benchmarking process.

Financial Implications

35. There are no direct financial implications relating to the recommendations of this report.

RECOMMENDATIONS

- 1) That the recommendations of the scrutiny task and finish review of Education, Health and Care Plans be endorsed and referred to Cabinet for consideration.

Councillor Sam Smith
Chairman of the Children and Families Select Committee

For any enquiries about this report, please contact:

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Constitutional Comments (LPW 14/09/2023)

36. The recommendation falls within the remit of the Children and Families Select Committee by virtue of its terms of reference.

Financial Comments (SES 15/09/2023)

37. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

38. Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- [SEND code of practice: 0 to 25 years](#)
- [Summary of the SEND review: right support, right place, right time](#)
- [SEND and Alternative Provision Improvement Plan](#)
- [Area SEND inspection of Nottinghamshire Local Area Partnership](#)
- [Area SEND inspections: framework and handbook](#)
- [The Annual Report of His Majesty's Chief Inspector of Education, Children's Services and Skills 2021/22 \(sections 4.3 to 4.5\)](#)
- [Education, health and care plans](#)

Electoral Division(s) and Member(s) Affected

- All