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25 August 2020

Dear Mr Williamson,

I am writing to you as deputy leader of Devon County Council, the authority's Cabinet member for children's services and as the national chair of f40.

You will be familiar with the continuing national funding difficulties of services for children with special educational needs and disabilities.

I realise the Covid 19 emergency has created a massive demand for extra funding and this is not just another plea for more money, although the aspirations of both central and local government for better care for some of our most vulnerable children does require improved funding. However I would like to suggest a number of actions to you which would help to contain the soaring costs of SEND for local authorities whilst not in any way diminishing the care we provide.

The changes introduced in the 2014 Children and Families Act were ambitious and designed to reshape support for children with SEND but were not funded at an appropriate level to allow us to meet the increased demand. For example, your own data show the number of children and young people with EHCPs increased by 35 per cent nationally in the five years to 2017/18. In Devon the number of ECHP plans maintained has almost doubled from 3,284 in 2014 to 6,474 in 2019. Currently we have 7,000 children with plans. This has obviously come at a huge cost to us and to my local authority colleagues across the country.

Over two years the funding gap we face in Devon between the government grants we receive and the cost of meeting the needs of the children and young people we support has been £19.7million in 2019/20 and £23.1 million in 2020/21, thus giving a cumulative deficit of £43 million. The extra funding we have received from 2019/20 to 2020/21 within the High Needs Block amounts to £6 million after recouplement. Clearly this is not sustainable. Devon, in common with other local authorities, has taken your Government's advice and identified this deficit as a negative reserve but this will never be a long-term solution and will not provide financial stability.

We have developed a recovery plan that includes making significant investment in creating special school places. Compared to three years ago we have around 300 more children being educated in state-funded settings rather than independent schools and, although this will require considerable corporate investment on our part at time of intense pressure on our finances, we are planning to deliver another 300 places by 2023. However the current legislation and the SEND code of practice create additional challenges that could in fact be amended to provide better value for the public purse.

One of the most costly areas of provision is the independent sector. The code of practice states that independent providers on list 41 must be given equal consideration to state funded special

schools. However these settings often include provision which is not stipulated in the child's education, health and care plan but which make the school understandably appealing to parents albeit at significant additional cost.

You will be well aware parents have a right to appeal at tribunal. The strong emphasis placed on parental preference at appeal means local authorities find it very hard to defend a decision to place in state-funded provision when the independent provision looks more appealing.

Tribunals often dismiss cost as not being significant. However the average difference in cost between a state-funded school and an independent school is £24,000 per child with some costing up to £100,000 a year. We have also seen considerable volatility in the independent sector with some special schools facing problems with both quality and finance.

Nationally some 85 per cent of high needs block expenditure is tied to individual pupils and placements. A change in guidance to allow local authorities to secure state-funded provision with less challenge or with a cap on the fees charged by independent schools coupled with a requirement to align the fees with the provision specified in the plan could help to contain escalating costs.

We are also now faced with many more legal challenges and local authorities are facing judicial review for not following SEND legislation when in fact we are following the guidance contained in the national code of practice.

Even before cases reach this stage, local authorities are spending significant time and resources on managing solicitors and pre-action letters because of the raised awareness of SEND issues within the legal community.

We therefore request an urgent review of the underlying regulations and the code of practice to ensure it removes any ambiguity in expectation which would allow local authorities to ensure best value for the public purse while continuing to meet pupils' needs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James McInnes', written in a cursive style.

James McInnes