

Wiltshire Council

Cabinet

12 March 2024

Subject: Update on Safety Valve Deal with the Department for Education

Cabinet Member: Councillor Richard Clewer
Leader of the Council
Councillor Laura Mayes
Deputy Leader of the Council and Cabinet Member for Children's Services, Education, and Skills
Councillor Jane Davies
Cabinet Member for Adult Social Care, SEND and Inclusion
Councillor Nick Botterill
Cabinet Member for Finance, Development Management and Strategic Planning

Key Decision: Key

Executive Summary

Safety Valve is a Department for Education (DfE) programme that supports Councils which have a very high deficit in the High Need Block (HNB) of the Dedicated Schools Grant (DSG).

The HNB is the part of the DSG that primarily supports pupils who have Special Educational Needs or Disabilities (SEND), and approximately two thirds of councils in England have some level of deficit in their HNB. In Wiltshire this cumulative deficit has grown from £2.1m in 2018/19 to £35.2m in 2022/23 and it is forecast to continue growing. The Q3 Budget Monitoring paper that was presented to Cabinet forecast a total cumulative deficit of £56.247m by the end of this financial year.

This deficit has been held in a negative reserve on the council's balance sheet while a statutory override is in place to shield the overall financial position of the council from this deficit. However, the statutory override is due to end in 2026.

A Safety Valve Deal is a formal agreement between a local authority and the DfE which offers councils additional funds to help with their historic deficits and in return the council agrees to deliver a plan to return their DSG to a balanced position over the period of the deal.

Cabinet agreed to submit a draft version of the plan to government in December 2023 and, following comment and challenge from the DfE, the plan was amended and resubmitted on 12 January 2024. This plan was submitted with endorsement from Wiltshire Schools Forum, Children's Select Committee and a representational board including members from B&NES Swindon and Wiltshire

(BSW) Integrated Care Board (ICB) and Wiltshire Parent Carer Council (WPCC).

Further discussion has taken place between the DfE and Wiltshire Council to arrive at a negotiated position which could be presented to Ministers for their approval.

The outcome of those conversations and the status of all Safety Valve deals are currently embargoed until published by the Department for Education, therefore the detail around this will be discussed in the confidential part of the Cabinet meeting on the 12 March 2024. Wiltshire Council is committed to transparency around this work and so the detail will be made public as soon as possible.

A disapplication request has been approved by the Secretary of State for a block transfer above 0.5% from the Schools Block to the High Needs Block. This is for 0.55% this year and was submitted with support from Schools Forum.

The capital request to support this plan was submitted on 5th January 2024. This bid is for £5.7m to expand special schools places in the south of the county but this decision has not been made by ministers yet. This remains the biggest risk to delivery of the sustainability plan.

Proposals

That Cabinet:

Note the need to take this decision in a Part 2 confidential session due to the key information having been embargoed by the Department for Education.

Reason for Proposal

The High Needs Block deficit remains the largest financial risk to the council and the Safety Valve programme forms a key part of the financial context for the council. Cabinet will continue to be kept apprised of progress and public reporting is critical to ensure transparency of the programme and the council's approach to it.

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Purpose of Report

1. To update Cabinet on progress to reach a Safety Valve Deal between Wiltshire Council and the Department for Education, and to set out the implications of that on the financial position of the council.

Relevance to the council's Business Plan

2. The High Needs Block must be brought back into a balanced position. This is a significant financial risk and so removing it will support the delivery of the council's priorities as set out in the Business Plan.
3. The delivery of the High Needs Block Sustainability plan, which was submitted to support the development of a Safety Valve Deal, will also provide better outcomes for children with SEND in Wiltshire, supporting the following Business Plan priorities:
 - a) Resilient Communities
 - b) Empowered People
 - c) Thriving Economy

Background

4. The Dedicated Schools Grant (DSG) is funding which local authorities in England receive to support schools. The DSG is split into four blocks which support different parts of the schools system.
5. One of these blocks is the High Needs Block which is used to support children and young people with Special Educational Needs and Disabilities (SEND).
6. Since 2018/19 the High Needs Block has been under increasing pressure. This growth in expenditure has been seen in every council in England, and Wiltshire is no exception.

7. This growth is the result of changing practice following The Children and Families Act 2014, SEND Regulations 2014 and the SEND Code of Practice 2015 which introduced new statutory obligations for local authorities in England in how they support children and young people with SEND.
8. In Wiltshire from 2018/19 to 2022/23, this equated to a 51% growth in the number of children supported by an Education, Health and Care Plan (EHCP), and a 46% growth in the amount of money being spent from the High Needs Block. Over the same period, the money received into the High Needs Block from government only grew by 36%. The Association of Directors of Children's Services estimate that, as of 2022, this was a £2.6bn issue across England.
9. While High Needs Block income has not kept pace with the growth in demand, there are also changes that councils can make to respond to the new strategic context.
10. This issue has received some attention over recent years, and this is reflected in the introduction by government of a statutory override. This override allows councils to hold their DSG deficit as a negative reserve on their balance sheet, walled off from the rest of the council's finances. This statutory override, however, is due to expire 31st March 2026 and at that point, councils will be expected to make good any remaining deficit that has not been previously addressed.
11. The Wiltshire Council DSG deficit forecast suggests that, by April 2026, the cumulative unmitigated deficit could be £117m while the current forecast total general fund and earmarked reserves are £90m.
12. The invitation from DfE to join the Safety Valve was received in August 2023 and an initial meeting with the Department for Education was held in early October 2023. The plan was submitted in draft form on December 15th, it was then amended and resubmitted on January 12th 2024.
13. Further negotiations were held between the council and the DfE to ensure a mutually agreeable deal. These negotiations were based on the High Needs Block Sustainability Plan for Wiltshire, which was approved by Cabinet for submission in December 2023 with the endorsement of Wiltshire Schools Forum, Children's Select Committee, and a cross-sector board including members from B&NES Swindon and Wiltshire (BSW) Integrated Care Board (ICB) and Wiltshire Parent Carer Council (WPCC).
14. The outcomes from those negotiations and the status of all Safety Valve Deals are currently embargoed. It is expected that the embargo will be lifted before the 19th March and the council will make the detail public as soon as possible.
15. The plan focuses on activity required for financial recovery, but just as importantly on the quality of provision for our learners with SEND and on getting the right support to those children and young people.

Main Considerations for the council

16. The trajectory set out in the plan is very ambitious and will require a One Council commitment to delivery, alongside support from elected members, schools and parent carers. The delivery phase of this plan will continue to have a focus on co-design and engagement to bring the whole SEND system on this process as well.

17. The budget that council agreed contained investment in preventative programmes that will deliver this financial recovery. The expectation is that this upfront investment will deliver significant savings in year 3-5, but the council should be aware that further investment may be required to deliver the plan.
18. The cumulative deficit that Wiltshire Council is holding in the Dedicated Schools Grant negative reserve is the biggest financial risk that the council has and without a Safety Valve Deal it could prove to be impossible to solve.
19. As reported in January, at the end of the plan period, the cumulative mitigated deficit is forecast to be £137.2m. It is expected that the council will need to cover £70-90m from other funding sources to completely remove the deficit.
20. The budget also established a High Needs Block reserve to begin addressing that residual deficit and further contribution will be required.

Safeguarding Implications

21. The Safety Valve Plan does not, in and of itself, have any safeguarding implications. It is expected that, if it is fully implemented, it should reduce the risk to children and young people.
22. However, nationally, children with disabilities are 3.7 times more likely to suffer abuse, and so during the implementation phase of this plan, careful consideration will be given to unintended consequences that could lead to an increased safeguarding risk.

Public Health Implications

23. The decision to submit a draft Safety Valve Plan, and open discussions with the DfE about a Safety Valve Deal, does not on its own have public health implications.
24. If the Safety Valve Deal reaches the implementation phase then each individual intervention will need to be understood in terms of the public health implications. SEND is a factor that impacts public health, and the Programme Team will continue to work closely with the Public Health team.

Procurement Implications

25. The decision to submit a draft plan and enter into discussions around a Safety Valve Deal does not have procurement implications.
26. If the Safety Valve Plan becomes a deal then each proposal would need to be reviewed by an appropriate Procurement Officer.

Equalities Impact of the Proposal

27. The Safety Valve Plan does not, in and of itself, impact people with protected characteristics. The potential outcome at this stage is a financial agreement between Wiltshire Council and the DfE.
28. However, if the Safety Valve plan becomes an agreement, and that includes changes to services, those proposals would be subject to an Equalities Impact Assessment.

Environmental and Climate Change Considerations

29. This decision does not directly have any environmental or climate change impacts that need to be considered. However, if this plan becomes a Safety Valve Deal then the interventions will need to be understood in the context of the environment and climate change.
30. As an example, should the plan be implemented then fewer children will need to be placed out of county and this will result in a reduced carbon footprint for travel.
31. Any environmental or climate change impacts that have already been identified are in the main body of the Safety Valve plan (Appendix 1).

Workforce Implications

32. This decision will not directly have workforce implications, however if the plan is taken forward and a Safety Valve Deal is signed, then each mitigation will need the workforce implications to be set out.
33. Anticipated impacts on workforce can be found in the main body of the Safety Valve Plan (Appendix 1)

Risks that may arise if the proposed decision and related work is not taken

34. If the decision is not taken then the financial risk of the DSG deficit remains on the balance sheet of the council. There is a risk that, if the statutory override ends as anticipated in April 2026, the entire deficit becomes the councils to manage. The deficit is forecast to be £113.5m by that point. It is not thought that the council could effectively manage this risk without the support of a Safety Valve Deal.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

35. If the decision is taken to enter into a Safety Valve Deal, the council will be responsible for delivering that deal. There is a risk that if the council falls behind on the deal that further work will have to be undertaken to bring the plan back in line, this may include further investments to ensure delivery. To mitigate this risk, there is a robust process of monitoring in place, with clear measures regularly reported on.
36. There is a risk that the council will see an increase in legal challenge and tribunals arising from the SEND decision making process. This risk is being mitigated through the plan, by ensuring the council is confident in the support being provided to children with SEND, by ensuring that the council has efficient and well-defined processes in place. Additionally, the plan is being co-designed with parent carers, schools, early years settings and colleges to create shared ownership and buy-in.

Financial Implications

37. The proposed plan has been updated to reflect the DSG funding settlement announced in December, the current DSG forecast for 2023/24 and the changes required to reflect the children and young people currently awaiting assessment.

38. The updated plan includes mitigations of £83m to be delivered over 5 years across the 5 workstreams. This is the net impact after the required investment to deliver increases in support and early intervention, and to cover the revenue costs of additional specialist places across Wiltshire schools.
39. The plan includes capital investment in the delivery of new special school and resource bases across Wiltshire. This includes current plans funded by High Needs Places Capital Allocation (HNPCA) grant and council contributions and incorporates funding already agreed by the DfE to support the development of a new 130 place special free school for pupils with social, emotional and mental health needs.
40. The plan also includes an assumption that the council's application for a free school to deliver Alternative Provision will be successful. A decision from the DfE has not yet been announced, despite the application being submitted in early 2023.
41. In order to deliver the required place sufficiency across the period of the plan a bid to the additional HNPCA grant made available to councils on the Safety Valve programme has been made for £5.7m in order to accelerate the delivery of additional special school capacity.
42. The profile of the mitigated deficit is summarised as follows:

Provision Type	2023/24 £'000	2024/25 £'000	2025/26 £'000	2026/27 £'000	2027/28 £'000	2028/29 £'000
Plan Year	1		2	3	4	5
Mainstream Provision	22,875	24,019	25,254	20,379	16,112	11,896
Resourced Provision	4,249	5,353	6,295	6,390	6,169	6,325
Special Schools	27,026	32,364	34,952	37,110	38,325	40,229
Independent and Non-maintained Special School Provision	20,207	19,705	19,024	15,110	6,100	4,143
Post 16 Provision	10,881	11,491	11,958	12,107	12,044	12,506
Alternative Provision	10,198	9,464	8,912	8,808	8,623	9,708
Therapies	560	560	773	782	792	801
Other High Needs Block expenditure	1,103	786	810	834	859	885
Total Expenditure	97,098	103,744	107,977	101,520	89,024	86,494
High Needs Block	-70,798	-73,465	-75,669	-77,939	-80,277	-82,685
Block Transfers	-1,797	-2,000	-3,754	-3,867	-3,983	-4,102
In Year Surplus (-)/Deficit(+)	24,504	28,280	28,555	19,715	4,765	-293
Surplus/Deficit from other DSG Blocks	-3,470	0				
Surplus/Deficit Brought Forward from Previous years	35,214	56,247	84,527	113,081	132,796	137,561
Total Deficit Balance	56,247	84,527	113,081	132,796	137,561	137,267

43. The decision to enter the Safety Valve deal will crystallise the requirement of a contribution from the council's resources which will in effect be the balance of the cumulative deficit set out in the plan less any contribution from the DfE.
44. The council will be taking an approach of maximising all opportunities to set money aside in a specific earmarked reserve to fund the contribution required. If sufficient funds are not set aside by the end of the plan period (April 2029) then the council will need to capitalise the residual balance.

Legal Implications

45. The submission of the plan to the DfE does not, in and of itself, have legal implications. However, should the plan become a Safety Valve deal then the council will enter into a formal written agreement with the DfE.

46. Safety Valve Deals are largely standardised documents that set out, at a high-level, the commitment that the council has to reaching a balanced DSG position, and the commitment that the DfE has to provide additional DSG to support deficit reduction.
47. This deal will need to be reviewed by Legal Services to ensure that the legal implications are sufficiently considered before the deal is signed.

Options Considered

48. Decline the offer to develop a Safety Valve agreement – this was rejected because the lack of up-front investment from the Department for Education would significantly compromise the ability of the council to deliver the change required. This delay would increase the cumulative deficit still further, which would increase the impact on the Council's general funds.
49. Attempt to negotiate a slower reduction in the overspend – this was rejected for two reasons, firstly it is understood that the DfE is unlikely to accept any deal longer than the 5 years that we are proposing. Secondly, the delay in managing the overspend would result in an increase in the deficit which the local authority would be responsible for. Covering this overspend would require further cuts to services that all residents, including children and young people with SEND, rely on.

Conclusions

50. If the council is to continue to deliver on its statutory duty to children and young people with SEND then we must make changes to the way the SEND system in Wiltshire operates.
51. These changes would need to be made anyway to stop the growing deficit, improve outcomes for children and young people, and to reflect the changing strategic context in which the system finds itself. Despite the challenges in delivering this plan, and the increased financial impact of the forecast deficit, this still represents a good way to manage the risk.
52. As reported in January, if a deal can be negotiated between Wiltshire Council and the DfE, Safety Valve offers an opportunity to undertake those changes, leveraging additional investment from the Department for Education that will allow such changes to be made more quickly than would otherwise be possible, and to significantly reduce our historic deficit.
53. Further updates will come to future Cabinet meetings as officers pull together implementation plans and Children's Select Committee have requested this be a standing item on their future agendas.

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Appendices

None

Background Papers

None