

Wiltshire Council

Cabinet

16 April 2024

Subject: SEND Sustainability Plan and the Safety Valve agreement

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

Key Decision: Non-Key

Executive Summary

On 12 March 2024, Wiltshire Council signed a Safety Valve agreement with the Department for Education (DfE). This agreement is supported by the High Needs Block Sustainability Plan which was created with parent carers, schools and settings, and health and care professionals.

These documents, taken together, describe how Wiltshire Council will improve outcomes for children and young people with SEND and, through investment in early help and support, return the High Needs Block (HNB) to a financially balanced position.

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.

Safety Valve is a DfE programme that supports Councils who have a large or rapidly increasing deficit in the HNB of the Dedicated Schools Grant (DSG).

A Safety Valve Agreement 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 an "in-year" balanced position by the end of the period of the plan.

The agreement confirms the DfE will provide an additional £67m of DSG funding split over the years 2023/24 – 2028/29. The first payment of £26.8m is due to be received on 28 March and future payments are contingent on the Council meeting the terms of the deal.

This money will be used to offset the cumulative deficit which, by the point that the

Council reaches balance is forecast to be £137.2m. This leaves £70.2m which the Council will need to contribute from other funds to completely remove the residual forecast deficit that is a requirement of the agreement.

This agreement was only possible because the plan that the Council submitted was found to be a credible approach to balancing the financial position of the HNB while improving outcomes for children and young people with SEND.

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).

The plan sets out how the DSG will be brought back into balance over the next 5 years. This will be done through increased provision of early support and prevention, increasing the number of maintained special school places in Wiltshire to place more children and young people with SEND close to home and without the need to rely on the independent sector.

Wiltshire Council has already put over £4m of pump-priming investment behind this plan to ensure it will deliver the intended outcomes, and further capital investment has been committed.

This is alongside an additional capital request which was made as part of the Safety Valve process to support this plan and was submitted on 5 January 2024. This bid is for £5.7m to expand special school places in the south of the county but this decision has not been made by ministers yet.

Now the Safety Valve agreement has been signed, the work to deliver it will be folded into ongoing SEND improvement and transformation programmes.

Proposals

That Cabinet:

- 1) Welcomes the agreement that was signed and returned to the DfE in line with the Cabinet decision on 12 March 2024.
- 2) Endorses the steps being taken to address the financial deficit in the High Needs Block.
- 3) Approves publication of the High Needs Block Sustainability Plan for Wiltshire which underpins the Safety Valve agreement.

Reason for Proposals

This five-year agreement will shape the provision of SEND services in Wiltshire and will form a key part of the financial context for the authority. 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.

Terence Herbert - Chief Executive

Lucy Townsend - Corporate Director, People

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Purpose of Report

1. To update Cabinet on the SEND Sustainability Plan for Wiltshire and the Safety Valve Agreement between Wiltshire Council and the Department for Education which was signed on 12 March 2024.
2. To set out the implications of the Safety Valve agreement on the financial position of the Council.

Relevance to the Council's Business Plan

3. The Safety Valve Agreement will ensure that the Dedicated Schools Grant deficit will be removed, and the High Needs Block will be brought back into an in-year 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.
4. The delivery of the Safety Valve plan 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

5. 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 and education system.
6. 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).

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Wiltshire Council's 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.
13. The invitation from DfE to join the Safety Valve programme 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.
14. Further negotiations were held between the Council and the DfE to ensure a mutually agreeable position. This agreement received ministerial approval and was signed on behalf of Wiltshire Council on 12th of March. The agreement text forms Appendix 1 to this report.

Main Considerations for the council

15. The agreement sets out commitments from the DfE and from Wiltshire Council. The DfE has committed to give Wiltshire Council an additional £67m over the 5 years of the agreement. These contributions are paid in instalments, profiled as follows:

Year	The Department agrees to pay to the authority an additional £m of DSG by year end
2023-24	£26.8m
2024-25	£6.7m
2025-26	£6.7m

2026-27	£6.7m
2027-28	£6.7m
2028-29	£13.4m

16. The first payment of £26.8m was received by the council on the 28th March 2024.
17. The conditions of the grant are that payments are used to pay down the cumulative Dedicated Schools Grant deficit and that Wiltshire Council makes sufficient progress towards meeting the conditions of the agreement, noted in paragraph 20 of this paper.
18. Future payments will be withheld should the Council fail to meet its obligations under the agreement, however there are no 'clawback' provisions in the agreement.
19. By signing the agreement, Wiltshire Council has committed to reaching an in-year balance in the High Needs Block and to eliminating the cumulative deficit by the end of 2028/29, and also to ensuring that the cumulative deficit does not exceed the maximum deficit profile. This profile, including a Council contribution of £70.2m but excluding the DfE contribution, is as follows:

Year	Maximum Forecast DSG Deficit Profile at year end¹
2023-24	£56.2m
2024-25	£84.5m
2025-26	£94.6m
2026-27	£114.4m
2027-28	£119.1m
2028-29	£67.0m

20. In addition, the Council has agreed to regular monitoring, at least 3 times a year, to check on progress. The DfE will expect the Council to report against the key conditions of the agreement, and on progress to deliver capital projects associated with the agreement. These conditions are:
- a. Maximum Forecast DSG Deficit;
 - b. Provide earlier support for children and young people with SEND, improving inclusion practices and managing pressure points and school transitions;
 - c. Prevent the need for escalation by providing the right support, first time, including a more holistic response alongside health and social care, with improved management and communication;
 - d. Increase the number of special school placements, resourced provision, and alternative provision to ensure that children and young people can access the support they need, with proper reintegration support for children who belong in mainstream provision;

¹ This profile includes contributions that the council will make from its own resources to reduce the DSG deficit.

- e. Improve transition pathways to provide a range of opportunities for young people with SEND to prepare for adulthood, including training, further education, and employment;
- f. Foster a culture of change across the Wiltshire SEND and AP system by engaging with partners and parent carers, improving trust and coproduction across the sector.

21. These conditions are focused on activity which will reduce the in-year overspend, but in a way that will maintain, or improve, the quality of support for children and young people with SEND.
22. The agreement is 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). It has been amended in line with feedback from key stakeholders, and this amended version forms Appendix 2 of this paper.
23. These endorsements are an encouraging sign of support from key stakeholders, and an indication that the engagement with stakeholders has been good so far. The Council is conscious that this support is not guaranteed, and so significant work is being put into continued engagement and co-design. The plan becomes almost impossible to deliver without the goodwill of schools, colleges and early years settings; parent carers; the voluntary sector; HCRG and the ICB.
24. Given the need for continued engagement to enable the successful delivery of this plan, the Council wants to be as transparent as possible. As a starting point, the High Needs Block Sustainability Plan for Wiltshire sets out the key workstreams and projects that will be undertaken to help deliver this plan. Many of these projects, already have a clear alignment to the existing SEND and Inclusion Strategy 2020-24, and to the emerging SEND and AP Strategy that is currently being developed.
25. All these plans and strategies will be brought together into a single transformation plan for SEND, Inclusion and AP in Wiltshire, so that the Council can be assured that there is a comprehensive and well supported approach to SEND improvement in the county.
26. The plan, and therefore the agreement, focus on financial recovery, but equally importantly on the quality of provision for our learners with SEND and on getting the right support early to those children and young people.
27. The trajectory set out in the plan is very ambitious and will require a One Council approach and 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.
28. The 2024/25 budget that Cabinet approved 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 there may be a need to consider further investment.

29. Should the Council fail to deliver against the plan then the DfE will place the Council in “enhanced monitoring”. While in “enhanced monitoring” any additional payments are paused, and the expectation is that the Council will re-baseline and develop a new plan. There is no additional money or support that follows “enhanced monitoring”, however there are also no clawback provisions in the agreement and so the Council would not have to return any payments made to that point.
30. 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 Agreement it could prove to be impossible to solve.
31. While the £67m contribution from the DfE will not meet the whole cumulative deficit, the Council recognises the vote of confidence in the plan that this level of financial commitment from the DfE demonstrates.
32. At the end of the agreement period, the cumulative mitigated deficit is forecast to be £137.2m. Once the DfE’s contribution of £67m is included, that reduces the residual deficit to £70.2m which Wiltshire Council will need to fund.
33. In preparation for this proposed agreement, the 2024/25 budget included a contribution to a High Needs Block reserve to begin addressing that residual deficit and further contribution will be required as the Council continues to fulfil the conditions of the agreement.

Safeguarding Implications

34. 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, who we know are 3.7 times more likely to suffer abuse.

Public Health Implications

35. The decision to sign a Safety Valve Agreement with the DfE, does not on its own have public health implications.
36. As the High Needs Block Sustainability Plan reaches the implementation phase, 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

37. The decision to sign a Safety Valve Agreement does not have procurement implications in and of itself, however as contracts come up for renewal through the commissioning process, the council will need to consider the impact of interventions.
38. The agreement will require us to consider what early intervention and prevention activity can be undertaken to reduce the call on statutory support. This activity could increase some commissioned activity, particularly in the therapies’ contracts.
39. As the High Needs Block Sustainability Plan reaches the implementation phase, each proposal will need to be reviewed by an appropriate Procurement Officer.

Equalities Impact of the Proposal

40. The signing of a Safety Valve Agreement does not, in and of itself, impact people with protected characteristics. The Agreement is primarily a financial agreement between Wiltshire Council and the DfE.
41. However, now the Safety Valve plan has become an agreement, and that includes changes to services, these proposals will be subject to an Equalities Impact Assessment and this has been built into the project plan.

Environmental and Climate Change Considerations

42. This decision does not directly have any environmental or climate change impacts that need to be considered. However, now this plan has become a Safety Valve Agreement the interventions will need to be understood in the context of the environment and climate change.
43. As an example, we anticipate that fewer children will need to be placed out of county and this will result in a reduced carbon footprint for travel.
44. Any environmental or climate change impacts that have already been identified are in the main body of the Safety Valve plan (Appendix 2).

Workforce Implications

45. Delivery of the agreement trajectory will require investment in staff and increased capacity in our SEND system. The funding for these posts has already been identified as part of the budget setting process, but each mitigation will still need the workforce implications to be set out clearly.
46. Anticipated impacts on workforce can be found in the main body of the Safety Valve Plan (Appendix 2)

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

47. If the decision is not taken, then the financial liability of the DSG deficit remains on the balance sheet of the Council. There is a risk that, if the statutory override ends as currently set out in April 2026, the entire deficit becomes the Council's to manage. The deficit is forecast to be £113.5m by that point. It is not thought that the Council could effectively manage this liability without the support of a Safety Valve Agreement.

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

48. The decision to enter into a Safety Valve Agreement makes the Council responsible for delivering that agreement. There is a risk that, if the Council falls behind on the financial delivery of the plan, 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.
49. 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 there is 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

50. The Safety Valve Agreement reflects 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.
51. This therefore assumes mitigations of £83.0m 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.
52. The plan which underpins the agreement 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.
53. The plan also includes the Council's application for a free school to deliver Alternative Provision, which was approved in the government's budget on 6th March.
54. 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.
55. 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

56. The decision to enter the Safety Valve Agreement crystallises the requirement of a contribution from the Council's resources to eliminate the cumulative deficit set out in

the plan less any contribution from the DfE. This figure, based on the plan set out, is £70.2m

57. 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 identify funding for the residual balance or exceptional financial support will be required from government.
58. It should also be made explicit that the DfE contribution is a fixed figure which, if the plan is delivered, will not change. If the Council manages to reduce the deficit more quickly than anticipated, then the Council contribution will be reduced. If the Council is slow to deliver the changes required, then the deficit will grow more than anticipated and that financial liability resides with the Council.

Legal Implications

59. The Safety Valve Agreement is a formal written agreement with the DfE. This draft agreement language has been reviewed by Legal Services and amendments were incorporated into the draft.
60. The final agreement was reviewed to ensure that the legal implications were sufficiently considered when the agreement was signed.
61. It was noted that the agreement is subject to review at any time and whilst the agreement does set out examples of events which may lead to review, this list is not exhaustive.
62. In particular, clause 6.3 provides for the agreement to be reviewed in the event of insufficient progress being made towards the authority reaching and sustaining an in-year balance on its DSG account as set out in the plan.

Overview and Scrutiny Engagement

63. The sustainability issues with the High Needs Block have regularly been reported on to the Children's Select Committee.
64. Children's Select Committee undertook a High Need Block (HNB) Rapid Scrutiny which produced a report, the contents of which have been used to inform the Safety Valve plan.
65. The Rapid Scrutiny Report also recommended that Children's Select Committee have a representative on the programme board for this work and that member has been included throughout the process.
66. Children's Select Committee received the High Needs Block Sustainability Plan in draft on 7th December 2023 and held a single item meeting to ensure the plan was fully scrutinised before submission to the Department for Education.
67. Questions from members of the Select Committee offered useful challenge, and improvements to the plan were made as a result.

68. Children's Select Committee continues to receive regular updates on progress at their meetings and the High Needs Block Sustainability Plan is now a standing item on their agenda.

Options Considered

69. The option of declining the offer to sign the Safety Valve agreement was considered and rejected. The lack of up-front investment from the DfE 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 fund and contribution to eliminate the deficit when the statutory override is removed.

Conclusions

70. 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.

71. These changes need to be made 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.

72. 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.

73. Cabinet is asked to note that Wiltshire Council has now signed the Safety Valve Agreement and this will formally come into effect from the new financial year. Work has already begun to deliver priority projects.

74. 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.

Terence Herbert - Chief Executive

Lucy Townsend - Corporate Director, People

Report Author: Ben Stevens, Inclusion, SEND and AP Transformation Lead,
Ben.Stevens@wiltshire.gov.uk, 01225 713788

Liz Williams, Finance Lead – High Needs [Block](#) Sustainability,
Liz.Williams@wiltshire.gov.uk, 01225 712521

Appendices

Appendix 1 - The Wiltshire Council Safety Valve agreement

Appendix 2 - The High Needs Block Sustainability Plan for Wiltshire

Background Papers

None