

## Wiltshire Council

### Cabinet

16 January 2024

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**Subject:** Safety Valve Agreement Update

**Cabinet Member:** Councillor Laura Mayes - 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:** Non-Key

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#### **Executive Summary**

Safety Valve is a Department for Education (DfE) programme that supports Councils who 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.

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 rest of the Council from this deficit. However, the statutory override is due to end in 2026.

Safety Valve offers councils additional funds from the DfE to help with their historic deficits, so long as the Department is satisfied that the council can return their DSG to a balanced position over the period of the deal.

In December 2023, Cabinet agreed a strategic approach to DSG sustainability that could form the basis of negotiation with the Department for Education (DfE). This paper was presented 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).

Cabinet agreed to submit a draft version of the plan to government and, following comment and challenge from the DfE, for the plan to be amended and resubmitted on January 12<sup>th</sup> 2024.

Feedback from the DfE was positive with the strategic approach and strong commitment to co-design were singled out for praise, especially given the short timeline.

While the plan is substantively the same, some changes have been made to reflect comments received and new information:

- The unmitigated pupil number forecast has been updated to include the children and young people currently awaiting assessment.
- The unmitigated financial forecast has been updated to reflect the settlement and updated 23/24 position. These changes have been rippled through the future years.
- The mitigated position has been updated accordingly.
- Milestones have been added to give more assurance that the plan is deliverable and then, following advice from the DfE, some of these milestones have been brought forward so the impact is felt more quickly.
- The narrative has undergone minor amendments to reflect comments received during the drafting process and to clarify terminology where needed.

It should also be noted that since the draft submission in December, a Disapplication request has been submitted to 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 also submitted on 5<sup>th</sup> January 2024. This bid is for £5.7m to expand special schools places in the south of the county and will directly contribute towards delivery of Workstream 2.

The plan was submitted in its final form on the 12<sup>th</sup> January and will now go forward to the Secretary of State for approval. It is expected that, given the positive feedback from the DfE advisors, approval will be given and the government will send a deal for review and signature before April 2024.

Given the ambitious approach that the plan requires, the Programme Team will begin delivery of the plan immediately to ensure key conversations are already happening before April 2024.

## **Proposals**

That Cabinet note:

- 1) the changes made to the Dedicated Schools Grant (DSG) Management Plan and the SEND Sustainability plan.
- 2) the submission of these documents to the Department for Education (DfE) on 12 January 2024.
- 3) the continued progress to reduce and remove the financial risk that the deficit in the High Needs Block (HNB) represents.

## **Reason for Proposals**

The submission of amended documents to the DfE was agreed at Cabinet on the 12 December 2023 and this update ensures that Cabinet are kept apprised of the changes.

**Lucy Townsend**

**Corporate Director of People and Director of Children's Services**

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### Purpose of Report

1. To update on the draft Safety Valve plan and highlight the changes that were made, in response to Department for Education feedback, in advance of the 12<sup>th</sup> January submission. This version will now go forward for Secretary of State approval and to form the basis of a Safety Valve Deal for Wiltshire.

### Relevance to the Council's Business Plan

2. The Safety Valve plan will ensure that the Dedicated Schools Grant will be brought back into a balanced position. This 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 deliver of the Safety Valve plan will also provide better outcomes for children with SEND in Wiltshire, supporting the following Business Plan priorities:
  - i. Resilient Communities
  - ii. Empowered People
  - iii. 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 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 is a £2.6bn problem across every council in 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 changing strategic context.
10. This problem 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 31<sup>st</sup> March 2026 and at that point, councils will be expected to hold sufficient reserves to cover the remaining deficit.
11. The Wiltshire Council DSG deficit forecast suggests that, by April 2026, the cumulative unmitigated deficit could be £117.0m while the current forecast total general fund and earmarked reserves are £90m.
12. The invitation to join 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 15<sup>th</sup>, it was then amended and resubmitted on 12 January 2024.
13. If a deal can be successfully negotiated, and receives Secretary of State approval, the implementation phase begins in April 2024.

### **Main Considerations for the Council**

14. Since Cabinet agreed the submission of the draft High Needs Block Sustainability Plan, it has been amended in the light of comments from the Department for Education (DfE) and from other stakeholders.
15. The unmitigated pupil number forecast has been updated to include the children and young people currently awaiting assessment. Built into this is the assumption that the assessment backlog can be cleared within two years. This update does not change the end position, which was based on the percentage of school cohort expected to have an EHCP, but it does bring through a bulge of pupils in the 2024/25 and 2025/26 years.
16. The unmitigated financial forecast has been updated to reflect the settlement and the updated 23/24 position. This means that the financial forecast better reflects the starting point of the plan, and the Q3 monitoring. These changes have been rippled through the future years to provide a better financial forecast.
17. The mitigated position has been updated in line with the above changes. This does not substantively change the outcome but does increase the final deficit balance by £1.2m to £137.2m

18. Milestones have been added to the plan to give more assurance that it is deliverable. These milestones have been developed and now form the basis of the delivery plan. Following advice from the DfE, some of these milestones have been brought forward so the benefit is realised more quickly, this is especially important for some of the early help projects.
19. The narrative within the plan has undergone minor amendments to reflect comments received during the drafting process and to clarify terminology where needed.
20. A request to the Secretary of State has been submitted for a block transfer above 0.5% from the Schools Block to the High Needs Block. For 2024/25 this figure is 0.55% and was submitted with support from Schools Forum.
21. It should be noted that the High Needs Block sustainability plan requires a 1% block transfer beyond 2024/25 and this has not been yet agreed by Schools Forum. This decision will be subject to a vote by Schools Forum for each financial year, and a further request to the Secretary of State.
22. The capital request to support this plan was also submitted on 5<sup>th</sup> January 2024. This bid is for £5.7m to expand special schools places in the south of the county and will directly contribute towards delivery of Workstream 2.
23. The DfE did raise concerns about the resource required to clear the backlog of children and young people awaiting assessment. This work is undertaken by the Statutory SEND team, which is not funded through the Dedicated Schools Grant. Additional resource has been identified in the Medium Term Financial Strategy (MTFS), however monitoring needs to be in place to ensure this is sufficient.
24. Similarly, the DfE sought assurance that, given how ambitious and front loaded the HNB Sustainability Plan is, the Council had sufficient resource allocated to programme delivery. Funding has been identified through the Transformation Reserve to support the first year of this plan but Council will need to consider if further resource is required.
25. Finally, the final deficit figure has risen in this latest version of the plan. The contribution from the DfE has not yet been agreed but it is a fixed figure so this rise increases the Local Authority contribution to paying off the deficit. The previously reported range of £70-90m still reflects the expected position.

### **Safeguarding Implications**

26. 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.
27. 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**

28. 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.

29. 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**

30. The decision to submit a draft plan and enter into discussions around a Safety Valve Deal does not have procurement implications.
31. 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**

32. 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.
33. 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**

34. 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.
35. 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.
36. 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**

37. 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.
38. 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**

39. 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**

40. 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.
41. 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**

42. 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.
43. The updated plan includes 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.
44. 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.
45. 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.
46. 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.
47. 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
<b>Total Expenditure</b>	<b>97,098</b>	<b>103,744</b>	<b>107,977</b>	<b>101,520</b>	<b>89,024</b>	<b>86,494</b>
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
<b>In Year Surplus (-)/Deficit(+)</b>	<b>24,504</b>	<b>28,280</b>	<b>28,555</b>	<b>19,715</b>	<b>4,765</b>	<b>-293</b>
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
<b>Total Deficit Balance</b>	<b>56,247</b>	<b>84,527</b>	<b>113,081</b>	<b>132,796</b>	<b>137,561</b>	<b>137,267</b>

48. 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.
49. 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

50. 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.
51. 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.
52. 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

53. 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.
54. 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

55. 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.
56. 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.
57. 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.
58. Cabinet is asked to note the changes to the draft plan, and to note submission of the amended plan which took place on January 12<sup>th</sup>. This will now go to the Secretary of State for approval.
59. 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.

## **Helean Hughes & Richard Hanks, Directors for Education and Skills**

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Report Author: Ben Stevens, Sustainability Strategic Lead (High Needs Block),

[Ben.Stevens@wiltshire.gov.uk](mailto:Ben.Stevens@wiltshire.gov.uk), 01225 713788

Liz Williams, Finance Lead – High Needs Block Sustainability,

[Liz.Williams@wiltshire.gov.uk](mailto:Liz.Williams@wiltshire.gov.uk), 01225 712521

8 January 2024

## Appendices

Appendix 1 – DSG Management Plan summary tables

## Background Papers

None