

Wiltshire Council

Cabinet

8 October 2024

Subject: Safety Valve - August Update Report for DfE

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

The High Needs Block (HNB) is the part of the Dedicated Schools Grant (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.

On the 12th of 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.

As part of the agreement that was signed with the DfE, Wiltshire Council agreed to submit monitoring reports three times a year. These reports are then noted in public by Cabinet and Children's Select Committee.

Appendix 1 is the monitoring report for September 2024 and reflects the work done to that point.

Cabinet should note that, despite a significant amount of work being undertaken, the report is explicit that the plan is off-track and that this is not recoverable in this financial year.

The financial forecast for this quarter indicates that expenditure is not on track to meet the target of £84.5m (before SV contributions) for the cumulative deficit in the 2024/25 financial year. Therefore, that condition of the deal is rated Red because current forecasts indicate an overspend against the current plan of £10.156m in 2024/25.

Despite this, the council is projecting that it will get back on track and achieve a positive in-year balance by the end of the agreement (March 2029) and in subsequent years.

The data shows that the increased spend in the current year is driven by increased activity rather than by unit cost in most types of provision. This reflects the increase in the number of children with EHCPs in the 2023/24 academic year and the projections for activity in the new academic year.

This is reflected in the SEND service data which shows that, at the end of July, the number of EHCPs in the system was 5,861, 229 ahead of the figure suggested by the Safety Valve Plan.

Much of the growth in the number of EHCPs is due to the continued upward pressure of new needs assessment requests from schools and settings. However roughly 100 of these additional plans are the result of investment put into processing the 20-week-wait backlog faster than expected. This is clearly to the benefit of the children and young people and provides greater visibility of the needs in the system, but, it does mean that the number of EHCPs is inflated beyond what was anticipated at the time of submission.

Further proposals are being worked up to increase the mitigations so that an in-year balanced position can be achieved by April 2029 and the detail will be included in the November update. These proposals will follow the principles set out in the original plan – investing to save in future years, and improving support for children and young people with additional needs across the system.

To this end, 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 5th January 2024. This bid is for £5.7m to expand special schools places in the south of the county but a decision has not been reached by ministers yet.

Proposals

That Cabinet:

Note the monitoring report which was submitted to the DfE on 28th August 2024.

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.

Lucy Townsend
Chief Executive

Wiltshire Council

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Purpose of Report

1. To update Cabinet on the Safety Valve Agreement between Wiltshire Council and the Department for Education (DfE) which was signed on 12 March 2024.
2. To present the update report submitted to the DfE on 28 August 2024.

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. 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.
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 15 December 2023, it was then amended and resubmitted on 12 January 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 12 March 2024.
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. In addition, the council has agreed to regular monitoring, 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:
1. The authority undertakes to reach a positive in-year balance on its Dedicated Schools Grant (DSG) account by the end of 2028-29 and in each subsequent year.
 2. The authority undertakes to control and reduce the cumulative deficit, not exceeding £84.5m in financial year 2024/25.
 - 3.1. Provide earlier support for children and young people with SEND, improving inclusion practices and managing pressure points and school transitions;
 - 3.2. 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;
 - 3.3. 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;
 - 3.4. Improve transition pathways to provide a range of opportunities for young people with SEND to prepare for adulthood, including training, further education, and employment;
 - 3.5. 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.

Main Considerations for the council

17. The August monitoring report, Appendix 1, is the second monitoring report that has been sent to the DfE. This report covers the activity and data from June to August. Each submission of a report, on time, releases the next Safety Valve payment.
18. The first payment of £26.8m was received by the council on the 28th March 2024. A further payment of £2.233m was received in June 2024 following submission of the first monitoring report to the DfE.
19. Appendix 1 contains a detailed update, data and graphs, but in summary, while significant steps forward have been taken, and much of the planned 'activity' is on track, the time from implementation of a project to the realisation of the benefits is greater than had been anticipated.
20. Financially, this means that the council is not on track to meet agreement condition 2 and will exceed the forecast £84.5m cumulative deficit (excluding Safety Valve payments) in this financial year. The consequences of this are set out in the financial implications section of this report.
21. The status of the other conditions is set out below:
- a. Condition 3.1: While the project activity to deliver this condition remains on track, the data is not showing the impact of those interventions yet. The growth in the number of EHCPs has exceeded our forecast figures, and while the growth in EHCNA requests has slowed it remains at a high level. Consequently, this condition is rated amber- off track.

- b. Condition 3.2: The activity that was planned to support this agreement condition is on track and, while the number of children placed in the Independent Sector remains historically high it has not increased, as a percentage, over the past school year. This condition is therefore rated as green – on track.
- c. Condition 3.3: Despite significant progress, this condition remains amber – off track, as was the case last month. This is primarily due to the uncertainty around the Safety Valve capital funding which has still not been confirmed. The decision, due in March, was initially delayed by a request for more information, and then further delayed by the General Election and subsequent change in ministerial team.
- d. Condition 3.4: This workstream is amber – off track, and it is expected to be back on track by November. There is a lot of work happening in post 16 and transitions, however this needs to be more focussed and structured. The authority has recently taken on a new project manager to focus on developing this programme and it is expected that significant progress will be made in the next reporting period.
- e. Condition 3.5: This deal condition is currently green – on track. The authority has continued to engage partners and parent carers to ensure that trust remains high.

Safeguarding Implications

22. This update report does not raise any additional safeguarding implications.

Public Health Implications

23. This update report does not raise any additional public health implications.

Procurement Implications

24. This update report does not raise any additional procurement implications.

Equalities Impact of the Proposal

25. This update report does not raise any further equalities impacts.

Environmental and Climate Change Considerations

26. This update report does not raise any further environmental or climate change considerations.

Workforce Implications

27. This update report does not raise any further workforce implications.

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

28. If the DSG deficit recovery work 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. It is not thought that the council could effectively manage this liability without the support of a Safety Valve Agreement.

29. The decision to enter into a Safety Valve Agreement made the council responsible for delivering that agreement. There is a risk that, if the council continues to fall behind on the financial delivery of the plan, further work will have to be undertaken to bring the plan back in line and the DfE may suspend future payments. To mitigate this risk, there is a robust process of monitoring in place, with clear measures regularly reported on.

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

30. 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

31. The monitoring report submitted to the DfE at the end of August confirms that the Council is not on track to meet the condition to reduce the cumulative deficit, not exceeding £84.5m (excluding Safety Valve payments) in financial year 2024/25. The current forecast projects an overspend against the plan of £10.156m in 2024/25.
32. Initial modelling has taken place to consider the impact of the increased commitments in the system from activity in the current year, and the further mitigations that need to be implemented in order to reduce spend by the 2028/29 financial year. This initial work indicates that the residual deficit at the end of the plan will increase by £34.5m compared with the agreed Safety Valve plan. The plan will be re-worked in order to fully confirm the impact in time for the November submission to the DfE
33. The profile of the revised forecast is summarised as follows:

	Outturn 2023/24	Forecast 2024/25	Forecast 2025/26	Forecast 2026/27	Forecast 2027/28	Forecast 2028/29
	£m	£m	£m	£m	£m	£m
Cumulative DSG deficit - brought forward (deficit at beginning of financial year)	35.214	28.706	61.184	77.319	99.198	99.926
In year DSG deficit (before Safety Valve and local contributions)	20.292	39.177	41.280	28.579	7.428	-0.194
Safety Valve programme contribution	-26.800	-6.700	-6.700	-6.700	-6.700	-13.400
Local general fund contribution	0.000	0.000	-18.445	0.000	0.000	-51.822
Cumulative DSG deficit - carry forward (deficit at end of financial year including SV payments and local contributions)	28.706	61.184	77.319	99.198	99.926	34.509

34. 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. However, it should also be made explicit that the DfE contribution is a fixed

figure therefore if the deficit grows as forecast in the table above, that financial liability resides with the council.

35. 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.
36. 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. No decision has yet been made by Ministers on the council's application for capital funding.

Legal Implications

37. The Safety Valve Agreement is a formal written agreement with the DfE. This draft agreement language was reviewed by Legal Services and amendments were incorporated into the draft.
38. The final agreement was reviewed to ensure that the legal implications were sufficiently considered when the agreement was signed.
39. 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.
40. 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

41. A report on the progress of the Safety Valve programme is provided for scrutiny at all Children's Select Committee meetings.

Conclusions

42. 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.
43. 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.
44. As the monitoring report sets out, significant steps have been taken to improve support for children and young people with SEND in Wiltshire. Improvements to how the council helps schools support these children will be felt this coming school year, and further changes are planned.

45. However, the council recognises that the plan is off-track and further steps are required. The pressures in the SEND system are now being fully reflected in the finances this year, and that emphasises the need to deliver a step change in this coming year.
46. Before November, the sustainability plan will need to be re-baselined and updated to reflect the new position. This work will be enhanced by further data analysis, the new SEND Strategy and the SEND Needs Assessment.
47. 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.
48. 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.

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Appendices

Appendix 1 – Aug 24 SV Monitoring Template

Background Papers

None