

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:

Cabinet

DECISION NO:

23/00012

For publication

Key decision: YES

Subject Matter / Title of Decision

Safety Valve Funding - DfE

Decision:

Cabinet agrees to;

a) approve the Dedicated Schools Grant ‘Safety Valve’ Agreement between DfE and Kent County Council (KCC);

b) endorse the progression of plans to deliver against the range of required activity detailed in section 2 of the report; and

c) note that various service level and portfolio-specific Executive decisions may be required to implement subsequent policy changes.

d) delegate authority to the Corporate Director of Finance, in consultation with the Leader, the Deputy Leader and Cabinet Member for Education & Skills to resolve any minor technical issues to the text, which do not materially alter the substance of the agreement; and,

e) delegate authority to the Corporate Director for Finance, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, to take relevant actions, including but not limited to entering into contracts and other legal agreements, as necessary to implement the decision.

Reason(s) for decision:

The recovery of the DSG deficit is fundamental to ensuring continued support is available to meet the needs of children and young people and ensure the best possible outcomes for all are successfully achieved.

Funding has not kept pace with the rise in demand and two thirds of local authorities have deficits in their DSG grant budget as a result of High Needs cost pressures. By the end of 2020/2021 the national deficit was estimated to be over £1 billion (and continues to grow). The rights of parents and carers to request the consideration of an EHC assessment in the first place and to name a specific school or provision if an EHCP is granted have also driven the rapid and unsustainable rise in demand and cost. The table below shows EHCP numbers in state-funded nursery, primary, secondary and special schools, non-maintained special schools, pupil referral units and independent schools . Compared with the national average, Kent’s figures have risen by more in terms of both absolute numbers and as a proportion of all pupils.

In response to this, DfE is negotiating with 35 Local Authorities with the highest DSG deficits, termed the Safety Valve programme. The programme is voluntary and involves DfE providing funding to part or fully extinguish the cumulative debt arising from existing and forecast overspends on High Needs Funding. This involves local authorities reforming their local High Needs systems so that they are on a more sustainable footing and better placed to respond to pupils' needs. This requires ensuring that in-year spend is in line with in-year grant funding over a time period, generally of not more than five years.

Appropriate Executive decision-making was required to formalise the Safety Valve arrangements, including relevant policy commitments to secure the relevant funding. Full details are set out in the associated decision report.

Financial Implications

The Council cannot subsidise activity funded from the DSG High Needs Funding stream without the explicit permission of the Secretary of State. Therefore, there is a pressing need to ensure that spend is brought within the grant funding made available.

Currently there is something in place called a "statutory override", which means that SEND/High Needs deficits are ring fenced away from core Council budgets and do not have to be cash backed. This override remains in place for the next three years (but is not guaranteed beyond that). Once agreed, it will be prudent to build into financial plans contributions from reserves (or from other sources) to meet the Council's contribution throughout the period to 2027/28.

If the Council chose not to accept the Safety Valve proposal it would still need to fund the whole of the cumulative High Needs spending deficit at some point in time. This would either be through large scale reductions in High Need services funded from DSG, which would not be in the best interests of children or the wider sustainability of the SEND system (and probably would not be feasible), or through reductions in General Fund spend to pay for the whole deficit. As the cumulative deficit would likely consume nearly all Council reserves, this would lead to a Section 114 notice being issued. Under the Local Government Finance Act 1988, this is where the Chief Finance Officer makes a report where expenditure in a financial year is likely to exceed the resources available, leading to no new expenditure being permitted, with the exception of that funding statutory services.

Legal implications

If KCC enters into the Agreement with the DfE, there are various stipulations and conditions and these are summarised in para 2.6 of the associated decision report.

Equalities implications

At this stage, the general principles of entering into the Agreement do not represent identifiable equality implications. However, the impact of the implementation of any of the actions highlighted in section 2 of the report may have equalities considerations for children and young people with disabilities. These will be assessed in detail as part of normal decision-making processes in relation to any required policy or service changes.

Cabinet Committee recommendations and other consultation:

The proposed decision was not considered by Cabinet Committee.

Any alternatives considered and rejected:

KCC could have chosen to not engage with the Safety Valve arrangements or rejected the required policy commitments at this stage of the process. However, this would have placed the Council under significant financial pressure.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer: None

7 March 2023

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date