

From: Rory Love, Cabinet Member for Education and Skills
Peter Oakford, Deputy Leader and Cabinet Member for Finance,
Corporate and Traded Services
Sue Chandler, Cabinet Member for Integrated Children's Services
Sarah Hammond, Corporate Director Children Young People & Education
Zena Cooke, Corporate Director - Finance

To: Cabinet, 7 March 2023

Subject: Decision 23/00012 - Department For Education Safety Valve Funding Proposal

Classification: Public

Electoral Division: All

Summary: The report sets out the proposal from the Department for Education (DfE) to part extinguish the cumulative debt arising from existing and forecast overspends on High Needs Funding for services to children and young people with Special Education Needs and Disabilities (SEND). The report also sets out the requirements the Council must meet to receive this funding.

Recommendation: Cabinet is asked 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.

1. Introduction

1.1 This report sets out a proposal from the DfE to write off part of the forecast cumulative deficit (by 2027/28) on grant funded services to children and young people with SEND. DfE will also contribute towards implementation costs. In return, the Council will need to identify funding to cover the residual deficit and agree to make significant changes to local High Needs systems so that they are on a more sustainable financial footing and better placed to respond to pupils' needs.

1.2 The underpinning financial analysis is attached as an exempt annex, as the agreement remains subject to ratification by the Secretary of State and DfE has specifically asked for no pro active communications until the agreement is published by them.

2. The Safety Valve

2.1 The Dedicated Schools Grant (DSG) is a ring-fenced grant which local authorities receive and manage, which is split into four blocks: schools, High Needs, early years, and central school services. The majority of the grant is paid directly to schools and other settings to provide education services. The High Needs block primarily funds services to pupils with SEND. The DSG conditions of grant require that any local authority with an overall deficit on its DSG account at the end of the financial year, must present a plan to DfE for managing their future DSG spend.

2.2 The Children and Families Act 2014 brought in reforms aimed to link support for children and young people with SEND aged 0-25 across education, health care, and social care. This was clearest in the introduction of Education, Health, and Care Plans (EHCP), which replaced the previous system of 'statements' of SEN. Separately, changes were also made to funding for schools with pupils with 'High Needs', through a national funding formula.

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 schools¹. 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.

		2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Kent	EHC plans/Statements of SEN	7,136	7,335	7,860	8,726	9,861	11,073	12,698
	EHC plans/Statements of SEN (%)	2.9%	3.0%	3.1%	3.4%	3.8%	4.2%	4.8%
	All pupils	243,708	247,704	250,574	253,826	257,807	260,824	265,806
England	EHC plans/Statements of SEN	236,806	242,184	253,679	271,165	294,758	325,618	355,566
	EHC plans/Statements of SEN (%)	2.8%	2.8%	2.9%	3.1%	3.3%	3.7%	4.0%
	All pupils	8,559,540	8,669,080	8,735,098	8,819,289	8,890,345	8,911,887	9,000,031

2.3 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

¹ Note: this does not cover all EHCPs for which the Council is responsible (eg post 16 and out of county placements), but it does help provide a comparison of trends.

ensuring that in-year spend is in line with in-year grant funding over a time period, generally of not more than five years.

2.4 The pressure on Kent's High Needs Block arises mostly from the large increases in the use of specialist provision and the cost of individual packages of top-up funding for children with SEN, in both mainstream and special schools. Those increases have also been fuelled by an exponential increase in applications for EHCPs, particularly from parents, driven by a lack of confidence that their child's need will be met without an EHCP and additional support in their local school, a trend accelerated by the impact of two years of Covid. The SEND Written Statement of Action developed in response to the Local Area OFSTED inspection in 2019 also identified key priorities in supporting a more consistent inclusion offer in mainstream schools, ensuring more children with SEND are supported in their local mainstream and special schools, so that both align more closely with national averages. The successful implementation of this strategy has been limited to date.

2.5 KCC was invited to join the Safety Valve programme in April 2022 and there has been a series of meetings with DfE's SEND and financial advisers, designed to ensure that a robust plan is produced that delivers effective SEND services to children and young people, whilst also ensuring that overall spend is brought into line with available grant funding. Proposed changes to the delivery of services are consistent with the Green Paper on the SEND and alternative provision (AP) system in England. Changes are also consistent with the recent Written Statement of Action revisit and the Accelerated Progress Plan required by the DfE. 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.

2.6 There are a range of activities that the Council will need to put in place to ensure that appropriate provision is available as part of the agreement with DfE:

- Implement a countywide approach to 'Inclusion Education', to further build capacity in mainstream schools to support children and young people with SEN, thus increasing the proportion of children successfully supported in mainstream education and reducing dependence on specialist provision;
- Introduce a robust SEN offer for early years, through a review, which explores alternatives to special school admission before KS2, SEN redesign and implementation of County Approaches to Inclusive Education (CATIE)² to support a consistent mainstream offer, including leadership development programmes, peer review and core training offer;
- Review the system of EHCP assessments and annual reviews to ensure robustness, transparency, and consistency, through use of consistent criteria and practice framework;
- Implement models of reintegration of children from special/independent schools to mainstream;

² Cabinet considered the CATIE at its meeting in July 2022

- Develop a robust post 16 offer across the county with clear pathways to independence for children with SEN, through increased post 16 opportunities for preparing for adulthood;
- Develop the Transition Charter to increase parental confidence in Kent's provision. This involves working with schools to enable them to articulate the provision pathways for parents clearly and provide support to both children and parents at key transition points;
- Ensure there is sufficient and consistent capacity across the county to support children with severe and complex needs in their local area where possible. This includes recruitment of temporary posts to support sufficiency planning, reviewing the use of SRPs and reviewing the specialist continuum to ensure only the most severe and complex needs are supported in special schools;
- Increase school accountability through development of a school/area-led approach to commissioning of SEN support services (Locality Based Resources), to better respond to the needs of children and young people with SEND;
- Continue working closely with NHS Kent and Medway to ensure a common understanding of SEND needs, including the drivers behind increases in need, ensuring clarity of clinical assessment and the subsequent funding associated.

2.7 It should be noted that some of the above is linked to developments in sufficiency and capacity of provision in the local area through use of High Needs Capital. There is a separate, but linked, process for considering additional capital allocation bids via the Safety Valve route. The Council applied for funding for three new Special Free Schools and was successful for the Swanley and Whitstable areas, but unsuccessful in an application for a special school in Sheppey. Further detail from DfE is expected in due course.

2.8 Detailed implementation of some of the activities highlighted above may require changes to current policy, in line with broader transformation plans for SEND services. In these circumstances specific decisions will be progressed through the relevant Executive governance processes, ensuring that any decisions are consistent with the Government's approach to SEND outlined in the recent Green Paper and with broader activity being undertaken within the Council as a result of the Written Statement of Action revisit and other factors. In addition, the Council will work closely with the Schools Funding Forum to secure the long term sustainability of the DSG and to avoid any further intervention from the DfE.

2.9 In terms of governance, the programme of work will be overseen at officer level by a SEND Transformation Strategic Board (chaired by the Corporate Director - Children, Young People and Education) that will have oversight of three Operational boards. There is also a Partnership board to ensure collaboration and engagement throughout the Countywide system. Reporting to Members will be through quarterly financial monitoring (in terms of whether the Safety Valve activities are on track to trigger payments from DfE) and performance monitoring (in terms of key metrics such as EHCP numbers), as well as forming part of broader SEND transformation activity

considered by the Strategic Delivery Board. As above, policy and significant service changes will be subject to normal Member engagement, committee consideration and potential for Scrutiny activity.

3. Financial Implications

3.1 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.

3.2 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.

3.3 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.

4. 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 above.

5. 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.

6. Governance

6.1 Various policy changes may be required to deliver against the actions listed in section 2 of the report. These policy changes or significant service reviews will necessitate Executive decisions, in accordance with the governance requirements set out in the Constitution. While the decision does not authorise substantive policy

or service change at this time, it does represent a commitment to the policy direction required to support the activities outlined in section 2.6 of this report, which are requirements to remain compliant with the Safety Valve agreement. The delegations set out in the decision relate to the technical processes involved in entering into the agreement, as well as providing relevant updates to Government as required as part of the agreement.

Appendices:

- Financial overview – Exempt and Confidential

7. Background Documents

The Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2020 (SI 2020 No 1212)

<https://www.legislation.gov.uk/uksi/2020/1212/regulation/2/made>

This explains the “statutory override” currently in place, whereby Local Authorities do not have to provide cash backed reserves to offset DSG deficits.

DSG: conditions of grant 2022 to 2023

<https://www.gov.uk/government/publications/dedicated-schools-grant-dsg-2022-to-2023/dsg-conditions-of-grant-2022-to-2023>

These explain how the dedicated Schools Grant must be used and contains (at 5.2) further conditions relating to DSG overspends and deficits.

8. Contact details

Report Author:

John Betts

Finance Consultant

03000 410066

john.betts@kent.gov.uk

Relevant Director:

Zena Cooke

Corporate Director - Finance

03000416854

zena.cooke@kent.gov.uk