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To: Scrutiny Committee – 24 April 2024

Subject: Safety Valve Implications for the Cost of Adult Social Care

Classification: Unrestricted

Summary: To provide a report which quantifies and costs the short, medium, and long-term impact of the Safety Valve agreement with regards to costs incurred by adult social care, and the council's overall financial stability and provide assurance that decisions made in one part of the council take account of people's outcomes over their lifetime, any adverse financial impact on other directorates and the council's overall financial stability.

Recommendation(s): Scrutiny Committee is asked to **DISCUSS** and **NOTE** the content of the report.

1. Introduction

- 1.1 Following a member Scrutiny item request, it was determined that the Committee would receive a paper which quantifies and costs the short, medium, and long term impact of safety valve with regards to costs incurred by adult social care, and the council's overall financial stability. This should consider the impact over the person's lifespan and make appropriate recommendations considering the findings.
- 1.2 The paper also seeks to provide assurance that decisions made in one part of the council (education) take account of people's outcomes over their lifetime, any adverse financial impact on other directorates (adult social care), and the council's overall financial stability.
- 1.3 This report enables Scrutiny Committee to understand and question the following areas:
 - Do savings in one directorate (education), drive cost pressures in another (adult social care)?
 - Does a reduction in funding in early years lead to the council incurring greater costs over the person's lifetime?
 - What are the people and financial risks of safety valve and the significant reductions in Education Health and Care Plan (EHCP) forecast as information presented indicates a 5,000-person reduction in forecast?
 - Does the Equality Impact Assessment for the Safety Valve decision account for the findings of the paper with due regard for short, medium, and long-term impact?

- Research and evidence that sets out where specialist EHCP intervention is an enabler to people's longer-term outcomes, as a means of offsetting adverse outcomes and understanding the long-term impact of investment in a young person's life.

2. Extract from Key Decision recorded on 7 March 2023

- 2.1 On 7 March 2023 Cabinet took a Key Decision which enabled the council to enter into the "Safety Valve" agreement with the Department for Education (DfE), enabling Kent County Council (KCC) to receive additional external funding over a five year period to substantially fund the accumulated deficit on the Dedicated Schools Grant (DSG) High Needs Block (HNB). The agreement required the council to commit to areas of review and improvement identified by the Department for Education (DfE) to bring in year spend in line with the in-year budget by 2027/2028. A financial contribution from the council was also expected to cover residual deficit.
- 2.2 At the time of this Key Decision, it was noted that the council was spending significantly more on this area than it received in grant. The cumulative HNB revenue deficit was predicted to be £147m by the end of this financial year and was predicted to continue to grow. Cabinet was advised that the council cannot subsidise activity funded from the DSG High Needs Funding stream without the explicit permission of the Secretary of State. Therefore, there was a pressing need to ensure that spend was brought within the grant funding made available.
- 2.3 The DfE invited the council to be part of the Safety Valve programme which involves substantial funding from DfE, in return for improvements in local systems providing support for children and young people with special educational needs and disabilities (SEND), which also ensure that spend comes into balance with the grant.
- 2.4 The Safety Valve programme is voluntary and involves DfE providing funding to partly extinguish the cumulative debt arising from existing and forecast overspends on High Needs Funding. The programme required the council to review its local High Needs systems so that it is on a more sustainable footing and better placed to respond to pupils' needs. This required the council to ensure that in-year spend is in line with in-year grant funding within a five year period.
- 2.5 On the basis that Safety Valve is voluntary it was noted that the council could reject the invite and opportunity to receive Safety Valve funding, but this would place the council at significant short and medium term financial risk. This would require substantial service review activity to manage the funding situation to eliminate the deficit, without additional government assistance, with the potential for negative impact on all areas of children's service delivery.
- 2.6 The Key Decision recorded by Cabinet was aligned with the strategic priority "**Securing Kent's Future**" as it would primarily support Priority 4: New Models of Care and Support, around the commitment to making rapid and sustained

improvements in the support provided to children with Special Educational Needs and Disabilities (SEND) and their families.

3. Do savings in one Directorate (education), drive cost pressures in another (adult social care)?

- 3.1 The Key Decision to enter into the SEND “Safety Valve” agreement with the Department for Education (DfE) enables the council to write off part of the forecast cumulative deficit (by 2027/2028) on grant funded services to children and young people with SEND. At the time of entering the agreement the forecast deficit was £222m for Kent County Council by 2027/2028, even after the council had put in place mitigating actions.
- 3.2 Through the implementation of “Safety Valve” the DfE has committed funding to the value of £140m (alongside £2m of implementation costs). This funding was predicated on the council identifying and committing funding to cover the residual deficit (up to £82m) and agreeing to make changes to local High Needs system so that it is on a more sustainable financial footing and better placed to respond to pupils’ needs. Without this agreement the DfE would not have released the funding.
- 3.3 There have been no policy changes as a result of the Safety Valve agreement that have required a Key Decision. The primary focus has been on ensuring that existing systems and processes are more effective at meeting need within the resources made available by central government. Those changes are summarised in para 4.9. Therefore, there is no evidence to suggest that the activity here has driven costs up in adult social care.

4. Does a reduction in funding in early years lead to the council incurring greater costs over the person’s lifetime and what are the people and financial risks of safety valve and the significant reductions in EHCP forecast as information presented indicates a 5,000-person reduction in forecast?

- 4.1 At the time of writing this report it is not possible to project short, medium, and long term implications of Safety Valve on the lifetime costs of individuals to Kent County Council.
- 4.2 However, when the current deficit on HNB spend is considered within the context of the council’s current overall financial situation. It can be reasonably argued that had Cabinet rejected the opportunity to take part in the “Safety Valve” programme the council would be significantly challenged in how it delivered a legally balanced budget in the short, medium term, and long term. This would likely place the council at significant increased risk of issuing a section 114 notice.
- 4.3 Government reforms to SEND are aimed at ensuring that children and young people are better prepared for adulthood. Nationally the majority of young people with EHCPs complete further education with their peers by age 19, and it remains the expectation of the government that this trend will continue.

- 4.4 The government recognises that some young people with SEND need longer to complete and consolidate their education and training. All young people should be supported to exercise choice and control over their lives, including the four 'preparing for adulthood' outcomes:
- moving into paid employment and higher education
 - independent living
 - having friends and relationships and being part of their communities
 - being as healthy as possible
- 4.5 In line with preparing young people for adulthood, a local authority must not cease an EHCP simply because a young person is aged 19 or over. However, this position does not mean that there is an automatic entitlement to continued support at age 19 or an expectation that those with an EHCP should all remain in education until age 25. A local authority may cease a plan for a 19 to 25 year-old if it decides that it is no longer necessary for the EHCP to be maintained.
- 4.6 Section 45 of the Children and Families Act sets out the circumstances where a local authority may cease to maintain an EHCP. This is when the local authority is no longer responsible for the young person, or they decide that it's no longer necessary to maintain the plan (for example if special educational provision is no longer necessary). When determining whether a young person aged over 18 no longer requires a plan, a local authority must consider whether the educational or training outcomes specified in the plan have been achieved.
- 4.7 The council's agreed changes to the delivery of services are consistent with the Green Paper on SEND and alternative provision (AP) system in England. Changes are also consistent with the Written Statement of Action revisit and the Accelerated Progress Plan required by the DfE.
- 4.8 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. Without the agreement, £222m of cuts to SEND services would be required, which would have additional detrimental impact on all areas of children's service delivery. It would be reasonable to assume that this level of funding cuts would have additional adverse impact on young people outcomes and could adversely impact the lifetime costs of Kent County Council. The Safety Valve does not imply a reduction in the number of EHCPs by 5,000. The number of EHCPs continues to increase, but at a decelerating rate. All children eligible for an EHCP will continue to receive one.

4.9 The activities the council needs to put in place to ensure that appropriate provision is available, as part of the agreement with the DfE, are as follows:

- 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 (CAIIE) 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.
- 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.

4.10 As is clear from the list, the vast majority of changes are about improving existing systems and processes to ensure that appropriate SEND services continue to be delivered within the funding provided by central government. If changes to current policy, in line with broader transformation plans for SEND services are required, these would 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.

5. Does the equality and impact assessment account for the findings of the paper with due regard for short, medium and long term impact?

- 5.1 Equality Impact Assessments (EQIA) provide an evidence-based approach designed to help organisations ensure that their policies, practices, events, and decision-making processes are fair and do not present barriers to participation or disadvantage any protected groups from participation.
- 5.2 When undertaking this important and necessary consideration of equality impact the Children, Young People and Education Directorate and the Adult Social Care and Health Directorate will use this framework to set out how they have considered and taken action to identify and mitigate where possible, any adverse impact on individuals with protected characteristics. This approach ensures that the focus on equality of access, experience, and outcomes remains central to any decision making.
- 5.3 It should be noted that when undertaking the initial EQIA it will focus on any impacts that can be reasonably predicted at the time of developing proposals and at the point when the decision is made, with the EQIA being updated throughout the decision-making process.
- 5.4 The original report to Cabinet on 7 March 2023, said the following: “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”. As and when any specific service changes, savings or spend proposals are developed, appropriate EQIA work will be undertaken in line with normal procedures – for any substantive Key Decisions, these will form part of the published documentation.

6. Research and evidence that sets out where specialist EHCP intervention is an enabler to people’s longer-term outcomes, as a means of offsetting adverse outcomes and understanding the long-term impact of investment in a young person’s life.

- 6.1 Discussions have commenced with representatives from the Adult Social Care Kent Academy about how best to respond to this point. The network includes a researcher who has reached out through her own network to understand what research has or is currently being undertaken in this area. It is likely that any new research will require dedicated resource and input from academic institutions.
- 6.2 Any research undertaken in this area will also need to align with the government’s SEND reforms, Securing Kent’s Future, and other key strategic plans such as the Making a Difference Everyday Strategy for adult social care.

7. Alignment with the strategic vision and values for adult social care

7.1 The approach that is set out across the SEND reforms and improvement actions agreed between the council and the DfE, (and outlined in para 4.9) align well with the co-produced strategic vision for adult social care “Making a Difference Every Day”, which is an approach underpinned by the fundamental principles of:

- Strengths and place-based approaches to adult social care.
- Choice and Control, which places people at the heart of all decisions about them.
- Providing support to people in a manner that supports them to live the life they choose, by promoting the principles of supporting people in a place they call home, surrounded by the people and things they love.

8. Recommendations

8.1 Recommendation: Scrutiny Committee is asked to **DISCUSS** and **NOTE** the content of the report.