

From: John Betts Interim Corporate Director - Finance  
To: Scrutiny Committee, 29 January 2025  
Subject: Safety Valve Programme  
Classification: Unrestricted

**Summary:**

The report outlines the reasons for the Safety Valve Programme, so that the committee can better understand the requirements of the Agreement and the progress being made within the programme. It also provides some commentary on potential implications, should the Authority not meet its targets.

**Recommendations:**

The Scrutiny committee is asked to comment on and note the report.

**National Context**

1. The National Audit Office has also recently identified the considerable financial pressures facing Local Authorities in the SEND system<sup>1</sup>, identifying that the government needs to think urgently about how its current investment can be better spent, including through more inclusive education, identifying and addressing needs earlier, and developing a whole-system approach to help achieve its objectives. Through the Delivering Better Value scheme, Department for Education<sup>2</sup> have identified that strengthening accountability for more mainstream schools to be inclusive, ensuring that special schools cater for those with the most complex needs and reducing reliance on independent or non-maintained special schools (where 80% of young people were found to be not receiving the most effective support) would lead to a better, more sustainable system.
2. Ahead of any national initiatives, Kent CC needs to work within the resources available to it, or else go bankrupt or rely on a council tax increase in excess of 25% to fully fund the predicted overspend on High Needs Block services. The Safety Valve programme provides a way of mitigating the impact of the overspend.

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<sup>1</sup> <https://www.nao.org.uk/reports/support-for-children-and-young-people-with-special-educational-needs/>

<sup>2</sup> <https://www.dbvinsend.com/insights>

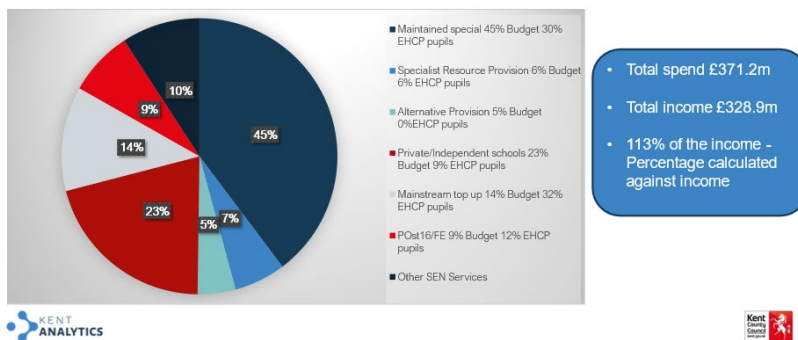
## Drivers of Spend

- The demand for specialist SEND provision has risen significantly, placing substantial pressure on the system, nationally and locally. In Kent, the number of pupils in independent and non-maintained special school placements has grown from 240 in 2006 to over 1,600, with associated costs now reaching £80 million.
- Kent now has the highest proportion of pupils aged 2-18 in special schools among all shire counties. Both the number of placements and the associated expenditure have increased significantly over the last five years, with spending on these provisions nearly doubling since 2018/19.

## Current Spending Patterns

- The vast majority of High Needs funding in Kent goes to maintained special schools and into mainstream top-ups. One way to shift the resources considerably would be if more pupils who are currently being placed in private / independent schools could in future be taken by our maintained special schools. To create the necessary capacity, more inclusion in mainstream schools is needed for pupils who do not have the most complex needs. However, as the situation below shows, currently spend considerably outweighs the income available from the High Needs Block element of the Dedicated Schools Grant. In this case (2023/24 budget), actual spend was 13% greater than the grant – a forecast in-year overspend of £42m. There is no other area of the Council where spend is greater than the grant received for those services in these proportionate terms. It is not a sustainable position, either financially or in terms of service provision.

### Item 2: High Needs Funding Budget Spend 2023-24



- The primary reason for spend being in excess of the grant received is that the levels of spending in Kent are above the England, statistical neighbour, and South east averages, both in terms of place and top up funding<sup>3</sup> The table below demonstrates this:

<sup>3</sup> Department of Education SENFD benchmarking tool  
<https://www.gov.uk/government/publications/high-needs-benchmarking-tool>

**High needs budget amounts per head of 2 to 18 population (2022/23 budgets)**

	Kent	England	10 closest statistical neighbours	South East
Total place funding for special schools and AP/PRUs	£174	£149	£151	£142
Top up funding (maintained schools, academies, free schools and colleges)	£423	£357	£296	£329
Top up funding (non-maintained and independent schools and colleges)	£242	£160	£137	£222
SEN support and inclusion services	£66	£64	£73	£63
Alternative provision services	£33	£18	£13	£16
Hospital education services	£1	£5	£3	£3
Therapies and other health related services	£12	£5	£3	£11

7. This has led to a situation whereby spend has been in excess of the grant available from central Government to pay for SEND services. The unmitigated financial position, which would have reflected the position if no action had been taken and trends had continued, was a forecast overall deficit of c£600m. Even after taking into account all possible mitigating actions, the forecast deficit on the High Needs block was as follows (at the time of agreeing to enter into the Safety Valve programme):

**Table 2: Mitigated Cumulative Forecast Deficit (at the time of the Safety Valve Agreement**

	22-23	23-24	24-25	25-26	26-27	27-28
	£149.7m	£189.1m	£216.5m	£233.2m	£234.1m	£222.6m

9. Hence the need to seek additional funding from Department for Education and an ongoing requirement to improve financial control of the High Needs Block Budget.

**Statutory Override**

10. There is currently in place a “Statutory Override”, which keeps the High Needs Block cumulative deficit off the balance sheet of the Local Authority. This override is currently due to end in March 2026. Like most Local Authorities, if the override comes off in March 2026 (and the cumulative deficit crystallises on the balance sheet) it is most likely that the County Council would have to consider a Section 114 notice<sup>4</sup>, as it is unlikely that it could completely fund the deficit from its existing reserves. Local government is generally lobbying for a further extension to the statutory override to avoid this situation. However, a particular accounting treatment to keep the deficit off the balance sheet is not, of itself, a sustainable solution. As noted above, that requires systemic change.

<sup>4</sup> A “Section 114 notice” is a report indicating that the authority is about to incur expenditure that is unlawful according to the Local Government Finance Act 1988, primarily because it is expected that expenditure will exceed their income for a particular financial year.

11. It is disappointing that in the recent provisional local government financial settlement there was little indication of how this would be resolved. The settlement did reference the Government's intentions to set out plans next year for reforms to the SEND system, which will include how the Government will support Authorities to deal with historic and accruing deficits, which in turn will inform any future decision on the override. However, there was no detail and that presents a considerable obstacle to providing any medium-term assurance on both the Council's ongoing financial viability and the future delivery of SEND services.

## **Safety Valve**

12. 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), and which also ensure that spend comes into balance with the grant.
13. On 7 March 2023 Cabinet took a Key Decision that enabled the Council to enter into the "Safety Valve" agreement with the Department for Education (DfE), with Kent County Council (KCC) receiving additional funding over a 5-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 to bring in-year spend in line with the in-year funding available by 2027/2028. A financial contribution from the Council was also expected to cover the residual deficit. The amount offered to Kent (£140m) was the largest in the country.
14. On the basis that Safety Valve is voluntary it was noted that the Council could have rejected the opportunity to receive Safety Valve funding, but this would have placed the Council with a significant short and medium-term financial risk. It would also have required substantial service reviews to reduce or close services to eliminate the deficit, without additional government assistance. This would have had a negative impact on all areas of SEND services.
15. The executive 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.
16. KCC's entry into Safety Valve brings an additional £140 million into the Kent SEND system. Without the Safety Valve agreement, there would need to be £220m of savings made from the SEND system. This is because Kent is currently spending more on the SEND system than the resources received for SEND services via the Dedicated Schools Grant. The Authority has a responsibility to function within the

resources available. To go outside of these boundaries requires the approval of the Secretary of State, hence the Safety Valve agreement<sup>5</sup>.

17. Critics of Kent's Safety Valve agreement would need to identify which areas would be cut to meet this cumulative overspend of £220 million. If Kent CC was not in the Safety Valve programme then there would need to be either £220m of cost reductions made to SEND provision or (with the agreement of the Secretary of State) a council tax increase in excess of 25% to fund the deficit.
18. Access to the Safety Valve funding is dependent on the development of a more financially sustainable system over five years. It does this by focusing on the following areas:
  - 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 (CAIE) 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;

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<sup>5</sup> ESFA Schools operational guide: 2024 to 2025 Section 32  
<https://www.gov.uk/government/publications/pre-16-schools-funding-local-authority-guidance-for-2024-to-2025/schools-operational-guide-2024-to-2025#DSG-deficits-and-high-needs-exceptional-funding>

- 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.

### Progress to Date

19. The original plan, including proposed contributions from the DfE and the LA contributions are all laid out in the table below. As can be seen, there continues to be an in-year deficit right until 2027/28. That is, in-year spend by schools and in the independent sector continues to outstrip resources made available by central Government, until then. The cumulative deficit is minimised by both the DfE contributions (which consist of £140m to part pay off the cumulative deficit and £2m for the costs of administering the programme) and LA contributions. Without these, the Local Authority would be £220m in debt by 2027/28, which would inevitably have led to a Section 114 notice being issued.

**Table 3: Original Safety Valve Plan, With Impact of 2022/23 Outturn, Including DfE and Local Authority contributions**

	<b>Outturn 22-23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28</b>	
	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>Totals</b>
Cumulative DSG deficit	-97.6	-61.4	-72.7	-77.2	-71	-49.5	
In year DSG deficit (before DfE / LA contribution)	-37.5	-39.9	-33.8	-22.6	-3.8	10.9	
DfE contribution	56.8	14.2	14.2	14.2	14.2	28.3	141.9
LA contribution	17.0	14.4	15.1	14.6	11.1	10.1	82.3
<b>Cumulative DSG deficit - carry forward</b>	<b>-61.3</b>	<b>-72.7</b>	<b>-77.2</b>	<b>-71.0</b>	<b>-49.5</b>	<b>-0.2</b>	

20. Financial progress on the Safety Valve is reported as part of the usual quarterly financial monitoring to Cabinet. The Council was ahead of its cumulative target for both 2022/23 and 2023/24. However, the latest forecast has indicated that the in-year overspend for 2024/25 will result in the SEND system being c£10m short of the planned cumulative deficit position as of March 2025. The Authority expects to be able to recover this as a result of additional actions being taken (see the following section).
21. The implementation of new funding models for schools has been more challenging than assumed in the original safety valve assumptions, which has led to delays against the original timescales. In addition, schools have consistently told us there is a high level of demand and increasing levels of support required for SEN in mainstream schools leading to Mainstream schools identifying significant numbers of children whose costs of support are greater than £6k of additional support.

22. The forecast number of children in independent schools is approximately the same as forecast under the original safety valve plan. However, the higher average cost for independent school placements has added further pressure. Due to continual high inflation and increased costs via the national living wage, we have had to provide 1% higher increases to our state-funded settings (schools & post 16) than originally expected in the plan has added further pressure.
23. The plan also assumed 2 of the 3 new special schools applied for would begin a phased opening (on the basis of an accelerated programme). However, it is now unlikely these schools will be opened until September 2027 (at the earliest), This is something outside the jurisdiction of this authority. The building programmes are led by DfE. This results in a residual accumulated deficit of £23m by March 2028 (after safety valve contributions), because there is less scope to place pupils in local special schools, rather than more expensive independent placements.

### **Actions to Improve Financial Performance**

24. For this financial year DfE has continued to make all its payments towards the cumulative deficit. The Council has received over £85m to date to partly write off the deficit. If it had not received this, then vital SEND services would have had to be cut by an equal amount.
25. The Council is confident it has in place actions that will reverse the £10m under performance. For example, there are better moderating processes involving a review of recommendations to proceed with an EHC needs assessment now in place, that also involve an Assessment Manager and Senior Education Psychologist. Where both the decision to Assess and Issue was made post Decision-Making changes, the data is beginning to show an increase in the proportion placed in mainstream and decrease in the proportion placed in maintained special, independent and other placements, whilst still meeting need. There are developments in Post 16 provision for young people in expensive provision far from home, planning for their return to their community and transition into education or employment.
26. The new SEN funding model for schools should also help by devolving some decision making to a local level, so that Headteachers and professionals are empowered to make evidence-based decisions about the best use of High Needs money in collaboration with peers. This is the “communities of schools” funding, Alongside this, the proposed SEN Funding Model will bring together the different funding arrangements for top-up funding for mainstream, SRP and special into one funding system. The same tariff structure will be used to inform the funding allocations for children with an EHCP attending special schools and SRPs; and identify the relevant funding stream for pupils in mainstream schools.

### **Implications if Financial Performance Deteriorates**

27. Without the Department for Education Safety Valve funding, there would be one of three possible outcomes:

- A request to the Secretary of State for permission to raise council tax by 25% to raise the money necessary to fund the cumulative deficit of £220m
- The issuing of a Section 114 notice as the Council wouldn't have the reserves necessary to fund the cumulative deficit, should it continue
- Reductions in SEND services of £220m to repay the cumulative deficit, which would be catastrophic for those children and young people with SEND most indeed of services and support

28. To have gone down any one of these routes would have been reckless.
29. Currently, the national Safety Valve programme has been frozen, with no new Authorities invited in this financial year. However, DfE has indicated that existing agreements will remain in place and be honoured. Despite missing the in-year target for 2024/25, Kent CC has continued to receive all Safety Valve payments for this financial year, obviating the need to make £14m of cuts in this year alone.
30. The local government provisional financial settlement highlighted the Government's intentions to set out plans next year for reforms to the SEND system, which will include how they intend to support authorities to deal with historic and accruing deficits. Until the Council receives greater clarity from central Government, it is difficult to predict with any degree of certainty what will happen next. However, it is highly unlikely that the Government will be able to afford to simply write off all existing High Needs deficits, as that is currently estimated to be c£4bn nationally. There has been an uplift in funding announced for 2025/26 for High Needs (Kent receiving 7% increase), but that is currently a one-off increase.
31. So, the only credible course of action is to continue with the current plan, which is to ensure spend is in line with grant by 2027/28.

## Conclusions

- There is a national challenge around how the SEND system works and part of this involves funding.
- Whilst Kent is not alone in facing a financial challenge around the local SEND system, it did, in recent years, overspend on its ring-fenced High Needs grant disproportionately more highly than other Authorities.
- Agreeing the highest Safety Valve deal in the country has meant that the Council has been able to avoid making cuts to SEND services (or raising council tax) to fund repayment of the historic accumulated deficit
- To date, the Council has received all Safety Valve payments planned for it – saving £85m.
- However, the Government's plans for the future reforms to the SEND system, including how Authorities will be supported in dealing with historic and accruing deficits, are not known.
- Until there is greater clarity at a national level, the Council needs to continue delivering on its Safety Valve agreement, to best protect those receiving SEND services as well as the local taxpayer.