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To: The Chair and Members
of the Cabinet

County Hall
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Date: 5 December 2023

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CABINET

Wednesday, 13th December, 2023

A meeting of the Cabinet is to be held on the above date at 10.30 am in the Committee Suite (DAW) - County Hall to consider the following matters.

Donna Manson
Chief Executive

A G E N D A

15 DfE Safety Valve Negotiations and Progress (Pages 1 - 6)

Joint Report of the Director of Children and Young People's Futures / Chief Executive and Director of Finance and Public Value updating on the progress of discussions with the DfE regarding the Safety Valve, attached.

Electoral Divisions(s): All Divisions

CS/23/23
Cabinet
13th December 2023

Update on progress to develop a High Needs Block Safety Valve proposal Joint Report of the Director of Finance & Public Value and Director of Children Futures

Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

1. Recommendation

That the Cabinet note the contents of this report, as an update on progress in reaching a Safety Valve agreement with the Department for Education.

2. Background / Introduction

2.1. School Funding is received through the Dedicated Schools Grant (DSG), and is split into four blocks:

- Schools Block – funds mainstream primary and secondary schools through the school formula, and growth funding for growing schools/bulge classes.
- High Needs Block – funds places in special schools, resource units and alternative provision, and top up funding for pupils with Education Health and Care Plans (EHCPs) in all settings.
- Early Years Block – funds nursery schools, nursery classes in mainstream schools, and early years settings in the private, voluntary and independent (PVI) sector through the free entitlement for 2, 3 & 4 year olds.
- Central Schools Services Block – funds services provided by the local authority centrally for all schools, such as the admissions service, and historic commitments, such as termination of employments costs.

2.2. Across the country many local authorities (LAs) have faced financial challenges in meeting the demand for Special Education Needs and Disabilities (SEND) within the High Needs Block of the DSG. In response, the Government introduced a statutory override in 2020 which separates local authorities' DSG deficits from their wider financial position. However, authorities are holding significant financial risk should this cease and the accumulated deficit need to be offset by reserves. The current arrangement ends in March 2026 and the future of the override is uncertain.

2.3. In parallel, the Department for Education (DfE) launched the Safety Valve Intervention programme in 2021, which targets support to the LAs with the highest

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DSG deficits and requires them to develop plans to reform their high needs systems and place them on a sustainable footing.

2.4. If LAs can demonstrate that their DSG management plans create financial sustainability - returning them to an in-year balance - and improved support for children and young people with SEND, the department will enter into an agreement with the authority, subject to Ministerial approval. LAs will be subject to regular monitoring and will receive incremental funding, if progress is being made, to contribute to their historic accumulated deficits over several years.

2.5. The County Council has been experiencing significant pressures on its SEND High Needs Block since 2019/20. The following table details the SEND funding available each year, the in-year pressures and the growth in accumulated deficit.

	2019/20	2020/21	2021/22	2022/23	2023/24 (Forecast)
	£'000	£'000	£'000	£'000	£'000
SEND funding	65,663	75,361	86,966	96,695	106,923
SEND Spend	85,385	104,587	124,497	135,603	144,071
In year overspend	19,722	29,226	37,531	38,908	37,148
Accumulated Deficit	19,772	48,998	86,529	125,437	162,585

2.6. In May 2023, the Authority was invited to re-join the Safety Valve programme. This paper, and accompanying slides, provides an update on the Authority's plans to reform its high needs system and bring the DSG deficit under control. Initial proposals will be presented to the DfE on the 15 December 2023.

3. Safety Valve Proposals

3.1. In Summer 2023, the Authority's DSG management and sustainability plans were revisited with the aim of providing robust details about how to manage high needs costs, reach an in-year balance, and improve service provision.

3.2. A fundamental part of the work has been detailed demographic analysis of SEND up to 2029-30 which reflects both the changing population but also Devon's SEND system. This has produced an 'unmitigated' forecast which suggests that, if we do nothing, Devon will see a growth from circa 9,000 Education Health and Care Plans (EHCPs) in 2024 to over 10,600 in 2030, with a projected 35% increase in the numbers of students who receive their education from the independent sector. All of which, puts significant and continued pressure on the High Needs Block.

3.3. The Authority has redeployed some of its project management resources to help build the Safety Valve work strands, which form part of the local area's SEND Transformation Programme. Some work strands are already being successfully delivered and others will be operational in the foreseeable future. The impact of these workstreams aim to 'mitigate' the projections identified in 3.2 and reach an in-

year balance, where the funding received from Government will fully cover the cost of the service.

3.4. The intended impact of these work strands can be summarised as;

- An annual slowing down and flattening of the net increase in EHCPS, to bring us in line with statistical neighbours and England averages.
- A sustained reduction in the use of costly independent specialist provision, with a total reduction in the number of learners accessing this provision of 30% from 2024 to 2030, some 361 places.
- A proportional year on year increase in the number of learners accessing their education in mainstream schools/resource base provision.

3.5. More detail on the proposals can be found in the accompanying slide pack.

4. Options / Alternatives

4.1. **Do nothing** – the impact of the current performance of the SEND system in Devon means that doing nothing will see a worsening financial position with significant financial sustainability challenges for the Local Authority.

4.2. **Proposal** – the proposals, as set out in the paper, will support the financial sustainability of the Local Authority and should secure Safety Valve support from the Government. Proposals will need to be constantly reviewed and other initiatives may be brought forward through continued review of performance and risk management.

5. Consultations / Representations / Technical Data

5.1. The Local Area SEND Partnership, which includes NHS Devon, and the Devon Education (Schools) Forum (DEF) have been kept up to date with the ongoing challenges being faced by the High Needs Block budget and with the solutions being developed as part of our DSG management plans.

5.2. New special schools that form a part of the management plan will be established as Academy Free schools through the DfE's free schools programme. A competitive process will take place to seek proposals from academy trusts to establish new schools. The successful academy trust sponsor will be required to undertake, under Section 10 of the Academies Act 2010, a statutory consultation in the pre-opening phase on whether to enter into a Funding Agreement with the Secretary of State to run the new school.

5.3. Proposals for new Resource Base provision will require a full consultation/significant change with decisions being made either at Cabinet, for maintained schools or the Region's Advisory Board for Academy and Free Schools.

6. Strategic Plan

6.1. One of the key focuses of the authority's Strategic Plan 2021-2025 is to create a 'Child Friendly Devon', where Devon is the best place to grow up. Specifically, one

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element of the Strategic Plan is to “ensure children and young people with special educational needs and disabilities achieve the best possible outcomes” (Devon County Council, 2021).

7. Financial Considerations

- 7.1. The key to achieving a positive outcome from the negotiations with the DfE and vital to the financial sustainability of the authority is developing a plan that results in services being delivered within the funding available and deliverable in a reasonable timeframe. If the DfE are assured that the plans are deliverable within the timescales proposed and will achieve the intended outcomes, then financial support towards the accumulated deficit is expected.
- 7.2. Each agreement reached between a Local Authority and the DfE has different dynamics and results in varying levels of support being made available. Discussions with the DfE have also indicated that any agreement reached in terms of participation in the Safety Valve programme will require a local contribution from the Authority to fund part of the accumulated deficit. This formed the rationale behind the recommendation within the Month 4 Budget monitoring report in September 2023 where Cabinet agreed that a Safety Valve Support reserve was created and a contribution to it of £10 million is made in year representing the first element of the local contribution.
- 7.3. The full extent of the contribution required by the authority will not be known until negotiations are concluded and will be reported to Cabinet in due course but is expected to be significant and span many years.
- 7.4. The following capital investment will help to achieve in year balance:
 - Investment of £18 million to increase the special school estate, including most recently new school provision in Okehampton (£11million) and additional provision in Barnstaple and Bideford, totalling circa £7million.
 - £6million to deliver the additional 200+ resource base places and successfully secure 2 additional Free Schools, including the purchase of land.
 - In addition, the authority has been invited to bid for additional high needs capital and is preparing a bid of c£14million from DfE to increase Further Education capacity and additional satellite (pre-16) provision in the west of the County. This is critical to the delivery of the financial savings and improve capacity to deliver at pace.

8. Legal Considerations

- 8.1 A number of proposals in the Safety Valve require statutory consultation as set out in the DfE’s [Making significant changes to an open academy](#) guidance for academy trusts and [Making significant changes ‘prescribed alterations’](#) guidance to maintained schools. If a proposal is made by Government a further report will be considered by Cabinet which will outline any legal considerations

9. Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

9.1. The County Council's Carbon Reduction Plan has set a target to become net-zero by 2030. Growth in the number of young people with an EHCP and lack of suitable local places has led to a significant increase in the number, and cost, of transport arrangements. This is impacting on the Council's carbon footprint with young people travel significant distances, often in an individual taxi. With children being educated more locally in their own community this will reduce the need to travel. By having shorter journeys to access education there is a greater likelihood that the switch to electric vehicles will be more viable.

10. Equality Considerations

10.1 At this stage, the general principles of preparing a case to negotiate with Government in relation to the Safety value offer do not represent identifiable equality implications. However, the impact of any offer 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.

10.2 Devon County Council has a statutory duty to provide sufficient education places. The proposals within the Safety Valve will provide additional special educational needs places to increase Devon's offer and enhance inclusivity in mainstream schools. 10.3 By increasing mainstream inclusion and local SEND places it is hoped that this will have a positive impact on learners and their families, supporting more children to attend a school closer to their local community, reducing journey times to school which can result in distress and disruption to family life. The new provisions are expected to improve opportunities for children ensuring earlier support and intervention and improved access to a full inclusive curriculum. The combined overall impacts are seen to be positive.

11. Risk Management Considerations

11.1 This proposal has been assessed and should be considered a high risk for the Council. Appropriate project and performance management, alongside clear governance arrangements, are in place and required for the duration of the programme.

11.2 A number of proposals are reliant on third party delivery, proposals for self-delivery should be explored to mitigate the risk of non-performance, in particular in the delivery of additional SEND provision.

11.3 Proposals in this paper have been supported across the local authority, with officers from other areas 'leaning in' to deliver successful outcomes. The sustainability of this

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support against continued pressures and financial constraints is a risk to the programme and will need to be managed and mitigated.

- 11.4 Proposals relating to the delivery of additional FE and satellite provision are reliant on a successful bid for high needs capital.

12. Summary

- 12.1. The authority has revisited its DSG management and sustainability plans and has developed a proposal to submit to the DfE, as part of the Safety Valve Programme, which will enable the Council to reach a positive in-year balance. If the DfE is assured that the plans proposed are deliverable within the timescales proposed, will result in intended outcomes and have the appropriate level of project management, Governance and resource support then financial support towards the accumulated deficit is expected to be agreed.

Angie Sinclair

Director of Finance & Public Value

Stuart Collins

Director of Children & Young People's Futures

Electoral Divisions: All

Cabinet Member for SEND Improvement: Councillor Lois Samuel

Cabinet Member for Finance: Councillor Phillip Twiss

Local Government Act 1972: List of background papers

Background Paper

Date

File Reference

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