

DFP/24/44
Cabinet
13th March 2024

Safety Valve Agreement

Joint Report of the Chief Executive, Director of Finance & Public Value and Director of Children and Young People's 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 approves that the Authority enters into the Safety Valve Agreement with the Department for Education as set out within this report.

2. Background / Introduction

In December Cabinet received a report on the authority's proposed submission to the Department for Education as part of the SEND Safety Valve Programme. The Authority received confirmation on 7th March after 4pm that the Minister has made an offer of the opportunity for the Council to enter into a Safety Valve Agreement with the Authority for a nine-year period on the terms set out within this report, (Communication of offer is attached as Appendix 1).

This is a significant achievement and opportunity for the Council that not only provides the framework for service improvement but also puts the Authority back onto a sustainable financial footing by ensuring services are delivered within the annual ring fenced grant for the High Needs Block and by reducing the cumulative SEND deficit to zero by the end of the term.

3. Safety Valve Proposals

- 3.1 The agreement between the Department for Education and the Authority covers nine financial years from 2023/24 to 2031/32, inclusive.
- 3.2 The Authority undertakes to reach a positive in-year balance on its Dedicated Schools Grant (DSG) account by the end of 2026/27 and in each subsequent year. In essence SEND services within the High Needs Block element of the Dedicated Schools Grant will cost no more in any year than the funding available from Government grant and any block transfer agreed.
- 3.3 The Authority agrees actions to:

- 3.3.1 Focus on improving early intervention through early identification, and strengthened universal and targeted support;
 - 3.3.2 Develop shared pathways into adulthood across the local system, supporting young people (14-25yrs) to access appropriate education and training and ensure a planned transition into employment, independent living, or identified next steps in adult life;
 - 3.3.3 Ensure, that as far as practicable, sufficiency of appropriate local provision is available to meet the needs of children and young people with SEND across Devon, including sufficient mainstream provision, special school places, Specialist Resource Provision and improved use of Alternative Provision;
 - 3.3.4 Improve processes and use of data to make informed decisions about how the council spends money to support children and young people with SEND in a timely way;
 - 3.3.5 Work with partners to improve the inclusive capacity of Devon's mainstream schools and settings by ensuring high quality Ordinarily Available Inclusive Provision (OAIP) is available consistently as part of a robust graduated approach. This work will be supported by four Locality SEND Advisory Teachers;
 - 3.3.6 Work with partners to improve the way services in Devon, including health services and schools, work together to provide seamless cross-service support for children and families.
- 3.4. The authority also agrees to ongoing monitoring of its performance in fulfilling this agreement. The authority will:
- 3.4.1. Report tri-annually (as a minimum) in writing to the Department (Funding Policy Unit) on its progress towards implementing the plan as per the conditions set out in paragraphs 2 and 3;
 - 3.4.2. The monitoring reports should include progress against the conditions of grant and a financial dashboard detailing various metrics relating to demand and cost. DfE will provide a template for this;
 - 3.4.3. Inform the Department (Funding Policy Unit) of any unforeseen difficulties or impacts of carrying out the agreement, or any significant risks to reaching the agreed financial position as soon as they arise;

3.4.4. Meet with the Department at any time when the Department deems it necessary to discuss progress towards the agreement.

3.5. The details of the financial implications of the agreement are set out in section 7 but in summary, the cumulative SEND deficit could reach £207 million at 31st March 2026 before it then stabilises. The DfE has agreed to contribute £95 million to this deficit with the remainder coming from various sources, including interest earned on the DfE contribution, within the authority as set out below:

	£million	£million
Possible Cumulative Deficit 31/03/2026		207
Financed by:		
Department for Education	95	
Devon County Council		
2023/24 - in year savings	10	
Revenue Budget £5m a year	40	
Ringfenced interest earned	29	
Earmarked Reserves	20	
Flexible Use of Capital Receipts	13	
		207
Cumulative Deficit 31/03/2032		0

3.6. The Budget approved in February included as recommended by Cabinet the transfer of £20 million from other reserves to the Safety Valve (SEND) Reserve, £5 million annual contribution including ringfenced interest and the authority's Flexible Use of Capital Receipts Strategy. Now that details of the Safety Valve Agreement are known, a more comprehensive plan will be prepared to allow the authority to amend the Strategy as expected at budget setting.

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 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 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 the positive outcome from the negotiations with the DfE and vital to the financial sustainability of the authority is the development of the Safety Valve Management Plan that results in services being delivered within the funding available and deliverable in a reasonable timeframe.
- 7.2 The DfE are assured that the plans will be deliverable within the timescales proposed and will achieve the intended outcomes, which has resulted in financial support towards the accumulated deficit of £95 million over a 9 year period.
- 7.3 Each agreement reached between a Local Authority and the DfE has different dynamics and results in varying levels of support being made available.
- 7.4 The agreement of 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 made in year representing the first local contribution.

7.5 Over the remaining period of the agreement a further £60 million will be made from Revenue Budget contributions and £29.1 million of potential interest earnings / reduced interest payments. The final element of funding will be derived from our Flexible Use of Capital Receipts Strategy that will free up either Revenue Budget or Reserves over the nine year period.

	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
LA mitigated forecast deficit, including any block transfers	125,437	163,419	194,585	207,007	207,007	207,007	207,007	207,007	207,007	207,007
Devon Reserves Contribution		10,000	25,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Interest Earning / Reduced interest payment			3,700	2,400	2,800	3,200	3,600	4,000	4,300	5,100
Flexible use of capital receipts impact not yet profiled										12,907
Resultant final deficit position (including local contribution)	125,437	153,419	155,885	160,907	153,107	144,907	136,307	127,307	118,007	95,000
DfE Contribution		38,000	6,330	6,330	6,330	6,330	6,330	6,330	6,330	12,690
		38,000	44,330	50,660	56,990	63,320	69,650	75,980	82,310	95,000

7.6 The following capital investment will help achieve in year balance:

- Investment of £18 million to increase the special school estate, including most recently new school provision in Okehampton (£11 million) and additional provision in Barnstaple and Bideford, totalling circa £7 million.
- £6 million to deliver the additional 200+ resource base places and successfully secure 2 additional Free Schools, including the purchase of land.
- In addition, the Authority was invited to and submitted a bid for additional high needs capital totalling £8.7 million matched funded with £1.5 million from the Authority, a total project cost of 10.2 million. This investment will 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 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 the agreement 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 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 approval of the Authority's Safety Valve proposal by DfE is a huge achievement and opportunity. It is the result of significant work across the authority over many months and years. The significance of this agreement should not be underestimated and will deliver the service improvements and financial sustainability we need and want.

Donna Manson

Chief Executive

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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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