CABINET

13 DECEMBER 2022

UPDATE ON THE SAFETY VALVE INTERVENTION PROGRAMME

Portfolio Holder: Councillor Mrs Josie Iles, Portfolio Holder for Children's Services (Lead Member)

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Summary

This report will outline the plans submitted to the Department for Education (DfE) to recover the Council's budget deficit on the High Needs Block (HNB). These plans have been submitted to the DfE with a request for £17.7m investment as part of the Safety Valve Intervention Programme (SVIP), to support the delivery of these plans.

This report was considered by the Children and Young People Overview and Scrutiny Committee on 29 November 2022, and its comments are set out at section 6 of the report.

1. Budget and Policy Framework

1.1. The Local Authority is required to make provision for children and young people as set out in the Special Education Needs and Disabilities (SEND) Code of Practice[1]. The code provides statutory guidance on duties, policies and procedures relating to Part 3 of the Children and Families Act 2014 and associated regulations. It relates to children and young people with special educational needs (SEN) and disabled children and young people up to the age of 25.

1.2. Under the Education Act (section 19), the Local Authority has a statutory duty to make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.

1.3. The Local Authorities Dedicated Schools Grant (DSG) allocation is calculated in four separate funding blocks (Schools, Early Years, High Needs and the Central Service Schools Block) using national funding formulas. Schools receive, as part of the schools block, a proportion of notional SEN funding, this funding is intended to cover the additional costs required for children and young people with SEND who are not in receipt of an Education, Health, and Care Plan (EHCP) and the first additional £6,000 for those children and young people with an EHCP. The High Needs Block (HNB) is the funding mechanism through which the Local Authority provides provision to meet the statutory duties set out above, over and above that funded through the schools.

1.4. The HNB budget in 21-22 was £45.5m. The budget remains under significant financial pressure and at the end of the financial year 21-22 had a cumulative deficit of £20.8m.

2. Background

2.1. In 2020-21, the Department for Education (DfE) introduced the Safety Valve Intervention Programme (SVIP) to support local authorities with the very highest percentage DSG deficits. In May 2022, Medway Council was invited to take part in the SVIP and had an introductory meeting with representatives from the DfE and the Education and Skills Funding Agency (ESFA) colleagues to discuss engagement with the programme.

2.2. The SVIP requires the Local Authority to develop a substantial plan for reform to their high needs systems and associated spending to rapidly place them on a sustainable footing. In doing this, the area needs to show that it can bring its spending down to within an in-year positive balance, whilst delivering the sufficiency and quality of provision required to meet the needs of children and young people with SEND and those unable to attend school for reasons of exclusion or a health need.

2.3. This plan has been developed with support and challenge from the DfE and ESFA advisors and submitted to the Secretary of State for approval. A decision is expected in December.

3. Evidence Informed Practice

3.1. The DfE published analysis[2] of the Local Authorities involved in previous safety valve work and case studies[3] from those without deficits. The research

[2] https://www.gov.uk/government/publications/creating-sustainable-high-needs-systems

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003162/Case_studies_-_Sustainable_high_needs_systems_16July2021.pdf

report puts forward 10 recommendations for Local Authorities to consider when re-focusing the sustainability of their high needs systems, these are:

- LAs should invest properly in SEND leadership
- LAs should review their joint commissioning arrangements
- LAs should ensure joint accountability for those with SEND and finance responsibilities
- LAs should review their capacity for SEND support
- LAs should review their current staffing levels and structures for SEND casework
- LAs should review and further develop their approaches to partnership with key stakeholders
- When creating new specialist provision, LAs should be clear about the expected range and levels of need that this will cater for
- Investment should be targeted at strengthening inclusion in mainstream provision
- LAs should set out more clearly their expected pathways for young people
- LAs should learn from positive examples of innovative approaches to mainstream funding

4. Safety Valve Intervention Plan (SVIP)

4.1. The proposed SVIP focuses on five overarching priorities and related activities which together address changes to the whole system. These are:

4.1.1. **Appropriately managing the demand for Education, Health and Care Plans (EHCPs), ensuring requests are timely and appropriate and supported by education and health professionals.**

4.1.1.1. The proportion of children in Medway with an EHCP, whilst improving, remains higher than the national average.

Table 1: Proportion (%) of pupils with an EHCP

	2018/19	**2019/20**	**2020/21**	**2021/22**
Medway	3.5	3.8	4.0	4.2
National	3.1	3.3	3.7	4.0

4.1.1.2. It is recognised that for some children, an EHCP and special school placement is the most appropriate provision from a very young age. These children are catered for in our Special schools. However, research shows that children who start their education in specialist provision, rarely reitegrate into mainstream and for some children, early additional intensive support (delivered in their mainstream setting) enables them to learn and develop strategies and independence, which prevents the need for them being moved into a special school.

4.1.1.3. On average 45.8% of requests for assessment are made by parents. When schools submit requests, this is supported by a portfolio of evidence which makes it more likely the EHCP, if issued, will be issued within the statutory deadline, this is because the information to support robust decision-making is already in place. The SEND team do not give preference to any particular requests over others, including requests submitted by parents, however, analysis shows that requests not supported by the school or that the schools are unaware of are much less likely to result in the issue of an EHCP.

4.1.1.4. Activities to support improvements:

- Provide training to Early Years providers in supporting de-escalation and transition planning so that only the most complex needs are referred for an EHCP at this age.

- Provide greater support to parents with their applications and SEND enquiries. Introduce family liaison officers FLOs to be the direct link with families to support parents engage and secure the full involvement of schools. Provide drop-in opportunities and support to navigate the system.

- Invest in additional staffing, to improve the annual review and forward planning processes, that work with families to plan progression routes. Joining up the planning with children and adults social care where families are accessing this support.

- Continue to engage with the work of the Medway Parents and Carers Forum (MPCF), including further open day events and regular 'meet the professionals' forums.

- Develop parent champion positions to work with the FLO's and advise parents.

4.1.2. **Increase the proportion of children and young people with SEND who receive high quality education and achieve their potential in mainstream schools.**

4.1.2.1. Medway is committed to ensuring there is diverse provision to enable parents to have a choice of school. There are many benefits to children and young people attending their local school – it supports integration into their community by enabling them to make friends, it means they spend less time travelling, it creates more diverse school communities which overtly acknowledge and embrace difference.

4.1.2.2. 31.9% of Medway children with an EHCP are catered for in mainstream schools, compared to 40.5% nationally. This is a further decline from 2021 the figures are 33.8% and 39.9% respectively. The proportion of children with an EHCP attending a special school continues to increase and is now 48% compared to 34.8% nationally.

4.1.2.3. In Medway, 1.8% of all pupils attending a mainstream primary school have an EHCP, compared to 2.3% nationally. For secondary the gap increases, with 1.5% of pupils attending mainstream secondary school, compared to 2.2% nationally. However, 2% of pupils in non-selective secondary schools have an EHCP.

4.1.2.4. The proportion of children with an EHCP catered for within each provision type needs to be brought in line with national, such that specialist provison is preserved for only those children who require the most specialist support and Resource Provisions and Alternative Provisions support greater inclusion of children and young people within mainstream schools.

4.1.2.5. Activities to support improvements:

- Provide a core offer of training and support to embed whole school approaches to support inclusion. Linking to and complementing the broader system of targeted and specialist support, to build upon skills and expertise within individual schools. Current consultation is moving towards Medway wide adoption of trauma informed practice.

- Develop locality resources. Funding that is delegated or devolved (with performance indicators) to groups of system leaders within localities to enable them to develop pre-emptive strategies to reduce escalation of need, and direct resources to where they are most impactful.

- Further resource inclusion by providing more funding into the system through top ups to the SEN notional budget and review the funding policy so that schools with a higher proportion of children and young people with EHCP's receive additional element 2 funding.

- Continue with the current programme of developing resourced provision, including provision in selective schools. This will include reviewing access arrangements for the Medway test.

- Increase the capacity of Alternative Provision to support pre-emptive and reintegration activity, including revolving door and outreach.

4.1.3. **Ensure the use of appropriate and cost-effective provision.**

4.1.3.1. Ensuring the efficient use of public funds, whilst managing the level of available provision to meet the needs of the children in the system.

4.1.3.2. Activities to support improvements:

- Continue with the development of a commissioning function to ensure value for money for all the services commissioned, both in terms of quality and financial efficiencies.

- Plan for and procure independent specialist provision to achieve the best value for money.

- Have robust quality assurance mechanisms for all providers that enable regular monitoring and have mechanisms for holding to account.

- Develop wider system governance of the quality assurance and commissioning processes which are purchased with schools funding.

- Inform a longer-term approach to place planning which provides an authentic choice of a local school for children and young people with SEND.

- Continue with the review of EHCP funding such that there is a fair and transparent banded funding matrix for all children with EHCPs and that funding follows the child.

- Continue with the review and system redesign of the SEND and Inclusion teams currently being undertaken to provide a more efficient system in relation to:
    - Communication and relationship with families
    - Focused task teams which can meet statutory deadlines
    - Tell it once methodolgy to reduce duplication of work
    - Dedicated review and transition team to ensure advice is appropriate and timely
    - Data and IT systems are effective in informing management action.

- Ensure there is sufficient provision to meet need:
    - Increase the capacity of non-independent special schools to cater for children and young people with the highest level of need.
    - Continue with the in-progress, expansion to special schools (Abbey Court and Bradfields). However, realign the need types provided for by special schools to meet forecast need.
    - Provide a temporary expansion to Inspire SEMH special school (new build, under the DfE free school programme, provides for 160 pupils (Social, Emotional and Mental Health (SEMH) and Audism Spectrum Disorder (ASD)). Opening pushed back to Jan 2025)
    - Increase availability of resourced provision in localities:
        - ASD, 25 place at Strood Academy
        - ASD, 25 place at tbc
        - 2 x ASD, 25 place at selective school tbc
        - SEMH, 25 place tbc
        - MLD (Moderate Learning Difficulties), 25 place tbc

4.1.4. **Sustainability of governance, management, and delivery.**

4.1.4.1. Put in place the appropriate governance, management and delivery structures and mechanisms that ensure that the work makes embedded and sustainable change for children and young people.

4.1.4.2. Activities to support improvements:

- Medway Education Partnership, SEND Partnership Board and the Schools Forum to provide governance to the plan.
- SEND Strategy aligns with SVIP Plan
- In additional to the quarterly DfE monitoring, monitoring will also be undertaken by Parent and Carer Forum Liaison Group, Quality Assurance and Performance Information Board, High Needs Block Recovery Advisory Group and the Children and Young People Overview and Scrutiny Committee.
- An Inclusive Education Oversight Group has been established with school leaders from across Medway to focus on the delivery and impact of the work with schools.
- The SEND operational group will focus on the delivery of the plan across stakeholders.
- Stakeholder task and finish groups have been set up to focus on particular aspects of the work.
- Permanent additional resource has been added in both place planning and health commissioning teams to focus on this plan and to connect the work across social care and health commissioning.
- Medway council is committing further business change and HR support to ensure rapid transition into new ways of working.
- Data and IT systems are being improved so that they are effective in informing management action.
- Recruitment of 2 x Strategic Officers and additional administration support to ensure there is appropriate project management capacity and with a particular remit to ensure:
    - SEND sufficiency work, forecasting and place planning are embedded in the system as business as usual
    - There is a specific focus on Quality of Education and Inclusion for children and young people with SEND, ensuring high quality outcomes.

5. Performance Indicators

5.1. The SEND Strategy and its associated plan give performance indicators in relation to the education, health and care of children with SEND. The use of the HNB is to support the delivery of these and the outcomes for children and young people are always placed first and foremost.

5.2. However, the delivery of a sustainable system in which we can achieve these means that we need to monitor and manage placement and finances. The following indicators are how the financial viability of the plan aims to be achieved:

5.3. 1: Reduction in percentage growth of EHCP applications.

Table 2: Projected numbers of pupils with EHCPs

	Jan 2019	Jan 2020	Jan 2021	Jan 2022	Jan 2023	Jan 2024	Jan 2025	Jan 2026
Numbers	2,126	2,296	2,507	2,697	2,853	2,995	3,135	3,254
Percentage Growth		8.0%	9.2%	7.6%	5.8%	5.0%	4.7%	3.8%

Note: This is based on actual pupil numbers coming through the system. There is a 4 year decline in birth rates also reflected in these figures.

5.4. 2: Sufficiency of quality placements and reduction in placement costs for independent provision.

5.5. 3: Increase in the proportion of children and young people with EHCP's being catered for in Mainstream schools, to 42% by Jan 2026. The majority of movement into mainstream is for children and young people with ASD, followed by MLD and SEMH, as such training and support is focusing on these need types.

Table 3: Projected movement of pupils with EHCPs

	22-23	23-24	24-25	25-26
Early Years	0.2%	0.2%	0.2%	0.2%
Mainstream, including Resourced Provision	35.4%	37.9%	40.4%	42.0%
Special School	55.5%	51.1%	48.7%	47.8%
Special - Maintained	40.6%	40.7%	41.1%	43.7%
Special - Independent	14.9%	10.5%	7.6%	4.1%
Further Education	0.6%	0.6%	0.6%	0.6%

6. Children and Young People Overview and Scrutiny Committee

6.1. The Children and Young People Overview and Scrutiny Committee considered the report at its meeting on 29 November 2022 and its comments are set out below.

6.2. The Assistant Director, Education and SEND introduced the report which outlined plans submitted to the Department for Education (DfE) to recover the Council's budget deficit on the High Needs Block (HNB).

6.3. Members then raised a number of comments and questions which included:

- **Level of Education, Health and Care Plans (EHCPs)** – Clarification was sought on the position in Medway compared to the national average and how the demand for EHCPs could be appropriately managed. Officers said that the only provisions that an EHCP was needed for were special schools and resource provisions. The forecasted figures showed a diminishing growth which took account of a dip in the population and the considerable work that was being undertaken with mainstream schools to support them in taking children and young people with special education needs and disabilities (SEND). This would result in earlier intervention and reduced demand for EHCPs as parents' confidence in the system grew. It would also result in fewer children in special schools where this was not necessarily the best provision for them as they could be catered for in mainstream schools.

- **Lessons to be learnt from Kent's SEND provision** – Officers advised that the situation in Kent would be considered, and Medway would review and evaluate its own system in light of the new SEND inspection framework which placed a greater emphasis on the views of parents and young people.

- **Risk implications** – Further clarification was sought as a number of the risks identified in the report were not in the Council's control. Officers said that there was a much more detailed risks and assumptions paper which could be shared confidentially with Members.

- **Parents' right to a named school for a child with an EHCP** – Officers advised that, where a school was chosen by parents, they would consult with the school in question, and it would only be named if it was an appropriate school for the child or young person.

- **Hospital provision** – Asked for more information on the provision of education for children in hospital, officers advised that a number of places were available. The situation with regard to alternative provision was under review, including outreach and reintegration. This would address the needs of those children and young people who were anxious about going into school following the Covid pandemic.

- **Additional capital funding for the delivery of the Safety Valve plan** – Asked for an update, officers advised that a bid for £7.2 million had been submitted to the DfE.

6.4. The Committee noted the report.

7. Risk Management

7.1. A number of potential risks have been identified, which will be monitored through the various governance forums. Broadly, the key risks associated with the delivery of the Recovery Plan are:

- Lack of engagement and buy-in across all stakeholders, but specifically schools and academies, to commit to improving inclusion in mainstream education.
- Numbers of children and young people with EHCPs not reducing to the levels projected within the plan.
- Cost of provision, particularly in the independent sector, not being appropriately managed to ensure value for money in use of public funds.
- Capital developments for resourced provisions not being sufficiently funded to ensure timely completion. (A capital bid will be submitted to the DfE on 15th October 2022 to support this)

7.2. Amendments to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) ("the 2003 Regulations") were made in 2021 to establishing new accounting practices in relation to the treatment of local authorities' schools budget deficits. The new accounting practice had the effect of separating schools budget deficits from local authorities' wider finances for a period of three financial years.

7.3. However, the accounting treatment introduced by this regulation was clear that it was intended to provide a permanent solution to the issue posed by the deficits and that Local Authorities should continue to work to close the deficits as planned. Therefore, the accounting treatment introduced by this regulation was limited to the financial reporting periods 2020/21, 2021/22 and 2022/23 to provide time for Government and local authorities to implement their plans. In March 2023 this override expires, and the deficit falls back to the council.

8. Financial Implications

8.1. Sustainable budget management and deficit recovery will most effectively be achieved by ensuring the proportion of children and young people with EHCPs catered for within each provision type is in line with national (please see Appendix 2).

8.2. Further savings will be achieved with the introduction of the commissioning team, who will initially focus on the independent special school provision and other independent provider provision.

8.3. The planned review of Alternative Provision will be largely focused on ensuring more pre-emptive and revolving door activity, is able to take place to reduce exclusions and improve attendance. It will aim to remove the use of independent provision for this cohort entirely and re- balance the funding to maintained AP so that it is fairer. The total amount of funding £3,704,539 currently spent is unlikely to reduce. However, we are proposing capping this amount for the next three years.

8.4. The EHCP funding review will have funding implications. These will be modelled and shared as part of the consultation.

8.5. Medway Council are working to ensure the contributions from Health and Social care to the provision named in a child's EHCP are appropriate.

8.6. As part of the Safety Valve process, Medway Council can apply for additional funding to help recover from the deficit position. The plan includes a contribution of £17.7m from the DfE.

8.7. As part of the Safety Valve process, Medway Council can also apply for additional capital funding to help deliver the plan. These costs are being calculated. The Council has submitted a capital bid.

8.8. If the plan is agreed and delivered, the deficit will be recovered by end of the financial year 2025-26.

9. Legal implications

9.1. The Council has statutory duties under the Children & Families Act 2014 and the Care Act 2014 to provide for children and young people with special educational needs and disabilities. The proposed SVIP focuses on five overarching priorities and related activities which together address changes to the whole system. The scope of the activities sits within the framework of the legislative duty to ensure efficient use of public resources.

10. Recommendations

10.1. The Cabinet is asked to note the comments made by the Children and Young People Overview and Scrutiny, as set out in section 6 of the report.

10.2. The Cabinet is asked to approve the Medway's Safety Valve Intervention Plan, which has been submitted to the Secretary of State.

11. Suggested reasons for decision

11.1. The HNB budget remains under significant financial pressure and at the end of the financial year 21-22 had a cumulative deficit of £20.8m. If the plan is approved by the DfE, Medway Council will receive £17.7m investment as part of the Safety Valve Intervention Programme (SVIP), to support the delivery of a substantial plan for reform to its high needs systems.

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Appendices

Appendix 1: Diversity Impact Assessment

Appendix 2: Statistical Neighbours: Proportion of children and young people with EHC Plans by Provision Type June 2022 Data Return

Background papers

None