

To: The Executive  
12 December 2023

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## Bracknell Forest Council's Involvement in the Department for Education's Safety Valve Intervention Programme

Chief Executive / Executive Director: People / Executive Director: Resources

### 1 Purpose of Report

- 1.1 To recommend to the Executive an initial Safety Valve proposal to be submitted to the Department for Education by 15 December 2023. Subject to the Executive's endorsement, the Council will subsequently need to submit a final proposal by 12 January 2024, that will be presented for consideration by Full Council at its meeting on 10 January 2024.

### 2 Recommendations

That the Executive:

- 2.1 Approves the Council's initial Safety Valve proposal detailed in confidential Annex B *[TO FOLLOW]* for submission to the Department for Education by 15 December;
- 2.2 Delegates authority to the Chief Executive, in consultation with the Leader of the Council, to amend the initial proposal if necessary in response to feedback from the Department for Education prior to a final Safety Valve proposal being presented to the Council meeting on 10 January 2024.

### 3 Reasons for Recommendations

- 3.1 The Council was invited by the Department for Education (DfE) to participate in its Safety Valve Intervention Programme 2023/24 in July (the invitation letter to the Chief Executive is attached as Annex A). The Safety Valve programme aims to agree a package of reforms to local education systems for pupils with special educational needs and disabilities (SEND) through which the systems will become financially sustainable within the level of grant provided by the Department for Education, while improving the experiences of children and young people. Bracknell Forest is one of five authorities invited to participate in the programme this year, due to its large and rising deficit.
- 3.2 Participation in the programme can secure access to additional capital funding for new local provision and a material financial contribution from the DfE towards the accumulated Dedicated School Grant (DSG) deficit, should proposals for reform submitted by the Council be accepted. A significant financial commitment is also required from the Council, both to secure delivery of the proposed programme of activity and to write off the remainder of the accumulated deficit not funded by the DfE. At the time of this report's publication, discussions are continuing between Council officers and the DfE's Safety Valve team on these details, which will be distributed for Councillors' consideration in confidential Annex B in advance of the Executive's meeting.

## **4 Alternative Options Considered**

- 4.1** The Council could choose not to participate in the Safety Valve programme. This is not recommended since it would mean that responsibility for funding the DSG deficit would rest entirely with Bracknell Forest Council, with no financial contribution available from the DfE. In addition, the Council would be less likely to receive additional capital funding to support local provision, since priority is given to applications from Safety Valve authorities. While some local authorities with Education responsibilities have not yet participated in the Safety Valve programme, all will face a significant financial challenge if they are in a deficit position when the temporary override enabling deficits to be carried forward is removed, which will inevitably happen at some point. Should an authority face a situation where its total reserves are insufficient to cover the accumulated deficit at that point, the authority would be forced into declaring a section 114 notice, since it would at that point be unable to fund its known liabilities. Bracknell Forest is not currently in this position, but its rapidly rising DSG deficit that is expected to reach a minimum of £45m even with significant mitigations identified and implemented risks triggering that situation in the next few years.

## **5 Supporting Information**

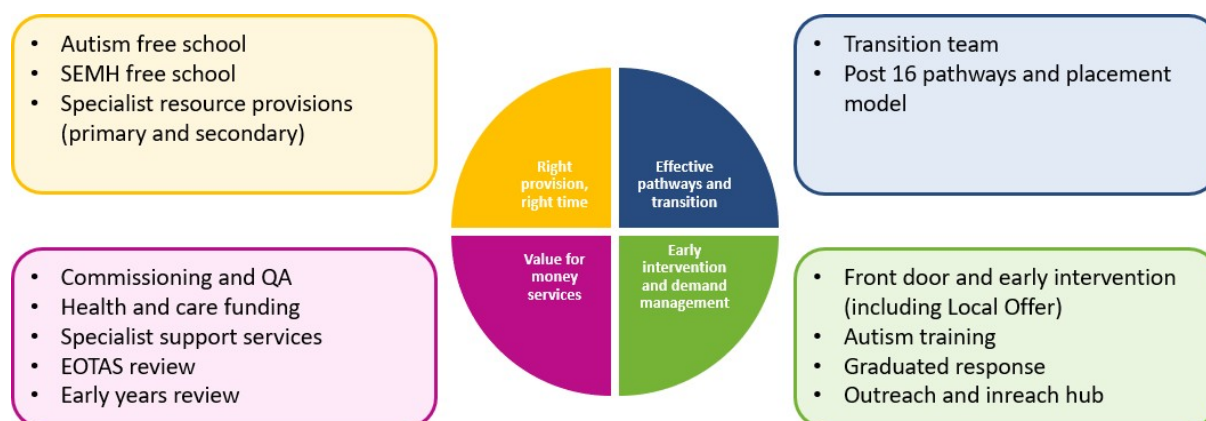
- 5.1** The DfE recognised in 2019 that significant cost increases in SEND services were being experienced in many local areas, taking spending above funding provided through the Dedicated Schools Grant. At the end of 2018/19, around half of all education authorities were experiencing DSG overspends, totalling at that time around £250m. Through a consultation issued in October 2019, the Government proposed changes to accounting arrangements to ensure that “DSG deficits should not be covered from general funds but that over time they should be recovered from DSG income”. At the time, the Government’s belief was that additional funding it had announced would help local authorities bring their DSG accounts into balance in a fairly short period.
- 5.2** Following the consultation, revisions were made to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, introducing a requirement for the 2020/21 to 2022/23 financial years that any school budget deficits that arose during that period should be charged “to an account established ... solely for the purpose of recognising deficits in respect of school budgets”. Essentially, the regulations overrode general accounting practice by directing that a “negative reserve”, the Dedicated Schools Grant Adjustment Account, be created in councils’ accounts. Further regulations have recently extended this arrangement to the end of the 2025/26 financial year.
- 5.3** With this highly unusual approach not offering a long-term resolution to DSG deficits, the DfE introduced its Safety Valve Intervention Programme in 2020. A total of 34 local authorities experiencing the highest deficits in their Dedicated Schools Grant (DSG) budgets have participated in the programme to date and signed Safety Valve agreements with the DfE. In order to qualify for an agreement, it is necessary to:
- a) Demonstrate how the current deficit will be controlled and an in-year balance achieved as quickly as possible (the expectation is normally within 5 years);

- b) Explain what financial support is required from the DfE to eliminate the historic deficit and implement the proposals (the DfE will not fund all of the costs and will expect the local authority to be clear how it will fund its share)

5.4 The forecast cumulative deficit for Bracknell Forest to 31 March 2024 is currently £24.1m, including an estimated in-year deficit of around £8.7m, and is predicted to rise to at least £45m over the coming years even with mitigations implemented to bring spending back in line with resources. This situation is primarily caused by a large growth in pupils with Education Health Care plans (EHCPs), that has been faced across the country, with the local implication of placing significant reliance on expensive provision outside the Borough, since the Council's highly-regarded Kennel Lane Special School has been at full capacity for many years. While a number of specialist resource provisions (SRPs) have been created in local schools, they are insufficient to cope with the scale and complexity of need being experienced.

5.5 It has therefore been recognised that a key element of the Council's strategy to address the needs of local pupils and young people will be to create more local capacity. Its bid for a new school for pupils with autism was approved by the DfE earlier in 2023. The school is to be built by the DfE and, although a site has been identified and approved, the Council has not yet had confirmation of the expected construction dates. It has made a proposal to take responsibility for construction itself to enable certainty around the timescale when it will open, which we understand is being considered.

5.6 Council officers have engaged with local school leaders, both Headteachers and Chairs of Governors and the Bracknell Forest Parent Carer Forum, to agree further areas of focus to ensure that overall SEND system best meets the needs of pupils and schools and identify areas where current expenditure is not felt to demonstrate value for money. This has led to a programme of activity as summarised in the pictorial below.



5.7 These workstreams are expected to lead to securing better local facilities to improve outcomes for pupils while at the same time collectively reducing costs over time. New, local facilities will inevitably take some time to be developed and a carefully planned approach will need to be taken to their opening. In the meantime, there will continue to be a reliance on other, generally more expensive school places in other local authority areas, including independent schools. The impact of the proposals and their expected financial benefit will therefore take time to be felt.

5.8 For that reason, the Council has proposed an option to secure additional funding for SEND provision by transferring resources from other parts of the Dedicated Schools

Grant, including funding for Central (Council) Services and the main Schools funding block. This is currently the subject of consultation with schools, which will run until 8 December. The results of the consultation with schools will be known by the time of the Executive's meeting but will need to be considered by the Schools Forum, which is the body of representative Headteachers responsible for recommending how the Dedicated Schools Grant is spent, at its meeting on 13 December.

- 5.9 The "Block Transfer" proposal recommended by the Council had regard to initial feedback from a number of primary and secondary Headteachers and includes a capped maximum 0.5% top slice of potential 2024/25 individual school budget allocations (£0.40m), reductions in discretionary budgets to fund in-year pupil growth (£0.28m) and a lower contribution from the DSG towards the Council's costs of providing central support services to schools (£0.26m). The last of these transfers adds a pressure to the Council's general fund budget and options are being looked at to mitigate this. The significance of the block transfer proposal, that was clearly signposted in the Safety Valve invitation letter from the DfE, is that it secures additional funding for SEND budgets from 2024/25 while the initiatives outlined under paragraph 5.6 are implemented to reduce costs over time.
- 5.10 At the time of this report's publication, Council officers have identified a potential route to reaching a balanced in-year DSG position by 2029/30 through implementation of the activities outlined in this report. This is slightly beyond the DfE's expectation of a five-year plan. Discussions on this are continuing in an effort to reach a position likely to be acceptable to the DfE prior to the required submission of an initial Safety Valve proposal by 15 December.
- 5.11 As indicated in paragraph 3.2, the latest position will be set out for the Executive's consideration in a supplementary Annex B in advance of the meeting.

## **6 Consultation and Other Considerations**

### Legal Advice

- 6.1 Section 14 of the Education Act 1996 places a general duty upon the Council to secure sufficient schools to provide primary and secondary education in its area and it should have particular regard to securing special education provision. Following the enactment of The Children and Families Act 2014, the Council retains responsibility for commissioning services for children and young people with SEN or a disability. It is required to keep the provision for children and young people with SEN or disabilities under review, including its sufficiency (Section 315 of the Education Act 1996), and to promote wellbeing and improve quality, working in conjunction with parents, young people and providers. This Act and its associated guidance is clear that, when considering any re-organisation of provision, it must be clear how it is satisfied that the proposed alternative arrangements will lead to improvements in the standard, quality and/or range of educational provision for children with SEN or a disability. A final agreement for funding will be entered into in due course with the DfE. The Council's legal team will advise on the terms prior to its execution.

### Financial Advice

- 6.2 The Executive Director: Resources in his capacity as the Council's s151 officer has been closely involved in the preparation of the proposals outlined in this report that will be submitted to the DfE for consideration, subject to the Executive's approval. The Council's involvement in the Safety Valve programme will inevitably have material financial implications for Bracknell Forest. These will include funding activities to reduce current SEND expenditure that will require investment to ensure

they are successfully delivered, identifying savings in general fund services to absorb the release of grant funding for SEND services and setting aside resources to cover the Council's identified share of the accumulated DSG deficit. The scale of these financial consequences is still being assessed through on-going discussions with the DfE's Safety Valve team but will need to be clarified and reported to this meeting of the Executive.

#### Other Consultation Responses

- 6.3 School Leaders have been involved in reviewing options for inclusion in the Council's Safety Valve proposals.

#### Equalities Impact Assessment

- 6.4 A full EQIA will be completed for the Council's proposed Safety Valve proposals and submitted to the Executive alongside Annex B. An EQIA for the proposed Block Transfer / Top Slice that is subject to consultation with schools has been completed.

#### Strategic Risk Management Issues

- 6.5 The level of the deficit on the Dedicated Schools Grant due to rising costs in recent years of SEND services represents the most serious financial threat the Council faces. Participation in the Safety Valve programme provides the impetus to address this through the identification of mitigations that both reduce costs and maintain a focus on educational outcomes, while offering the opportunity to secure both revenue and capital grant funding from the DfE that is not available to authorities outside Safety Valve.

#### Climate Change and Ecological Impacts

- 6.6 There are no immediate implications, however the creation of additional provision within the Bracknell Forest boundary will reduce CO<sub>2</sub> emissions through reducing the need for home to school transport to educational facilities in neighbouring boroughs and beyond.

#### Health & Wellbeing Considerations

- 6.7 The Council's recently approved SEND strategy includes a focus on providing additional school places within Bracknell Forest, that would significantly reduce travelling time for children who require specialist places whose needs cannot currently be met within the Borough. In most instances this will have a positive impact on the health and well-being of those pupils.

#### Background Papers

Bracknell Forest Council's invitation from DfE to participate in the Safety Valve Intervention Programme – Annex A

#### Contact for further information

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