

Report subject	<b>SEND Progress Update re SEND Improvement Plan and Safety Valve</b>
Meeting date	22 May 2024
Status	Public Report
Executive summary	<p>This report provides an overview of the work to date within the Special Education Needs and Disability (SEND) system, through the newly developed SEND Improvement plan. It provides a narrative to the improvement work to date within the BCP Council SEND service, the wider SEND system and points towards the significant progress that has been made over the last 6 months. It is recognised though, that much more needs to be done and that a continued effort is needed across the partnership to address the further areas of improvement.</p> <p>Alongside the operational and strategic improvement work within the SEND system the report also provides information and a short narrative on the progress of the Safety Valve programme and resultant next steps. Discussions are still ongoing with the Department for Education (DfE) and Department for Levelling Up Housing and Communities (DLUHC) and as such a revised Dedicated Schools Grant (DSG) plan has not yet commenced.</p> <p>The report also outlines the serious implications of the current funding position for SEND services, for the Council.</p>
Recommendations	<p><b>It is RECOMMENDED that Cabinet:</b></p> <ul style="list-style-type: none"> <li>a) Note the positive progress against the SEND Improvement Plan in the Local Authority's key statutory processes in particular, our children in BCP Children's Services this academic year are no longer experiencing delays to the initial assessment and creation of their EHCPs.</li> <li>b) Acknowledges that the new SEND Improvement Board governance structure provides the rigour and transparency required to maintain progress in the SEND system.</li> <li>c) Note the assumptions within the Safety Valve plan and associated DSG plan are understood and that the Committee notes that BCP are currently in discussions with DfE and DLUHC regarding the financial implications of the High Needs Block budget.</li> <li>d) Acknowledge that the progression of improvements in SEND is reliant on Health, Education and the Council working together.</li> </ul>

Reason for recommendations	To ensure that all stakeholders within and across the SEND system are aware of the positive improvements in the SEND system and the future work required regarding the Safety Valve programme and supporting DSG plan.
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Corporate Director	Cathi Hadley Corporate Director Children's Services
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Wards	BCP Wide
Classification	For update and information

## Background

1. The SEND Improvement journey has been an absolute focus of BCP's Children's Services since the DfE and NHSE review visit in July 2023. The outcome of this visit deemed that the level of progress had been too slow and that the SEND system had not yet made the progress required to ensure a good standard of service delivery for children and their families across the SEND partnership in BCP local area (Appendix 1). A resultant Statutory Direction (28 February 2024) was issued to ensure that the right improvement focus, and attention be given to the SEND system to make the essential improvements (Appendix 2). The delay in issuing the Statutory Direction was caused by a debate across government about how best to ensure that health partners, in particular, were actively engaged in the SEND improvement programme.
2. Alongside the delays in the SEND improvement programme of work, the financial aspects of SEND in BCP Council had also been under review by the Department for Education due to the increasing financial deficit. This deficit is caused by the difference between the cost of providing the required services and the budget provided by DfE which is insufficient to fund the services. The current financial regime imposed on the Council prevents that deficit from being funded from the General Fund and the negative balance is held in an unusable reserve, and outside of the Council's consolidated reserves position. This accumulated deficit is estimated to be c£63m by year end 2023/24. The statutory set-aside is currently timed to end on 31 March 2026, at which point government will have to decide who will bear the cost of the accumulated deficit.
3. During 2023, DfE recognised that the Delivering Better Value programme, which had included BCP Council, was not sufficiently strong to deal with our increasing deficit and invited the Council to join the Safety Valve programme. The Council was invited to submit a DSG deficit management plan, including changes to policy and practice designed to reduce the deficit position of the local system and bring about system changes to stabilise the financial profile within the forecast available budget. This proposal was developed alongside a new SEND Improvement Plan to ensure that all strategies and actions were co-produced and co-ordinated. This would support the SEND system to stabilise and for long term improvements to be sustained. (Appendix 3 – Safety Valve Proposal).

4. The Safety Valve proposal was submitted to the Department for Education on 15 January 2024 comprising two parts:

- a. A profile of changes which, over a period of time, are designed to bring the budget into a balanced position articulated financially through the DSG deficit management plan. Due to the nature of the profile of provision for children and young people in the current SEND system i.e. a high use of Independent Non-Maintained Specialist Placements (INMSS), a relatively low penetration of Education, Care and Health Care Plans (EHCPs) within the mainstream education system and a significant increase in the level of new assessments, this proposal identified that it would take 15 years to balance the system.

The plan assumptions were predicated on supporting existing placements in specialist provision and changing the future sufficiency of placements and improvement in early help and identification systems to reduce the volume of new plans.

The Council was informed on 13 March 2024 (Appendix 4) that this plan has not been accepted by the DfE. Further discussions are underway regarding the future financial arrangements for the SEND system locally and it should be noted that concern is growing nationally for the funding of DSG high needs provision.

- b. The second part of the Safety Valve submission was an application for c£5m capital funding for the creation of new specialist provision for our children and young people. It identified a number of areas for new provision to reduce the use of costly independent provision and to ensure that new provision e.g. increased outreach provision, resource base provision and specialist provision could reduce the cost profile for the long term and better meet children's needs.

Feedback from the DfE was that this was a credible approach, and the Council is currently awaiting a decision on the provision for capital funding. In the meantime, the SEND team within BCP Children's Services is continuing to work with schools and providers to support future developments so that no time is lost where at all possible.

5. Against the outcome of the DfE and NHSE visit in July 2023 and subsequent Statutory Direction a new SEND Improvement Plan was co-produced across the partnership, including representation and engagement with Parent Carers Together and Parent Carer Forum organisations within BCP local area (Appendix 5). It reviewed the historic Written Statement of Action Plan and held internal and external meetings to identify the barriers and opportunities for improvement. This work took place from September to December 2023. It ensured that the voice and experience of children and young people with SEND was understood, acted upon and central to the much-needed developments in the system. This work also included several meetings with Head Teachers through structured Head Teacher Forums and individual discussions orientated around children or school experiences of the system.
6. The resulting improvement plan has 8 priority areas. These are focused on ensuring that the systemic faults in the system are addressed individually and moreover, that all actions work in an integrated fashion to ensure the SEND system in the BCP local area is stabilised and ensures a good sustainable future. The priority areas are Leadership Management and Governance, Co-production and Communication, Early Identification and Intervention, Inclusion, Pathway, Sufficiency, Preparation for Adulthood and

Managing Resources. Each priority area has actions with agency and service leads being responsible for their delivery.

7. Alongside the new SEND Improvement Plan, a new refreshed SEND Improvement Board was established in the Autumn of 2023 and is chaired by John Coughlan, DfE advisor to BCP Council. John ensures that there is both independent challenge and support to partners across the BCP local area. He has led the Social Care Improvement Board for the BCP Children's Services since April 2022, and this provides continuity in terms of approach in the improvement plan ensuring that children's pathways across Education, Care and Health services are aligned. This Board meets every 6 weeks and reviews the partnership's progress against the identified milestones.
8. Measuring progress and improvements across the SEND system is paramount. Working with the Parent Carer Together and Parent Carer Forum a new SEND Partnership Scorecard was created (Appendix 6). This scorecard has several qualitative and quantitative measures to assess progress. The scorecard is updated each month and is subject to scrutiny at the Improvement Board by the Chair. This mechanism ensures that there is full transparency and accountability in place regarding the measurement of progress and impact of the improvement actions.

### **Impact of Improvement Work to Date**

9. Across the 8 priority areas there are currently 137 actions, and much work has happened in the last four months to improve our Services for children and young people. Good progress is being made, the system is improving and at speed. There are some areas within the Improvement Plan which have been slightly delayed, these are being managed through risk assessments and mitigating actions, and for the main are to be expected in such a large and complex improvement journey. For instance, the new SEND Strategy has been developed in draft but recent representation from schools and parents and carers regarding provision has resulted in co-production workshops which are due to finish in their entirety in the summer term, whilst this is a delay it ensures that all views are considered in the development of onward actions.
10. A key focus for the BCP SEND service was to address the significant delays for children and their families. It was also imperative that the historic slow or static improvement journey in the Education system within the BCP local area was understood to make sustainable changes.
11. Key changes in personnel and systems have taken place to ensure that right people, right focus, and culture for improvement is in place, at both a strategic and operational level. A key imperative has been to increase BCP Council's communication and engagement with schools and to this end the Director for Children's Services and Interim Education and Skills Director now hold virtual briefings every 3 weeks alongside termly face to face meetings. Separate meetings have been called as and when necessary. Whilst it is early days, the SEND School Improvement Board representatives have recently acknowledged that it feels like the system is improving.
12. As at the end of March, efforts of our improvement plan have resulted in the following progress:

Area	March '23	February 24	March 24	Impact for children and young people (Eng add SW av)
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6 week decision making	26.7%	99.0%	96.4%	No comparator data available
20 week decision making (inc. exceptions)	0.0%	52.9%	67.1%	<b>National</b> 44.47% (but this <b>excludes exceptions</b> , new data will be published in June 24) <b>Statutory neighbours</b> 36.4% (new data will be published in June 24) <b>South West</b> 34.7% (new data will be published in June 24)
EPS timeliness	0.0%	98.0%	92%	No comparator data available
Health timeliness	87.5%	93.2%	91.1%	No comparator data available
Annual Review backlog	2012	1216	1030	Annual review backlog for Academic Year 23/24 will be completed by end April.  In year timeliness has improved but with some children experiencing delays this is currently c350 children with a plan in place to recover this.
In Year Annual Review	65.9%	70.1%	62.1%	No comparator data available
% Parental Requests	29%	23%	22%	No comparator data available
Children Awaiting Specialist provision	-	-	282	No comparator data available.  We have reviewed the needs of all these children and are finalising co-production events with schools for future provision. A clear plan to address this will be in place by the end of the academic year.  This work will then be included into our Sufficiency Strategy.

13. The hard work and efforts of staff should be acknowledged and celebrated. We are proud of the progress made so far but know that there is much more work to be done before SEND services reach a sustainably good standard. There has been an absolute focus on improving the delays in our children's pathways within the Local Authority processes and these have both been improved and sustained at significant pace since September of last year. No child has experienced any significant delay in receiving a needs assessment service in this academic year and we have now addressed the backlog that had occurred previously. It is accepted that this was not satisfactory, and leadership and management controls are now in place to ensure that this does not occur again.

14. BCP staff, working with the active engagement of schools are addressing the availability of specialist placements for our children and young people. We know that there are too many children awaiting specialist provision, and this is why the capital bid is of paramount importance. The DfE is scheduled to inform us of the outcome of our capital bid and a positive decision is key to reducing the number of children awaiting specialist provision. If the capital funding is not provided by the DfE, the Council will need to consider whether it can fund the required works through borrowing which will add costs to the currently balanced medium term financial plan.
15. However, it is not just about building new provision, it's also imperative that our system remains and improves its penetration of SEND inclusive education across the BCP local area. This is not the work of the Local Authority alone; it involves Health and schools supporting our SEN learners.
16. During March and April, the SEND team have conducted several workshops with schools and parent carer representatives to discuss specialist and wider SEND provision and what further improvements are needed. This includes the appetite and engagement of our schools in increasing EHCP penetration in mainstream schools which is comparatively low (37.3% in BCP as of February 2023 compared to 41% National).
17. Through reviewing our data, listening, and working with schools it is important that all stakeholders working together to reduce the level of SEN learners being suspended, excluded, or being referred to long term Alternative Provision (Appendix 7 – Overview and Scrutiny Report). The LA SEND Service has recently held four workshops with schools to discuss and co-produce new aspects of inclusion, outreach, and specialist provision. It is essential that the BCP education system is an inclusive system and those children that can and should be enjoying and thriving in mainstream education can do so, this is true for all stages from primary through to Post 16 provision. This work will continue to inform our DSG management plan and onward Sufficiency Strategy for SEND.
18. Over the last four months the Children's Services along with the senior leadership of the Children's Services have been working together to secure the improvements needed in BCP place. There are monthly leadership meetings in place between the Local Authority with the key Executives in Health. As with the national profile, children and young people do experience significant delays in accessing Health pathways due to capacity and staff shortages. This is most acute within the CAMHS services and Neurodiversity Pathways and has been a subject of discussion at the SEND Improvement Board. The local authority is currently working with colleagues in NHS Dorset to review those children waiting specialist provision to identify what other support service could be provided whilst children and their families are waiting. Health colleagues are invited to share progress at the Local Authority Education meetings and continue to use this as an avenue to build relationships with schools.
19. Through dedicated effort, we can see that the SEND system in the BCP local area is starting to improve with partnership conversations now happening in parts of the system that have been stuck in the recent past. A new SEND Sufficiency Strategy is in development, and this will address the aspect of children waiting specialist provision and seek to address greater inclusivity in and across BCP schools.

### **Options Appraisal**

20. N/A – this paper provides an update on progress.

## Summary of financial implications

21. In 2023/24 the Council budgeted to spend £27m more on Special Educational Needs and Disability services than the funding specially being made available by government. In 2024/25 the council is budgeting to spend £28m more than the grant provided by the Department for Education (DfE) as part of the Dedicated Schools Grant (DSG).
22. The Dedicated Schools Grant (DSG) is the main source of funding for schools and education services. It is allocated by the DfE to local authorities, who then distribute it to schools and other providers according to local formulae and arrangements. It is divided into four blocks: schools, high needs, early years, and central school services. It is possible to transfer 0.5% of school block funding to support high needs expenditure with this option agreed by government for 2024/25 to reduce the high needs funding gap to the £28m. The DSG deficit management plan assumes this contribution will grow to 1% in future years, requiring further approval from the DfE.
23. The high needs block is allocated to councils according to a national funding formula. This formula reflects the characteristics of pupils in the local area (0-25 population, disability, poor health, low attainment at key stages 2 and 4, and deprivation indices) plus an amount based on the historic (2017/18) level of the council's high needs budgeted expenditure. There is protection each year for a minimum increase (per 0-25 population) for this aspect of the formula for all councils. BCP has received this minimum increase since inception with the increase for 2024/25 only 3%. The national formula also allocates an amount per pupil for those placed in specialist provision which is updated in-year based on data returns.
24. The high needs block funding is insufficient for the level of expenditure following the rise in demand for statutory education services for children and young people with special educational needs and disabilities (SEND), and others unable to be educated in mainstream provision (such as those with medical needs or permanently excluded). Funding increases have not reflected either the rise in demand or rise in the costs of placements. DfE advised that the DSG Deficit Management Plan should assume only a 3% increase in funding each year going forward. The increase in demand annually is projected ahead of this (35% further EHCP growth in the plan over the next 5 years) with the annual high needs funding gap already £29 million.
25. There needs to be a significant reduction in the average cost of placements to make the high needs budget sustainable with the levels of demand experienced in recent years and projected. The plan includes a budget of £2.8m for invest-to-save initiatives to increase inclusion in mainstream schools. Additional capital above current allocations will be needed to create new special school places to reduce reliance on higher cost independent and non-maintained special school provision.
26. The council is not permitted to add to the DSG from its own general fund resources without the express approval of the government. The statutory override that is in place to prevent it being considered as part of the overall assessment of the council's financial position reads as follows.

*Where a local authority has a deficit in respect of its school's budget for a financial year beginning on 1st April 2020, 1st April 2021 or 1st April 2022, the authority—*

*(a) must not charge to a revenue account an amount in respect of that deficit; and*

*(b) must charge the amount of the deficit to an account established, charged, and used solely for the purpose of recognising deficits in respect of its school's budget.*

On 12 December 2022 as part of a local government finance policy statement government announced the extension of the DSG statutory override for a one-off period of three years up to 31 March 2026. By this time, it will have been in place for 6 years, a time within which the DfE was expected to find a solution. Meanwhile, an increasing number of councils have needed to rely on the override and sought additional DSG funding via the Safety Valve mechanism to reduce their deficits to more manageable levels.

27. The impact of spending money on providing these services, over and above the annual resources being made available by government is an accumulating deficit in an unusable reserve, specifically for the DSG. This deficit is predicted to have totalled £63m as of 31 March 2024 and to grow to £91m on the 31 March 2025. As set out in previous financial reports to Cabinet and Council this issue presents the most significant risk to the council's financial health and sustainability as the accumulated DSG deficits will be greater than the total General Fund reserves from 31 March 2024 and create an overall negative position for the Council. Any authority with an overall negative position is technically insolvent. The current statutory override means the DSG deficit position can be ignored by all councils until 31 March 2026 provides a degree of protection for the council. However, the financial imperative is huge, and the Cabinet are recommended to encourage lobbying of DfE and DLUHC to resolve this position for the long term, and for the Director of Finance to draw the attention of DLUHC and CIPFA to the financial position of the Council.
28. The payment of c£30m annually more than the government grant funding needs to be underpinned by the availability of financial resources to fund the payment. The 2024/25 budget report (February 2024) highlighted that this requirement is likely to be costing the council c£3.9m in 2024/25 in forgone income that it would otherwise have obtained on its reserves, balance and normally treasury management operating cashflow position. This money would otherwise be available to fund additional revenue services and represents further services cuts that have been imposed on services.
29. There is also the challenge of whether the Council can continue to provide the cashflow to cover the payments for these services as the increased expenditure, with no income cover, is stretching the cashflow of the Council to the extreme. There will come a point as expenditure continues to exceed the budget, possibly during 2025/26, that we cannot continue to provide the cashflow to fund it and that will trigger severe consequences for the financial administration of the Council.
30. Looking forward the council is in the process of commencing its work to deliver a robust and balanced budget for 2025/26. As part of this process legal advice is being sought into various aspects associated with the funding of the accumulating DSG deficit. This includes consideration of the legislation that prevents long term financing of revenue expenditure by borrowing and the requirements of the Prudential Code which indicate it would be imprudent for a council to borrow more than its Capital Financing Requirement (approved debt limit on already incurred expenditure). The outcome of this legal advice will guide the Director of Finance and other statutory officers on any action that may need to be taken in line with their statutory duties.

## **Summary of legal implications**

31. Whilst there are no direct legal implications arising from this update report, it is imperative that the Director of Finance and Section 151 Officer, as detailed within the financial implications carefully monitors the Council's financial position in view of the current expiry of the statutory override on 31 March 2026. The impact of failure to extend this statutory override could result in the Section 151 Officer, in consultation with the Council's Statutory Officers, considering what action may be required under the Local Government Finance Act 1988.

## **Summary of human resources implications**

32. N/A

## **Summary of sustainability impact**

33. N/A

## **Summary of public health implications**

34. N/A

## **Summary of equality implications**

35. N/A

## **Summary of risk assessment**

36. N/A

## **Background papers**

Overview and Scrutiny Education Jan report:

1. [Children's Services Overview and Scrutiny Committee January - SEND Improvement Update.](#)

## **Appendices**

Appendix 1 – DfE July 2023 letter

Appendix 2 - Statutory Direction:

[SEND Statutory Direction Bournemouth Christchurch and Poole childrens services \(publishing.service.gov.uk\)](#)

Appendix 3 – DSG 15 year plan):

[BCP Safety Valve submission - DSG 15 year management template \(bcpcouncil.gov.uk\)](#)

Appendix 4 – DfE Letter Safety Valve March 24

Appendix 5 - SEND Improvement Plan

Appendix 6 – SEND Partnership Scorecard