CABINET

Report subject	**Assessing the serious cashflow issue caused by ever-increasing demand and cost outstripping High Needs Dedicated Schools Grant government funding.**
Meeting date	10 December 2024
Status	Public Report
Executive summary	This report presents the background to and an update on the ongoing conversation with the Department for Education (DfE) and the Ministry of Housing, Communities and Local Government (MHCLG) further to the letter from the Director of Finance issued on the 22 May 2024. This letter outlined concerns about the impact the ever-increasing deficit on the Dedicated Schools Grant (DSG), caused by increasing demand and cost outstripping government funding, will have on the council's ability to set a legally balanced budget for 2025/26.
Recommendations	**It is RECOMMENDED that Cabinet:** **a) Note the actions taken to date to seek government advice, support, and guidance as to how the Council can set a legally balanced budget for 2025/26.** **b) Note the work undertaken by Children's Services to improve the efficiency and effectiveness of the SEND service to manage demand and cost.** **c) Agrees that the Leader should write again to the Deputy Prime Minister requesting an urgent meeting and a solution to the cashflow challenge that the Council faces.** **d) Agrees that the Chief Executive and Director of Finance should write formally to the Permanent Secretary, MHCLG, drawing her specific attention to the cashflow challenge and potential solutions.** **e) Request officers to bring forward details of which of the options listed in section 28 of the report will need to be enacted to ensure the Council can set a legally balanced budget for 2025/26.**

Reason for recommendations	To ensure that Cabinet are kept abreast of a potential existential threat to the financial viability and sustainability of the council.
Portfolio Holder(s):	Cllr. Mike Cox, Portfolio Holder for Finance
Corporate Director	Graham Farrant, Chief Executive
Report Authors	Adam Richens, Director of Finance and Chief Finance Officer adam.richens@bcpcouncil.gov.uk
Wards	Council-wide
Classification	For Decision

National Context

1. In July 2024 the Local Government Association (LGA) and County Council Network published a research document that highlighted that fundamental reform of the special educational needs and disability (SEND) system is both urgent and unavoidable. They highlighted that despite record investment, the system continues to fail too many children and families, and rising costs are becoming a potential threat to the financial sustainability of councils. Their view was that the SEND Green paper, published in 2022 and subsequent SEND and Alternative Provision improvement plan, published twelve months later, whilst containing some welcome measures, did not go far enough to address the systemic issues within the system.
2. Their view was that given the scale of current challenges, nothing short of fundamental reform is needed. They took the view that the statutory SEND system is providing support at a scale for which it was not designed and that this has been driven in significant part by declining inclusivity in mainstream education and a large reduction in the support for pupils that is available without a statutory plan. Meanwhile, there are critical issues within the statutory framework including a fundamental misalignment of roles, responsibilities and accountabilities which means that local SEND system leaders do not have the right powers to respond to issues or improve support.
3. They estimated that the national cumulative high needs deficit has risen from £300m in 2018/19 to £3.16bn currently. Without additional investment through, for example, the Safety Valve programme, the cumulative national deficit would be closer to £4bn. This is money that has already been spent, and through what is called the “statutory override”, is ring-fenced as Local Authority debt although through a statutory instrument it is currently being disregarded in an assessment of Local Authority balance sheets.
4. The scale of the debt is so great that half of Local Authorities who responded to a survey by the LGA said that, if the statutory override was removed, they would be insolvent within a year (25%) or within three years (25%). In 2023/24, 85% of Local Authorities who responded to their survey reported an overall cumulative high needs deficit. Local Authorities’ high needs funding is at the epicentre of the crisis, and can

be measured easily, but their research suggested that education settings and health services are experiencing similar financial pressures.

5. Alongside the LGA, according to national media, the Department for Education (DfE) itself has recognised the growing threat to the financial stability of councils from the rising cost of support for children with SEND. Indications are that the number of identified children and young people with SEND have more than doubled in a decade, with more than 570,000 legally entitled to support programmes and a further 1.2m identified as needing extra support, leading to SEND spending rising from £4bn in 2015 to £12bn. Ultimately this is placing an intolerable pressure on local authorities.

6. In October 2024 the National Audit Office (NAO) published a separate report "Support for children and young people with special educational needs" which set out the current national picture and highlighted the huge pressures on local authorities' budgets arising. However, other than emphasising the SEND system is financially unsustainable, it did not offer solutions to the cashflow crisis which is set out throughout this report.

7. This NAO report set out that following the Children and Families Act 2014, there have been significant increases in the number of children identified as having Special Educational Needs (SEN), particularly those with Education Health and Care Plans (EHCPs) specifying a need for support in more expensive settings. Since 2015, demand for EHCPs has increased 140%, leading to 576,000 children with plans in 2024. There has also been a 14% increase in the number of those with SEN support, to 1.14 million pupils in mainstream schools. These changes have increased the cost of the SEN system. Although the DfE has increased high-needs funding, with a 58% real-terms increase between 2014/15 and 2024/25 to £10.7 billion, the system is still not delivering better outcomes for children and young people or preventing local authorities from facing significant financial risks. The DfE estimates that some 43% of local authorities will have deficits exceeding or close to their reserves in March 2026. This contributes to a cumulative deficit of between £4.3 billion and £4.9 billion when accounting arrangements that stop these deficits impacting local authority reserves are due to end. As such, the current system is not achieving value for money and is unsustainable.

8. The DfE has been implementing its 2023 plan for system improvement, but there remain significant doubts that current actions will resolve the challenges facing the system. None of the stakeholders who spoke to the NAO believed current plans would be effective. The government has not yet identified a solution to manage local authority deficits arising from SEN costs, and ongoing savings programmes are not designed to address these challenges. Given that the current system costs over £10 billion a year, and that demand for SEN provision is forecast to continue increasing, the report recommended that the government needs to think urgently about how its current investment can be better spent, including through more inclusive education, identifying and addressing needs earlier, and developing a whole-system approach to help achieve its objectives.

Local Context

9. All the symptoms and pressures identified in the reports detailed above are apparent within the system within the Bournemouth, Christchurch and Poole area and BCP Council has one of the largest accumulated deficits, which is growing at one of the fastest rates. The problem is exacerbated in the area by a historic mix of elements, set

out in more detail in the report previously submitted to the Cabinet meeting held on 2 October 2024.

In summary, these elements relate to:

a) A historic backlog of 2,645 EHC Needs Assessments and/or plans being cleared in recent years resulting in higher estimated placement costs and ongoing commitments being factored into the SEND budget forecast.

b) An increase in EHC Needs Assessments being carried out due to demand, rising from 322 in 2020 to 628 in 2023 resulting in more EHCPs and associated cost in the system.

c) School suspensions of pupils increasing at a significant rate, rising from 5,374 separate suspensions in 2022/23 to a current total of 7,240 in 2023/24 (final figure to be confirmed once School Census figures are received in December 2024). In terms of percentage rises, secondary suspensions have increased by 29% whilst primary suspensions have increased by 87% in that time.

d) Permanent exclusions rising from 48 in 2020/21 to a high of 118 in 2022/23, above the average rate across England. This dropped to 97 in 2023/24 but still remains significantly higher than was previously the case.

e) A rise in the number of children and young people placed in alternative provision settings outside the mainstream and special schools system. In particular children and young people with EHCPs who are in alternative provision and not also on roll at a registered school has risen from 56 in 2021/22 to 151 in 2023/24.

10. Increased suspensions, exclusions and alternative provision placements are symptomatic of a mainstream system that is struggling to meet the needs of pupils, resulting again in an increase in costs as more pupils enter the EHCP pathway and specialist placements. Maintained specialist placements have reached capacity, resulting in an increase in out-of-borough placements with the average local cost of an independent SEND school placement costing £83,400 compared to the £20,200 average local cost of a maintained special school placement.

11. Children's Services has done a considerable amount of work to successfully improve the efficiency and effectiveness of the SEND services to drive down budget pressures, however central government funding still falls significantly short. Some of the actions taken by the service include achieving **94.4%** of EHC Needs Assessments within the legal 20-week timescale (up from 0%), supporting mainstream schools to manage the needs of more children with EHCPs and SEN Support, and increasing the capacity of places in mainstream schools.

12. Cabinet and Council have previously and consistently been made aware of the impact the accumulating deficit on the Dedicated Schools Grant is having on the financial sustainability and health of the Council. This has been highlighted in annual budget reports and is also reported regularly through the quarterly budget and performance monitoring reports.

13. The table in figure 1 below sets out the current 2024/25 position regarding the expenditure on the Special Educational Needs and Disability (SEND) service which forms the High Needs Block of the government's Dedicated Schools Grant (DSG).

This demonstrates that the Council was given a High Needs Block allocation of £62.3m for 2024/25 which was within an overall DSG grant allocation of £363m. As part of the Council's approved budget for 2024/25 it was recognised that the funding would be short by £28m (45%), which has since increased to £44.5m for the year representing a 71% overspend against the grant allocation. The reasons for the increase were set out in detail as part of a report to Council on 15 October 2024.

Figure 1: Forecast High Needs Revenue Expenditure 2024/25

Revenue Expenditure	Government Grant £m	Original Budget £m	Latest Estimate £m
DSG - Grant Funded Expenditure	62.3	62.3	62.3
Additional Budgeted Expenditure		28.0	28.0
Further Additional Expenditure			16.5
Total Estimated Expenditure	**62.3**	**90.3**	**106.8**
Dedicated Schools Grant (DSG) Funding	-62.3	-62.3	-62.3
Total DSG Grant Funding	**-62.3**	**-62.3**	**-62.3**
Net Overspend / Unfunded	**0.0**	**28.0**	**44.5**

14. The in-year position is not the only issue that needs to be considered. This excess of demand and expenditure over grant has been ongoing nationally since the introduction of Education, Health and Care Plans (EHCPs) were introduced under the Children's and Families Act 2014. Locally the deficit has been growing exponentially for several years with the result that the BCP Council forecast accumulated deficit as of 31 March 2025 is now estimated to be £108m as set out in figure 2 below in the context of the council's overall reserves position.

Figure 2. BCP Reserves including the Accumulated DSG Position

	Balance 31-Mar-23 £m	Estimate 31-Mar-24 £m	Estimate 31-Mar-25 £m
Operational (day to day) Unearmarked Reserves	17.9	26.1	26.1
Earmarked Reserves - Specific Purpose	68.5	39.0	37.6
Total Reserves	**86.4**	**65.1**	**63.7**
Accumulated DSG Deficit	**-35.8**	**-63.5**	**-108.0**
Net Position	**50.6**	**1.6**	**-44.3**

15. Any private sector organisation which has negative reserves on its balance sheet, is likely to fail the “going concern” accounting concept. In local government a material uncertainty related to “going concern” is unlikely to exist as the financial reporting framework assumes the council’s services, at least its statutory services, will continue to be delivered in all scenarios. Therefore, in local government, the most likely scenario is the council’s Director of Finance (known as the Section 151 Officer) would have to contact DLUHC to advise them of their financial concerns and the possibility of issuing a report under Section 114 of the Local Government Act 1988. A s114 report would result in an immediate and severe restriction of non-statutory services. Even statutory services may be subject to a reduction in frequency or quality.

16. Due to the accumulating deficit on our Dedicated Schools Grant, BCP Council is projected to have negative reserves by 31 March 2025. This means that all things being equal the s151 Officer would be required to issue a s114 report for the 2024/25 financial year. However, to mitigate this position, which is a problem nationally, the government issued a DSG Statutory Override by way of a statutory instrument (SI) which became law at the end of November 2020. This means the council cannot contribute to the deficit, cannot hold a reserve to act as a counterweight and has been required to move the deficit to an unusable reserve where it will sit as though it did not exist within the council’s accounts and is disregarded from balance sheet perspective. This means a s114 report triggered by the DSG deficit outweighing BCP reserves will not be issued while the statutory override is in place.

17. The statutory instrument reads as follows.

    Where a local authority has a deficit in respect of its schools’ 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.

18. On 12 December 2022 as part of a local government finance policy statement, government announced the extension of the DSG statutory override for three years up to 31 March 2026. This means in respect of the accumulating deficit the position can be ignored until the 2026/27 budget process as a solution will need to be found for any financial year covering 1 April 2026 onwards.

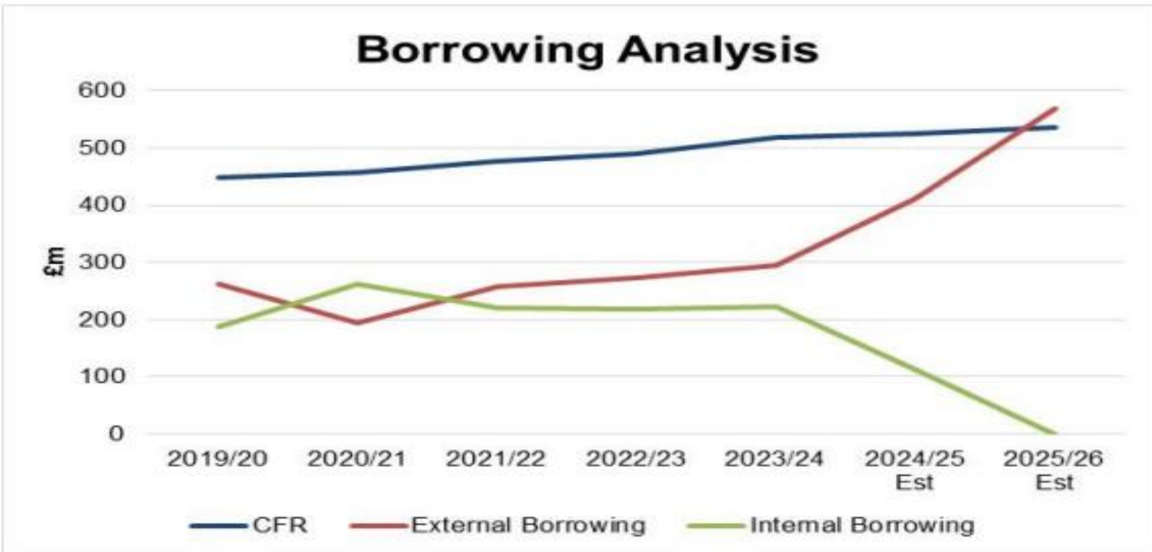
19. Ignoring this deficit from a balance sheet and potential solvency perspective is one thing. However, the bills still need to be paid, and all councils are prohibited from borrowing to fund the day-to-day operational/revenue expenditure. Currently the council is using what is referred to as its “treasury management headroom” to enable these bills to be paid. Generally, this is the timing difference between receipts for council tax or business rates arriving and the date when the actual bills they fund are paid, alongside any cash-backed balance sheet items such as reserves and provisions.

20. Figure 3 below sets out that BCP Councils treasury management headroom will be exhausted by the first quarter of 2025/26 which is when the threshold on borrowing, referred to as its Capital Financing Requirement (CFR) is forecast to be breached. In effect this is the point at which the council runs out of cash to continue to cashflow the

DSG deficit on behalf of the Department for Education. While the Council's statutory services will continue to be delivered in all scenarios, the framework to do so has severe consequences for the level and quality of those services and impact on residents. We need to find a solution to this cashflow restriction and have been working with government for some months on this specific issue.

21. At this point it should be recognised that if the council did not have to cover this deficit, created through pressures beyond its control, this cash would be earning interest or would enable a lower level of external debt to be held. Therefore, cash flowing the DSG deficit is estimated to cost the council in the region of £5.4m in 2024/25 – a cost incurred due to mostly external factors beyond the council's control and one that the council has had limited power to tackle. That is £5.4m of the £38m of savings, efficiencies and additional resources implemented in 2024/25 which could have been avoided if it were not for this issue and could be used to benefit our residents.

Figure 3: Analysis of BCP Councils borrowing analysis



22. The consequence of being unable to cashflow the DSG deficit in 2025/26 means the Council will potentially be unable to set a legally balanced budget for 2025/26. Therefore, as part of the precursor to a formal s114 report the council's Director of Finance wrote to DLUHC on the 22 May 2024 (Appendix B) to seek its advice, guidance and support on how a legally balanced budget for 2025/26 could be set. The statutory override is in place to avoid some of the serious consequences of having such a large and growing deficit but has now itself become a threat to councils' financial stability as it is a debt councils are not permitted to tackle proactively, nor is the government offering any contribution to either the deficit or providing an effective long term financial solution to the historic inadequate funding of SEND. This is an impossible situation where councils cannot pay off the deficit, but the increase of the deficit threatens the financial sustainability of the council and put services at risk.

23. The letter from the Director of Finance has been supplemented by a letter from the Council Leader in response to a Council motion early in 2024 (Appendix A), and numerous letters since from the Council Leader and local MPs to highlight the precarious position we are in and encouraging government to find a solution. (Appendix D to H). The Chief Executive and Director of Finance have also had regular conversations with civil servants from Ministry of Housing, Communities and Local Government (MHCLG) and DfE.

24. Specifically in response to the letter from the council's Director of Finance, senior officers of the council met with representatives of the DfE and the Ministry of Housing, Communities and Local Government (MHCLG) on the 21 August 2024. The outcome was that DfE commissioned a detailed review by an independent local authority financial specialist to provide them with a report on BCP Council's budget and cash position.

25. Officers will continue with the urgent dialogue with civil servants, and the Leader and MP's will continue to push the Minister and Secretary of State for a satisfactory solution over the next six weeks, after which we have to start to publish proposals for the budget for 2025/26. At that point, officers will advise councillors of any formal strategies that may be available to the Council, or any other solutions that could be considered.

26. We have made financial suggestions to government about how this could be resolved on a temporary or permanent basis until the statutory override is either extended, which is most likely, or is cancelled, at which point the debt arising from the accumulated deficit will crystalise, either in the Council's accounts, which would be have the serious financial and delivery consequences for the Council as outlined in this report, or in government's accounts, in which case the issue will be resolved for the Council. However, each of those solutions carries a risk for the government or the Council and there will undoubtedly be concerns in government about the national effect of any local solution that we might need.

Options Appraisal

27. The Council has limited options to address this position, although we have suggested some solutions to government for its consideration. This report is not intended to address the options, but to set out the context so that councillors can continue to lobby government for a permanent solution to this national financial crisis. On the assumption that government have not provided a solution the next report to the Cabinet will address the options and recommend action for the Council to take to address the issue for Bournemouth, Christchurch and Poole.

28. Unless government provides us with a practical solution and/or an injection of cash the potential actions that the council will need to consider, some of which will be highly unpalatable and in breach of legislation and statutory regulations., include.

    a) Not sending any more cash to government, for example for its share of business rates income, but instead issuing them with an "IOU" for any outstanding sums that we are due to pay them and using that cash to offset the accumulating deficit.

    b) Cutting the SEND service to keep it entirely within the budget provided by government – This option would be to cease all further new Education Care and Health Needs Assessments (ECHNAs) and amends to Education Heath and Care plans where there is an additional financial outlay. This would effectively create a new waiting list for new assessments or changes to current plans and would breach required service standards. This option also includes not commissioning any new, or recommissioning any existing, AP placements because of Permanent Exclusions or other statutory responsibilities.

c) Breaching the legislative and accounting framework by borrowing to fund the deficit and charging the interest costs to the DSG deficit.

d) Issuing a section 114 report (or councillors making the equivalent decisions) and using the General Fund savings to fund the deficit.

Summary of financial implications

29. As a financial report the financial implications are considered in the main section of the report.

Summary of legal implications

30. The council has a fiduciary duty to its taxpayers to be prudent in the administration of the funds on their behalf and an equal duty to consider the interests of the community which benefit from the services it provides. The services provided within the High Needs Block are statutory services and demand is increasing, leading to an overspend on the budget against the grant provided by government to pay for the service.

31. It is the responsibility of councillors to ensure the council sets a balanced budget for the forthcoming year. In setting such a budget councillors and officers of the council have a legal requirement to ensure it is balanced in a manner which reflects the needs of both current and future taxpayers in discharging these responsibilities, which will include the need to ensure there is sufficient cash to fund the commitments at the time they fall due. In essence, this is a direct reference to ensure that Council sets a financially sustainable budget which is mindful of the long-term consequences of any short-term decisions.

32. As a billing authority, failure to set a legal budget by 11 March each year may lead to intervention from the Secretary of State under section 15 of the Local Government Act 1999. It should however be noted that the deadline is, in reality, 1 March each year to allow sufficient time for adherence to the timescales for the council tax direct debit process.

33. The issuing of a s114 Report by the s151 Officer is a statutory report issued pursuant to s114 Local Government Finance Act 1988. If such a report is issued, this must be considered by an extraordinary meeting of Council within 21 days of issue. Council will be required to consider whether or not it accepts the statutory report and must also provide a formal response to the s151 Officer. However, upon issue of a s114 report, the s151 Officer is required, following consultation with the Monitoring Officer where necessary, to implement council wide spend controls and all decisions with a financial implication must be reviewed and approved by the s151 Officer before they can be enacted.

Summary of human resources implications

34. The potential implementation of a s114 report and resulting reductions in services (which the council is seeking to avoid) would reduce the level of staff employed.

Summary of sustainability impact

35. Like other non-statutory services, any formal process that restricted funding for non-statutory services would significantly impact any progress the council could make towards its climate change and ecological emergency commitment.

Summary of public health implications

36. A potential implementation of a s114 report and resulting reduction in services (which the council is seeking to avoid) would inevitably impact of the affordability of public health services.

Summary of equality implications

37. A restriction of services to those that are just statutory and even for statutory services restrictions in the level and quality are likely to have implications which impact on the wellbeing of our residents. An Equality Impact Assessment would be needed to support any decision around future service levels.

Summary of risk assessment

38. The risks inherent in this position to the council include.

    - **Unsustainable accumulating DSG deficit.** The national system for the funding of Special Educational Needs and Disability expenditure is broken and unsustainable. It is likely that an annual BCP Council deficit of circa £60m for 2025/26 will need to be added to the forecast 2024/25 year-end position meaning the deficit on 31 March 2026 is likely to be around £168m, with no legal avenues for the council to address it.
    - **Unable to set a legally balanced budget for 2025/26**. The purpose of the action currently being taken is to enable a legally balanced budget for 2025/26 to be set.
    - **Unable to set a legally balanced budget for 2026/27 onwards**. Setting the cashflow issue to one side the government will need to consider the fact that the current statutory instrument ends on the 31 March 2026 which will mean BCP Council alongside several other authorities will need to consider action under the arrangements supporting a s114 process in advance of the 2026/27 budget setting in addition to those already commenced in advance of the 2025/26.
    - **Government Intervention.** There is a risk that any solution offered by government may form part of their Exceptional Financial Support programme which in turn could either lead to a further Best Value Notice or some form of government intervention.

Background papers

39. February 2024 Budget and Medium-Term Financial Plan 2024/25 2024

    https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=284&MId=5386&Ver=4

40. May 2024 SEND Progress Update re SEND Improvement Plan and Safety Valve

    https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=285&MId=5897&Ver=4

41. July 2024 MTFP Update Report

https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=285&MId=5901&Ver=4

42. September 2024 Quarter One Budget Monitoring Report 2024/25

    https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=285&MId=5902&Ver=4

43. October 2024 MTFP Update Report

    https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=285&MId=5903&Ver=4

44. October 2024 High Needs Schools Grant Expenditure Forecast

    https://democracy.bcpcouncil.gov.uk/ieListDocuments.aspx?CId=285&MId=5903&Ver=4

Appendices

Appendix A	7 May 2024	Letter from BCP Leader to SoS for Education
Appendix B	22 May 2024	Letter from BCP Director of Finance to MHCLG
Appendix C	19 July 2024	Briefing note from BCP Director of Finance on BCP cashflow crisis provided to MHCLG
Appendix D	19 July 2024	Letter from V Slade MP to SoS
Appendix E	6 Sept 2024	Letter from BCP Leader to Deputy Prime Minister
Appendix F	6 Sept 2024	Letter from BCP Leader to SoS for Education
Appendix G	10 Sept 2024	Letter from Local MPs to SoS for Education
Appendix H	4 Oct 2024	Response from Minister for School Standards
Appendix I	29 Oct 2024	Response from Minister for School Standards to V Slade