

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 09 April 2024

TITLE	Safety Valve Agreement and High Needs Provision Capital Allocation (HNPCA)	
Ward(s)	All	
Author: Reena Bhogal-Welsh	Job title: Director of Education and Skills	
Cabinet lead: Cllr Craig, Cabinet Member for Children’s Services, Education and Equalities Cllr Cheney, Cabinet Member for City Economy Finance & Performance	Executive Director lead: Stephen Peacock, Chief Executive Officer Hannah Woodhouse, Executive Director for Childrens and Education Tony Kirkham, Interim Finance Director, and Section 151 Officer	
Proposal origin: Other		
Decision maker: Cabinet Member Decision forum: Cabinet		
Purpose of Report: For Cabinet to: <ol style="list-style-type: none"> Note the full terms of the Safety Valve Agreement with the Department for Education (DfE). Accept funding from the DfE’s High Needs Provision Capital Allocation (HNPCA) if the Council is successful in its application. Approve the spending of the HNPCA funding in line with the proposals outlined in this report if the Council is successful in its application. 		
Evidence Base: <ol style="list-style-type: none"> The Safety Valve programme is an agreement between local authorities and the DfE to develop plans for reform to their high needs systems to make them effective and sustainable. To be accepted, authorities must provide evidence that their plans will support improved outcomes for children and young people as well as demonstrate that their Dedicated Schools Grant (DSG) Deficit Management Plans (DMP) are robust and can create lasting financial sustainability. This must include a projection to reach an in-year balance as quickly as possible On 18 July 2023, the Council was invited by the DfE to apply (Appendix A1) to be part of the Safety Valve Programme. Being part of the Safety Valve Programme supersedes the Council’s involvement in the Delivering Better Value in SEND (DBV) Programme. Agreements are subject to Ministerial approval. In August the DfE advised that no public announcements should be made relating to the Safety Valve invitation. As a result, Council officers met in closed sessions with members of the Financial and People Scrutiny task groups and members of the Audit Committee throughout the process. During negotiations Council officers worked with DfE advisors to refine the existing DSG DMP to ensure its robustness and deliverability. This included a full review of the financial modelling underpinning the plan. This process resulted in an updated DSG DMP (Appendix A2), building on the iteration approved by Schools 		

Forum on 27 September 2022, and presented for noting to Cabinet on 3 October 2023.

5. As part of this review process the Council updated the DSG DMP to include workstreams which are currently being delivered or co-designed with key stakeholders. This includes changes to High Needs Block (HNB) funding, Pathways to Independence and a co-designed SEND Inclusion Strategy.
6. Changes to HNB funding, specifically the non-statutory 'Top-Up' funding, were approved by Cabinet on the 5 February following a full city-wide consultation process. This review was linked to the Council's participation in the DBV programme. The current system will be phased out with a final non-statutory 'Top-Up' panel in June. At this panel new non-statutory funding agreements will be limited to one year. Statutory funding linked to an Education, Health and Care Plans (EHCP) will not be limited and will in future be allocated at the point of completion. Existing individual non-statutory 'Top-Up' funding agreements will continue in line with the terms of the existing agreements. It is expected that non-statutory 'Top-Up' funding will be phased out completely by 2027/28.
7. A new targeted funding model and outreach service (combined funding of £2m per annum) is in the process of being co-designed with key-stakeholders, with a launch date scheduled for September 2024. This targeted and outcome focused approach will bring Bristol into line with national best practice.
8. The Council's Safety Valve application was formally submitted to the DfE on 12 January 2024 following engagement with Cabinet Board and the Council's Finance Scrutiny Task Group. The submission was supported by the Chief Executive, the Director Education and Skills and the Council's Section 151 Officer.
9. On 5 March 2024, the Council presented a report to Cabinet under APR16 outlining seven recommendations, which included granting delegated authority to sign the agreement to the Chief Executive Officer on the condition that the terms of an agreement were aligned with the Council's submission. Cabinet was also asked to note an application for additional High Needs Provision Capital Allocation (HNPCA) funding. All seven recommendations were approved by the Cabinet Member for Children's Services, Education and Equalities.
10. On 7 March, the DfE presented to the Council an agreement which was to be signed and returned within three working days. This agreement was signed by the Council's Chief Executive Officer, Executive Director for Children and Education (DCS) and Section 151 Officer and a copy of this agreement can be found in Appendix A3. On 21 March, the DfE announced the Agreement on its [website](#).
11. The agreement summarises the information submitted to the DfE, this includes the mitigations as per the DSG DMP Overview (Appendix A2) and SEND Strategy Overview (Appendix A4).
12. The Council is not able to subsidise activity funded by the DSG from its own resources without the explicit permission of the Secretary of State. It is therefore critical that DSG expenditure is brought within the grant funding made available as soon as is practicably possible.
13. Currently a "Statutory Override" is in place, which means that the Council's DSG deficits can be ring fenced away from core Council budgets and do not have to be cash backed. This Statutory Override is currently due to remain in place until 31 March 2026 but is not guaranteed to be renewed beyond that date.
14. At 31 March 2024, the Council's DSG reserve is forecast to be £56.1m in deficit and this deficit is projected rise to £114.2m by 2027/28 assuming all planned mitigations have been successfully delivered in full up to that date. This can be seen in the DSG DMP in Appendix A2.
15. Currently, the DfE's Safety Valve Programme is the only option that the Council has to reduce and eventually eliminate the cumulative deficit on its DSG Reserve.
16. Under the terms of the Safety Valve Agreement (Appendix A3) the key financial implications are as follows:

- The DfE will make available an additional £53.8m of DSG allocation payable over the next six years which is only to be allocated to reduce the accumulated deficit on the Council’s DSG reserve. Of this amount, 40% (£21.5m) will be paid to the Council before or on 31 March 2024. Subsequent payments will be made quarterly in arrears with the annual totals being as identified in paragraph 5 of the agreement.
- The additional DSG funding to be made available by the DfE is subject to continued satisfactory progress in implementing the Safety Valve plan over the six-year period and achieving the savings identified in the DSG DMP (Appendix A2)
- The Council will contribute up to £46.5m from its own resources with £42.8m of this amount to be allocated to reduce the accumulated deficit on the DSG reserve and £3.7m to provide additional funding for the associated costs in delivering the programme of change.
- For 2024/25, the Council’s initial contribution of £12m is included within the 2024/25 Budget agreed by Full Council at the meeting on 28th February 2024 and the balance is incorporated in the Council’s current Medium Term Financial Plan that was presented to the meeting on that date.

The table below identifies the source of £46.5m Council funding supporting the Safety Valve Agreement:

Source of funds	2024/25 £m	2025/26 £m	2026/27 £m	2027/28 £m	2028/29 £m	2029/30 £m	Total £m
General Fund revenue – costs of delivery	0.663	1.218	0.649	0.399	0.399	0.399	3.727
General Fund revenue – contribution towards deficit	3.500	3.500	3.500	3.500	3.500	3.500	21.000
General Fund reserves – contribution towards deficit	7.837	7.282	6.655	-	-	-	21.773
Total	12.000	12.000	10.804	3.899	3.899	3.899	46.500

- Subject to annual approval at Schools Forum, and in addition to the contributions from the Council, a transfer from the Schools Block to the High Needs Block of 0.5% will also be required in each of the first five years of the agreement. This is projected to average £1.8m per annum and total £9.1m over those five years.
- The Council will undertake not to exceed maximum levels of deficit on its cumulative DSG reserve (before any additional DSG allocation) at the end of each of the seven financial years 2023/24 through to 2029/30 as identified in paragraph 2 of the Safety Valve Agreement (Appendix A3). This is to be achieved by implementing the plans required to deliver the savings as shown within the DSG DMP (Appendix A2) and thereby reaching and sustaining an in-year balance on the Council’s DSG account by 2028/29.
- The Council has also agreed to ongoing monitoring of its performance in fulfilling the Safety Valve Agreement and will:
 - Report tri-annually (as a minimum) in writing to the DfE on its progress towards implementing the plan as per the conditions set out in paragraphs 2 and 3 of the Safety Valve Agreement (Appendix A3);
 - Include progress against the conditions of grant and a financial dashboard detailing various metrics relating to demand and cost in its monitoring reports;
 - Inform the DfE of any unforeseen difficulties or impacts of carrying out the agreement, or any significant risks to reaching the agreed financial position as soon as they arise;
 - Meet with the DfE at any time when deemed necessary to discuss progress towards the agreement.

For the capital position these are:

- A bid has been made to the DfE for an additional £28.2m of HNPCA to support the programmes of work required to deliver the Safety Valve Agreement. The outcome of this bid has yet to be announced. Further information can be found in paragraph 23 and 24.
- Following any announcement of a successful bid for additional HNPCA, a review and replanning process

will take place to optimise the use of such capital funding to best support the delivery of the Safety Valve Agreement.

- Any proposed schemes resulting from this replanning process will require business cases to be developed and reports to be brought to committee for decision making before these plans are taken forward.

17. There are key risks to the Council that arise from entering into the Safety Valve Agreement with the DfE. For the revenue position these are:

- a. If, for any reason, the Council or DfE are forced or required to terminate the Safety Valve Agreement and a deficit remains on the DSG Reserve at the date the current DSG Statutory Override ends, which is 31 March 2026 and assuming that the DSG Statutory Override is not renewed, the Council will need to fund the DSG deficit at that date from its own reserves. This would result in the need to reallocate resources and may require significant reductions in expenditure on other Council funded services, the scale of which would be dependent on the size of the DSG deficit at that date. Assuming all of the planned mitigations are delivered in full, this is currently projected to be £96.0m which is equivalent to 17% of the Council's projected net expenditure in 2026/27.
- b. There is a risk of not being able to deliver the required savings as planned. Whilst this can be mitigated by identifying and delivering other savings, there is a risk that these prove to be inadequate and hence the Safety Valve Agreement could be terminated by DfE.
- c. There is a risk that the Council may be required to find further resources to support the delivery of the Safety Valve Agreement conditions relating to the year end deficit balances (paragraph 2 of the Safety Valve Agreement) if insufficient savings have been achieved.
- d. There is a risk that the Council may not be able to fund the future years of contributions required under the Safety Valve Agreement which could result in the Agreement being terminated the DfE.
- e. There is a risk that the application for HNPCA of £28.2m is either rejected or scaled down. This would make some of the savings identified in the Safety Valve plan extremely difficult to achieve. Available HNPCA would need to be reviewed and prioritised to maximise short term benefits. Whilst further mitigations could reduce this risk, it is possible that these are insufficient and result in the DfE terminating the agreement. It is not known if the DfE would be prepared to negotiate the terms of the Safety Valve Agreement under these circumstances.

18. Whilst the Corporate Risk Register 15 (CRR15) risk outlines the overall risk to the council of in year financial deficit, consideration as to a specific separate risk on the DSG deficit management will now need to be given in light of the recently confirmed Safety Valve Agreement and any subsequent announcement regarding additional HNPCA allocation.

19. As of the 25 March 2024, the DfE has yet to approve the Council's HNPCA application of £28.2m. The application for HNPCA funding is linked directly to savings outlined in A2 of the DSG DMP (Appendix A2). It is unknown whether the DfE will approve all, or some of the funding.

20. If this application is successful, this additional HNPCA can only be used to address specific barriers to unlocking savings or support new projects that can be delivered quickly to help bring spending back into in-year balance. This funding is not intended to cover the breadth of demographic demands in Bristol, nor to fund all the High Needs capital projects which are planned in future years.

21. Bristol was unable to submit a funding request to cover capital projects currently being built or for reimbursements of projects already delivered – these were considered out of scope. Any additional investment in new places will be in addition to the following two workstreams as outlined in the DSG DMP (Appendix A2):

- A1 – Specialist Provision - In the financial years 2022/23 and 2023/24 Bristol was allocated £14.8m of HNPCA funding. This funding allocation is being used to deliver 118 additional specialist and resource places as part of the SEND Phase 2 Capital Programme.
- A4 – SEND Free School - In 2023 the DfE approved a new SEND Free School in Bristol. This is a DfE led

build which is due to open in September 2026, with an initial capacity for Bristol based children of 36, increasing year on year to a full capacity of 129 students by September 2032. As this is currently a DfE led development, it is not included in the Council's own capital programme.

22. Both the additional Specialist Provision and the SEND Free School are critical dependencies in delivery against the terms of the Safety Valve Agreement. If either of the capital schemes are delayed or undeliverable as planned, it will become necessary to re-evaluate the Safety Valve programme of work and develop alternative options. This may include the need for the Council to allocate further capital resources to support successful delivery under the terms of the Safety Valve Agreement.
23. If Bristol's HNPCA application is fully successful it is proposed that the Council will use up to £15m of HNPCA to invest in the existing education estate to improve the accessibility of mainstream schools, create inclusive environments and future proof buildings. Funding will be allocated to schools via a grants programme that will be co-designed with key stakeholders and aligned with design frameworks for inclusive buildings.
24. Additionally, the Council is seeking approval to allocate an additional £13.2m of new HNPCA funding to rebuild the Clarendon Special School primary site and amalgamate both the primary and secondary sites into one building with an increased capacity up from 77 to 97 children. It is proposed that Clarendon's current secondary school site be repurposed into a circa 50-place resource base.
25. The primary building is in Henleaze, and the secondary building adjoins Redland Green Secondary School both in North Bristol. The primary school site is nearing end of life and requires significant investment to keep operational. Without this it is likely that it will become unusable within 5-10 years. The Council has recognised that it must address the risk that losing this essential provision would cause in terms of significant disruption for pupils and families. Furthermore, children would likely need to be placed in Independent Non-Maintained Schools further increasing the pressure on the DSG.
26. Cabinet approved spend of up to £15m to deliver the Clarendon project on 1 September 2020. £6.5m was allocated from existing DfE capital grants immediately, the remaining capital was due to be supported through future grant funding or prudential borrowing. Financial pressures on the Council have meant that this has not been viable. The total build cost for this project is currently estimated to be in the region of £19.7m. The increase is due to changes to increase school capacity and inflation in the interim period. The project has planning approval and can be moved into final design and construction phase quickly in order to deliver the projected savings once funding has been identified either through HNPCA or alternative funding sources.
27. If the Council is unsuccessful in its application for HNPCA funding this will result in the Council and the DfE needing to renegotiate the Safety Valve agreement, specifically in relation to mitigation A2 although it should be noted that the DfE have not confirmed that such re-negotiation would be possible. This is therefore a critical risk to the programme as outlined in 17(e).
28. If the Council is only partially successful in its application for HNPCA funding, mitigation A2 will be reviewed to maximise the short-term impact of the available funding against the financial targets set out in the Safety Valve agreement. In addition, the Council will need to identify and develop further mitigations to make up any projected shortfall in achieving those financial targets.
29. New capital projects will be subject to the capital lifecycle and best practice delivery framework. Full governance will be implemented including engagement with the Education Capital Board and DSG Programme Board. Where proposed budgets are more than Director and Executive Director decision thresholds, a key decision will be required via the new decision pathway at the relevant Committee(s).
30. All projects are planned to be fully funded using external grant funding (HNPCA) from the DfE with no match funding required from the Council and therefore no impact on Council resources earmarked for existing projects.

31. The financial terms set out in the Safety Valve agreement and the targets outlined in the DSG DMP (Appendix A2) form part of the Council's budget framework and closely align with other key aspects of the financial planning process, including the Council's Medium Term Financial Plan (MTFP) and Capital Strategy. As a living document the DSG DMP will remain subject to frequent review and revision, be responsive to changing national factors, local priorities, and conditions, and take account of emerging pressures, risks and opportunities, as it builds on the annual budget approved by Schools and Council each year.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. Note the full terms of the Safety Valve agreement with the Department for Education (DfE) (Appendix A3).
2. Authorises the Chief Executive in consultation with Cabinet Member for Children's Services, Education and Equalities and the Cabinet Member City Economy Finance & Performance to take all steps required to, if successful, accept and spend the funding from the DfE's High Needs Provision Capital Allocation (HNPCA), including procuring and awarding contracts which may be over the key decision threshold, as outlined in this report.
3. Authorises the Chief Executive in consultation with Cabinet Member for Children's Services, Education and Equalities and the Cabinet Member for City Economy Finance & Performance Authorises to invoke any subsequent extensions/variations specifically defined in the contract(s) being awarded, up to the maximum budget envelope outlined in this report.
4. Authorises the Head of Strategic Procurement & Supplier Relations to approve appropriate procurement routes to market where these are not yet fully defined in this report, or if changes to procurement routes are subsequently required

Corporate Strategy alignment:

CYP3: Equity in education.

Over the course of this Corporate Strategy, the Council expects SEND provision to continue improving by co-designing appropriate support with children and families to meet their needs. The Council want to create the right conditions that will enable more young people with SEND and from disadvantaged backgrounds to enter further education, employment, or training. Supporting children and young people to experience an inclusive education that meets their academic, health, social and emotional needs is a crucial step to entering employment and becoming independent and economically active within the city, which supports their lifelong wellbeing.

The Council's ambition is that children and young people have access to an education that develops their potential both in what they learn and who they become, so that they have skills for life and work. Additionally, an education that is inclusive and values diversity, and that provides opportunities where they learn from each other and benefit from understanding their different experiences is important. In achieving this, the Council will work both directly and with partners across the entire system to maximise opportunities for all. This includes access to further education, higher education, and other training providers to help people find pathways to employment; acknowledging and building upon much existing work by the Council and partners in these sectors to address the educational disadvantage in the city.

City Benefits:

Improvements to the way the DSG is used to support provision for pupils and students with SEND, ensuring it is spent in a fair, transparent, and sustainable way.

Consultation Details:

1. Audit Committee, 20/11/23
2. Cabinet Board, 08/01/24
3. Scrutiny - Finance Task Group, 23/11/23, 05/01/24

4. School's Forum Meeting, 16/01/24
5. Cabinet member Briefings 01/03/24
6. Department for Education meetings, 31/08/23, 15/12/23, 05/01/24

Background Documents:

1. Bristol City Council Cabinet Meeting 2 July 2019 - [Education Capital Programme – SEND Capital Proposals](#)
2. Bristol City Council Cabinet Meeting 1 September 2020 - [SEND Sufficiency & Capital Proposals](#)
3. Schools Forum 27 September 2022 - [The Dedicated Schools Grant \(DSG\) Management Plan Update including mitigations](#)
4. Bristol City Council Cabinet Meeting 3 October 2023 - [Dedicated Schools Grant \(DSG\) High Needs Block Recovery Plan](#)
5. Bristol City Council Cabinet Meeting 7 February 2024 - [Review into the effective and sustainable use of statutory and non-statutory high needs block \('Element 3'\) funding \[Delivering Better Value in SEND, Workstream 2\]](#)
6. Bristol City Council Cabinet Meeting 5 March 2024 – [Safety Valve Programme](#)
7. Department for Education – [Bristol City Council Safety Valve Agreement](#)

Revenue Cost	General Fund £46.5m Dedicated Schools Grant £53.7m Schools Block transfer £9.1m	Source of Revenue Funding	General Fund Dedicated Schools Grant
Capital Cost	£28.2m	Source of Capital Funding	Grant: High Needs Provision Capital Allocation
One off cost <input checked="" type="checkbox"/>	Ongoing cost <input checked="" type="checkbox"/>	Saving Proposal <input checked="" type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice: The financial implications are as identified within this paper and the related appendices. Further details of the revenue financial implications can be found in paragraphs 12 to 16 and the capital implications in paragraphs 19 to 30.

Given the risk to the Council created by the DSG deficit and the related Safety Valve Agreement, consideration as to a specific separate risk in the Corporate Risk Register is recommended.

Finance Business Partner: Guy Marshall, Finance Business Partner 14 March 2024

2. Legal Advice: The procurement process must be conducted in line with the 2015 Procurement Regulations and the Council's own procurement rules. Legal services will advise and assist officers with regard to the conduct of the procurement process and the resulting contractual arrangements.

Legal Team Leader: Husinara Jones, Team Manager/Solicitor 12 March 2024

3. Implications on IT: I can see no implications on IT in regard to this activity.

IT Team Leader: Alex Simpson – Lead Enterprise Architect 21 March 2024

4. HR Advice: The report is seeking Cabinet to note the full terms of the Safety Valve agreement, to accept the funding the DfE's High Needs Capital Allocation (HNCA) and approve the spending of the funding as outlined in the report. This report has no significant HR implications arising from these requests for Bristol City Council employees.

HR Partner: Lorna Laing, HR Business Partner Adults & Communities, Children's & Education 13 March 2024

EDM Sign-off	Hannah Woodhouse	20 March 2024
Cabinet Member sign-off	Cllr Craig Cabinet Member for Children's Services, Education and Equalities	26 March 2024
For Key Decisions - Mayor's Office sign-off	Mayor's Office	26 March 2024

Appendix A – Further essential background / detail on the proposal A1 - Invite to Round 4 of the 'Safety Valve' intervention programme letter – Bristol A2 - Overview – DSG Deficit Management Plan A3 – Signed Safety Valve Agreement A4 - SEND Strategy Overview	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO