

Children and Families Committee

Date of Meeting:	23 May 2022
Report Title:	Participation in Department for Education, Delivering Better Value Programme
Report of:	Deborah Woodcock, Executive Director of Children's Services
Report Reference No:	CF/09/22-23
Ward(s) Affected:	All wards

1. Purpose of Report

- 1.1. This report provides a briefing on the invitation Cheshire East has received to participate in the Department for Education Delivering Better Value programme.

2. Executive Summary

- 2.1. The government is making an unprecedented level of investment in high needs funding with revenue funding increasing by more than 40% between 2019-2020 and 2022-2023. However, nationally spending is still outstripping funding. Two thirds of local authorities have deficits in their dedicated schools grant budget as a result of high needs cost pressures. By the end of 2020-2021 the national deficit was over £1 billion. This would equate to an average deficit across 128 authorities of £7.813M, or an average across the two thirds that have a deficit of £11.765M. Cheshire East had a deficit of £9.999M as at 31 March 2021.
- 2.2. Cheshire East has been invited to be part of the Delivering Better Value (DBV) programme that was announced by the Department for Education (DfE) in February this year. The DBV programme is designed to provide dedicated support and funding to help 55 local authorities with substantial deficit issues in their high needs block of the dedicated schools grant (DSG) to reform their high needs systems, with the aim to put more local authorities on a more sustainable footing so that they are better placed to respond to the

forthcoming special educational needs and/or disabilities (SEND) reforms. There is currently £85m allocated to this programme. A further 14 authorities with more severe deficits are engaged in the Safety Valve project which involves contractual arrangements with the DfE.

- 2.3. Senior officers met with the DfE recently and it was emphasised that participation in the programme is voluntary. There was emphasis on this being an enabling and supportive programme with strong focus on the mutual learning across the wider system. However, it should be noted that there was a clear indication that local authorities could be asked to move from the DBV programme to the safety valve programme, which is mandatory, although this would not happen in this year.
- 2.4. The first 20 of the 55 will start in June of this year and the others will then be scheduled in.
- 2.5. The high needs block is one strand of the dedicated schools grant (DSG). This element of the DSG is primarily spent on securing suitable school and post 16 provision for children and young people in line with the 2014 code of practice.

3. Recommendations

- 3.1. The Children and Families Committee is asked to:
- 3.2. Note the invitation to participate in the programme and the chronology in relation to our high needs budget and the potential to start engagement in the programme from June 2022.
- 3.3. Note that under Chapter 2 – Part 5 of the council's Constitution, at paragraph 52, the Executive Director (Children's Services) is given delegated power to take any decisions in relation to this area of the council's operations and services.

4. Reasons for Recommendations

- 4.1. The council already has a significant deficit and whilst a proactive approach has already been adopted through the high needs management plan which was approved by Cabinet in March 2021 this still forecasts a significant high needs deficit.
- 4.2. The DBV programme will complement the safety valve intervention programme by providing dedicated support and funding to help 55 local authorities with substantial, but less severe, deficit issues to reform their high needs systems.
- 4.3. In addition, the DfE's aim is to put more local authorities on a more sustainable footing so that they are better placed to respond to the SEND

review reforms. Cheshire East has been selected as one of the local authorities to be invited to take part in the programme.

- 4.4. For 2020/21 the council's DSG deficit was £9.999m compared to high needs funding of £39.6m.

5. Other Options Considered

- 5.1. A decision could be taken not to participate in the programme, but the council would need to be mindful of the significant High Needs deficit and that this would possibly trigger an invitation to the safety value programme next year which would be mandatory and contractual. In addition, the council would not be able to benefit from the additional resource and learning that is attached to the DBV programme.

6. Background

Chronology

- 6.1. The following sets out the chronology in relation to the high needs budget and the reporting and actions that have been taken to date.

2014 September	Statutory guidance issued in the SEND code of practice: 0 to 25 years bringing in significant changes and reforms to the support to be provided by the local area to children with special education needs.
2016 – 2019	High Needs funding in Cheshire East increased by £1m in absolute terms while education health and care plans (EHCPs) increase by 25%. In per EHCP terms funding dropped by over 16% during this time.
2018 March	CQC/Ofsted inspection identified a number of strengths in our SEND arrangements, but these were undermined by two key areas of significant weakness. A written statement of action was required.
2018 April	High needs national funding formula introduced with 50% determined by previous legacy allocations.
2018 August	Joint Written Statement of Action (Clinical Commissioning Group (CCG) and local authority) setting out actions to address weaknesses approved.
2018 – 2021	DfE/CQC monitoring of improvements
2019 September	New major review into support for Children with SEND launched by DfE
2020 February	Cabinet receives the Schools Funding Formula report highlighting the refusal of the Schools Forum to contribute to high needs pressure and that a dis-application has been made to the DfE – which was declined.
2020 March	Cheshire East DSG Reserve goes into deficit position of -£2.6m having reduced from +£3.4m in 2016/17.

2020 April	A national accountancy Override approach introduced by Ministry of Housing, Communities & Local Government (MHCLG) (now Department for Levelling Up, Housing and Communities (DLUHC)) to address national high needs budget issues.
2020 June	The -£2.6m deficit DSG Reserve forms part of the 2019/20 Outturn Report to Cabinet.
2020 Autumn	The DfE launch a DSG Management Plan format to assist presentation of the issues. This is a voluntary template for local authorities to use but would be required for discussing dis-application requests and higher DSG deficits. The council developed a local template based on the DfE model that allowed a number of technical issues around high needs funding to be addressed.
2020 October	The council's 2020/21 mid-year review is reported to cabinet setting out the expectation the DSG reserve deficit will increase to -£5.1m
2020 November	The deficit DSG reserve is reported as part of the council's Statement of Accounts for 2019/20.
2021 February	The council's 2020/21 third quarter review is reported to Cabinet setting out the expectation the DSG reserve deficit will increase to -£7.6m
2021 February	Cabinet receive the Schools Funding Formula report highlighting that a dis-application has been made to the DfE, to request a transfer of £1M from the schools block to the high needs block – which was declined.
2021 March	Cabinet approves the DSG Management Plan 2021/22 to 2024/25.
2021 April	The Cheshire East DSG Management Plan is shared with the DfE and formed the basis for a series of meetings in 2021. The DfE provided minor feedback as we had addressed most of their concerns in the draft plan.
2021 March	DfE launches Safety Value programme starts with 5 local authorities with the highest dedicated school grant deficits in 2020/2021.
2021 May	CQC/Ofsted SEND revisit found that the two areas of weakness in the previous inspection had been addressed and monitoring is no longer required.
2021 June	Schools Forum receive an update on the DSG Management Plan
2021 September	Finance Sub-Committee receive 2020/21 Outturn reporting setting out DSG Reserve position as -£10m.
2021 November	CLT receive an update on DSG Management Plan v2. CLT note the update and recommend an update is taken to Children and Families Committee in Autumn 2022.

2021 December	Finance Sub-Committee receive an in-year 2021/22 financial review paper reflecting the DSG deficit reserve forecast at -£25.5m.
2022 January	Children and Families Committee receive an in-year financial review paper – extracts from the Finance Sub-Committee report reflecting the DSG deficit reserve forecast at -£25.5m.
2022 February	Children and Families Committee receive the Schools Funding Formula report highlighting that a dis-application has been made to the DfE, to request a transfer of £1M from the schools block to the high needs block – which was declined.
2022 February	Council receives the MTFS report for 2022/23 to 2025/26 that highlights the risk of the override and the 2021/22 year end forecast position of a -£25.5m deficit.
2022 March	SEND Green Paper published with consultation closing 1 July 2022. This indicates 2/3 of local authorities now have significant deficits.
2022 March	DfE launches a ladder of intervention through the Safety Value (SV) and Delivering Better Value (DBV) programmes. A further 9 local authorities mandated to join the safety valve and 55 invited to join the DVB programme.

Accounting Override ~ Dedicated Schools Grant adjustment account (England)

- 6.2. From the financial year 2020/21 the accounting arrangements for the deficit on the DSG grant has changed.
- 6.3. The council holds usable and unusable reserves on the balance sheet. Usable reserves are cash backed whereas unusable reserves are not and relate to timing differences, examples of unusable reserves are pensions and the valuation of land and buildings.
- 6.4. Prior to 2020/21 the DSG grant was treated as a usable reserve, when this went into deficit it was no longer appropriate for it to be treated as such, as negative cash reserves are not acceptable. The impact on the balance sheet is a netting off effect which therefore reduces the amount of usable reserves. In the 2019/20 Statement of Accounts when the override did not apply the general fund earmarked reserves total figure included a negative DSG reserve of £2.560m.
- 6.5. In April 2020 Ministry of Housing, Communities & Local Government (MHCLG) introduced new legislation to switch the DSG deficit reserve from usable to an unusable reserve and allowed the creation of an adjustment account on the balance sheet.

- 6.6. When MHCLG set up the accounting override, this prevented local authorities from funding a DSG deficit from General Funds without the permission of the Secretary of State. It was made clear to LA treasurers that this override was in place to allow time for DfE, MHCLG and LAs to reach suitable arrangements to address the issue. In presenting the Better Value proposition DfE have only confirmed that the override will end on 31 March 2023. This provides no resolution to the negative reserve issue which was the subject of the override. The potential size of the negative reserve for Council, at 31 March 2023, presents a financial stability issue for the 2023/24 financial year. As such we will continue to liaise with DLUHC and DfE to further understand how the DBV programme will impact on the accounting override.
- 6.7. The Dedicated Schools Grant adjustment account holds accumulated deficits relating to the schools budget. Where the authority has incurred a deficit on its schools budget in years beginning 1 April 2020, 1 April 2021 or 1 April 2022, the Local Authorities (Capital Finance and Accounting) Regulations do not allow for such amounts to be included in the General Fund and instead must be held in this adjustment account.
- 6.8. The impact of the override for the 2020/21 Statement of Accounts resulted in the DSG deficit of £9.999m being reported as an unusable reserve on the balance sheet rather than being included in the Earmarked Reserves – General fund balance of £91.4m.
- 6.9. The current legislation applies to the financial years stated above and further legislation will be required for 2023 onwards.

Department for Education Intervention Programmes

- 6.10. In response to the considerable deficits across the national SEND budgets the safety valve programme was announced last year as an intervention programme with local authorities identified with very high deficit in their SEND high needs block. This is the element of the dedicated schools grant (DSG) that is primarily spent on securing suitable school and college provision for children in line with the 2014 code of practice. The programme started with 5 local authorities with the highest dedicated school grant deficits in 2020/21, with 9 more joining this year and a further 5 planned for next. Cheshire East have not been invited to participate in this programme. There are 2 North West local authorities in the programme (Salford and Bury) and 3 larger unitary/ county councils (Dorset, South Gloucestershire and Surrey). Their 2021/22 forecasted deficits range from £13.6m (York) to £118.4m (Surrey). The local authorities are required to enter into a contractual agreement with the department identifying high needs reforms and savings targets alongside some grant provision. The funding allocated to this programme is currently £300m until 2025/26.

- 6.11. The DBV programme is designed to provide dedicated support and funding to help 55 local authorities with substantial, but less severe deficit issues to reform their high needs systems, with the aim to put more local authorities on a more sustainable footing so that they are better placed to respond to the forthcoming SEND review reforms. There is currently £85m allocated to this programme.
- 6.12. There does not appear to be any link between performance and outcomes for children and high needs deficit. For example on reviewing those authorities involved in the safety valve programme in the North West, Salford are rated good for social care and Bury inadequate, Bury have a written statement of action for SEND, but Salford don't. Both have smallish/average populations (Salford c260k, Bury c195k). Outside the North West, York are rated good with a population of c210k and no written statement of action for SEND, but Surrey are rated requires improvement having just moved from inadequate with a population of c1.20m and have a written statement of action for SEND.

Outline of the DBV programme

- 6.13. The programme will take place over two phases.
- 6.14. Phase 1 – is the diagnostic phase to analyse the data and review existing action plans. Funding will be available to help the authority to undertake the analysis.
- 6.15. Throughout this phase local authorities will be supported by a SEND professional adviser, a SEND financial advisor, possibly with an experienced S151 officer, and a delivery partner. They will support analysis and share best practice.
- 6.16. This phase will take 6 months and result in an action plan. The local authority can then decide if we wish to share this with the department and progress to phase 2 or we can withdraw from the programme at this point.
- 6.17. If we decide to progress to phase 2 we would need to submit the action plan. Through the action plan we can request funding to contribute to implementation and set out where national policy is not supporting progress and so escalate these issues to the DfE.
- 6.18. Phase 2 is the delivery phase. During this phase we will continue to receive support from by a SEND professional adviser and SEND financial advisor. There is no delivery partner as the local authority is responsible for delivery.
- 6.19. This phase will come with some funding (an allocation from the £85M available nationally for the programme). There will be no clawback and no monitoring relating to this funding.

- 6.20. The SEND Green Paper (March 2022) recognises that the system is driven by a hard-working and dedicated workforce who are committed to delivering excellent support for children and young people but that there are growing pressures across the system which are creating increasing financial pressure for local government.
- 6.21. The green paper describes an effective system as one in which the vast majority of young people can thrive without the need for an EHCP or specialist provision because their needs would be identified promptly and appropriate support put in place at the earliest opportunity.
- 6.22. Proposals are set out for an inclusive system with improved mainstream provision that is built on early identification, high quality teaching and prompt targeted support with improved national consistency.
- 6.23. A range of local consultation workshops are planned to take place throughout May to inform a local partnership response to the vast range of detailed proposals.

Governance arrangements

- 6.24. There will be a national steering group that will want to know how the programme is progressing. It will be focused on outcomes and not monitor individual action plans. We would be invited onto the board. Through the board good practice would be shared across authorities.
- 6.25. Local strategic oversight of the programme will be through a governance meeting chaired by the Executive Director of Children's Services. Support to the programme would need to be provided by a cross-directorate steering group.
- 6.26. We would engage schools and settings throughout the programme through the Schools Forum.

7. Consultation and Engagement

- 7.1. TOGETHER is our shared definition of coproduction in Cheshire East and the review will be carried out together with our key stakeholders, including parent/carers, young people, our staff, and providers
- 7.2. Engagement would take place throughout our participation in the programme to support the development of the action plan to ensure shared ownership across the SEND sector. The SEND Partnership Board would provide multi-agency governance.
- 7.3. Appropriate consultations would take place on any proposals included in the action plan as part of the delivery phase.

8. Implications

8.1. Legal

- 8.1.1. The DfE has invited local authorities with the highest DSG deficits to the safety valve programme and those with less severe but substantial deficits have been invited to the Delivering Better Value programme.
- 8.1.2. The programme is a financial intervention programme, following the DfE's tender seeking to deliver services through a single contract to be awarded by the Department for Education (DfE) to design and develop the Delivering Better Value in SEND programme.
- 8.1.3. It is intended that local authorities with sustainable high needs systems will thus be in a better position to modernise in line with the SEND reviews detailed in the Department for Education's Green Paper that was published on 29 March 2022.
- 8.1.4. The Green Paper sets out broad principles for reform and a consultation process is underway, with a closing date of 1 July 2022. Further details as part of the Government's response to the consultation and a SEND Delivery Plan are not expected until later in 2022 and therefore further legislation or guidance will not be available until later in the year.
- 8.1.5. The DBV programme, worth £1.5 million pounds, aims to deliver a values-based framework for managing local SEND systems to enable financial sustainability.
- 8.1.6. It is possible that the new system will be used to assess the performance of local authorities either through formal or informal accountability measures.
- 8.1.7. Further advice should be sought from Legal Services as the details of the programme become known.

8.2. Finance

- 8.2.1. The table below shows how the DSG Reserve Deficit has developed over time:

Financial Year	Total DSG Income High Needs £000	Carry Forward (Surplus / - Deficit) £000
2016-17	£35,498	3,364
2017-18	£33,924	2,304
2018-19	£34,143	1,596
2019-20	£37,557	-2,560
2020-21	£39,636	-9,999
2021-22	£44,526	-25,500

- 8.2.2. The DSG Management Plan reported to Cabinet in March 2021 forecast the deficit reserve balance to increase to -£81m by 2024/25 after a number of mitigations were applied.
- 8.2.3. Given the uncertainty of the duration of the override and the potential implications of its removal the council needs to consider all options to reduce the deficit DSG reserve to manageable levels.
- 8.2.4. High needs funding has increased in recent years but not by enough to keep pace with the growth in EHCPs. The DfE apply an increase to local authorities' high needs budget at the same set percentage for every authority. This does not reflect the differences in the rate of increase in EHCPs across authorities. Cheshire East has seen a significant increase over recent years as our percentage of plans was significantly below the national average and has increased to being just below national average. This does indicate we could start to see a decline in the rate of increase but further increase at a rate above the national average is still likely for at least one to two years. EHCPs in Cheshire East have increased by 88% from 1,812 to 3,412 from 2018 to 2022 and the budget increased by 34% from £33.1M to £44.5M over the same period.

8.3. **Policy**

- 8.3.1. The SEND Code of Practice sets out the statutory guidelines and policy for SEND. The SEND Review: Right support, Right place, Right time sets out proposed changes to policy which are open for consultation until 1 July 2022.
- 8.3.2. This statutory code contains details of the legal requirements that the local authority, health bodies, schools and colleges must follow without exception to provide for those with special educational needs under part 3 of the Children and Families Act 2014.
- 8.3.3. The statutory duties include:
- the need to undertake a needs assessment where a child may have additional needs,
 - to issue an education, health and care plan within 20 weeks where assessment provides evidence this is required to meet the assessed needs.
 - the local authority must then secure an appropriate school place and must consult with parental preference.

8.4. **Equality**

- 8.4.1. Equality impact assessments would be carried out in relation to any relevant changes as a result of engagement in the programme.

8.5. **Human Resources**

- 8.5.1. If we participate in the DVB programme this would fund additional capacity to support the phase 1 analysis and to support capacity to deliver our mitigations at a greater pace in phase 2.

8.6. **Risk Management**

- 8.6.1. If we do not volunteer to participate in the DVB programme this will increase the likelihood that we will be mandated to join the safety valve programme from next March.
- 8.6.2. Despite our comprehensive current DSG management plan we are still forecasting a significant deficit. External support and access to evidence-based practice may help us to reduce this forecast further through additional capacity and invest to save funding.
- 8.6.3. The national override enables the council to hold the DSG reserve deficit separately from its other reserves. This is not sustainable as the council is spending more than it is receiving, and it would normally **have** to set that off against positive reserves. The Management Plan approved by Cabinet in March 2021 forecast that this increase to £81m by March 2025. The latest forecasts expect that will exceed £118m by March 2026. In context, the council's General Reserve balance as at 31 March 2021 was £91m.

8.7. **Rural Communities**

- 8.7.1. This is a high-level high needs DSG budget issue and does not specifically impact differently on rural communities. In relation to individual school budgets, we have challenged the DfE at every possible point on the negative impact of the national school funding formula on rural schools. This continues to be our approach with the backing and support of the Schools Forum.

8.8. **Children and Young People/Cared for Children**

- 8.8.1. 20% of our children and young people who are cared for have SEND or are vulnerable and need alternative education packages which are funded through our DSG high needs budget. As corporate parents it is important we continue to ensure the appropriate additional support is in place to support the educational progress of our cared for children.
- 8.8.2. It is important that ensuring the best outcomes for vulnerable children remain at the heart of any action plan.

8.9. **Public Health**

- 8.9.1. Covid has had an impact on the mental health and wellbeing of children and young people. This is resulting an increase in the application for an education, health and care plan.

8.9.2. In addition, the impact on children’s education progress due to Covid is well documented. This is again leading to an increase in applications for an education, health and care plans.

8.10. **Climate Change**

8.10.1. The mitigations in our DSG management plans that will have the greatest impact on reducing the deficit is the creation of additional local provision, whether that be through enhanced provision in mainstream or additional specialist schools. Children and young people attending a more local school will reduce the transport requirements. In addition, any new school builds are designed to be energy efficient. Reduced transport and energy efficient new builds both contribute positively our climate change strategy.

Access to Information	
Contact Officer:	Jacky Forster Jacky.forster@cheshireeast.gov.uk
Appendices:	None
Background Papers:	<p>SEND Green Paper: The following link should take you to the full report and consultation response document https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time</p> <p>SEND Green Paper: The following link should take you to the summary document https://www.gov.uk/government/publications/send-and-ap-green-paper-responding-to-the-consultation/summary-of-the-send-review-right-support-right-place-right-time</p> <p>The Council’s DSG Management Plan that was approved by Cabinet in March 2021 as item 95.</p>