

**Name of meeting:** Cabinet  
**Date:** 21<sup>st</sup> December 2022  
**Title of report:** Alternative Provision (AP) Education in Kirklees

**Purpose of report:**

To provide an overview of plans to refresh and expand our “Alternative Provision” (AP) Education offer and seek authority to progress plans to create additional specialist AP places to support the needs of children (some of whom also have Special Educational Needs and Disabilities) who require an alternative education offer.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<p>Yes – this will have a significant effect on two or more electoral wards because of the reach of Alternative Provision.</p> <p>Also, the cost of the refreshed AP offer is likely, in the short term at least, to be in excess of £250k more than the current spend associated in this area.</p>
<b>Key Decision - Is it in the Council’s Forward Plan (key decisions and private reports)?</b>	<p>Key Decision – Yes</p> <p>Private Report/Private Appendix – No</p>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<p>Yes. A draft report was discussed at Children’s Scrutiny panel on 12<sup>th</sup> December and feedback has been reflected in this report.</p>
<b>Date signed off by <u>Strategic Director</u> &amp; name.</b>  <b>Is it also signed off by the Service Director for Finance?</b>  <b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<p>Mel Meggs – Director of Children’s Services – 9/12/22</p> <p>Eamonn Croston – Service Director for Finance – 7/12/22</p> <p>Julie Muscroft – Service Director for Legal, Governance and Commissioning – 7/12/22</p>
<b>Cabinet member <u>portfolio</u></b>	<p>Cllr Carole Pattison – Learning, Aspiration and Communities</p> <p>Cllr Viv Kendrick – Children’s Services</p>

**Electoral wards affected:** All

**Ward councillors consulted:** None

**Public or private:** Public

**Has GDPR been considered?** Yes, personally identifiable data is not present in this report.

## 1. Summary

### 1.1 This paper outlines the following:

- Overview of the SEND Transformation Plan and Safety Valve agreement
- Alternative Provision (AP) definition
- The current context in Kirklees
- Proposals for the future Kirklees AP offer – including opportunity for an AP Free School in Kirklees
- Cost implications

Improving the outcomes for our children with special educational and additional needs is at the heart of our agreed 'Inclusive Ambitions' (see Appendix 1) to tackle key inequality issues in Kirklees. By investing in and working with our children and young people and their families at the earliest opportunity, this will support us to help them in achieving their best possible outcomes.

Kirklees wants:

- All our children and young people to have the best start in life
- Our children and young people to be proud to come from Kirklees
- Our children and young people with Special Educational Needs and Disabilities (SEND) to live and be educated in Kirklees
- Our children and young people with Special Educational Needs and Disabilities to make good educational progress, have high aspirations and good life opportunities.

### 1.2 Kirklees has a comprehensive SEND Transformation Plan (STP) (Appendix 2) with robust governance. The STP has, at its core, a sufficiency strategy which focuses on enabling more children and young people to secure places and thrive in local educational settings.

### 1.3 The STP has been fundamental in successfully securing funding from the Education & Skills Funding Agency following two submissions. The first brought in £33.5m to help address the cumulative historic High Needs deficit (See Appendix 3 for a copy of the agreement) and the second, £8.2m capital to further support our ambitions.

### 1.4 Fundamental changes were introduced nationally as part of legislative reforms under the Children and Families Act 2014, and the Special Educational Needs and Disability code of practice: 0-25 years 2015. Since that time, and like other local areas, Kirklees has experienced an increased demand for Education, Health and Care Plans and subsequent rises in costs. Like many other authorities, over recent years Kirklees Council has seen rising numbers of children with SEND who need additional support. This has all had an impact on sufficiency of "Alternative Provision" places in Kirklees. In March 2022 a Green Paper was published entitled "Right Support, Right Place, Right Time." This paper jointly considered SEND and AP.

### 1.5 Current trajectories, in terms of annual revenue expenditure from the High Needs Block for the education of children with SEND and those in AP, are unsustainable in the medium to longer term. As part of our wider transformation plans, securing sufficient and suitable places for our learners is a key element to enable us to address this. Pressures in Kirklees include a significant rise in children with an Education Health and Care Plans (EHCP) since 2015 – from 1907 children and young people in Kirklees having an EHCP in 2015 to 3860 in Nov 2022.

### 1.6 An independent review into AP in Kirklees was commissioned in 2020-21 and the key recommendations are incorporated into the work described in this paper. This review included views of a range of stakeholders including children and young people who attend AP and their families.

- 1.7 Refreshing and expanding the Alternative Provision offer across Kirklees is at the heart of the key recommendation of this report. As part of a planned strategy of enabling more children and young people to secure places and thrive in local educational settings, the purpose of this report is to seek approval to increase the sufficiency of the Alternative Provision offer in Kirklees. This would strengthen the pathways of support available for children locally and allow for more children to be successful in Kirklees
- 1.8 The proposals in this report are intended to ensure we secure high quality and sufficient AP to meet the needs of our children and young people. This would be achieved by commissioning a wide range of clearly defined provision through a robust procurement process. Together with a range of supporting projects featured within the SEND Transformation Plan, AP is a fundamental element of Kirklees' strategy to improve outcomes for children, parents and carers whilst mitigating the pressures outlined above and throughout this report.

## **2. Information required to take a decision**

### **Background**

#### **2.1 Defining AP and its current context in Kirklees**

The SEND & AP Green Paper, 2022 defines Alternative Provision as:

*“Education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education and support arranged by schools, including for pupils receiving targeted support in their mainstream school; pupils being directed by schools to off-site provision to improve their behaviour; and provision for pupils on a fixed period exclusion. When we reference state place-funded alternative provision, we mean alternative provision receiving £10,000 per place from a local authority or the Education and Skills Funding Agency, comprised of all Pupil Referral Units, alternative provision academies and alternative provision free schools.”*

SEND & AP Green Paper “Right Support; Right Place; Right Time” (March 2022)– p.83

AP can also include one-to-one education in the home if that child has a medical condition – which includes mental health issues such as high anxiety - that can't be supported in a school. Such bespoke, home-based provision can be delivered by medical AP schools.

The Department for Education defines Alternative Provision (AP) as:

*“Alternative Provision (AP) refers to suitable full-time education that is arranged for a pupil from the sixth school day (or earlier) of a suspension or the sixth school day (or earlier) after the first day of a permanent exclusion. In other circumstances, AP may refer to education arranged for pupils who are unable to attend mainstream or special school and who are not educated at home, whether for behavioural, health, or other reasons. AP includes Pupil Referral Units (PRUs), AP academies and free schools, and hospital schools, as well as a variety of independent, registered, unregistered and further education settings.”*

Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement Guidance for maintained schools, academies, and pupil referral units in England, July 2022

#### **2.2 The current context in Kirklees**

Securing the right number of AP places is a fundamental part of our overall sufficiency strategy within our SEND Transformation Plan. This report focuses on opportunities which propose to

secure and build on the capacity and expertise which exists in local provision settings and create sufficiency in Kirklees alternative provision settings. This will allow Kirklees to continue to support children and young people's needs by ensuring we have high quality, fit for purpose facilities that can support a wide range of need within a sustainable delivery model.

Our vision is for the development of a pathway for Alternative Provision in Kirklees, offering a continuum across a "Graduated Approach", using some of our existing providers, new providers, and the wider school system. We aim to co-design and co-produce true multi-agency partnerships, to deliver on the Our Kirklees Futures vision, enabling children, young people, and their families to access the services they need, where they need them and when they need them - "Right Support, Right Place, Right Time". This will form part of our wider "continuum" of SEMH provision across Kirklees.

There are a number of AP providers currently within Kirklees, four of which are judged by OFSTED to be Good or better, one of which more recently inspected, received a "Requires Improvement" judgement and one which offers an alternative, therapeutic, outdoor education offer and is currently unregistered with OFSTED. Collectively, these providers serve learners with a range of needs as follows at various stages:

### **Current AP Providers in Kirklees**

We currently commission three contracts with AP providers and additionally purchase some spot placements with AP providers for children with EHCPs. The reason the spot purchases are made with these providers is:

- This gives us the opportunity to educate more children locally within Kirklees, with a high quality, flexible, bespoke offer which meets their needs, often in line with parental preference
- Due to current local sufficiency pressures, the alternative would be to place children with other Independent Providers, outside of Kirklees, where the current cost of a place for a child can be high. (This ranges from £40K to £100K with an average of £62K.)

#### **2.2.1 Ethos Academy Trust**

Currently in Kirklees, we commission the majority of our alternative provision from **Ethos Academy Trust (EAT)**. The Academies that are part of Ethos Academy Trust all have Good or Outstanding judgements currently. EAT make provision for KS1-4 through a variety of settings which form their AP Academy:

- Engage Academy – KS1 / 2
- Reach Academy – KS3
- Ethos College – KS4

The cost of this existing contract is in excess of £4.2 million and provides for the equivalent of 129 full-time pupil places (including 17 fte places for medical provision), as well as other commissioned services such as Outreach support and Exclusion duties.

Additionally, we currently commission a small range of registered independent schools and education providers to supply additional alternative provision locally. These include:

#### **2.2.2 Brian Jackson College**

Brian Jackson College is an independent registered Alternative Provision supporting pupils with social, emotional and mental health difficulties in Years 9 – 11 whose proprietor is the Yorkshire Children's Centre. Brian Jackson College has an Ofsted rating of good. The LA can commission places for young people with EHCPs at a cost of @£45,000 / year on a spot

purchasing arrangement. As at October 2022 25 children are attending Brian Jackson College on a spot purchased placement.

### **2.2.3 PIVOT**

Pivot is an independent registered Alternative Provision supporting pupils with social, emotional and mental health difficulties. Currently has an Ofsted rating of Requires Improvement. They are commissioned by Kirklees to deliver provision for those pupils in KS4 who are permanently excluded from school and are entitled to receive a full -time education from Day 6 of their exclusion period from their regular school setting. "Day 6" places at Pivot cost @£17,000 per place.

PIVOT are also delivering provision for an increasing group of pupils who are highly vulnerable and have complex needs, most of whom are either in receipt of an Education, Health & Care Plan (EHCP) or in the process of being issued with an EHCP. The costs of provision for this particular pupil cohort varies and begins at £41,000 per pupil place which are issued on a spot purchasing arrangement. As at October 2022 28 children are attending Pivot on a spot purchased placement.

### **2.2.4 Employability Solutions**

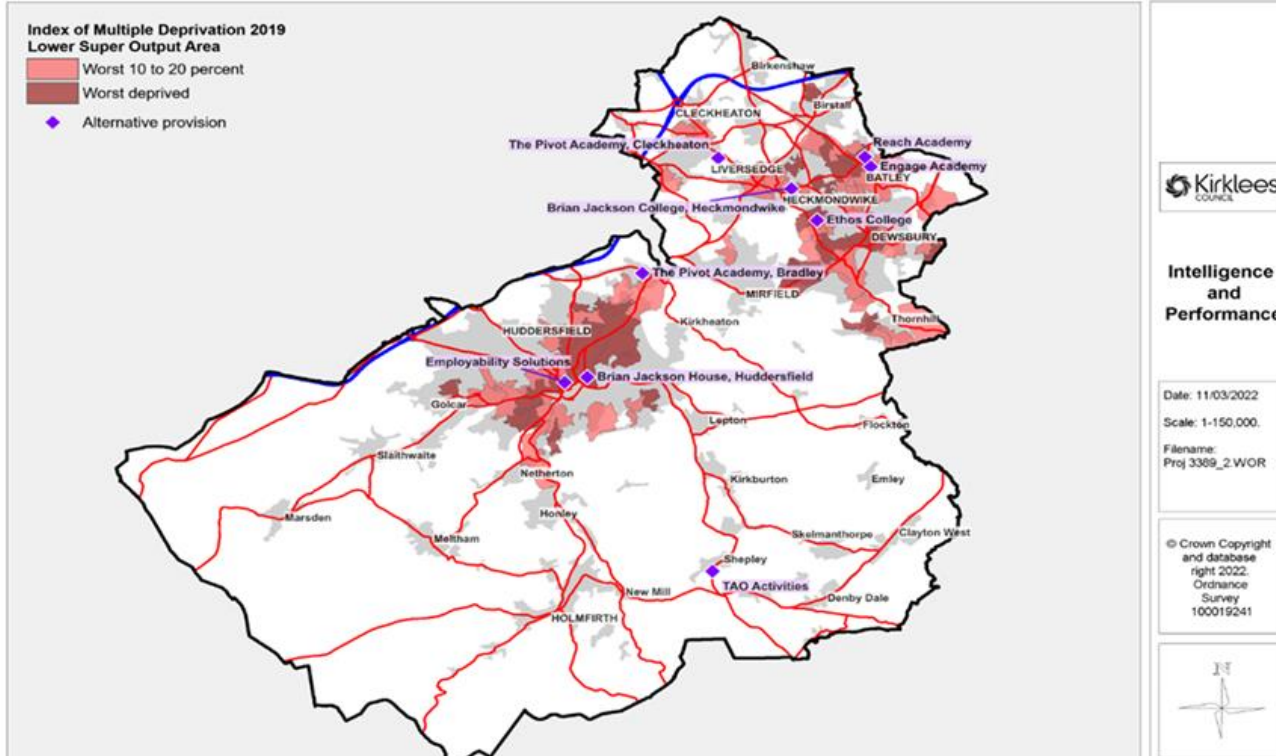
Employability Solutions is a registered Independent School offering an alternative, largely vocational, secondary education for young people in KS4 who thrive in a smaller, more nurturing setting than mainstream schools. Costs of pupil places vary according to level of need – places range from £15.5k – £17k subject to EHCP. As at October 2022 1 child is attending Employability Solutions in a spot purchased placement.

### **2.2.5 TAO Activities Ltd**

TAO is an AALA (Adventure Activities Licensing Authority) registered (Alternative Education Provider which specialises in providing therapeutic outdoor education provision over a 12 week programme (this can be extended or reduced if needed). The focus is intensively on social skills, resilience, independence and increasing and improving mental health and wellbeing with a view to re-engage disaffected learners with education. The LA currently commissions TAO in a contract with a value of @£170k which enables TAO to work with up to 200 learners / year from KS2-4.

The map below illustrates the spread of AP in Kirklees:

## SEND - Alternative Provision



A new AP Quality Assurance tool has recently been developed in Kirklees, based upon the Ofsted's *Education Inspection Framework for schools*, statutory safeguarding requirements, *Keeping Children Safe in Education*, (KSIE) and DfE 2013 alternative provision guidance. This will support our AP providers to ensure the best outcomes for the children and young people who attend their sessions.

The national average cost of a pupil place in "alternative provision" was calculated in 2018 at £18,000. [Alternative Provision Market Analysis.pdf](#) The Kirklees independent AP review (2021) highlighted that, in Kirklees, there was a clear need for greater challenge to the pricing structure and provision tariffs.

Since the independent review of AP was undertaken, the gaps in provision, pricing, costs and commissioning have been better understood and we are now preparing a range of brand-new tenders for AP due to be launched by January 2023, ready for the new academic year 2023/24. The tender will provide a framework of providers with a new set of expectations clearly articulated through the new quality assurance approach

### 3. The Proposals

#### 3.1 Rationale for change

There are three main reasons why we need to refresh our AP offer in Kirklees.

Firstly, is the analysis of increased demand for AP places as part of the overall sufficiency for meeting the educational needs of children and young people.

Requests for places in AP are increasing year on year, particularly for pupils with Social and Emotional Mental Health (SEMH) needs. This is a national challenge, with an increase in the number of children and young people identified as having SEND (16.5% of schools' population) and EHCPs now issued for 4% (and rising) of the schools' population compared with 2.8% between the years 2007-2017.

Our APs are also providing for pupils with significant levels of SEND in Kirklees. There has been a significant increase in the numbers of pupils who attend alternative provision who have a complex level of need and have an EHCP.

Below is a percentage of learners on roll at Kirklees AP in Sep 2022 with EHCPs:

- Brian Jackson Heckmondwike -50%
- Brian Jackson Huddersfield – 68%
- Employability Solutions 21%
- Pivot (Day 6) – 7%
- Pivot Salus – 100%
- Pivot Cleckheaton -100%
- Ethos Engage – 48%
- Ethos Reach -30%
- Ethos College- 61%
- TAO – 100%

Kirklees commissions and purchases places for children and young people with an EHCP on an individual pupil arrangement with the providers, this and other EHCP purchasing arrangements has a direct impact on the AP sufficiency and the provider offer. Our current AP offer is supporting placement of pupils with long term SEND therefore it is essential that the refreshed AP offer is considered alongside additional SEMH and overall SEND sufficiency plans in order to ensure we are able to offer the wide range of AP required in Kirklees, including short term, turnaround placements as well as longer term provision for pupils with EHCPs.

Alongside the rebuild of the two special schools we are also creating further Additionally Resourced Provision attached to mainstream schools in Kirklees which will include provision for learners with SEMH needs.

It should also be noted that we currently have just over 200 children / young people educated outside of Kirklees or in independent settings, and approximately 75% of these have SEMH needs.

The long-term aim is to create, through an extensive AP offer alongside increased sufficiency of places in ARPs and special schools, a “continuum of provision” to meet a wide range of SEMH need within Kirklees.

However, there is a significant sufficiency pressure in the interim period whilst these new schools and provisions are being developed and built - which is having an impact on the AP landscape.

Secondly, significant pressure on the high needs block element of the Dedicated Schools Grant has resulted in significant overspend of this budget. We have entered into the Dedicated Schools Grant ‘Safety Valve’ Agreement with the DfE earlier this year as outlined earlier in this report.

There are multiple factors which have contributed to the overspend of the high needs budget. In relation to AP, pressures have largely arisen because of rising numbers of pupils with SEND, with some conditions (autism and social, emotional and mental health needs primarily) increasing disproportionately. Post-pandemic effects on this pupil cohort are now being experienced both nationally and locally and this has resulted in more pupils being both suspended and permanently excluded from school.

Thirdly the new refreshed offer will include a range of provision across a graduated approach – offering opportunities for earlier intervention. The opportunity to recommission our AP in Kirklees will contribute to more children and young people being able to access the right, high quality provision, in the right place, at the right time, fundamentally leading to improved outcomes.

### **3.2 Proposed changes**

Kirklees requires a multi-stranded offer of alternative educational provision which provides a response to meeting local pupil need on a partnership arrangement with a range of alternative education providers, including local schools. Through market engagement we want to enable a wide range of partners, including mainstream schools and academies, to support in developing our AP offer. This AP offer will be part of an overall continuum of provision to meet the needs of children and young people with SEMH difficulties across Kirklees.

To improve outcomes for the AP pupil groups, flexible and individually tailored responses that address a breadth of needs, based on accurate assessment, delivered by skilled, nurturing and knowledgeable staff, with continuity of strong relationships will be key characteristics of effective practice with all young people in Kirklees.

#### **The Kirklees AP Offer 2023**

In the immediate future the sufficiency requirements for AP locally are explained below:

##### **1) Day 6 Provision**

Access to full-time education from Day 6 of absence from school primarily because of permanent exclusion. \*NB This provision may be spread in different settings across the LA with more than one provider.

- Key Stage 1/2 – 5 places
- Key Stage 3 – 25 places
- Key Stage 4 - 25 places

(+ option to purchase additional places on cost per placement basis)

##### **2) Medical Needs provision**

- Key Stage 1/2 – 5 places
- Key Stage 3 – 20 places
- Key Stage 4 – 20 places
- Flexible model of home tuition / outreach places where appropriate

(+ option to purchase additional places on a fixed cost per placement basis)

##### **3) Triage / Assessment Bases**

- Key Stage 1/2 - 2 bases, North and South Kirklees each for up to 12 CYP
- Key Stage 3/4 - 2 bases, North and South Kirklees, each for up to 16 CYP
- Dual registered

**Full time assessment places** – Maximum of 12 weeks for young people who are experiencing significant social, emotional, and mental health difficulties (may have co-existing additional SEND, potentially presenting as challenging behaviour) which are affecting their learning. Provision offers assessment, short term intervention and respite. Desired outcome is that there will be clear recommendations and next steps for each young person based upon assessment of need.



### **Services required within the Assessment Base:**

- Assessment of pupil need – including cognitive ability, SEND, mental health & well being
- Early Support assessment / intervention (to include Family Support)
- English as an Additional Language (EAL) assessment / support
- Engagement and access to core and creative curriculum
- Wider multi-agency support where appropriate e.g. Social Care, International New Arrivals Team (INAT), Youth Engagement Service (YES), Multi-Systemic Therapy (MST)

#### **4) Key Stage 1 and 2 SEMH Turnaround / Intervention Bases**

2 provisions, 12 places in each, based North and South, for 18-24 weeks

Students will be dual registered with their referring mainstream school

Curriculum will be tailored to individual need, based upon Nurture Group principles with a Trauma Informed approach, triaged through the initial 12-week assessment placement,

Aim to return to mainstream setting at end of placement, to include reintegration support.

\*NB – these may be in the same setting as the 12-week assessment / Triage offer.

- Education Health and Care Needs Assessment (EHCNA) if appropriate
- Engagement and access to core and creative curriculum
- Tailored intervention to remove barriers to learning
- Family Support
- Therapeutic intervention e.g. Multi Systemic Therapy (MST) Mental Health in Schools Teams (MHST), Child & Adolescent Mental Health Service (CAMHS), Speech & Language Therapy (SALT), Occupational Therapy (OT)
- English as an Additional Language (EAL) support
- Wider multi-agency support where appropriate e.g. Social Care, International New Arrivals Team (INAT), Youth Engagement Service (YES)

#### **5) Key Stage 3 SEMH Turnaround / Intervention**

2 provisions, 16 places in each, based North and South, 18-24 weeks, dual registered, triaged through the initial 12 week assessment placement, Trauma Informed approach, tailored curriculum offer, high staffing ratio, potential EHCNA where appropriate, aim to return to mainstream setting at end of placement, to include reintegration support.

- EHCNA if appropriate
- Engagement and access to broad and balanced curriculum
- Tailored intervention to remove barriers to learning
- Family Support
- Therapeutic intervention e.g. MHST, CAMHS, SALT, OT
- EAL support
- Wider multi-agency support where appropriate (e.g. Social Care, INAT, YES)

## 6) Year 9 + Alternative provision

Bespoke tailored offer for up to 40 CYP unable to access mainstream school, vocational offer as well as curriculum pathway. A number of these pupils will have SEND with SEMH as their primary need, at SEND support level – without an EHCP), however some may not have any identified SEND. This offer may be from a number of different providers including tutoring, vocational internships and, for example, an outdoor education offer.

## 7) EHCP Specialist Places

**\*NB – in the longer term when we have resolved some of our Special School sufficiency pressures these placements may no longer be required**

- Up to 60 specialist places for pupils with EHCPs offering a tailored curriculum to meet individual need
- Many will have SEMH as their primary need,
- These placements are long term, usually for a minimum of 2 years
- Family Support
- Therapeutic intervention e.g. MHST, CAMHS, SALT, OT
- EAL support
- Wider multi-agency support where appropriate (e.g. Social Care, INAT, YES)

## 8) Online learning offer

To provide an alternative approach to learning for pupils who are experiencing difficulties learning in a traditional classroom setting.

Programmes to:

- Provide a tailored education programme for pupils and personal guidance and support
- Offer the opportunity for externally accredited qualifications in several subject areas
- Be regularly reviewed with the aspiration of pupils transitioning to full time in school provision as soon as possible.

**Across the range of settings, the following will be provided:**

- Core curriculum offer – GCSE pathway
- Alternative curriculum offer – e.g. Functional skills qualifications / Foundation courses
- Vocational curriculum offer – Vocational qualifications

Suppliers of Alternative Provision may offer:

- A full-time provision which meets the entitlement of pupils to a broad and balanced curriculum while providing an alternative or more flexible approach to traditional teaching and learning or to curriculum content
- One or more days off-site provision per week to include opportunities not available through the standard school curriculum. This can include a flexible offer whilst still on roll at a mainstream school.
- Activities to enrich the curriculum offer within a school or other institution

## **Additional Support Services for Alternative Provision**

Some pupils placed or being considered for a place in alternative education may require support in addition to the services provided by a setting or school. The LA therefore intends to utilise the new tendering opportunity to commission additional support services for pupils in specific circumstances.

- Examination centre access and management
- Tuition (one to one or small group)
- Outdoor educational therapeutic tuition

## **Delivery of proposed changes**

The Local Authority (LA) is committed to securing excellent teaching and learning opportunities and a personalised learning programme for all learners, according to need, through its maintained mainstream and special providers. This provision may be supported by commissioned services to either compliment or provide alternative pathways of support to the teaching and learning available within those settings. The aim is to provide learners with a rigorous and high-quality alternative to a mainstream curriculum including:

- Offering learners who have previously not thrived in the mainstream system a creative and engaging opportunity to re-join the world of education
- Supporting and raising the aspiration, attainment and achievement of all learners to ensure that they achieve at the highest level possible
- Supporting learners to successfully transition to their next phase of education and training with the provision of good quality tailored careers guidance, support and work experience
- Offering learners the opportunity for formal accreditation in several subject areas

## **AP Network**

We have clarified the position of Alternative Provision in the landscape of Kirklees and used this to produce a detailed strategic plan that forms a strand in the SEND Transformation Plan on this aspect of provision. Through collecting and sharing timely accurate data with stakeholders, services are able to provide the best possible care for vulnerable learners. As the local authority representatives on the Alternative Provision network (members are leaders from all alternative providers in Kirklees), leaders have been able to articulate the expectations, principles and have oversight of the LA statutory duties.

In recognition of the developments required to provide a truly bespoke and outstanding alternative provision offer, colleagues from providers and school settings have been recruited to join the Alternative Provision development working group. The group provided insight into the needs and wants of Kirklees system leaders. This information was used to create the proposed new pathway for alternative provision (cabinet report pending). The foundation of the proposed pathway is based on robust investigations, data led enquiries, testimonies, and cost against outcome analysis.

Leaders have engaged with the council's procurement process, as several commissioned contracts are in place relating to these services. Leaders have worked closely with the procurement and sufficiency team in Kirklees to ensure these contracts are in place and that the council meets its legal obligations within a prescribed budget. A recent example of this is linked to the local authority statutory duty for ensuring Day 6 education for permanently excluded learners in Kirklees, this was successful recommissioned in 2021 and a new service level agreement co-produced and adopted.

As part of Kirklees' commitment to inclusive practice, the AP offer should seek to provide a responsive and flexible approach to recognising and meeting needs at the earliest opportunity, through understanding of every CYP's lived experience.

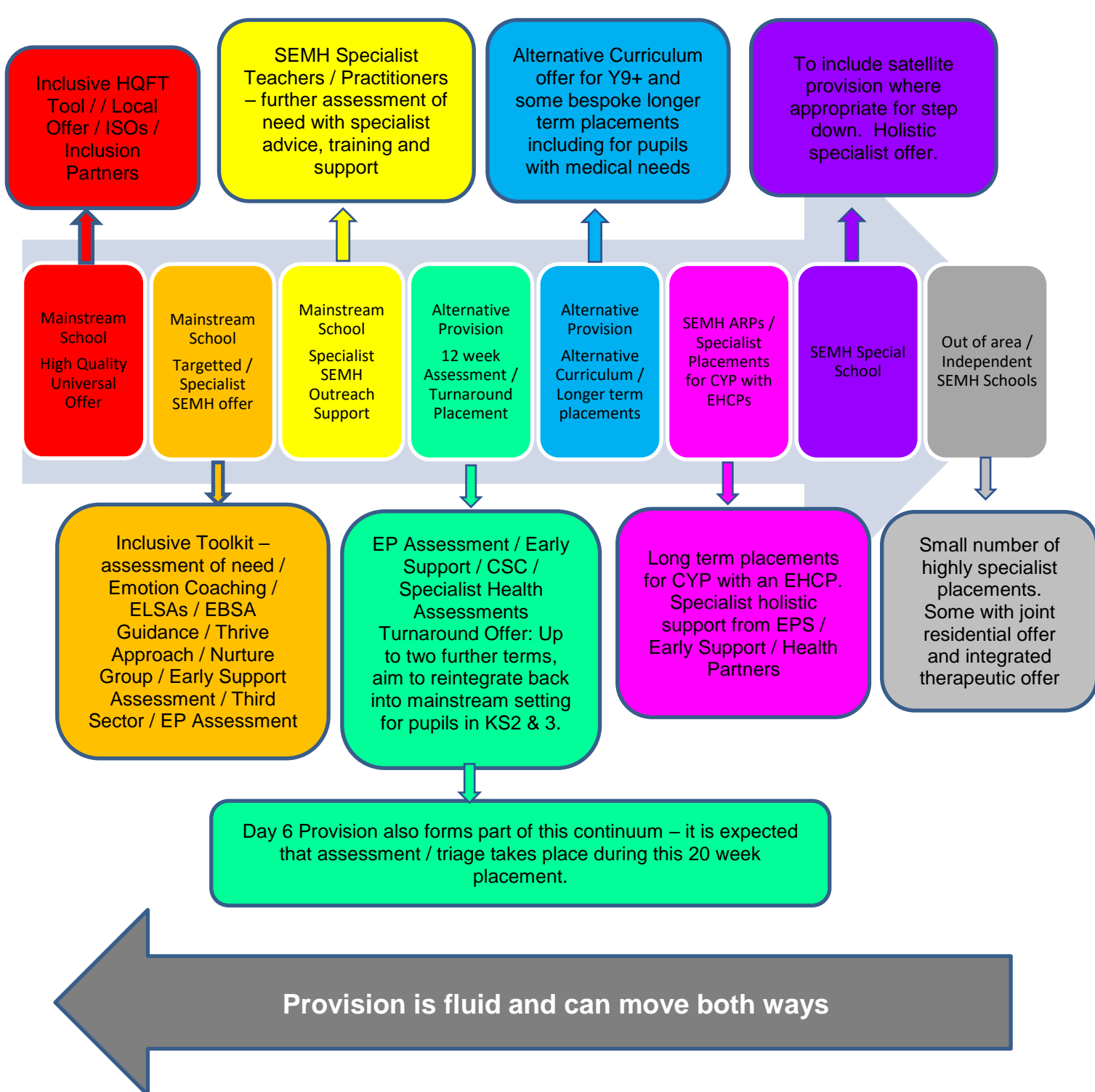
Through engagement with the range of AP which will be available, schools and settings can develop whole-school planned approaches to identifying and meeting the needs of CYP who are struggling in the areas of relationships, regulation and resilience, and in supporting the wellbeing of all.

### **3.3 AP as part of a wider continuum of provision**

The overall AP offer should aim to ensure that Kirklees is a place where children and young people thrive. Pathways of Alternative Provision will form part of a wider continuum of provision for children and young people with SEMH needs, or for those who require an alternative or different offer to that provided in a mainstream setting. It is agreed that investing in our children and young people now should ensure we build strong, resilient and thriving communities for the future. The proposed SEMH continuum of provision can be seen more specifically in the following diagram:

## Kirklees Social Emotional Mental Health (SEMH) Continuum of Provision

### A Graduated Approach



### 3.4 The opportunity to secure an AP Free School

The DfE recently opened up an opportunity for Multi Academy Trusts (MATs) and Local Authorities to work in partnership to apply to establish new AP Free Schools.

The detail is outlined in published government guidance (attached at Appendix 5).

The guidance sets an expectation that a partnership between, and shared commitment by, the LA and provider is required at all stages. The timeframes are:

- Pre-application form completed between 19/9/22 and 24/10/22.
- Full Application submitted by 17/02/23.
- Interviews - May 2023.
- Successful applications announced Autumn 23

There are 2 partner MATs that have submitted an Expression of Interest to open a Free School in Kirklees, however we anticipate that, should we be successful, plans will progress with only one AP Free School.

AP free school places would attract some direct EFSA funding (£10k per place), enabling a potential opportunity for significant cost saving. In addition, there is likely to be the opportunity for capital investment by the EFSA to ensure there is suitable premises for the AP free school.

A free school could carry out any of the functions outlined in section 3.2 above e.g.

- Triage / Assessment Bases
- KS1/2 SEMH Turnaround / Intervention Bases
- KS3 SEMH Turnaround / Intervention
- Y9 + Alternative provision

Kirklees Council officers would like to continue to work in partnership with the 2 Academy Trusts to enable a full application to be made to the DfE, and a further report would be brought back to Kirklees Council Cabinet with further details in due course.

### 3.5 Cost Implications

#### 3.5.1 Cost of current AP offer – including commissioned support and spot purchased places

Commissioned support:

- Total Cost of AP Commissioned Provision - £4.66m

Spot Purchased EHCP Places:

- Total Spot Purchased EHCP Places - £2.16m

Total current cost of Alternative Provision in Kirklees - **£6.82m**

#### 3.5.2 Projected cost of new AP offer

The projected costs are difficult to accurately define as much is dependent on the responses to tenders through the procurement process. However, the intention from this robust procurement process, more appropriately aligned to current and future district sufficiency need, will deliver enhanced value for money over time.

The new AP offer has a stronger focus on earlier intervention, triage and assessment – with an aim of avoiding longer term, high-cost individual spot purchased and out of area / independent SEMH placements.

With some assumptions around predicted costs going forward (usually national average benchmarks) it is likely that the new tendered AP offer will not be in excess of £7m – with a longer-term cost save on high cost out of area places.

However, should we be successful in securing an AP Free School opportunity in Kirklees this could potentially offer significant cost savings up to £1m, due to the EFSA funded element of the offer. It is recognised that this would come online no sooner than 2024

## **4. Implications for the Council**

### **4.1 Integrated Impact Assessment**

An Integrated Impact Assessment has been completed. The positive impacts for addressing inequalities and on the green agenda are noted. All impacts recorded are positive or neutral.

Tackling inequalities is fundamental to the SEND programme and this AP offer.

Work is focussed on ensuring an individual's needs are understood and met at the earliest opportunity. The subsequent wrap around support is cognisant of protected characteristics. Pivotal to our approach is the positive promotion of SEND, the dispelling of myths & the embedding of inclusive approaches and practices across the system & within communities.

### **4.2 Working with People**

With a focus on early intervention and supporting co-production and design, the approach we are developing illustrates our organisational commitment to working with families, partners, stakeholders and communities. This is highlighted in the development and agreement of a shared set of 'Inclusive Ambitions' across the Kirklees SEND partnership.

Integral to those ambitions and our approach is working with, not 'doing to' our children, young people and families - ensuring voices are heard and valued and views are used to shape provision and support. We want to create a truly person-centred approach to supporting children and young people and their families with a commitment of: "No decision about me is made without me."

In producing change and transformation of outcomes, we are seeking to improve the life experiences and chances of a cohort of young people who consistently benchmark below their peers in relation to educational attainment and employment prospects. Should the proposals in this report be approved, we are committed to working with our families as we progress the delivery of AP.

### **4.3 Working with Partners**

The transformation of the SEND system to deliver better outcomes and on a sustainable financial basis is reliant on a strong partnership approach with Kirklees internal and external partners.

This opportunity for an increased AP offer for Kirklees children and young people cannot be realised without good relationships and collaboration with our education providers, local elected members and communities. Ensuring that we maximise opportunities for the next stages to be shaped by partners will be crucial to ensure that services are joined up and well understood.

#### **4.4 Place Based Working**

One of the cornerstones of our SEND transformation plan is building provision within Kirklees to ensure there is sufficient capacity locally to meet need wherever possible. We recognise that some children may need to receive support outside of Kirklees, but we want to ensure that is kept to a minimum through better integration of provision and support across partners and AP forms an essential part of our graduated approach of provision for CYP with SEND, and those who require an alternative curriculum, across Kirklees.

We are passionate about ensuring services are accessible to our Children and Young People and their families and plan to move towards a place-based approach of joined up working with services across Education, Health and Care.

#### **4.5 Climate Change and Air Quality**

The aspiration for our SEND Transformation Plan is that fewer young people will leave or travel outside of Kirklees. By having services more local and accessible within existing settings to where people live in communities can have a positive impact on their mode of travel and in doing so, we will contribute to the Council's net zero ambition.

#### **4.6 Improving outcomes for children**

The whole of the SEND Transformation Plan focuses on improving outcomes for children. The proposals in this report are integral to successful achievement of our ambition.

Across the partnership, Kirklees have taken significant action to improve SEND services for children and young people aged 0 to 25. This is now captured as part of a clear Inclusion strategic plan.

With the development of our 'Inclusive Ambitions', the direction for us is to work towards shared vision and equal partnership with a clear pathway of improvement across a range of partners, striving for the best outcomes for children and young people with SEND. In modelling the proposals, meeting the needs of children and young people and their preparation for adulthood, has been our key underlying principle and is intrinsic in the proposed delivery of a range of quality Alternative Provision.

'Our Kirklees Futures' is our Learning strategy which describes our ambitions for learners in Kirklees. From engagement with a wide range of stakeholders across the learning system, three 'obsessions' emerged that would be our areas of relentless focus:

- Inclusion: Children, young people and learners of all backgrounds learn and grow side by side, to the benefit of all.
- Resilience: The ability and support to overcome adversity.
- Equity: Everyone gets the support they need

These obsessions are at the heart of everything we do when planning services for education of children and young people.

The updates and proposals contained in this report contribute to our ambitions which will lead to improved outcomes for children.



## **4.7 Financial implications for the people living or working in Kirklees**

Providing suitable education provision nearer to where families live not only supports place-based working and outcomes for children, it can also save families time and money because they can travel smaller distances to school events and meetings.

## **4.8 Financial – Revenue and Capital**

4.8.1 As part of the Safety Valve work with the Education & Skills Funding Agency, the Council has secured £33.5m of revenue to support the High Needs expenditure and an additional £8.2m in capital. Of the £33.5m, we received £13.5m in 2021/22 and the remaining £20m will be paid to us based on performance against the Safety Valve management plan targets. To date, we have secured the first 2 instalments totalling £2m.

The Safety Valve agreement is aimed at improving outcomes for children and young people with SEND and to deliver an in-year balanced budget against SEND activity funded through the High Needs Block element of the Dedicated Schools Grant, by year 5 of the multi-year year plan. The procurement proposals for the re-tendering of Alternative Provision, as set out in this report, form part of a suite of medium-term district sufficiency measures intended to secure best value for money in supporting the delivery of these key safety valve objectives

4.8.2 It is possible that capital funding may be required to support some of the AP providers' bids and the £8.2m received in Capital Funding could be used to support any funding requirements.

## **4.9 Legal Implications**

The public sector equality duty, as set out in section 149 of the Equalities Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The services that this tender relates to fall under the ‘light touch’ regime of Regulations 74 to 77 of the Public Contract Regulations (PCR) 2015 and the procurement process will be conducted using the open procedure.”

The Council must comply with its duty under the Public Services (Social Value) Act 2012 to consider how services are procured might improve economic, social and environmental wellbeing of the area. This procurement falls under the light touch regime. Any areas for social value are written into the service specifications but will not be included in the tendering process as additionality.

The Council has a duty under section 3 of the Local Government Act 1999 to continuously improve the way its functions are exercised having regard to economy, efficiency and effectiveness and relevant statutory revised Best Value guidance (MHCLG ,2015).

The Council has a duty, amongst other things, under the Education Act 1996 to arrange suitable education for excluded pupils and others who due to illness or other reasons would not receive a suitable education without such arrangements being made.

## **4.10 Governance and statutory compliance**

The SEND Programme Board oversees and implements the SEND Transformation Plan. This work features as one of the projects within that plan.

As the work progresses a project plan would be created to include to deliver the required outcomes and outputs.

## 5. Consultees and their opinions

As part of the AP review in 2020-21 a wide range of stakeholders were consulted regarding Alternative Provision in Kirklees. Over the last 12 months, whilst further developing our understanding of need across the landscape significant engagement has been undertaken with current AP providers and schools with wider market engagement and development opportunities currently underway. Also, Alternative Provision has been considered within key partner boards such as the SEND Transformation & Commissioning Group and the Education & Learning Partnership Board.

In December 2022 Children's Scrutiny considered the proposals within this report and were in full support. It was noted that monitoring of outcomes for CYP in AP will be essential, ensuring qualitative outcomes are measured alongside national benchmarks.

## 6. Next steps and timelines

Activity	Date
Conduct market engagement	December 2022
Publish Tender & Notices	23 <sup>rd</sup> January 2023
Hold Q&A sessions for providers	30 <sup>th</sup> January to 10 <sup>th</sup> February 2023
Final date for receipt of questions	20 <sup>th</sup> February 2023
Deadline for Submissions (min 30 days)	27 <sup>th</sup> February 2023
Evaluation Period Ends	24 <sup>th</sup> March 2023
Draft Standstill letters	27 <sup>th</sup> March – 14 <sup>th</sup> April 2023
Notification of Outcome Issued (Standstill)	17 <sup>th</sup> April 2023
Standstill Ends	28 <sup>th</sup> April 2023
Contract Award	W/c 1 <sup>st</sup> May 2023
Contract Mobilisation	From award to 31 <sup>st</sup> August 2023
Contract Start Date	1st September 2023

## 7. Officer recommendations and reasons

### Delegated Authority

Based on the content of this report, Officers make the following recommendations to Cabinet. Members are asked to:

- a. Approve delegated authority for the Strategic Director for Children's Services to design a procurement strategy to procure and award Alternative Education provision contracts for 3 years with an option to extend for a further 2 years; and the Service Director for Legal Governance & Commissioning to finalise, enter into and execute any agreement where appropriate together with any ancillary documents in relation to the Alternative Provision commissions. This will enable the Local Authority to carry out its statutory duties to meet the needs of children and young people requiring Alternative Provision, as well as creating

an enhanced offer with opportunities for earlier support for children and young people and their families, within a best value for money framework.

- b. Approve delegated authority for the Service Director for Learning and Early Support to work with partners to progress applications to the Department for Education for an AP Free School in Kirklees in order to further maximise opportunities for children and young people requiring Alternative Provision across Kirklees.

## **8. Cabinet Portfolio Holder's recommendations**

This report continues to affirm Kirklees' ambition to make a difference for and with the people of Kirklees. This is founded on engagement, working with and creating local provision for local children.

Working together with schools, we can see the opportunities that increasing the offer of Alternative Provision can bring to meet the needs of some of our most vulnerable learners locally within Kirklees.

These proposals represent significant investment and illustrate our commitment to removing barriers and addressing inequalities – this is about doing the right thing for children and their families both now, and for years to come. These proposals also represent a key element of our SEND Transformation Plan and aligned Safety Valve Agreement. It is for these reasons that we support the officer recommendations and will want to ensure that officers commit their time to working with pupils, parents and carers and partners as the AP proposals are developed and implemented.

The opportunity to secure external investment for an AP Free School would further support the development and implementation of a new AP offer.

## **9. Contact officer**

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John Bartlett – Finance Manager  
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## **10. Background Papers and History of Decisions**

- SEND Code of Practice 2015 [SEND Code of Practice January 2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303673/SEND_Code_of_Practice_January_2015.pdf) ([publishing.service.gov.uk](https://www.publishing.service.gov.uk))
- SEND / AP Green Paper 2022 [SEND review: right support, right place, right time - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time)
- 16<sup>th</sup> March 2021 Kirklees Council Cabinet Report - Procuring an External Business Partner - SEND [Cabinet report SEND Transformation FINAL V2.pdf](https://www.kirklees.gov.uk/cabinet-reports/16th-March-2021-Kirklees-Council-Cabinet-Report-Procuring-an-External-Business-Partner-SEND) ([kirklees.gov.uk](https://www.kirklees.gov.uk))
- 5th October 2021 Kirklees Council Cabinet Report - [Capital investment and rebuild of 2 Special Schools](#)

## **11. Service Director responsible**

Jo-Anne Sanders – Service Director for Learning and Early Support  
[jo-anne.sanders@kirklees.gov.uk](mailto:jo-anne.sanders@kirklees.gov.uk)

Tom Brailsford - Service Director- Resources, Improvement and Partnerships  
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## **12. Appendices**

Appendix 1 – Our Kirklees Inclusive Ambitions

Appendix 2 – SEND Transformation Programme governance

Appendix 3 – Safety Valve Agreement

Appendix 4 – Continuum of SEND provision / Graduated approach

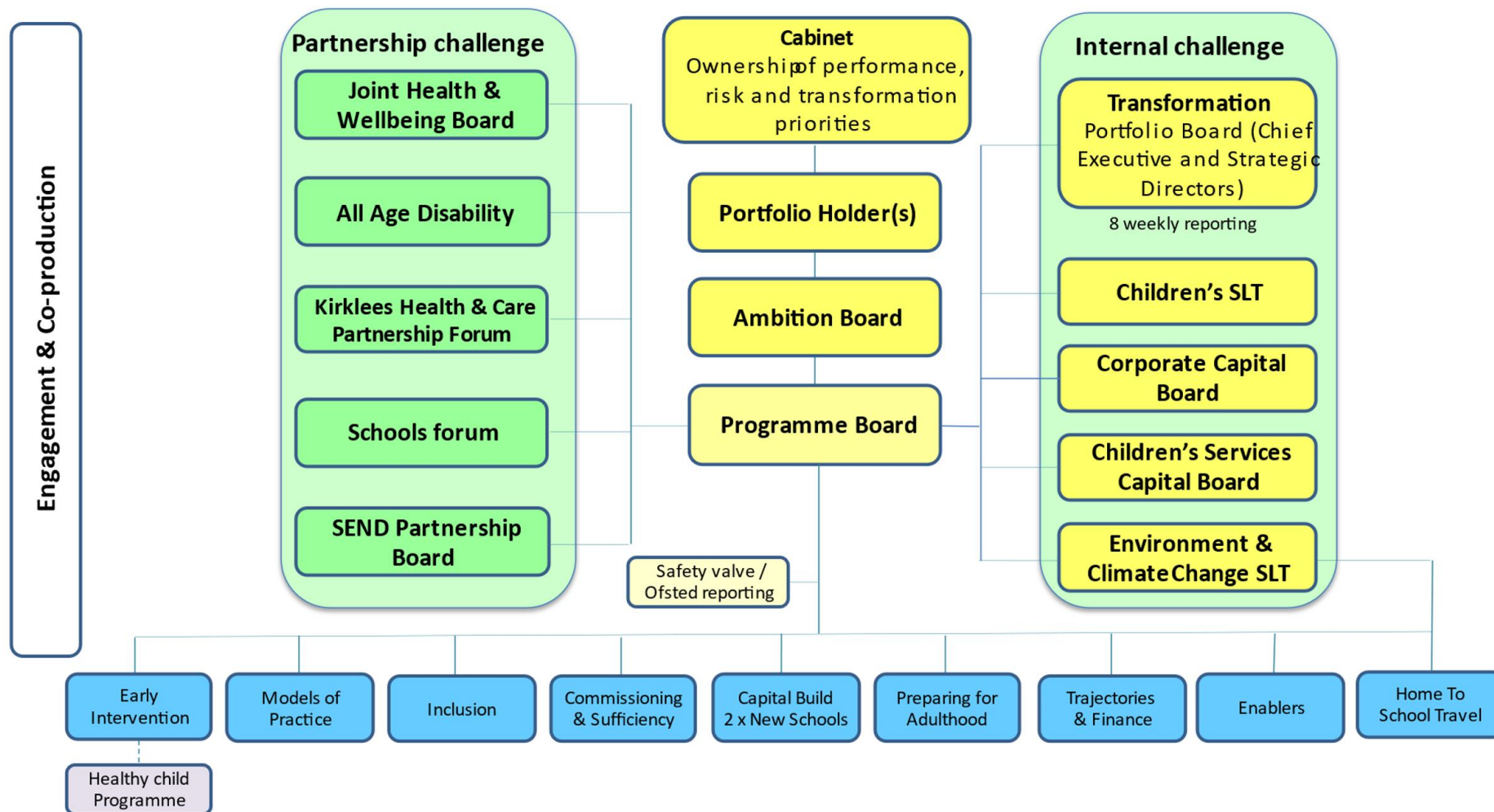
Appendix 5 - Guidance on applications in setting up an AP Free School

## **Appendix 1**

### **Kirklees Inclusive Ambitions** (Developed in Workshops Autumn/Winter 2020)

1. We will have a renewed focus on responsive and holistic early intervention for children and young people, refocusing resources to produce a varied multi agency offer including the use of the community and assistive technology and building the skills of the workforce to work preventatively.
2. Families and carers feel empowered and supported. They have strong knowledge of the support available and there is a clear culture of trust between professionals and families. This will enable a shared understanding of needs; the joint support required to meet them and a clear focus on aspirations.
3. Children and young people feel included across the community and within education settings. Schools are celebrated and held accountable for their pupil centred inclusive practice, and the contribution of individuals with additional needs is better understood across the system. This will mean that more children are able to be supported in mainstream settings across Kirklees.
4. Children and young people are able to thrive within their education settings and are supported to access an education that is flexible and empathetic to their needs. Needs are addressed in a proactive and individual way. Schools focus on and measure an individual's holistic outcomes, recognising success outside of purely academic achievements.
5. The system works in an integrated way, using its resources to take a holistic and targeted approach to needs whilst creating a seamless journey for children, young people and their families. This means that bureaucracy is reduced, and that children and young people are able to receive the right support at the right time.
6. Professionals are empowered to meet the needs of children and young people and support them to achieve their aspirations. This is achieved through embedding a shared culture of proactivity; holistic skills and knowledge across the workforce; and creating clear pathways for meeting needs.
7. Children and young people are supported to have clear aspirations for the future, with a focus on independence and preparing for adulthood. Throughout a young person's journey, they are supported to achieve their aspirations through the support they receive. Ultimately, this will mean more young people enter education, employment and training as they progress into adulthood.

# SEND Programme Governance



### **Appendix 3 – Safety Valve Agreement**

1. This agreement is between the Department for Education and Kirklees Council and covers the financial years from 2021-22 to 2026-27.
2. The authority undertakes to reach a positive in-year balance on its Dedicated Schools Grant (DSG) account by the end of 2026-27 and in each subsequent year. The authority undertakes to control and reduce the cumulative deficit as follows, not including any contribution made by the department through this agreement:

Year	Forecast DSG Deficit Profile at year end <sup>1</sup> £m
2021-22	£34.0m
2022-23	£36.5m
2023-24	£37.6m
2024-25	£37.0m
2025-26	£35.1m
2026-27	£33.0m

3. The authority agrees to implement the DSG management plan that it has set out. This includes action to:
  - 3.1 Ensure inclusive co-production and engagement is and will be central in approach to understand children's, young people's and family needs and how these are best met by a range of settings services, local schools and at home;

- 3.2 Implement joint commissioning and sufficiency strategies, re-balancing the range of placements, services and provision locally. These will include rebuilding and creating additional SEMH and Complex ASD special school places and increasing additionally resourced provision, to ensure a sufficient mix of flexible services and local placements for children and young people;
- 3.3 Support children with SEND in mainstream schools by continuing to develop and implement the graduated approach, outreach support model and inclusion strategies which further develop the skills, expertise and capacity of the workforce;
- 3.4 Ensure that children and young people are being prepared for adulthood throughout their life course, promoting a focus on independence and transition as early as possible in a child's and families journey;
- 3.5 Ensure that children, young people and families have the right help at the earliest possible opportunity at a time that is right for them. This will mean having their needs met at the most appropriate level of provision without the need escalate into formal processes in order to have that need met. This will build on approaches being implemented including outcome-based tools such as VSEND ensuring need is understood holistically and can be met at school and at home; and our inclusion support offer (ISO) providing advice and support for professionals and families;
- 3.6 Continue to review assessment and decision-making processes to ensure decisions are made transparently, in a timely manner and in partnership with children young people and families. This will involve the implementation of a range of holistic assessments tools engaging professionals and families and consolidating improvements and timeliness in our EHCP assessments and reviews.
- 3.7 Develop and implement inclusion strategies to further develop skills, expertise, and capacity to support children with SEND in mainstream schools.
- 4. The authority also agrees to ongoing monitoring of its performance in fulfilling this agreement. The authority will:
  - 4.1 Report quarterly (as a minimum) in writing to the Department (Funding Policy Unit) on its progress towards implementing the plan as per the conditions set out in paragraphs 2 and 3;
  - 4.2 The monitoring reports should include progress against the conditions of grant and a financial dashboard detailing various metrics relating to demand and cost. DfE will provide a template for this;
  - 4.3 Inform the Department (Funding Policy Unit) 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;
  - 4.4 Meet with the Department at any time when the Department deems it necessary to discuss progress towards the agreement.





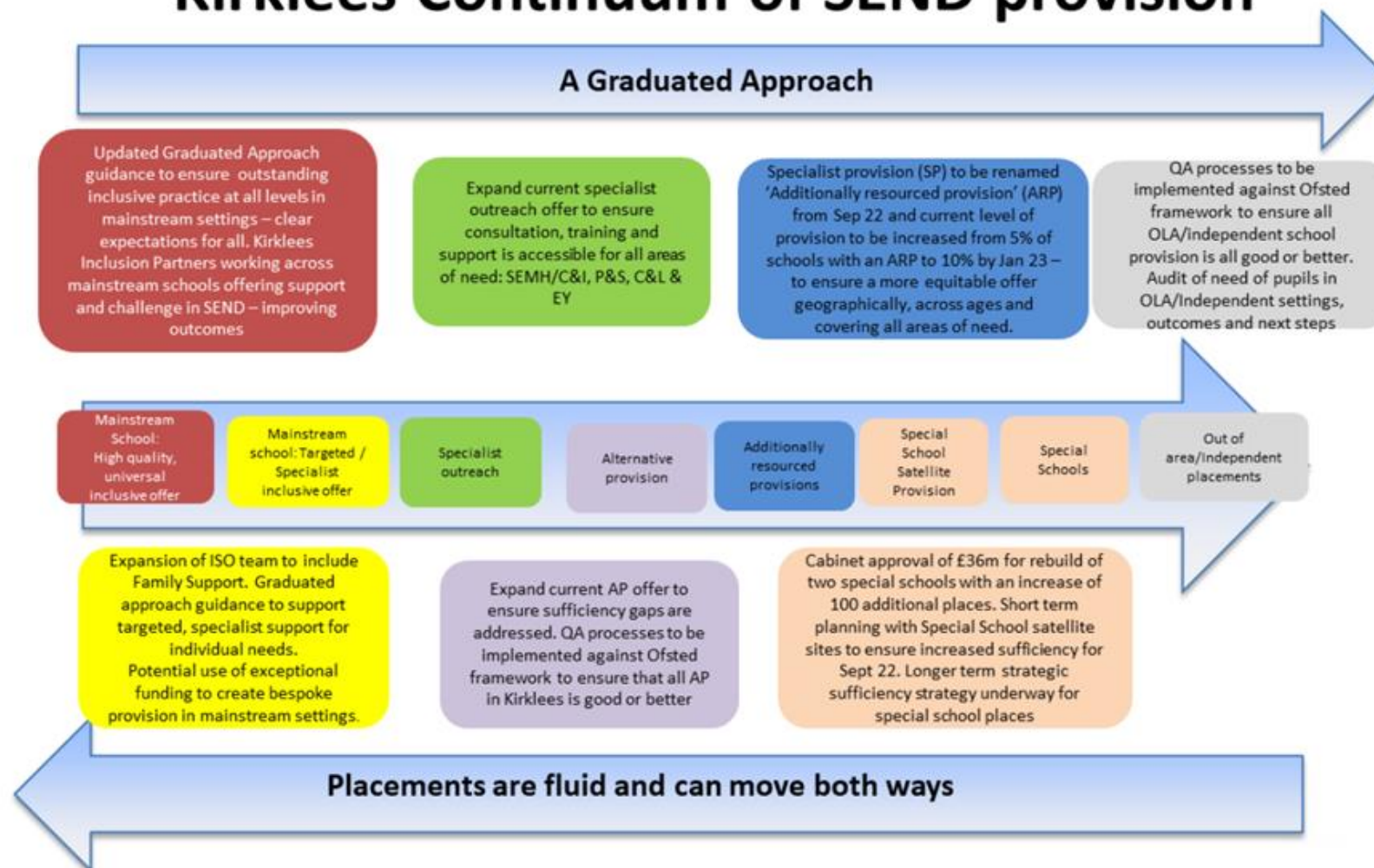
5. The Department agrees to pay to the authority an additional £13.5 million of DSG before the end of the financial year 2021-22. In subsequent financial years, subject to compliance with the conditions set out in paragraph 3, the Department will pay DSG sums as follows. This funding will be provided in instalments and subject to continued satisfactory progress. Subject to full compliance, Kirklees should therefore eliminate their cumulative deficit no later than 2026-27.

The Department agrees to pay to the authority an additional £m of DSG by year end 2021-22 £13.5m 2022-23 £4.0m 2023-24 £4.0m 2024-25 £4.0m 4 2025-26 £4.0m 2026-27 £4.0m.

6. The Department has also sent a commission relating to the local authority's capital plans for the creation of new places for children and young people with special educational needs and disabilities (SEND) or those requiring alternative provision (AP). It is critical that the authority considers its revenue and capital plans holistically – in developing capital proposals, the Department expects local authorities to have a keen eye on the efficiencies that need to be made and how they can invest wisely to secure financially sustainable high needs systems.
7. As such, capital proposals will need to demonstrate how investment is aligned to, or further develops, the reform plans and savings outlined in this agreement. Proposals will need to focus on projects that can be delivered quickly to improve the local provision offer and meet identified gaps in local provision. The Department will assess and review proposals against set criteria which have been outlined in the commission. Subject to that assessment, the Department will consider making a capital contribution to these plans in 2022-23 as a top-up to the local authority's High Needs Provision Allocation (HNPCA), which will be announced in Spring. Progress against delivery of those capital plans should then be integrated into the quarterly reporting to the department as part of the monitoring of this agreement.
8. This agreement is subject to review at any time, for example as a result of the following events:
  - 8.1 Higher or lower DSG formula funding levels for the authority in future financial years than those the authority has assumed;
  - 8.2 Significant changes to national SEND policy, for example as a result of the government SEND Review, which impact on elements of the plan;
  - 8.3 Insufficient progress being made towards the authority reaching and sustaining an in-year balance on its DSG account as set out in the plan;
  - 8.4 Whether Kirklees is awarded additional capital funding support following the capital application process. The review process will include an assessment of the impact of the change in circumstances.

## Appendix 4 – Continuum of SEND Provision / Graduated Approach

# Kirklees Continuum of SEND provision



## Appendix 5: Guidance on applications in setting up an AP Free School

[How to apply to set up an alternative provision free school - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-to-apply-to-set-up-an-alternative-provision-free-school)



