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Cabinet

12 July 2022

**Name of Cabinet Member:**

Cabinet Member for Education and Skills – Councillor K Sandhu

**Director approving submission of the report:**

Chief Partnerships Officer/ Director of Education and Skills

**Ward(s) affected:**

All wards

**Title: Government Green Paper Consultation: ‘SEND and AP Review: Right support, right place, right time’**

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**Is this a key decision?**

No - although the proposals affect more than two electoral wards, the impact is not expected to be significant.

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**Executive summary:**

In 2015, following a four-year period of consultation and testing through regional pathfinder programmes, the Government implemented substantial statutory changes to the Education, Health and Care system for identifying, assessing and making suitable provision for children and young people aged 0 to 25. The changes were set out in parts 3 of The Children and Families Act (2014), supporting regulations and a revised SEND Code of Practice.

Seven years on, it is widely recognised that the reforms have failed to deliver the intended outcomes and a further radical review is required. In 2019, The House of Commons Education Select Committee conducted an in-depth system enquiry. The committee in its report, concluded that “the 2014 SEND reforms were the right ones, but implementation had gone badly, avoidably wrong”

The Government has subsequently completed a review and published a consultation of the SEND and Alternative Provision system in England. The review sits within a context of systemic national failure. The Green paper ‘Right help, right place, right time’, is open to public consultation until 22<sup>nd</sup> July 2022. The proposals based on high level aspirations, are far reaching. If implemented they will have significant implications for local authority infrastructures, operational delivery, partnerships and accountabilities. The DfE confirms that the consultation response will influence the programme of change moving forward.

**Recommendation:**

- (1) That the Cabinet endorse the Council's proposed response to the consultation as detailed in Appendix 1 to the report and approve submission.

**List of Appendices included:**

The following appendix is attached to the report:

Appendix 1 - Proposed Consultation Response

**Background papers:**

SEND Review: Right support Right place Right time – government consultation on the SEND and alternative provision system in England

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1063620/SEND\\_review\\_right\\_support\\_right\\_place\\_right\\_time\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063620/SEND_review_right_support_right_place_right_time_accessible.pdf)

**Other useful documents**

[Support and Aspiration Green-Paper SEN. 2011](#)

[House of Commons Select Committee enquiry: Special Educational Needs and Disability 2019](#)

**Has it or will it be considered by scrutiny?**

No

**Has it or will it be considered by any other council committee, advisory panel or other body?**

No

**Will this report go to Council?**

No

**Report title: Government Green Paper Consultation: 'SEND and AP Review: Right support, right place, right time'**

**1. Context (or background)**

- 1.1. The inclusive educational rights of children with SEN (Special Educational Needs) were formally recognised in statute in 1981, with the introduction of Statements of Special Education Needs. These set out a child's difficulties, the support they required and named the appropriate school to meet their identified needs. This system remained in place until the implementation of parts 3 of The Children and Families Act (2014). The Act sought to extend the rights of children and young people to integrated education, health and care support from birth up to 25; and replaced Statements of SEN with Education Health and Care Plans.
- 1.2. The implementation programme was complex and placed significant additional burdens on LAs, which were not fully funded.
- 1.3. As part of the accountability framework, Ofsted were commissioned to complete a single five-year cycle of Local Area SEND Inspections, to monitor the progress of implementation and the

effectiveness of the reforms. Whilst the inspection framework did not include a formal judgement over 50% of local areas (80% in the final year of inspection) were required to produce a written statement of action to address significant weaknesses.

- 1.4. Over the last seven years demands on the system have significantly increased year on year. This is evidenced through an unprecedented increase in EHC Plans, which has in turn generated inflationary pressures across all systems and partnerships.
- 1.5. In response to the apparent failure of the national system, the House of Commons Education Select Committee conducted an in-depth enquiry. In its published findings, the Committee concluded that “the 2014 SEND reforms were the right ones, but implementation had gone badly, avoidably wrong” This conclusion is supported by LAs nationally. In summary, it is widely accepted that the current system is broken and not fit for purpose. Change is therefore required.
- 1.6. The Government within its Green Paper sets out the rationale for change, identifying three key challenges:
  - *Outcomes for children and young people with SEN or in alternative provision are poor*
  - *Navigating the SEND system and alternative provision is not a positive experience for children, young people and their families .....*
  - *Despite unprecedented investment, the system is not delivering value for money for children, young people and families ....” (pages 9 and 10)*
- 1.7. Whilst the Green Paper does not provide any detail on how the proposals will be realised, it does offer some recognition that changes will be delivered sensitively and in partnership.
- 1.8. The consultation sets out a series of proposals, some of which (but not all) are included in the 22 consultation questions set out in Appendix 1 to the report.

## **2. Options considered and recommended proposal**

### **2.1. Do not respond to this consultation**

This option will mean that the City Council loses the opportunity to have its views on the proposals for change being considered or taken into account. Consequently, it will not be able to influence the immediate outcome or contribute to the future shape of the new system. This option is not recommended.

### **2.2. Endorse the Council’s proposed response to the consultation in Appendix 1 and approve it’s submission.**

This option will ensure that the Council’s views on the proposals contained in the Green Paper consultation are received and considered as part of the Government’s rationale for change. It will also enable officers to contribute to the series of webinars and reference groups currently underway, sharing local experience and learning.

## **3. Results of consultation undertaken**

### **3.1. Not applicable**

## **4. Timetable for implementing this decision**

- 4.1. If the recommendations set out in this report are approved, the Council’s response will be submitted in advance of the closing deadline at 11:45 pm on 22<sup>nd</sup> July 2022

## **5. Comments from Chief Operating Officer (Section 151 Officer) and Director of Law and Governance**

### **5.1. Financial Implications**

Over recent years, significant pressures on high needs budgets nationally, has resulted in many local authorities accruing multi-million pound deficits in their Dedicated Schools Grant (DSG). Over the last two years, this has triggered a significant Department for Education intervention (Safety Valve Intervention programme) enabling 14 LAs to secure additional funding. It is estimated that the total accumulated high needs deficit across LAs in England is circa £2.3bn.

Within this context, Coventry City Council's expenditure has remained within its overall high needs budget. Whilst this situation remains fragile, the Council's position is supported by a number of factors including a continuum of high quality in-City specialist provision; and an increase in the DSG through the national funding formula. However, this is against a backdrop of a significant increase in demand over the last 7 years (introduction of the reforms) of 56%, resulting in a corresponding increase in costs. The impact of the pandemic has further exacerbated demand. If demand pressures continue, there is a risk that expenditure will exceed budget over the medium term.

As part of the DfE's national financial intervention programme, the Department for Levelling Up, Housing and Communities has put in place a temporary statutory override to ring-fence DSG deficits from councils' wider financial position in their statutory accounts. This ring-fence is due to end after the accounts for the financial year 2022-23, at which point authorities will need to demonstrate their ability to cover DSG deficits from their available reserves. It is therefore crucial that Local Authorities are able to keep the high needs systems in a sustainable position.

Changes to national policy and legislation form a key part in enabling financial sustainability. Whilst there is a commitment from the Government to calculate the cost of additional burdens, there is no guarantee that an additional allocation will be sufficient to cover the actual cost of change and implementation. For example, a definition change that extends participation rates up to age 25 entitlement as set up "*Behaviour, Emotional and Social Development to Social, Emotional and Mental Health*" and does not identify any corresponding additional resource will place additional strain on budgets. Further consideration will need to be given to future financial implications additional thematic consultations are rolled out.

### **5.2. Legal Implications**

The Government proposes to review the national system for supporting children and young people aged 0 to 25, with special educational needs and disabilities. Accordingly, there are no legal implications at this stage.

The consultation on proposed reform closes on 22 July 2022. If the LA does not respond to the consultation by that date, it will lose the opportunity to have its views on the proposals for changes being considered or taken into account.

## **6. Other implications**

### **6.1. How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?**

The effectiveness of support, entitlement and opportunity for children and young people with additional needs (SEND) is centric to realising many of the council's core aims for this vulnerable group, who with the right support can make a substantial and positive contribution to the prosperity of the City; by being enabled to maximise their personal agency and independency and secure positive routes to meaningful employment. Strong identification, assessment and support systems, provide the scaffolding children and young people need to be safe, achieve and have the confidence and aspiration to make a positive contribution to their community and the city overall.

**6.2. How is risk being managed?**

There are no foreseeable associated risks to the Council with responding to this consultation.

**6.3. What is the impact on the organisation?**

There is no immediate impact on the organisation. However, if the proposed statutory amendments are implemented, they will have a significant impact across the breadth of Education Services, Childrens Social Care, Adults Social Care and Health partners. This has the potential to impact on operational delivery models and commissioning activity throughout the implementation timescale, which is likely to be staged over a period to 2030.

**6.4. Equalities / EIA?**

This is a public consultation process open to all. The Government has made provision to support disability access. Officers in Coventry are facilitating a parent event to further assist access and enable a wider community voice to be heard.

**6.5. Implications for (or impact on) climate change and the environment?**

None

**6.6. Implications for partner organisations?**

What is the impact on partner, communities, Compact, organisations / voluntary organisations, community safety issues, local neighbourhoods etc.? If none, say so. Please keep to one paragraph.

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This report is published on the council's website: [www.coventry.gov.uk/meetings](http://www.coventry.gov.uk/meetings)

## Appendix 1

**Coventry City Council proposed draft response to the Government's SEND and Alternative Provision Green Paper: 'SEND Review Right Support, right Place, Right time.'**

***Question 1: What key factors should be considered, when developing national standards to ensure they deliver improved outcomes and experiences for children and young people with SEND and their families? This includes how this applies across education, health and care in a 0-25 system. (see Chapter 2, paragraphs 4-6).***

It is acknowledged that the current system is broken and not fit for purpose. However, it must also be acknowledged that there are many examples of best practice across the Country that should be exemplified and preserved. We therefore welcome the assurance that standards will be developed with LAs, to ensure operational experience of the systems enable any barriers to implementation to be foreseen and avoided. The Green paper issued in 2011, Support and aspiration: a new approach to special educational needs and disability [Support and Aspiration Green-Paper SEN. 2011](#) set out a range of successful strategies that were highly acclaimed by parents, this includes Early Support and Achievement for All. Investing training across schools and the wider workforce enabled professionals to hold partnership conversations with families that built relationships and empowered choices. For example, Lyng Hall (page 64) was used by the DfE as a case study, exemplifying best practice, serving as an example today of embedded cultural change. However, disinvestment in programmes such as Achievement for All has meant that the required cycle of cultural change has not been sustained across the system because of changes in leadership and the general workforce. It is therefore important that any review of the current system reflects the learning from the past. Changing the rules will not in itself change practice, although a set of measurable standards (rule book) may prove useful as guidance. Behavioural changes are driven by culture and strong leadership. Support and aspiration laid out a blue-print that put the child and family at the centre, co-production was centric alongside preparation for adulthood. These principles should be revisited, not reinvented.

***Question 2: How should we develop the proposal for new local SEND partnerships to oversee the effective development of local inclusion plans whilst avoiding placing unnecessary burdens or duplicating current partnerships? (see Chapter 2: paragraphs 6-12).***

The role and governance of the statutory local SEND partnership needs to be clearly defined in terms of its accountability. It could drive strategy, policy and/or operational practice depending on existing local arrangements. It might operate as a commissioning group and/or scrutinise performance. However, if one of the implicit aims of the Green Paper is to secure a more inclusive system, the opportunity to socialise an enabling language should not be missed. The term SEND originated 45 years ago, replacing descriptors such as mal-adjusted. The categorisation has significantly grown in breadth, building on a deficit model that 'labels' children and young people and is no longer fit for purpose. A reset that positively promotes inclusion may positively influence the required change in culture, by revisiting barriers to learning and promoting achievement for all. This approach could bring sufficiency duties in line with mainstream, ensuring that children and young people requiring specialist provision were planned for alongside their non-SEN peers. Assurance could be secured through an evidence based outcomes framework, which local areas could report against. This approach would inform the terms of reference and distribute responsibilities accordingly and could be intertwined with local partnership

governance systems. Consideration should therefore be given to Inclusion Partnerships developing and overseeing the Inclusion Plan, which focuses on barriers to learning for all thereby superseding SEND Boards.

***Question 3: What factors would enable local authorities to successfully commission provision for low-incidence high-cost need, and further education, across local authority boundaries? (See chapter 2: paragraph 10).***

The term high cost 'low prevalence' needs, requires definition and quantification. Our experience is that traditional low incidence needs, that historically required external specialist placements such as sensory impairment have now been absorbed into local authority provision. For example, there is no longer a demand for the West Midlands regional provision for MSI (multi-sensory impairment). Statutory systems already enable placements across LA boundaries. All specialist placements are funded in accordance with the host authorities funding bands, observing EFSA rules. If local areas are not adhering to that requirement and it is causing frustration for receiving schools, the school should challenge them with EFSA support.

A decision to place a child in a high cost external placement, is not made lightly. Most LAs would resist using a residential provision for educational purposes only. In order to secure a day placement, that protects a child's right to a family life within a reasonable travelling distance, time and cost, is highly likely to restrict the geographical reach to sub-regional provisions. Currently, local areas do have to identify highly specialist placements for a small cohort of children and young people, with complex learning disability and associated challenging behaviours. This group includes those whose needs meet the continuing care framework, where the school and/or home placement is at breaking point and the child's needs are not being met. Often these placements require a residential component. The range of providers in this market space is very limited, following a significant number of closures post adverse OfSTED inspection. High quality providers are consistently 'full' leaving schools with RI judgements commanding high fee levels.

It is true that these placements may be better delivered through a publicly funded provider (regional free school) to secure improvements in quality and outcomes and therefore value for money. However, it should not be assumed that this would have a significant impact on the public purse.

In terms of the broader sufficiency challenges in respect of ASC and SEMH, any approach that has the potential to reduce dependence on independent sector placements across a broader area and enable young people to be educated closer to home is welcomed. The West Midlands has the infrastructure to deliver this, through the ADCS regional commissioning group but would require capital investment to secure appropriate premises.

***Question 4: What components of the EHCP should we consider reviewing or amending as we move to a standardised and digitised version? (See chapter 2 paragraphs 15 - 23).***

It is critical that any changes to the current processes learn from the chaos, created by the unnecessary burden of churning existing Statements of SEN into EHC Plans that began in 2015. This blanket requirement served as a barrier to progress, paralysing the capacity of professionals to focus on whole system redesign, training and cultural engagement. This was against a backdrop of significant additional demands being placed on education settings; and capacity gaps in Educational Psychology, health therapies and social care disability teams. Data capture also proved challenging as providers were given little lead-in time to redesign data bases, resulting in parallel record keeping, much of which was manual. Consequently, if we apply that learning, any significant over-haul should as



promised within the Green paper, be subject to a cost benefit analysis and be introduced sensitively over-time. It is noted that the format of the current EHC Plan template is set out in statutory regulations making clear what must be included in sections A to K. In Coventry, the actual layout of the template and logo was co-designed locally with families, carers and young people. The plan offers families the choice of including photographs and other personal elements. It is therefore difficult to understand the rationale for change, although the clarification of single agencies responsibilities would be warmly welcomed, for example clarity on the responsibility to fund and deliver any speech and language therapy that has been specified and quantified.

We are concerned that a centrally designed EHCP retained in electronic form does not discriminate against parents who are not IT literate, do not speak English, experience literacy difficulties or digital poverty. It is therefore essential that this proposal is considered against a thorough Equality Impact Assessment that secures entitlement of access for all. Many LAs already offer a level of digitalisation referred to as 'a portal' that fulfils this function for those that want it. The underpinning database draws child information from across the wider system, which means it will be very difficult to disaggregate.

Clarification of a timescale for the completion of the annual review process would be very much welcomed. We would ask that this takes into account the time required for a school to produce and submit the outcomes of the annual review meeting.

Streamlining the assessment process to avoid duplication, embrace the 'tell us once approach' and ensure intervention is proportional to need, would be very much welcomed especially in relation to social care assessments, which many families make clear that they do not want and do not need. It has therefore become a bureaucratic burden that adds little value.

***Question 5: How can parents and local authorities most effectively work together to produce a tailored list of placements that is appropriate for their child, and gives parents confidence in the EHCP process? (See chapter 2: paragraphs 24-28).***

We welcome a statutory change to the current requirement for LAs to provide a full indiscriminate list of all independent and non-maintained special schools, alongside all publicly funded mainstream and special schools and provisions in the local area. Parents have made it clear that they do not want this, instead they require a list of schools that would be suitable for the assessed needs of their child. Many LAs already provide the information in this way, if the statutory requirement was amended accordingly, LAs would in partnership with parents be enabled to produce this list; and the matter would be settled.

***Question 6: To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation? (See chapter 2 paragraphs 29-32).***

Agree

***Question 7: Do you consider the current remedies available to the SEND Tribunal for disabled children who have been discriminated against by schools effective in putting children and young people's education back on track? Please give a reason for your answer with examples, if possible. (See chapter 2: paragraphs 33-34).***

It is evident that very few claims of disability discrimination are lodged against a responsible body (this applies to all education providers, not just schools). In our very limited local experience of two cases in a 5 year period, the Tribunal process was elongated and subject to postponements, hearing cancellation and administrative errors. Therefore, to be effective the Tribunal must be more accessible to families, better scrutinise claims and

ensure hearings are held in a timely way. Current formal remedies include an apology, training and changes/reviews of systems and policies. We believe that these remain effective outcomes. However, the impact of the process itself, which includes receiving and responding to a claim of discrimination, coupled with the significant burden of preparation; and the financial and emotional cost of attending the hearing, will also have an effective impact on learning, organisational culture and behaviours, which cannot be underestimated.

***Question 8: What steps should be taken to strengthen early years practice with regard to conducting the two-year-old progress check and integration with the Healthy Child Programme review? (See chapter 3: paragraphs 3-5)***

Increasing expertise in the Early Years Foundation Stage (EYFS), has the potential to increase identification of children with additional needs, which is welcomed. However, early years settings face significant challenges in staff turnover, which is exacerbated by relatively low pay in an increasingly competitive market. We suggest that settings will therefore need to be incentivised to prioritise any investment in training. Narrowing training to only 5000 SENCOs, may be beneficial for some children, but not all. We therefore need to increase any ambition to ensure equitable access to services for all children. Otherwise, the 'postcode lottery' will perpetuate. This could be secured through a funded quality standards framework, which would enable EYFS leaders to develop staff through locally available training, coaching and mentoring.

***Question 9: To what extent do you agree or disagree that we should introduce a new mandatory SENCO NPQ to replace the NASENCO? (See chapter 3: paragraphs 21-24)***

Neither agree nor disagree

***Question 10: To what extent do you agree or disagree that we should strengthen the mandatory SENCO training requirement by requiring that headteachers must be satisfied that the SENCO is in the process of obtaining the relevant qualification when taking on the role? (See chapter 3: paragraphs 21-24).***

**Disagree**

Whilst we agree that SENCOs should be suitably qualified and experienced, have gravitas and be on the senior leadership of the school, the post of SENCO is difficult to fill. Demanding that an applicant is already in the process of qualification, may have the unintended consequence of dissuading candidates with high potential from applying. It is a fact that many SENCOs are appointed from within their existing school structure. We suggest that the post may be more attractive if it is advertised with a commitment from the employer to sponsor professional training including study time and an expectation on the candidate that they will commit to undertaking the training at the next available admission point. If new courses run throughout the year, allowing three entry points at the beginning of a term, candidates could be enrolled as part of the recruitment process. This approach would create a maximum one-term gap between appointment and commencement of training. It is also important that the cost of training is affordable, given the current challenges on school budgets.

***Question 11: To what extent do you agree or disagree that both specialist and mixed MATs should be allowed to coexist in the fully trust-led future? This would allow current local authority maintained special schools and alternative provision settings to join either type of MAT.(see chapter 3: paragraphs 39-40).***

Neither agree nor disagree

***Question 12: What more can be done by employers, providers and government to ensure that those young people with SEND can access, participate in and be supported to achieve an apprenticeship, including through access routes like Traineeships? (see chapter 3: paragraphs 44 – 51).***

Raising aspirations for young people with additional needs in adulthood, requires a partnership that not only involves employers, providers and the Government, but families too. If a young person is regarded as vulnerable and has experienced high levels of protection and support through the school system, it is sometimes difficult to enable parents to see a positive future, that offers meaningful employment. Pathways to further education, training and employment are too often seen as a risk that a family does not have the confidence to take. Academic progression therefore needs to become an explicit expectation of post 16 and FE courses; and when a course is completed young people should be supported to take the next steps and move on. The SEND system invests much in creating demand for EHC Plans but invests too little in promoting progression into adulthood before the age of 25. Supported internships are invaluable in developing confidence and growth, often leading to meaningful employment; but too few young people access the opportunity. Employment pathways need to have more prominence in the SEND Code of Practice, supported by clarity on what progression means in determining the value of continuing further education pathways for an extended period of time. Progress must therefore be explicitly defined in the new Code of Practice.

***Question 13: To what extent do you agree or disagree that this new vision for alternative provision will result in improved outcomes for children and young people? (see chapter 4: paragraphs 8 - 11).***

Disagree

The vision set out in paragraphs 8 to 11 reflects current practice in many local areas. We agree that a continuum of provision is required for young people presenting with social emotional and behavioural challenges. However, the continuum should be just that, it should not be fragmented and any design must be all age. Our experience of the administration of supported transfers, fair access protocols, work related learning (independent AP providers) and LA PRUs, is that placements need to be personalised to meet the needs of the individual child. This can mean securing geographical distance from peers. Strong partnership working with a range of agencies including education settings, social care, police, YOS and health are instrumental to safeguarding children at the point of placement. The range of interventions described in the proposal therefore needs to be carefully coordinated to ensure that APs can deliver high quality teaching and learning for those on their roll without their expertise being diluted through a labyrinth of outreach offers.

***Question 14: What needs to be in place in order to distribute existing funding more effectively to alternative provision schools, to ensure they have the financial stability required to deliver our vision for more early intervention and re-integration? (See chapter 4: paragraphs 12 - 15).***

If high quality AP provision is to be available to all, the current system will need to be expanded to enable earlier access by both age and stage. A range of models for primary age pupils could be developed within the existing inclusive environments of mainstream schools. However, the legal framework which protects children from attending unregistered

provisions will need to enable MATs and LAs to create new integrated provisions, that serve local areas/communities without a presumption of new free schools being created. Units within a school that serve a local area can be highly effective, but also restrictive in terms of the limited statutory permitted hours of attendance, if the child is not on the roll of that school. We therefore advise that the whilst the current definition of 'substantial' education needs to be clarified, restricting this to 18.5 hours as proposed within the Green paper for publicly funded provisions, creates an unhelpful barrier to meeting the needs of very vulnerable children, who require access a period of high quality intensive support. Regulation could simply include enveloping all education delivery on a school site within the OfSTED framework for the provider. It therefore follows that any publicly funded provider could operate on a commissioned placement basis to secure parity. Funding streams would logically require any pupil led funding to continue to contribute to the overall cost of provision. It will be important not to incentivise schools to direct pupils to AP, the system will need threshold criteria.

***Question 15: To what extent do you agree or disagree that introducing a bespoke alternative provision performance framework, based on these 5 outcomes, will improve the quality of alternative provision? (see chapter 4: paragraphs 12 – 15)***

Strongly disagree

The assertions set out in the Green paper in relation to the perceived failings of the AP sector are not recognised by Coventry, including the fragility of funding mechanisms. The maintained provisions are secured, with admission being governed by the LAs strong partnership of schools. The creation of a single AP delivery model would potentially dissolve existing services and structures. We would argue that the system can (and does) develop behaviour pathways that offer flexibility and personalisation without significant structural reform. School to school support is a strong and effective strategy to support the challenges children and young people are currently facing, which has been compounded by the impact of Covid. Personalisation requires a range of positive pathways and interventions to meet individual need. It is not necessarily beneficial to bring young people with complex emotional needs into a single setting. Early intervention begins with an understanding of a child's back story and it is from there that appropriate support can be developed to include a multi-disciplinary/agency response, that often involves direct work with the family. The success of an AP model that focuses on outreach, early intervention and lowers thresholds for admission would be at risk if it became over-whelmed with referrals. It is also important to bear in mind, that the decision to remove a child from their community school who has not been permanently excluded from school, to attend an AP, ultimately rests with the parents.

***Question 16: To what extent do you agree or disagree that a statutory framework for pupil movements will improve oversight and transparency of placements into and out of alternative provision? (See chapter 4: paragraphs 22 – 26).***

Strongly agree

***Question 17: What are the key metrics we should capture and use to measure local and national performance? Please explain why you have selected these. (See chapter 5: paragraph 14 – 20).***

The key metrics outlined in Chapter 4, paragraph 16 would provide a secure outcomes framework to measure the impact of the SEND system. However, whilst quantitative measures can identify areas for further investigation it needs to be balanced against any

known context. An opportunity to provide a contextual narrative would therefore aid understanding.

***Question 18: How can we best develop a national framework for funding bands and tariffs to achieve our objectives and mitigate unintended consequences and risks? (see chapter 5: paragraph 27- 32).***

It is important to recognise that the spiralling cost of SEND is a symptom of a complex system, that cannot be solely attributed to poor financial decision making, or failures in strategic planning. The current system has inbuilt incentives to inflate demand and because of the personalisation of each programme against assessed needs, packages of support require careful brokerage beyond the determination of a placement. We therefore welcome clarity on the expectation of funding responsibilities and contributions for continuing care; joint placements and therapy provision including; speech, occupational and physio therapies

The paper recognised that many LAs have developed in partnership with schools, SEND specialists and families a framework that reflects both the local funding context and local thresholds of need. In Coventry this includes a trigger to increase the notional element of the budget to reflect disproportional growth in SEN, thereby negating any perverse financial incentives for schools to identify and support children with additional needs. Any proposed national system will need to have the sophistication and flexibility to mirror this. Transitional processes will need to be introduced with caution over time, to ensure financial systems in place across the range of providers are not destabilised. Sophisticated modelling and testing of funding models will be essential to avoid foreseeable chaos. Failure to do this would result in a high risk of system destabilisation, which would in turn have a direct and immediate impact on the quality and sustainability of the plethora of child support structures in place. In terms of mitigation of risks we advise the primary objective must remain focused on securing positive outcomes for the child, 'form should therefore follow function' enabling financial systems to be built around the delivery model, not vice versa. This is because it is critical that the pupil led funding element reflects the assessed needs of the individual child, within the environment they are educated. It therefore follows that funding bands should differentiate between mainstream and specialist settings, to reflect economies of scale and secure value for money. The essence of the reforms, which the review continues to endorse makes clear that processes must be child centred, personalised and that blanket policies cannot be legally applied

***Question 19: How can the National SEND Delivery Board work most effectively with local partnerships to ensure the proposals are implemented successfully? (See chapter 6: paragraph 6 – 7).***

Applying the learning from the previous reforms, should enable the National SEND Delivery Board to understand the importance of 'staying connected'. A two-way feedback loop that ensures local areas have a voice and are enabled to positively contribute to any implementation plans, would be welcomed. It is important that systems are not imposed and that a culture of co-design and co-production are systemically deployed. This will help to minimise any unintended consequences, to the much needed review.

***Question 20: What will make the biggest difference to successful implementation of these proposals? What do you see as the barriers to and enablers of success? (See chapter 6: paragraphs 8 – 14).***

It is important that there is coherence across all education reforms and that the drive for education excellence properly acknowledges all barriers to learning, not only those that can

be attributed to good teaching and learning. The spirit, intent and expected outcomes within the white paper does not fully acknowledge or provide an opportunity to celebrate the talents and success of children and young people, who cannot cognitively meet the expected national standards in reading, writing and mathematics. This is wrong. A system built on openness, trust and fairness has to include opportunities for all. Otherwise, the perverse incentive for placing pupils with significant additional needs into the special school sector will continue. Inclusive schools should be aspirational but deserve to be rewarded for the progress their children make, not penalised for achievement gaps that children do not have the cognitive capability to bridge, this is discriminatory.

It is widely acknowledged that many of the 2014 SEND reforms set out in the 2011 Green paper 'Support and Aspiration' were the right ones and that implementation has gone badly and avoidably wrong in some local areas, but not all. However, much of the potential to fail was embedded at the point the Code of Practice was compiled, which we would argue may have been overly influenced by professional stakeholder's self-interests. Consequently, expectations were raised to an unrealistic level, there was a statutory failure to make partners equally accountable and adversarial processes were exacerbated through the formal extension of dispute resolution.

Success this time is pivotal on expectations and entitlements being explicitly set out and partner responsibilities underpinned by statutory requirements. The criteria for entering and exiting the system must be clear and the Tribunal must observe and be accountable to those thresholds, if the year on year growth demand is to be controlled.

Time must be invested in ensuring any proposals endorsed and implemented do reflect system capacity in accordance with their proportional impact. Implementation should not be overloaded with initiatives that do not make a positive and significant difference. The measurement of additional burdens on the system must reflect the true cost of implementation, this cannot be achieved from existing resources. Any demand on a specific specialism must consider workforce availability e.g. offering additional training places for Educational Psychologists is welcomed, but it must be recognised that increased capacity into the system will not be realised for 5 years. The paper commits to managing the market for external placements, this should be extended to include the costs of consultants across the field of education, health and social care. For example, Education Psychologists are currently able to demand £1000k a day to produce virtual assessments, as part of the statutory process. Whilst this is an unacceptable use of the public purse, some LAs are left with no choice other than to commission privately elements of both assessment and provision, because professionals are moving into the lucrative area of private practice.

***Question 21: What support do local systems and delivery partners need to successfully transition and deliver the new national system? (See chapter 6 paragraphs 8 – 14).***

Before a new national system can be safely implemented, it needs to be designed, tested and reviewed. Local areas must be fully engaged in that design and current best practice must be recognised and shared. The current system is rich in learning and offers a bedrock for realistic feedback, on what will (does) work and what may not, because it can see the interconnections across the whole system from an informed and experiential perspective. We know that imposition of a new operational system, that was not based on full engagement and is not carefully planned and resourced, will not succeed. Indeed there is a

risk that it may introduce further stress, into an already broken system compounding current problems.

The overall change programme across education, social care and health is ambitious and will create exceptional capacity challenges across both National and Local Government Departments. Joined up thinking and collaboration across this broad horizon will be a critical factor to success. Defensive decision making that serves to move responsibilities from one agency to another, will not be helpful. An example is speech therapy. A speech therapist is a health professional, trained within the NHS. Arbitrary discrimination between what is a health or an education need, can create adversarial relationships in terms of where financial responsibility lies and who must commission a service. This is an example of disjointed silo planning which must be minimised – the Integrated Care Boards must offer a solution to this type of dilemma.

When this is in place, local areas will need to secure strong and sustainable leadership, supported by strong regional collaborative partnerships. This will secure an environment that promotes the sharing of ideas and resources, avoid 'reinventing the wheel' and harness the talent, skills and experience of the wider partnership including young people, parents and carers. The current ADCS regional structures working in partnership with the Regional Boards could provide a conduit for this. The alternative would be 150 local areas at different stages of a journey having to separately harness the capacity to deliver change in relative isolation. Local areas experience of delivery partners has been mixed. It is essential that a delivery partner adds real value and coordination over and above the expertise already available. For delivery partners to have credibility, Local Areas should be part of the commissioning function. Finally, the timeline for implementation must be realistic and ordered.

***Question 22: Is there anything else you would like to say about the proposals in the green paper***

Further related consultations

Annual reviews, amendment to timescales

<https://consult.education.gov.uk/special-educational-needs-and-disability-division/reviews-of-education-health-and-care-plans/consultation/subpage.2022-06-09.1567230234/>