



House of Commons
Education Committee

Pre-legislative scrutiny: Special Educational Needs

Sixth Report of Session 2012–13

Volume II

Oral and written evidence

*Additional written evidence is contained in
Volume III, available on the Committee website
at www.parliament.uk/educom*

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The Education Committee

The Education Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Education and its associated public bodies.

Membership at time Report agreed:

Mr Graham Stuart MP (*Conservative, Beverley & Holderness*) (Chair)
Neil Carmichael MP (*Conservative, Stroud*)
Alex Cunningham MP (*Labour, Stockton North*)
Bill Esterson MP (*Labour, Sefton Central*)
Pat Glass MP (*Labour, North West Durham*)
Charlotte Leslie MP (*Conservative, Bristol North West*)
Siobhain McDonagh MP (*Labour, Mitcham and Morden*)
Ian Mearns MP (*Labour, Gateshead*)
Chris Skidmore MP (*Conservative, Kingswood*)
David Ward MP (*Liberal Democrat, Bradford East*)
Craig Whittaker MP (*Conservative, Calder Valley*)

Damian Hinds MP (*Conservative, East Hampshire*) was also a member of the Committee during the inquiry.

Powers

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Committee staff

The current staff of the Committee are Dr Lynn Gardner (Clerk), Geraldine Alexander (Second Clerk), Penny Crouzet (Committee Specialist), Emma Gordon (Committee Specialist), Benjamin Nicholls (Committee Specialist), Ameet Chudasama (Senior Committee Assistant), Caroline McElwee (Committee Assistant), and Paul Hampson (Committee Support Assistant)

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Oral evidence

Taken before the Education Committee on Wednesday 24 October 2012

Members present:

Mr Graham Stuart (Chair)

Neil Carmichael
Alex Cunningham
Pat Glass
Charlotte Leslie

Ian Mearns
Mr David Ward
Craig Whittaker

Examination of Witnesses

Witnesses: **Kathryn Boulton**, Head of Access and Inclusion, Children's Services, Blackpool Council, **Peter Gray**, Consultant, Special Needs Consultancy, and **Jo Webber**, Director, Ambulance Services Network and Deputy Policy Director, NHS Confederation, gave evidence.

Q1 Chair: Good morning. Welcome. Thank you for attending this meeting of the Education Committee. This morning we have three panels as part of our pre-legislative scrutiny of the proposals to reform special educational needs provision in this country. We have limited time and fiendish complexity to many of the issues underlying our questions, so I would ask my colleagues and the panellists to try to do the near impossible, which is to be as succinct as possible and yet hopefully get over the points you want to make. We will be making proposals to Government on any changes suggested to the current proposals. Are you confident that what is going to come out of this process is going to improve provision for all children with special educational needs?

Peter Gray: If I start off, I think the legislation that is currently framed is very broad and very general. There is a lot that still needs to be coming through in the regulations and guidance to convince me that we are going to be in a better position than we currently are.

Kathryn Boulton: Some of the lack of detail within the draft Bill does not leave us with the confidence that actually things are going to be significantly improved for children and young people, or for the profound or significant improvements that we had the optimism for with the Green Paper.

Jo Webber: We would welcome the aspirations that are in the Bill, but we think that some of the underpinning needs further consideration, particularly how it links across to the Health Service, the reforms that have just gone on in the Health Service and how we make the system work within the reformed Health Service, not the Health Service that was here before.

Q2 Chair: How much is your scepticism to do with lack of resource? If the demand and need is much greater than the resource available, is there anything in this set of provisions that makes you believe there is going to be a better match between provision, the ability to fund that provision, and need—or am I missing the point; is it more about better co-ordination, rather than greater resource?

Peter Gray: For me, the definition in the legislation of special needs and special provision is still the same as it was within the existing statutory framework. One

of the issues that has changed significantly since 1981, when that was introduced originally, is that local authorities have significantly fewer powers than they had at that stage. That is going to continue with the growth of academies. The legislation at the moment is quite short on definitions about what is going to be ordinarily available. Given the fact the definition is still built around children needing something greater than what is ordinarily available, that begs the question about how we define ordinarily available. I personally would expect and want to see much more in the regulations and guidance about what parents can reasonably expect from every school.

Q3 Chair: Kathryn and Jo, what priorities do you have for regulation accompanying this Bill?

Kathryn Boulton: The kinds of priorities we have are around the single plan, particularly the detail within the Education, Health and Care Plan. There is a missed opportunity there, in terms of tying health colleagues into the plan.

Q4 Chair: You want a statutory duty on them, do you?

Kathryn Boulton: I would want to see a statutory duty for health, although I recognise the difficulties and the complexities in that. We do work very well and collaboratively with our health partners. Some of the structures there do not enable the systems to align well together. There also should be some statutory relevance and relationship with the Health and Wellbeing Boards that are now statutory. I think that, in terms of regulations, some aspects around the local offer and having some consistency across the local authorities, there are dangers there of simply describing what is currently on offer. As we know, there is a wide range of variations, which could then lead to a postcode lottery for families moving around, etc. There needs to be a lot more clarity, as Peter has alluded to, in terms of that local offer extending to the offer that is ordinarily available across the schools. We do welcome all schools and all educational provisions being tied into this Bill. That is a welcome addition.

Q5 Chair: Jo, priorities around regulation?

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Jo Webber: I am not a huge fan of extra duties on people, because it tends to be far more about how well it works around local commitment to pupils. Having a strong health plan as part of the Education, Health and Care Plan is very important, but I would like to see more alignment towards the way in which the new health system is going to work, to elements of that, like joint strategic needs assessment, joint health and wellbeing strategies and the outcomes framework aligning that.

Q6 Alex Cunningham: You have answered the question partly, because the charities sector is telling us that parents are very suspicious of the legislation. All the charities accept that this is a step forward in the right direction. Do you see anything in the proposed legislation that can actually reassure parents that they don't have anything to worry about?

Peter Gray: The traditional statutory framework has encouraged parents to feel that entitlements are best safeguarded at the individual child level through a statutory piece of paper, a statement. There are different ways of ensuring entitlements for parents. For example, I talk to a lot of parents who will say, when they take their child to different schools, they get a very different response from different schools and a lot of variation. If parents felt that there was a stronger entitlement in terms of what was available ordinarily, then they may be less dependent on pieces of paper. This is the issue with the new legislation. We are very unclear at the moment about the population that Education, Health and Care Plans will relate to—whether they will relate to the existing population of children's statements, more, fewer or however.

Q7 Pat Glass: Can I just clarify that? If there was a very clear expectation of what every single school across the country would provide, then you think this would give a fair weight to this piece of legislation.

Peter Gray: Yes. The difficulty at the moment is that we have a situation with mainstream education policy, where the expectation on ordinary schools is that they are now having to be good or outstanding, and yet the culture in relation to special needs provision in mainstream is talking about basic minimums and satisfactory. While there is that disjunction in terms of expectation in our schools about quality, that problem is potentially going to get worse, and people are going to be less confident and rely more on individual bits of paper to secure what they need.

Q8 Pat Glass: Can I ask you about the pilots? First of all, are any of you involved in the pilots? Have you had any feedback on the good practice that is coming out of the pilots, because we are getting very mixed views about this? Do you think there has been sufficient time for the pilots to feed into the legislation?

Kathryn Boulton: I have seen the evaluations so far of the pilots. I don't think there has been sufficient time for the pilots to do their work. I know some are in their early stages about recruiting families. I was reading in one around families and personal budgets

and, actually, not having a big appetite at the moment to be taking up the offer of a personal budget.

It is difficult, coming back to the other question in terms of the confidence of parents, for this particular draft Bill, to be absolutely clear and confident that things will be better for parents, because there is still quite a lack of clarity around how personal budgets may work for families. There is a big difference between having a personal budget to spend on the kind of care arrangements you might wish to make within your family, where you are responsible for those care arrangements, and then the arrangements that you might wish and feel are appropriate within the school setting. That provides a number of complexities. It is hard to be able to say to parents, "This will actually be better for you and give you greater confidence."

Q9 Pat Glass: Anyone else, or is it the general view that there has been insufficient time?

Jo Webber: I think there has been insufficient time and you are also talking about pilots that have been running while there is a great upheaval across the local system. While the health system is reconfiguring itself and settling down again, to run a pilot at this time, in some ways, may have been one of the factors why some of this is not working as fast as it might. It is not a stable time to be doing it. The health engagement of this might not be as good as it could otherwise have been, because of the time when the pilots are being undertaken.

Peter Gray: The other reason why the pilots have struggled a bit is that some of the conceptual thinking may not have been as developed as it needed to be. As an example, if we are talking about the single assessment, some pilot areas are piloting single assessments for quite a constrained group of children with very complex needs, where it is important that different agencies work very closely together. Others are really seeing it almost as an extension of the Common Assessment Framework process, which is for quite a large number of children. If we were clearer to start with about what the population that we were thinking single assessment was applying to and how that related to other processes, it would have been easier for them.

Q10 Chair: Do you believe that the immature state of the pathfinders and the ability to provide us with feedback is a cause sufficiently grave as to suggest there should be a delay in the process of legislation? The Government is suggesting coming forward with an actual draft Bill in January.

Kathryn Boulton: Given the commitment to the pathfinders and the complexities that they are having to pilot, the learning should be allowed to be developed in order to inform this.

Chair: Kathryn, you are clearly saying there should be a delay and the Government should set back its date to come forward with the draft Bill

Peter Gray: It comes back to the balance between the Bill, the populations and the guidance, and which bits the pathfinders will inform. As I see it, the legislation at the moment is still very general and broad and, apart from some very specific aspects, not hugely

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different from our existing statutory framework. The bit that this is really going to need to inform is what happens afterwards in terms of the regulations and the guidance.

Jo Webber: I would agree that we need more time to see what the pathfinders are coming up with. Particularly given the health element of this, it is going to be difficult to really assess until the system is completely in place, which will not be until April next year.

Q11 Chair: Are you calling for a delay then, yes or no? Peter is saying no, I think.

Peter Gray: I am saying not necessarily.

Jo Webber: I am saying we would be in a much better place if we had the learning from the pilots with a more stable health element to it.

Q12 Pat Glass: Looking at the issues of health, Jo, I was interested in what Kathryn said about a statutory duty on health, because I was on the Education Bill and I put forward an amendment to have a statutory requirement on health, but it was not well received, not surprisingly. I don't think that is just about this Government; I think every Government had concerns around that. Given the turmoil that we are seeing at the moment in health and, forgive me for saying this, but I have always thought that health was the weak link when it came to SEN—now that is different in different parts of the country—where are we in PCTs transferring to clinical commissioning groups? Are they in a position to input into this?

Jo Webber: The first wave of CCGs are being authorised at the moment and there will be four waves of authorisation between now and April next year. That will not mean necessarily that absolutely every CCG will be authorised by April next year, because some of them can ask for a delay if they feel they need more time, although that will be a very small number. The issue with child health is that it is not just commissioned by CCGs. In the new system, elements of child health can be commissioned in eight different places, so if you have a child with severe and complex needs and, say, an acute physical condition, say a congenital heart disease, then elements of that service for that child can be commissioned in eight different parts of the new system. The issue for us is then how you link all of those bits back together and at what point you co-ordinate all those bits to ensure that you have quality for the child and the family across the whole of the care pathway.

Q13 Pat Glass: Is this going to make this better or worse for families, in the short term and in the long term?

Jo Webber: In the long term, there will be an improvement because you have clinicians commissioning services, but the big trick will be to co-ordinate all the elements of that service together. Not all of those elements are going to be commissioned very close to the child.

Q14 Pat Glass: Is that a further reason for seeking a delay?

Jo Webber: I do not know that it is a reason for seeking a delay. I think it is a reason for seeking more clarity in the way that things are going to be co-ordinated.

Q15 Pat Glass: Historically, local authorities are increasingly delegating resources to schools, so that schools can meet children's needs without the need for a statement. Where is that going to place you now that that money has been delegated to schools? It cannot come back, because of the minimum guarantee. Where is that going to place local authorities in relation to this legislation? Are you going to have the resources? How long is it going to take you to get into a position to have those resources?

Kathryn Boulton: I think there is the potential for it taking some time. The other issue is that the funding reforms are happening at the same time and are not necessarily aligned with this particular draft Bill. Where there are local authorities that have high levels of delegation, uncoupling that in order to deliver on these draft clauses around personal budgets is going to be incredibly complicated and could lead to further variances across country in terms of how that might be done.

Q16 Pat Glass: Even if you can identify, can you get it back, because of the minimum guarantee?

Kathryn Boulton: The minimum funding guarantee does present a difficulty in getting it back, so you could end up with in-local-authority variants in terms of how you could potentially manage it. It might not actually be doable.

Peter Gray: Local authorities are at different stages on this, but there are examples of authorities that have delegated funding for special needs very successfully. Schools are much clearer about what their responsibilities are, see that as appropriate and will work with that. There are others that probably maintain a high level of funding centrally still, which gives a bit of a conflicting message to schools about what they should be responsible for and has some disadvantages. Kathryn is right to point out that, in a way, one of the difficulties we have in scrutinising this Bill is that there is a range of other legislative changes that are happening, in relation to, for example, school funding for special educational needs, which interact with that. Just looking at the pilots for example, which are dealing with certain aspects of that, without looking at the impact of some of those funding changes and the inter-relationships between them, and inter-relationships with other mainstream school policy changes, is a problem for us.

Q17 Pat Glass: Those authorities that have traditionally been high delegators have therefore had ticks from the Government; that is good. Is the new legislation going to make things more difficult or easier for parents?

Peter Gray: Most of the authorities that are struggling at the moment with the delegation issue are struggling with the changes to the funding system. It is not coming out of this Bill; it is coming out of how they are going to wrestle with those changes.

Q18 Pat Glass: Is this Bill going to make things better or worse then?

Peter Gray: From my point of view, if this Bill could be accompanied by regulations and guidance that made it clearer to schools what they were ordinarily expected to do, and the funding was aligned to that, then that would be good, but the Bill does not do that in itself.

Q19 Neil Carmichael: I want to talk a little bit about co-operation between local authorities and health bodies. We think that is central to this issue. We were at a meeting last week, when my colleagues and I teased out the issue of accountability in relationships between local authorities and health bodies. My first question is: do you think that the Health and Wellbeing Boards are going to be a suitable vehicle for bringing together the various agencies and assuring that the right kind of funding is available?

Jo Webber: I think they are going to be essential bodies to do that. They are essential within the local system. They are the only part, particularly in the new health system, where you can get an element of strategic planning around how you develop services together and in partnership. I do not think they are the only answer; a lot of this relies upon local co-operation between local authorities, schools and the NHS. Obviously, schools are not statutory partners on the Health and Wellbeing Board, so there is an issue about how you engage schools through the Health and Wellbeing Board's work. It is the only place where you can strategically plan for resources and, therefore, it must have a role in this. It is also the only place where are going to get a full assessment, through the joint strategic needs assessment, of what the needs of your local population are going to be.

Kathryn Boulton: I think they do have a crucial role. It is important, where there is a statutory function, to tie this together. However, they do have a very broad role and, in order to be able to maintain a priority on children, young people and families, that needs to be a critical priority in terms of the overarching work.

Peter Gray: They have a role. The issue is that there can be quite a distance between strategy at a central level, operation and casework. There has to be a much stronger bottom-up and top-down relationship in terms of what the issues are, because otherwise you will have a group of people who are strategy people and a group of people who are operational people. They do not necessarily match that closely.

Q20 Neil Carmichael: Coupled to your earlier point in answer to Pat about regulations and so forth accompanying this legislation, and more generally to the other two, in the absence of any legal obligations around this area, do you worry that the net effect might be that budgetary pressures might drive the allocation of social care and health, rather more than the actual needs, Jo?

Jo Webber: That is always going to be a worry when you are in a time of financial constraint, for both local authorities and for local health organisations. What would be absolutely imperative is to look at different ways of delivering, so that you can continue to meet needs within a much more financially constrained

environment. That will be for local innovation and local working-together to work out how that actually looks in an individual Health and Wellbeing Board.

Q21 Neil Carmichael: Peter, you mentioned regulations before in parallel to this legislation. Can you give us a rough idea of what you think those regulations should be covering?

Peter Gray: My priority would be, if you look at the local offer—I know it is not what you have just been talking about, but the local offer as an area—it is very vague in the legislation at the moment. It is unclear, for example, whether that local offer extends to schools in terms of their ordinary activity for special needs. It kind of reads as though—

Q22 Chair: Peter, I hate to interrupt; we are going to come to the local offer a little later. If you could, focus particularly on this area of health and social care, the lack of statutory obligations and whether or not you think they are going to come to the table as envisaged.

Peter Gray: I have to think about specifics there, and I think I could get a bit too specific, but as an example for me, one of the issues for parents at the moment, around the different agencies, is that a single agency will make commitments on another agency without necessarily having the responsibility to see through that provision. At the very least within regulations, if people are making recommendations about their own provision, they should be seeing through that they are able to provide that. For example, if a health practitioner is making recommendations about a provision for health, then it should be duty bound on health to actually provide that, rather than the local authority to have to do that. That is an example, but it may be too specific for you.

Q23 Neil Carmichael: Would you mind dropping us a line summarising some of the thoughts that you have, because you have raised some issues in the last series of answers you have given and we need to know a little bit more in terms of detail?

Kathryn, you are very concerned about Child and Adolescent Mental Health Services. Can you give us more information about that?

Kathryn Boulton: There needs to be a specific reference to mental health services in relation to the overarching health provision. As we know, with some very complex SEN, there are then mental health needs that run alongside. What we need to be seeing is a commitment and a requirement for the mental health provision for children and young people with SEN to be outlined clearly.

Q24 Neil Carmichael: Okay, thank you. Essentially, who do you think will lose out if the requirement on local authorities to promote integration for special education provision, healthcare and social care is expressed specifically in terms of children and young people with SEN? In other words, that is quite a limiting definition, is it not, so others will lose out and who do you think they will be, Jo?

Jo Webber: I would hope that nobody would lose out, but it is going to be difficult, because we have tough choices to make, because the budgets are constrained

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in the way they are. I would hope that we could develop locally ways of delivering services that would ensure that people did not lose out greatly on this, but obviously there is a pressure on all of the budgets, particularly picking up on what Kathryn said about Child and Adolescent Mental Health Services. I think it is going to be hard work, but we would hope that people would not lose out as a result of this.

Q25 Neil Carmichael: The interesting part of that answer is it is the second time you have used the phrase, “We have to develop local solutions” or “respond locally”, which is perfectly good; that is localism through and through. What do you think is missing in the legislation that leads you to constantly go back to “We must develop”?

Jo Webber: I don’t think it is what is missing in the legislation; I think it is the way in which the new commissioning system is being set up. Some of those decisions are going to have to be taken locally, because that is way, from a health point of view, that the commissioning system has been set up. There are bigger issues for the range of health services locally that come from this, particularly issues around transition ages, which is an issue for health. At the moment having a set transition age of 25—I think that is one that has been suggested—would have an impact on health resourcing because, for health services, children move over at 16, 18 or 25, depending on what part of the country they are in and what those actual services are. There is a cliff on the other side of that, which means that the services do not link across that transition age. Elements like that do have an impact, but the only way in which we are going to get over them is to use the commissioning systems locally and try to join up the other levels of commissioning that are going to come into the system to make sure that it works.

Q26 Craig Whittaker: Isn’t that better?

Jo Webber: I was trying to answer the question about why I kept saying that we would have to come to local decisions. I think that is the right place to be. I am not saying it is not the right place to be; I was just trying to answer the question.

Q27 Neil Carmichael: Do you think this legislation is going to help your tasks in terms of defining SEN, Kathryn?

Kathryn Boulton: I don’t think it moves us any further forward in terms of defining SEN. It would be helpful to have a clearer definition.

Peter Gray: The way it is defined in law is this relative definition about needing something that is over and above what is normally available. It is to some extent circular. There are two ways of defining it better. One would be to be clearer about what “significant” means, in terms of special education needs in law. There are some problems with that. The other way of doing it, which is my earlier point, is to be clear about what ordinarily available provision is. If you have ordinary provision right and everybody clear about that, then special educational needs is what needs to happen over and above that.

Q28 Neil Carmichael: Peter, this is my last question. Earlier, you were talking about some agencies effectively coming up with expectations or obligations on other agencies in the package that they might propose. You were wondering about how that might unfold or at least you raised that question in my mind. All three of you, in terms of local delivery, local responsiveness and so forth, where is the mechanism going to be that is actually going to provide the final arbitration to solve the sorts of problems that Peter has alluded to and that Jo has talked about? Who would like to answer that question first?

Chair: We will put it on health. That is always a good idea in this context, Jo.

Jo Webber: I don’t know that it is absolutely clear where the final arbitration is going to be. Again, it is one of the areas where we would be seeking further clarity, particularly about who has accountability throughout the system to ensure that what provision is decided upon is going to be delivered.

Q29 Neil Carmichael: The reason I asked the question is because I don’t think it is clear at all. What we need from you is some sort of indication as to how that might be made clearer, Kathryn.

Kathryn Boulton: I don’t think there is the clarity either. Particularly with pre-school, and particularly with post-16 and post-19, there are further risks there if the accountability is not absolutely clear, in terms of children and young people losing out. I do not think it is clear either.

Peter Gray: The easy answer would be to say there should be some joint accountability, but how joint accountability is actually operationalised is a big question. The problem is, if there is a single accountable person like the local authority, there may be capacity through the Health and Wellbeing Board to influence what health and social care do, unless social care comes within the same authority. There is this issue about schools. If we are talking about more academies here, what is the local authority’s role in influencing what academies do in terms of their accountability? You are right to identify it, but the question is ideally it would be joint accountability and it would be something coming through from regulations about that duty to co-operate and duty jointly to be making appropriate provision.

Chair: Thank you very much. You are doing a great job. I will ask colleagues as well, if we are going to get through the main material, for quick-fire questions and answers.

Q30 Mr Ward: Just quickly back to the EHCPs, apparently you have a fan club in Blackpool, Peter, and they allegedly cite you as an expert on this issue. There is a difference between a plan with three elements and an integrated single assessment. How can that be achieved? It applies to you all, I know, but you are cited as being an expert in this area, Peter.

Peter Gray: I think what they were referring to was the low incidence audit, the audit of support services and provision with low incidence needs we did about five years ago, which was quite a comprehensive, well evidenced document, drawing on about 90% of local authority areas. There was a good return through the

surveys and the focus groups, and it was holistic, so it engaged at that stage with health, social care and education, in looking at what the issues were particularly for those young people with very complex and significant needs, which might be multiple, across a number of dimensions—not just school, but home and care. There were a number of things within that in terms of recommendations and also the issues and gaps that were around currently that needed to be addressed. There were a number of things in there about aspects of good practice, in terms of examples of how that was being addressed in different parts of the country, which I think could be built on and used as a resource.

Q31 Chair: Could you give us any ones in particular, as to what we should be saying to Ministers they should ensure is touched upon within regulation?

Peter Gray: I don't want to go on to the local offer, because I know you have already had it, but there were examples at the more strategic level. Dorset was an example that came through, where parents and different services were actively involved in reviewing the provision that was available across all those dimensions for particular groups of children, like ASD—autistic spectrum disorders—looking together at what the issues were and coming up with a local plan. The local offer could potentially build on that, but it needs to be much more specific.

Q32 Chair: I am looking at the clock, Peter. Please go with the local offer now, because I would be very surprised if we get there in the time we have. If you want to say something about the local offer, do it now.

Peter Gray: The local offer, first of all, needs to be much clearer about what it is going to be. At the moment it is being interpreted by some authorities as really just a directory of services. It needs to be clearer about whether it is really about parental entitlements and expected pathways in a particular area for children. It needs to be clear about whether it is including schools properly and it also needs to be built around a national quality framework. Although there are advantages about doing things locally, as you have indicated, that needs to be around a national expectation and, for schools, that has implications for the Ofsted accountability framework on schools and how they look at this area.

Q33 Mr Ward: Can I just ask about transition points, because you already mentioned that, Jo? This is an opportunity just to add to your earlier comments about the difficulties that we have all identified with the different transition points and how they can be overcome in a zero to 25 scheme.

Jo Webber: It is very difficult, and it is also another co-ordination issue if some of those services are being commissioned through different parts of the health system. There is an issue. It is not universal across the system when people transition from particular services, and certainly not all of the services transition at the same time. There is an implication to that, depending on which age you land on as being the transition. The other thing that this does, of course, is not treat the individual child as an individual, because

it puts limits on when things stop and the new services begin. In a world that is going to become increasingly personal health budgets alongside the personal budgets, is there a way of being more personalised about the way in which we transition children from children and young people services through to the adult services? The adult services do not mesh at all with the provision for children and young people.

Q34 Charlotte Leslie: One of the issues that comes up again and again when talking about SEN is the problem of the local authority being both the commissioner and the provider, and the conflict of interest that that presents. Do these measures go any way towards solving that, in your opinion, and does it need solving?

Kathryn Boulton: That is always a challenge. There are some strengths, actually, in being a commissioner and a provider. Coming back to an earlier question about balancing resources, we have a cost envelope in which to work and that does have to be managed very carefully. I am not sure that it does help us necessarily further that role, and I think it will always continue to be a challenge. If there is not, in the commissioning world, an eye on the resources, the provision and the delivery, then you can get conflicts. It works well when they work well together.

Peter Gray: It is one of these issues around the balance between parental choice and regulation. A lot of the ideological presentation is around parental choice, but there are also a number of regulatory functions, like value for money, working within the budget that is available, equity and those kinds of issues that are not necessarily always addressed and need to be. Although there needs to be strong recognition of parental choice and engaging actively with parents, empowering them and involving them in an open way, equally well we are not working with an open-ended budget. If we look at the 16-plus situation, that is an example of where, by having a gap between people who were assessing needs—i.e. local authorities pre-16—and what was then provided at 16-plus, when they had no responsibility to manage or oversee that budget, that led to a significant inflation in the cost of post-16 provision, which was not a realistic one to work with.

Q35 Charlotte Leslie: Can I very quickly, if I have time, just come on to what is going to be the cost, financially, in terms of resources to local authorities, which now are going to have responsibility for EHCPs up to 25 and how will they meet it?

Peter Gray: Kathryn will have a view as well, but my view is that we should not underestimate the post-16 costs. There are structures and processes in place for early years, but the post-16 area will need to be much more brought together strategically with pre-16 as well. There are also administrative costs in relation to the development of EHC plans, the monitoring and view of those, let alone what the provision costs will be.

Kathryn Boulton: From a local authority point of view, alluding to the post-16 and post-19 provision that has come across to the local authority, whilst the funding is coming across, there has not been any

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funding for the increased capacity that is being required to actually deliver on the functions, and that is a particular challenge. If you look at the requirements of this particular draft Bill on local authorities and transitioning from where we are now to where we need to be, whilst many of those intentions are very welcome, great thought needs to be put to the kinds of resources and capacity that will be required to bring it about.

Q36 Chair: Can you give us any sense of the scale of that?

Kathryn Boulton: It is hard to be able to give a sense of the scale really, because of some of the lack of detail. First of all, we don't know whether we will be needing to move the current statements to EHC plans; whether those who have left at 16 and post-19 who did have one, but do not have one because it has ceased, will then need to be reinstated. We do not know that kind of clarity, so it is actually quite hard to give that sort of scale. In terms of the time, the mechanics that are required within the local authority and the people who will need to do the work should not be underestimated, but it is hard to quantify that.

Q37 Craig Whittaker: Can I just ask you if it is right that local authorities are relieved of their duty to maintain the EHCP if a young person chooses to leave education or training?

Kathryn Boulton: My personal view is that, whilst that puts increased pressure on local authorities' resources, EHCPs should be maintained. They should also be maintained in apprenticeships. Any child with a vulnerability around their learning should be safeguarded. I also think that those who go into custody should have their EHCP maintained whilst they are in custody. It is really important to safeguard them.

Q38 Craig Whittaker: Does anybody have a different view? No, okay. What about when educational outcomes have been achieved?

Kathryn Boulton: That is quite an interesting one. We are always striving to be aspirational for our children and young people. What I would not want to see is the risk of actually setting low outcomes, low objectives, in order to be able to achieve them in order to be able to cease the EHC plan. We need to be careful not to introduce perverse incentives to not be aspirational for children and young people.

Q39 Craig Whittaker: Do you think it would be a perverse incentive?

Kathryn Boulton: It is about identifying the potential risks involved in enabling the ceasing of an EHC plan, should objectives be met. It is simply about objectives being met, because we are not talking about needs being met. They are two different things. We need to be very clear around whether the circumstances—around the young person's needs or the environment, and the teaching and learning context—are such that they are able to meet that child's needs and enable them to make the progress that they are able to make, be the best that they can be without the need for an EHCP. That is very different from a child actually

achieving the objectives that are stated in an EHC plan. We have to be quite clear about that.

Q40 Alex Cunningham: I am looking for a very clear recommendation from you as far as the local offer is concerned. Charities working with children with special educational needs agree with you, Peter, that they want a framework with clear principles of what the local offer should be, a clear duty to provide a specific list of quality control services designed to work with local people to meet local needs. What on earth can we do with the legislation to make sure that we can deliver something specific? Does it need some form of minimum offer that has to also have that local focus as well?

Peter Gray: The first thing is there needs to be a national offer. The notion of it just being local, in a way, ducks some of the questions. It would be stronger if there was a national quality framework, which local offers then had a reference to. There will need to be local variation because of differences in demography.

Q41 Alex Cunningham: There is nothing in the legislation that provides for that at all.

Peter Gray: No, absolutely not.

Q42 Alex Cunningham: What do we recommend in order to achieve that?

Peter Gray: There could be a national framework for the evaluation of local offers. There is nothing in the legislation about how local offers are going to be monitored and reviewed, so we could produce a local offer and, from parents' point of view, it could be not worth the paper it is written on unless it is evaluated and people have a chance to comment on how they have experienced that. If it is not possible to do a national offer, the framework for evaluating local offers and for monitoring offers could be strengthened in the regulations, and perhaps some of the individual bits like the schools aspect of it could be strengthened through developments in the Ofsted framework. I would again say the Ofsted framework is weak on this. To touch on that very briefly, at the moment we are in a situation where for outstanding academies that are exempted from inspection five years, on the basis of their normative results, you are not necessarily going to pick up an issue that a lot of authorities and parents would experience about those schools working quite exclusively in relation to admissions. That has to be picked up through our national accountability framework at school level.

Q43 Alex Cunningham: Kathryn, you mentioned earlier that there should be various legal duties for the system. Do you think legal duties should be there across the system to ensure that that sort of thing happens?

Kathryn Boulton: It is about having consistency at a level across all local authorities. There needs to be greater emphasis on some of the duties, but I agree with Peter about the national framework within which people need to work. In terms of the local offer, it is about what the purpose of a local offer is. Is it merely describing what we currently have now or is it about

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constantly striving to improve and deliver locally? There needs to be local variance and the flexibility within the local offer to be able to provide that, because every authority is different. I do think there needs to be some sort of national framework. In terms of consulting and improving the local offer, it is about consulting more widely than the current draft Bill is proposing.

Q44 Alex Cunningham: Do you agree with that, Jo?
Jo Webber: I agree with that.

Q45 Pat Glass: I just want one very quick question in clarification. You talk about, Peter, a national framework that is at a school level. I saw a local authority that had tried to do this and it had fallen apart because of the fragmentation around academies, but they were looking very clearly at every single

school and they had a chapter for each disability. It was based upon three areas.

Chair: This is the really quick question of clarification.

Pat Glass: Sorry. Resources, training and curriculum; is that the kind of thing that you are talking about? A parent can pick it up, look at it and say, "Every single school will have to do this."

Peter Gray: I am after a situation from this legislation that leads to good quality special needs provision in ordinary schools not any longer being seen as optional. In the culture we have at the moment that is seen as optional. That local authority may be doing it, but an authority down the road may not.

Chair: Thank you very much indeed for giving evidence today. That was very useful. Please do stay in touch and write to us if you have any further points to add.

Examination of Witnesses

Witnesses: **Philippa Stobbs**, SEC/Council for Disabled Children, **Brian Gale**, Director, Policy and Campaigns, National Deaf Children's Society, and **Dr Charles Palmer**, Children and Young People's Service, Leicestershire County Council, gave evidence.

Q46 Chair: Good morning. Thank you very much for joining us today. Listening to the first panel, I am struck, as I have been, looking at this Bill and considering the Green Paper onwards: how on earth do we get health to the table? Is health not the enormous elephant in the room? We don't know how we mediate with them; they don't have any statutory duties; they have entirely different frameworks and accountabilities, as well as the fact that the whole system in health anyway is having a revolutionary change in structure. Is health the area that is likely to be the Achilles' heel of the high hopes that Ministers have had for improving support for children with special educational needs?

Ian Mearns: Forgive me, Chairman. I think the question is: isn't health the elephant that is not in the room?

Chair: Fair point.

Philippa Stobbs: I think health is key and that the draft provisions set out a very good clear direction in terms of securing joint commissioning. There are some key elements that need to be improved to make that work. It is interesting that the previous panel was talking about how schools should be engaged in that process, and this Committee played an important role in securing a continuing duty on schools and academies to co-operate with Children's Trust arrangements. There needs to be a structural link between the children's trust arrangements and the Health and Wellbeing Boards to complete the circle that should ensure that we get the appropriate services commissioned for children in schools. There is that structural link.

The functional link that needs to be improved is tying schools in to the Joint Strategic Needs Assessment, which is the responsibility of the Health and Wellbeing Board. If that picks up, through that structural link, the needs of that group of children, we will actually have a better chance of commissioning

the appropriate services so that they are available to meet the individual needs that are set out in a plan. We need to have tighter accountability at the individual level as well but, if we don't get that broader framework right, we won't be able to improve the individual accountability.

Q47 Chair: Do you think that the elephant will be in the room and that it can help in a positive way, under these arrangements?

Philippa Stobbs: What is in the draft provisions is a start, but it will be important to improve that, as the Bill goes through Parliament. That will improve the situation at the minute.

Q48 Chair: How do we improve it?

Philippa Stobbs: By the two linkages that I talked about: the structural linkage and the functional linkage. Without them, I don't think we will be able to improve accountability at the individual level, if we have not commissioned the right services to be available in the first place.

Brian Gale: I would like to say that a parent, responding when we had focus groups on the Act, said, "I have a statement at the moment, and speech and language is written into the statement. I see a speech and language therapist. The speech and language therapist says, 'I am here because I am in the statement, but there is no legal obligation on me. You may see me today, but you may not see me tomorrow.'" That parent is saying, "How will an education, health and care plan improve that security?" I had to say, "Sorry; it won't." Unless we can put some sort of statutory obligation on health to comply with what is written into a statement or an education, health and care plan, we are not going to see an improvement in that. I have to be honest with the parent and say, "It won't."

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We have a situation now where there is going to be statutory mediation but health is not involved in that. If you have an issue with your education, health and care plan, you go to statutory, compulsory mediation with the local authority, and then you take the same issues around the plan through a different mediation process with health. It just does not make sense. We work in the UK; in fact, we work around the world, but we notice that the Welsh Assembly Government is reviewing their special educational needs provision, and parents will be able to take issues over health to their tribunal. We cannot see any reason why that should not be followed in England.

Q49 Chair: Speech and language has its problems but, at risk of controversy, I would suggest that mental health services have even more and more consistently. We described it as “scandalous” in the past. Do you have any belief that where a child who may have behavioural difficulties, and recognised in its plan is the need for mental health services, there will be any more likelihood of the child getting it than there is now, when they can wait months and months, even in acute cases of need?

Brian Gale: If there is a legal entitlement to it, then it will help. If there is not, if it is left to people’s discretion, then it is unlikely that it is going to happen.

Dr Palmer: When you work in partnerships with other agencies, you have to understand the culture, practices and the constitutions that drive those other agencies. It is no use shouting from the rooftops about health. The fact is that the NHS constitution, as far as health colleagues are concerned, prevents them from making specific commitments that interfere with the principle of delivering according to clinical need.

I don’t think that is going to change, but I would make two suggestions about how we could draw health and other agencies more closely together. First of all, we could link the timetable for EHCPs more closely to NHS waiting timetables, the 18 weeks. Secondly, we could ensure that, at all levels in the NHS commissioning process, there were clear children’s leads, right the way through from the NHS Commissioning Board, through local area teams and into clinical commissioning groups. Ensuring that there is a clear voice at each of those levels of commissioning for children would be a very helpful way forward.

Q50 Chair: On the waiting times, have you had any more thoughts on what they might look like and the argument in favour of it? We would welcome any further written evidence from you.

Dr Palmer: At the moment, when parents seek a statutory assessment of special educational needs, it takes six months. They are shocked by the length of time it takes. They can ring up and arrange insurance for their car over the phone. They do not understand why, as a newcomer to the system, it takes six months to arrange for special educational provision. To align the timescales with health would help with setting reasonable expectations for parents about what might be delivered.

Q51 Pat Glass: First of all, I need to declare an interest, because Philippa and I worked together in the past. She led on the Lamb report and I provided professional support, just for the record. I think I would be less generous than Philippa and Charles. My concerns around health are that there may not be a statutory duty at the individual level, but there is a statutory duty to plan. In my experience, many PCTs—and I don’t know about CCGs—systematically fail to plan. Would it not be helpful if children’s health was at least a priority within their NHS plan, which it is not now?

Philippa Stobbs: It is really important we take account of the work that has been undertaken this year looking at children’s health outcomes, which has been led by Christine Lenehan and Professor Ian Lewis. The proposals from that work have an opportunity to improve the profile of children’s health at a local level, with a changed set of health outcomes locally providing a framework for local commissioning. There is an opportunity that children’s needs have a higher profile locally, and there is an opportunity to flag both the mental health needs and the broader therapeutic services that are going to be needed.

There is a test for me around children with diabetes in schools. We still have children in schools at the minute being sent home at lunchtime, because there is no one there to help them check their blood sugar, missing out on 50% of their education. If we can make sure that attendance at school is a key part of health outcomes for children locally, we should be able to commission the right service to make sure that child is in school 100% of the time. That is the test for me of whether the new framework will actually support a greater priority for children’s health needs locally.

Q52 Pat Glass: You have all said that you support the direction of travel of this piece of legislation—I think we all do; we are broadly in favour of this—but you have some serious reservations. Can I just ask you for one thing that you think the Government could put into this legislation that would take away some of your concerns. What would be your one priority?

Dr Palmer: My one priority would be to extend the duty to co-operate, in clauses 8 to 10, to include a duty for schools to co-operate with each other, together with the power for local authorities and parents to cause schools in the local area to work together to provide for all children in the locality, through local special educational needs partnerships. Partnerships would work with local authorities to manage admissions, employ specialist staff, monitor the breadth and quality of SEN provision, deal with complaints and stimulate innovation.

Brian Gale: I would be letting parents down if I didn’t say that they don’t believe this Bill is going to make much difference, because they are being faced on a daily basis with cuts to the services, cuts to teachers of the deaf, cuts to equipment so that their children can hear the teacher in class. Against that backdrop, it is very difficult to convince parents that this Bill is going to make a difference to the lives of them or the lives of their children, or improve outcomes. What I think we would really like to see is a national offer. We bring deaf children together from all around the

country and they compare what they get. They say to us, "Why am I getting all of this, but my friend who lives somewhere else does not?" They say, "How can you justify that?" and we say "localism". They think you are daft.

Q53 Pat Glass: Do you mean a national offer across the piece or a national offer around low-incidence SEN?

Brian Gale: I represent deaf children. We would particularly like to see a national offer around that. It is not rocket science to set out what deaf children need to do to be able to engage positively in education and make good progress. That should be available nationally. What the cuts are doing at the moment is making that unacceptable variation even worse.

Philippa Stobbs: My key priority would be to have a more robust local offer. Crucially, schools have to be engaged in that. The changes in school funding arrangements at the moment do provide an opportunity, as well as a threat, to get schools' responsibilities much more clearly articulated. The funding changes mean that schools are likely to change what it is that they are going to provide from their delegated budget. We need to get that really clearly articulated with more robust duties around making that provision available.

Q54 Pat Glass: Are your reservations serious enough to ask the Government to pause on this? You heard what people said earlier.

Chair: Yes or no, and a very short explanation, please.

Philippa Stobbs: No. A very short explanation: there is a huge momentum built up around trying to improve the way the system works. The Bill, as currently drafted, makes a modest step, but the activity around developing better ways of doing this is sufficient to say this should proceed. Perhaps we need to think of it as being a first step towards achieving a more integrated vision around a broader range of assessments.

Brian Gale: Some of the feedback we are getting from parents on the pathfinders is very worrying. The education, health and care plans, quite frankly, are not accountable on a statement. We have had to advise parents, "For God's sake, stick with the statement, because what we've got there certainly isn't fit for purpose." There are some elements of the Bill that are very good: the development post-16, bringing the academies within the framework so that we are all on a level playing field, the joint commissioning. You could progress on those but, in the riskier areas, unless we have evidence that those risks are being properly addressed, I would say delay the rest.

Pat Glass: You would delay.

Brian Gale: I would want certain things to progress, but there are risky areas where we do have to seriously consider delaying.

Dr Palmer: I would advise a delay on the grounds that expectations have been raised very high amongst parent groups. There is a real danger now, with the restriction in resources in local authorities, that we simply will not be able to meet those expectations. Even worse, the jam is already being spread too thinly.

We have to restrict the range of young people and families that are supported through the statementing process or the EHCP process to ensure that we actually look after the needs of the most needy in our communities.

Q55 Pat Glass: Finally, can I ask you about children and young people themselves? Is there sufficient in this Bill, or is there anything in this Bill, that determines the ability of young people themselves to be involved in decision-making, both nationally and locally?

Philippa Stobbs: I don't think that is clearly articulated at the minute, at an individual level. It needs to be articulated at a local level as well. Children's ability to participate in decisions about, for example, how the local offer is made needs to be articulated, so parents, children and young people should be consulted. Young people are given their voice post-16, but that does not come from nowhere. That has to build on the engagement of younger children in the processes, otherwise how can you switch that tap on at 16?

Brian Gale: There is a problem in the Bill at the moment because, if you look at part 7, where it says who local authorities need to consult when reviewing their SEN provision, it is all provider interest. The child, young person and parents are left out of that list, so there is something wrong with the Bill at the moment in that respect. We think that, if you are looking at that, parents and young people should be at the heart of the consultation. When you are looking at the funding arrangements and huge amounts of money for special educational needs, all that lot is being discussed by the schools forum, where there is again no representation from parents or young people whatsoever. At the same time, the Bill is talking about personalised budgets. The discussion around those budgets is being taken by provider interest.

Dr Palmer: Person-centred planning approaches have been very successful at enabling a planning process that looks at the needs of the young person rather than the providers that are making provision for the young people. In order to make those person-centred planning processes work, we again need to focus on a smaller group of children for whom those processes are done. The person-centred planning process takes longer and is more involved, so again I would urge a delay and a rethink around the scope of the children who are involved.

Q56 Ian Mearns: Before, Charles, you talked about the statementing process taking six months but, if a parent disagrees with the outcome of the statement, there is then to be mediation and appeals. I have certainly seen cases where that has gone on for an extended period and the child's progression has subsequently suffered dramatically. Should there be a time limit on those processes?

Dr Palmer: The latest research from the tribunal suggests that a very significant number of tribunal cases are resolved in between registering with the tribunal and the actual presentation of the case at the tribunal. We think that the current mediation process works reasonably well, apart from the odd case. You

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cannot make general laws on the odd case where things go wrong. My view is that mediation should not be compulsory, and that we should maintain the current arrangements that are working reasonably well, despite the tensions that exist over resourcing.

Q57 Ian Mearns: There has been some suggestion that we should be trying to re-coin the terminology. Under the new system that runs from birth to 25, the term “special educational needs” is still there at the moment, but do we need to redefine what we mean by this whole process? Sarah Teather would like to see views gauged on suitable alternatives to the term “special educational needs”. Any thoughts?

Philippa Stobbs: One of the things that we would clearly like to see is disabled children much more clearly included in the definition, not being subject to their need to require special educational provision. I want to pick up the discussion in the last panel about the relative definition of special educational needs. The alternative to a relative definition of special educational needs is a categoric one, and I don’t think our children are categoric; I think our children exist on a continuum, in all sorts of different ways. I say that the relative definition and that nature, which lies at the heart of this definition, have to stay. What we have to improve are the professional judgments around that, which is what the code of practice seeks to do. It does not set out categoric definitions; it seeks to improve the professional decision-making process about when a child has special educational needs.

Q58 Ian Mearns: Is there not a concern though, Philippa, that if we are going to move to something that is going to be called an education, health and care plan, the definition of special educational needs within that is too narrow?

Philippa Stobbs: Absolutely, which is why I say that disabled children need to be included without necessarily a requirement that they need special educational provision. They should be included in the definition and not subject to that requirement.

Q59 Chair: What about the name? Do you want to change it from SEN to additional needs, or do we stick with SEN, even though it goes from nought to 25?

Philippa Stobbs: We have had some discussions about that, but we have not come to any conclusion on that yet.

Brian Gale: I would just like to say, for our parents, it is not an issue. They have bigger issues, bigger fish to fry and bigger concerns than whether it is SEN, learning challenges or whatever. They feel their focus must be on their issues.

Q60 Chair: So you have no view on the name?

Brian Gale: No.

Dr Palmer: Local authorities are having to restrict eligibility for statements now, because of resource demands. The numbers of children caught within the system will reduce over time, and I personally would move towards an adult-led definition of disability so that, at the transition point from child services to adult services, there is no cliff edge.

Q61 Ian Mearns: For the record, you are quite clear in your own mind that local authorities are restricting the number of children who are getting statements because of resourcing issues?

Dr Palmer: We have been explicit with families in my local authority that, in order to protect the needs of the most needy children, to protect the provision we make for the most needy children, we are having to restrict growth in the numbers of children being assessed.

Q62 Ian Mearns: Does the draft legislation need to contain clearer definitions of SEN and disability? You have already alluded to that, Philippa. Do we need to actually do something about that?

Philippa Stobbs: I don’t think we should propose a move to a categoric definition. Being clearer about what we mean by special educational needs comes from refining professional judgment, and also from being much clearer about what we expect to be ordinarily available. It was the point that Peter Gray made in the last panel. If we clearly articulate that, we are in a better position to define when what we need to provide to meet needs goes beyond that. The definition remains relative both to other children and to the provision available. That is part of the definition. If we define the provision better, then we have a clearer definition.

Q63 Chair: You have mentioned a national offer already, or should it be a national quality framework for the local offer to be set against or within, however you want to view it? What about an SEN code of practice?

Philippa Stobbs: That is where most of this is articulated currently and it will be very important. This is a very significant document for parents, schools and everyone. I would urge the Committee to recommend to the Government that members of Parliament have sight of that document. At the moment, the proposal is that it is not laid before Parliament.

Q64 Ian Mearns: I know that you have taken differing views in terms of where we should move, in terms of delaying the Bill or moving forward. Is there not a grave concern that, because of the lack of detail within what we have already seen, really what we are actually doing is saying to the Secretary of State, “You have Henry VIII powers to do whatever you want in terms of regulation in the future”?

Philippa Stobbs: The Bill Committee in particular will seek to see regulations and drafts of the code of practice that will better inform that detail. A lot of the regulatory powers are powers, not duties. That will be something that this Committee will want to make a recommendation on. Actually, for some of those regulations, you will want a duty on the Secretary of State to make those regulations and make them available when the Bill is going through Parliament.

Brian Gale: Our parents and our members are quite clear that you proceed if you think it is going to bring benefits, and you have to get it right from the start. You cannot proceed where there are loose ends, uncertainties and risk, because we cannot risk a cohort

of highly vulnerable children going through a system that fails them. It is important for the code to go through the full parliamentary procedure, and it is important that the main legislation is right from the start and that we do not try to fix it subsequently, through regulations and mistakes, which are mistakes made at the cost of children.

Q65 Chair: Charles, do you think that the code should be laid before Parliament?

Dr Palmer: Yes, I do, because that will raise the awareness and the significance of it. It is a very important document. Can I just say that that was written originally to specify what it was that schools should be doing prior to statutory assessment? In a sense, the motivation for the local offer was what motivated the SEN code of practice and the revision of the code of practice.

Q66 Neil Carmichael: The care plan is where I want to probe a little bit. Brian, you have been making comments about the care plans, and my first question is really to you, at least initially. What is the single assessment process likely to look like, in your view, and how will it work in practice?

Brian Gale: In practice, it is not working particularly well. We are not getting the multi-agency input we would like from that and I can realise why people are not doing that around deaf children. An audiologist leaves the clinic to go to one meeting to discuss one child, and six children miss their appointments. There is that particular issue between what a process would look like in theory and what it looks like in practice. I don't blame that audiologist for sticking with the clinic but, in an ideal way, you wouldn't see that. You need to get a framework. Ideally, as I have said before, I would like to see health compelled to make the provisions meet those needs. The commissioning is all very good, but you need the compulsion to make it bite.

Whatever we do, it has to compare well against the statement and what we have been seeing is not. Only on Friday, a parent was raising concerns saying, "There is not sufficient detail in this education, health and care plan." The local authority said, "Okay, we will add a page, but do not expect it to be as specific as the statement," and then saying, "We are following DfE advice." I know it is not DfE advice and there is nothing about that, but we may need to have a look at the wording that is going into the Bill because, at the moment, the current legislation says the statement must "specify". In the current Bill, it says the education, health and care plan must "set out". I am just wondering whether that change in words is putting thoughts in local authority officers' minds that we no longer need to be specific; we can be far more woolly.

We need to have an education, health and care plan that is very specific about what the child needs. It needs to focus on both the broader outcomes, which were missing from the statement, but still the specific objectives in a statement, which are the sorts of things around skill development, like developing age-appropriate language or being able to eat independently. It is important to have those. We need

to be firmly based on a sound assessment. We have heard from some local authorities' pathfinders that they are not going to bother with assessing the child's needs; they are going to jump straight into a plan. They have not read anything that Ofsted has written about the importance of assessment. If you do not know the child's needs, how can you plan to meet them? Those are the sorts of things we would really like to see embedded in the new process.

Philippa Stobbs: The assessment process, as currently mapped out, is not that different from what we have at the minute. Brian has pointed to some gaps and some bits of drafting that do need to be improved, and I know that IPSEA has sent into the Committee a clear account of where there are some points of omission and gaps in what is currently drafted, as against the current framework. I am sure this Committee will make recommendations that those gaps are plugged and that the changes that might reduce entitlement are addressed. Broadly speaking, the assessment arrangements remain very similar to what is set out at the minute.

Where the Green Paper opened up the possibility of a much broader vision of integrating a range of different assessment processes, I don't think the Bill delivers on that. I said earlier that I do think this makes a move in the right direction. These processes are very complex, and it would be very helpful to think of this as being one step, and to think of learning from the pathfinders potentially feeding into later legislation that tries to bring an increasing range of different assessment processes into this to make a more integrated system, in the longer term.

Dr Palmer: One of our families in Leicester described the EHCP as "a statement with knobs on". How big the knobs are remains to be seen, but the risks are that expectations have been massively raised amongst families about the biggest change to special needs arrangements in 30 years. I do not know anybody who sees these proposals as that. That comes back to why I would urge a pause, because I think we need to talk more with families about what is actually possible in the current situation.

Q67 Neil Carmichael: What about those who are not actually in formal education or training? Do we need to be thinking in terms of extending the plans to them? I know you, Brian, have mentioned this.

Brian Gale: We think certainly in terms of post-16, if somebody drops out of their post-16 provision, what happens there? That is when they are likely to be most vulnerable; that is when they need support; that is when the plan should be reviewed and we should be looking at the options from that. That is one area. The other area is apprenticeships, which could be quite critical. We could be putting young people who need support, deaf young people who need support, into what could be a very positive outcome. We need to make sure that our planning and support around those apprenticeships are very secure and firm.

Philippa Stobbs: The post-16 situation is one in which many young people find themselves moving in and out of different sorts of provision. Many of the young people who we are talking about are not in employment, education or training, and that is the

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time when a plan really needs to draw together a clear vision, articulated with the young person themselves, about what needs to be provided to enable them to lead a life and enter into education or training opportunities, into an apprenticeship. That concept that the plan would only continue in education or training does not deliver this group of young people.

Q68 Neil Carmichael: One thing we have not really touched upon thus far, and it is not necessarily the remit of this Committee either, but I still think we need to mention it, is of course further education. Clearly there is a different structure. We heard all about that last week when we were talking to DfE and, ironically, BIS people too. What are your thoughts about further education, Charles?

Dr Palmer: I have already made a point about spreading the jam too thinly, as we look to extend the protection of EHCPs to wider groups of people. At the moment, local authorities do not fully understand the financial commitments that will come through extending into FE. We are very nervous about what might happen to the commitments that we have to make in our budgets once we do understand more fully the actual demands on us. Again, I would urge caution and a delay.

Q69 Chair: It is a broad, cross-party and commonly accepted view that it is better to get it right early on and you get a much better payback. It would be ironic, would it not, if we had a major piece of legislation that actually reversed the move to spend early and spend better to get people on the right path, rather than spending later? The risk is, with the same resource, we could actually be tipping it away from early intervention on to a later service.

Dr Palmer: The danger of resource pressure is that thresholds have to be raised and that intervention takes place at a later stage, rather than earlier stage, and is then more expensive.

Brian Gale: The National Audit Office report says that 2,000 young people with statements who leave school at the age of 16 are not in education, employment or training by the time they are 18. If you raise the participation age by two years, that means you will have 4,000 more young people with very high levels of need. The National Audit Office says that the average cost is £17,000, so you multiply £17,000 by 4,000; you are getting a cost to local authorities of somewhere in the region of £68 million. We welcome this extension, this protection, but we also need to see the local authorities' budgets increase by a commensurate amount, so that they can meet that need.

Philippa Stobbs: The cost of doing it has to be mapped against the cost to the nation of not doing it. There was a clear ambition for the Government and for the previous administration to see more disabled people going into work. How can we do that if we are not securing the best possible educational outcomes and the best, most coherent offer, as young people grow into adulthood? The cost of doing something has to be mapped against the cost of not doing something. There is a drive to make earlier intervention. There is provision, as there is currently, for intervention before

the age of two for children. The Ofsted report of 2010 was fairly clear that, actually, children identified really early do tend, on the whole, to have a more coherent offer. We should not be seeing this as one or the other.

Q70 Chair: Unless you have more resource, you could make the perfect the enemy of the good. If you end up spreading the jam more thinly, you actually undermine the quality of what you have now in order to provide barely adequate services later, however desirable they might be, at a lower level across the board. In the name of wanting a holistic system that covers the whole age group with the same resource, you simply end up with an inadequate service for everybody and a reversal of the presumption that you should intervene earlier if you are going to concentrate anywhere.

Philippa Stobbs: Absolutely, but if there are young people coming through the system who have not had their needs adequately met, who are not well prepared for adult life, at that point we have to look at the cost of the intervention set against the cost of not the intervention. I absolutely agree that the earlier we intervene, the better, and there are lots of cost-effective studies to show that that is a good system. We should intervene early. But young people coming out of the system at the moment, whose needs are not adequately being met, who have not been adequately prepared for adult life—

Chair: I understand that, Philippa.

Q71 Neil Carmichael: I have two further questions to ask. One is about the lack of statutory mention of the health side of things. We have heard about that already, but what I would like to hear from you is some sort of idea as to how that should be incorporated into the legislation.

Philippa Stobbs: It has to be done at two levels. We have to get the strategic level right. That was the first point I made. If we don't get that right, then the provision is not there to make in the individual plan, but it absolutely has to be tied into the individual plan as well.

Brian Gale: Not that I am particularly in favour of compulsory mediation, but if we are going to have mediation, then health needs to be brought in, within that scope. It needs to be, as the Welsh Assembly Government is proposing, brought within the scope of the tribunal. That will give bite to the broader joint commissioning arrangements that Philippa was talking about, too.

Q72 Neil Carmichael: I was thinking more in terms of the structure of the plan itself and how various agencies would contribute to it, because that is equally important. We do not want to end up with everybody going to tribunals because they are not satisfied. What we want to find is a situation where they have got a good start. How do you think we can bring that about, Charles?

Chair: Very briefly, speak for the panel.

Dr Palmer: We have to rely on the joint commissioning. We have to allow the current massive change to settle down, so that we can actually find the people to talk to. When the system is changing so

quickly, it is actually difficult to find the right people to talk to. Give us a chance to have a go at joint commissioning and improving things that way.

Q73 Craig Whittaker: Can I just ask you how useful it would be to include independent schools in the list of schools parents can name on the EHCP?

Dr Palmer: You will excuse me if I return to my theme of spreading the jam too thinly, but that would be my answer. Again, people in local authorities are nervous about making those sorts of commitments that would again extend our resources into new areas.

Q74 Craig Whittaker: But don't you do that already?

Dr Palmer: We do for special schools in the independent sector, not mainstream schools in the independent sector.

Q75 Craig Whittaker: Any differing view?

Brian Gale: Yes. We are advocates of parental choice and we think parents should have that option. We can think of cases where deaf children have been placed in independent schools, and the cost has not been as great as maybe a non-maintained special school.

Q76 Craig Whittaker: Can I ask you then, if a parent or young person chooses to attend an independent school not funded by the local authority or the Secretary of State, will the EHCP continue to serve a useful purpose or should it be stopped?

Chair: In a truly independent school, independently paid for, are the plans any use? Yes or no?

Brian Gale: I think they should continue. We should not be penalising a child who may be deaf just because their parents choose an independent school for them. I think that child needs advice and support from specialist teachers of the deaf.

Q77 Chair: Does anyone disagree with that, or are you all in agreement?

Dr Palmer: If families make a choice to educate their children in the independent sector and make those provisions, they should carry those responsibilities.

Q78 Craig Whittaker: You are saying it should stop.

Dr Palmer: I would again urge not to extend the remit of an education, health and social care plan.

Q79 Alex Cunningham: I think you agree with our previous witnesses who talked about the need for a national offer to inform a local offer to meet local needs. Do you also agree with NDCS that there ought to be a set format for the presentation of that offer by each authority? How difficult is it to understand that at the moment?

Dr Palmer: There is a really tricky balance between national protection and local variability. The key to this is not about rules and regulations that impose requirements on schools. It is about encouraging innovation in schools, creating an environment where schools will work together and innovate themselves.

Q80 Chair: This is specifically about presentation, in order to allow people to make a comparison and allow the localism to inform in different areas.

Philippa Stobbs: I think it may be very helpful if there is some agreed format. It would make it easier for parents to find out what they can reasonably expect to be made available, but I do think that some of the accountability comes from having a shared local understanding of what that local offer is. That really needs to involve parents and children in the discussion of what that should be. You cannot possibly document everything that should be provided locally so, if you are going to summarise that, you need that shared local understanding of what that summary represents.

Q81 Alex Cunningham: Can local authorities actually be confident at the moment that they understand what their roles and responsibilities are in this, and how they will actually be held accountable for providing the correct range of services?

Dr Palmer: Local authority roles are changing very rapidly at the moment, more than at any other time. We have in the legislation a role around a champion for children and families. Understanding how we carry that out, with an increasingly independent and atomised education sector, is a real challenge.

Q82 Alex Cunningham: It applies to health as well, of course. You appear to agree that there should be some sort of legal provision that compels people to conform.

Dr Palmer: The real thing we need to achieve is a commissioning voice for children within all levels of the Health Service. That is the key, to me.

Q83 Alex Cunningham: Thank you. Brian, you talked in some of your work about the gap analysis between what the provision is. How on earth do we get that written into the legislation to make sure that that gap analysis is carried out, in consultation with parents, as you suggest?

Brian Gale: I think we ought to be looking at the national offer. It goes back to something that Peter was saying. If you set out your national offer, and a requirement to have a national offer, then within your local offer you would be doing two things. One is that you would be setting out how you are delivering that national offer locally; it enables you, as Peter said, to evaluate your offer against everyone. I would start with the national offer, and then I would put into legislation—I'm afraid I don't have the wording—something about how a local authority would explain that they are intending to meet that national offer. That national offer is basically saying what it is that a child who is deaf or has a visual impairment needs to make progress, and achieve good outcomes.

Philippa Stobbs: Much of the local offer would be delivered by schools, so I think that needs to be really clearly articulated, and that must be done through the discussions that are happening at the moment about how the new funding arrangements will work, and how schools delegation will work.

Q84 Alex Cunningham: Finally from me, a question around the personal budget: how likely are parents to

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take up the opportunity of a personal budget, and what safeguards are needed to ensure that the use of personal budgets does not lead to a decline in the availability of less-used services?

Philippa Stobbs: What has come through from the pathfinders is that fairly small numbers of parents are seeking a personal budget.

Q85 Alex Cunningham: Is that because they fear it?

Philippa Stobbs: It may be; some parents have said to us that the determination to cut bureaucracy for schools means that actually it has been handed over to parents. The broader aim of those arrangements is to personalise the services that are provided for families. That is a laudable ambition. What has not been adequately articulated yet is how that would work in schools. A personal budget has been demonstrated to be very effective, where we are encouraging families to make choices about what they will do. In schools, that personalisation happens in a slightly different way, and the use of a personal budget for school-based provision has not yet been adequately tested out in the pathfinder areas.

Q86 Alex Cunningham: Do you think there is a risk of some of the more unique services being lost if personal budgets are pursued?

Brian Gale: Yes, I think there is not a lot of interest amongst parents of deaf children for various reasons, but there is a fear that with sensory support services and hearing support services meeting low incidence needs and low numbers, if a few parents decide to take the funding for those services and do something else with it, then the viability of those services can be under threat. If you have an early years specialist, and maybe a small percentage of parents decide to take their money elsewhere, what would you do with that early years specialist? You can no longer afford to pay them. Do you get rid of them, and leave 90% of the other parents without a service? That is a particular issue and a concern for us.

Q87 Chair: Are you in favour of them? Do you think that of the pluses and minuses, the pluses outweigh the minuses?

Brian Gale: There are pluses and minuses, and there are ways that local authorities could organise themselves against that risk. The other problem of commissioning comes back to an earlier point about local authorities being both commissioners and providers. We think that some local authorities, in trying to meet low incidence needs by themselves, are actually damaging deaf children.

Dr Palmer: I am in favour of personal budgets, because they create more flexibility in the way families construct their provision, and they are an increasingly common feature of adult services, so it is important that we help young people to prepare for an adult future with a personal budget. Within the education sector, you could create a virtual personal budget by enabling parents to have a power to seek a personal budget statement from a school, so that they could see what resources were coming into the school, and how the school were spending the resources on their child. That might not be a personal budget in pounds, shillings and pence, but it would be a virtual budget, which, I would suggest, they could usefully have a power to seek where they were unsure about the provision being made.

Philippa Stobbs: That is a very helpful way of thinking of it. The benefit of the personal budget is the transparency and the young person's and parents' say-so in how that is used. Potentially, as it were, a school holding a personal budget for a child and family is a very good way of increasing that transparency. There is a risk at the moment: a lot of parents think the money in their child's statement is being used to tarmac the staff car park or renew the school windows, and this would address that problem.

Chair: Thank you very much for helping us get through so much in so little time. If you have any further thoughts, do stay in contact with the Committee, if you have any particular proposals or you want to fill out any of the points you have made. Thank you very much indeed.

Examination of Witnesses

Witnesses: **Di Roberts**, Principal, Brockenhurst College, **Christine Terrey**, Executive Headteacher, Grays School and Southdown Junior School, **Janet Thompson**, National Adviser for Disability and Special Educational Needs, Ofsted, and **Graham Quinn**, Headteacher, New Bridge School, gave evidence.

Q88 Chair: Thank you very much for joining us. The challenges of dealing with this topic and doing so in a short time are further added to by having four of you, all excellent witnesses, with little over half an hour in which to cover the ground. To start with a general point about the local offer, what role could Ofsted play, with or without a national quality framework, with or without a national offer underlying it, in ensuring that we get decent, reasonable consistency across the piece?

Janet Thompson: I suppose that is for me to answer first of all. The issue Ofsted has come back to the

fact that, when we go into providers, we inspect the outcomes and the provision for the young people who are within that provider or the role of that provider. That does not necessarily capture the youngsters that one of your colleagues mentioned, who are not in the provision, and it does not necessarily capture the fact that a school is not necessarily admitting the same range of youngsters that perhaps another school down the road does. Therefore, the accountability structure, as it is set at the moment with inspections, is linked to youngsters on the roll within a provision.

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In a similar way, at the moment we are doing proportionate inspections, and therefore there are outstanding providers who may not get inspections for quite some time, or if their data continues to be positive for a long length of time. Similarly, we have issues around the lack of what I would call performance data, the lack of data about outcomes, for some of the young people that we are talking about today, and those with the most complex needs are within that group. There is no national structure for that, so Ofsted needs to do some more work around that, which we are willing to do with the Department, and we have started to look at that with some stakeholders as well.

Q89 Chair: Do you think it is important we are realistic about the ability of Ofsted to make a contribution in this area, for the reasons you have given?

Janet Thompson: I do. For me, there are some pluses and some minuses to the draft legislation, but the key benefits are the guidance and recommendations that sit around that, and the accountability that sits around that. Picking up on other people's views about the local offer, we need to be much clearer about what every school should be offering. My other thing—and you would expect me to say this, from Ofsted—is that we should not just focus on provision because, as our SEN review found in 2010, you can have all the legislation to protect a level of provision, but it does not mean it is of good quality and that it is actually improving the outcomes for children and young people.

Q90 Chair: You have touched on the weakness of the data. How easy is it to come up with data for outcomes for children with SEN, and the variety and complexity, to enable you, properly and fairly, to hold an institution to account for what it has done with those children?

Janet Thompson: There is a range of data out there. Colleagues will want to jump in, I am sure. It is about getting a joint agreement about which are the important things to look at and how we can make that moderated nationally, and not just on a within-school basis.

Graham Quinn: I will continue from what Janet said. There is a significant amount of data that we are able to use, some of it commercial, some of it probably five or six years old now. The key question has to be that the majority of special schools, which is where I come from, are considered to be good and outstanding, and we are all very good at analysing that data. Actually, however, when you look at the outcomes for young people aged 16 or 19-plus, they are still very variable across the country. The question is: are we measuring the right sort of data within our schools at this point in time to have a real impact upon young people's life opportunities?

Q91 Alex Cunningham: We have this tremendous variability in the inspection regime nowadays, and tremendous variability in the quality of the provision.

All parents are bothered about is whether their child is getting what they need. How does the Government make sure that the child is getting what the child needs, and how do we make sure that the best practice is captured and shared, particularly in this world of localism and people doing their own thing?

Christine Terrey: My school is a national lead school for Achievement for All, and part of that responsibility as a lead school is to share some of the practice that we have developed. We were a pilot school for Achievement for All, so this is now into our third year. We have learned a lot through the practice, particularly the high focus on parental engagement, which obviously is also a key feature of the draft legislation—the choice and engagement of parents in what happens to their children who have special educational needs. Somebody spoke earlier about schools innovating; schools in our position that have had more opportunity to innovate. Through being in the pilot, we were able to do that; we were able to innovate and try different approaches. We learned a lot from that, and we are sharing that more widely now. There is a duty on schools to share widely. The duty on schools for school-to-school support, really—

Q92 Alex Cunningham: If we don't know where it is, how do we actually share it? It's a big country, isn't it?

Christine Terrey: It is. There is a greater responsibility and accountability on schools for providing school-to-school support now, as the local authority has started to take a slightly more backwards role in schools. Schools are forming alliances and sharing practice more widely across those alliances. Currently they may still be within local authorities rather than nationally, but there is that understanding that schools perhaps now have more of a moral imperative to support not only children in their school but others.

Q93 Chair: That is an input rather than an outcome. What we are trying to tease out is whether we have the metrics, the measurements and the ability to see whether institutions are, either collectively or individually, delivering for the most vulnerable and challenged—and sometimes challenging—children on their roll. Di, do you want to come in from a college perspective?

Di Roberts: It is one of the advantages that this Bill could give us, in terms of actually tracking those young people through their plans, right through to the age of 25. The problem has been, with local authorities and the dismantling of Connexions, actually tracking those young people. It would be a loss if the clause that is in the Bill already that says that if they come in and out of education, as soon as they have gone out, that is it—they have completed—was kept. I think that is a serious flaw.

Q94 Alex Cunningham: Would legislation facilitate that?

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Di Roberts: If a young person has an annual assessment through to the age of 25, yes, it would have an impact.

Q95 Alex Cunningham: Does the legislation allow for that, though? Is it detailed enough?

Di Roberts: No, it is not.

Q96 Alex Cunningham: So what needs to happen to the legislation to ensure we get that?

Di Roberts: It needs to say that they have an annual assessment until the age of 25.

Q97 Chair: Regardless of what they are doing and whether they have ceased to be involved in education?

Di Roberts: Yes, yes.

Q98 Chair: Are you optimistic that we can achieve this joined-up system? We did a report on 16 to 19 participation, one of the recommendations of which was to ensure that schools and local authorities were given the capability, or possibility the duty, to transfer data on children with free school meals, so that when they have to give bursaries out, they at least know which kids coming from school are on free school meals. That still has not been implemented.

Di Roberts: No. That is why, from a post-16 point of view, we welcome this; it is the first time we have been included in this sort of legislation. It is absolutely crucial because, at 16, some young people fall off a cliff and we have very little information that comes to us about that young person in terms of what has gone on previously. If they have statements of educational need, we will usually have that information, but anything else, we do not get. This plan, and the duty that it is not just those that have the education health and care plan, but those with SEN, is an absolutely crucial part of this legislation.

Q99 Ian Mearns: That inherently will massively increase the accountability of all educational institutions, if that tracking process goes on. Then we can look at what has happened to those young persons and where they came from. That will be a big issue, and I welcome your comments on that. Will the proposed changes have a significant impact on schools and colleges, and are schools and colleges ready to deal with these changes in the timescale envisaged? Or do you actually envisage that there is no real challenge there for schools at the moment within what is provided?

Graham Quinn: The devil is in the detail there. We are living within a time of significant change, and schools adapt very well to that. We will continue to adapt well. The challenge is that whilst we know what the detail is, we can effectively plan. Lots of schools at this point in time are slightly concerned that, because of the lack of detail, they are unable to put clear plans in place.

As an example, around personal budgets: will personal budgets be able to be used to purchase places for young people with the most significant and profound disabilities in organisations that may be arm's length organisations for the school, which presently the college is struggling to meet? If we talk

about the end of the cliff, young people with more profound disabilities are the ones who really do fall off the end of the cliff at 16 and 19, and they are usually left to live at home with their families. There is an awful lot of evidence saying that.

Q100 Ian Mearns: Previous panellists talked about things like the duty to co-operate for instance. If that were to be enshrined within the Bill or within the legislation, a) would you welcome that, and b) would you see it as a problem?

Graham Quinn: I would absolutely would welcome it, but it is about freeing up the resources to enable families to have real choice within that, particularly around 16-plus provision.

Q101 Ian Mearns: Christine, you are nodding vigorously there.

Christine Terrey: Whilst I do think schools are ready within the timescale, I am talking to some of my primary headteacher colleagues, many of whom have very little understanding currently of what will be required of them. They have not made any start whatsoever on any form of a local offer. They don't actually have much of an understanding, because even though my local authority is a pathfinder local authority—there are 70 families involved in that in my local authority—the messages from that are only just starting to gradually filter through.

Q102 Ian Mearns: That is understandable, Christine, because I think people in the Department don't know what a local offer will look like yet.

Christine Terrey: Obviously the code of practice is going to change, and somebody else mentioned earlier on that it is a significant document for schools, and it has been. That is going to change. Obviously the children who actually have a plan are the minority in a maintained primary setting; the extreme minority perhaps. In a year group, on average, I might have two or three; they occasionally go up as far as seven, but that is the minority. However, I have many children who will, at some point, have a need that is additional and above that which would normally be able to be dealt with by quality first-wave teaching.

It may be that that has been identified by clear scrutiny of data, where you can see that a child is having a problem and that actually that child needs an intervention. It may be an intervention for a 12-week period, or for something a little bit longer or even shorter, which helps them over that hurdle and moves them on. That child would move to School Action at that point, have the intervention and hopefully would not need School Action anymore, because that need had been addressed. However, it is an additional need, one that cannot be provided by the class teacher at that time.

Q103 Ian Mearns: How much does the SEN code of practice need to be changed, and is it important that it becomes a statutory code rather than just DfE guidance?

Janet Thompson: Can I just go back to your previous question as well? Picking up on the local offer side, which is where the code of practice sits, it is about

the partnership with whom they develop that local offer. You must not forget that schools need to be part of that partnership, but so do other services, so that the local offer is not just about schools. That expectation that schools will provide perhaps the 12-week intervention as part of the usual offer that any child can expect within that school is key to some of the things we are talking about here. This brings me to the code. It is about when that relative additional and different comes into play. The key for me is that if we do not articulate clearly what everybody should be able to access—it will not be just, “I am in a class of 30 youngsters with a teacher”; there is more than that—we do not know what is additional and different. Until we have done that, those levels will be very variable.

Di Roberts: And of course it does not at the moment apply to colleges, so of course we would want to have some input into that, and there would be a training need for our staff.

Janet Thompson: I think anything we do has to go through to 25.

Christine Terrey: At the moment, obviously the local authority will have an offer, but schools are required to publish to parents what they, as a school, offer. Currently that would be very different. My school is a dyslexia-friendly school. My school is a lead school for Achievement for All. My school does employ a specialist reading recovery teacher. I have specialist staff to deliver national maths intervention programmes, but the schools in the next town or down the road may not have those things, because perhaps they have not prioritised those particular interventions or those particular opportunities for their children. Those schools will not be offering. I think schools’ own offers to parents would look very different.

Q104 Ian Mearns: That is the code of practice. Does that need to be statutory guidance?

Chair: Any views on that, or not particularly?

Ian Mearns: You are sanguine about that.

Janet Thompson: I don’t necessarily think making something statutory makes it work. I think it is about other leavers and the accountability framework.

Q105 Ian Mearns: Isn’t that a difficulty? Without making something of that nature statutory, in this time of change and with the need to co-operate between people, would some institutions not just opt out of the whole process, and say, “We don’t deal with those sorts of youngsters”?

Janet Thompson: That comes back to what we have said this morning about the draft legislation, about making a duty to co-operate and that partnership part of the issue, and about that national offer translated into a local offer as well.

Q106 Craig Whittaker: Can I just ask you about the removal of School Action and School Action Plus levels of intervention? Will the local authority involvement in the early stage of identifying the children and young people with SEN be reduced as a result?

Di Roberts: It does not apply to colleges.

Janet Thompson: I don’t think local authorities do get involved at that stage. Most of it is determined by the schools.

Q107 Craig Whittaker: So the answer is no.

Janet Thompson: That is why we have the variability of 5 to 75% in schools.

Craig Whittaker: That is not an issue then.

Janet Thompson: I don’t think so.

Q108 Alex Cunningham: Children who have been supported through School Action and School Action Plus, and those who may have been covered by a statement in the past may not qualify for the new type of plan. How do we make sure that they are supported properly in the future? Where is the legal protection for them in the new legislation?

Christine Terrey: I am anxious about that. I am particularly anxious about the children I have currently who are on a statement band A, which is the lowest statement band. Indeed, my local authority is making clear to me that some of my children on band A and band B may not qualify for the new plan. Currently, of course, those families feel very reassured that there is an annual review that is statutory and other services are involved in that. Really, I don’t think the draft legislation is paying much attention to what will happen to those children who don’t—

Q109 Alex Cunningham: What needs to happen to the legislation to change that, to satisfy your concern and mine?

Di Roberts: The legislation at the moment says that those with a mild SEN must be educated, and that is all it says. It needs to be more definitive in terms of what that means.

Q110 Alex Cunningham: What should it say?

Janet Thompson: It comes back to the accountability bit that sits around the legislation. If you determine what a local and national offer look like, you can then have an accountability framework that sits around it that says it is about the progress and outcomes of those youngsters. Going right back to the beginning, we know statements can sit there for years, and the outcomes for that child do not change. The issue around health, which we have heard a lot about this morning, is again not just about saying, “I need X hours of something.” It is about the quality of that, and the difference it makes to that young person. You cannot do that through saying, “You must have this,” but you can do that by looking at the results of what we have put in, and the outcomes for that child and family.

Q111 Charlotte Leslie: There are obviously concerns about any future system working. How adequate do you think the School Action and School Action Plus system has been? Some work I did showed that School Action pupils are substantially more at risk of exclusion, or substantially more likely to be excluded, and it would seem to suggest that under School Action and School Action Plus, the kind of support was not actually getting to those children who needed it, as the exclusion rates show.

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Janet Thompson: Our review found exactly that: that actually those youngsters were disproportionately excluded, and they had low attendance. There is a bit of a chicken and egg here, and we have to be aware that some schools immediately put youngsters that have had more than one fixed-term exclusion onto School Action or School Action Plus. There is a little complexity around the data there. However, my view is that School Action and School Action Plus at the moment is not ensuring the best possible outcomes for children and young people, and that is shown by the national data.

Q112 Chair: What difference will the single assessment process make for schools, Graham?

Graham Quinn: Goodness. At this point in time, the assessment processes, particularly the monitoring of them through statements, are variable. We have rehearsed this morning the challenge we have of getting people around the table to actually ensure the child's needs are being met.

Q113 Chair: You are optimistic that the provisions and the aim of a single assessment process will create more streamlined, more co-ordinated and more effective partnership working than we have now. Yes or no.

Graham Quinn: Am I optimistic?

Chair: Yes.

Graham Quinn: Not at this point in time, because I have not seen the detail. That would be the position we have. We are aware of the need to move forward, but again it is the detail in the legislation that will allow us to see whether it has any real teeth.

Q114 Chair: Christine, any thoughts on this?

Christine Terrey: I am optimistic. I am Head of a maintained nursery, as well as an infant and junior school, and I am optimistic that my young children, who are two and attending the nursery, will have a better opportunity, because it is clearly starting from zero now, to get the plan they need earlier.

Q115 Chair: Are we going to see a significant increase in the number of children in early years who get a plan?

Christine Terrey: I think there may be an increase. I am optimistic that those children who need one will have a better chance of getting one in the future.

Q116 Chair: It is more spreading of the same amount of jam. Is there a risk in that, as the previous panel were talking about?

Christine Terrey: Those children would have got one, but later, and I believe in early identification. I feel that getting it earlier will help us to make the jam thicker later on.

Q117 Chair: But will it require additional resources, and thus a resource from a pot with no more money in it being spent earlier than it was before? That may be a good thing. We talked in the last panel about the fact that spending the same amount of money and doing it later, rather than earlier, was perhaps a

reversal of normal priorities. Will it generate additional resource from anywhere, and if so, how?

Christine Terrey: I don't understand that all plans will necessarily generate additional resource, but they will ensure accountability. For the child who has the plan, it will ensure that people are reviewing it, that appropriate outcomes are happening, and that the child is receiving the appropriate provision that will improve outcomes for that child.

Di Roberts: Can I say something about spreading the jam? We are at—

Chair: You are at the unfashionable end.

Di Roberts: We are at the end that is not actually getting any jam at all. There is a £640 million budget currently there for young people of 16 to 25 with disabilities. Some of that is going to the local authorities through the new funding changes for 16 to 18 funding provision. Local authorities will have some more jam. What they will not have is any additional resource in terms of administering it, and that is perhaps one of their particular concerns, because they will have more young people and more institutions to deal with, with the same structure that they currently have. It is more of the oiling of the wheels as opposed to the jam on top of the cake.

Q118 Chair: Should any child currently with a statement automatically get a plan?

Christine Terrey: I think so, yes.

Di Roberts: Yes.

Q119 Chair: Does anyone disagree?

Graham Quinn: You would struggle with the parental lobby if that was not the case.

Q120 Alex Cunningham: I was interested in what Christine had to say about young children. It is expected that more and more young people will go into the independent sector as far as nurseries are concerned, and yet they are not treated the same way in this Bill as the maintained sector. One example is provision 40, where it is compulsory to have a special needs co-ordinator in maintained schools, but that does not apply to the independent sector. How do we ensure, therefore, that every child has the same opportunity, whether they are in the independent or maintained sector? Do we need to change the clauses?

Christine Terrey: Yes. Every child has the right to achieve their potential. If the parents have chosen a different setting for that child, they should still have the right to the appropriate provision and outcomes for that child. That should be legislated for.

Q121 Alex Cunningham: The same rules and everything should apply to the independent sector as the maintained sector.

Janet Thompson: At the moment it says a SENCO, doesn't it? I think that is a particular role and position. What the legislation needs to be extended to include is that somebody with the necessary expertise, and knowledge of the system, is accessible within those providers up to 25. However, we have to be very cautious about stopping very small providers, which often give very personalised, effective provision, by

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putting a lot of bureaucracy on them to have a SENCO that a larger provider could do quite easily.

Q122 Alex Cunningham: It should still be compulsory that they should have access to that level of service.

Janet Thompson: Absolutely, yes.

Q123 Chair: Janet, I think in your 2010 report you suggested fewer children would need statements if we improved pastoral care and other support within schools. Going back to my question on whether there should be the automatic—

Janet Thompson: That depends on how it will be brought in, and I don't think the detail is here. It is whether we will have everybody suddenly swapping, or whether this will be a phased introduction. Again, that is detail that we don't know enough about. For me, it is about prioritising, probably, the young people at the 14-plus stage who need to be taken through to 25, and those at early years. It is looking at those two ends first before everybody swaps over wholesale. That is about phasing it in, because it makes it more doable than causing parental angst as well as a probable administrative nightmare.

Q124 Chair: Will there be children with a plan and statement running along at the same time and, if so, for how long? Could this lead to confusion?

Janet Thompson: No, in my view, it is about phasing it in, so there may be some children with a statement and some youngsters with a plan, but not the same youngster with both, if that was your question. It is about phasing that through.

Q125 Chair: Is there any risk that a plan could be less effective? We had this issue around specifying or setting out. Could we have parents sitting there with their heels dug in, desperately trying to hang on to their statement as long as possible, and trying to be in the last phase of those getting a plan? Is there a risk of that? It would send a terrible message about the direction of travel, if that happened.

Janet Thompson: There is a risk of that if it is not managed well, and if the plan is not seen as beneficial for the outcomes for the children and young people. That bit about the specificity, for me, goes back to whether this is about provision or how we help youngsters to have a better life, and better chances. The latter is more important.

Q126 Chair: How often should the plans be reviewed? Should there be a fixed annual basis? How time-consuming would it be if we imposed through primary legislation, or regulation, a requirement to carry out these reviews? How do we get the balance right?

Christine Terrey: That needs to be flexible. You will probably have to legislate a minimum of annual reviews, but parents and professionals should be able to call and arrange earlier reviews at times, as they currently can. We can call an early annual review if we need it. We must be responsive to the needs and outcomes. We must look at what is happening with that child. It could be legislated as a minimum,

because I really don't think it should ever be more than a year.

Di Roberts: Definitely it needs to be at least once a year.

Q127 Chair: But flexibility to do it more often?

Di Roberts: But flexibility, definitely.

Janet Thompson: I would agree with that, but we need to make sure the review is about the outcomes, not about what has gone in.

Q128 Chair: Excellent. There is consistency of that excellent message.

Graham Quinn: These are our more costly children, and we have to ensure that we get it right by them. I absolutely endorse the minimum of a year.

Q129 Mr Ward: On appeals and mediation, there is an extension of a right to appeals both up and down age-wise, but not necessarily in terms of the broadening of it, so it is still essentially an educational appeal, and not appealing the health care aspects. Is that an issue? One of the appeals may be on the basis of the lack of co-ordination of those, for instance, or the bringing together of those.

Di Roberts: The timescale around appeals is an area that is concerning, if it does become very bureaucratic and takes a long time. If a young person misses out a significant chunk of their education, they will begin to fall significantly behind. If we can do it through getting the plan right in the first place, rather than then having to go to appeal, that would seem to be the best outcome, bearing in mind that there will always be appeals, because you will not be able to satisfy parental expectations, perhaps.

Q130 Mr Ward: We will come back to the pre-appeals stage, but at the appeal am I not right that it applies to the educational element of the plan?

Janet Thompson: There is an issue where all parties that are, if you like, commissioned within that plan should be as accountable as all other parties.

Q131 Mr Ward: So there are other avenues for the health and care parts, but it needs to be brought together into a single assessment, a single appeal.

Janet Thompson: I think so. The parents and the young people themselves are the people who are negotiating these different paths sometimes and, if they have to go down three different paths, it makes it more complex and difficult for them. It is about streamlining that for parents and young people.

Q132 Mr Ward: On the question of mediation, for possibly sound, rational reasons there is a desire to drive down the number of appeals through compulsory mediation. It sounds fine in theory. Will that work, and is it desirable that it should work?

Di Roberts: It is very desirable that it should work.

Mr Ward: And will it?

Di Roberts: Because everybody will be wanting it to work, it stands a very good chance. It depends on whether there are the resources to satisfy the young people's needs and the parental expectations.

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Q133 Chair: Assuming there are not, Di, which is a brave stab in the dark, how will it work then?

Di Roberts: It is about managing expectations as to what the young person can actually expect. Having that national and local framework would help, because you would be measuring something against what is nationally seen as at least a minimum level. That would be beneficial.

Christine Terrey: Schools need to ensure there is trust and understanding, with good levels of communication between the school and family. Perhaps the mediation might be able to develop that level of trust more, if there is more talking about the child. That is crucial, isn't it?

Graham Quinn: Some families see the system as very adversarial at this point in time. Having the opportunity to mediate prior to the appeal is to be welcomed.

Q134 Mr Ward: Isn't there a pre-mediation stage as well, and the danger is that you miss that stage and go straight to mediation?

Christine Terrey: Yes. I would seek to be able to talk to all my families very openly, and to listen to their worries, anxieties and aspirations as well, and going through the informal stage first would avoid it needing to go any further. I think most schools would want that to happen.

Q135 Mr Ward: This extends it post-19 now. What are the implications for that?

Di Roberts: For some 16 to 25-year-olds, that happens already in terms of trying to bring together a package without having any legislation or any duty to co-operate; we try to do that for the purpose of meeting the needs of the young person. It has to be through talking in the initial stages as to what the young person wants to achieve. Again, having this plan come

through from the age of nought would mean that the parents, by the time they reach us, should find it is mapped out and relatively straightforward. You may have mediation as you go along, but I do not think you will end up, when we have gone through a full cycle, having the level of appeals that might be in the early years.

Q136 Mr Ward: The final one is the transference of the right from the parent to the child.

Di Roberts: Yes. It is absolutely vital. Indeed, in terms of the personal budgets and where they actually go to, if they are in parental bank accounts, how much safety is there in terms of protecting the rights of the child?

Q137 Chair: Thank you very much indeed. If following this panel session, or indeed listening to the earlier sessions, you wish to add to any evidence you have already submitted to us, we would be delighted to hear from you, and any proposals you have.

Di Roberts: Can I just make one plea about apprenticeships? To give you a little case study, we have two learners currently who are on marine engineering apprenticeships with profound deafness. They have to have signers for the training aspect. Under the Bill, they would not be entitled to have an EHC plan. They would not have one.

Q138 Chair: Why not?

Di Roberts: Because apprentices are explicitly excluded.

Chair: Of course. This is the apprentices point. Exactly, yes.

Di Roberts: Please can they be included?

Chair: Excellent. Thank you for that. If you have any other burning points like that, write to us, because I am now going to bring this meeting to a close. Thank you very much indeed for coming, and to the other panellists as well.

Tuesday 6 November 2012

Members present:

Mr Graham Stuart (Chair)

Neil Carmichael
Alex Cunningham
Bill Esterson
Charlotte Leslie
Siobhain McDonagh

Ian Mearns
Chris Skidmore
Mr David Ward
Craig Whittaker

Examination of Witnesses

Witnesses: **Josh Pagan, Tom Schewitz, Carol Dixon**, Participation Co-ordinator, Parent Voice, Hampshire, and **Sharon Smith**, Chair, Hampshire Parent/Carer Network, gave evidence.

Q139 Chair: Good morning and welcome to this session of the Education Select Committee, looking at the clauses dealing with special educational needs in the proposed Bill. Thank you very much for being here. Are there any things that are not in the Bill that you wish were there? Is there a wish list of improvements or services that you do not think are being covered by the Bill?

Sharon Smith: At the moment, there are a number of areas that are not necessarily included in the Bill. The current system is failing a lot of families. In Hampshire, we sent a survey out to 2,000 families and 470 replied. There were a lot of issues that came out in the feedback, and I do not think the Bill is covering all of those. However, it is a step forward and there are lots of positives in it that we would welcome: the fact that it covers nought to 25 and involves joined-up working with health and social care. I do feel there is a big gap in terms of the children who are not currently eligible for statements and the support available for them. There is also parental concern that the draft Bill is eroding some of the statutory protections that parents have under the current system.

Carol Dixon: The main thing for me is that the Green Paper was talking about support and aspiration for all children and young people. The draft clauses seems to have narrowed that right down to just those who are currently eligible for a statement of special educational needs or a learning difficulties assessment. We found from our survey that there were an awful lot of parents who have fought and fought for years and years to even get a full and proper assessment of their children's needs, without even considering provision. My daughter was in Year 11, about to sit her GCSEs, when we had a statutory assessment done: that is too late.

Chair: Thank you. We have quite a lot to cover in a very short time. You are doing a great job already in being short and succinct. My Committee will struggle to match that but will do their best.

Q140 Bill Esterson: I will give a very bad example of doing that. The Government says it is very keen to involve parents and young people in drawing up policy to support young people with special educational needs. Do you feel that you have been involved in drawing up the services available in the areas where you live?

Sharon Smith: Parents have been involved in our area. To give you a little background, Hampshire is in the SE7 pathfinder area, and the SE7 pathfinder has spent a great deal of time engaging with parent and carer forums and ensuring that parents have been involved from the initial discussions. Across those seven local authorities, they have been working really closely in co-production with parents. That is showing in the work being delivered: the outcomes are better. There is a lot more confidence in what is being delivered because parents have been involved from the early stages. I do not think we have had enough engagement with young people in our area.

Tom Schewitz: That is similar to me. My local authority does not listen to anything I say. If you ask them to reconsider something or make a change for your needs and benefits, they do not care.

Q141 Bill Esterson: Do you think the Government shows more signs of listening to you?

Tom Schewitz: I think today has proven that, but I feel that some local authorities do not necessarily give the right support or give people the opportunity to have a voice at all.

Q142 Bill Esterson: Josh, what is your experience?

Josh Pagan: I think the local authority has helped me a lot, to be honest. I have a good social worker, who sorted a lot of things out for me. There are a lot of different teams who have helped me, like the Smart team. The Prince's Trust helped me a lot. All of them helped me in lots of ways.

Q143 Bill Esterson: Carol, how about you?

Carol Dixon: I have been co-ordinating the parental involvement in the pathfinder in Hampshire. We have two parents represented on every workstream and a co-chair on our change board, so parents have been very involved. I have personally been a representative on one of the workstreams, where I was able to suggest a change in the range of ages we were going to test the pilot on. Originally, there was an intention to do it for the early years only, but we thought it was really important, as parents, that it was tested across a wider age range. That was listened to and taken on board. So we have been able to make a difference. We are also noticing that it is opening doors to other areas of participation. In the past, we have had quite good parental engagement with social care; even

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before this happened, we were listened to in terms of the short breaks and Aiming High. Now people from health are consulting us and saying they are thinking about reviewing their therapy provision and getting some parents involved in that right from the beginning. So it is really making a difference.

Q144 Bill Esterson: There are some good examples there of how you are involved now. Are there examples of how you would like to be more involved?

Sharon Smith: One of the areas that is vital for parents to be involved in, and I joined the workstream on this two months ago, is around the provision of the local offer. That involves making sure the local offer, what it looks like and how it is delivered is done in conjunction with parents so it includes the information that parents need to have in a format that is suitable for them. That is one example where co-production with parents is vitally important.

Tom Schewitz: I think a lot of parents are not listened to. I think parents should be treated as much as professionals as social workers and mental health teams. I do not feel that parents get enough say on their children's needs and aspirations. That could be changed a lot.

Q145 Bill Esterson: Do you think young people should be listened to more and involved more?

Josh Pagan: I definitely think they should be listened to more. They have the same sort of understanding as adults and can make decisions for themselves.

Q146 Bill Esterson: The draft legislation suggests that anyone will be able to ask for an assessment to be carried out. At the moment, there is a limit to who is able to. Do you think this is an improvement on the current system?

Sharon Smith: I think it is definitely an improvement that anybody can ask for an assessment. There is concern around the current wording though. Although anybody can request an assessment, the local authority does not have a duty to respond to that within six weeks, as they do currently. At the moment, if a parent or a school requests an assessment, the local authority has to respond with a decision within six weeks. If their decision is no, then the parent has the right to appeal.

The wording in the draft Bill at the moment is quite vague, and if that duty to respond within six weeks is not included in the new legislation, then the local authority do not actually have to respond. So if there is no response saying "no", then parents cannot actually appeal that decision. So it would mean that parents would be in limbo for longer. So whilst I would welcome anybody being able to request an assessment, I think the local authority still needs to have a duty to respond to that request within a set period of time.

Q147 Chair: Carol, do you have any thoughts on that?

Carol Dixon: I agree with what Sharon says.

Q148 Chair: You were nodding as well, Tom.

Tom Schewitz: Yes, I agree. Some assessments do not get done on time with some local authorities. The core assessment or care plan has to be done within a week or so; there is a time and date on a care plan and assessment. I waited for two years for a law-abiding care plan and core assessment. It is very hard at the moment for parents to ask for assessments. In my experience, I have found that parents are blamed for their children's issues. It is not that the local authority could do more; they turn it around and attack the parents.

Q149 Mr Ward: Can we talk about the local offer and what you understand by it? There will be a requirement for an authority to publish the local offer. Do you think there should be some standards set and some minimum requirements?

Carol Dixon: Absolutely. I think it is key that there are at least some minimum requirements for the local offer. The format of it needs to be interactive and not simply a directory of services. Otherwise, it is inaccessible to a lot of families. There will need to be support provided with the local offer for some families to be able to access it, even if it is not in an interactive form. When I heard about it, my idea was that you would be able to key in the child's age and their main issues of concern, and it would come up with a lot of information, so you could choose what you looked at. What concerns me is that a lot of the local offers seem to be just a directory with maybe some criteria on them. I know Sharon has been working on our local offer workstream.

Q150 Mr Ward: Do you want to say anything about that?

Sharon Smith: I absolutely think there should be national minimum standards. At the moment, we hear lots of parents feeling there is a postcode lottery, so if you live in one local authority what you might receive in provision is completely different from what you might receive two miles down the road in a another local authority. It is particularly important for children and young people who are not currently eligible for a statement. That means those who are on School Action and School Action Plus. In what this new draft legislation delivers, the core of what is going to be there to support them will be the local offer. As Carol says, if the local offer is simply a directory and something that parents can go and look at, that is not really sufficient to support those families. We really need to see some national minimum standards of provision for children with special education needs, and for there to be a duty for the authorities to actually deliver those as well. It has to be realistic about what is published.

In Hampshire, in terms of the local offer and how we are trying to deliver it, we are aware that parents have different needs at different stages. A parent with a child with a particular diagnosis will have different needs from another parent. So we are trying to do some mapping exercises about the needs and outcomes parents are looking for. Sometimes, parents might not even know what it is they are looking for when they go to the local offer, so we are looking at ways of using technology to support parents through

those steps, so they can find the right information. I absolutely agree that there should be minimum standards.

Q151 Mr Ward: Tom and Josh, what do you think young people would like to see in the local offers?

Tom Schewitz: I think what Sharon said is pretty down to the point. Some local authorities behave differently from others. You can go from one to the other, and they work totally separately and differently. So I would go along with what Sharon said.

Q152 Mr Ward: How do you think you can affect what will be in the local offer?

Tom Schewitz: I am not sure. I think that we could support young people to come up with ideas, so that we can look at it and have some more influence on it than we do currently.

Q153 Mr Ward: Do you think the sort of information that would be required within the local offer for young people would be different from that for parents and carers?

Tom Schewitz: Yes.

Q154 Mr Ward: In which way do you think it would need to be different?

Tom Schewitz: I think parents should be supported in a different way from the person with special needs in education. Parents should have the right to be treated like professionals, but the person who has special needs and educational difficulties should be treated with a bit more respect. I think parents and the child should be helped in different ways. Parents are stressed with trying to help their children and so on, so it does vary.

Q155 Mr Ward: Have you identified different needs in terms of the local offer among young people and parents?

Sharon Smith: It is something we are looking at currently, both in terms of the information that is provided and how it is provided. Young people access information in different ways, so we have to consider things like iPads and mobile phones. Although parents use those as well, it is about how young people are accessing information. We are currently engaging with young people through our workstream to identify what information young people want to know and how they want to access it. So we are spending time looking at that before we build what the local offer should look like in Hampshire. We are trying to do everything as a co-production. In an ideal world, we would get young people involved in actually producing some of it as well.

Q156 Mr Ward: Do young people engage in social networking with other young people with special needs?

Tom Schewitz: I would say so, yes.

Josh Pagan: Yes, definitely.

Tom Schewitz: I do voluntary work in a place in Worcester where young people can access information. It is a chance for people with Asperger's to come together. Social networking is encouraged in

places like that because people with Asperger's naturally struggle with friendships and relationships, and social networking does work.

Q157 Mr Ward: What is your experience, Josh?

Josh Pagan: It is pretty much the same as what Tom just said: it is an easier way of doing it. If you are not confident in yourself or talking face to face, you can go through social networking.

Q158 Alex Cunningham: I would like to take Tom and Josh back to something you said a few minutes ago about not being listened to. You said that the local authority does not listen to you and does not listen to your parents. Do you think we should put some sort of duty on them to listen to you? Is there some way we could make it compulsory for them to listen to you? How do you think that could happen?

Chair: That is a difficult one.

Alex Cunningham: It is a difficult one. Do you think we should say they should have a duty to talk to you every three months about your ongoing provision or something like that?

Josh Pagan: Yes, put more structure in it. You could script it all, and then they can take it back to the office, read it and make sure they have done it properly.

Q159 Alex Cunningham: So there would be a proper way of actually looking at the plan, discussing the plan and determining whether there are different things that you need?

Josh Pagan: Yes.

Q160 Alex Cunningham: Tom, how about you?

Tom Schewitz: As local authorities have an input on our duty of care, they should be scrutinised more and looked over more. I think we should have more of an input on our care plans and core assessments. In my experience, we had reviews every month, because I lived in a residential place for people with Asperger's and autism. We had reviews; the local authority would come down and make decisions, but they do not often listen to you; they just close off. It is all about money; it all comes down to money. I think they need to be scrutinised more as well. We should have a lot more say in what happens in our future provision than we do now.

Q161 Alex Cunningham: So you mean some sort of independent scrutiny?

Tom Schewitz: Yes, but as well I think the Government should keep looking over their shoulder to make sure they are doing what they should be doing.

Q162 Alex Cunningham: We have a world with organisations like Ofsted that look at these kinds of things. Do you think that an element they could look at could be: what is happening to make sure people are being properly consulted?

Tom Schewitz: Yes. I was going to say that it should not just be scrutiny with the local authorities; maybe the Mental Capacity Act could be used. They are making decisions and pulling the strings for your future. If you have the capacity to make decisions,

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surely that should be enforced on them rather than them making decisions for you without you having a say. So if you have the mental capacity: go for it.

Q163 Ian Mearns: In my own local authority in Gateshead, we have a scrutiny committee which oversees education and children's services. The cabinet make decisions about what happens and what gets done on the ground, but the scrutiny committee have a duty to make sure that what they are doing follows the policy and it is accountable through that. But what the scrutiny committee also does is meet with a representative group of children who are in the care system—for instance, in Gateshead. They have regular contact through the scrutiny committee with the people who are making the decisions. Do you think something like that—for youngsters who will be in receipt of education, health and care plans—would be of use in your localities?

Tom Schewitz: Yes.

Q164 Chair: Josh, do you think it would be useful if a whole group of people came together and their local authority met with them?

Josh Pagan: Yes, probably.

Ian Mearns: I thought the answer might be yes, but there you go.

Q165 Neil Carmichael: Good morning. This is a continuation of the discussion about the health and care plans. First of all, Tom and Josh, do you think, generally speaking, they are as good an idea as statementing?

Tom Schewitz: I am not sure on that one. I have not really looked into it that much. Regarding education, health and care plans, would the local authority be carrying those out? Would they be the ones doing the assessments?

Q166 Neil Carmichael: That is the sort of question we keep asking. There is an accountability issue here that I am concerned about, but I think the lead structure would be the local authority. They are supposed to be working with the healthcare system and other agencies as required. It is that kind of link that we want to get sorted out, so your views about where that would be are quite interesting.

Tom Schewitz: I think it would be a good idea, if the local authorities can do it lawfully in the first place. In past experience, I have had assessments and care plans done, and they just do not reach the mark at all. I had to go to a judicial review with my local authority; they could not do an assessment to save their life. I think it is a good idea, but only if they are scrutinised and people are making sure that what they are doing is right and beneficial to the person concerned.

Q167 Neil Carmichael: You make two really good points there: one is the quality and capacity of the local authority—you have put that into sharp focus—and the other is the idea of the judicial review, which is not necessarily anyone's preference for how to deal with a problem, is it?

Tom Schewitz: Not really, no.

Q168 Neil Carmichael: Tribunals and judicial reviews are not really what we want to have, are they?
Tom Schewitz: No.

Q169 Neil Carmichael: Do you think the new care plan—given that it is talking about setting out provision rather than specifying provision—will be helpful?

Tom Schewitz: I am not sure, but I do think that, with local authorities and so on, it all comes down to money, does it not? I think that sometimes they will mess up. In my experience, as well, they have deliberately messed up assessments. One person wrote one thing, which was that I should go into a residential setting for people with Asperger's and autism. When they found out how much it would cost, they told the social worker to change the assessment so it said that I could not go to a residential placement.

Q170 Neil Carmichael: From that, you are really saying that, if the various parts of the process agree quickly and more transparently, it would be better, because we certainly do not want contradictions halfway through the process, as you have suggested happened in your case.

Tom Schewitz: Yes.

Q171 Neil Carmichael: Sharon and Carol, would you like to comment on the line of questioning I have developed so far?

Carol Dixon: One thing Tom was saying was that assessments need to be needs-led, not resources-led. There is a really big danger that they focus on what is available in terms of the resources of the local authority rather than what the young person actually needs. There is a lot of anxiety among the parents that we speak to about the issue of specifying provision. If it is not specified, then it is woolly. People talk about regular speech and language therapy; Father Christmas comes regularly, but that is not what is needed. Parents have found—which is why you have a lot of tribunals related to that specific issue around therapies—that if you do not specify it and quantify it, the speech and language therapist leaves and there is nobody to see them. They might be seen every term rather than every six weeks, as they were meant to be seen. So it goes on. Sharon, you have a bit more experience of that.

Sharon Smith: Absolutely, yes. On a personal level, I had to get the wording in my daughter's statement for her therapy really tied down. She has Down's syndrome, so one of her biggest needs is speech and language. The local authority did not want to put anything in her statement around speech and language therapy. The original wording that came back was very open to interpretation and could have been interpreted as there being a phone call to her school once a term, rather than anybody coming in to the school and delivering therapy to her.

I spent a great deal of time during the statementing process fighting—I hate the word—the authority to get the wording put into her statement. I had it specified. Later on, during my daughter's time during Year 1, it turned out that one of the therapists was not delivering the therapy that was written into the

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statement, so I had to go along the process of threatening judicial review. In the end, the local authority conceded and admitted that, given that the wording was so specific, they had not delivered what was in there; they backdated it so she could receive the therapy she needed.

In the survey we mentioned earlier, we had a lot of anecdotal comments, which we can pass on to you after this, from other parents in Hampshire. As an example, I was looking back through of the comments and one parent said, "Getting the wording of the statement correct and getting therapies quantified and qualified does not seem to have improved over the last 14 years. Weasel words and putting things in the wrong place seem to be normal practice." That is a problem with the fact that at the moment they do have to specify. If the duty to specify wording and provision is taken out and it is put as set out instead, I think it will put a lot of parents in a more disadvantaged position than they are currently.

Q172 Neil Carmichael: Two questions arise from that, do they not? Carol and Sharon, you have both been talking about the statementing system. The new approach is to try to incorporate healthcare as well, which is particularly relevant to your point about speech therapy. Are you confident that the new proposals and plans would help in that respect? Sharon, please go first, as you made the point quite clearly.

Sharon Smith: I have a personal concern for my daughter and other children with Down's syndrome. At the moment, because speech therapy is written into her statement of educational needs, there is a duty on the local authority to provide that. The health authority is not providing any speech therapy for my daughter at the moment. The local authority pays for a private speech therapist to see my daughter weekly. We are seeing huge gains in terms of her speech clarity, understanding and language development as a result of that. I absolutely welcome that there should be a joined-up plan and joined-up working. On a personal level, I am concerned that there is no duty for the health and care aspects to be delivered, and as a parent I have no recourse if those elements are not being delivered.

Going back to the speech therapy element, obviously once there is an education, health and care plan in place for my daughter, then the speech therapy will fall under the health provision and, therefore, if it is not being delivered, I actually will be in a worse position than I am in today. At the moment, if it is not being delivered I can—as I have had to do—threaten judicial review and get that therapy put back in place, so there is a concern. That is something that happens for a lot of children with Down's syndrome: their speech therapy provision and occupational therapy provision is considered an educational need and is therefore put into their statement.

Q173 Neil Carmichael: Are you heartened by the potential length of the new plans?

Chair: They go from nought to 25.

Carol Dixon: Absolutely. In my case, we were at tribunal while my daughter was sitting her GCSEs

because that was the cut-off point. At 16, she had to leave school. Her school did not have a sixth form that could cater for her needs; therefore, the local authority had no responsibility for her whatsoever after that time. Absolutely, it is fantastic that it goes up to 25.

One of the concerns we are hearing from other parents—and we share some of these concerns, as well—is that it is only for children in education or training. We feel that if it is an education, health and care plan, then it should continue to 25 regardless of whether you go into an apprenticeship or supported employment, because those young people will still need a co-ordinated system of support.

Q174 Neil Carmichael: Tom and Josh, do you have any comments on the length of the plan, up to 25?

Tom Schewitz: No.

Q175 Chair: Carol, could I ask you about that? You are welcoming the nought to 25 age range; isn't there a danger here, if there is no additional resource? We had a previous witness before us who talked about spreading the jam too thin. If you try to cover a wider area, the danger is that you make the perfect, which would be a longer system, the enemy of the good in the current system. Although ideally we would cover a wider range, is there a danger in fact that, without additional resource, we will have an inadequate service through a broader range of years?

Carol Dixon: I am not sure. Are you saying that because there will be more young people to meet needs for, the costs will be greater and therefore there will be less provision?

Q176 Chair: Unless there is the resource to meet that, you might actually have the dismantling of current services to provide a service for longer years. Are you clear on where any additional resource might come from? If speech and language fell to health, and health actually stepped up to the plate, that would be a way of having additional resource. That is a positive thing if it comes about, but there could be a concern that we are setting out the perfect world without having the means to deliver it.

Carol Dixon: I guess that could happen, but with the current system, there is a great unfairness for those young people whose needs are identified later and do not have the opportunity to learn any of the coping strategies that they might need. They leave school, as my daughter did, with extremely low self-esteem, low confidence and poor exam results far below those she should have achieved, according to cognitive ability. In those cases, I think absolutely there should be a duty on someone to make up for that deficiency, which is no fault of that child. That is happening a lot in the evidence that we have had.

Really, the types of things we want to see are co-ordinated plans. They do not necessarily need to come with a lot of extra money. Those provisions should be being put in place anyway for children at college—and they are. Children at college are receiving additional support through the learning difficulties assessment, so it is not as though that is not there. What is lacking for those young people who are

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identified later is that really specialist input and the therapies that they should have been having when they were six or seven, which they would have been eligible for—had anyone identified the need. But because it has been identified later, those types of things are not forthcoming in college.

Chair: Thank you. That was a very good answer.

Q177 Neil Carmichael: I would like to move on to the likely transition from statementing to the plans, because of course that could be complicated. How do you feel about that, Carol and Sharon? Clearly, if you have a statement, you might move on to a plan, or you might have some people with statements and some with plans. It is going to be a complicated situation, isn't it? Do you have any thoughts, initially?

Carol Dixon: It is really complicated. If I could go back to the issue with the plan, my personal view is that there is not a problem with the statement—the actual piece of paper that you have—as it is. For a lot of children who only have educational needs, it is more about the process. What we have done in SE7 with the pathfinder is look at a process that is much more collaborative. Parents work with professionals to agree the plan rather than, as happens in the statementing and is evidenced in the draft clauses, the parent makes a request; the local authority assesses it; they make a decision; they send the parent a draft; the parent writes back and says, “I am not happy.” There is this to-ing and fro-ing.

Education, health and care plans are most useful for those young people who have needs across the range of services. That does not apply to all children and young people. The transition is a really big issue, and I do not have an answer for it. My gut feeling is that the priority should go to those children who have needs across the different areas and have existing plans in place in social care and education. It would make sense for those to be the first ones to move across to the new plan.

Sharon Smith: I agree with what Carol is saying. Also, obviously, the new children that have been identified should also go straight into that.

Q178 Craig Whittaker: I want to ask you about independent schools and whether you think it would be helpful to have independent schools listed on the education, health and care plans. Currently, they are not.

Sharon Smith: Yes, absolutely.

Carol Dixon: Yes.

Q179 Craig Whittaker: How do you feel, Josh? I know you went to an independent school.

Josh Pagan: Yes, it was good. I thought it was a lot better than a mainstream school. It helped me a lot more than the teachers at the normal, mainstream schools did.

Q180 Craig Whittaker: Do you think it would be helpful to have independent schools listed on the education, health and care plan?

Josh Pagan: Yes, definitely.

Q181 Craig Whittaker: If a parent or young person decided to go to an independent school and it was not funded by the state, do you think the education, health and care plan should continue, or should it be stopped?

Carol Dixon: I think it should continue, because the education, health and care plan is about the additional needs that child or young person has, so it would make sense for the plan to continue for those additional resources that are required to go in.

Sharon Smith: I agree with Carol.

Q182 Craig Whittaker: You agree with that as well. Josh, can I ask you about your experience? How did going in and out of a secure setting affect the quality, quantity and consistency of your support?

Josh Pagan: I don't know.

Q183 Craig Whittaker: Do you feel as though your needs were consistently met whilst you were in the independent sector?

Josh Pagan: Yes, definitely.

Q184 Craig Whittaker: What was the quality of that like? Was it good quality?

Josh Pagan: It was good, yes. It was good quality.

Q185 Craig Whittaker: According to your biography, you have done incredibly well. Well done for that.

Josh Pagan: Thank you.

Q186 Craig Whittaker: Is there anything that happened to you that you would change in regards to support?

Josh Pagan: I don't know. It just all changed. There were a lot of good people around who helped me all of the way through it.

Q187 Craig Whittaker: Do you think you would have received that support in a mainstream school?

Josh Pagan: Definitely not, no.

Q188 Craig Whittaker: Do you think that is perhaps because you had a very specialist need?

Josh Pagan: It was a lack of concentration. If there were too many people in the class and I was not receiving help, I was not going to go anywhere. I lost interest and I did not bother doing it. When I was in a place where I had a lot of teachers and helpers around, it helped me a lot. I understood it more, and I got through it.

Q189 Charlotte Leslie: Thank you very much for coming along today. I would like to talk a bit about mediation and tribunals. Under the Government's new plans, they have extended the right of appeal to tribunal to people beyond compulsory school age. I want to start off by saying this: if you were designing the mediation and tribunals system from scratch, what would you design? It is a big question.

Sharon Smith: It is, absolutely. There would be support and help a lot earlier in the process. A lot of the feedback that we receive from parents is that, by the time you reach the stage of appeal, the relationship

between the parent and the local authority has already broken down. As such, you are then both in the position where you basically take your positions. As a result of that, the local authority does not necessarily want to engage in discussions with the parent, and the parent realises that they will not receive everything that they necessarily are asking for, so the parent will ask for a bit more than they might necessarily need for their child. There should be an adult and grown-up conversation where the parents and the local authority sit and talk about it.

In terms of what it could look like, perhaps there could be an independent arbitrator at the very early stages, as soon as there is any sign of there being disagreement. It could also ensure the right to independent support for parents exists, as well, to help them through that process. In the current system of going to tribunals, it is only the parents who have the ability, the money, or both, who get that far. You will find that it is the educated parents who are able to appeal local authority decisions; the system is actually letting down a lot of families and a lot of children whose parents do not have the ability or the money to take it further. The draft Bill has suggested compulsory mediation, but that comes too late for me. To parents, it feels like another obstacle that will add extra time into an already very lengthy process.

Charlotte Leslie: Carol, you are nodding away.

Carol Dixon: I absolutely agree. It is a really lengthy process. It is over a year for a straightforward application to tribunal to have the case heard. When you reach that position with the local authority where you are at loggerheads, it does feel as though introducing mediation at that stage will be too late. The parents we have spoken to have said that it would not be a meaningful discussion. We see a lot of examples where the local authority will back down right at the last minute—on the day before or the day of the tribunal. That just adds to the cynicism about the whole process.

There needs to be a culture change and a shift to working in partnership with parents. There needs to be—much earlier, as Sharon said—some sort of independent arbitrator, like the Local Government Ombudsman, who you can go to at a really early point to say, “This is not working. We are having a problem.” Someone can come in and oversee to ensure that things are happening in the way they should.

Q190 Charlotte Leslie: Do you think underlying it all is the problem that the local authority is the commissioner and the provider of the services, which still builds distrust?

Sharon Smith: Absolutely, yes. The Green Paper did discuss the fact that there would be independent assessments, and that has been lost in the draft Bill. That is one of the things that is hugely disappointing to parents. As parents, we work very closely with the local authority, so we do understand the issues. There are only limited resources—obviously, we understand the situation that the economy is in at the moment—but as parents you do feel that decisions that are being made are being made because of budget, not because of a child’s needs. As a parent, obviously, it is your

child’s needs that you need to protect and ensure there is provision for.

Q191 Charlotte Leslie: When the panel makes recommendations that we take back to the Government, should independent assessments be one of them?

Sharon Smith: Yes.

Carol Dixon: One of the issues is that you do reach this position, and because it is resource-led, it feels as though, as a parent, there is an automatic “no” the first time you ask. Unless the needs are really complex and obvious, there is an automatic “no” first, and then it is, “Can you challenge? What do we have to give away?” All that the parents we have spoken to want is the best for their children. That is available from the resources that are there. We do not all want the gold-standard, super-duper, million-pound schools; we actually just want the best that is available. What happens is it is, “No, no, no,” and then, “Yes, because you have fought really hard and have gone to tribunal and won.” Actually, that is not a fair system. There could be quite a small need that, if it was something that was identified early, would not need to cost as much.

Tom Schewitz: I was going to say that when mediation breaks down—and you ask and they do not give, and you ask and they do not give—in my experience they often blame the parents. I have said this before: they blame the parents. Also, what I find really interesting is that when you do take them to a tribunal or a judicial review, they are quite able to spend all of that money doing that, though they could be spending that money on giving somebody else the right help and support. While they were wasting money on me, going through to judicial review—when they could have just done what they were asked—there was Joe Bloggs down the road who probably needed it just as much as I did. We could have spent that money a bit better.

Q192 Chris Skidmore: Sharon, you spoke a moment ago about your frustrations at decisions being made because of budgets, rather than for your individual child’s needs, but what if you held the budget yourself, as is proposed with personal budgets? Do you think that those will be effective? Do you have any concerns about personal budgets?

Sharon Smith: I honestly do not know enough about personal budgets to provide an informed answer on that one. Sorry.

Carol Dixon: The concern from parents about personal budgets is that it is just shifting an administrative burden on to parents. I think parents welcome the idea of a creative approach to meeting the needs of their child; we have heard some great, innovative ideas of how children’s needs have been met. But it definitely has to be optional, because the worry is it is just another thing to keep track of and another thing that you are responsible for as a parent.

Sharon Smith: Also, there is a concern with parents—because obviously we know we are in a time when budgets and resources are limited—that the personal budget that you would be allocated would not be sufficient to meet your child’s needs. That is also a concern. Whilst parents are creative and would work

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together to come up with ways of making the most of that money, there is still a concern that, for instance, a parent might then have to choose and make a decision: “Does my child have speech therapy or occupational therapy?” The child probably needs both. Those concerns are out there among parents.

Q193 Chris Skidmore: In your evidence, you said that the Hampshire Parent/Carer Network is concerned that if parents/carers have the right to request personal budgets, it may result in local authorities being less willing to issue an EHCP. Do you want to explain what you meant by that?

Carol Dixon: That came from one of our members, who was concerned that the wording in the clauses is such that you have to have an education, health and care plan to request a personal budget and, therefore, because they will be more concerned about giving out these pots of money to parents, they will be less likely to give education, health and care plans.

Q194 Mr Ward: Tom, you mentioned this several times. Presumably we are not talking about bad people who are denying you things because they do not like you. It is the resource and the lack of money that we keep coming back to. Out of 10, with 10 being the most important, how much of this is a funding issue as opposed to a systemic fault in the system.

Tom Schewitz: I would say probably about seven or eight. I think, as I say, that local authorities and other bodies sometimes have the resources but just do not want to spend the money. That is my attitude on it, as well. I have come across some viciousness in my local authority.

Q195 Mr Ward: That is a very strong word.

Tom Schewitz: It is. Honestly, I can back that up by saying that they actually accused my mother of having Munchausen by Proxy. My mother does not have Munchausen by Proxy; there was no assessment done to assess her for Munchausen by Proxy. It is just slanderous. That is what I mean by vicious.

Sharon Smith: What we would like to see in terms of the changes from the new legislation is a culture shift to more parental involvement. As a result of parents being involved more and some of the early intervention that has also been discussed, hopefully local authorities would be able to manage their budgets in conjunction with parents, looking at more creative ideas, with parents working together with the local authority to come up with ways to ensure that not only budget and resource-led decisions are being made.

I think we need a culture shift. At the moment, a lot of the decisions that are made are resource-led. Whilst appreciating that resources will not necessarily increase, what we would like to see is a culture shift as a result of this new legislation coming in, so that this changes.

Carol Dixon: You do what you are measured on—don’t you?—in your job. The special educational needs teams seem to be measured on how well they control their budgets. That is what they are most focussed on. If there was an element of parental satisfaction included in how they were measured, I am sure that things would shift. I think, as Tom has said, they spend an awful lot of money on fighting things; they could be diverting those funds into resources.

I do not think it is only about resources. Yes, of course we would all like more money; that would be great. However, it is about how you use those resources. If you work in partnership with parents, as Sharon said, we can be creative and we can be innovative. If we feel like we are working alongside you, we can help to try to find other solutions. If we feel like we are at loggerheads, then what happens is that you say, “No, that’s your problem. I do not care that you have no money; you need to provide that.” It becomes this big battle.

Chair: Thank you very much indeed for giving evidence to us this morning, particularly Tom and Josh. Thank you for coming along. I hope you have found it an interesting if not an always enjoyable experience. Thank you very much.

Examination of Witness

Witness: **Mr Edward Timpson MP**, Parliamentary Under-Secretary of State, Department for Education, gave evidence.

Q196 Chair: Good morning, Minister, and welcome to the Committee. Welcome to your new post and welcome to the first of what will doubtless be many attendances at this Committee during your time in office. We recognise, as well, that you are relatively new in post and that this is a ferociously and fiendishly complex area of policy—so welcome to that, too.

The Green Paper promised a new dawn for children with special educational needs. Did it promise too much?

Mr Timpson: Chairman, first of all, thank you for your warm welcome. As someone who has sat on the other side of the fence on this Committee, it is nice to see it from a different angle. I hope I can be as helpful to the Committee as possible.

In relation to the Green Paper, of course the Green Paper did not appear out of thin air. It was a product of a lot of close work with the sector, young people and parents, who have a strong and vested interest in ensuring that we have a system of support for children with special educational needs and disability that delivers the outcomes that we all want to see. In the spirit in which the Green Paper was developed, written and then consulted upon, I am confident—and it is borne out in many of the conversations I have already had with many of those who played a part in bringing it together—that it does illustrate, very clearly, the ambition of this Government and many other people to ensure that the system we move to is a vast improvement on the previous system. For 30 years, we have tried to—and in some cases have

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managed to—improve the provision, service and support for children with special educational needs and disability. But the overwhelming view is that it is still failing in too many areas to identify needs early, to provide a clear and consistent approach throughout a child's journey into adulthood and to make sure parents do not have to battle every minute of every day just to secure the support that they think should be readily available without having to do that.

To answer your question in a pithier sentence, I think the Green Paper is a very strong document and sets out our ambition. The next step, through pre-legislative scrutiny—which I am grateful you are taking part in and taking a close interest in—is an opportunity to make sure that those ambitions are reflected in the legislation and regulation that follows.

Q197 Chair: The legislation and regulation—particularly the regulation, perhaps—is supposed to be informed by the pathfinders. We have heard that they are fairly undeveloped so far and that it is hard to get too much out of them. What will you do to fulfil the promise of ensuring that the pathfinders do inform policy and we do not make it without having had the evidence of how best to proceed?

Mr Timpson: The pathfinders are in many respects an essential element of our learning how the proposed reforms will turn out in reality and on the ground. We had the interim report back in August from SQW, which pointed to some good work that has been done by some local authority areas—including the 31 local authorities that are taking part in the 20 pathfinders—particularly around the development of a single assessment and the education, health and care plan. But there are some other areas where there is still some embryonic—if I can put it that way—work that is taking place, for instance around personal budgets, which would be helpful to have as we go through the passage of the Bill to continue to learn from the development of that work.

There are already some good examples across the pathfinders of where, by having parents and young people involved right from the very start of the development of a plan or local offer, it is bringing about not only a stronger and more cohesive support system but also, in many respects, finding more cost-effective ways of delivering those services as well. I am keen to continue to learn from those.

Q198 Chair: The pathfinders were set up with an 18-month timeframe, and you said yourself that is fairly embryonic. Is that enough?

Mr Timpson: Chairman, they are currently due to end in March next year. Obviously, at that stage the legislation will not have reached the statute book. I am keen to ensure that we continue to learn from the pathfinders as we move through the passage of the Bill; but also, beyond that, I am keen to ensure that those local authorities that are not part of the pathfinder programme have the opportunity to learn from those that have been. What I have decided is that we should extend the pathfinders for a further 18 months beyond March 2013—through to September 2014—so that the useful and productive work that has

already been done can continue to help ensure that we get this legislation right.

Q199 Chair: Thank you. I think that will be a welcome announcement. When do you expect this legislation to make it on to the statute book?

Mr Timpson: It is still very much my intention to have this legislation on the statute book by early 2014, but, as I say, I want to make sure we get the legislation right. In the meetings that I have already had with members of the special educational needs groups, parents and those taking part in the pathfinders, it is clear that there are some issues that have been raised about whether the legislation is clear enough, sharp enough and whether it sets out in a robust form what the rights of parents and young people will be going forward. I want to make sure I listen carefully to all those concerns. Despite some of the issues that have been raised about the detail surrounding the draft clauses that we have published, I am reassured that the overwhelming view is that we are moving in the right direction.

As I say, I want to make sure we get this right, and if that means listening for a little longer, then I am prepared to do that.

Q200 Ian Mearns: To a certain extent, you have pre-empted my first question. I think it is interesting that you have suggested that the pathfinders will actually lead to changes possibly on the face of the Bill itself. It would be welcome to see evidence coming from the pathfinders influencing what is on the face of the Bill.

The majority of witnesses so far have been concerned that the draft clauses lack significant detail; you have mentioned that. In many cases, they are wondering how the proposals will actually work on the ground. Some cynical people have suggested that the lack of detail will hand a lot of power to the Secretary of State, Ministers and civil servants to sort it all out through regulation, which they can change, or through guidance. Is it that we are waiting for evidence from the pathfinders, or is it just that, in some respects, the ministerial team themselves are not sure what needs to be done to support children with special educational needs at the moment?

Mr Timpson: The first thing I want to be absolutely clear about is that the current protections that parents and young people have in the current statementing system are intended to be carried forward into the new system. Specifically, as an example, the right to request an assessment is something that the draft clauses were designed to follow through from the old system, but more people would have the option of putting forward that request. It would not just be the parents; it could be a GP, a health visitor or others who have a vested interest in that individual child's welfare.

I want to make it abundantly clear that all the protections and rights that parents have in the current system will continue into the new system. Now, where the draft clauses may be unclear—or there may be a perception that they do not achieve that particular aim—of course I am happy to go back and look, make sure and reassure those who have concerns about that

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issue that we will address them. Between the ambition, the sometimes more prosaic language of a Green Paper and then the rather more dry legalese within a draft clause, there is always that difficulty of ensuring one reflects the other. The framework within the draft clauses was to ensure that we nailed down those protections and then, through the code of practice and the regulations that will follow, start to put some more meat on that bone.

However, the most important thing I want to state for the purpose of this session is that in no way, shape or form is there an intention to water down the protections parents currently have. If that requires some nuances to the drafting within the clauses currently before the Committee, that is something I am happy to go back and have a closer look at.

Q201 Ian Mearns: Do you think sufficient thought has been given to how workable and deliverable the proposals are, given the huge changes that are under way in health services? One commentator has mentioned with respect to this draft Bill that health is the elephant that is not in the room. Can you assure us that health is on board and will bring the goods to the table, where necessary, to make this workable? Is there not a risk that what is being asked of the health service will be very difficult—if not, in some cases, impossible—for them to deliver?

Mr Timpson: One of the reasons that we have proposed this legislation, moving on from the old system, is to ensure that health plays a greater part in delivering all of the support that each individual child with special educational needs and disabilities has. That is why we have, for the first time, a duty of joint commissioning between education and health.

In terms of any reciprocal duty, where that proves difficult is that, within the NHS constitution, any delivery of services has to be based on clinical need. That is the barrier we come up against there. But what I am doing—and I am continuing to have discussions with my colleagues in the Department of Health—is to look at other ways we can strengthen the close working and accountability between education, health and social care. For instance, the NHS mandate—which the NHS Commissioning Board has to have regard to and, similarly, thereafter the clinical commissioning groups—makes it clear that the service that the clinical commissioning groups provide has to meet the needs that are put out clearly in the plan for each individual child who has special educational needs. That is an important statement within the mandate, and of course, as of yesterday, we now have the NHS constitution that is out for consultation and will be looking at how we can improve redress for those who have complaints against the health provision that they are receiving. I am looking at seeing how we can strengthen that package as much as possible; but of course, we want to ensure there is as close a collaboration between education and health as possible. Right from the start, that involves parents.

Q202 Craig Whittaker: I just wanted to take you back to something you said about the right to request an assessment. Under current legislation, that must be

done in six weeks. Under the draft Bill, there is no timescale, which would indicate that people have a right to request but there is no responsibility in place to ensure that happens. Will you have a look at changing that in the draft Bill?

Mr Timpson: As I say, the draft clauses are very much the framework. As we move on to the code of practice and the regulations, we will be looking at the detail of how we will ensure that, in many cases, we have ways of reducing the time that parents have had to wait for assessments to be decided on, to hear whether they should happen in the first place and also then the details of them. That is something we will be looking at carefully as we develop the code of practice and regulations and learning from the pathfinders.

It is interesting that in some of the pathfinders the process of assessment—rather than taking up to 26 weeks—is falling back to as low as 14 weeks. This is not through necessary statutory time limits being in place but through closer working at an earlier stage between parents, local authorities and other interested parties. I think we need to learn the lessons from that as well and ensure that, whatever system we put in place—whether it has timescales or not—it is delivering an effective and efficient assessment process that then holds water for the nought-to-25 period, which we are now trying to ensure that people move to.

Q203 Chair: Are you minded to have timescales or not, Minister?

Mr Timpson: We are going to look carefully at what the pathfinders show.

Q204 Chair: Those who are the enthusiasts, early adopters or naturally co-operative will deliver well above any minimum threshold. The reason you have a minimum threshold is that there are so many people out there who do not fulfil those qualities. Do you want to bring in a minimum and set a deadline or not?

Mr Timpson: It is something that I am still considering.

Q205 Ian Mearns: Minister, can you explain how you envisage the arrangements in the Bill will tie in with the new health and wellbeing boards?

Mr Timpson: This is partly the answer that I gave earlier. A relationship has been established between the health and wellbeing boards and the JSNA that they now have to produce at a local level. There has to be close co-operation and collaboration between that process and the mandate that I mentioned earlier, as well as the joint commissioning, which will now be a duty within the Bill. There will be a need for them to co-operate closely and to ensure that they align themselves with one another.

There is an interesting question—which goes back to the Chairman's point about timescales—about some of the timescales within the NHS and whether they marry up with what would be happening in the development of an education, health and care plan. It is something I want to look at more carefully. The health and wellbeing boards also have an important role to play in holding CCGs to account for the

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delivery of their service. We need to make sure young people get the most benefit from it.

Q206 Ian Mearns: Have you considered putting a duty to co-operate on the face of the Bill as regards all of the different functions within the health services?

Mr Timpson: I am happy to look at that and see whether that is something that would first of all be doable and whether it would make any material difference. It is something I am happy to go away and have a look at.

Q207 Ian Mearns: How will schools and colleges be engaged in the strategic planning of services in a locality? How will they be accountable for what they will or will not do? Are you going to place any duties on schools for which they cannot escape responsibility?

Mr Timpson: The involvement of schools is crucial in the development of any plan and, in relation to the local offer, there will be a duty on local authorities—which will include schools—to provide the information required to put the local offer together so they know exactly what services will be available.

Q208 Chair: Will there be a duty on academies and free schools to participate in the make-up of the local offer?

Mr Timpson: No, the duty is on the local authority in relation to the need for them to co-operate in producing the local offer. That includes ensuring that all the services available in the local area are part of that local offer. It has to be developed at a local level, and there is a duty to ensure that it involves the input of young people and parents as well as part of that process.

Q209 Ian Mearns: Given the autonomy of a great number of schools now, if they do not want to bring their goodies to the table, it could mean the local offer as drafted by the local authority might look a bit thin.

Mr Timpson: It is worth disaggregating out two elements of this. We started talking about academies and free schools. It is worth being clear that the duties on local authorities to provide a place at a named school—and all of the other reciprocal duties that would be across other state schools—will flow through into academies and free schools as well. It will not just be through their funding arrangements; it will also be through specific duties that will be the same as they would elsewhere.

Q210 Chair: That follows the strategic planning. We are talking about the strategic planning. If they are not playing as part of that, it will be harder to see how you will name them in the plan.

Mr Ward: Chair, there is a later question that is probably appropriate now. In plain terms, should all schools have a duty to draw up a local offer?

Mr Timpson: The local offer is a duty on local authorities, which will involve health, social care and schools in bringing together all the information that parents need to make an informed choice about what services are available in their local area. What is clear from the pathfinders is that there are essentially two

ways that can be done: some have started by bringing together parents and young people and getting them to say what information they require; others have taken another approach, which is to look at what information is already out there and present that as a starting point.

Q211 Mr Ward: Isn't there a danger that some schools will take part and others will not?

Mr Timpson: All schools will have a vested interest in ensuring that the services that they have available are part of the local offer. Parents will be able to hold them to account for whether they do or they do not.

Q212 Mr Ward: What vested interest would they have?

Mr Timpson: They are there to provide a strong education for young people in that area.

Q213 Ian Mearns: If you do not mind me saying this, Minister, it sounds like you are leaving an element of this to God and good neighbours, and expecting reasonable people to behave reasonably. But I am not convinced that this will always be guaranteed on the ground.

Alex Cunningham: Can we just talk about this responsibility for different types of schools? If they are academies, free schools, local comprehensives or independent schools, will they have the same duties and responsibilities under the legislation as each other?

Mr Timpson: Yes.

Alex Cunningham: Thank you. That is best answer I have ever had.

Q214 Ian Mearns: The lack of a single appeals process to address all aspects of the education, health and care plan has presented itself as an issue in evidence so far. Some people have expressed concerns about that. How are you going to address this significant range of concerns about this lack of a single appeals process?

Mr Timpson: What is clear is that the current tribunal system is not effective. We know that 80% of cases that go to tribunal—over 3,000 every year—end up being withdrawn or resolved sometimes the day before the tribunal. The system is not necessarily delivering.

Q215 Siobhain McDonagh: To some extent, does that show that they do work? The threat of them works.

Mr Timpson: The delay that results and the cost incurred could be avoided if there were earlier discussions and work done, which is the whole purpose of the reforms. The plan that has been drawn up has parents very much at the heart of its formulation. What we want to do is ensure we move away from what can be quite an adversarial process to providing all parents and local authorities the opportunity to try to resolve any disagreements they have without having to go through the tribunal system, which can be a pretty traumatic and costly process. We also want to be clear on the other routes of redress for parents and young people. One thing we are doing

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for the first time is extending the rights to tribunal from nought to 25, which includes young people themselves. We are also piloting the right for children to be able to take any aspect of a plan to appeal. But to ensure we have the opportunity to try to resolve it at an earlier opportunity—and also to try to prevent any unnecessary delay—we are looking at having the mediation filter as part of that process.

Q216 Chair: We have heard practically no evidence—and we have had 200-plus submissions—in support of compulsory mediation. The last panel were talking about having an early independent arbitrator, but practically nobody is supporting compulsory mediation. Would you consider dropping it?

Mr Timpson: I certainly recall you receiving evidence to the Committee—whether it was the same seat I am sitting in, I do not know—where there were mixed views as to whether it would be helpful or not.

Q217 Chair: The overwhelming weight of evidence has been against compulsory mediation. It is not against the intent or the purposes set out by the Government, but most people seem to think it will not deliver what you hope for.

Mr Timpson: Conversely, if you look at some of the evidence that is available—for instance, some of the work that was done in the West Midlands—four out of five cases that went through mediation were resolved as a result of the mediation process. This demonstrates that it can be a very effective and constructive way of ensuring that the matter can be resolved amicably. We need to make it clear that of course there will be cases where it will be crystal clear that there is no hope of mediation being successful. That is where the trained mediator and their input will be helpful in ensuring that no time is wasted.

The other point I want to make is that there would be no inbuilt delay—I am very conscious that there should not be any unnecessary delay in trying to resolve these matters—as a consequence of there being the mediation element to the resolution of any disagreement. The two-month period a parent or young person would have to trigger an appeal would not be effected because the mediation would be envisaged as having to take place in the first month of that period. I want to ensure that there is no unnecessary delay as a consequence of that.

Q218 Chair: Are you sure there is the capacity in mediation services to deliver that? Having the aim and it not happening in practice could lead to the delay that none of us want.

Mr Timpson: You always have to take into consideration that, whenever any change is brought in, there may be a sudden rush initially. But we have parents and young people involved right at the start of the formulation of the education, health and care plan, which was one of the concerns that they had with the old statementing process: they were not involved enough. That in itself presents more areas for potential conflict in the future. The expectation is that right from the very start it will reduce a lot of the

adversarial nature that you would then see happening later on.

Q219 Chair: In the calculations in the Department, have estimates been made and budgets concocted as to how much this will cost?

Mr Timpson: Rather than trying to remember a figure that I do not have in front of me, could I provide that to the Committee later? The general point I would make is that the purpose of these reforms is not to save money; in fact, the spending on SEN funding has gone up from £2.7 billion in 2004–05 to £5.7 billion in 2010–11. There is a significant amount of money being spent—all the way through from nought to 25, I would point out. It is not a matter of trying to spread jam more thinly; it is about actually trying to spread it better.

Q220 Chair: You can either have more jam to spread it better, or you spread it more thinly. It is one or the other.

Neil Carmichael: You could have better quality jam.

Chair: You could conceivably have better quality jam, but you would still be spreading it pretty thin, unless you have a magic recipe.

Mr Timpson: I think it depends on the size of the piece of toast.

Chair: And we have just got a bigger piece of toast.

Mr Timpson: Regarding the funding that is currently available from nought to 25, we have two systems. We have the SEN system up to 16; then we have the LDA system from 16 onwards. They are all currently funded and that money will still be available for the new system. It is not trying to have less funding available for a longer period of a young person's need. Ultimately, this is about ensuring that more work done early ensures better outcomes for young people with special educational needs and disability, and therefore makes important savings.

I will just give you a quick example from the pathfinders, if I may. Up in Durham—close to your neck of the woods, Mr Mearns—the county council there, as a consequence of working closely with parents and young people in developing their short breaks and how they are administered and co-ordinated, have made a saving of £2 million within a calendar year. There are good examples of how the current system is not necessarily delivering the best value for money or the best outcomes for young people. My hope and expectation is these reforms will bring about improvements in both those areas.

Q221 Chair: Are you certain that resource will not be taken from the school years? They basically receive the SEN support now, for the most part. So we will not see any of that resource spread to improve services in the early years or up to age 25?

Mr Timpson: That is right. It is also right to point out that post-16 funding has actually increased in the last few years. We have made commitments to the early years in relation to the two-year-old offer and the early support. Also, what I want to do in relation to children with special educational needs and disability is build on some of those existing programmes that have been extremely effective in improving not just the

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developmental progress of young people but also that academic progress. As an example, the Achievement for All programme, which we fund and which I had the pleasure of going to see in action in Leicester a few weeks ago, is a good example of where an evidence-based programme delivered within schools—with the close co-ordination of parents, teachers and staff—has elicited really impressive results. That is why I have also decided to continue funding that programme for an additional two years.

Q222 Charlotte Leslie: I would like to take us back a bit to the pathfinders and timings. You have said that you have extended the pathfinders from March 2013 to end of September 2014. Will that have any impact on the actual timetable for legislation? Will the legislation have time to learn from the extended time of pathfinders?

Mr Timpson: Building on the conversation we had earlier about the evidence that they are starting to reveal about the workability of the legislation in practice, one of the reasons I wanted to extend the pathfinders is that in some areas we now have a grounding of good evidence for how we can ensure that we pitch the legislation correctly, so that it will be most effective.

In other areas, we still need more evidence—particularly, for instance, around personal budgets—to be satisfied that we will be able to come up with the right regulations and code of practice to reflect that evidence. Clearly, by March 2013, the legislation will not be on the statute book. We are looking at early 2014. I want to use the opportunity through the passage of the Bill, as well as through the pre-legislative-scrutiny stage that we are currently going through, to learn from those pathfinders to make sure, as I said right at the start, that we get this right.

Q223 Chair: Are you still committed to producing the Bill in January? The Green Paper was supposed to come out in October; then it was December; and, eventually, it came out in February. The Department has a history of delay in order to get things right.

Mr Timpson: I am not sure I can be held personally accountable for the timing of the Green Paper's publication. All I can say is that it was the culmination of a lot of work.

Q224 Chair: I did not mean to ask you about the Green Paper; it was just by way of comparison. Are you still determined to produce the Bill in January or might you delay?

Mr Timpson: I want to make sure we get this legislation right. If that means a short delay in the introduction of the Bill, then so be it. Ultimately, it is the parliamentary authorities who have the final say as to what legislation will be introduced when.

Q225 Chris Skidmore: Welcome to your new post, Minister. I was not here at the time—I have only just joined the Committee—but apparently in a briefing to members on 16 October your officials admitted that the transition to the new ways of working would be “messy”, with local authorities struggling to meet parents' expectations. Do you agree that the transition

could be messy? I suspect probably not, but what would you be doing, as Minister, to minimise this mess at a time of local authority cuts elsewhere across the board, reorganisation and increasingly high expectations from parents?

Mr Timpson: I am very conscious that parents will be anxious about any transition period in moving from one system to another—both those who have children currently within the statementing system and those who are wondering how that will then manifest itself as the new legislation is brought in.

We have to be very careful that we do not try to move in one fell swoop from one system to another. It is perhaps obvious to suggest that those children who currently do not have a statement will be coming into the new system of education, health and care plans as opposed to the old system. In relation to those who are currently statemented, the provision that they receive through that statement and what they are entitled to, I do not want to see—this is to reassure parents as well—any watering down of the current statement that they have as they go into the new system.

The question is: what is the right moment to move from the statementing system to the EHC plan? There are some perhaps obvious points within the process at which that could take place: for instance, at the annual review of the statement; and also, perhaps, when those concerned are moving from pre-16 to post-16, where, rather than moving on to the old LDA, they would be continuing with their EHC plan. If they had not been statemented before that, they would be moving into the EHC plan. It is something that we need to think very carefully about. I do not think there is a single moment where we can say to all of the children who are going through this process, “Today is the day that you have a statement and tomorrow is the day that you have your EHC plan.” Again, we need to use the pathfinders to help provide us with enough evidence as to what would work best for young people and for parents.

Q226 Chris Skidmore: With local authorities in particular, we have received quite a lot of evidence about their concerns with the financial transition and how they will be able to cope and put these measures in place. I was wondering to what extent you will provide additional funding to local authorities to increase their capacity to take on the post-16 remit. If they already have these financial management arrangements in place with other schools and partners supporting children, what guidance will you give to local authorities to manage this process?

Mr Timpson: If you are asking a question about the funding arrangements, there is a wider reform to the school funding formula, which I know you will be aware of, of which part is SEN funding. What we want to ensure is that the new funding system is much clearer and much more consistent than that which previously pertained to this. There will be some adjustments that will be needed by local authorities and, whether it is through the EFA or through direct work with local authorities, we want to make sure that we get those adjustments right. Ultimately, it is still going to provide the funding that each individual child will need for their EHC plan to be delivered in its

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entirety. Whether that is through the dedicated schools grant or local authority top-up, the combination of both will have to ensure that is the case.

Q227 Chair: Is there a danger that some local authorities that have been particularly good at delegating funding for SEN down to schools could find themselves punished in this new regime, because they cannot reverse the delegation and yet they find that some of the responsibility rebounds from schools back to them? Some of them are worried about this. Is there a risk of it?

Mr Timpson: That is why we have to make sure that, in the development of the new funding formula, we have those conversations with individual local authorities, so they are fully aware of the implications of the new funding regime and can make adjustments locally to reflect that. But the ambition remains the same, which is to have a funding regime that better reflects the needs of each individual child and the rights of parents within the reforms, particularly in relation to choosing the right school for their child.

Q228 Chair: Can you make a commitment today that the Government will ensure that those authorities who have delegated a greater amount of funding down to schools will not be penalised in the transfer to this new system?

Mr Timpson: I think what I will have to do, Chairman—as we are now straying into the responsibilities of another Minister within the Department—is go away and have that conversation and get back to the Committee about that in writing.

Chair: Thank you very much indeed.

Q229 Bill Esterson: Good morning, Minister. A concern was raised with us about the need for parallel assessments in health and social care at the same time as assessments in education. Sarah Teather asked us to consider how regulations could be used to integrate education, health and social care assessments. Would it not be a good idea to place a statutory duty on health and social care to be part of the assessment process? If not, have your thoughts moved on as to how best regulations could be used? Is there anything coming from the pathfinders to shed light on this issue of integration?

Mr Timpson: There is quite a lot to consider in that question. Clearly, the whole purpose of moving to the single assessment is so that there is closer co-operation. In the draft clauses, there is a duty to co-operate between education, health and social care in the formulation of both the assessment and in the case of each individual plan as well. What I am conscious of—I am giving quite a lot of thought to it—is ensuring that children do not have too many parallel assessments. That was one of the problems of the old system. Some children find themselves being assessed incessantly, and we want to be able to move away from that type of regime.

Q230 Bill Esterson: That sounds like an argument for having a single assessment.

Mr Timpson: Clearly, there are examples. For instance, if you have a child who has a section 17

assessment, you might also have an education, health and care plan and the assessment that leads to that plan taking place. There is more that we can do to try to align some of these assessments, so that there is not too much duplication and crossover, because that is one of the complaints that we get from parents. They are asked to do the same thing twice, if not three or four times. It is something that the pathfinders will help inform. I want to look at that carefully and see whether there is more that we can do to make sure that it is as streamlined a process as possible.

Q231 Bill Esterson: As things stand, when educational outcomes have been achieved the plans will end. We had evidence that many children continue to need that level of support to maintain the progress they are making—or that they would make with the support in their plans. At the same time, when the education element is completed, what is the implication there for the health and social care element? Will that end as well or do you need to give consideration to the idea that it needs to be the completion of the whole process—not just one part of it—and, for those groups of children, the continuation of the education element? Again, there is plenty there.

Mr Timpson: The first thing to say is that the refocusing of these reforms is around outcomes: that is very much at the heart of the development of each individual plan. We want to ensure that each individual child or young person reaches those outcomes. Those sorts of outcomes would be getting into employment and getting into independent living, for example. The focus and the trigger are both still educational; but of course the health and social care elements of that—and the duties that still flow through to social care and health—will continue irrespective of whether the education of a young person ceases. But of course we would hope and expect that the reason education has ceased is because they have reached an outcome beyond their education. If that is not the case, there are duties on local authorities to assist them back into education and, of course, that would re-trigger an education, health and care plan.

Q232 Bill Esterson: What about those young people who have left education? Is there a case for continuing a plan up to the age of 25 whether they stay in education or not? Again, there was concern raised to us that this loss of support could have a dramatic negative effect.

Mr Timpson: Building on the answer I just gave about the duty of local authorities to get young people back into education if they fall out of it beyond the age of 19 to 25, it is also worth saying that there is still the option for local authorities, if it is deemed appropriate to do so, to continue with the services that the education, health and care plan would have delivered, including the educational element to that. This is not a case of either you have it or you do not have it. There is the opportunity for it to continue.

Q233 Alex Cunningham: I am interested in the potential of what happens if there is a gap in a young person's education. If a young person reaches a particular stage on a plan and decides that they will

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take a year out to work and then go back into education, will there be provision within the legislation to allow that plan to be picked back up again after that gap year?

Mr Timpson: Yes. The young person has a right to request an assessment in the first place, but also has a right to request for it to be reactivated at a time when they want to come back into education.

Q234 Alex Cunningham: Do you see a situation where it could not be reactivated? You said they would have to be re-assessed.

Mr Timpson: Without being able to comment on every individual circumstance, I am not able to answer that. If the local authorities decided not to do that, of course one of the new rights that this legislation brings in is the right for that young person to take that matter on to tribunal if they do not agree with that assessment.

Q235 Alex Cunningham: Would there be an automatic right for the plan to be reinstated? Could they say, "I want to take a year out. I am going to go to Australia and come back next September and continue my education." There is no planned automatic right in the legislation for them to pick it up where they left off.

Mr Timpson: As I understand it, when they move out of education but then, at a later date, want to come back in, at that point they can request that their plan is reactivated and, clearly, that will have to be looked at in those circumstances as they pertain at that moment. If they are not happy with that decision, they now have this new right to follow it through to a tribunal, if necessary.

Q236 Bill Esterson: We had evidence of the need to support disabled children who are not currently covered by the SEN framework. In fact, some witnesses called for all children to be covered by a version of an integrated framework including health and social care with education. We are in danger of going back to the topic of jam being spread too thinly, I suspect, but what is your view on all children—particularly disabled children—having a framework covering their health and social care needs, as well as their education?

Mr Timpson: First of all, it is worth remembering what this legislation is looking to change between the current statement system we have and the new system. It seeks to enable children with special educational needs and disability still to have the provision they need through the education trigger but with the other services that flow from that—the health and social care aspects. That is very much where this legislation is aimed.

As we know, there is of course a huge crossover between disabled children and children with special educational needs; about 75% of disabled children have a special educational need. Clearly, there are those who have some physical disabilities—epilepsy is an example—where they may not have that crossover. There are still duties on health and social care to provide assessments, services and support for those individual children, but the local offer is

principally designed to set out clearly what services are available locally for parents and young children with special educational needs and disabilities. Inevitably, there will be a crossover of the services: children who do not have a special educational need but do have a disability will also want to know what is available, how they can access it and, if they do not get access to that support or service, how to complain or seek redress.

There is still a strong element of what we are proposing within the legislation and the ongoing duties on health and social care to deliver for disabled children, which will continue, that provide assurances that they will be able to access the services that they need.

Q237 Bill Esterson: You are not going to look at the idea of a framework for all children at this stage.

Mr Timpson: As I say, the purpose of this legislation is around children with special educational needs. Clearly, as I say, there is a huge crossover with children with disabilities. I am conscious of the fact that there are already duties on local authorities and health providers to provide, in the right circumstances, the services that those individual children need.

Q238 Chair: You mentioned epilepsy, which is an interesting case. I have constituents who tell me that their children are forced to leave the school to get treatment that could be delivered, in the parents' view, within the school, and thus it disrupts their education, so it turns out to be a form of special educational need. I wonder how you think this change may change the attitude towards a comprehensive and holistic set of measures to support the child and ensure their education is as full as it can be.

Mr Timpson: I know this is something we asked the Committee to look at; I am looking forward to hearing your views on it. In terms of the definition that we are working from, if that individual child is unable to receive the education that is on offer within the school—and it is not additional to or different from what is ordinarily available to a child of their age within that school—then of course that is when they would need to look at whether they fall into the definition.

Without knowing about the individual case that you mentioned, Chairman, clearly that is something they will have to take into account when deciding whether that individual child would fall into that category.

Q239 Chair: You did not actually ask us about the definition; you asked us about terminology.

Mr Timpson: Terminology.

Q240 Mr Ward: You mentioned earlier on that certain parts of the legislation are not clear or detailed enough. One of the aspects that has been raised with us is the definition of SEN and the failure to define that clearly. Do you see that as something that is worth pursuing?

Mr Timpson: As I say, the draft that we have carries through the current definition. That is the position that we currently hold. Clearly, we want to make sure we get it right and that it reflects what we want to achieve

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through the legislation. I will continue to consider it carefully.

Q241 Mr Ward: In absence of that, you are back to vague terms like “ordinarily available”, and concerns relating to this have been raised with us, particularly that those with low-level needs will possibly not be picked up. Obviously, there will be the removal of School Action and School Action Plus as it operates at the moment. Without that clear definition, how are we going to arrive at who falls within and who falls without the support that is required?

Mr Timpson: One of the concerns—this was something Ofsted raised in the work that they did looking at the current system—is that there are children who are falling into the School Action category, and School Action Plus in particular, who were very much capable of being taught within the offer of the mainstream school, rather than being defined as needing educational support from outside the school. Clearly, the tiered definition system was not working, which is why we want to get to a single, coherent SEN definition. We think we have got that right, but of course we are still listening to how it is being perceived, particularly through the pathfinders and whether it is identifying all of the right children who may need that extra support. That is something I will continue to look at.

Q242 Alex Cunningham: School Action and School Action Plus currently attract money from the local authority to meet the children’s needs, but there does not appear to be anything in the legislation that protects that funding or, in fact, specifically that provision. What is going to happen? Are you going to protect that funding, or is that going to go into the melting pot? The School Action and School Action Plus money that currently sits with local authorities, as I understand it, is delegated, isn’t it?

Mr Timpson: This is a detail I will have to look at a little bit more.

Q243 Alex Cunningham: A lot of people out there are seeking reassurance that the children who do not qualify for the plan still need to be looked after. I am concerned that the funding to ensure that provision is in place looks a little bit dodgy.

Mr Timpson: We are talking about those children who, through the assessment, have been deemed to be a child with a special educational need. They will, through the education, health and care plan, have the funding made available through both the dedicated schools grant and the top-up from the local authority to ensure that plan and its delivery will be able to be followed through in its entirety.

Q244 Alex Cunningham: But parents are concerned about those that do not have a specific plan because they are almost marginal in terms of their needs.

Mr Timpson: Within Ofsted, there is a clear category now within their inspection regime to ensure that the disadvantaged children in the school and those who need extra help within the school are being identified. The dedicated schools grant is being protected, so schools will still be receiving, in cash terms, close to

record amounts of money to ensure that happens. Also, within that system, there is an opportunity to identify whether they are delivering on that; that will be part of the Ofsted inspection.

Alex Cunningham: We need to understand that in a little bit more detail; I would appreciate it if you would come back to us on this specific point.

Mr Timpson: Yes, I think I have committed myself to doing that.

Q245 Bill Esterson: I think this is an incredibly important concern that has been raised with the Committee and people outside of the Committee: children who are just outside the current arrangements must not be excluded by the new arrangements. I think you have expressed that point and we would certainly welcome you coming back in detail on that. This is the final question from me. You have touched on this with young people who are outside education, employment and training, to some extent. Another point was raised regarding apprenticeships. There is almost universal evidence that people in apprenticeships should have plans where it applies as well. Can you say something more about that?

Mr Timpson: In the many hours I have spent in the last few weeks poring over the evidence that is out there and trying to get up to speed with as much detail as possible, this is an area that I have had an opportunity to look at quite carefully. I think there is a strong case that has been made for the inclusion of apprenticeships; I am minded to include them within the scope of the Bill.

Q246 Bill Esterson: What about higher education?

Mr Timpson: Higher education is more difficult. They have their own independent accountability structures and their own service delivery through disability allowances and other support. It is a much trickier area to get uniformity and consensus on, but I am, certainly in relation to apprenticeships, clear that will be an important improvement to the Bill.

Q247 Chair: A lot of people will welcome that. I do not mean, by my question, to suggest that I do not, but quite a lot of older people start apprenticeships now, often those older than 25. What happens if someone starts a three-year apprenticeship aged 24 and they have an assessment that shows that they might need signing or some other help to get them through? What would happen about the transition once they get to 25?

Mr Timpson: The way the legislation is currently drafted would mean that we have a limit at 25. Clearly, there are other services that could step in at that point where it is appropriate to do so. It is something that I will consider, now that you have raised it, Chairman.

Q248 Chair: I would hate to put you off going to apprenticeships because of some of these difficulties.

Mr Timpson: Having raised it, it is something I will endeavour to come up with a careful and considered answer to, which reflects entirely the deep and important meaning of your question.

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Chair: We expect nothing less, and thank you for the flattery.

Q249 Neil Carmichael: Good morning. I want to go back to the transition from statements to care plans, because we could see a situation where some people have statements and some people have care plans; a temptation to compare and contrast might be overwhelming. Have you had any further thoughts about the transition period?

Mr Timpson: As I said earlier, I want to avoid a situation where there is blind panic as we move from one system to the other. It needs to be systematically and carefully introduced. I touched on this earlier. One of the key elements is to ensure that, for those children who currently have a statement and who are looking to move potentially through the review of their statement on to an education, health and care plan, the current elements of their statement—and the provision that then flows from it—will continue into the education, health and care plan, so that effectively they do not lose anything as a consequence of moving from one to the other, where it is deemed necessary and appropriate for them to do that as part of the normal reviewing mechanism. We need to provide reassurance to those parents who either are still in the process of moving from one to the other or have not yet done, so that, by going through that process, there will not be any dilution of what they currently know they should be receiving.

Q250 Neil Carmichael: The arrangements that you have in your plan are satisfactory, given the pathfinders.

Mr Timpson: We are still learning from the evidence they are providing to us. As I say, we need to think very carefully about the period of transition, because I am conscious of the fact that for many young people and parents this will be a very anxious time. We need to think about how we can best ensure that the transition is as smooth as possible—both generally, across the piece, but also individually for each child. The regulations and the code of practice can be far more explicit about that.

Q251 Neil Carmichael: Will the care plans have the same legal status as statements?

Mr Timpson: Yes.

Q252 Neil Carmichael: Parents will have the right to request reviews of plans and so forth, as they think is necessary.

Mr Timpson: All the current rights that parents have will be protected through the legislation that we are currently going through.

Q253 Neil Carmichael: Will you be imposing a duty to deliver what is in the actual care plan?

Mr Timpson: There are various routes of redress available to parents, should there be no delivery of the plan. That is the duty on the local authority: to ensure that the plan is delivered in its entirety. That is what we hope will then follow through.

Q254 Neil Carmichael: In the evidence session we had this morning, where we had parents and students, there was obvious concern about the relationship a local authority might have with healthcare. Two real issues came out: one was that there would be a bit of buck-passing, and the other one was that there would be a question of who would actually be in charge. Are you satisfied that the plans for the care plans will be able to deal with those concerns?

Mr Timpson: This is precisely why we have brought in the new duty of joint commissioning: to make sure it is not just the local authority that is scrambling to try to find all of the right support and services, but rather there is a duty on health and social care to be part of that commissioning process. There is also the duty to co-operate as well, which is an important embedded duty within the legislation. Right from the very start, there must be buy-in from health, social care and education to work together with parents to ensure that they come up with a plan that best reflects the needs of that individual child.

Q255 Neil Carmichael: If the care plan has the same legal status as a statement, does that not raise the issue that, where parents and authorities are not agreeing, judicial reviews and tribunals will become common, or at least as common as they are with statements?

Mr Timpson: The contrary is the intention of the Bill: by having a duty on local authorities to work closely and engage with parents, right from the very start, the education, health and care plan that then follows will better reflect a collaborative approach to the services that it will deliver for that child. That will therefore—as I said about an hour or so ago—reduce the prospect of an adversarial approach to any conflict that there may be in the future. Of course, we are strengthening the tribunal system for parents and young people as well. There is an opportunity, where they are unhappy, to have greater recourse to challenge that.

Q256 Neil Carmichael: That strengthening is a backstop position, presumably. I have one more question. There has been some concern about setting out as opposed to specifying needs. That came out again this morning in the evidence. What are your thoughts about that?

Mr Timpson: Again, when the clause was drafted the intention was that there would be no material difference between “specify” and “set out”. The intention was very much to continue what is currently the position. I want to make that clear: this is not some way of trying to realign what may or may not be available. In looking at the draft clauses and whether they are clear or sharp enough and reflect precisely what we intend them to do, I am happy to ensure that they do that. It may also be that the regulations and the code of practice will make it abundantly clear that is the situation and the position.

Chair: Craig, you might like to ask about those aspects of mild to moderate SEN that have not been covered by Alex.

Q257 Craig Whittaker: The final question that I have on that area is: how much does the SEN code of practice need to be changed? Also, the new code will

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not have to be consulted on or laid before Parliament. Would you consider changing that?

Mr Timpson: The current code of practice was last reviewed in 2001. There is good cause to suggest that it does not reflect the current state of affairs. That is one of the Achilles heels of having the need for a positive resolution from Parliament every time you need to make any adjustments to the code of practice. It should be more of a living, organic document that has a closer reflection of the current provision on offer, and it may need to reflect that more closely.

I am also conscious of the fact that the current code of practice is not a single document. We have one for children with SEN and we have one for children with learning difficulties and disabilities. This will bring them together into a single source document, which I think is more helpful. It will be a shorter, clearer and more concise document that will then, as I say, be able to be reviewed and reformed in a much more simple and natural way, so that it best reflects what is happening on the ground. But I am of course wary of the fact that the slightly unusual history of the original code of practice led to it being a document that needed parliamentary approval of any minor change.

Chair: You have made that point, Minister.

Q258 Craig Whittaker: To follow on from that, if it is going to be a working, living document—as I think you said—how can you make it so if you do not have any consultation?

Mr Timpson: There will always be the need to ensure there is close involvement with parent and carer forums and the feedback we get from them and other bodies—for instance, our strategic partner within the Department in relation to SEN. That is why it is important that we ensure that they play a part in informing the Code of Practice.

Q259 Craig Whittaker: Will there be consultation through those bodies?

Mr Timpson: Clearly, I am conscious of the fact that the current Code of Practice has a different status, and I am still listening to people's views as to how they can persuade me that perhaps there is a different route that would be more appropriate.

Q260 Chair: Simpler, clearer and shorter is always welcome, so long as the bite in it does not go—in terms of deadlines for players within the system and that sort of thing. Can you reassure us that you can both keep the bite, as well as make it simpler, clearer and shorter?

Mr Timpson: We want to make sure it is a document that parents can easily access and that it is clear to them on the face of the Code of Practice what their rights are and what the process is that they will see, as they follow their child's journey through education.

Q261 Chair: Will it include deadlines for the groups of people they have to deal with in trying to get what their children need?

Mr Timpson: I am not in a position to give you the details of the Code of Practice right at this moment.

Q262 Chair: Broadly, what will it cover?

Mr Timpson: It will cover the education, health and care plans; it will cover the personal budget and the local offer; it will cover all of the clauses within the framework of draft clauses that we currently have that need to have more meat on the bone. I do not want for this to become an inaccessible, labyrinthine document that is not easily referred to.

Q263 Chair: We also do not want it to be short, pithy and readable but ineffectual.

Mr Timpson: No, it needs to be effective. That is why the pathfinders will be important in informing how the Code of Practice can be as effective as possible.

Q264 Siobhain McDonagh: I would like to look at some issues around the local offer. Will you introduce a duty for local authorities to provide the contents of their offer?

Mr Timpson: That is not our intention in the current legislation, as we have drafted it. The duty is on local authorities to produce a local offer, having done it in consultation with parents and young people within their local area. There is often a tension between national consistency and local determination. Certainly, the experience in the SE7 pathfinder area has shown that having parents and young people involved from the very outset of developing the local offer makes it a far more powerful document to hold local authorities to account.

Q265 Siobhain McDonagh: One of the people giving evidence to us suggested that, as there is no legal protection for children who do not receive an education, health and care plan, it is fundamental to the success of the local offer that there is a legal duty to provide what is set out in the offer. We have all seen a lot of documents offering a great deal, but, though they may exist and they may not, they are certainly not being offered to people.

Mr Timpson: What is important, without being prescriptive about the local offer, is that one of the key areas it should address is the services that are laid out within the local offer that young people can access. It should be clear, if they do not receive that service, how they can seek redress or complain to follow through their concern that that service has not been delivered. Whether it is through health or social care, there are various routes of redress. But it is important that it is on the face of the local offer, so that parents have that option available to them.

Q266 Siobhain McDonagh: You raise the issue of a postcode lottery; has your thinking moved on about requiring minimum standards of local offers?

Mr Timpson: I am not sure I mentioned anything about postcode lotteries, but in terms of minimum standards, what is clear is that we want a local offer to genuinely reflect what young people and parents who live in that area want from the services local to them. Of course, there are some services that are needed for children who have special educational needs or disabilities with low incidence. To have those services on offer in every locality is not a reasonable prospect. But in terms of any national minimum standard, clearly there are key areas that the local offer

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should cover. It is right, though, that there should be strong local accountability on local offers, which is developed from the fact that young people and parents were involved—as there is a duty on local authorities to ensure that they are—in the development of that local offer.

Finally, on the postcode lottery point, there will be local offers that parents will be able to set against the local offer that is being made available within their local area. They will be able to compare, contrast and challenge their own local authority: “Why is it that over the border in East Riding they have this in their local offer? We want to include that in ours.”

Q267 Siobhain McDonagh: But will the Government introduce a minimum standard?

Mr Timpson: We are proposing that in the Code of Practice there are key areas that a local offer should cover in the right circumstances, but we do not want to be prescriptive about the local offer. It should be developed locally.

Q268 Siobhain McDonagh: Will regulations governing the local offer include a requirement that it is evaluated against a national framework?

Mr Timpson: That is not currently the intention, but that is something that I will, now you have raised it, give some more consideration to.

Q269 Ian Mearns: Minister, is it sufficient that the local authority only needs to consult a headteacher when naming a particular school in an education, health and care plan? Is there a need for a duty on local authorities to give a reason if they decide to go against the response of the school and name that school in a plan?

Mr Timpson: Mr Mearns, from memory—and I am trying desperately to stretch the bounds of my brain—there is a right that parents have to name a particular school, and of course we are increasing those options for parents to include academies and free schools, and we are moving into further education as well. Clearly, though, we have to ensure that three criteria are met. I am trying to remember the precise details of the three criteria that have to be taken into consideration, one being whether it will cause disruption to other pupils as a consequence—i.e. a disproportionate amount of disruption. I think it is important that there is close consultation between the school, the local authority and the parents to ensure that this is the right school for their child. I am happy to provide you with the details of how that would work in practice.

Q270 Ian Mearns: I would be interested to see that, Minister. Thank you very much indeed. Do you think further education establishments are geared up to respond to requests by parents, and children and young people with SEN, for their establishment to be named in an education, health and care plan? Would it be workable if parents and young people could also specify a particular course?

Mr Timpson: The answer is yes, I believe they are. I have had the opportunity to visit an FE college that has a strong provision for children with special educational needs. Of course, this is not something

new for many of them; what is new is that there are going to be stronger rights for young people and parents in relation to access to FE colleges but also requests for an assessment and so on.

The point that you raise about individual courses is an interesting one. It is something that I need to look at. I would have to think about how that will reflect itself in the deliverability of provision and the impact it would have on FE colleges. I am conscious that, by providing a specific right to a specific course, we do not impact on the potential learning of other children who may be looking to establish themselves on the same course.

Chair: Thank you. We have very few minutes left; I hate to interrupt you, Minister. It is not that you are being too long; it is that the time is too short.

Q271 Ian Mearns: Have you changed your mind as to whether independent schools should be included on the list of schools for which parents can express a preference?

Mr Timpson: I assume you are talking about independent special schools, as opposed to all independent schools.

Ian Mearns: Yes.

Mr Timpson: The original difficulty with including independent special schools in the overarching terms of the Bill related to technical difficulties, legal definitions and, also, some mixed views as to whether that would be the best way forward.

Q272 Chair: Among whom were there mixed views?

Mr Timpson: There were mixed views among providers in pathfinders.

Q273 Chair: That is not what they tell us. They say the Government say they have mixed views, and they do not. All the groups involved say they categorically think they should be included.

Mr Timpson: If I could just finish my sentence, you have anticipated what I was going on to say, as ever.

Ian Mearns: He does that.

Mr Timpson: We are and have been speaking regularly, and in quite a lot of detail, with independent special schools providers to see whether we can find a way to include them as one of the named educational establishments, which would enable parents to name them within the education, health and care plan. Although I cannot give you a categorical guarantee, which is never a good thing to do in any event, I am hopeful we will be able to resolve it productively.

Q274 Ian Mearns: If you go along that particular route, does that mean you may have to provide a definition of independent special schools in the Bill?

Mr Timpson: As I say, there are technical difficulties around legal definitions. That is something we are working on to see whether there is a way forward.

Q275 Charlotte Leslie: Very quickly, I want to come back to personal budgets. There are concerns that the impact of personal budgets would mean that existing services suffer. Will provision be made—given the impact of personal budgets—so that existing services do not suffer, and, if so, will there be a case of double

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funding in both maintaining existing services and offering personal budgets where parents can choose?

Mr Timpson: Certainly, the intention is not to reduce provision or funding within the system. We need to think about how that is reflected in the regulations that flow through, but the pathfinders are showing something in relation to this. I hate to return to East Riding, Chairman.

Chair: It is always a good place to return to, Minister.

Mr Timpson: It is a good example of how in some ways it can be more cost-effective through the use of personal budgets. My understanding is that a group of parents have used their individual personal budgets to pool together a larger budget between them, which is helping pay for a specific and targeted level of short breaks that they have identified all of their children would have particular benefit from. That is a good example of how it has the potential to not only give parents more control over the services they are receiving, but also allows them to think creatively as to how they can get more value from them.

Of course, as I said earlier, Chairman, the personal budget is something that the pathfinders are in the early stages of developing. The pilots of individual budgets have shown that there is a powerful case for them. In health, as well, they have trialled this and it has had some good success. We are keen to ensure that we push through personal budgets, which, of

course, are a choice. Parents do not have to decide that they want a personal budget; it is a choice that they have. I think that is an important element.

Q276 Charlotte Leslie: Very briefly, what kind of support will parents get in making that choice of whether to have a personal budget or not? Will they be informed of the allocation they would have before they decide to take a personal budget option or not?

Mr Timpson: There are different ways in which a personal budget can manifest itself. Some of them do it through direct cash payments; others are doing it through notional budgets; and others, in the example I gave, are trying to pool things together for a specific purpose. There does need to be close work done with parents who are considering the personal budget by those who are delivering the education, health and care plan. We are looking carefully at how we can ensure that they know what is available to them in their area. The pathfinders, I am sure, will be very helpful in ensuring that we know that we are providing the right support.

Chair: Thank you very much, Minister, for giving evidence to us this morning. We look forward to hearing from you on the various points we touched on during the session. Thank you, again.

Mr Timpson: Thank you very much.

Written evidence

Written evidence submitted by Blackpool Council

1.1 The following response, to the call for written evidence, is from Blackpool Council. It consists of contributions from staff working in the fields of early years, educational psychology, statutory assessment, specialist teaching support and senior management.

1.2 No part of this submission is confidential.

1.3 As a council we welcome the new changes and are supportive of the aims of the Bill, and the direction of travel. The main issues we feel that need to be addressed are, having significant capacity, including finance, to enable such significant changes to be successful, time being required to fully trial new approaches and there being sufficient time to implement new systems.

2. SPECIFIC QUESTIONS

GENERAL

2.1 Does the draft Bill meet the Government's policy objective to improve provision for disabled children and children with special educational needs?

2.1.1 The draft Bill stands as an aspiration for SEND and reflects an overarching desire to make provision and inclusion a clearer and more focussed process. Many of the objectives could be met by the proposals around joint commissioning/integrated delivery/placement and monitoring of provision to ensure good outcomes. However, there is not enough detail in the draft Bill to be able to fully answer this question. Elements look too much like old legislation. The fine detail arising from the Pathfinders/scrutiny will hopefully define further changes.

2.1.2 Care will need to be taken in any transition arrangements, because the Pathfinders have been working with reasonably small cohorts of volunteer families, whilst implementation across all of England will be on a different scale. Due to the time scales many of the Pathfinders only recruited cohorts of families by June. The long term consequences of the proposals can therefore not be fully tested.

2.2 Will the provisions succeed in cutting red tape and delays in giving early specialist support for children and young people with SEN and/or disabilities?

2.2.1 Care needs to be taken that lessons learnt from the pathfinders are applicable across environments in each local authority, across the country. Blackpool has a transient population, and significant numbers of young people newly entering the town have a Statement of SEN (9.8% new arrivals had an existing Statement last year, compared with the national average of 2.8%, for all young people). Another local authority will have a very different demographic profile.

2.2.2 Blackpool has trialled a post Lamb Inquiry approach ("CAN") that we would welcome further discussions about. The approach has been positively received by parents as both cutting bureaucracy and enabling the speedy delegation of resources. It is an approach we are successfully using with early years children.

2.2.3 Care must be taken not to create a system that can become adversarial again. There is tension in any system that delegates resources according to need, and lessons learnt from authorities such as Blackpool (virtually no tribunals due to resolving most concerns early) need to be incorporated into any new approach. As well as the overall system, the culture within organisations (recognising parental anxiety and working with this) is vital here.

2.3 What will be the cost?

2.3.1 There will be significant financial pressures on local authorities as their role significantly changes and expands in regards to the new Bill and financial responsibilities. These changes have occurred at a time of budgetary cutbacks, when growth will be needed to fully implement the changes and new roles. An example is in regard to the funding of post school provision from April 2013. The finance has been moved from the EFA, but not the capacity to manage this.

2.3.2 However, if the system does not lead to improvements in the outcomes for CYP with SEND, there will be long term costs in terms of the young people and families themselves. Particular attention must be given to those with hidden disabilities, for instance autism, that could be missed by support mechanisms unless highlighted by such documents as the new Code.

2.3.3 Potential issues exist for a local authority such as Blackpool. Historically the borough has delegated significant SEN resources to schools. However, this finance can not be recouped from schools because of the

minimum funding guarantee. If there are to be less EHC plans nationally than the current levels of Statements, or the decision re criteria is a local one, this will not be an issue. However, if not, there will be extra costs in a number of authorities who have historically delegated more SEND finance to schools than the national average.

2.3.4 If independent mediation between local authorities and parents (section 30) is compulsory at too early a stage, this could lead to increased tribunals and costs in some authorities, where early resolution is sought. Mediation needs to occur at the appropriate time, after all attempts to arrive at consensus are sought.

2.4 What impact will the draft Bill have on current institutional structures?

2.4.1 The role of the SENCo is vital. They need to be within a school's senior management structure, and this role reflected in the Bill (Clause 40), or new Code. Their training also needs to be expanded to understand all aspects of the EHC plan.

2.4.2 A key part of the draft Bill is the monitoring of progress and the clauses (section 38) allowing local authorities to do this are welcomed.

2.4.3 There will need to be significant structural changes at all levels of organisations, from central government to local areas. Joint commissioning, for instance, will have an impact. Until the exact detail emerges, exact changes can not be fully known. We would welcome the facilitation of work across the mental health/LDD thresholds to be made within the new frameworks, and a review of the different thresholds that exist at different age ranges to access support.

2.5 What transitional arrangements should be put in place in moving from the existing system?

2.5.1 This needs to be carefully planned so that institutional (and cultural changes in some cases) can occur, without losing the momentum needed to establish the change. One significant issue will be the transfer (or not) of the current Statements (226,125 in England) into EHC plans. A decision will be needed regarding this, because a number of parents may wish this to occur. To do so will need significant resources targeted in local authorities and health organisations, at a time of financial austerity. If young people, who have left school, need a re-assessment this will take considerable amounts of resources in the short term.

2.5.2 Current early years/school based systems will need considerable development work to enable change, and work force development for key staff will be required across agencies

2.6 What can be learned from the current pilot schemes and how can these lessons be applied to the provisions of the draft Bill?

2.6.1 The current pilot schemes are small in terms of scale and care will be needed to transfer learning into a wider context.

2.6.2 Examples of existing integrated teams/pathways (such as the Complex Difficulties Team in Blackpool) would be also useful to build into ways forward. The team were evaluated by an external body who found that parents felt confident that they were providing early intervention and support for CYP with disabilities. The CAN approach in Blackpool builds on the integrated pathway approach, with person centred planning at the heart.

2.7 Is there anything missing from the draft Bill?

2.7.1 Until there is more substance from scrutiny and the Pathfinders, this question is hard to answer. There needs to be clear dialogue across all agencies, both nationally and locally to enable the integration to work. The role of the Children's Trust in this will be vital. The dialogue must involve parents/CYP and the VCS.

2.7.2 There is no mention in the Bill about CAMHS and we feel that this is a big gap, since they need to be part of any integrated support package.

2.7.3 Unless there are legal obligations for all partners to deliver on all aspects of the EHC Plan there are dangers that parts of it will be seen as less important than others.

2.7.4 Areas of "clinical judgment" of need, where there is no definitive test, such as ASD, BESD need greater clarity within any new Code. Reference to, for instance, the Royal College of Psychiatrists guidance on ASD diagnosis would be useful.

2.7.5 There is a significant issue regarding elective home education legislation, and how this can lead to students with SEND not receiving appropriate education. There are also, occasionally, safe guarding issues that can not be picked up due to limited access rights. This needs to be addressed as part of any new legislation.

SPECIFIC

2.8 *Whether it would be appropriate to move away from “special educational needs” and use the term “learning difficulties and/or disabilities” instead in the new system?*

2.8.1 Any terminology must celebrate difference and diversity, moving away from “within person” descriptions of the causes of need. The danger in moving away from special educational needs to learning difficulties and disabilities is that the word need is lost and terms become more internal, rather than recognising external factors as well.

2.8.2. We have come across many different definitions of either SEN or disability enshrined in various statutes. This causes great difficulty for all. This is an area where we must learn from the Olympic Spirit and disabled people themselves. They learn differently but are very able in many areas and the challenge to all is to ensure these abilities are realised and they have the time and commitment to do this. Learning Disability is much more preferred to Disability or Special. Celebrate difference within the Bill and the subsequent code.

2.9 *How the general duties on local authorities to identify and have responsibility for children and young people in their area who have or may have special educational needs (Clauses 3 and 4) work with the specific duties in other provisions (Clauses 5 to 11, 16 and 17 to 24)? Are they sufficiently coherent?*

2.9.1 The coherence will hopefully come in the later detail emerging from the Pathfinders. The duty for local authorities to cooperate with local partners (section 8) is welcomed. It would be useful to have a formal partnership board established in each local area, with clear terms of reference relating to the duties (for instance ensuring that all relevant parties contribute to assessments/the local offer). This would reinforce the duties regarding SEND across all agencies. There is a concern re the new clinical commissioning arrangements and the need to highlight SEND issues within them.

2.9.2 The word integration, relating to services, needs to be seen as inclusion, where there is mutual respect/work together across agencies. Integration can still mean that issues arise with professional status and so on. The young person and family need to be at the heart of any decision making.

2.9.3 There also needs to be clear distinctions between the commissioning and provision functions of the duties, although the two processes should be complementary. Guidance and examples of good practice (of which there are many) would be useful in the new Code.

2.9.4 Clarity is required re any provision being cost effective, with positive outcomes for CYP at the heart. Parents will almost always want what they see as the best provision for their child, but local, cost effective options should be sought if these can meet needs. The 2001 Code of Practice on SEN discusses the need for intervention when “adequate progress” (eg 5.41/5.42) is not being made by the CYP. The word “adequate” is not aspirational enough, but there needs to be clarity around the type of progress that should be expected in the new Code.

2.9.5 In section 17 there is no mention of transport.

2.9.6 The right to visit all educational institutions to monitor the progress of CYP with an EHC plans is welcomed. However, it would be welcomed to extend this for all CYP with SEND, so that appropriate early intervention also occurs for all.

2.10 *Should the scope of the integrated provision requirement be extended to all children and young people, including those with special educational needs?*

2.10.1 Yes. We need to support all CYP within the same frameworks, with enhancements for those who need this.

2.11 *Should other types of schools and institutions be included in the duty on schools to admit a child with an education, health and care plan naming the school as the school to be attended by the child?*

2.11.1 It should cover all types of schools/colleges that are financed by the public purse. Early year’s providers, including private and voluntary, and post 16–19 providers such as Independent Service Providers should also be included.

2.12 *Do the provisions for 19 to 25 year olds provide a suitable balance between rights, protections and flexibility?*

2.12.1 Once again greater clarity is required. There are far too many young people with SEND who are NEET. This is often in the areas of “hidden disabilities” such as ASD. If the plans cease when the young person leaves education/training this group can be disadvantaged, and safe guards need to be built in. Leisure would be useful to be explicitly covered under the care aspects of the Plan, to enable this group to access appropriate services.

2.12.2 Greater clarity is required about what areas the term “*training*” (for instance section 24–3) covers for those young people no longer in school. Reassurances need to be given to young people and parents re the type of support they will get if choosing a post school option where the Plan will no longer apply.

2.13 *Do the provisions achieve the aim of integrated planning and assessment across agencies?*

2.13.1 Within “*Support and Aspiration*” there was much debate concerning the need for an early, speedy assessment of need. This is an important aim. However, the importance of assessment over time, within a context that the CYP is usually in, needs to be part of the Bill or in the new Code. This is especially relevant when the child is young. Needs can change over time, and there will be different interactions with familiar adults and strangers. Historical models of children being taken out of familiar surroundings, and asked to do certain tasks with a stranger, do not give an accurate picture. Needs are contextual and the context is important in being able to evaluate how best to support CYP with SEND.

2.13.2 Clear guidance needs to be given regarding assessment processes, and this should be an important part of the Code. Person Centred Planning (PCP) appears to be one of the options emerging from the Pathfinders. If this is adopted as the future way of planning, training will have to occur across all professional groups, and some families will need support during the meeting.

2.13.3 Regular reviews of EHC Plans need to be clearly stipulated in the Bill, possibly at a shorter time span for younger children.

2.14 *How could the power given to the Secretary of State to make regulations with regard to the practicalities of the assessment and planning process be best utilised to achieve the aim of integrated support?*

2.14.1 Regard should be given to the low incidence survey carried out by Peter Gray (2006) <https://www.education.gov.uk/publications/eOrderingDownload/RR729.pdf> This report answers the question and also has good evidence based on sound consultation with objective analysis leading to informed recommendations.

2.14.2 Examples of good practice in multi-professional assessments, such as autism pathways and professionals crossing agency boundaries, like some specialist teachers, educational psychologists, need to be utilised.

2.15 *What impact will the new powers provided for in the clauses have on young people’s transition into adult services?*

2.15.1 It would be useful to further expand on transitions in a separate chapter in the new Code. This is often an anxious period for young people and their families. Agencies can also have different operational transition points, due to different legislation, guidance and/or practice. Further clarity, to resolve this, needs to be made in the Bill, replacing previous legislation/guidance in the respective areas.

2.16 *Should the provisions in this bill relating to portability of social care support reflect those for adults contained in the Care and Support Bill?*

2.16.1 The Bills need to join up in a clear way.

2.17 *How could the provisions in the Bill be used to reinforce protections for young people with special educational needs who are in custody or who are leaving custody?*

2.17.1 There should be a duty for relevant aspects of the EHC plan to be delivered in custody, so that the needs can be met. Relevant aspects of a Plan should also apply to the police and judiciary. Arrangements between the home local authority, and where the place of custody is, need to be stipulated. A post custodial plan should be mandatory, involving the home authority in respect of saying how the plan will now be delivered.

2.17.2 All YP entering custody should have their SEND re-assessed, to investigate any specific needs such as learning or language that may not have been initially identified. There is agreement with Clause 4.16 concerning assessment occurring in custody if required. Again arrangements between a home and host authority will need to occur, because this could be a significant burden on those authorities where a large young offender’s provision is located.

3. GENERAL POINTS

3.1 Currently local areas have different approaches to SEN. This makes sense in terms of local decision making, and the local context. However, it can also lead to some confusion for parents and young people. The local offer may help clarify what is available in each area, but a minimum offer to be made would be useful in the Code to improve consistency.

October 2012

Written evidence submitted by National Deaf Children's Society (NDCS)

The National Deaf Children's Society (NDCS) is the leading charity dedicated to creating a world without barriers for every deaf child. There are over 35,000 deaf children in England. We welcome the opportunity to respond to the Education Select Committee request for submissions of evidence on the draft Children and Families Bill. Further evidence, gained through analysis of government data, consultation with parents and extensive engagement with local services can be provided on request.

Throughout our response, we have suggested possible questions for the Committee to explore. These are shown as indented italic questions.

1. Does the draft Bill meet the Government's policy objective to improve provision for disabled children and children with special educational needs?

1.1 No. NDCS believes that the draft Bill is a positive step forward and strongly supports aspects of the draft Bill. However, we also believe it needs to go further to achieve the government's policy objectives and to avoid unintended and damaging consequences. Key issues for NDCS include:

EDUCATION, HEALTH AND CARE PLANS (EHCPs)

1.2 We welcome the extension of existing statutory rights within the statement to young people aged 16 to 25 with SEN. However, we are disappointed that this will only apply to young people who remain in certain forms of education and training. We believe deaf young people with apprenticeships (a form of education) should be eligible. We also believe there has been a missed opportunity to support young people who are not in education, employment or training (NEET). NDCS believes that all young people with special educational needs who are NEET should have a EHCP to ensure they receive the support they need to help bring them into education, employment or training.

1.3 NDCS believes that the alternative—having a dormant EHCP which can be “re-activated” as needed when a young person returns to education—relies on the education services keeping track of all young people who are NEET. NDCS is not convinced that all local authorities have adequate systems in place to do this.

Q. What is the rationale for excluding apprenticeships and those who are NEET from the Education, Health and Care Plans?

1.4 Many deaf children and young people rely on health services such as speech and language therapy or audiology services to achieve their educational potential. However, the EHCP does not introduce any new statutory rights against health or social care services. We believe this is a missed opportunity to strengthen parent's ability to hold health services to account.

Q. Should Education, Health and Care Plans be properly enforceable against health services, in the same way that statements are against education services?

1.5 Clause 24(3)(a) of the draft Bill indicates that a EHCP will cease if a child or young person has achieved the outcomes set for them. NDCS believes this is a flawed approach; for many deaf children, it is only through ongoing support that they will continue to achieve the outcomes set for them. The wording could also introduce perverse incentive for local authorities to set “easy” outcomes for children to achieve in order to end the EHCP quickly.

LOCAL OFFER

1.6 NDCS supports the local offer as a tool for providing parents with more information about local provision and empowering them to hold services to account for what is not available. To achieve these aims, we believe the local authorities must be required to:

- Show information by type of special educational need and disability, so that parents of deaf children can find information relevant to them.
- Must be of a set format across England so that parents can easily compare across different local authorities.
- Be preceded by a “gap analysis” so that local authorities are clear where they need to go further in their local offer. This gap analysis should be done in consultation and liaison with parents.

Q. How will the Department ensure that the local offer provides useful information about different groups of children with SEN and which allows comparisons between different local authorities?

1.7 It is unclear what will happen if local authorities do not provide meaningful information as part of the local offer. NDCS has encountered serious difficulties in extracting basic information about services for deaf children. In NDCS's experience, existing legal requirements are often widely ignored. As such, NDCS believes further action is needed to strengthen the transparency and accountability framework around local authorities.

Q. How will the Department ensure that local authorities provide meaningful information as part of the local offer and what will the consequences be if they do not?

PERSONAL BUDGETS

1.8 NDCS believes that the proposals around personal budgets in the draft Bill could risk undermining existing provision and will result in unintended consequences, unless carefully implemented. NDCS is concerned that small services for children with low incidence needs could be disproportionately hit if their funding is reduced as a result of delegation of funding to parents. This would, in effect, reduce choice to other parents of deaf children.

1.9 The SEN (Direct Payments) (Pilot Scheme) Order 2011 for SEN pathfinders set out a number of important safeguards around personal budgets, including a requirement that there be no negative impact on existing services. These safeguards do not currently appear on the face of the draft Bill.

Q. Should safeguards to protect existing services from negative impact of personal budgets be on the face of the draft Bill?

1.10 Finally and importantly, we also believe that the government's policy objectives are being undermined by local authority spending cuts. NDCS's Stolen Futures report has found that in 2012, one in four councils have made cuts to education, social care and/or speech and language therapy services for deaf children. Without expert professionals, knowledgeable in deafness, it is difficult to see who will be able to act as a key worker, prepare a EHCP, contribute to the drafting of a local offer and so on.

Q. How will the Department ensure that local authority spending cuts do not thwart their ambitions on special educational needs reform?

2. Will the provisions succeed in cutting red tape and delays in giving early specialist support for children and young people with SEN and/or disabilities?

2.1 Not sure. In some areas, there is a risk that the proposals will introduce new layers of complexity to the process. For example, there will be no single means of redress against any issues with the new EHCP. Health and social care services will not be held to account, via a Tribunal, in the same way that education services are.

Q. Should a single plan come with a single means of redress?

2.2 In addition, the proposal to introduce mandatory mediation will be seen as a bureaucratic hoop by many parents. The evidence base for mandatory mediation is unclear. NDCS is particularly concerned that some parents may feel "pressured" during mediation to accept something less than what their child needs.

Q. What evidence supports the belief that mandatory mediation will lead to less cases going to Tribunal and improved parental satisfaction with the process?

3. What will be the cost?

3.1 NDCS is not able to make reliable estimates around costs but we believe key costs are likely to emerge in the following areas:

- The use of key workers in supporting families with their EHCP and personal budgets presents significant resource implications for local authorities and it is unclear how this additional role will be funded without drawing funding away from existing services.
- Mandatory mediation may lead to greater costs. NDCS is unaware of any evidence to suggest it will lead to less cases going to Tribunal nor that this proposal will be cost-neutral.
- Unless safeguards are put into place, personal budgets may lead to reduced funding for existing services. This may need to be offset by increased funding to make sure that existing services and other parents do not suffer as a result.
- Increased duties to provide EHCPs to young people aged 16 to 25, as well as to assess young people in this age group for EHCPs, will place additional pressure on local authority budgets. In addition, the raising of the participation age and impending funding changes mean that local authorities will have increased funding responsibility for young people aged 16–25 with special educational needs. NDCS is not convinced that the Government has budgeted adequately for these increased responsibilities.

4. What impact will the draft Bill have on current institutional structures?

4.1 NDCS hopes the draft Bill will lead to more flexible joint commissioning between health and education services and welcomes the proposed new duty around this. But it is not clear what incentives there will be for services to comply with this duty and what the consequences will be if they do not.

Q. How will the Department ensure that education and health services jointly commission services and what will be the consequences if they do not?

5. What transitional arrangements should be put in place in moving from the existing system?

5.1 NDCS would like to see explicit safeguards in place, on the face of the Bill, that ensure no changes can be made to existing provision until and unless the impact on children with special educational needs can be shown to be neutral or positive.

6. *What can be learned from the current pilot schemes and how can these lessons be applied to the provisions of the draft Bill?*

6.1 NDCS's impression is that the pathfinders are still at a very little early stage of development. Thus far, we are aware of emerging concerns around:

- Health accountability. Some services have reported anecdotally to NDCS that it has been difficult to secure engagement with local health services.
- NDCS has also come across a range of EHCPs being used in the pathfinders. NDCS is concerned that many are too weak and oversimplified, with inadequate focus on expected outcomes.

6.2 It also appears to NDCS that the numbers of deaf children involved are very small. For example, across the South West, NDCS is currently aware of only one deaf children being involved in any of their pathfinders. SEN is not a single entity and deaf children, as a low incidence group, require access to highly specialist services. NDCS is concerned that it will be difficult to apply any lessons from the pathfinders to deaf children.

Q. Is the Department comfortable that the pathfinders are testing the impact of their proposals across the full breadth of special educational needs, particularly those with low incidence needs?

7. *Is there anything missing from the draft Bill?*

7.1 The SEN Green Paper highlighted the benefits of regional commissioning, particularly for low incidence needs. NDCS is disappointed that the draft Bill does not take this forward. NDCS would welcome the creation of a duty on local authorities to regionally commission services for children with low incidence needs, with steps taken to ensure this is acted upon.

Q. Has the Department considered how it can encourage regional commissioning of services through the draft Bill?

7.2 There currently exists a widespread postcode lottery of specialist support for deaf children in England. For example, some visiting Teachers of the Deaf are working with an average of over 100 deaf children each (the national average ratio is 46 to one). Many local authorities are unfamiliar with the needs of deaf children and other children with low incidence needs. NDCS is therefore in agreement with SEC and Every Disabled Child Matters that there should be a national offer to inform the development of local offers to ensure that every deaf child gets the help they need.

Q. Do children with low incidence needs require a national offer to ensure local offers meet their needs?

8. *Whether it would be appropriate to move away from "special educational needs" and use the term "learning difficulties and/or disabilities" instead in the new system?*

No response.

9. *How the general duties on local authorities to identify and have responsibility for children and young people in their area who have or may have special educational needs (Clauses 3 and 4) work with the specific duties in other provisions (Clauses 5 to 11, 16 and 17 to 24)? Are they sufficiently coherent?*

9.1 NDCS's concern is not that the new proposed duties are incoherent but that they are too weak. For example, in terms of joint commissioning and collaboration, it is unclear what a parent could do if they feel that health and education services have failed to work together. In addition, if health services are required for a child to make progress, it is not clear how parents can hold health services to account for a failure to do so if they cannot be taken to Tribunal in the same way as education services can. Overall, NDCS believes that the current duties lack sufficient "bite" on health services.

9.2 Clause 4 places the onus on local authorities to identify whether a child has a special educational need. There is no such onus on health services. For deaf children, health services normally identify whether a child is deaf. NDCS believes Clause 4 should therefore be extended to require health services to inform a local authority whether a child is likely to have a special educational need. This would help support early intervention.

Q. Should health services have a greater, clearer role in identifying children who may have special educational needs?

10. *Should the scope of the integrated provision requirement be extended to all children and young people, including those with special educational needs?*

10.1 At the very least, NDCS would like to see it extended to all disabled children.

11. *Should other types of schools and institutions be included in the duty on schools to admit a child with an education, health and care plan naming the school as the school to be attended by the child?*

11.1 In terms of post 16 provision, NDCS believes that apprenticeships should also be included in the duty to admit a young person with a EHCP, where appropriate.

11.2 Further Education (FE) colleges are already included. NDCS believes the Department could go further by requiring FE colleges to provide a place on a particular named course where this is specified in a EHCP and where appropriate.

Q. Should a young person be able to request a specific course at a college in their EHCP?

12. *Do the provisions for 19 to 25 year olds provide a suitable balance between rights, protections and flexibility?*

12.1 No. NDCS believes it is too weak on rights. NDCS is particularly disappointed that those not in education, employment or training, will not receive any support via a EHCP to help get them back into education, employment or training.

13. *Do the provisions achieve the aim of integrated planning and assessment across agencies?*

13.1 No. NDCS is unclear what the read-across to social care assessments, particularly for children in need, will be. Under other Department for Education proposals, children in need, which includes all disabled children, will no longer be required to have a realistic plan of action following assessment or for that assessment to be normally completed within a specified timescale.

13.2 As before, NDCS also believes there needs to be stronger accountability against health services to ensure genuine integrated planning.

14. *How could the power given to the Secretary of State to make regulations with regard to the practicalities of the assessment and planning process be best utilised to achieve the aim of integrated support?*

14.1 NDCS believes that a number of changes should be made on the face of the draft Bill, rather than through regulations, to improve on integrated support. In particular, NDCS believes the draft Bill should strengthen the accountability of health services in terms of the EHCP and joint commissioning.

15. *What impact will the new powers provided for in the clauses have on young people's transition into adult services?*

No response.

16. *Should the provisions in this bill relating to portability of social care support reflect those for adults contained in the Care and Support Bill?*

16.1 Yes. NDCS would also like the same principles around portability to apply to all aspects of the EHCP.

17. *How could the provisions in the bill be used to reinforce protections for young people with special educational needs who are in custody or who are leaving custody?*

17.1 As NDCS understands it, having left education, young people in custody or leaving custody would not have a EHCP. NDCS believes that all young people with special educational needs who are NEET should have a EHCP to ensure they receive the support they need to help bring them into education, employment or training. This should include those in custody or about to leave custody.

October 2012

Written evidence submitted by Peter Gray, Senior Consultant, Strategic Services for Children and Young People

A common point of agreement among witnesses at last week's oral evidence session was that the draft legislation is very broad and adds little to the current statutory framework (beyond the extension of the system to 25). At this stage, the main voluntary sector concerns relate to potential loss of parent/child entitlement resulting from the move from statements to EHC plans.

The main thrust of my evidence is that there is going to be little positive progression for SEND while entitlement continues to be focused at the individual child level. Parents will see the EHC plan as a direct substitute for the statement and expect similar (or enhanced) statutory safeguards through this mechanism. Existing issues around accountability and eligibility for additional resources are not being addressed and will continue to lead to difficult relationships between schools, parents and Local Authorities.

Parental confidence will only be raised within a broader framework of accountability, built around clearer national expectations of all mainstream schools/academies and local services, against which "local offers" are

monitored and evaluated. Accountability needs to match more closely the balance of funding to ensure that it corresponds with where money currently lies.

This implies a more robust approach to school SEND inspection, and, at Local Authority level, OfSTED will need to focus more on the strategic management of this area.

The notion of a single EHC plan has been influenced to some extent by the Coordinated Support Plan approach in Scotland. This tends to be used for a smaller population of children with relatively complex and significant needs, where a multi-agency approach needs to be more clearly defined. Entitlement for the broader population of pupils with SEND is ensured through a stronger national emphasis on effective provision for vulnerable children at both school and service/local authority levels.

I am concerned that, if EHC plans apply to the overall population currently covered by statements (or more than this number), the process will not move us beyond the problems inherent in the existing bureaucratic assessment system. A number of children with statements do not require active involvement from Health or Social Care. Some pupils with specific physical disabilities may not have special educational needs or require much of an Education input. Good quality person-centred integrated assessments take time and should be focused on those children that need this level of coordinated input on an ongoing basis.

Committee members (Neil Carmichael and Pat Glass) asked for further written views on how Regulations might specify the requirement for inter-agency working more clearly. I would make the following suggestions:

- (i) Strategically, there should be a specific statutory requirement on Local Authorities to oversee the design and implementation of the Local Offer, and to identify and address any gaps/issues at school or service level. This function could be delivered by a board of nominated representatives (similar to Schools Forum), drawing on school leaders, health & social care commissioners, appropriate service/strategic managers and local parent/voluntary organisation leads. Guidance should be provided on how such reviews might best be conducted, drawing on best practice as exemplified in the National Audit that I conducted on behalf of the DFES in 2007.
- (ii) In contrast to some other witnesses, I am not convinced that the new Health & Wellbeing Boards are best placed to oversee this function, as their main focus tends to be on the Health/Social Care interface and there is no routine involvement of schools. In larger Authorities, they also operate at some distance from the operational level. However, they should have a statutory responsibility to address any implications from Local Offer reviews for further development of services and agency provision.
- (iii) Schools (including academies and free schools) should be required to collaborate with Local Authorities/Health Services in designing, delivering and reviewing the Local Offer, and in evaluating their own contribution.
- (iv) At the individual child/family level, there should be written protocols to guide practitioner recommendations, to avoid preemption of other agency decisions. The coordinator of the EHC plan should confer with each provider agency to confirm that the provision determined will be available. If they are unable/unwilling to provide, then agencies should be required to justify their decision, and undertake to fund this provision, if the Tribunal determines that this should be made available.

The National Audit included a range of other practical recommendations, some of which have already been put in place. I am attaching the Executive Summary of my report for your reference.¹ A key aspect for those young people with complex and significant difficulties is the importance of services ensuring they receive an appropriate degree of priority and working flexibly to meet individual needs. This is likely to become an even bigger issue with services under increasing budgetary and staffing pressures.

November 2012

Written evidence from the Every Disabled Child Matters campaign and the Special Educational Consortium

ABOUT US

1. The Every Disabled Child Matters campaign is a consortium campaign run by four of the leading organisations working with disabled children and their families: Contact a Family, the Council for Disabled Children, Mencap and the Special Educational Consortium. Since its launch, EDCM has gained over 34,000 individual supporters.

2. The Special Educational Consortium came together in 1992 to protect and promote the interests of disabled children and children with special educational needs (SEN). SEC is a broad consortium of 33 professional, voluntary sector and provider organisations.

¹ Not printed

3. EDCM and SEC are working together on the draft SEN provisions and the subsequent Children and Families Bill, and have produced this joint submission to the Education Select Committee.

PRE-LEGISLATIVE SCRUTINY LED BY THE EDUCATION SELECT COMMITTEE

4. EDCM and SEC welcome the Government's decision to release the Draft SEN Provisions for pre-legislative scrutiny led by the Education Select Committee. We welcome this opportunity to submit evidence to the Committee.

5. We attach a brief summary of the draft provisions as Appendix 1.

DRAFT LEGISLATION ON REFORM OF PROVISION FOR CHILDREN AND YOUNG PEOPLE WITH SPECIAL EDUCATIONAL NEEDS

6. EDCM and SEC broadly welcome the ambitions of the Bill which are to provide a clearer focus on outcomes and a more coherent, joined up approach to meeting the needs of children and young people. However, in some areas we believe that the draft provisions do not go far enough. This submission sets out our views on how the draft provisions could be improved in order to better realise the Government's ambitions for disabled children and young people and those with special educational needs (SEN).

Definitions and scope (provisions 1–4)

7. The draft provisions, as entitled, signal the reform of provision for children and young people with special educational needs. Many disabled children and young people also have special educational needs but some do not. Research has estimated that in the region of 25% of disabled children may not have SEN. Yet it is just as vital that these children and young people have access to the improved services and the better co-ordinated provision that should be the outcome of the draft provisions. It is important to send a clear signal to all the agencies involved that the Government intends the improved local co-ordination and new joint commissioning arrangements to apply to all disabled children and young people as well as those with SEN.

8. EDCM and SEC believe that the draft provisions should explicitly include disabled children and young people: disabled children and young people should be included in the title of the draft provisions, in the definition, in the responsibilities of local agencies. This will include them in all the other benefits of the proposed legislation.

EDCM and SEC believe that the draft provisions should explicitly include disabled children and young people.

9. Provision 4 extends local authority responsibilities to include all children with SEN, replacing the current duty that only applies to children who may need a statement of SEN. EDCM and SEC welcome the extension of local authority responsibilities to include this wider group of children and young people with SEN. We believe this will encourage an early response to children's needs. However, as with the other provisions, we want to see disabled children and young people included in this responsibility too.

EDCM and SEC welcome the extension of local authority responsibilities to a wider group of children and young people with SEN. This needs to include disabled children and young people.

10. The draft provisions apply directly to mainstream schools, including Academies (including free schools), maintained schools and colleges. This clarifies the confusion about the responsibilities of Academies towards children and young people with SEN.

EDCM and SEC warmly welcome the application of the draft provisions directly to Academies and their extension to include colleges.

11. Children and young people have the right to participate in all matters that affect them individually, and in strategic decisions about national and local authority service provision, development and delivery. This entitlement needs to be woven into the draft provisions. It needs to be supported by disability- and age-appropriate assistance to enable children and young people to participate in decisions about how their education, health and care needs are met, and how services are provided and developed.

The participation of children and young people in decision-making needs to be made explicit in the draft provisions.

Local integration and information (provisions 5–12)

Co-operation

12. The draft provisions require named partners to co-operate in relation to meeting the education, health and care needs of children and young people with SEN. Partners include special and mainstream schools and colleges, local authorities (including in relation to social services), providers of alternative provision and key health agencies.

EDCM and SEC warmly welcome the emphasis on joint working and co-operation across services.

Joint commissioning

13. Draft Clause 6 requires local authorities and clinical commissioning groups to make arrangements for joint commissioning. This includes arrangements for considering and agreeing reasonable provision to meet the needs of all children with SEN in the area, and specifically for children with education, health and care plans. Local authorities and clinical commissioning groups have to have regard to these agreements, and to the joint health and wellbeing strategy, when undertaking their functions. Schools, Academies, colleges and a range of other education providers, are required to co-operate with the local authority in these and other functions set out in the draft provisions.

14. Accountability for these joint arrangements needs to be clear.

EDCM and SEC welcome the joint commissioning requirements on local authorities and clinical commissioning groups. Accountability needs to be clear.

15. We believe that joint planning and commissioning will need to be joined up with commissioning arrangements undertaken by local Health and Wellbeing Boards, which were established by the Health and Social Care Act 2012. There need to be clear structural links between coordinating bodies, and in particular between Children's Trust arrangements and Health and Wellbeing Boards, in order that the Joint Strategic Needs Assessment carried out by Health and Wellbeing Boards takes full account of the needs of all children and young people in the area.

There need to be clear links between Children's Trust arrangements, Health and Wellbeing Board duties and the joint commissioning arrangements set out in the draft provisions.

Keeping education and care provision under review

16. Draft Clause 7 requires local authorities to keep education and social care provision under review, including whether local provision is "sufficient" to meet local need. Currently, draft Clause 7 only requires local authorities to consult education providers. We believe this should be extended to include parents, young people and health and care providers.

EDCM and SEC believe that that there should be a requirement to involve parents, young people and health and care providers in the review of local services.

The local offer

17. Draft Clause 11 requires local authorities to produce information on the education, health and care services it "expects" to be available locally, the "local offer". This includes information on provision available outside its area. The details of what the local offer should include and who should be consulted will be set out in regulations.

18. EDCM and SEC welcome the principle of a local offer. It will provide much greater clarity, for parents, children and young people about what is available locally and we believe this clarity will lead to better working relationships between parents and young people on the one hand and schools and services on the other. We would welcome assurances that regulations will require consultation with schools and other providers of education, with health and care agencies, and with parents and young people.

19. Children and young people who do not qualify for an education, health and care plan will be reliant on the local offer, so there needs to be a legal duty to provide what is set out in the local offer. Without this, there is no accountability and no route for challenge by parents and young people if the local offer is not delivered.

EDCM and SEC welcome the principle of a local offer. There needs to be an underpinning duty to provide what is set out in the offer.

20. To address the postcode lottery of support, EDCM and SEC believe some form of national standard should inform the development of the local offer. Children with lower incidence SEN or disabilities may be better served by a "regional offer". Their needs should be addressed as part of a national standard.

21. While the inclusion in the local offer of education, health and care services is welcome, there are other services which we feel should also be included. For example, employment support to help young disabled people find work and advocacy services are not included in the information that will be made available.

The local offer should include a wider range of services, such as employment support and advocacy services for young people.

Information and advice

22. Draft Clause 12 requires local authorities to ensure there is information and advice available locally for parents and for young people. Parent partnership services provide information and advice for parents.

23. EDCM and SEC welcome the extension of the information duty to include young people with SEN. Services for young people will need to be distinct from those for parents. Providers of this information need to be trained and resourced to provide age appropriate information and advice to young people. In addition,

appropriate structures and mechanisms need to be in place to ensure that professionals take into account the views of young people when making decisions about their education, care and support.

24. We re-iterate our earlier argument that all the draft provisions need to apply both to children and young people with SEN and to disabled children and young people.

EDCM and SEC welcome the extension of the information duty to include young people. Services for young people need to be appropriately tailored to meet their needs.

EDUCATION, HEALTH AND CARE NEEDS ASSESSMENT AND EHC PLANS (PROVISIONS 16–28)

25. Statements of SEN will be replaced by education, health and care plans (EHC plans). However, the majority of the provisions in relation to EHC plans remain the same as for statements. The threshold for an EHC plan is the same as for a statement—effectively that a school is unable to meet a child or young person’s special educational needs. The plan ceases when a young person is no longer in education or training.

26. EDCM and SEC welcome the concept of a multi-agency plan covering children and young people from birth to 25. We believe that children and young people who have health or care needs, but are not covered by the current SEN framework, should also be included in the new integrated system. They should be entitled to an assessment, and a plan where necessary, when the local offer, as it is provided across all agencies, cannot meet need.

EDCM and SEC welcome the concept of a single assessment and a multiagency plan covering children and young people from birth to 25. Children and young people with health and care needs should be able to access an assessment, and a plan where necessary.

27. EHC plans will extend all the statutory rights currently associated with a statement into further education and training for the first time. We welcome this. However, young people in apprenticeships or higher education will not benefit from these new entitlements. We have particular concerns that young people between the ages of 18 and 25, who may move in and out of education or leave education altogether, may lose access to support. We urge the Government to go further and commit to supporting young people up to the age of 25, in any setting and whether or not they are in education or training.

EDCM and SEC welcome the extension of the statutory entitlements into further education and training. We believe these rights should include young people in other settings, including apprenticeships and higher education.

28. We also believe the Government should provide clarity regarding the ownership of an EHC plan. It needs to be clear how and when it transfers from the parent of the child to the young person in their own right. The Government will also need to ensure that these draft provisions complement the adult social care reforms as they are set out in the draft Care and Support Bill.

29. Health and social care needs will have to be explicitly recorded in the EHC plan. However, there are no new duties on health and social care in relation to delivering what is in an EHC plan, though there is a duty to co-operate with the local authority, see above.

30. In order to improve on the current system, EDCM and SEC believe there should be statutory duties on health and social care services to deliver what is set out in an EHC plan. We also believe that parents should have a clear right to appeal if health and social care services do not deliver on what is in the plan. This should be a single point of appeal, across all aspects of the plan.

EDCM and SEC believe there should be duties on health and social care services to deliver what is set out in EHC plans, with a single point of appeal for parents and young people.

MEDIATION

31. Draft Clause 29 requires parents or young people to participate in mediation before they can appeal to the Tribunal. The mediator must be independent of the local authority. We are concerned that this proposal will add an extra stage in the process and place an additional demand on parents. Requiring parents to attend mediation is not a substitute for a continuing dialogue between parents and the local authority.

We are concerned that requiring parents to go to mediation before they lodge an appeal will add an extra stage to the process and place additional demands on parents.

SEN CODE OF PRACTICE

32. There will be a revised SEN Code of Practice, but unlike the current Code, it will not have to be consulted on or laid before Parliament. EDCM and SEC believe the draft Code of Practice should be consulted on and laid before Parliament. Parliamentary approval of the Code sends a signal to everyone about its significance.

EDCM and SEC believe the draft Code of Practice should be laid before Parliament.

DRAFT PROVISIONS ON SEN AND DISABILITY: A SUMMARY

Definitions and scope (provisions 1–4)

- The definition of a learning difficulty and special educational provision is broadly similar to the definition in the Education Act 1996.
- The definition of SEN, and the definition of those for whom the local authority is responsible, will be extended to young people as well as children. Young people are defined as being over compulsory school age but under 25.
- The local authority will be given a duty to identify all the children in their area with SEN. This duty is wider than the current duty in EA1996, which only requires LAs to identify children where they may need to determine the special educational provision (ie children who may need a statement of SEN). Importantly, this duty will not include a duty to identify disabled children or those with a health condition unless they need special educational provision.
- Draft clause 4 makes local authorities responsible for all the children and young people in their area with SEN. Again, this duty is more expansive than the current one. The intention is that the provisions in this draft Bill (for example, the duty to publish information in the local offer) should apply to all children with SEN, not just children with education, health and care plans. However, again, this will not include disabled children or those with a health condition unless they need special educational provision.
- All the references to mainstream schools include academies (including free schools) and maintained schools.

Local integration and information (provisions 5–12)

- Named partners will be required to cooperate in relation to meeting the education, health and care needs of children and young people with SEN. Partners include all special and mainstream schools and colleges, local authorities (including in relation to social services), providers of alternative provision and key health agencies (provisions 8 and 9).
- Local authorities will be required to promote integration in the exercise of their functions, specifically between education, health, and social care services, in order to improve children’s wellbeing. This applies to provision made outside an LA’s area (5).
- Local authorities will be required to keep education and social care provision under review, including whether local provision is “sufficient” to meet local need. It must have regard to the joint health and wellbeing strategy when undertaking this function (7).
- Local authorities and clinical commissioning groups “must” make arrangements for joint commissioning. This includes arrangements for considering and agreeing reasonable provision to meet the needs of all children with SEN in the area, and specifically for children with EHC plans. LAs and clinical commissioning groups have to have regard to these agreements, and also to the joint health and wellbeing strategy, when undertaking their functions (6).
- If health providers decide not to cooperate with any specific request from an LA they must respond in writing, in prescribed timescales, setting out why they will not comply (10).
- Local authorities will be required to produce information on the education, health and care services “it expects” to be available locally (the local offer). This will include information in relation to provision available outside its area. The details of what the local offer should include and who should be consulted will be defined in regulations. There will be a complaints mechanism in relation to the local offer although there are no details of how this will work (11).
- Local authorities must ensure there is advice and information available locally for parents and young people (12).

Education, health and care needs assessment and EHC plans (provisions 16–28)

- Statements of SEN are replaced with education, health and care plans (EHC plans). Most of the provisions in relation to EHC plans remain the same as for statements.
- The threshold for an EHC plan is the same as for a statement—effectively that a school is unable to meet a child’s special educational needs. Regulations may set out how this assessment must be conducted and how it might be combined with other assessments. The plan will cease when a young person is no longer in education or training.
- The duty on the local authority to secure the educational provision set out in an EHC plan is the same as it is currently with a statement.
- Health and social care needs must be explicitly recorded in the EHC plan. There are no new duties on health and social care in relation to delivering what is in a EHC plan, though there is a duty to co-operate with the local authority, see above.

- The section 139A assessment (Learning Difficulty Assessments) ceases to apply and is replaced with a re-assessment/annual review of the EHC plan.
- EHC plans extend all the statutory rights currently in a statement into the further education and training sector for the first time. Young people in apprenticeships are not covered.
- Rights of appeal to the Tribunal remain the same but is extended to further education.

Education providers (provisions 40–43)

- All of the provision of the Bill will apply to academies in full.
- Schools will continue to be required to have an SEN coordinator (40).
- Schools will still be required to inform parents and young people if they believe their child has SEN (41).
- Schools and post-16 institutions will still be required use their “best endeavours” to meet SEN (42).
- Schools must publish information on how they meet the needs of disabled children and children with SEN (43).

Inclusion (provisions 13–14)

- The presumption in favour of a mainstream education is retained, and extended to academies and further education.

Personal budgets (provision 26)

- Local authorities must prepare a personal budget in relation to an EHC plan where a request has been made by the parent and the young person. This may include, in some circumstances, the making of a direct payment.
- The details of this provision will be set out in regulations.

Mediation (provision 29)

- The parent or young person will be required to participate in mediation before they can appeal to the Tribunal. The mediator must be independent of the LA.
- Regulations may set out:
 - In what circumstances mediation is not necessary;
 - the training and qualifications required by mediators;
 - how the voice of children and young people should be sought;
 - time limits.

SEN Code of Practice (provision 44)

- There will be a revised Code of Practice.
- Unlike the current Code of Practice, the draft will not be laid before Parliament.

October 2012

Written evidence submitted by Hampshire Parent/Carer Network (HPCN) and Hampshire Parent Voice

1. INTRODUCTION/BACKGROUND

1.1 This document provides the joint response from the Hampshire Parent/Carer Network (HPCN) and Hampshire Parent Voice to the Education Select Committee’s request for evidence and submissions relating to the pre-legislative scrutiny of the Government’s proposed reform of provision for children and young people with Special Educational Needs (SEN).

1.2 *About Parent Voice*

Parent Voice is an information and participation service for parent/carers of disabled children and young people in Hampshire aged 0 to 19. We send out weekly bulletins to our membership database of 2,300 members (including 1,750 parent/carers) on local and national news relating to disability, as well as participation opportunities.

1.3 *About Hampshire Parent/Carer Network (HPCN)*

The Hampshire Parent/Carer Network is an independent parent-led parent/carer forum for parent/carers of children/young people in Hampshire aged 0 to 25 with disabilities and additional needs. We work with Hampshire County Council and Health to engage with parents/carers and to encourage effective parent

participation and co-production. We are part of the South East Region of the National Network of Parent Carer Forums.

2. SUPPORTING EVIDENCE

2.1 HPCN and Parent Voice engage/communicate with and represent the views of 1,800+ parents/carers of children/young people (0–25 years) with a wide range of disabilities/additional needs across Hampshire

2.2 HPCN and Parent Voice have provided parent/carer representation on all Hampshire Pathfinder workstreams (part of the SE7 Pathfinder), and this response includes the thoughts and feedback from the parent representatives who have been involved, as well as other parents/carers from Hampshire.

2.3 In addition to this, earlier this year we undertook a joint survey to parents/carers in Hampshire, looking at parental confidence across Education, Health and Social Care to help inform Pathfinder strategy and to look at how to improve experiences for families in Hampshire. 470 families responded to this survey, and the anonymised results of this survey, with a large number of anecdotal comments, can be made available to the Education Select Committee to provide evidence to support our response detailed below.

3. RESPONSE FROM HAMPSHIRE PARENTS AND CARERS

3.1 We have chosen to focus our response primarily to answer Question 1: Does the draft Bill meet the Government's policy objective to improve provision for disabled children and children with special educational needs? Our feedback below will also answer some of the other questions raised by the Committee.

3.2 *How the draft Bill should improve provision*

There are a number of areas in the draft bill which we believe will help improve provision for disabled children and children with SEN, in particular:

- 3.2.1 We welcome a joined up 0–25 plan covering Education, Health and Care. We believe this should particularly bring around improvements for families during the process of transition from Children's services to Adult services, which is often a difficult and stressful time for families, with a lack of support and information available.
- 3.2.2 We also welcome the joint commissioning of services between Education, Health and Care and hope that this will result in more joined up working between services. We hope that joint commissioning will lead to joint implementation and delivery, preferably with one point of entry for families.
- 3.2.3 We welcome the requirement for Local Authorities to work with parents and carers to look at the Local Offer both in terms of what should be delivered and how/when information is provided to parents. Our survey results show that many of the issues faced by parents are as a result of either a lack of provision of clear information, or poor communication. Effective communication and partnership working with families will help improve the situation for many children/young people and should be encouraged. We therefore welcome the principle of a published Local Offer.
- 3.2.4 We are pleased that academies, free schools and further education organisations will also be required to follow the same legal framework as State-maintained schools.
- 3.2.5 We welcome the engagement of parents/carers and children/young people in the development of plans as outlined in the draft bill.

3.3 *Areas where we believe the draft Bill will not improve provision*

We strongly believe that there are a number of areas where the draft bill is disappointing for parents and carers of children with disabilities/additional needs, in particular where it does not meet the original aspirations the Government set out in the Green Paper, much of which had been welcomed by parents/carers.

We would urgently request the Committee to review the following three areas as per our feedback below:

- Education Health Care Plan.
- Local Offer.
- Compulsory Mediation.

3.4 *Education Health Care Plan (EHCP)*

We welcome joined up working across all agencies, in terms of both joint commissioning, assessment and delivery. Feedback from families who have experienced joined up working locally has been incredibly positive and we are keen for this to be extended to all families.

However we have the following concerns around the current proposals:

- 3.4.1 We believe that the wording in the draft bill is still very unclear, particularly around who can request an assessment, and some parents have expressed concern that they will have less legal

- protection than is currently available. We would strongly urge the Committee to ensure that parents' rights are not eroded as a result of the introduction of the new legislation.
- 3.4.2 The draft Bill does not include wording to support parents' or a headteacher's rights to request an assessment and the Local Authority's duty to respond to that request within a set period (currently six weeks). The duty to assess lies with the Local Authority and it appears that there is no option for this to be challenged if they do not make a decision. This removes rights that parents currently have.
 - 3.4.3 There is no longer a specific duty on the Local Authority to proactively identify children who require an EHCP.
 - 3.4.4 It is our understanding from the draft bill that the Local Authority will decide whether a "joint" assessment takes place for a child/young person, whilst also holding the budget for SEN and Care provision. As there is no independence from those holding budgets the decisions around who is eligible for an assessment could continue to be resource led rather than need led.
 - 3.4.5 The Green Paper talked about independent assessments and an independent element to the drawing up of an EHCP. This is no longer evident in the draft Bill and there is therefore a risk that EHCPs will be significantly weaker and could be inadequate or insufficiently specified/quantified as a result.
 - 3.4.6 This is especially worrying given that the current requirement to "specify" provision is reduced to "set out" provision in the draft Bill. Feedback from parents has shown us that Local Authorities often attempt to use vague and unspecific wording when writing statements. However it is only when provision is specified that parents are able to seek redress when provision is not delivered to the agreed level, otherwise the level of provision is open to interpretation.
 - 3.4.7 Getting an initial assessment is one of the biggest issues parents have reported back to us, both anecdotally and in our parental confidence survey. Some parents have struggled for years to get their child's SEN recognised, or a diagnosis confirmed. There is no provision in the draft legislation to address the current situation where these parents who are seeking diagnosis/support for their child's needs currently hit a brick wall in the system—eg where a school or Local Authority are not wanting to recognise needs, missing the opportunity for early intervention.
 - 3.4.8 The EHCP will only be for children/young people with SEN—we have heard this described as there being an "Education spine". We had hoped that EHCPs would be for any child/young person with Education, Health or Care needs, rather than being introduced only when there are identified SEN.
 - 3.4.9 The wording in the draft bill does not make any changes to the system for children with special needs whose needs are not recognised as complex and severe, or who have fallen through the net as their needs are not yet being recognised as Educational needs (as mentioned previously). Therefore the eligibility for an EHCP (certainly one with statutory protections) essentially remains the same as it does for the current statement. We are disappointed that this could mean that parents will continue to need to fight for assessment of needs and an EHCP, in order to receive appropriate support for their child/young person.
 - 3.4.10 We are very concerned that the draft bill does not bring any additional help/support for those families with children who are on School Action or School Action Plus—for example, any child whose needs do not meet the criteria for statutory assessment—which in Hampshire is to do with what centile you are on in terms of attainment or cognitive ability. One example of a group of children who will be affected is those children with high functioning autism, who might be scraping by with average or just below average grades but could be capable of much more with suitable support. The Green Paper talked about reaching full potential, not simply reaching a minimum level of academic attainment.
 - 3.4.11 We are concerned that as parents/carers have the right to request personal budgets, this may result in some Local Authorities being less willing to issue an EHCP.
 - 3.4.12 There is no right of appeal or legal redress on the Health or Care elements of the EHCP only Education elements, as is the situation today. We had hoped that the new legislation would bring improved protection for families and accountability for Health and Care aspects of the EHCP; however it appears that families will only be able to enforce delivery of the Education aspects of the new joint plan. It is not clear how families would appeal if Health or Care aspects of the plan needed challenging or what redress is available if agreed Health or Care provision was not being delivered to plan.
 - 3.4.13 We are concerned that the new GP led Clinical Commissioning Groups, may not have the expertise to understand the long term complexities of the needs of families of children/young people with disabilities and SEN.
 - 3.4.14 We are also concerned that with the new EHCP some elements that are currently considered to be educational needs (eg Speech and Language) may be considered as Health needs under the

new plan, and therefore parents will have no right of appeal or legal redress for these areas, whereas they do currently when they are written into parts 2 and 3 of a child's statement.

- 3.4.15 We do not think it is clear therefore how the EHCP will be introduced for children 0–5years old, many of whom will not yet be in an education setting and therefore may not yet have a recognised or identified SEN but who are known to have a disability or additional need. We are also unclear on the implications for those young people who are 16–25 years who are not currently in an education setting. We believe the assessment and planning process should apply to children and young people who have a disability and who may not need or want educational provision including those who are moving into Adult services but not in formal education.

3.5 Local offer

Improved communication, and engagement with parents/carers is absolutely key to improving parental confidence and satisfaction in Education, Health and Care services.

We welcome the Local Offer but have the following concerns about its implementation:

- 3.5.1 We believe that there needs to be National minimum standards set that the Local Authority and Health are compelled to deliver as part of their Local Offer in terms of the format, minimal content and ideally the level of provision available. We would like to see the end of the postcode lottery that currently exists.
- 3.5.2 We would like to see these standards developed in conjunction with experts in particular disabilities and specific Special Educational Needs, to ensure that the Education, Care and Health standards meet with the latest recommendations and are needs led, not resource led.
- 3.5.3 There needs to be a statutory requirement for Health to input to Local Offer information and delivery, to be developed in conjunction with parents/carers and not just a statutory requirement for the Local Authority to publish the Local Offer.
- 3.5.4 There needs to be a legal requirement for all schools (including academies, free schools and FE) to work with parents/carers to develop their input to the Local Offer, and to publish a minimum standard of service provision and information. This will ensure consistency for parents whichever Education setting they choose. We are concerned that Local Authorities cannot currently enforce schools to co-operate and provide information or to engage with parents/carers in the development of their Local Offer.

3.6 Mediation

Whilst we would always encourage discussion with parents to seek a mutually beneficial outcome rather than legal redress, we have a number of concerns around compulsory mediation being introduced prior to tribunal:

- 3.6.1 Parents/carers see this as another obstacle or obstruction rather than a solution to getting the right support for their child.
- 3.6.2 Enforced mediation removes choice for parents/carers.
- 3.6.3 It will also increase the timeframe for going to appeal which is already considered to be too long (12 months+ on average).
- 3.6.4 Currently only the more educated and/or able parents appeal statements/annual reviews and initiate tribunal proceedings. There can also be financial implications of going to tribunal (eg sourcing specialist assessments and reports), often costing thousands of pounds, which also suggests that only those with sufficient financial resources are able proceed towards tribunal. The introduction of compulsory mediation will only affect these families (ie. those who would be able to proceed to tribunal currently) and will therefore not provide any support for those who are currently less able to challenge the Local Authority in order to get the provision that their child needs.
- 3.6.5 If a parent is appealing/proceeding to tribunal then positions have already been taken by both parties so it is may be late for mediation to be worthwhile.
- 3.6.6 We would prefer an alternative system or process where earlier support is introduced in order to try to reduce the numbers heading for redress. The key to avoiding conflict is better communication and working together with parents at an earlier stage to come up with a suitable solution that meets everyone's needs.
- 3.6.7 We therefore feel that there needs to be an independent ombudsman or arbitrator with sufficient influence and authority to resolve differences at an early stage, which parents or professionals can refer to when needed. There should be no cost associated with this for parents, to ensure all parents can access this route. We would like the Regulator to also ensure compliance with any new regulation and have specific monitoring based on the findings of the Lamb report.
- 3.6.8 There should also be "one door for parents to walk through". Not one for Health one for Education and one for Social Care (even if this information is available on the Local Offer). If there is one EHCP, there should be one way of initiating appeal discussions and accessing

redress, which everyone is aware of and has adequate and independent help and support to work through.

4. We would like to see more time to allow further learning from the individual Pathfinder areas, many of which are still at the very early stages of implementation of initiatives and trials. We would also like there to be independent scrutiny of what has and has not worked across the Pathfinder areas, allowing families involved with the trial to provide their feedback in a timely and effective manner.

5. We believe that this, along with continued involvement in the process from a wide range of parents/carers is necessary to ensure that the needs of families will truly be met by the new legislation. We would welcome continued and ongoing involvement by Parent/Carer forums in the development and implementation of the new legislation.

6. The current system is flawed in many ways, with parents being left frustrated, stressed and feeling as though it is a constant fight and battle. We want the new system to be less adversarial and for it to deliver some real and positive changes for families with children/young people with disabilities and additional needs.

7. This is a huge opportunity to improve “the system” and to improve outcomes for children and young people, and we do not want to see everyone’s resources, efforts and input to go to waste.

8. We would be happy to provide further evidence in writing or verbally at a Select Committee hearing.

October 2012

Written evidence submitted by the Department for Education

THE UK’S RESERVATION TO ARTICLE 24 OF THE UNCRPD

1. *The UK Government’s reservation to Article 24 removes the right of children with SEN to be educated in an inclusive manner in their own communities. In the light of the proposed legislation, does the Government plan to reconsider its reservation to Article 24, and commit itself to providing appropriate education provision, on an equal basis, for all children in their own local community?*

The UK Government has ratified the Convention and will meet its commitments under it. The previous Government took a reservation and interpretive declaration to Article 24, on education, and there are no plans to change this.

The Government believes that children and young people should be educated in provision that best suits their needs. Ofsted evidence shows that children with special educational needs can do well in all types of setting and that it is the quality of teaching and special educational provision and support which is crucial. In many cases, that provision will be in the local community. But requiring it to be provided in local communities may not always be the realistic or best option for the child or young person, particularly for those with the most complex needs where the best option might be outside of the child or young person’s immediate local area.

PARTICIPATION OF CHILDREN AND YOUNG PEOPLE WITH SEN

2. *Has the Government considered how it can enable children and young people with SEN to take greater ownership of their Education, Health and Care plan? Will the named child or young person be able to assist or determine the content of their Plan?*

Yes, it is proposed that children and young people will help decide what should be contained in their Plan. Plans would be centred on the needs of the individual and focus on the outcomes that child or young person wants to achieve. The young person would have the right to give views and submit evidence about their needs as part of the assessment process (draft clause 16 (2)(b)). It is intended that regulations and guidance will emphasise this.

The draft provisions also make it clear that once a young person is over compulsory school age it is they, rather than their parents, who would have rights in relation to their Education, Health and Care Plan, including for example a direct right of appeal to the Tribunal.

3. *Has the Government considered how children and young people with SEN might participate in the development of their local authority’s Local Offer? How can their wishes and input be protected?*

The Government believes that the process of developing the local offer is central to its success. The intention is that in preparing its local offer, a local authority should engage with children and young people with special educational needs, and their parents, over the provision included and how it is to be published. Draft clauses 11 (4) (c) and (d) would give the Government the power to make regulations setting out how a local authority must involve children, young people and parents in preparing its local offer. Local authorities could do this in a number of ways, including by working with Children in Care councils, children’s centres, schools and colleges and voluntary sector organisations and groups. Some approaches may work better in some local areas than others. Regulations will be drawn up taking account of the experience of the local Pathfinders that are

testing the reforms.² The regulations will need to reflect a balance between central prescription and enabling local flexibility to decide how best to involve children and young people.

4. In its Progress and Next Steps Paper, the Government proposed the establishment of a Young People's Advisory group, to help shape the next stages of reform. What progress has the Government made in this area, and how will the participation of young people inform reform of SEN education?

The Young People's Advisory Group will be launched on 27 October. The Department received applications from around 150 young people aged between 14 and 25. 30 successful applicants made the shortlist and have been invited to attend an open day on 13th October. The final group will be selected after the open day in readiness for the launch. The group will support the Green Paper reform programme by: providing feedback and advice; providing expertise and networks which will contribute to how the programme develops; highlighting and helping to tackle the challenges in how the reforms will work and working directly with officials to ensure that the Green Paper reforms reflect the experience and expertise of disabled young people.

ADVICE AND INFORMATION

5. What consideration has the Government given to drafting of Clause 12, so as to include all children, particularly in light of the obligations owed under Article 13 of the UNCRC but also, the fact that for the first time, children will have a direct right of appeal through the pilot scheme?

The Government does not believe that the draft provisions are the appropriate vehicle for setting up a system for giving advice and information for all children. The draft provisions relate specifically to children and young people with special educational needs and their parents. Draft clause 12 provides for local authorities to give advice and information to parents and young people about matters relating to special educational needs. Currently local schemes (known as parent partnership schemes) provide advice and information to the parents of children with SEN. The draft clause would also require local authorities to make arrangements to provide young people with special educational needs with relevant information and advice.

Draft clause 31 would give the Secretary of State the power, by order, to make pilot schemes enabling children in England to appeal to the Tribunal and make disability discrimination claims. The order may make provision enabling children to have access to advice and information in respect of an appeal or a claim (31(2)(f)). In order for the children to be able to appeal or make a claim they would either have to have special educational needs and be within the process of a single assessment and having an Education, Health and Care Plan drawn up for them or be disabled and believe they had been discriminated against.

Draft clause 32 would enable, once the pilots have been evaluated, an order to be made giving children in all local authority areas the right to appeal and make disability discrimination claims in England. The Government intends to give children access to the advice and information which will be available to parents and young people when the pilots are in operation. Subsequently, if the right to appeal and claim is given to children in England the Government will consider whether to give children access to the advice and information services when they are not appealing and making a disability discrimination claim.

EHC PLANS: HEALTH AND SOCIAL CARE NEEDS

6. The draft clauses impose obligations on local authorities making them "responsible" for children and young people in their area who have been brought to the authority's attention as having or possibly having SEN (draft clause 4). What does "responsible" mean in this context? How do the obligations imposed on local authorities in relation to children and young people with SEN fit with obligations on other public bodies arising due to a child or young person's health or social needs? What will be the general framework to ensure a child or young person is assessed and obtains the educational, health and social support they need. What agencies will be involved and what will their duties be?

Local authorities would become responsible for a child or young person in their area from the point that the authority identifies them, or they are brought to the authority's attention, as someone who may have special educational needs (draft clause 4). Anyone would be able to bring a child or young person to the attention of the local authority including parents, young people, schools, colleges, health and social care professionals. The draft clauses define the responsibilities on local authorities in relation to specific duties for promoting integrated services, joint commissioning of services, reviewing education and care provision, cooperating with other agencies, providing information and advice, preparing a local offer, carrying out assessments, drawing up and securing the provision in Education, Health and Care Plans, resolving disagreements, and undertaking mediation to resolve disputes.

The responsibilities local authorities have under these draft provisions would need to be discharged in conjunction with other obligations placed on local authorities and their partner Clinical Commissioning Groups through other legislation such as Section 17 of the Children Act 1989, the National Health Service Act 2006

² 20 local pathfinders involving 31 local authorities and their local health partners are testing the key reforms in the Government's special educational needs and disability Green Paper, including the local offer, the single assessment process and Education, Health and Care Plans.

as amended by the Health and Social Care Act 2012 and, when enacted, any relevant provisions in the draft Care and Support Bill for Adult Social Care Services.

The planning and commissioning of Education, Health and Care services should sit within the broader strategic health and wellbeing arrangements for the local population. Specifically, we would expect Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies to identify population-level needs and strategic priorities for the local area.

Clinical Commissioning Groups and local authorities would have a duty to commission the provision and support that is needed for all children and young people with SEN jointly (draft clause 6). These joint commissioning arrangements should be embedded within the wider strategic planning framework. There should be clear links through to the Health and Wellbeing Board, which includes Clinical Commissioning Groups, the local authority (including the Director of Public Health and the Director of Children's Services) and local Healthwatch.

This would mean that the approach to providing support to disabled children and young people, as well as those with SEN is part of a strategic approach to health and social care across local agencies.

Individual assessments would then be carried out in a context where local needs and services were identified and planned in an integrated way, and where local authorities and Clinical Commissioning Groups health bodies were required to work together to make arrangements for carrying out assessments of Education, Health and Care needs. The detail of the statutory provisions under which a child or young person should be assessed would be set out in regulations and guidance and would build on lessons learned from the Pathfinders. All agencies and organisations listed within the cooperation clauses within the draft provisions (draft clauses 8 to 10) would have a duty to cooperate with the local authority, including both NHS commissioners and service providers.

Local authorities are directly responsible for Children's and Adult Social Services and will need to ensure those services, where they are required, are integral to the support provided for children and young people with special educational needs, and that transitions between services are well-managed. The draft special educational needs provisions and provisions in the draft Care and Support Bill include measures to support better planning for transition (see question 22 below).

7. Will local authorities be under a duty to assess children and young people with health and social care needs in the same way as SEN or will this duty fall under other legislation to other public bodies or agencies depending upon the primary or first identified need?

Where the local authority is of the opinion that special educational provision is necessary, draft clause 16(3) makes clear that the local authority would be under a duty to secure an Education, Health and Care needs assessment for the child or young person. Local authorities have duties under section 17 of the Children Act 1989 to assess and provide support for children in need, including disabled children, and responsibilities for providing social care services to adults who need them, including young disabled adults.

While the local authority would not be under a direct duty to *carry out* the assessment of health needs they would be required to secure that assessment through co-operation with local clinical commissioners and NHS providers. Local authorities and Clinical Commissioning Groups (CCGs) would be required to work together to make arrangements about the local services to meet the education, health and care needs of children and young people with SEN (draft clause 6). These joint commissioning arrangements must particularly include arrangements for securing Education, Health and Care assessments.

This would help ensure that health bodies and local authorities would be part of the joint assessment and planning process from the start, and that Education, Health and Care Plans are created and committed to by each of the key local agencies.

Clinical Commissioning Groups have clear duties under the Health and Social Care Act 2012 to provide a comprehensive range of health services locally including medical services and "services as are required for the diagnosis and treatment of illness". The Secretary of State for Health will hold the NHS Commissioning Board to account for the delivery of objectives set out in the Mandate to the NHS commissioning Board. The draft mandate, published in July 2012 included an objective to contribute to the work of other public services, including: "ensuring that children and young people with special educational needs have access to the services identified in their agreed care plan."

Furthermore, under the draft provisions local authorities would be responsible for keeping special educational provision and social care provision under review (draft clause 7). They would also be under a duty to cooperate with a range of partners, including NHS commissioners and service providers (draft clause 8); and those partners would be required to cooperate with the local authority (draft clause 10). These cooperation duties would help the local authority fulfil its responsibilities including the delivery of the Education, Health and Care Plan, the local offer, the provision of advice and information and other duties.

8. *How will the Government ensure that disabled children with complex health and social needs, but not necessarily SEN, have access to a single assessment process and that there is sufficient coordination between the bodies and agencies involved?*

Disabled children and young people with complex health and social care needs would be covered by the single assessment process if their needs were preventing or hindering them from making use of mainstream educational facilities (draft clause 1 (2) (b)). Most children and young people with complex needs will need support from health and/or social care without which they would be unable to access education.

Where this is not the case, there would be nothing to stop local authorities and their partners from using a single, “tell us once” approach to assessing needs for other services on a non-statutory basis and developing their own non-statutory plans. The draft provisions would not affect local authorities’ duties under section 17 the Children Act 1989 to provide services for disabled children or the duties on health agencies to provide health care where required to children with complex needs who do not have Education, Health and Care Plans.

EXCLUSION AS A TRIGGER FOR SEN ASSESSMENT

9. *Why has the Government decided not to place “risk of exclusion” on a statutory footing as a trigger for assessment for children and young people with potential SEN?*

The trigger for an assessment would be when the local authority believes that a child or young person has, or may have, SEN, and it may be necessary for them to have an Education, Health and Care Plan. Anyone would be able to bring a child or young person to the attention of the local authority at any point, including when a young person is at risk of exclusion. There would be no need in primary legislation to single out exclusion, or risk of exclusion, any more than any other reason for considering an assessment. If a child or young person’s behaviour is such that teaching staff or others consider that special educational needs may be a factor, they can bring this to the attention of the local authority. The authority would then become “responsible” for the child or young person and decide whether to carry out an assessment. More generally, the Department for Education’s statutory guidance on exclusions makes clear head teachers should consider a multi-agency assessment for children who display persistent disruptive behaviour.

LOCAL OFFER AND THE TRIBUNAL

10. *Can the Government clarify the function and purpose of the Local Offer?*

The primary purpose of the local offer is to make sure that parents of children with special educational needs and young people with SEN have access to clear information about what support they can expect to be available within the local authority without having to search for it. Recognising that some local families and young people will seek services beyond the geographical confines of their own local authority, the local offer would include relevant provision beyond its borders such as places at non-maintained special schools.

The local offer would include social care services, for example family support services for a family with a disabled child such as short breaks, and health care services such as therapies.

The local offer would set out how to seek an assessment for an Education, Health and Care Plan and how to make complaints about services. The draft provisions would require local authorities to involve children, young people and parents in developing their local offer. The Government sees this as vital to the success of the local offer.

By making local provision more transparent, the local offer would enable parents, young people and local authorities to make comparisons between local areas and help to prompt discussions about developing local provision, including through local authorities working with neighbouring authorities to develop shared services.

11. *The draft clauses do not indicate that the Tribunal will be required to have regard to the Local Offer and there does not seem scope for this to be addressed in regulations. Does the Government propose changing the decision-making process of the Tribunal from one of statutory entitlement to reasonably expected resources with a requirement to have regard to the Local Offer?*

The Government is not proposing to change the decision-making process of the Tribunal. The Tribunal will continue to make decisions on the basis of the needs of individual children and young people and their statutory entitlements, where necessary, to assessments and Education, Health and Care Plans (where necessary) which set out their special educational needs and the provision that is required to meet those needs. The content of an individual’s Plan would be determined by the assessment of their needs and not the local offer. The local offer would be available to the Tribunal and could be submitted as evidence by a local authority, for example, to help the Tribunal Panel decide whether an assessment was necessary for a child or young person or whether what is normally available in the area would meet the child or young person’s needs.

While the Government does not intend to require the Tribunal to have regard to the local offer in either primary or secondary legislation it is envisaged that the revised Code of Practice, to which the Tribunal must have regard, would refer to it. The Tribunal must also have regard to relevant evidence which is submitted to it by the parties to the case, and that could include a local offer.

12. *What progress has the Government made in its discussions with the Tribunal?*

The Tribunal is an independent judicial body. However, the Department has regular meetings with the Tribunal to discuss and brief them on the Government's policy intentions.

13. *In what way will the Local Offer be used by the Tribunal?*

As an independent judicial body, this would be a matter for the Tribunal. The Department believes that the local offer could provide useful background information for the Tribunal panels to help them see individual appeals in the context of what is normally available for children and young people with special educational needs in the area (see also question 11).

14. *Will parents/children be able to enforce the Local Offer and to what extent will Local Authorities be liable for failure to (a) publish in the first instance, and (b) failure to deliver services specified in Local Offer? Again, the draft clauses do not address this point and it is not clear that it can or should be covered in regulations.*

Local authorities that did not publish a local offer would be failing in their statutory duty and be open to legal challenge or a complaint to the Secretary of State. Accountability for providing services set out in a local offer would, as now, rest with the services themselves and parents will be able to take up complaints through the established complaint and appeal processes. Draft clause 11 would require local authorities to provide details in their local offer of how people can make complaints and take up appeals. In keeping their local offer under review, local authorities would engage with the children and young people, and their families, for whom the services are intended, so that they can consider how best to respond to their needs.

REVIEWS AND RE-ASSESSMENTS

15. *Is there scope in the draft legislation for aligning duties to review and reassess with the Key Stages, so as to provide an integrated assessment of the child/young person's EHC needs alongside their progress with the relevant statutory education stages?*

Draft clause 23 would require local authorities to review a child or young person's Education, Health and Care Plan at least every 12 months. It specifies that regulations may make provision about other circumstances in which a local authority must or may review an Education, Health and Care Plan or secure a re-assessment, including around the end of a specified phase of a child's or young person's education. The specified phases could include key points of transition, for example from primary to secondary education, from school to further education, and could include statutory education stages. The intention is to firm up details on the content of the regulations over the coming months taking account of learning from the pathfinders, who are testing new approaches.

PERSONAL BUDGETS

16. *Can the Government confirm that local authorities will calculate the amount due to a child or young person on a needs-basis rather than a resource-basis?*

Local authorities and their partners will set out the provision, to meet the assessed needs, in a child or young person's in their Education, Health and Care Plan. Regulations will require that the personal budget meets the agreed cost of that provision.

To meet this requirement we expect that local authorities and their partners will develop resource allocation systems (or similar) to allow them to calculate indicative budgets for use with families during the assessment and planning process. Learning from the individual budget pilot for families with disabled children highlights that this is one approach that can work well and matches assessed need to available resource.

17. *The Government has already piloted a similar scheme through the Department of Work and Pensions "Right to Control Trailblazer" pilot, ending in December 2012. What, if any, lessons has the Government learned from this pilot? Does the Government intend to draw out best practices from that model and will that knowledge feed into the right to control personal budgets in this context? How relevant are the results of that Trailblazer pilot likely to be given that it dealt with personal budgets for disabled adults?*

The "Right to Control" pilot is one of a number of pilots that are informing the work of the SEN and Disability Green Paper pathfinders and the development of the draft legislation. We will work with the pathfinders and their support team to draw out any lessons from the formal evaluation of the "Right to Control" pilot, when published. We will also seek to incorporate key learning from evaluation of the Personal Health Budget pilot, due to be published this month.

The pathfinders are already building on the experience of the Department's Individual Budgets for Disabled Children Pilot. The pilot was established in 2009 and sought to establish whether a personal budget would increase choice and control and improve outcomes for families with disabled children by bringing together a range of funding streams including health, social care and non-statutory education services.

The Individual Budget pilots have told us a lot about how personal budgets can improve choice control and outcomes for families with disabled children; they have also highlighted the complexities and challenges faced by local areas when introducing personal budgets. Impacts on commissioning, markets, workforce, and developing support are common across the age ranges.

18. The draft legislation makes provision for the Secretary of State to make regulations governing the particulars of the personal budget scheme. Can the Government outline its thinking at this stage in relation to the following matters?

(a) Who will be entitled to request a personal budget?

A personal budget may be requested by the parent of a child or by a young person (from age 16) that has an Education, Health and Care Plan.

(b) In what circumstances may a local authority decline a request for a personal budget?

Local authorities will be required to meet requests to prepare a personal budget for funds and provision that falls within the scope of regulation.

Regulations will set out the detail of how requests can be made and the sources of funds that can be included. Within the scope of these requirements, we expect local authorities to be able to prepare a notional budget for all requests (where the local authority identifies the budget to meet assessed need in the Education, Health and Care Plan and the parent/young person directs how it is used, but does not receive the cash to purchase services themselves).

However, we will place additional requirements, in regulation around the use of direct payments and local authorities will be able to decline requests for these cash payments, which are held and spent by the parent or young person. They will be based on existing schemes and the learning from the current SEN direct payment pilot currently being undertaken by the pathfinder and individual budget authorities and will cover how and in what circumstances cash payments can be made, for example, current regulations specify persons to whom direct payments made not be made, such as those subject to a drug rehabilitation requirement.

(c) Will there be a right to appeal against a local authority's decision either to award a personal budget at all, or against the amount allocated to a child or young person?

Decisions not to award a budget will be restricted to the award of a direct payment (see question 18(b)). Requirements in relation to the use of direct payments will be set out in regulations including any rights to request the local authority to review their decision. However, should a decision be made against the award of a direct payment we will expect the authority to look at the use of notional identification of funds to meet the request for a personal budget and give the parent/young person the choice and control over the services they receive.

The personal budget is one means of delivering the provision set out in the Education, Health and Care Plan. Regulations will require that personal budget to be set at an amount that meets the agreed cost of the provision to which the budget relates. If that provision is not agreed by the parent/young person they will have a right to appeal to the First-tier Tribunal in relation to the provision rather than the amount of budget to deliver that provision.

(d) What, if any, safeguards will local authorities put in place so as to ensure personal budgets are used for their intended purpose?

We will provide in regulations safeguards to protect local authority funds against misuse, including requirements for monitoring and review and conditions on the recipient for receipt for the money. The detail will be based on existing good practice and reflect any lessons learnt from the SEN and disability pathfinder programme and regulations are likely to include advice on monitoring and review of personal budgets and direct payments.

(e) How does the Government propose to assist young people with SEN, who do have control of their personal budget, in terms of locating services? What arrangements will be made in terms of local brokerage and advocacy services?

We know from previous pilot activity that a crucial factor in the success of any personal budget programme or personalised service is the provision of an optional, tailored and independent support service to service users and families. The support provided should help users to manage their budgets and help them identify and locate the services they need to meet the agreed provision in their individual Education, Health and Care Plan. We also know that successful support services are flexible, and sufficiently diversified to meet individual local requirements. We anticipate that regulations will set out requirements for local authorities to provide information, advice and support to meet the local needs of personal budget users.

(f) Will local authorities be able to decline requests for personal budgets where there is a risk that take-up of the budgets is destabilising the ability of the local authority to provide SEN services?

The SEN and disability pathfinders and former Children's Individual Budget sites are currently testing the use of personal budgets including the potential impact on the delivery of services to other children and young people. Whilst we want parents, that want to have a direct payment, to be given that option whenever possible, we recognise that they may present a risk in this area.

That is why we have included a requirement for local authorities to consider the impact on other service users before agreeing any individual direct payment for special educational provision under the SEN Direct Payments pilot scheme. We will incorporate the lessons from this pilot in regulations. On occasion, a notional budget may be more appropriate, especially in the short term where it allows greater choice and control over services tied up within block contracts or reconfiguration of local authority services driven by meeting actual/ changing demand from service users.

RIGHT TO APPEAL: LOOKED AFTER CHILDREN

19. How does the Government propose to give full and equal access to the right to appeal for looked after children, particularly in light of the fact that local authorities are placed in a position of conflict when acting as both corporate parent and SEN decision-maker?

The draft provisions set out arrangements for the Secretary of State to make an order for pilot schemes enabling children in England, including looked after children, to appeal and make disability discrimination claims and, if the pilots are successful, to extend the right to appeal and make claims to children in all local authorities in England. The order making powers for the pilots (draft clause 31) and extension of the right to appeal and claim across the country (draft clause 32) may make provision for matters such as the support a child may require to appeal and make a claim, such as the availability of "case friends", who can exercise a child's rights on their behalf and about the provision of advocacy and support services to children. The Government sees these arrangements as particularly relevant to looked after children whose interests are not well served by the current limitation of the rights to make SEN appeals and disability discrimination claims to parents, including corporate parents.

20. Would the Government expedite the extension of the right to appeal (notwithstanding the pilot scheme provisions) specifically for looked after children as soon as possible?

The Government does not believe it would be appropriate to expedite the right of appeal for looked after children because it wishes to run pilots in order to test the best way of making the right to appeal for all children, including looked after children, effective and one which can be properly exercised by children

21. Does the Government propose greater use of independent advocates so that looked after children are provided with the resources and support their SEN needs require?

There are already arrangements to give looked after children access to advocates to help them receive the services that they require.

The Adoption and Children's Act 2002 requires local authorities to make arrangements for all looked after children, as well as other children in need, and care leavers to have access to advocacy services. This is designed to help them make representations about the services they receive and to pursue complaints. While this is not a requirement to allocate an advocate for every looked after child, one must be provided to those who request an advocate when he or she needs it. The local authority must have a system in place to provide written, age appropriate information to each looked after child about the function and availability of an advocate and how to request one.

All looked after children must have an Independent Reviewing Officer (IRO). The primary task of the IRO is to ensure that the looked after child's care plan reflects his or her current needs, including those related to education, and that the actions set out in the plan are consistent with the local authority's legal responsibilities to the child. The IRO statutory guidance sets out in the clearest possible terms that when meeting the child before each review of his or her care plan, the IRO is responsible for making sure that the child understands how an advocate could help and his/her entitlement to one whenever the child wants such support and not just when making a complaint.

To ensure that looked after children know about and use advocacy services the Department is funding organisations such as VOICE to provide effective advocacy services to young people as well as Action for Advocacy who are developing a quality framework for effective advocacy, and strengthening the voice of the child through its support of Children in Care Councils across the country.

PROVISION FOR YOUNG PEOPLE WITH SEN

22. *Has the Government considered introducing the following duties so as to ensure that its aim of adequate provision for young people up to the age of 25 is realised:*

- *A duty on local authorities to create a structured transition from the Education, Health and Care Plan to adult service.*
- *A duty on local authorities to use their best endeavours to support young people with SEN into employment opportunities.*

The Government does not believe such additional duties are necessary. The Education, Health and Care Plan would extend the rights and protections of the existing system up until age 25 for those young people who need longer to complete their education and make a successful transition to adulthood. The Plan itself would be focused on outcomes from the start, taking on board the aspirations and ambitions of parents, children and young people. It would have a clear focus on preparing young people for adulthood including employment, independent living and higher education and be “forward looking” so that it anticipates, plans and commissions for key transition points in children’s and young people’s lives.

Draft clause 27 and relevant provisions in the draft Care and Support Bill aim to deliver a joined up and seamless transition from children’s to adult social care services. For those with Education, Health and Care Plans, local authorities would be able to agree the best time for that transition to take place rather than this always being triggered by the young person’s 18th birthday. Under the draft Care and Support Bill, adult social care would be able to assess young people’s needs in advance of transition so that young people could know what services they would be receiving and transition could be planned accordingly. And under draft clause 27 of the special educational needs provisions, children’s social care services would be able to continue providing services after the young person becomes 18. The aim is to prevent a gap in support at any point when a young person is moving from children’s to adult services.

The Government’s wider reforms aim to support all young people to continue in education or training and achieve high quality and rigorous qualifications. A commitment has been given to raising the age of compulsory participation in education or training to 17 in 2013 and 18 in 2015 and new Study Programmes will provide the skills and qualifications that employers look for. Where appropriate, these will include work experience. Colleges and other providers are being supported to trial a number of approaches, including Supported Internships for those with learning difficulties and/or disabilities. Local authorities will continue to play a key role by fulfilling their statutory duties to support all young people to participate in education or training, including those with learning difficulties and/or disabilities.

COMPULSORY MEDIATION

23. *Notwithstanding the issues around Halsey, will the success rate of compulsory mediation be undermined by the fact that it is intended to be a voluntary process?*

The Government does not believe so. In 2010–11 Tribunal figures show that 51% of SEN cases registered with the Tribunal were withdrawn and 29% were conceded before they got to a hearing. The Government believes there is scope for many of these cases to be resolved through mediation before they are registered with the Tribunal with a consequent saving in money and time spent on administrative processes. The Government also believes that there is scope for resolving cases where positions are more entrenched. It is true that the success of the example referred to in the Green Paper from the West Midlands, where four out of five cases were resolved through the current dispute resolution arrangements without the need to go to Tribunal, is likely to be affected by the fact that both parties to the disputes entered into the mediation process voluntarily. However, the Green Paper also pointed out that these dispute resolution arrangements are greatly underused and the Government believes that more cases, (even the seemingly intractable cases) could be resolved without going to the Tribunal if they were taken to mediation.

24. *What, if any safeguards, will be put in the regulations so as to ensure young people, representing themselves, with SEN are not prejudiced in mediation? Will they have access to free advocacy and advice?*

The Government intends to use the regulation making power to ensure that parents and young people can take appropriate support along with them to the mediation session. This could take the form of an independent advocate, a friend or relative or a person from a voluntary organisation. The Government will consider how best to make arrangements for giving parents and young people access to this kind of support in the mediation process.

25. *What information can the Department share with this Committee on the outcomes from the Pathfinder project on this matter?*

The pathfinders are at the stage of testing Education, Health and Care Plans and some families have completed Plans. If and when difficulties arise the pathfinders will have the opportunity to test the use of mediation to resolve those difficulties and we will share any learning from the pathfinders with the Committee.

26. *In its draft Explanatory Notes to the Bill the Government proposes that the mediator will have the discretion to dispense with the requirement to mediate in certain circumstances? In what circumstances will such this discretion apply? Will the mediator's decision to waive the requirement to mediate be final? Will the parties be able to make representations to the mediator to dispense with mediation in a particular case? Will the mediator be required, in considering whether to dispense with mediation, to have primary regard to the interests of the child or young person concerned?*

The Government is considering circumstances in which the mediator will have the discretion to dispense with the requirement to mediate. The circumstances could include, for example, cases where there are good reasons why a parent or young person was not able to come to a mediation session or one which was arranged subsequently and trying to arrange another session would mean that the parent or young person would be out of time to register an appeal. In such a circumstance the Government would expect the mediator's decision that mediation was not necessary to be final. It would be open to the parties to make representations to the mediator that mediation was unnecessary and, of course, in considering whether to dispense with the need to mediate, the mediator should always take account of the best interests of the child or young person.

October 2012

Further written evidence submitted by the Department for Education

INTRODUCTION

1. This Memorandum identifies the provisions in the draft provisions about children and young people in England with special educational needs (published for pre—legislative scrutiny on the 3 September) that confer powers on the Secretary of State to make delegated legislation. The Annex sets out a summary of the clauses that contain powers to make secondary legislation.

2. The section below headed “Provisions for Delegated Legislation” explains in relation to each power:

- (a) what the power does;
- (b) why the power has been taken; and
- (c) the nature of, and the reason for, the procedure for Parliamentary scrutiny that has been selected.

BACKGROUND

3. The draft clauses make provision for identifying children and young people with special educational needs, assessing their needs and making provision for them. They require local authorities to keep local provision under review, to co-operate with their partners to plan and jointly commission provision and publish clear information on services available. The draft clauses set out the statutory framework for identifying, and assessing the needs of children and young people who require special educational provision beyond that which is normally available.

4. Parents of children with statements of special educational needs currently have a right to express a preference for the maintained school they wish their child to attend. The provisions extend the right to express a preference for a particular educational institution to young people with a Plan and to enable them to express a preference for Academies, further education colleges and sixth form colleges and non-maintained special schools, as well as maintained schools.

5. The provisions are also intended to provide parents and young people with greater control over the way their support is provided, for example by providing for greater involvement in assessments, and by personal budgets. The provisions introduce a requirement for mediation before appeals can be made to the First-tier Tribunal. This is to help resolve disagreements without the need for Tribunal appeals wherever possible. The provisions also include a power to pilot giving children the right to make appeals to the Tribunal themselves, rather than the appeal having to be made by their parent.

6. The clauses replace and extend, in relation to England, provisions in Part 4 of the Education Act 1996 and associated Schedules and regulations, and sections 139A to 139C of the Learning and Skills Act 2000, which will be repealed in relation to children and young people in England. Consequential amendments giving effect to this would be addressed in any future Bill.

7. Regulations will set out the detailed requirements of particular provisions where indicated in the draft clauses. The regulations will be drafted, taking account of pre-legislative scrutiny and findings from local pathfinders testing the reforms in practice. A Code of Practice will be developed to provide guidance on the new framework for special educational needs.

TERRITORIAL COVERAGE

8. The provisions extend to England and Wales, although largely only apply to England. Clauses 27, 33 and 45 make amendments to other legislation that does apply to Wales, but there are no delegated powers in those provisions.

THE DELEGATION OF POWERS

9. The specific provisions for delegated legislation in these provisions have been developed on the basis of the following considerations:

- (a) the legislative framework must be clearly presented on the face of the Bill with secondary legislation used to provide the detail;
- (b) within that framework, the provisions must also support effective implementation and contain sufficient flexibility to respond to changing circumstances;
- (c) the power to make regulations or orders must be narrowly drawn so that, although there are a number of regulation making powers, there is greater clarity of intention than would be the case with fewer but more general secondary legislation making powers; and
- (d) operational, administrative and technical details are not normally set out in primary legislation as too much detail on the face of primary legislation risks obscuring the principal duties and powers from Parliamentary scrutiny. The use of secondary legislation not only ensures appropriate flexibility but also provides additional opportunities to consult on matters of detail with those that will be affected by the provisions.

PARLIAMENTARY SCRUTINY

10. All powers for the Secretary of State to make orders or regulations under these provisions are exercisable by statutory instrument. The Government has considered on a case by case basis the appropriate procedure to be followed in making orders and regulations. The general reliance on the negative resolution procedure reflects our view, in each case, that the relevant matters are of administrative or procedural detail. In many cases, we have retained the same Parliamentary scrutiny for the new provision as that contained in the provision that is being repealed.

11. In the case of commencement orders under clause 50, no Parliamentary procedure is required, in line with standard practice.

PROVISIONS FOR DELEGATED LEGISLATION

Clause 10—Co-operating in specific cases: local authority functions

12. Clause 10 requires various bodies, including other local authorities and clinical commissioning groups to co-operate with a local authority where the local authority requests such co-operation in the exercise of its functions under these provisions. The body concerned must comply with the request, except where it considers that doing so would be incompatible with its own duties, or otherwise have an adverse effect of the exercise of its own functions.

13. One of the functions for which local authorities may request co-operation is in the assessment of a child or young person under clause 16. It is important that assessments of a child or young person's special educational needs are conducted without delay. Therefore the Government considers that it is important there is an ability to impose a time period in which other bodies must comply with a request to co-operate in the assessment of a child or young person with special educational needs. However, there may be situations where this is not appropriate, so there is a power to prescribe exceptions to the requirement to respond within a certain period of time.

14. The negative resolution procedure is proposed as this is a technical and procedural matter and mirrors the procedure that Parliament thought appropriate for the provision being replaced (section 322(4) Education Act 1996).

Clause 11—Local offer for children and young people with special educational needs

15. Local authorities are required to publish information about certain provision in their area, including education, health and care provision, training provision and travel provision.

16. The delegated power in clause 11 can be used to ensure that, whilst there is flexibility for each local authority to come up with its own local offer, certain types of information are provided in all areas and that certain persons are consulted over the preparation of the local offer, including children, young people, and parents, for whom the local offer is principally intended.

17. The negative resolution procedure proposed is appropriate for this level of detail.

Clause 14—Children and young people with special educational needs but not EHC plan

18. Clause 14 requires that children and young people with special educational needs who do not have an EHC plan are educated in a mainstream setting, subject to specific exceptions. One of these exceptions is where the young person is admitted to a special school or special post-16 institution for the purposes of an assessment.

19. The regulation-making power at subsection (6) enables circumstances to be prescribed in which a child or a young person can remain at the special institution following an assessment. The power could be used to enable the child or young person to remain at the institution following the assessment, whilst the EHC Plan is finalised.

20. The negative resolution procedure proposed is suitable for this level of detail and mirrors the procedure which Parliament considered appropriate for the provision being replaced (section 316A(2)(b) Education Act 1996).

Clause 16—Assessment of education, health and care needs

21. Clause 16 makes provision for the assessment of a child or young person's special educational needs. The regulation-making power at subsection (1) enables provision to be made about the assessment procedure, including how assessments are conducted, and how parents and young people can ensure that their views are heard. The negative resolution procedure proposed is appropriate for this kind of procedural detail, and mirrors the procedure which Parliament considered appropriate for the provision being replaced (Schedule 26 Education Act 1996).

Clause 17—Education, health and care plans

22. Clause 17 makes provision for an education, health and care plan to be prepared after a child or young person has been assessed in accordance with clause 16. The regulation-making power at subsection (4) enables requirements about the preparation, content and maintenance of the plan, including time limits for certain steps, to be prescribed. The Government believes that the negative resolution procedure proposed is appropriate for this kind of procedural detail, as it provides a greater degree of flexibility than is currently the case, where the detailed provisions are included in Schedule 27 to the Education Act 1996, and require primary legislation to change them.

23. The power to prescribe the health and social care provision to be included in an EHC plan in clause 17(2)(d) is included so that it is not necessary for all health and social care provision for the child or young person to be included, for example, in many cases, it will not be necessary or appropriate to include universal services, such as those of a dentist or GP and which are available to everyone, in a plan.

Clause 23—Reviews and re-assessments

24. Once a plan is prepared, it is necessary to keep that plan under review. It must be reviewed at least every 12 months. In certain circumstances, it may also be necessary to re-assess the child or young person. The regulation-making power will enable provision to be made about when a review or assessment must be conducted, such as at the end of a particular stage of education. The negative resolution making procedure is appropriate for this procedural detail, and mirrors the procedure that Parliament thought appropriate for the provisions being replaced (section 328 Education Act 1996).

25. Clause 23 (2) requires the local authority to undertake a re-assessment when requested to do so by the child's parent or the young person himself, or by the educational institution the child or young person is attending. This is subject to any regulations made under subsection (5) (b). The regulation-making power will enable provision to be made to prevent the local authority having to review or re-assess if there has been a previous review or re-assessment within a specified period of time. Although this provision was included in primary legislation in the provision being replaced (section 328(2) Education Act 1996) and set the time period before which no further re-assessment was necessary at 6 months, the Government believes that this is too inflexible, and regulations are a more appropriate method of fixing those time periods.

Clause 24—Ceasing to maintain an EHC plan

26. It is important that local authorities go through certain procedures before determining it is appropriate to cease maintaining a Plan. The Government believes that this procedural detail is most appropriately included in regulations made by the negative resolution procedure and is too detailed to be included in the primary legislation as is the case currently (Schedule 27 Education Act 1996).

Clause 25—Release of child or young person for whom EHC plan previously maintained

27. There is a duty on local authorities to review an education, health and care plan when the child or young person is released from custody. This will be important, particularly where that child or young person may not have had all of their special educational needs met whilst detained. However, there will be circumstances when this is not appropriate. As with clause 23, the Government thinks it is important that the local authority is not required to conduct reviews of plans unnecessarily. Many periods of custody are short—the average length of stay in a Young Offenders Institute is 74 days—and if a review was undertaken shortly before a person was detained for a limited period of time it may not be necessary to conduct another review on their release from custody.

28. The Government believes that this kind of procedural detail is most appropriately included in regulations made by the negative resolution procedure.

Clause 26—Personal budgets

29. Giving parents and young people the option of a personal budget to secure provision identified in an EHC plan requires a procedure to be in place so that people know what they have to do, what the personal budget consists of and what it relates to. It is also necessary to have safeguards to ensure in the case of a direct payment representing all or part of the personal budget that the provision required is purchased, and funds aren't used for any other purpose.

30. The Government believes that this procedural and technical detail is most appropriately included in regulations made by the negative resolution procedure. The Order establishing the original pilot scheme (The Special Educational Needs (Direct Payments) (Pilot Scheme) (England) Order 2012 [SI 2012/206]) was made by the affirmative resolution procedure, but the Government believes that, with the experience obtained from the pilot schemes, the negative resolution procedure is now suitable, particularly as the issues have been subject to a considerable degree of Parliamentary scrutiny through that process.

Clause 28—Appeals

31. Although matters which may be appealed to the First-tier Tribunal are set out in clause 28, it is possible that the need for further rights of appeal may become apparent over time, particularly as rights are being extended to young people for the first time. The regulation-making power in subclause (4) enables further rights of appeal in relation to new matters to be added without the need for primary legislation, if this becomes necessary. It also enables provision to be made about the making of appeals, for example, when parents and young people must be notified of their right to appeal and powers of the Tribunal in relation to the appeals, including unopposed appeals, for example, whether, in a particular type of appeal, the Tribunal can dismiss an appeal, order an authority to amend a plan or to cease to maintain it. The Government believes that it is appropriate to make provision in relation to these procedural matters in regulations made by the negative resolution procedure.

Clause 29—Mediation

32. Subject to specific exceptions, a person must take part in mediation before they can make an appeal to the First-tier Tribunal. The regulation-making power in clause 29 enables provision to be made about the procedural requirements for the mediation, including setting time limits, making provision about who may attend the mediation (for example, "case friends" or voluntary organisation supporters, in addition to the parent or young person and the local authority), expenses, support services and qualifications for the mediator. Provision can also be made concerning the consequences of failing to take part in mediation, about ascertaining the views of the child, the provision of advocacy and support and the circumstances in which mediation may not be necessary, such as where there are genuine reasons why the parent or young person cannot take part in mediation. The Government believes that it is appropriate to make this kind of procedural provision in regulations made by the negative procedure.

Clause 31—Appeals and claims by children: pilot schemes

33. Appeals on SEN matters and disability discrimination cases against schools under the Equality Act 2010 have to be taken to the First-tier Tribunal by parents of children of compulsory school age and below. Clause 31 enables the Secretary of State to pilot giving children the right to bring their own claims and appeals to the First-tier Tribunal. It is likely that different pilot schemes will give children of different ages the right to bring their own claims, for example all children, just those aged 10—16 to give children the opportunity to appeal against the secondary school named in their plan, or those at secondary school. The pilot scheme will need to deal with the existing right of parents to bring claims on behalf of their child.

34. The Government believes that it is appropriate to establish the pilot schemes by secondary legislation, and for the order setting out the procedural details to be made by the negative resolution making procedure.

Clause 32—Appeals and claims by children: follow-up provisions

35. If the pilot schemes are successful, children will be given the right to bring their own SEN appeals and disability discrimination claims in all local authority areas in England to the First-tier Tribunal. This will be achieved by the order making power, and the order will make provision about the same sorts of matters as the order establishing the pilot schemes. Again, the Government believes that it is appropriate to do so by an order made by the negative resolution making procedure.

Clause 40—SEN co-ordinators

36. Clause 40 requires certain schools to have an SEN co-ordinator in order to co-ordinate the provision for pupils with SEN. It is important that the SEN co-ordinator has sufficient experience or qualifications to undertake the role. The Government also wants to have the ability to confer functions relating to the SEN co-ordinator. It believes that it is appropriate to make this technical provision by regulations made by the negative resolution procedure, which mirrors the procedure which Parliament considered appropriate for the provision being replaced (section 317(3B) Education Act 1996).

Clause 42—SEN information report

37. Clause 42 requires the governing bodies of maintained schools and maintained nursery schools and the proprietors of Academy schools to prepare an SEN information report. The Government wishes to be able to specify the information about the school's policy for children with SEN that must be included in this report and believes that regulations are the appropriate way to do this. The proposed negative resolution procedure mirrors that for the current provision in section 317(6) of the Education Act 1996 with the resulting regulations being the Education (Special Educational Needs) (Information) (England) Regulations 1999 [SI1999/2506].

Clause 44—Code of Practice

38. Clause 44 requires the Secretary of State to issue a Code of Practice giving guidance to local authorities, schools, colleges and providers of early years education about the exercise of their functions under these provisions.

39. Codes of Practice are dealt with in different ways in different pieces of legislation. The requirement for the Code to be approved by both Houses, as is currently the case, means that it is inflexible and cannot easily be amended and updated.

40. Although it would be possible to require the Code to be approved by negative resolution procedure, the Government also feels this is inappropriate as it would be necessary to go through this procedure every time a slight change was required to update aspects of the Code. Parliament will have already approved the provisions of the legislation, and the Code will offer guidance about those provisions. The Secretary of State will also have consulted on the draft Code before he issues it.

Clause 50—Commencement

41. The power to commence the provisions includes a power to make transitional, transitory and saving provisions in the commencement order. This power will be used to make incidental provisions in relation to the provisions in the legislation that deal with the transition from the current system to the new (not included in the draft published for pre-legislative scrutiny).

Department for Education

18 October 2012

PROVISIONS ABOUT CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL
EDUCATIONAL NEEDS

Annex to the Memorandum prepared by the Department for Education for the Education Select Committee

<i>Clause Number</i>	<i>Title</i>	<i>Procedure</i>	<i>New or Re-instatement</i>
10	Co-operating in specific cases: local authority functions	Negative	Reinstatement
11	Local offer for children and young people with special educational needs	Negative	New
14	Children and young people with special educational needs but no EHC plan	Negative	Reinstatement
16	Assessment of education, health and care needs	Negative	Reinstatement
17	Education, health and care plans	Negative	New procedure
23	Reviews and re-assessments	Negative	New procedure
24	Ceasing to maintain an EHC plan	Negative	New procedure
25	Release of child or young person for whom ECH plan previously maintained	Negative	New
26	Personal budgets	Negative	New procedure
28	Appeals	Negative	New procedure
29	Mediation	Negative	New
31	Appeals and claims by children: pilot schemes	Negative	New
32	Appeals and claims by children: follow-up provision	Negative	New
40	SEN co-ordinators	Negative	Reinstatement
42	SEN information report	Negative	Reinstatement
44	Code of Practice	None	New procedure
50	Commencement	None	

Written evidence submitted by Graham Quinn, SSAT

INTRODUCTION

SSAT is a membership organisation for secondary, primary and special schools dedicated to raising levels of achievement in education. This response comes from the Chair, Graham Quinn, who recently was asked to represent the SSAT National Headteacher Steering Group (NHSG) at the Education Select Committee (25 October 2012).

At 31 October 2012, 431 special schools were members of SSAT, representing 30% of special schools. The SEN and Special Schools Headteacher Steering Group consists of expert and forward thinking head teachers who are leading in the development of SEN provision and in improving educational and social outcomes for pupils with SEN.

This submission reflects, in particular, the views of more than 400 special schools in SSAT's special schools network. The submission also draws on consultation with SSAT's wider networks, covering all sectors and phases of education.

Are schools able to deal with the level of changes within the planned timescales?

We believe that schools will continue to work within the planned timescales as the proposed impact for the young people, and their families, could be so considerable. We support moves to put the interests of young people and their families at the centre of all decisions relating to SEN provision, the associated reduction in adversarial and bureaucratic processes and its replacement with a positive and trusting dynamic focussed on the best outcomes for the child. To this end a substantial number of our schools have supported the Pathfinders located in many parts of the country. We accept that their progress could be perceived as pedestrian but this, we believe, exemplifies the challenging issues tackled by the green paper. The SSAT Special Schools Network believes there should not be a delay in the legislative process and thinks it is important to work with key stakeholders in finding timely solutions to the challenges faced.

Will the proposed multi-agency assessment processes further impact upon families and children?

We welcome the proposed improvements in the initial assessment process. We would like to see a transparent and responsive system that takes on board the advice from all relevant family members, key stakeholders and school staff. As mentioned to the select committee we would envisage monitoring and evaluation of these plans to be carried out annually. We would expect a more rigorous process with all key contributors investing time and support. The present annual review system, it is reported by the vast majority of schools, is heavily dependent upon school based (education) staff and families.

How will we move from the position of "statements" to "Education Health and care plans"?

We welcome the introduction of Education, Health and Care Plans in place of the former statements. It is important that these plans should specify medical and social needs. The conditions of many pupils coming to our schools are becoming more complex and the medical support and interventions are becoming more invasive. We welcome the Green Paper's ambition to ensure that health provision and education becomes more "joined up" and ultimately more sustainable. To ensure that these plans continue to be relevant we would welcome legislation ensuring representation from different agencies.

For the record it is the view of many of our member schools that if they were given the budget they could more effectively manage therapies and provide a better service locally to all students requiring support. It is however vital that any resultant formula ensures that unnecessary duplication through local authorities is avoided, thereby maximising the extent to which scarce resources can be used to make specialist support and equipment available.

Do schools feel there will a difference between the EHCP and the present statements?

We believe that clarity is needed over who will have overall responsibility (including administration, funding, quality assurance and legal enforcement) to ensure that Education, Health and Care Plans are adhered to. We perceive a significant challenge relating to the Local authority resource in managing these plans.

How will the proposed changes impact upon learners aged 16 and above?

We welcome moves towards a more consistent approach for funding pupils pre-16 and post-16 up to age 25. We do, however, believe that this principle should go further and that greater fluidity in funding should be available through to adult services and throughout the lifetime of a person with SEN.

Similarly, there should be an agreed approach to ensure the young people (and their families) with the most significant disabilities have empowered choice through innovative solutions. SSAT has excellent examples of (for example) post 19 employment modules that work in partnership with their local special school. We believe

EFA finances require significant scrutiny to further enable a personalised approach. We would support these monies following the young person with the clear intention of improving choice.

The aim should be to achieve a fairer allocation of resources to each young person with SEN and to remove the significant inequalities that exist under the current funding framework. Many schools are frustrated with the on-going financial differences between school and FE funding streams.

We believe sufficient flexibility should be explored, within national funding frameworks, to support flexible personalised approaches to SEN provision.

Will the proposed personal budgets allow families the opportunity to feel empowered to make choices more pertinent to their child?

We welcome the opportunity for families to opt for a Personal budget. We believe they could support the further development of short breaks, transport, private tuition and respite care. We would also welcome the gradual expansion of these budgets and the provision of advice and training parents on how to make best use of them.

We welcome the principle of devolving budgets and decision making power to those with the most knowledge of the child and believe that, in future, and once the infrastructure has proved successful for the provision set out above, these budgets should be extended to cover a far wider range of education, health and social care provision.

As noted earlier, it is the view of many of our member schools that if they were offered the opportunity, through more personalised budgets, they could more effectively manage therapies and provide a better service locally to all students requiring support.

What should be the key components of a locally published offer of available support for parents?

So far as possible such offers should aim to be comprehensive and to present a range of options to parents in a clearly intelligible manner. The offer should include provision from charitable, voluntary and private provision, provided that it meets a minimum standard and can deliver comparable value for money to maintained provision.

It would also be desirable for the local offer to include guidance on options for spending personal budgets.

For some forms of low incidence SEN, not every local authority will have the capability to meet all pupil's needs. As such, the local offer should also include guidance on high quality and accessible provision within the region and nationally.

Should mediation always be attempted before parents register an appeal to the First-tier Tribunal (SEN and Disability)?

There is strong support for this proposal as a means of reducing potential confrontations and costs.

What information would help parents, governors and others, including Ofsted, assess how effectively schools support disabled children and children with SEN?

We welcome the proposals to make schools accountable for the performance of their lowest performing pupils. These measures should include current performance, future progression, life opportunities/employment and independent living. With this in mind we welcome the recent development of Ofsted and the department working alongside schools in developing and testing a wider range of measures to ensure relevant and robust evaluation of SEN progression within Special and mainstream schools.

In order to make schools genuinely accountable for their long-term impact on their pupil's life chances, we would support the use of a system to publish the career destinations of a school's former pupils and to demonstrate relative school success and impact.

It should however be noted that whilst the extension to age 25 for the single Education, Health and Care Plan is welcomed, we believe that consideration should be given to the idea of a Life Plan so that young people with SEN have a seamless transition to and through adult life.

Written evidence submitted by the Association of Colleges

The Association of Colleges (AoC) represents and promotes the interests of the 352, Further Education Colleges and Sixth Form Colleges established under the Further and Higher Education Act 1992 and their 3.4 million students.

Colleges play a significant role in education young people with learning difficulties and disabilities. Their incorporation as self-governing organisations coincided with a push to provide equal access to services for people with disabilities. Two independent reviews (in 1996 and 2006) recommended an integrated rather than segregated model of delivery for young people with learning difficulties and disabilities. About 6% of College students state that they have a disability (200,000 in all) and another 6% state that they have a learning difficulty. Many of the people in these two groups have relatively low cost needs but about 10,000 require support costing more than £6,000. We will know the exact figures later this term when the Department for Education (DfE) and Councils complete the task of working out which students will be affected by the forthcoming budget transfer.

We have answered each of the Committee's questions in turn. Our response should be read alongside that from the Every Disabled Child Matters campaign and the Special Educational Consortium, of which AoC is a member.

1. Does the draft Bill meet the Government's policy objective to improve provision for disabled children and children with special educational needs?

We think that the draft Bill correctly identifies the issues in the special educational needs (SEN) system that need to be improved and, in principle, AoC supports the majority of the proposed changes. We agree with the original analysis in the 2011 Green Paper that the existing arrangements have a number of flaws³:

- parents having to battle to get the support their child needs;
- parallel systems in education, health and care, causing children to fall between gaps or having to undergo multiple assessments;
- delays in providing support, therapy and vital equipment;
- a confusing and adversarial assessment process;
- a risk that too many children are being assessed as having special education needs resulting in teachers having lower expectations; and
- evidence that, after the age of 16, people identified with special education needs, are less likely to stay in education or secure work.

In terms of specific proposals, we welcome the proposed new assessment process and the jointly commissioned Education, Health and Care Plan (EHCP) and the creation of a system which caters for 0–25 year olds.

We think that the emphasis on transition to adulthood and employment is laudable but point out that this will require a wider cultural change which will require support from Government, local authorities, employers, Colleges and others.

We are also concerned that reforms, although necessary, are being introduced at a time of considerable change in the education system and when local authorities face reducing budgets and many other pressures on their time. Successful implementation will be heavily dependent on local authority capacity and capability. We welcome the work undertaken by the Local Government Association to produce common templates and approaches but we fear that devolving full responsibility for budgets, contracts and data collection to Councils could cause new problems. Colleges whose local Councils cover relatively small geographical areas (for example London Boroughs, the Thames Valley and Greater Manchester) face the prospect of having to liaise with more than 10 councils about the support for 16 to 25 year olds. If each Council adopts its own contracting, funding and data collection process then the consequences will be chaotic. Although this is mainly an issue for Colleges, the impact will be felt by young people and their parents/carers because they will find it difficult to get accurate information on the rules that apply.

Local authorities will take different approaches to what provision they decide to fund and, although funding is not included in the proposed legislation, it will inevitably impact on how authorities decide to perform their statutory duties.

We have doubts as to how effective the Pathfinders will be in identifying potential perverse outcomes that might arise out of the changes to the system and funding regimes. The pathfinders are, we feel, too specific and insufficient attention has been given to the system as a whole including provision for 16–25 year olds.

³ Support and Aspiration, A new approach to special educational needs and disability, Department for Education, March 2011

2. Will the provisions succeed in cutting red tape and delays in giving early specialist support for children and young people with SEN and/or disabilities?

AoC is not convinced that the proposed new system will reduce bureaucracy for Colleges as they will be required to deal with multiple local authorities, each of which will have their own systems and processes. In addition, because local authorities have not had a direct funding relationship with Colleges for 20 years there will, understandably, be a limited understanding of the provision on offer. This will take time to remedy itself. We understand why the Department for Education is keen to seize the initiative and implement this reform quickly but we believe it is very important that there is continuity of education for young people unless there is a good reason for them to move institution mid-way through their programme. DfE has informed Councils that there should be continuity but this message will need to be reinforced.

Given that one promise is that these reforms will produce a more integrated approach, we have a concern that the draft clauses are very education focused and think there is a need for more explicit links to health and social care legislation to ensure joint working becomes a reality.

3. What will be the cost?

The key issue in the proposals is the tension between costs, quality and choice. Choice may be limited if cost is the key driver in local authority decision making. There is already evidence that lack of transport is being used to limit choice. The draft clauses confuse high needs (as evidenced by a Learning Difficulty Assessment⁴ or Statement of SEN or EHCP) and high costs (where the cost of support is the identifying factor).

The legislation is being introduced at the same time as the DfE is carrying out a major overhaul in the way that 16–18 education is being funded and a £640 million budget for 16–25 year olds with a disability is being used⁵. Colleges have some concerns whether these changes will leave them unable to meet the needs and expectations of their existing students, particularly as there is also a significant change to the way in which additional learning support funds are allocated for those with lower level needs. We will not have a clearer picture on this until spring 2013 but there is a risk that some Colleges will be required to take money from their core funding in order to support these students.

Although there are potential long-term gains from a more integrated support service for young people and from a better assessment system, there will be an increase in administration costs for Colleges as a result of these changes. They will need to spend more time liaising with Councils. They will need appropriately trained staff to contribute to the assessment process, as well as additional administrative staff to manage the new funding process via local authorities. There will be indirect costs associated with management time.

We also believe there is a risk that Councils will face pressure from parents and others to redirect budgets from people over 16 to younger children. If such a decision is made on the basis of the available evidence then we could not argue for it, but we are concerned that other factors may play a part. The High Needs Block is not divided up by age and these sorts of decisions could make it harder for young people over 16 to access relevant, work-focused education and training which can help them move successfully into adult life. This risk is exacerbated by a general uncertainty whether there will be an appropriate contribution from the health and care budgets.

4. What impact will the draft Bill have on current institutional structures?

In Colleges there may need to be dedicated staff to deal with assessment and liaison with local authorities which themselves will need appropriately trained staff to carry out assessments and to liaise with Colleges and others.

5. What transitional arrangements should be put in place in moving from the existing system?

These changes are happening alongside other significant changes to College and school funding methodologies. In this light, and the fact that staff will need to be trained, we think that the changes to the high needs pupil funding should be trialled first.

There is a need to work on changing cultures to improve transition from education and/or training into work or supported employment. The legislation should help in this regard.

Local authorities should know the young people who are already in the system, but there are concerns about the validity of the baseline data. It is important, therefore, that there is flexibility during the transition from one system to another and that local authorities keep a contingency fund.

⁴ Under Section 139A of the Learning and Skills Act 2000

⁵ National Audit Office report: Oversight of Special Education for young people aged 16–25, November 2011

6. *What can be learned from the current pilot schemes and how can these lessons be applied to the provisions of the draft Bill?*

It is crucial that Further Education and Sixth Form Colleges are fully involved in all aspects of trialling the reforms. There is very little evidence that the Pathfinders are working with Colleges and this must be rectified as a priority.

7. *Is there anything missing from the draft Bill?*

The wording in the draft Bill does not appear to be “person centred” and the role of the parent and child/young person should be more prominent. There should be an explanation of what is meant by “personalisation” in order to understand fully how personal budgets should work

8. *Whether it would be appropriate to move away from “special educational needs” and use the term “learning difficulties and/or disabilities” instead in the new system?*

The term “learning difficulty and/or disability” is more appropriate for a multi-agency system than SEN which refers only to educational need. LDD describes the child/young person rather than the service.

9. *How the general duties on local authorities to identify and have responsibility for children and young people in their area who have or may have special educational needs (clauses 3 and 4) work with the specific duties in other provisions (clauses 5 to 11, 16 and 17 to 24)? Are they sufficiently coherent?*

Clause 5 should include statutory duties on health and care to deliver what is in an EHCP.

In relation to Clause 11, the Local Offer, there will need to be clarity about what will be provided in mainstream provision (Element 1); what additionally will be available from Element 2; and what support should be requested from the high needs block from the local authority (Element 3).

Clause 11 also includes arrangements for transport. We think there is a need to clarify the transport arrangements particularly in relation to provision for people aged 16–18 and 19–25 as primary legislation in this area is weak⁶. There is variability both between local authorities and within local authorities, where a EHCP could recommend specific provision but the local authority’s own transport policy won’t support it.

We have concerns that Clause 16 (5) would give local authorities the right not to provide an assessment and EHCP for someone over the age 18 (see question 12.)

Clause 24 subsection (3)—describes the circumstances in which an EHCP is no longer maintained, namely:

- (a) When educational outcomes have been achieved. We are concerned this could lead to the setting of outcomes which are easier to achieve.
- (b) When the student is no longer involved in education/training: We think the health and care elements of the plan should continue in these circumstances.
- (c) When a young person starts an apprenticeship: AoC is opposed to the exclusion of apprentices from these proposals. The proposed legislation needs to link with Raising the Participation Age legislation which says that the local authority is responsible for the young person to 18 or 25 with a learning difficulty assessment. The proposals will need, therefore, to include those in jobs with accredited training as well as apprentices.

10. *Should the scope of the integrated provision requirement be extended to all children and young people, including those with special educational needs?*

Ideally we think this should be the case but in view of limited capacity it seems sensible to start where the need is highest, whilst bearing in mind that whether or not a child or young person receives an EHCP may depend on local authority policy rather than level of need.

11. *Should other types of schools and institutions be included in the duty on schools to admit a child with an education, health and care plan naming the school as the school to be attended by the child?*

AoC is content with the proposed new statutory duties on Colleges as long as they are fully involved in transition planning, from Year 9. This should be achieved through the duty on local authorities to co-operate with institutions, including FE and Sixth Form Colleges.

We think that the situation with regards to Independent Specialist Colleges, where there is currently no duty to name or to admit, needs to be resolved. We understand that the omission is related to a lack of legal definition for these institutions. We suggest that receipt of funding from the Education Funding Agency (EFA) could be sufficient to clarify that they are eligible for inclusion under the terms of the Bill.

We think that this legislation should also apply to other state funded institutions including universities, training providers and employment-based training.

⁶ Section 509AB of Education Act 1996 sets out the duties on local authorities in relation to transport.

12. *Do the provisions for 19 to 25 year olds provide a suitable balance between rights, protections and flexibility?*

Clauses 16 and 17 appear to give local authorities the right not to provide an assessment or an EHCP for someone over the age of 18. The issue of who is “responsible” for 19–25 year olds requires clarification. Existing legislation states that the Department for Education, the EFA and local authorities are responsible if the young person has a Learning Difficulty Assessment. There are concerns that:

- (a) Local authorities won’t have to provide an EHCP.
- (b) There will be an effort to secure EHCPs in order to ensure students fall under the remit of the DfE/EFA as this is more comprehensive than that provided by the Department for Business, Innovation and Skills, which funds adult education and training at a lower rate and fee remission rules apply which currently mean that students could be subject to fees if they can’t progress to level 2 (equivalent of five A*-C grade GCSEs).

13. *Do the provisions achieve the aim of integrated planning and assessment across agencies?*

We think that there need to be new statutory duties on health and care services to deliver what is set out in an EHCP.

14. *How could the power given to the Secretary of State to make regulations with regard to the practicalities of the assessment and planning process be best utilised to achieve the aim of integrated support?*

If statutory duties on health and care need are already in place, through existing legislation, then this needs to be made clear. Regulations must set out how education, health and care agencies are to work together.

15. *What impact will the new powers provided for in the clauses have on young people’s transition into adult services?*

Transition to adult social services at the age of 18 can currently cause difficulties for Colleges and the proposals appear better than the current very variable situation. However, the whole area of 19–25 education needs much more clarification than currently exists in the draft legislation. Meanwhile, Government efforts to ensure schools use the Unique Learner Number (which is currently used by Colleges) should help with the transferability of data between institutions.

16. *Should the provisions in this bill relating to portability of social care support reflect those for adults contained in the Care and Support Bill?*

We have no comments relating to this question.

17. *Should the provisions in this bill relating to portability of social care support reflect those for adults contained in the Care and Support Bill?*

According to draft Clause 47, these provisions do not apply to a child or young person in custody. This Bill provides a good opportunity to reinforce protection of young people with special educational needs who are in custody or who are leaving custody. Therefore, Government should reconsider its decision to not apply the proposed provisions to such young people.

The explanatory notes states that that Section 562C of the Education Act 1996 makes provision for special educational support for young people who are detained. However, the legislation referred to only states that the Local Authority can make arrangements for the young person in custody but there is no further guidance on the nature of these arrangements. This does not appear to be a sufficient means of dealing with the special education needs of young people in custody. Therefore, Government should consider how the Bill could provide more explicit guidance on dealing with the needs of these young people, particularly through the proposed EHCPs, which appear to be particularly beneficial for children in custody who may be the most vulnerable.

October 2012

Further written evidence submitted by Di Roberts, the Association of Colleges

Thank you for giving me the opportunity to provide oral evidence to the Committee on 25 October. I thought it would be useful to follow up one of the issues we discussed.

You had some concerns that funding might be spread too thinly across the 0–25 age range. Local authorities will receive the funding, currently held by the Education Funding Agency and passed directly to Colleges, for students with learning difficulties and disabilities. According to the National Audit Office this amounts to £640 million which will go into the block of funding for “high needs”. It will not, however, be ring-fenced for young people aged over 16. The legislation says that local authorities will have to take into account someone’s age if they are aged 18 or over when assessing their needs and developing an Education, Health and Care Plan. This lack of ring-fence and legislative “get-out” means we have real fears that young adults will lose out, and that

Colleges will be left with reduced funding with which to meet the needs of students with learning difficulties and/or disabilities.

This is happening alongside changes to the 16–18 funding methodology and changes to the way in which money is allocated for students with lower school qualifications. We have very real concerns that these two changes taken together and without any trialling, could destabilise provision for vulnerable young people. This is also happening at the same time as RPA comes into effect, and Colleges could be trying to meet the needs of increasing numbers of students with additional needs, as we know that many young people who are currently NEET have a learning difficulty and/or disability.

There have been consistent efforts from both this Government and its predecessor to ensure that people of working age with disabilities are able to secure sustainable employment. The offer of a 0–25 education and health care system for people with disabilities is a considerable opportunity to help make this a reality but we fear it will end up a fragmented system based on age rather than need.

November 2012

Further written evidence submitted by the Department for Education

Thank you for giving me the opportunity to discuss our special educational needs (SEN) reforms with your Committee last week. I hope the session was helpful to Committee members.

Since taking up responsibility for policy on SEN and disability I have been struck by the extent to which people feel the time is right to reform the way we support children and young people with special educational needs and their families. There is broad support for the changes we propose but families, understandably, want to be sure that the essential protections in the present arrangements for identifying, assessing and supporting children and young people with SEN are retained. I hope I was able to reassure the Committee of our intention to retain those protections and indeed to extend them to 16–25 year olds. We will look carefully at the drafting of the legislation to make sure that we get it right and I am writing to parents' organisations to give that assurance.

We discussed the local offer. The local offer will enable families to see, without having to battle, what they can expect from mainstream services; how to access more specialist support; how decisions are made about providing that support; and how to make a complaint about decisions with which they disagree. We plan for local authorities to involve local children, young people and families in developing the local offer. This is to ensure the local authority understands their needs and aspirations, and plans provision to meet them. Local authorities will be required to cooperate with a number of organisations to develop their local offer, including schools and colleges, and those organisations will be under a reciprocal duty to cooperate with the local authority.

The Committee were keen to know whether lessons learnt from the local pathfinders testing the reforms would continue to influence the legislation. The draft provisions for pre-legislative scrutiny were informed by early pathfinder learning and the initial evaluation. Pathfinder learning events and case studies are ensuring that learning is available for the legislative process and to support implementation. I have extended the pathfinders until September 2014 to make sure that the effective practice they develop will continue to influence the legislation at every stage, including the regulations and the statutory guidance in the SEN Code of Practice.

We aim to provide indicative regulations and an outline of the Code of Practice to Parliament to inform debate, particularly during the Committee stage of the Bill. These will take account of pre-legislative scrutiny and debate during the passage of any legislation, as well as learning from the pathfinders. In the legislation we introduce we will make sure that the new arrangements, including those for assessments, are timely and effective.

I promised to write to the Committee on some of the detailed points raised in discussion.

The Committee asked whether extending protections up to the age of 25 would mean taking resources away from schools. I can confirm that this is not the case. Colleges are already funded to meet the additional needs of young people with learning difficulties and/or disabilities through Additional Learning Support (ALS). High Level Additional Learning Support for 16–24 year olds increased from £97 million in 2010–11 to £124.9 million in 2012–13; the LLDD placement budget for those in FE colleges with high and complex support needs increased too, from £24.8 million in 2011–12 to £35 million in 2012–13.

We discussed the school and college funding reforms briefly and you asked whether the Government would ensure that those local authorities that had delegated a greater amount of funding to schools would not be penalised in the transfer to a new funding system. You also asked about funding for pupils who do not have statements.

In the new funding system which begins in April 2013, we have asked local authorities to move towards standardising the amounts they delegate to mainstream schools for pupils with SEN, so that schools are expected to provide support for pupils up to roughly £6,000, while top-up funding from the local authority will kick in above that. This will require some local authorities to delegate more funding than they do at present,

and others to delegate less. The funding remains within the local authority's Dedicated Schools Grant in either case - it simply moves between the funding delegated to schools and the funding retained centrally by the local authority to support children with high needs.

Our information from local authorities is that the great majority of them will be moving to the £6,000 threshold from April 2013. Some will be moving more gradually over two or three years.

Schools are not funded by local authorities on the basis of the number of pupils they class as being at School Action or School Action Plus. To do so would create a perverse incentive to over-identify such children. Rather, local authorities use proxy indicators to create a notional SEN budget for schools they often use indicators of low prior attainment and deprivation, among others. This system will continue from 2013. We have asked local authorities to explain carefully to schools how they are arriving at the notional SEN budget and how it reflects schools' responsibilities to provide from their own resources for pupils with SEN.

We have estimated the costs to local authorities of arranging mediation in cases where there is disagreement at around £2 million per annum but we would expect this to be offset by savings from a reduction in Tribunal cases.

I confirm that where parents or young people express a preference for a particular school or college (mainstream or special) to be named in their Education, Health and Care Plan local authorities must name the parent or young person's preferred school or college (including Academies and Free Schools and non-maintained special schools) unless this would not meet the child's or young person's special educational needs, or would be incompatible with the efficient education of others or the efficient use of resources.

You will know that we are hoping to resolve productively the issue of including independent schools for children with SEN in those provisions. Once named in an Education, Health and Care Plan the school or college would be under a duty to admit the child or young person. Local authorities must consult the school or college and take their views into account before reaching a decision. We have no plans to include a specific requirement for local authorities to write to schools and colleges giving detailed reasons for their decision. Given that there are defined criteria governing their decision and consultation will have taken place on the basis of those criteria it is likely that schools and colleges will know of the local authority's reasons.

Finally, the Committee asked about arrangements for supporting young people who begin three-year apprenticeships at the age of 23 or 24. After considering the views expressed during the pre-legislative period, I am minded to include Apprenticeships in the scope of the revised legislation. This would allow young people up to the age of 25 to have an Education, Health and Care Plan in place whilst undertaking an Apprenticeship, which would normally be sufficient time for a young person to complete their education. Under current arrangements, when a young person with a Learning Difficulty Assessment (LOA) turns 25 mid-way through a three year programme, responsibility transfers to the Skills Funding Agency, which honours the requirements set out in the LOA until completion of the programme. We would expect those arrangements to continue for young people with an Education, Health and Care Plan.

In addition, young people with learning difficulties/disabilities undertaking an Apprenticeship are eligible for support via the "Access to Work" programme, which can pay for things like specialist equipment, travel or a communicator at a job interview. Health and adult social care support will also remain available to those who need it.

I am looking forward to receiving the Committee's report of its scrutiny of the draft SEN provisions and would be pleased to provide any further information the Committee would find helpful.

20 November 2012

Further written evidence submitted by the Special educational consortium

I am writing to add some additional points which have arisen since we gave our oral evidence to the Committee. I hope Committee members will consider raising these points with the Parliamentary Under Secretary of State who is appearing in front of the Committee on Tuesday.

SEC has welcomed the ambitions set out in the draft legislation. However, we remain anxious to secure further assurances that:

1. the legislation will not weaken current entitlements of parents and children in relation to education support; and
2. the legislation will significantly strengthen entitlement to support from other services.

SEC believes that these criteria have not been fully met by the draft provisions. We hope the Select Committee will be able to seek re-assurances on both these points.

THE DRAFT PROVISIONS DO NOT FULLY PROTECT EXISTING ENTITLEMENTS

The Government has made a commitment that the Bill will not weaken the statutory rights that currently exist in relation to statements of SEN. Statements of SEN will be replaced by education, health and care plans (EHC plans) and the majority of the provisions in relation to EHC plans maintain the current level of protection. However, the provisions, as currently drafted, will remove some of these entitlements:

1. In draft provision 16, there will no longer be a way for parents or young people to trigger an assessment. There is no duty on the local authority to tell parents that they have decided not to assess their child, so there is no trigger for a right to appeal against this decision;
2. In draft provision 16, there will no longer be a duty to respond within a certain time where a child, or young person, has or may have SEN;
3. In draft provision 17, local authorities will no longer be required to “specify” the educational provision a child or young person needs; and
4. Parents’ right to appeal is fettered by a requirement to go through mediation first.

We hope the Select Committee might draw these issues to the Minister’s attention. Given the Government’s commitment to protect current entitlements, we hope they will be eager to address these issues in the Bill.

THE DRAFT PROVISIONS DO NOT SIGNIFICANTLY STRENGTHEN OTHER ENTITLEMENTS

SEC believes that the new legislation needs to strengthen entitlements. The following points re-iterate our written evidence submitted in partnership with the Every Disabled Child Matters campaign.

- *Scope*—the draft provisions only apply to children with special educational needs (SEN). Many disabled children and young people also have special educational needs but some do not. We believe it is vital the Bill covers all disabled children as well as children with SEN.
- *Joint commissioning*—there are no clear links between Children’s Trust arrangements, Health and Wellbeing Board duties and the joint commissioning arrangements. There is not enough accountability built into the legislation.
- *The local offer*—draft provision 11 requires local authorities to produce information on the education, health and care services it expects to be available locally. We welcome the principle of a local offer but the drafting is not strong enough. We believe there needs to be an underpinning duty to provide what is set out in the offer and, to address the postcode lottery of support, we believe we need a “national offer” to underpin the development of local provision.
- *Education, health and care plans (EHC plans)*—SEC has welcomed the concept of a multi-agency plan covering children and young people from birth to 25. However, the draft provisions do not deliver this. There are no duties on health or social care services to deliver what is set out in an EHC plan. Young people will lose their EHC plan as soon as they leave education, or if they enter an apprenticeship or higher education. There will be no single point of appeal if the different agencies fail to deliver.

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