

Meeting: Children and Young People Board

Date: 14 March 2023



SEND and Alternative Provision improvement plan

Purpose of report

For direction

Summary

On the 2nd March the Department for Education (DfE) published their response to the SEND Green paper, [SEND and Alternative Provision improvement plan, right support, right place, right time](#). The improvement plan contains a significant number of proposals that seek to improve outcomes for children and young people with Special Educational Needs and Disabilities (SEND) via a reformed SEND and Alternative Provision (AP) system.

Claire Coutinho MP, Minister for Children, Families and Wellbeing, will be attending the Board meeting to discuss the proposals set out in the improvement plan in more detail. Member's comments will inform the LGA's on-going policy work as the reforms set out in the improvement plan are implemented.

Recommendation

That the Children and Young People Board comment on and agree the LGA's policy position with regards to the proposals set out in the SEND and Alternative Provision improvement plan.

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SEND and Alternative Provision improvement plan



Background

1. On the 2nd March the Department for Education (DfE) published their response to the SEND Green paper, *SEND and Alternative Provision improvement plan, right support, right place, right time*. The improvement plan contains a significant number of proposals that seek to improve outcomes for children and young people with Special Educational Needs and Disabilities (SEND) via a reformed SEND system.

SEND and Alternative Provision improvement plan – LGA response

2. In our initial response we welcomed many of the proposals, including the introduction of national standards that will clarify the support available to children and young people with SEND, as well as which partner is responsible for delivering it, as well as the focus on early identification of need and support. We raised concerns however that the improvement plan did not go far enough, with no mention of additional powers for councils to lead local SEND systems and hold health and education partners to account for their work supporting children with SEND.
3. Our response to the proposals set out in the six chapters that make up the improvement plan are as follows:

Chapter 1: Introduction

4. While we understand the logic of seeking to improve the performance of the existing SEND and AP system in the first instance, we are concerned that this approach will not address the key issue of increasing levels of mainstream inclusion, which is central to improving outcomes and relieving pressure on councils' high needs budgets. The improvement plan acknowledges that implementing reforms will take several years and while the additional funding that has been made available to all councils, as well as targeted financial support via the 'safety valve' and 'Delivering Better Value in SEND' programmes is welcome, these programmes do not address the fundamental cost and demand issues that are driving more councils into deficit and threaten the future financial viability of local government.
5. We support a test and learn approach to implementing the proposals set out in the improvement plan, which acknowledges feedback from consultees that the Department paid insufficient attention to implementing the reforms set out in the 2014 Children and Families Act. Given the scale of the proposed reforms we are concerned that the £70 million in funding for the change programme will be insufficient and ask the Department to keep this amount under review and provide additional funding where necessary to build a strong evidence base.

Chapter 2: A national system underpinned by National Standards

6. We understand the need for greater consistency of approach across the SEND system, including through a single, digitised Education, Health and Care Plan (EHCP) and we welcome the clarity that will come with national SEND and AP standards that will set out the support that children and young people should receive, as well as which partner in local SEND systems will be responsible for funding and delivering that support.
7. We are however concerned that too great a focus on the 'national' part of the system could raise expectations amongst children and young people with SEND, as well as their parents and carers, that the same support will be available in every area and delivered in the same way. We look forward to further discussions on the shape of any national standards, which must retain a degree of flexibility to reflect available provision and differing levels of need, while focussing on the things most important to children and young people with SEND and ensuring they achieve good outcomes. National standards should also make the case for reducing or removing support where possible, reflecting the improvement plan's focus on early identification of both help and need.
8. The establishment of local SEND partnerships is welcome and councils, with their democratic mandate, are ideally placed to lead them. For these partnerships to work effectively, councils must have backstop powers to hold partners to account if they fail to work collaboratively or make appropriate contributions to meet the identified needs of children and young people with SEND. Proposals for the development of local inclusion plans should give local areas flexibility to build on existing co-working arrangements and structures.
9. It is unclear how ICBs and schools will be represented on and expected to play their role in local SEND and AP partnerships, with ICBs being on a larger footprint and schools and MATs on smaller ones which in many instances cut across council boundaries.
10. We support the proposal to introduce a standardised, digitised EHCP template, which will help improve consistent and timely access to support for many mobile families. It is important that this is co-produced with councils, parents and providers to ensure it meets the needs of all partners.
11. The LGA wants to work with the DfE, National Network of Parent-Carer Forums and other partners at a national level to develop a set of shared principles that can underpin discussions between individual local areas and parent-carer groups on shaping a tailored list of suitable settings. A transparent and co-produced list of appropriate placements within a local area, as well as those out-of-area for children with more profound needs, will allow for a shared understanding of how needs can best be met and start to build trust in a reformed SEND system. Any such list should take into account the providers' performance, availability and suitability of places to meet local need as well as the value for money offered by the placements. It will be important that the process is promoted widely so that other parents are aware of how decisions were made and understand how they can have a say in the process going forward.

12. The test and learn work undertaken in local areas on the development of a tailored list of suitable settings must identify how children with SEND, their parents/carers, councils and health and education partners will reach a shared decision on how a placement from a tailored list will be decided upon. It should clarify the role of providers in developing the list of suitable placements and how the local market will be managed in this regard.
13. In this chapter the improvement plan also commits the Government to “underpin the standards with legislation for education at the earliest opportunity to facilitate intervention in education settings if standards are not met.” (paragraph 13, page 27). The introduction of these intervention powers will be crucial in impressing on all mainstream settings the need to take an inclusive approach, which will in turn reduce the use of special schools and the independent, non-maintained special schools and relieve pressure on council high needs budgets, as well as improve outcomes for children and young people with SEND. To ensure action is taken quickly where poor practice is identified, these powers should sit with councils, not the Department. It is also vital that the legislation needed to introduce these powers is brought forward at the earliest opportunity.
14. It will be necessary to ensure that the correct accountability mechanisms are in place to hold schools to account for their inclusive practice. We do not believe that any school should be considered to be a ‘good’ school unless it is good for all of the children in the school’s community, including the most vulnerable and those with special educational needs. This must be central to Ofsted’s school inspection framework and practice and the inspectorate must act swiftly where poor practice is identified.
15. We believe that councils, acting on local intelligence and with sufficient, complimentary powers, can support Ofsted in ensuring all schools are quickly held to account to minimise the impact of non-inclusive practice on children and young people. This should include delivering on a proposal in the Schools White Paper to give councils the power to direct all schools to admit pupils without a school place. Currently councils can only use this power in relation to maintained schools and not free schools or academies.

Chapter 3: Successful transitions and preparation for adulthood

16. The improvement plan acknowledges young people with SEND may need additional support to navigate their way through the post-16 education and training offer and flexible approaches to study including part-time or through a modular approach. At the same time, some Level 2 provision (BTEC and apprenticeships) has been removed resulting in a reduction of pathways to further learning. The recent investment in Supported Internships is welcome; however, appropriate Level 2 provision is a vital pathway to progression for many young people into education, employment or training (EET). It also helps those who may be SEND and at risk of becoming NEET (not in education, employment or training). Therefore, young people need a broad offer with alternative choices that are not unduly restricted, with a clear line of sight of what each post 16 route could lead to. Fundamental to this is being able to make informed choices through targeted and independent careers advice and guidance, but the system in and of itself is complicated and inconsistent across the country.

17. The Department's intention to publish guidance to support effective transition is welcome and we believe that councils should be consulted and have the opportunity to play a key role in its co-production. Councils have a wealth of knowledge and expertise which will ensure that it is helpful and fit for purpose.
18. The plan to conduct pilots for evidence to consider the flexibilities needed for the English and mathematics requirements for Apprenticeships is welcome, as this will improve the take up and completions of Apprenticeships by young people, particularly those with SEND or those requiring additional support. Many councils as employers are providers of Apprenticeships, including those with SEND and experiencing disadvantage, and can offer valuable insights to inform the pilots, so engagement would be welcome.
19. Our own analysis (April 2021) found that the employment and skills system, including careers advice and guidance, is complicated. Across England, around [£20 billion is spent on at least 49 nationally contracted or delivered employment and skills related schemes](#) or services managed by nine Whitehall departments and agencies, multiple providers and over different geographies. No single organisation is responsible for coordinating this locally or nationally.
20. The LGA recently launched [Work Local: Unlocking talent to level up](#), our latest employment and skills devolution proposals which build on the Government's Levelling up White Paper. It makes clear recommendations to Whitehall on ways it can improve its approach to employment and skills policy and provision for all places right now, and what is needed for a coherent framework for employment and skills devolution. We also point to [local government's](#) leadership, knowledge and innovation bringing together partners and national schemes to make the best of the current system to improve outcomes for residents, businesses and other employers. But local government can and wants to do far more for its people and places.
21. To enable this, we believe the [LGA's Work Local model](#) should be implemented. It would give democratically elected local leaders the power and funding to work with the full range of national and local partners to join up careers advice and guidance, employment, skills, apprenticeships, business support services and outreach in the community. By enabling this approach, local leaders would be able to design services targeted to local needs while meeting national priorities. Independent [cost benefit analysis reveals a Work Local approach](#) could each year result in a 15 per cent increase in the number of people improving their skills or finding work, delivering benefits to residents, businesses, the health and wellbeing of local communities while reducing costs to the public purse.

Chapter 4: A skilled workforce and excellent leadership

22. The development of the workforce as set out in the improvement plan is welcome and we agree with the overriding principle that 'the workforce will be crucial to every aspect of system improvement.' Therefore, we think the Department must go further to support schools, educational settings and councils to attract, recruit and retain adequate high-quality candidates into teaching and other relevant specialist professions as long-term career choices. To do this, schools and other educational settings need to be funded and supported to enable employers to reduce workloads

where appropriate, improve staff wellbeing and offer competitive salaries as part of a total employment package.

23. If we are to increase levels of mainstream inclusion then the Department must go further and develop training and support for all teachers and school staff to ensure they can meet the needs of pupils with SEND in mainstream settings, providing additional funding for schools to cover staff when their Continuing Professional Development (CPD) takes them away from the classroom.
24. All staff should be upskilled to support children with additional needs before feeling that they need to refer on to get more specialist support. When this happens, early years education and childcare practitioners also need to be supported by the wider system and have clear referral pathways into services such as speech and language, occupational therapists etc where appropriate.
25. Training and development opportunities need to support the inclusivity agenda and upskill all staff to support children, rather than refer them on to more specialist services. Therefore, we support the proposed introduction of a SENCo National Professional Qualification (NPQ) to replace the existing NASENCo statutory award for SENCos. This reflects the complexity of the system in which SENCos work and will help equip them with the skills needed to lead on the delivery of SEND support within schools. The implementation timetable will need to encourage and allow adequate time for existing staff who do not hold the current qualification to gain the SENCO NPQ, so as not to add to any capacity issues in the sector.
26. We welcome the recognition of the importance of getting it right in the early years to ensure children are enabled to thrive, needs are identified early and staff have the skills and confidence they need to provide support to children. Providing training and support to staff is essential and the proposals setting out a review of the Level 3 early years educator qualification is welcomed, as is a greater focus on specific support for SEND. However, the sector has experienced significant challenges which have been exacerbated by Covid-19, and recruitment and retention of skilled staff remains an ongoing concern.
27. The improvement plan recognises the interconnection between special educational needs, emotional needs and mental health which is welcomed. However, the current proposals do not go far enough in tackling the rising demand of mental health need, nor sufficiently focus on the particular needs of children with special educational needs. In particular, roll out of mental health support teams in schools to all of the country is required as is investment in community mental health support for children who cannot access school-based mental health provision.
28. We are concerned that the improvement plan does not explicitly mention school nursing, health visiting or the Healthy Child Programme. Health visiting and school nurse services are leaders of the Healthy Child Programme, the national evidence based universal programme for children aged 0-19. The programme provides the foundations for health improvement, public health and supporting families to identify problems early and give children the best start in life. The Healthy Child Programme shares many similar workforce concerns to early years; recruitment, retention and capacity.

29. Health visitors provide a vital service in early identification of needs and ensuring children get the best start in life. However, we know that many areas are struggling to recruit Health Visitors, with the number of Health Visitors falling by almost 40% since 2015. Current projections estimate that there is a shortfall of over 5,000 health visitors in England.
30. Councils commission school nurses through their ringfenced public health grant, many of whom are based within SEND settings. School nurses provide enhanced specialist support for children to ensure that children who have complex health problems have their health needs assessed and care needs are planned and delivered in school to a high quality. The number of school nurses has fallen by over a third in the past decade.
31. We are therefore calling for a properly resourced, integrated workforce plan that underpins the current refresh of the Healthy Child Programme. In addition to ensuring we have a sufficient supply of specialist public health nurses, a workforce strategy should recognise the benefits of having a diverse range of health visiting, school nursing, children's centre and other early years staff in children's and health services. We believe this will ensure councils are able to provide a consistent service which leads to better outcomes for children and families.
32. The Healthy Child Programme in councils is funded through the ringfenced public health grant, which has been vastly reduced in real terms since 2015-16. Despite more recent increases in cash terms, the public health grant in 2021/22 was 24 per cent, or £1 billion, lower per head in real terms compared to 2015/16. Councils are still waiting for their Public Health grant allocations for the next financial year (2023-24), A lack of certainty around councils' public health funding is exacerbating existing challenges as demand continues to increase for essential services such as health visiting.

Chapter 5: Strengthened accountabilities and clear routes of redress

33. We are concerned with the improvement plan's focus on intervention as the response where poor performance is identified, specifically with the focus on councils who are only one partner in local SEND systems. This top-down approach to accountability does not adequately reflect the complexities of the SEND system or take account of existing issues. As mentioned previously, councils have raised concerns about the time-consuming, bureaucratic process that needs to be completed to access funds for new special schools; in this instance it is clear that councils should not be held accountable where responsibility sits with the DfE. To increase trust in a new SEND system accountability must be proportionate, work both from the top down and bottom up and focuses on what partners have responsibility to deliver.
34. Integrated Care Boards (ICBs) have key responsibilities for meeting the needs of children and young people with SEND, providing adequate and timely funding for community health provision including occupational therapy, physiotherapy and speech and language therapy. It remains to be seen whether the greater powers for the Secretary of State for Health and Social will result in timely and effective intervention in health where performance issues are identified. Further clarification on the form that these powers will take, accompanied by examples of situations where they would be

used, as well as how they will support local accountability between partners locally, will help provide reassurance that health partners will be held to account where they are not making effective contributions to local SEND systems.

35. The improvement plan rightly identifies that existing programmes of improvement support will continue to play a key role in supporting councils to deliver better SEND support, but there is an absence of information on the improvement support that will be made available for health partners, beyond “a more joined up response between Department for Education and NHS regional and national teams” (Paragraph 12, page 75).
36. There is a clear need to undertake work to define what ‘good’ looks like, both within the current and also in transitioning to a new system. A shared understanding of ‘good’ should be reflected in the local and national inclusion dashboards. While these dashboards will provide some information on the performance of national and local SEND systems, they will not on their own signify how well a system is performing.
37. Dashboards should include measures that identify quality measures as well as outcomes for children and young people receiving support from SEND systems. Data should not be used in isolation by the Department when deciding whether to intervene in a local SEND system. Key metrics should be taken from existing data collection measures to minimise any additional burden on councils and their partners. We are concerned that national and local dashboards will be introduced from the autumn of 2023, while many of the other proposals set out in the improvement plan will not be implemented until 2025 at the earliest.
38. We support the proposed strengthening of early redress approaches to ensure disputes can be resolved as soon as possible and which we hope will help the shift to a less adversarial system. The concept of mandatory mediation will need careful consideration to avoid it being seen as an additional hurdle for families. As parental confidence in the system increases, the use of redress mechanisms and the Tribunal should reduce and only become necessary in exceptional cases where disagreements can be resolved via mediation.
39. We support a statutory framework for pupil oversight and transparency of placements into and out of alternative provision. For such a framework to be effective it must be backed by sufficient powers for councils to act swiftly in the interests of children where poor practice is identified.

Chapter 6: A financially sustainable system delivering improved outcomes

40. The improvement plan acknowledges that implementing reforms will take several years and while the additional high needs funding that has been made available via the ‘safety valve’ and ‘Delivering Better Value in SEND’ programmes is welcome, these programmes do not address the fundamental cost and demand issues that are driving more councils into deficit and threaten the future financial viability of local government.
41. While the decision taken by the Department for Levelling Up, Housing and Communities to extend the Statutory Override on the treatment of DSG deficits to March 2026 provides some breathing room, we do not believe that councils have the

levers to work with partners “to put themselves in the best position so that when the ‘statutory override’ comes to an end, local authorities are able to demonstrate their ability to deal with remaining DSG deficits” (para 5, page 82). The Department must go further and guarantee financial support to ensure that every council’s Dedicated Schools Grant (DSG) deficit will be eliminated by 2026 when the Statutory Override ends.

42. The LGA supports proposals to deliver greater capacity to address existing supply issues in the SEND system. An additional £2.6 billion over three years for SEND capital is also welcome, as is the flexibility to spend this money on specialist units in mainstream settings, as well as new special schools. Feedback from councils is that the speed at which new special school places can be brought online is too slow. We are keen to work with the Department to identify opportunities to speed this process up. Delivering additional capacity focuses on education and the Department should provide further information on their work with the Department for Health and Social care to secure additional capacity in both health and care, for example the provision of therapeutic and preventative mental health services which remains a huge challenge for children and young people with SEND to access.
43. The LGA has conducted [research looking into the Special Educational Needs Inclusion Fund](#) and believe there are some quick fixes that could be made, so the proposal set out to look at this are welcomed. However, we have long highlighted that early entitlements are underfunded and that the early years sector needs to be properly resourced to support the Government’s ambitions set out in this paper, therefore consideration of a wider review of early years funding is welcomed.
44. To support successful post-16 transitions, sustain education, employment and training for young people with SEND, councils need flexibility of funding to provide the appropriate level of wraparound support.
45. The LGA welcomes the development of banding and price tariffs, evidencing what is available for identified needs and associated cost, including the responsibilities on health to jointly fund and invest in placements for children with complex needs. Requirements for health partners to financially contribute to such placements should be set out in statutory guidance to avoid disputes at a local or individual case level.
46. Councils already make use of ‘banded’ funding arrangements and the Department should build on this work when developing a national framework of funding bands and tariffs. We agree that a national framework will help to improve consistency between areas and reduce the administrative burden on education settings that accept pupils from multiple councils. We also welcome the acknowledgement in the improvement plan that there will need to be a degree of flexibility for councils with the national framework.
47. Any reform of the school and high needs funding formula should both provide long-term certainty on the overall amount if funding being made available, and also address anomalies in the existing system, such as deficits sitting with councils while any budget surpluses sit with schools. Allowing councils access to these surpluses would speed up efforts to manage down their high needs deficits.

48. The concept of the notional SEN budget (the threshold for which has not changed since 2014) has not worked in the existing system. One alternative option would be to replace it with a reformed funding formula that is based on pupil need which includes a clear SEN budget. If the notional budget is to continue, it must be included in bandings, providing transparency as to how schools are funded for this and what they are expected to deliver.
49. We welcome the proposal to re-examine the state's relationship with independent special schools and to ensure that they align with the national standards. The improvement plan rightly highlights the need to define the provision that they offer, as well bringing consistency and transparency to their costs.

Implications for Wales

50. Special Educational Needs and Disability policy is a devolved issue and the findings of the report and the LGA's on-going SEND policy work applies to councils in England only.

Financial Implications

51. There are no financial implications for the LGA arising from this report.

Equalities implications

52. The existing SEND system does not meet the needs of all children and young people with special needs and disabilities. While we believe that the proposals contained in the improvement plan will have a positive impact, we are concerned that they do not go far enough. We will work with partners, including the Association of Directors of Children's Services (ADCS), Solace, the DfE and National Network of Parent-Carer Forums, to continually review the implementation of these proposals through the test and learn process. We will work to ensure that the evidence gathered through the test and learn exercise is used to inform decisions as to how support will be delivered to better meet the needs of all children and young people with SEND.

Next steps

53. Comments and feedback from Members will be used to inform the LGA's on-going policy and lobbying work in response to the proposals set out in the improvement plan.