



House of Commons
Education Committee

Pre-legislative scrutiny: Special Educational Needs

Sixth Report of Session 2012–13

Volume I

Report, and formal minutes

Volume II: oral and written evidence

*Additional written evidence is contained in
Volume III, available on the Committee website
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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.

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Contents

Report	<i>Page</i>
1 Introduction	5
Our report	6
2 The draft clauses: process and context	8
Detail, timing and context	8
Joined-up thinking? Co-operation between agencies	14
Terminology	17
3 Provision from birth to 25	18
Funding and post-16 education	18
Provision for 19-25 year olds	20
4 Integrated provision and Education Health and Care Plans	22
The integrated assessment process	22
Co-operation between local authorities and Health	24
Entitlement to integrated provision and EHCPs	28
Triggering assessments and timescales for conducting assessments	30
“Specifying” versus “setting out”	32
Stopping and starting the EHCP	33
Reviewing the EHCP	35
Appeals and Mediation	36
Transition from Statements to EHCPs	38
5 Children with SEN but without a plan	41
6 Local Offer	45
Young people and parental involvement in designing Local Offers	49
Advice and information	51
7 Extending choice and direct payments	53
Choice of school	53
Personal budgets and direct payments	55
8 Concluding remarks	57
Conclusions and recommendations	58
Formal Minutes	63
Formal Minutes	63
Witnesses	64
List of printed written evidence	64

List of additional written evidence	65
List of Reports from the Committee during the current Parliament	71

Summary

The Government's draft legislation on reform of provision for children and young people with Special Educational Needs (SEN) was intended to deliver "the biggest reforms for 30 years" for children and young people with SEN. Expectations amongst interested parties were raised extremely high as a result of the ambitions expressed in the 2011 Green Paper on SEN, and the risk of failing these expectations is very real if—as the Minister conceded—the Government does not "get the legislation right".

Our report concludes that the general thrust of the draft clauses is sound, but the legislation lacks detail, without which a thorough evaluation of the likely success of the Government's proposals is impossible. The Government intends to provide this detail in regulations and a revised SEN Code of Practice. It is essential that these documents address the concerns raised in the detailed written submissions to our inquiry and that the revised Code of Practice remains a statutory document, subject to consultation and laid before Parliament.

The SEN Pathfinders are at an early stage. We welcome the Minister's decision to extend the Pathfinders for a further 18 months to inform regulations and the Code of Practice. We do not recommend any delay in introducing the Bill.

In the light of the Government's proposals for an SEN framework that supports young people from birth to 25 years of age, we are particularly concerned at the Pathfinders' lack of engagement with post-16 education providers. We recommend that this shortcoming is addressed in the extended Pathfinders.

We believe that the Government is relying too heavily on the duty of joint commissioning between local authorities, Health and social care in order for the reforms to work. The active involvement of the NHS in commissioning, delivery and redress is critical to the success of the legislation. Despite the acknowledged difficulties, the Government must ensure that the NHS is obliged to participate fully. We make various recommendations on this point, including that regulations should commit Health to adhere to timetables for assessments of SEN. We also call for the Government to clarify in the legislation how responsibility for the provision of services which can be defined either as supporting health or special educational needs—such as speech and language therapy—will be decided.

We welcome the principle of integrated Education Health and Care assessments, but believe that they will require much more rigorous testing and shaping through the Pathfinders in order to advise regulation in this area. We conclude that the Government should focus on how to achieve good quality assessments and that regulations should stipulate how this should be achieved. We also recommend that all current protections afforded by a Statement of SEN be maintained in the new legislation.

The Government's proposals for compulsory mediation met with strong resistance from our witnesses. However, we also noted much support for the concept of early and

meaningful engagement and discussion with parents and so we recommend that mediation should not be compulsory, but that consideration of mediation should be.

We believe that the scope of entitlement to integrated Education Health and Care provision and assessments should be extended to disabled children, with or without SEN, and also to young people undertaking apprenticeships. Whilst we maintain that Education Health and Care Plans (EHCPs) should retain a focus on the achievement of educational outcomes, we make recommendations as to how this aspect of the legislation could be made more accommodating to the needs of young people with SEN who move in and out of education, and to young people not in education, employment or training (NEETs).

We welcome the extension of the list of schools for which parents can express a preference in an EHCP to include academies and free schools. However, we recommend that independent special schools and colleges should also be included on this list.

Good quality Local Offers are pivotal to the success of the Government's proposals, particularly for those children with SEN but without an EHCP. The involvement of parents and young people in the development of Local Offers is critical, and we recommend that the role of parents and young people be reinforced in primary legislation. We also make recommendations for minimum standards and a national framework for Local Offers, along with improved accountability measures.

1 Introduction

1. The Queen's Speech, delivered to Parliament on 9 May 2012, included proposals for a Children and Families Bill which would include “measures to improve provision for disabled children and children with special educational needs [...] to support children involved in family law cases, reform court processes for children in care and strengthen the role of the Children's Commissioner”.¹

2. The Government announced that it would bring forward draft clauses from the Bill for pre-legislative scrutiny in the following areas:

- Flexible parental leave and flexible working
- Special educational needs (SEN) and disability
- Office of the Children's Commissioner reform
- Family justice reform
- Adoption reform

3. The Government's stated intention was to introduce a Bill combining all these clauses in January 2013. We expressed an interest in conducting pre-legislative scrutiny of the draft clauses relating to SEN. The other parts of the Bill are being examined by different committees in the Commons and the Lords.

4. The notes accompanying the Queen's Speech explained that the proposed measures relating to SEN and disability would involve “cutting red tape and delays in giving early specialist support for children and young people with Special Educational Needs (SEN) and/or disabilities—the biggest reforms for 30 years.” It would achieve this by:

- Replacing SEN Statements and Learning Difficulty Assessments (for 16-25 year olds) with a single, simpler 0-25 assessment process and Education, Health and Care Plan from 2014.
- Providing statutory protections comparable to those currently associated with a Statement of SEN to up to 25 in further education—instead of being cut off at 16.
- Requiring that local authorities and Health services jointly plan and commission the services that children, young people and families need.
- Giving parents or young people the right to a personal budget for their support.

5. The Government paved the way for these proposals in its 2011 Green Paper on SEN, followed by the Next Steps document published in May 2012. Both these publications were

1 <http://www.cabinetoffice.gov.uk/queens-speech-2012>

the subject of one-off hearings before our Committee. The main concerns raised at the second of these sessions, held in June 2012, related to the speed of the implementation of the proposals, particularly in relation to learning lessons from the ongoing pilots.

6. The draft clauses which would make up the part of the Bill dealing with SEN were published by the Department for Education on Monday 3 September 2012 (Cm 8438), accompanied by explanatory notes on the clauses. At the same time, the then Minister, Sarah Teather, wrote to the Chair of our Committee, setting out the approach taken to drafting the provisions and some particular issues on which the Government would welcome the Committee's views.²

7. We drew up terms of reference to establish whether the draft clauses were likely to achieve the ambitions set out in the Green Paper. We also sought to provide answers to Sarah Teather's questions.

8. Our call for evidence resulted in well over 200 written memoranda being submitted from witnesses including parents and young people, local authorities, representatives of the Pathfinder projects which were set up to test the core proposals described in the Green Paper, academics, charitable organisations, educational organisations, specialists in therapeutic and Health services and the All-Party Parliamentary Group on Autism. We also held two oral evidence sessions. We are grateful to all our witnesses for providing such extensive and high quality evidence, particularly given the necessarily short timetables for this piece of scrutiny.

9. Finally, we would like to thank our specialist adviser, Professor Geoff Lindsay, and our standing special advisers on children's services, Professor David Berridge OBE and Marion Davis CBE,³ whose expertise and advice has been invaluable in the course of our inquiry.

Our report

10. Our call for evidence listed 17 questions, 10 of which were posed by the then Minister, Sarah Teather. From the responses received, key themes emerged about certain aspects of the draft legislation and the proposed reforms and we have concentrated in this report on these issues, rather than attempting to address all the specific questions in a schematic way.

2 <http://media.education.gov.uk/assets/file/pdf/s/sarah%20teather%20letter%20to%20education%20select%20committee.pdf>

3 Professor Geoff Lindsay declared interests as Principal Investigator for approximately 30 research projects for the Department for Education including current roles directing the CANparent Universal Parenting Classes Evaluation and the Investigation of Key Stage 2 Access Arrangements Procedures. Professor Lindsay is a member of the Labour Party. He also conducts research on other aspects of special educational needs for other funding bodies e.g. Nuffield Foundation, National Council of Special Education in Ireland. He is also conducting research funded by the Autism Education Trust which is itself funded by the DfE. Marion Davis CBE declared interests as a former President and continuing Associate Member of the Association of Directors of Children's Services (ADCS) and as a former member of the Munro review reference group, continuing to work with Professor Munro. Professor David Berridge OBE, Professor of Child and Family Welfare, Centre for Family Policy and Child Welfare, University of Bristol, declared interests in the form of research with the Department for Education and as a member of the Corporate Parenting Panel of Bristol City Council Children and Young People's Services.

This means that there is much valuable material within the written evidence submitted to our inquiry, in addition to that cited in this report, to which we would draw the attention of the Department for Education in their preparation of the forthcoming Bill. Some witnesses also provided detailed drafting suggestions which go beyond the scope of our report but which, again, should be taken into account by the Department's Bill team. ***We recommend that the Department for Education examine with close attention the written evidence provided to our inquiry on issues not covered in our report and give careful consideration to the points raised by witnesses in drafting the Bill which is to be presented to Parliament.***

2 The draft clauses: process and context

Detail, timing and context

11. The draft clauses are designed to provide a broad legislative framework, leaving detailed changes to be set out later in regulations. The Government has undertaken to provide draft regulations to assist parliamentary scrutiny during the public Bill stage of the Bill but this information is not currently available to us, nor to the witnesses to this inquiry. One reason for this is that the regulations are expected to draw upon the experience of the 20 Pathfinders which were originally intended to report by March 2013.

12. The lack of detail in the draft clauses was a source of much concern to our witnesses. A clear majority of the evidence we received during our inquiry concurs with the view of the SE7 Pathfinder—the largest Pathfinder⁴—which is “concerned that in many ways the draft clauses do not go far enough and do not fully reflect the inspirational vision in the Green Paper”.⁵ In the first session of oral evidence for our inquiry, Liverpool Council added that “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”.⁶

13. We discuss in greater detail where this lack of detail is particularly problematic in subsequent chapters of our report. However, in general terms, our witnesses agree that the fact that the draft legislation is “designed as a high level enabling document”⁷ means that they are unable to comment effectively on to how likely it is to bring about improvements in provision for children and young people with special educational needs. When we suggested to the Minister, Edward Timpson MP, that the draft clauses lack substance, he replied

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,

4 SE7 represents the views of Brighton and Hove, East Sussex, Hampshire, Kent, Medway, Surrey and West Sussex. These areas serve about 10% of the children in England. The 7 local authorities, PCT Clusters, Parent and Carer Forums and the Voluntary and Community Sector came together to submit a successful bid to become the largest SEND Pathfinder site. They had nearly 200 pilot Education, Health and Care Plans in place by the end of October 2012. This is nearly 50% of the national sample.

5 Ev w526

6 Q1, Kathryn Boulton

7 Ev w4

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.⁸

14. The majority of witnesses commented that the legislation is being brought forward too hastily, because there will not be time for the Pathfinders to report and inform consideration of the draft Bill. The SE7 Pathfinder warns “it is important not to underestimate the ground work needed to put in place such significant cultural and working practice changes as envisaged in the Green Paper”.⁹ The City of Bradford Metropolitan District Council, in its written evidence to the Committee, identified the short timescale as representing “a significant risk.”¹⁰

15. As to the effectiveness of the Pathfinders themselves, the charity IPSEA (Independent Parental Special Educational Advice) commented that “IPSEA is still finding it hard to determine what is actually being piloted, by who and with whom. From what we have been able to gather from parents and the limited information available, Pathfinder pilot schemes are not piloting common systems or Plans, so that any outcomes are not likely to be generalisable.”¹¹ Individuals working on the North Yorkshire Pathfinder support these concerns, saying “the families going through the new processes are not a representative sample of the potential SEN population in most cases. Many of the Pathfinders are concerned about how to scale up from the small trials to a whole Authority approach”.¹²

16. In response to these concerns, the Minister referred to the August report by the SEND Green Paper Pathfinder Programme Evaluators, SQW:

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.¹³

The Minister did not refer us to the findings of the most recent evaluation report published by SQW in October 2012, which does not make for very encouraging reading. It found that:

8 Q196

9 Ev w526

10 *ibid.*

11 Ev w108, Ev w559

12 Ev w172 (Evidence from Michael Cotton, a Principal Educational Psychologist and Lynda Dyson, Head of Assessment and Commissioning (Education) expressing their personal views working on the North Yorkshire Pathfinder)

13 Q197

The current pace of progress and associated recruitment of families and young people is behind that expected at scoping and unlikely to provide sufficient evidence to provide comprehensive responses to the four evaluation objectives¹⁴ within the 18-month evaluation timescale. This could limit the extent to which the findings can inform any transitional process. Unless current recruitment profiles can be increased or the evaluation timetable extended, it may be the case that the evaluation can only report the Pathfinder approaches that have been developed with only limited comment on their effectiveness.¹⁵

17. SQW's conclusion reflects the findings of a 2003 review of Government pilots commissioned by the Cabinet Office which recommended that "although pilots or policy trials may be costly in time and resources and may carry political risks, they should be balanced against greater risk of embedding preventable flaws into a new policy". It also advised that "once embarked upon, a pilot must be allowed to run its course. Notwithstanding the familiar pressures of government timetables, the full benefits of a policy pilot will not be realised if the policy is rolled out before the results of the pilot have been absorbed and acted upon. Early results may give a misleading picture".¹⁶

18. It is not only the short timescales for the Pathfinders which cause concern. The timing of the legislation alongside major reforms in education and Health is brought into question by most witnesses. Jo Webber, representing the NHS Confederation, told us:

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.¹⁷

19. Solicitors SEN Legal add, "the Department of Health is currently consulting on a draft Care and Support Bill which will deal with social care support for adults (defined as those over 18). There appears to be a complete lack of joined-up thinking here over how [Education Health and Care] Plans will move into Care and Support Plans for those over 25".¹⁸ Learning disability charity Mencap highlights how a lack of joining up in this area could impact on the ground:

14 Objective (1) Make the current support system for disabled children and young people and those with SEN and their parents or carer more transparent, less adversarial and less bureaucratic; Objective (2) Increase real choice and control, and improve outcomes, for families from a range of backgrounds with disabled children and young people and those who have special educational needs; Objective (3) Introduce greater independence into the assessment process by using the voluntary sector; Objective (4) Demonstrate value for money, by looking at the cost of reform and associated benefits.

15 DfE, *Evaluation of the SEND Pathfinder Programme: Interim Evaluation Report*, October 2012, Executive Summary, para 22

16 *Trying it out: The Role of Pilots in Policy Making*, Cabinet Office, 2003, Recommendations 2, 6

17 Q1

18 Ev w356

In the light of the fact that there is no duty on health and social care providers to deliver what is set out in an Education Health and Care Plan, Mencap is unsure how this would work if a Care and Support Plan is to make up the care element of an EHCP. We are concerned that, with a duty to provide social care support as part of the Care and Support Bill provisions and no duty to provide social care support as part of the Children and Families Bill provisions, this could create a divide in someone's social care support based on whether there is a statutory responsibility to provide it or not. This has implications for the ability of a CSP to be integrated into an EHCP. It might also lead some cash-strapped authorities to use this anomaly to justify a refusal to provide a certain service on the basis that it comes under an EHCP.¹⁹

Mencap concludes that the “Care and Support Bill includes provision to develop a new national eligibility and assessment framework and that this is still in development. We therefore appreciate that it is not possible to determine the likely numbers of children and young people who will be eligible for both children's and adult's services. However, this means that decisions about matters which affect EHCP provision will be made after the Education Select Committee has considered the draft SEN provisions. Mencap does not, therefore, believe that it is possible to consider the full ramifications of the various components of an EHCP at this stage”.²⁰

20. With regards to education reform, the Association of Directors of Children's Services (ADCS) warns that the new proposals are being introduced at a time of “significant flux in both the Health and education systems, and at a time when the school leaving age is to increase incrementally to 18 by 2015”.²¹ The National Union of Teachers adds:

Schools will not understand the implications of the new funding system on their SEN budgets until 2013. The way in which funding changes drive behaviour in terms of school admissions for pupils with SEN, provision and numbers of applications for Statements/EHC Plans remains to be seen. There is a huge black hole of knowledge about how SEN budgets will be affected by the overall funding changes. The Select Committee should recommend that the DfE waits to introduce the SEN Green Paper reforms until September 2015. This will provide an opportunity for schools and School Forums to get to grips with the new funding system. It will also allow time to evaluate what the funding reforms have meant for SEN pupils. There is a likelihood that schools with high numbers of pupils on the SEN Register and with high deprivation indicators are going to lose out under the new funding system.²²

21. Witnesses also point to particular challenges for local authorities in “undoing” complex arrangements already in place for supporting children with SEN. Blackpool Council explained that:

19 Ev w298

20 *ibid.*

21 Ev w279

22 Ev w519

Potential issues exist for a local authority such as Blackpool. Historically the borough has delegated significant SEN resources to schools. This lowered the number of Statements, whilst meeting needs without bureaucracy, as seen by the low number of Tribunals. However, this finance cannot be recouped from schools because of the minimum funding guarantee, to fund EHC plans. 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.²³

22. In oral evidence, we asked the Minister how he would guard against “punishing” those local authorities which have been particularly good at delegating SEN funding to schools in the past. We subsequently received a written response from the Minister explaining that:

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.²⁴

23. In oral evidence, we asked witnesses outright whether their concerns about the timetables for the draft legislation were sufficient as to recommend a delay in the process of legislation. Some witnesses felt this would be advisable—for example Jo Webber representing the NHS Confederation told us “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

23 Ev 42, para 2.3.4

24 Ev 78-9

until April next year”.²⁵ Other witnesses, such as consultant Peter Gray, pointed out that, due to the very general nature of the draft clauses and them being “not hugely different from our existing statutory framework”²⁶, this may not be necessary. Brian Gale of the National Deaf Children’s Society advised delaying the “riskier” elements of the draft legislation and progressing with the rest.²⁷

24. Dr Charles Palmer of Leicestershire County Council suggested that there was a great risk of failing the high expectations of parents and young people, advising “a delay [in the process of legislation] 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”.²⁸ The same concerns and recommendations are aired in other evidence, including that from the Association of Directors of Children’s Services.²⁹

25. In the light of widespread concern about the immaturity of Pathfinders and the short timetables for bringing the legislation forward, we were encouraged by the Minister’s response:

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.³⁰

On the question of timing of the legislation, he added that: “It is still very much my intention to have this legislation on the statute book by early 2014, but [...] I want to make sure we get the legislation right.”³¹ Reflecting on meetings that he had held with members of the special educational needs groups, parents and those taking part in the Pathfinders, he recognized that “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”. However, he was “reassured that the overwhelming view is that we are moving in the right direction.”

26. We agree that the draft legislation is moving in the right direction and we support the Minister’s ambition to keep up the momentum in finalising this legislation by 2014. We do not recommend any significant delay in introducing the Bill, but more work is needed and we welcome the Minister’s emphasis on getting it right rather than sticking

25 Q10

26 Q10

27 Q54

28 Q54

29 Ev w279

30 Q198

31 Q199

to a self-imposed timetable. For this reason, we strongly support the Government’s decision to extend the Pathfinders for a further 18 months and we seek assurances that the findings from the Pathfinders will be drawn upon in detail to inform the final make-up of regulations and the Code of Practice to accompany the legislation.

Joined- up thinking? Co-operation between agencies

27. Whilst the draft legislation provides separate definitions for “special educational provision”, “health provision” and “social care provision”, all responsibility for identifying, and making provision for, young people with SEN remains with the local authority. The new system will not introduce a duty on Health or other services to provide the support described in Education Health and Care Plans. The only duty on Health and social care is in Clause 6 which requires the joint commissioning of education, Health and care provision. The vast majority of evidence to our inquiry views the lack of statutory duties on Health as a major failing of the draft legislation. The ADCS, for example, was “concerned that although local authorities are, rightly, established as champion for the most vulnerable children, young people and their families, the lack of levers for local authorities in the draft legislation to hold partners to account for their contribution and the quality of their provision could undermine our capacity to secure appropriate and high quality provision across education, Health and social care”.³²

28. As the SEND Green Paper Pathfinder Programme Evaluators, SQW, concluded, “Much rests on the proposals for joint commissioning”³³ for integrated working to deliver on the ground. Our evidence suggests that many stakeholders do not see joint commissioning duties as sufficient to protect the needs of individuals. Indeed, SQW adds, there is a “high risk” that, “In the absence of sufficient Government direction, multi-agency working sees some improvement during the Pathfinder Programme and then drops back to the default position post this period”.³⁴

29. The National Union of Teachers asserts “there remain barriers to co-operation by education, Health and care which will not be removed merely by requiring by law that professionals co-operate around the education, health and care needs of children and young people with SEN.”³⁵ Instead, the NUT calls for greater clarity on accountability for the delivery of specific services:

We have one major concern [...] about the absence of new duties on Health and social care in relation to delivering the provision set out in EHC plans. If health and social care needs are to be explicitly recorded in the EHC plan, there needs to be clarity about responsibility. There is a very real chance that the new plans will

32 Ev w279

33 DfE, *Evaluation of the SEND Pathfinder Programme: Interim Evaluation Report*, October 2012, Executive Summary, para 21

34 DfE, *Evaluation of the SEND Pathfinder Programme: Interim Evaluation Report*, October 2012, Executive Summary, para 21

35 Ev w519

founder on how difficult it will be for the local authority to engage the Health Trusts and for agreement to be reached between the parties.³⁶

30. In oral evidence, Jo Webber of the NHS Confederation agreed, saying “one of the areas where we would be seeking further clarity [is about] who has accountability throughout the system to ensure that what provision is decided upon is going to be delivered”.³⁷ This view was further backed up by evidence from the SE7 Pathfinder—a powerful submission considering the weight of backing behind it. SE7 asserts:

We welcome the requirement for joint commissioning and the integration of services. There should also be a requirement for Health and care services to provide the provision set out in the EHC plan and they should be held accountable for this.³⁸

31. The Government’s reasons for there being no specific duties on Health in the draft legislation were explained to us by the Minister:

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. [...] 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.³⁹

32. As we will discuss in greater detail later in our report, our evidence suggests that, in the absence of any statutory duties on Health, there is a high risk of disengagement by the Health sector, with potential adverse consequences, including:

- An incomplete Local Offer
- Disjointed assessment processes

36 Ev w519

37 Q28

38 Ev w526, para 12

39 Q201

- Parents not having an Education Health and Care Plan that they can discuss with the local authority and expect action or redress from all partners if there are concerns
- Confusion over accountability for the provision of services.

33. To address some of these issues, we asked the Minister whether he had considered putting a duty to co-operate on the face of the Bill as regards all of the different functions within the Health services. He told us “I am happy to look at that and see whether that is something that would first of all be do-able and whether it would make any material difference.”⁴⁰

34. Our witnesses also put forward various suggestions to strengthen accountability for delivery of appropriate services. Philippa Stobbs of the Special Educational Consortium recommended that “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”. She also recommended a “functional link [by] 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”. UNISON similarly recommends “greater consideration be given to the role of local authority directors of children’s services, particularly in regard to representing the views of schools on Health and Wellbeing Boards”.⁴¹ Strong links between local authorities and Health and Wellbeing Boards were also seen to be critical by Liverpool Council and Jo Webber of the NHS Confederation,⁴² while Mencap drew attention to the new Clinical Commissioning Groups, calling for a “more robust duty on CCGs to ensure that the agreed commissioning arrangements are secured and delivered”.⁴³

35. These concerns and recommendations were brought together by the ADCS which acknowledged and welcomed references to clinical commissioning groups but remained “concerned that the draft legislation does not reflect the totality of the emerging Health system”. The ADCS suggested that the legislation may need to reflect:

- the role of the Joint Strategic Needs Assessment in the identification and assessment of need in the local area
- the role of the Health and Wellbeing Board and the Health and Wellbeing Strategy in setting local priorities for commissioning and monitoring progress

40 Q206

41 Ev w441, para 4.2

42 Q19

43 Ev w298, para 18

- the role of the local, regional and national NHS Commissioning Board in commissioning provision
- the role of Public Health England in commissioning provision.⁴⁴

36. The active involvement of the NHS—in commissioning, delivery and redress —is critical to the success of the legislation. Despite the acknowledged difficulties, in order for this to work, the Government must ensure that the NHS is obliged to participate fully. We also make recommendations later in our report as to how regulations may make specific requirements on Health to ensure the legislation meets the needs of young people and their parents.⁴⁵

Terminology

37. In her letter to the Committee, former Minister, Sarah Teather, suggested that it would be helpful for us to gauge views on suitable alternatives to the term “special educational needs” under the proposed new system. Many respondents suggest alternatives, highlighting the fact that, with a system that runs from birth-25, an “educational” focus may not be appropriate. Other suggestions included “learning difficulties and/or disabilities” (as proposed by the Department), “additional needs”⁴⁶ and “individual education”.⁴⁷ Quite a number of submissions, however, found this issue irrelevant and certainly less important than the proposed changes to the system itself. For example, the NDCS had “no response” to make to this question.⁴⁸ ***We recommend that, in the absence of any consensus or strong support for a change, the new legislation continue to use the established terminology of “special educational needs”.***

44 Ev w279, para 1.3

45 See paras 66, 67, 71 and 83

46 Ev w4, Ev w13

47 Ev w11

48 Ev 48

3 Provision from birth to 25

38. During our inquiry, we heard widespread and enthusiastic support for a statutory framework for SEN that works for children and young people from birth to 25 years of age. As parent witness Carol Dixon said, “absolutely, it is fantastic that it goes up to 25”, explaining that “At 16, [my daughter] 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”.⁴⁹ Notwithstanding this general welcome for the extension, witnesses expressed a certain degree of concern regarding funding for the new framework and the impact it may have on finances for post-16 education, and provision for 19-25 year olds. We examine these concerns below.

Funding and post-16 education

39. We questioned the Minister as to how a new birth to 25 system for SEN would be funded. He told us:

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.⁵⁰

He added:

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 [...] 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.⁵¹

40. The Association of Colleges pointed out that “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 used. 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

49 Ev 26

50 Q220

51 Q221

lower level needs”.⁵² Di Roberts—Principal of Brockenhurst College—clarified this, explaining that the £640 million

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.

Di Roberts added: “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 schools qualifications. We have very real concerns that these two changes taken together and without any trialling, could destabilize provision for vulnerable young people”.⁵³

41. Di Roberts also shared Blackpool Council’s concern that, whilst funding for post-16 provision is being provided, there is no funding to support the increased capacity that will be required to deliver these functions in local authorities.⁵⁴ The Association of Colleges points out that the administration of a system which operates from birth to 25 will create additional bureaucratic burdens on colleges as “they will be required to deal with multiple local authorities, each of which will have their own systems and processes”.⁵⁵

42. The Association of Colleges concludes that “it is crucial that Further Education and Sixth Form Colleges are fully involved in all aspects of trialling the reforms. There is little evidence that the Pathfinders are working with Colleges and this must be rectified as a priority”.⁵⁶

43. We commend the Government’s increased spending on supporting pupils with SEN but are concerned at claims that the SEN Pathfinders are failing to involve colleges adequately in trialling the approaches for 0-25 provision described in the draft clauses. We seek reassurances that this shortcoming will be addressed in the extended Pathfinder schemes so as to understand fully the financial and administrative impact the proposals will have on colleges and local authorities in securing provision for pupils with SEN up to the age of 25. The Government must ensure that the extension of the statutory SEN framework from 16 to 25 is not allowed to extend provision for some at the expense of the quality and quantity of provision for all.

52 Ev 74

53 Ev 77

54 Qq35-6, Kathryn Boulton

55 Ev 74

56 Ev 74;Q6

Provision for 19-25 year olds

44. In her letter to the Committee, former Minister Sarah Teather explained that “staying in education or training until they are 25 may not be in the best interest of a young person. But some people with special educational needs require longer than others to make the transition to adult life and it is important that local authorities are able to continue an Education, Health and Care Plan until a young person’s 25th birthday if that is what they need”.⁵⁷

45. For these reasons, clauses 16 and 17 of the draft legislation state that “in forming an opinion [as to whether to undertake an assessment or prepare an Education Health and Care Plan] in relation to a young person aged over 18, a local authority must have regard to his or her age”. The Association of National Specialist Colleges views these clauses as a potential “disincentive to continuing the EHC plan; we have concerns that young people and their parents will be put under pressure not to seek post-18 education placements. We understand the intention behind this clause, but we believe there are many good reasons for young people to stay in learning beyond 18”.⁵⁸

46. Along with several other witnesses, Hampshire County Council offers an alternative view, saying “although it is assumed that the new system is not intended to give an entitlement to education up to the age of 25 there is already evidence of parental assumption that it will. Independent providers are setting up 19-25 provision in anticipation of new business. LAs simply do not have the resources to meet this demand. If this section of the legislation is not clarified then more time will be spent in Tribunals arguing about placements. In times of financial constraint there will be tensions between Children’s Services, Adult Services and Health Services if the anticipated client group for this extended period is not clearly defined in the primary legislation”.⁵⁹

47. Evidence from the Nottinghamshire SEN Pathfinder builds on Hampshire’s analysis, explaining that:

Local authorities will wish to see [...] young people move on to independent living and work as quickly as possible and not to seek to remain in full-time learning without a clear reason and route towards independence and employment. Local authorities will therefore want to seek sufficient flexibility to provide access to education that promotes independent living and to supported employment where this is needed.⁶⁰

48. The Association of Colleges pointed out some perverse incentives within the proposed system, arguing that “With regards to rights and protections for 19-25 year-olds, [...] the legislation does not clarify who is responsible for young people over the age of 18”:

57 <http://media.education.gov.uk/assets/file/pdfs/sarah%20teather%20letter%20to%20education%20select%20committee.pdf>

58 Ev w489

59 Ev w225

60 Ev N119, para 12.2

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 and 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).⁶¹

49. The Association of College’s written evidence also points out that “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”.⁶² This was supported by parents giving oral evidence to our inquiry.⁶³ We address the issue of apprenticeships later in this report.⁶⁴

50. We are concerned that a potentially confusing picture is emerging over responsibility and rights for 19 to 25 year olds. Some stakeholders are interpreting the new system as providing guaranteed education for all young people with SEN to 25 years of age. This is doubtful. However, although it is more likely that the priority for the majority of young people with SEN (in particular, those with an EHCP) will be to move post-18 into independent living and employment, for some young people with an EHCP education will be the best route. It is vital that the responsibility, funding and, where appropriate, access to advocacy for these young people is clarified so that all those involved know what they can expect from the new provisions and who is accountable for providing it. If the purpose of the legislation is to extend education as a right to 25, then the Government needs to make that clear and fund that; if not, then that should also be made clear.

51. We seek reassurance that the extension of approaches for 0-25 provision will also address the needs of young people pursuing higher education.

61 Ev 74

62 *ibid.*

63 Q 173, Carol Dixon

64 See paragraph 97

4 Integrated provision and Education Health and Care Plans

The integrated assessment process

52. The draft legislation proposes to introduce a single assessment process and an Education, Health and Care Plan (EHCP) to replace the existing Statementing and Learning Difficulty Assessment processes. Under the present Code of Practice, a Statement is required where the LA considers the special education provision necessary to meet the child's needs cannot reasonably be provided within the resources normally available in mainstream schools and early education settings. In January 2010 there were 221,000 pupils with Statements of SEN—2.7% of the school population. If a young person remains at school after the age of 16, a local authority can maintain the Statement until he or she reaches the age of 19. If he or she leaves school for further education then a separate process, the Learning Difficulty Assessment, applies.⁶⁵ EHCPs will run from birth to age 25.

53. IPSEA—an organisation that provides advice on special education to parents—claims that “[The EHCP] is still an education-only based system. Parents or young people with SEN who also need to access social care or Health provisions will still need to go through parallel assessment processes, e.g. a social services core assessment. They will still need to deal with each agency separately”.⁶⁶

54. The National Autistic Society makes the same point and believes that the integrated assessment process could lead to an increase in bureaucracy. However, they view this as a necessary evil of the new system:

A short-term increase in bureaucracy may in the long term reduce the adversarial nature of the system and have a greater impact on bureaucracy and costs, through for example a reduction in the numbers of appeals, exclusions, and children developing more complex needs as a result of a lack of support.⁶⁷

55. Pathfinders are concentrating on how the process of assessment will work. However, along with several other witnesses, the Association of Directors of Children's Services suggests that “consideration should be given to shifting the focus in the legislation regarding assessments away from process and towards an articulation of what the key features of a quality assessment are”.⁶⁸ The Association of National Specialist Colleges adds that “we would like to see a greater emphasis on the training, qualifications, knowledge and experience required to undertake assessments and person centred planning, leading to high quality EHC plans. Young people and their parents cannot have confidence in the

65 House of Commons Library Standard Note, “Draft legislation on provision for children and young people with special educational needs”, SN/SP/6420.

66 Ev w108

67 Ev w273

68 Ev w280

system if they do not believe that the people working with them have the necessary understanding and knowledge”.⁶⁹

56. National charity for the deafblind, Sense, is concerned by “the absence of any co-ordinating agent” in the multi-agency assessment process and advocates employing “a specialist generalist’ to identify the current agencies to be part of the assessment process and ensure the necessary expertise is in place. This would also have the additional benefit of removing the necessity for parents to chase professionals to attend meetings and minimize the number of professionals at any given assessment”.⁷⁰ The National Union of Teachers “urges the Select Committee to call for additional ‘Lead Professionals’ posts to be created to facilitate multi agency working and ensure that unrealistic expectations are not placed on teachers, social workers or healthcare professionals already carrying out full time and overburdened posts”.⁷¹

57. The ES Trust—operational lead for Early Support—is also concerned by the lack of mention of key workers in the draft legislation. They allude to “a wide range of evidence that parent carers and young people value this and that key working support can make the difference between being enabled to live an ‘ordinary’ life and feeling as if life is a constant battle”.⁷² They add: “the draft legislation is in danger of substituting one statutory process for another and could fail to improve the system—the key to making a change in the system is to ensure a change in the working practices of professionals and the culture in the way services and practitioners work with families. Early Support can help to do this, but if this is ignored it could simply lead to different paperwork but the same process and outcomes”.⁷³ The Bromley and Bexley SEND Pathfinder involves extending the Early Support approach and key working up through the ages. Their evidence suggests that this approach is very effective.⁷⁴

58. Parent Julie Spicer-Thornton builds on the importance of the role of assessors, as opposed to the assessment process itself. She voices the view of many parent witnesses in saying

the draft Bill fails to establish the independence of experts assessing a child or young person’s special educational needs. Professionals making assessments of children and young people’s needs and who are responsible for making recommendations regarding suitable provision to be put in place to meet those needs will still not be independent from an LA [...] There is an inherent conflict of interest between the LA both assessing and being responsible for providing special educational provision.⁷⁵

69 Ev w490

70 Ev w258

71 Ev w519

72 Ev w317

73 *ibid.*

74 Ev w321

75 Ev w540

Ms Spicer-Thornton adds that this will lead to decisions on provision being made on a resource-led basis, rather than being based on need.⁷⁶ In oral evidence, parent witnesses alluded to the fact that the Green Paper discussed a role for independent assessments which was subsequently lost in the draft Bill. Parent Sharon Smith described this as “hugely disappointing to parents”.⁷⁷

59. In oral evidence, the Minister explained how the Government envisaged the operation of integrated assessments:

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. [...] 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.

The Minister concluded that “It is something that the Pathfinders will help inform”.⁷⁸

60. Little seems to be understood at present as to how the integrated assessment process will work in practice. This is an area where we welcome the additional time given to the Pathfinders to test approaches and report back on how to improve on the current Statementing process. We agree with our witnesses who prioritise the need for guidance on how quality assessments can be assured. We recommend that regulations make clear the necessary skills for individuals undertaking assessments. In addition they should create a presumption that a key worker/lead professional will be appointed unless there are good reasons not to do so.

Co-operation between local authorities and Health

61. As discussed in the previous chapter, our witnesses were dismayed that the draft clauses fail to place duties on Health “to compel integrated support”⁷⁹ in the same way as local authorities. As currently drafted, Clause 10, which addresses local authority functions relating to co-operation in specific cases (such as assessments of an individual child’s SEN and preparation of EHCPs⁸⁰), states that named bodies (including the NHS Commissioning Board, Local Health Boards and NHS trusts and Foundation trusts) must

76 Ev w540

77 Q 190

78 Qq 229-30

79 Ev w108, para 14 [IPSEA]

80 CM8438, Explanatory Notes, para 56

comply with a request for co-operation with the local authority “unless it considers that doing so would a) be incompatible with its own duties, or b) otherwise have an adverse effect on the exercise of its functions”.

62. Jean Gross, an independent expert and author on SEN, and member of the National Advisory Group established to advise the Government on implementing its SEN and disability reforms says:

[Clause 10], giving the NHS the right not to comply, will lead to many cases where Health bodies can escape making provision by stating that to do so would be incompatible with their duties to provide for acute conditions or for adults, or would have an adverse effect on the exercise of their functions for these patient groups.⁸¹

The Royal College of Speech and Language Therapists’ evidence reflects the concern of the majority of other witnesses that “this duty is not currently strong enough to ensure that the support required by individual children is actually delivered on the ground” and recommends “that regulations should clarify the kinds of co-operation that may be requested and, in particular, make it explicit that this co-operation includes co-operation in delivering services (i.e. not just co-operation in securing the EHC needs assessments and preparing EHC plans)”.⁸²

63. The National Union of Teachers points to the fact that the lack of any duties on Health is also likely to undermine the Government’s stated aim to cut red tape and delays in securing provision. It says “Statements are to be replaced because there is a view that the process is slow, parents become frustrated, and teachers need to produce too much paperwork. If the Health Authority does not co-operate, the process will in fact become slower rather than quicker, more adversarial and more bureaucratic. This will not benefit children or professionals working with them”.⁸³ Many witnesses, such as parent advice charity IPSEA, point to the fact that “there is no clear means of holding education, Health or social care to account for failing to work co-operatively”.⁸⁴ The SE7 Pathfinder arrive at the same conclusion that, “there should be a strengthened entitlement to the Health and care provision described in the plan and that there should be clear accountability on those agencies for this”.⁸⁵

64. The Minister appeared optimistic that the draft legislation will address these issues:

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.⁸⁶

81 Ev w333, para 5.1

82 Ev w458, paras 8, 10

83 Ev w519

84 Ev w108

85 Ev w526, para 17

86 Q253

[...] 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.⁸⁷

65. The Minister also told us that

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.⁸⁸

66. In oral evidence, Dr Charles Palmer of Leicestershire County Council acknowledged the fact that the NHS must prioritise its services based on clinical need, but suggested that Health and other agencies could be drawn more closely together by linking timetables for EHCPs more closely to NHS waiting timetables (18 weeks) and ensuring that there are clear children's leads at all levels in the NHS commissioning process.⁸⁹

67. Our evidence suggests that the duty of joint commissioning between Health and local authorities will not in itself be sufficient to secure improved engagement from Health in assessments of SEN and provision of Health services to children and young people with SEN and disabilities. We accept that there are constraints presented by the NHS Constitution, but duties can and should be imposed on the NHS which do not conflict with it. Regulations could, for instance, commit Health to adhere to timetables for assessments.

68. We are also concerned by the lack of a single means of redress/appeal. The Government seems to be relying on the duty for joint commissioning to reduce the incidence of appeals from parents and young people later on. This is too optimistic and we believe that greater protections for parents and young people in securing the provision described in an EHCP will be needed along with more coherent routes for redress for all aspects of an Education Health and Care Plan.

87 Q254

88 Q201

89 Q49

69. Written evidence from MG Law Limited points to a further complication resulting from the absence of any duties on Health in the draft legislation:

Clause 2 of the Bill includes for the first time in education law, a definition of Health services [...] This is [a very wide definition] as it includes all services which the Secretary of State considers appropriate for discharging his obligations. This therefore includes therapies which the Tribunal currently classifies as educational, such as speech and language therapy. The definition does not depend on the underlying need and reason for its provision, but the nature of the provider (almost invariably the Health service). There is nothing in the Bill which deals with the position where a therapy is needed for educational reasons, such as teaching a child to communicate, but delivered by a Health Authority. [...] Currently, if a local authority finds that the local NHS provider is not prepared or able to make the provision set out in the Statement, the local authority is under an obligation to buy the services in, from private sources if necessary. This is a vital safeguard.⁹⁰

The same issue was raised as a key concern by parent witnesses in oral evidence. Sharon Smith told us that:

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.⁹¹

70. Hillingdon Autistic Care and Support suggests that “safeguards should be included in the Bill to ensure that any therapy required to meet a special educational need remains legally the responsibility of the Local authority to arrange/secure as part of the special educational provision specified in an EHC Plan, even if the Local authority commissions this from the NHS Trusts”.⁹²

90 Ev w168, paras 9-10

91 Q172

92 Ev w265, para 7e

71. However, evidence from the SE7 Pathfinder explains concerns at this aspect of the draft legislation from a local authority point of view:

We are disappointed that the draft legislation has not attempted to address the key tension in the current legislation so that there is a key duty on the local authority to meet identified special educational needs but no acknowledgement of the restrictions on the public purse. Placing the only statutory duty to provide on education has led to an on-going broadening of the definition of ‘educational needs’ and has meant an increasing demand for education budgets to pay for support which in any other circumstance would be considered Health or social care provision. This cannot continue.⁹³

72. The lack of duties on Health creates a specific concern about securing services such as therapy services which may either be defined as supporting health or special educational needs. The legislation needs to make specific reference to such services to ensure that local authorities and Health cannot deny responsibility for their provision due to disagreements over which element of the EHCP they underpin. It also needs to be made clear how this provision will be funded, and by whom.

Entitlement to integrated provision and EHCPs

73. The requirement on local authorities to promote integration of special educational provision, Health care and social care in clause 5 is expressed specifically in terms of children and young people with special educational needs. In her letter to the Committee, former Minister Sarah Teather asked whether there was a case for extending the scope of the integrated provision requirement to all children and young people, including those with SEN.

74. There was little support for such a universal extension with concerns that this would mean “spreading the jam too thinly”,⁹⁴ but many witnesses, including Blackpool Council and Every Disabled Child Matters, suggested that “children and young people who have health or care needs, but are not covered by the current SEN framework, should 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”.⁹⁵ Mencap “is concerned that the eligibility for an EHCP is only via an educational trigger. This means that children and young people with primary health and care needs might not be identified as having SEN until they reach an educational setting. This seems opposed to the government’s aspirations to achieve early intervention”.⁹⁶

93 Ev w526, paras 7, 8

94 Q 68 [Charles Palmer]

95 Ev 50

96 Ev w298, para 32

75. Sense illustrates this point further, observing that “the promised 0-25 system in effect appears to be focused on the 2-18 age range with entitlement to an Education, Health and Care Plan being firmly attached to education. Congenitally deafblind [...] children require support from birth, initial priorities of clinicians will be to manage any of the underlying health conditions associated to the child”.⁹⁷ As a result of the primacy given to educational need in the draft legislation, the National Sensory Impairment Partnership calls for Clause 4 of the legislation to be extended “to require Health services to inform a local authority whether a child is likely to have a special educational need” rather than put the onus on local authorities to identify all children with SEN from birth to 25.⁹⁸

76. Philippa Stobbs of the Special Educational Consortium described how disabilities can have “hidden” impacts on a young person’s education, explaining “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”.⁹⁹ Evidence from the Department for Education asserts

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 [...] 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 of 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 not have Education, Health and Care Plans.¹⁰⁰

77. In oral evidence, the Minister acknowledged the “huge crossover with children with disabilities”¹⁰¹, but added “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”.¹⁰²

78. This touches on a fundamental question for our inquiry: how to establish a baseline of what is “ordinarily available” in all schools to cater for those young people with mild to moderate SEN. We address this question in the next chapter. However, *the evidence makes a strong case to include disabled children, with or without SEN, in the scope of*

97 Ev w258, para 1

98 Ev w371, para 9.2

99 Q51

100 Ev 59, para 8

101 Q237

102 Q238

entitlement to integrated provision and EHCPs. We recommend this. The legislation should also make clear that the entitlement covers children from birth upwards, including those too young to be in an educational setting but for whom an early assessment might highlight educational needs.

Triggering assessments and timescales for conducting assessments

79. A large number of witnesses agree with IPSEA in being “seriously concerned”¹⁰³ that the provisions “remove the parent’s/school’s right to ask an LA for a child’s special educational needs to be assessed and that request to be responded within a set time frame”.¹⁰⁴ The current legislation requires a local authority to respond, with reasons, within six weeks to a parent’s or school’s request for an assessment. Parent Julie Spicer-Thornton explains that

parents acting for their children lose the specific right currently available to them in law to request assessment for their child and for that request to be responded to by their local authority, which is the first stage in obtaining a Statement of special educational needs. This is clearly a glaring omission and must be rectified. The parents’ right to request a statutory assessment, is currently enshrined in Section 329 of the Education Act 1996, and in fact has existed since the 1981 Education Act. This needs to be enshrined in the Act itself, since, even if placed under regulations; it would fail to make it clear that there is a statutory right to request an assessment.¹⁰⁵

80. Rather than being a restriction of parents’ rights, the Department for Education intends this element of the legislation to be an expansion of rights across the board. As the Minister told us, “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”.¹⁰⁶ However, IPSEA observed that:

The intention in draft provision 4 seems to be that anyone should be able to bring to the attention of an LA the fact that a child has or probably has SEN [...] Draft provision 4 is, however, a general duty towards all children who have SEN, not the current specific duty to identify those children with SEN who may need the LA to act to provide the level of support afforded by a Statement/EHC plan. This duty on LAs precedes the duty to assess and defines the criterion for assessment, and has been omitted. What was a chain of duties to the parents of the most needy children [...] has been broken.¹⁰⁷

81. Moreover, many witnesses are concerned by draft Clause 16(6) which states that “regulations may make provision about EHC needs assessments”, but fails to list timescales

103 Ev w108

104 Ev w108, 1.1

105 Ev w540, para 2

106 Q200

107 Ev w108, para 1.1

for responding to a request for an assessment and timescales for conducting assessments as items for regulation. Evidence from parents advises that “parents currently complain that Local Authorities overrun Statutory time periods and the whole assessment process takes longer than the Regulations prescribe (currently 6 months start to finish). Removing the time period will lengthen the delay”.¹⁰⁸

82. On being asked outright whether he intended to impose minimum timescales relating to assessment processes, the Minister explained “it is something that I am still considering”.¹⁰⁹ He added:

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.¹¹⁰

83. On the wider point about whether parents’ rights had been diluted in the draft legislation, the Minister told us: “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”.¹¹¹

84. Improving processes for requesting, securing and carrying out assessments of SEN are top priorities for parents of children with SEN. We recommend that current protections be reiterated in the new legislation, and that timescales for responding to a request for an assessment, and for conducting an assessment be set out in regulations. It is essential that there is an alignment of assessment timescales between local authorities and Health. Whatever the difficulties, they must be overcome.

108 Ev w548, para 1c

109 Q204

110 Q202

111 Q200

“Specifying” versus “setting out”

85. IPSEA highlighted concern at the change of language in draft clause 17 which relates to how special educational provision should be described in EHCPs from “specifying” to “setting out”. They claim that this will lead to special educational provision being “described so vaguely as to avoid the legal duty to arrange/secure a specific amount and kind of help for the child”. IPSEA adds that a similar proposed change in language “was successfully opposed by parents’ groups over the proposed Code [of Practice] and amended Regulations in 2000 to 2001”. It called for this change to be “vigorously opposed”.¹¹²

86. Parent Sharon Smith provided a clear example of why specific detail is required in any plan:

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 [...] 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 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.¹¹³

Ms Smith also referred to comments from a recent survey of Hampshire parents:

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 [even] 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.¹¹⁴

87. When we asked the Minister what the rationale was for this change in terminology, he told us

112 Ev w108, 1.2

113 Q171

114 Ibid

[...] 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.¹¹⁵

Moreover, in answering the question “will [Education Health and Care] plans have the same legal status as Statements?”, the Minister responded with a categorical “Yes”.¹¹⁶

88. The Minister also pledged that “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 issue that we will address them. [...] 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”.¹¹⁷

89. We recommend that draft clause 17, which relates to how special educational provision should be described in EHCPs, require that an EHCP “specifies” detail contained within the Plan, as opposed to “setting out”, as currently drafted. It should be absolutely clear on the face of the Bill that EHCPs carry the same legal status as Statements.

Stopping and starting the EHCP

90. Clause 24 of the draft legislation states that “a local authority may only stop maintaining an Education, Health and Care Plan (i.e. providing what is set out in the plan) if they are no longer responsible for that child or young person, for example if the child or young person has moved to another area, or they consider that it is no longer necessary for the Plan to be maintained”. The clause sets out some of the circumstances under which it would no longer be necessary to maintain the Plan, for example, where the educational outcomes set out in the plan for the young person have been achieved, or he or she is no longer receiving education or training.

91. Referring to the provision for an EHCP to be ceased “where the educational outcomes set out in the plan for the young person have been achieved”, the National Deaf Children’s Society asserts that “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

115 Q256

116 Q251

117 Q200

children to achieve in order to end the EHCP quickly”.¹¹⁸ Evidence from the Nottinghamshire SEND Pathfinder points out that “in reality young people with a learning difficulty and/or disability will vary the ways they learn, depending very often on the nature of their condition. Some young people may drop out of learning only to wish to resume a few months later. It would be an inefficient use of resources to end an EHC plan immediately, only to have to re-start it”.¹¹⁹

92. Di Roberts, Principal of Brockenhurst College, also pointed to the risk of failing to keep track of young people as they pass in and out of education:

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.¹²⁰

93. We asked the Minister to clarify the Government’s thinking around this part of the legislation and he told us:

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.¹²¹

94. Many witnesses raised concerns about whether young people not in education, employment or training (NEETs), many of whom have Special Educational Needs, will be helped by the new policy. Blackpool Council’s evidence states that “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 safeguards need to be built in”.¹²² The National Deaf Children’s Society also supports maintaining EHCPs for NEETS, saying “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

118 Ev 46, 1.5

119 Ev w262, para 9.2

120 Q93

121 Q231

122 Ev 42, para 2.12.1

people who are NEET. NDCS is not convinced that all local authorities have adequate systems in place to do this”.¹²³

95. Evidence from Every Disabled Child Matters and the Special Educational Consortium concurs, urging 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”.¹²⁴

96. In oral evidence, the Committee heard a very clear plea from Di Roberts of Brockenhurst College with regards to the proposals to exclude young people on apprenticeships from the entitlement to an EHCP:

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. [...] Please can they be included?¹²⁵

97. Potential problems with extending entitlement to EHCPs to NEETs and students not in education were highlighted by Janet Thompson of Ofsted, stating that “the accountability structure, as it is set at the moment with inspections, is linked to youngsters on the roll within a provision”.¹²⁶ However, in oral evidence, the Minister responded to calls for apprentices to be included by saying “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”.¹²⁷

98. We believe that the cut-off point for EHCPs should be when educational outcomes are achieved but there must be regulatory provisions to ensure that 18-25 year olds with SEN can quickly have their plan reinstated if they move back into education. We acknowledge the particular position of NEETs and apprenticeships and the potential of EHCPs to assist them to reach desirable educational outcomes. We recommend that the legislation provide entitlement to EHCPs to NEETs of compulsory participation age and to young people undertaking apprenticeships.

Reviewing the EHCP

99. Draft clause 23 requires review of EHCPs every 12 months. Evidence from the Department for Education states:

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

123 Ev46, para 1.3

124 Ev 50, para 27

125 Q137

126 Q88

127 Q245

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.¹²⁸

100. The Association of Directors of Children’s Services expressed concern that “it is our experience that the resource intensive annual reviews of Statements are often not impactful because they are not necessarily held at the most useful time [...] We are concerned that this draft clause may obstruct the capacity of the process to be informed by outcomes monitoring. We believe that outcomes monitoring must be a requirement for all agencies and should be undertaken at points relevant to the intervention, not just at annual reviews or major transition phases”.¹²⁹ The Association of School and College Leaders reported in their written evidence that

it is the experience of our members that children do sometimes arrive at secondary school with special needs that have not been picked up by their primary school. While it is essential that the identification process can commence at any age, we think it might be useful to create the opportunity for the needs of children to be reviewed at transition stages in education such as the start of secondary school, and for the assessment process to remain flexible and open throughout childhood and into young adulthood.¹³⁰

ASCL members are reported to be anticipating that EHCP reviews “are likely to be even more time consuming” than the Statement review process.¹³¹

101. Regulations should allow flexibility in the frequency and timing of EHCP reviews.

Appeals and Mediation

102. The focus of the current proposals relies heavily on trying to avert complaints and costly and lengthy Tribunal processes through measures such as compulsory mediation. The Minister told us: “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”.¹³²

103. At present there is an entitlement to voluntary mediation, but this seems to be taken up very rarely (on average a Local authority will have just one case of voluntary mediation a year).The draft clauses would introduce a legal requirement for all cases brought to

128 Ev 59, para 15

129 Ev w279, para 2.3

130 Ev w50-1

131 Ev w50, para 21

132 Q214

appeal (except those relating to the name of a school, college or other institution specified in the EHCP) to go through mediation first, in an effort to reduce the number of cases going to the Tribunal and to make the system less adversarial. Whilst mediation will span education, Health and social care, appeals for Health and social care elements of the EHCP would still need to be addressed through the relevant channels e.g. Judicial Review.

104. Evidence received to date shows virtually no support for proposals for compulsory mediation. Blackpool Council wrote that “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”.¹³³

105. The National Deaf Children’s Society is against mandatory mediation which they claim “will be seen as a bureaucratic hoop by many parents”. The NDCS is “particularly concerned that some parents may feel pressured during mediation to accept something less than what their child needs”.¹³⁴ SEC/EDCM are also concerned that mandatory mediation “will add an extra stage to the process and place additional demands on parents”.¹³⁵

106. In addition, the impartiality of a mediation process which is arranged by the local authority itself is questioned by many. Reflecting the views of many, parent witnesses to our inquiry called for “an independent arbitrator at the very early stages, as soon as there is any sign of there being disagreement”.¹³⁶

107. Summing up the views of most witnesses, KIDS London—which has provided independent SEN mediation services since 2002—says “KIDS welcomes the ambition of the draft legislation to promote and increase use of mediation. However, we do not believe that mediation should become compulsory before a parent is able to register an Appeal with the Tribunal”. Instead, KIDS recommends that mediation should be “more widely promoted by Local Authorities and Parent Partnership Services to parents and schools [and that] the DfE has a role in ensuring that a clear message is sent to LAs and schools about the value of independent mediation”.¹³⁷

108. Evidence from MG Law Limited adds that “we have come across numerous cases where mediators simply have not been sufficiently aware of all the law involved in Statementing issues, and think it highly likely that there will be numerous instances where the agreement that is endorsed is in fact unlawful or unsuitable”.¹³⁸ This point is supported by solicitors SEN Legal.¹³⁹

133 Ev 42, 2.3.5

134 Ev 46, para 2.2

135 Ev 50, para 31

136 Q189, Sharon Smith

137 Ev w427, paras 9-10

138 Ev w168, 18

139 Ev w356, para 2

109. We put some of these arguments to the Minister. He pointed to the Pathfinders to support the Government’s position: “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”.¹⁴⁰ Addressing concerns of witnesses who view compulsory mediation as an extra bureaucratic hoop or, worse, a deliberate delaying tactic, the Minister said, “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”.¹⁴¹

110. We note the strong resistance to compulsory mediation in the evidence we have received. We consider that the main focus should be on ensuring early and meaningful engagement and discussion with parents. At present, in the family courts, the applicant and respondent in certain circumstances are expected to attend a family mediation information and assessment meeting (a “MIAM”) to find out about and consider mediation, or other forms of non-court based dispute resolution. The Government’s draft Clauses on family justice which will be included in the same bill as the SEN clauses propose that, in future, attendance at a MIAM should be compulsory for every person who wishes to apply for a court order in family proceedings of a certain type. We consider that this provides a useful model for the SEN dispute procedures and we recommend that the mediation proposals be changed so that it is compulsory to attend a meeting to consider mediation but not compulsory to enter it.

Transition from Statements to EHCPs

111. In oral evidence, all witnesses from educational establishments agreed that all young people with a current Statement of SEN should be entitled to an EHCP.¹⁴² Headteacher Graham Quinn added “You would struggle with the parental lobby if that was not the case”.¹⁴³

112. We discussed with the Minister how the transition from Statements to EHCPs should be made. He suggested that:

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

140 Q217

141 *ibid.*

142 Qq118-9

143 Q119

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.¹⁴⁴

113. Evidence from Mencap Local Kids First suggests a staged transition from Statements to EHCPs, with Years 10-13 being moved first (as time is “running out for them”); Years 5 and 6 next “to cover primary secondary transition”; children about to enter reception or full time schooling, and finally “others”.¹⁴⁵ In oral evidence, Janet Thompson of Ofsted suggested prioritising “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.”¹⁴⁶

114. The risks of introducing the relatively “untested” EHCPs (due to the lack of useful evidence from Pathfinders) were highlighted by Brian Gale of the National Deaf Children’s Society:

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”.¹⁴⁷

115. It is interesting to note experiences from Trafford where a SEND Pathfinder has been underway, that “the system that we are piloting in Trafford will not be transferable to all our current children that have Statements of SEN. Therefore a great deal of work will need to be done in order to determine the eligibility criteria. The Bill is not clear in defining the children for whom an EHC plan will be appropriate”.¹⁴⁸

116. In its 2010 report, *A Statement is not Enough*, Ofsted concluded that the number of young people with Statements could be reduced through, for example, better teaching and pastoral care. This may well be the case but there is naturally anxiety amongst parents that the transition from Statements to EHCPs could be used to reduce the number of children with plans. It would make sense for the change to be made on a rolling basis as children transfer from primary to secondary education, for example, and also to prioritise those with significant health and care needs first. **The Pathfinders will be important in testing**

144 Q225

145 Ev w125, para 4

146 Q123

147 Q54

148 Ev w434, para 2

the best approach to the transition from Statements to EHCPs and we look forward to the evaluation of their emerging results in this area.

5 Children with SEN but without a plan

117. Proposals for supporting the needs of pupils with mild to moderate SEN (to be brought forward under a new SEN Code of Practice) include replacing the existing School Action and School Action Plus system with a simpler new school-based category to help teachers focus on raising attainment. The Local Offer (as discussed in the next chapter) will address provision for these groups of children and young people.

118. Moving to a single category is designed to reduce the numbers designated as having SEN at School Action in particular as this is a problematic category. The proposed change has caused some concern among witnesses. For example, the Children’s Heart Federation found the proposal was “worrying”: “Sarah Teather, the previous Minister responsible for this legislation said quite clearly that no child currently receiving support through these categories would lose out because of this change. Concerns however remain and there needs to be definite guarantees that this is the case, and all those who currently receive support through these categories will equally be eligible for support. There needs to be greater clarification also about what system will be in place instead of these current support mechanisms”.¹⁴⁹

119. In oral evidence, Christine Terrey, Executive Headteacher of an Achievement for All school, told us that she was “anxious” for pupils who currently receive interventions under School Action and School Action Plus and those who have Statements but will not qualify for EHCPs. She told us “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. [...] Really I don’t think the draft legislation is paying much attention to what will happen to those children”.¹⁵⁰

120. Parent Eva Juusola asks

will a more person-centred approach suddenly end all conflict over the distribution of scarce resources? I really don’t think so. Maybe things will get easier for that tiny minority of children who qualify for an EHC Plan. But I fear that we might end up creating a two-tier system where the majority of children with SEND, who won’t have access to EHC plans, key workers, and personal budgets, are at serious risk of slipping through the net. In an increasingly autonomous school system, our kids need a bigger safety net, not a smaller one.¹⁵¹

149 Ev 494, para 2.3

150 Q108

151 Ev w370, paras 8-9

Ms Juusola concludes that “the local offer must establish minimum standards of provision, and it must be **enforceable**” [her emphasis].¹⁵² We return to the importance of the Local Offer for this group of children in the next chapter in our report.

121. Teaching union NASUWT is deeply concerned about the prospects for continued support to pupils with SEN, with and without Statements, particularly in the light of cuts to public services. NASUWT advises that “teachers report that both the level and quality of services have declined and that they are no longer able to access support for some children with SEN, including those with Statements”.¹⁵³ It adds:

Teachers report that local authority services are being refocused to concentrate on the needs of children and young people with the most severe and complex needs and they are unable to access support for pupils who do not have a Statement (e.g. pupils at School Action Plus). [...] The cuts to services also mean that mainstream teachers are likely to be unable to access the specialist advice and support for pupils whose needs are deemed to fall outside the definition of ‘high need’. This will have profound implications for the quality of education that both pupils with SEN and all pupils receive. It will place wildly unreasonable demands on teachers.¹⁵⁴

122. Brian Lamb notes that “the draft Bill is still unclear about how the Government expects schools to work with children who have SEN but no plan following the removal of school action and school action plus. The new funding arrangement makes clear that schools should now be taking on greater responsibility for meeting the needs of all children with less complex needs through their delegated funding. In this regard the Government’s support for rolling out Achievement for All and the new OFSTED guidance with an enhanced focus on schools ensuring progression for children with SEN are both welcome [...] however there needs to be a clearer guidance and focus of what is expected of heads and teachers in delivering better outcomes for children”.¹⁵⁵

123. Mr Lamb drew attention to the “crucial” part that the new SEN Code of Practice will play in this respect and in implementing the new SEN legislation more widely. The current SEN Code of Practice is subject to consultation and must be laid before Parliament (s314 Education Act 1996). The draft Bill does not propose that process will be carried out for a new Code. Brian Lamb and several other submissions to the inquiry were concerned that the Government should reverse its decision to remove the requirement that the SEN Code of Practice should be a statutory document laid before Parliament.¹⁵⁶

124. In oral evidence, the Minister explained the Government’s thinking on the status of the Code:

152 Ev 370, para 16

153 Ev 312, para 4

154 *ibid.*, para 13

155 Ev w237

156 *ibid.*

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.¹⁵⁷

125. The NUT was suspicious of the Minister’s analysis of this “flexibility for the Department for Education to reissue the Code of Practice more regularly and with more ease than previously, without having to take the Code back to Parliament”. They considered this to be “a matter of concern because there will be less scrutiny of the Code and future drafts and a regularly revised Code will lead to confusion, weariness and a lack of clarity about roles and expectations”.¹⁵⁸

126. Evidence from parents to our inquiry supports wholeheartedly the NUT’s stance. Parents and Carers Are eXperts (a local forum for parents and carers of children with special needs and disabilities in Poole) says

we are very concerned to see that scrutiny by the public and by Parliament of the drafts of the Code of Practice does not appear . The Code is heavily relied upon as the bible by parents and LAs, and by the Tribunal. If this guidance is not sufficiently consulted upon to ensure that it is workable and fair to all involved then, no matter what is placed in the law, the day-to-day working of the processes and procedures may not reflect the legal intentions. Those of us who have appealed to Tribunal are only too aware of what can happen when the law appears to contradict the guidance in the code of practice – it results in a lack of clarity which does not ensure the right outcomes for the child.¹⁵⁹

127. On a further point, in the light of greater responsibilities for schools to manage the needs of pupils with SEN in school, many witnesses, including Nottinghamshire SEND Pathfinder, note that “there appears to be a missed opportunity to strengthen the role and status of SEN Co-ordinators (Clause 40) by putting in the legislation that they be a qualified teacher”.¹⁶⁰ The NUT urged the rewording of Clause 40 (2) to state:—*The appropriate authority must designate a qualified teacher at the school (to be known as the “SEN Co-ordinator”) as having the responsibility for co-ordinating the provision for pupils with special educational needs’*.¹⁶¹

128. We are concerned by the lack of clarity as to how pupils currently receiving support under the School Action and School Action Plus categories will be supported under the new proposals. We understand that initiatives such as Achievement for All

157 Q257

158 Ev w524

159 Ev w532, para 2

160 Ev w262, para 1.5

161 Ev w519

have much to contribute. However, the Government must make clear at this early stage what is expected of schools in delivering better outcomes for pupils with SEN who are not entitled to an EHCP.

129. The revised Code of Practice will contain much of the vital detail on this as well as on other matters which will be critical to the success or otherwise of the Government's plans. It would seem a retrograde step to remove the code from parliamentary scrutiny. *We recommend that the Code of Practice remain a statutory document, subject to consultation and laid before Parliament under the negative resolution procedure. This would maintain the potential for meaningful scrutiny whilst minimising disruption and delay.*

130. *We also recommend that the role and status of SEN Co-ordinators in schools be strengthened in the draft legislation, by requiring that SENCOs be teachers qualified for the role.*

6 Local Offer

131. According to the draft clauses, Local Authorities will “be required to set out a local offer of the services available to children, young people and their families.” This will cover services that are normally available to children and young people who have disabilities or special educational needs and will provide details of how to apply for more specialist support. The stated aim is to allow parents and pupils to make informed decisions based on clear and consistent information, and so to improve satisfaction with the local authority and reduce disputes.¹⁶²

132. In relation to schools, the Green Paper says the Local Offer will cover curriculum, teaching, assessment (relating to barriers to learning for children and young people with SEN and disabilities), and pastoral support. There will be a duty on other relevant service providers to co-operate in drawing up the Local Offer.

133. The Local Offer attracted much attention and comment from our witnesses. Reflecting the majority view, consultant Peter Gray told us that the Local Offer “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”.¹⁶³ Mr Gray added that “it is unclear, for example, whether that local offer extends to schools in terms of their ordinary activity for special needs”.¹⁶⁴ Janet Thompson of Ofsted agreed that “we need to be much clearer about what every school should be offering”.¹⁶⁵

134. A recurring theme in the evidence submitted to our inquiry was how “ordinary practice” on SEN in schools should be defined. Several witnesses argue that a clearer definition of SEN and disability within the draft legislation would have addressed this. Professor Brahm Norwich, Professor of Educational Psychology and SEN at the University of Exeter points out that

The draft legislation only refers to children and young people with SEN with and without a Plan. It leaves to Regulation the critically important details about how this distinction will be defined and the scope of who is defined as having/not having SEN/disability.¹⁶⁶

135. Peter Gray told us that, in the absence of any such definition of SEN and disability, the definition of what should be “ordinarily available” in schools in terms of support to pupils with low to moderate SEN becomes “critical”. He said

162 CM 8438

163 Q32

164 Q21

165 Q89

166 Ev w155

If you have ordinary provision right and everybody clear about that, then special educational needs is what needs to happen over and above that [...]I personally would expect and want to see much more in the regulations and guidance about what parents can reasonably expect from every school [...]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 [i.e. Statements].¹⁶⁷

The NASUWT backs this up, saying “the issue is not about identification [of pupils with SEN], but about the definition of SEN set out in the SEN Code of Practice and that the interpretation of SEN is dependent on context. For example, whether a pupil’s needs are additional to those normally provided to all pupils will depend on the provision for all pupils [...] Education policy reforms mean that school diversity is increasing and that context is likely to become even more significant”.¹⁶⁸

136. The Local Offer is therefore of crucial importance in outlining what is ordinarily available in schools and what will be provided as additional above and beyond this. For this to work properly, schools must co-operate but at present there may be incentives for certain schools not to do so. The NASUWT teaching union pointed out that, “as the recent case involving Mossbourne Academy illustrates,¹⁶⁹ some schools are likely to restrict their intake [of pupils with SEN]”. The NASUWT adds “teachers working in schools that are seen to be inclusive report that neighbouring schools will sometimes discourage prospective parents from applying to the school by suggesting that ‘the school down the road’ will be better able to meet their child’s needs”.¹⁷⁰

137. Because of these concerns, many witnesses would like to see within the legislation a clearer role for schools in relation to the Local Offer. This involves a particular school not only setting out what it provides itself but also co-operating with other schools to ensure effective SEN provision. Dr Charles Palmer of Leicestershire County Council viewed as a top priority “[an extension] of 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”.¹⁷¹ In oral evidence, witnesses from educational establishments agreed that a duty for schools to co-operate with each other on providing local SEN provision would be welcome.¹⁷² The Association of Directors of Children’s Services and the Local Government Association, amongst others, believe that the legislation “should describe the role of Schools Forums in assisting the

167 Q27, Q2, Q6

168 Ev w312, para 18

169 Parents successfully challenged Mossbourne Academy in Hackney in five legal cases with a sixth case adjourned for failure to admit pupils with SEN. The Academy argued it had a higher than average number of pupils with SEN.

170 Ev w312, paras 23, 24

171 Q52

172 Q100 [Graham Quinn]; Q101 [Christine Terrey]

dialogue between schools, colleges, and local councils, placing a duty on local authorities and the Schools Forum to work together on SEN issues”.¹⁷³

138. In considering whether there should be any specific duties for schools to co-operate with each other in drawing up a local offer of services, the Minister pointed out that

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.¹⁷⁴

Indeed, in answering our direct question as to whether academies, free schools, local comprehensives or independent schools will all have the same duties and responsibilities as each other under the legislation, the Minister simply said “Yes”.¹⁷⁵ He added that “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”.¹⁷⁶

139. We welcome the fact that the legislation will give Free Schools and Academies the same duties and responsibilities as mainstream schools with regard to pupils with SEN, and believe that these responsibilities need to be spelled out more clearly in primary legislation. We remain concerned that there is a risk that some schools may not contribute to a Local Offer so as to discourage pupils with SEN and their parents from choosing their school as being best placed to meet their needs. The schools accountability system is based on exam results which means that there is no incentive for schools to admit pupils with SEN. At present, there is no alternative way of measuring schools in relation to the effectiveness of their SEN provision. Janet Thompson of Ofsted accepted that “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 [with SEN and complex needs]. 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”.¹⁷⁷ **We encourage the Minister to take up the offer from Ofsted to work together with the Department to create an improved accountability framework for achievement of SEN pupils based on outcomes.**

140. Brian Lamb further 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”.¹⁷⁸ This was backed up

173 Ev w188 (LGA), para 7.3

174 Q209

175 Qq209, 213

176 Q211

177 Q88

178 Ev w237, para 8

in oral evidence by parents and young people who linked a legal duty to deliver to setting national minimum standards or requirements for Local Offers.¹⁷⁹ Sharon Smith said:

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. [...] 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.¹⁸⁰

141. We asked the Minister whether he had considered creating a duty for local authorities to provide the contents of their Local Offer. He told us

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.¹⁸¹

142. With regards to setting minimum standards in Local Offers, the draft legislation states that “regulations may make provision about the information to be included in an authority’s local offer”. The Minister explained “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”.¹⁸²

143. Blackpool Council accepts the need for local areas to develop their approaches to SEN provision, saying, “this makes sense in terms of local decision-making, and the local context”. However, the council warns that “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.”¹⁸³

144. In order to provide this consistency, Peter Gray recommended the creation of a national framework for the evaluation of local offers. He added:

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

179 Qq149-50

180 Q150

181 Q264

182 Q267

183 Ev 42, para 3.1

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.¹⁸⁴

145. When we asked the Minister if there was an intention to include in regulations governing the local offer a requirement that it is evaluated against a national framework, he responded “that is not currently the intention, but that is something that I will, now you have raised it, give some more consideration to”.¹⁸⁵

146. The importance of getting the Local Offer right cannot be overstated. Where this does not happen parents will seek EHCPs as they currently seek Statements in those local authorities where provision normally available is perceived as deficient. *The weight of evidence received by our Committee clearly supported minimum standards and we recommend that the Pathfinders be used to inform what should constitute minimum standards for Local Offers, particularly to address the provision that will need to be made available in schools to support pupils with low to moderate SEN without EHCPs. We also recommend the establishment of a national framework for Local Offers to ensure consistency, together with accountability measures by which they can be evaluated.*

Young people and parental involvement in designing Local Offers

147. The National Autistic Society sees it as “essential that local parents are consulted, along with other relevant bodies”¹⁸⁶ in reviewing local provision. However, Tom Schewitz, a young person who provided oral evidence to our inquiry, told us

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.¹⁸⁷

148. A key strand of the Government’s policy around SEN is the involvement of parents and young people. As mentioned earlier,¹⁸⁸ the engagement of parents and young people in developing Local Offers is seen by Government to be more powerful than, for example, placing duties on local authorities to provide the contents of Local Offers.

149. The National Network of Parent Carer Forums suggests that the Government’s analysis is correct in this respect:

184 Q42

185 Q268

186 Ev w273, para 9

187 Q144

188 See paragraph 140

early lessons from pilot schemes and Pathfinder work would indicate that where local parent carer forums have been actively involved in the planning and design of pilot schemes from the earliest stages [rather than being consulted or involved at a later stage], the work of the pilot is more solution focused and more likely to gain the support and confidence of the families taking part.¹⁸⁹

150. This was backed up in oral evidence by Sharon Smith, a parent taking part in the SE7 Pathfinder who said that “One of the areas that is vital for parents to be involved in [...] 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”.¹⁹⁰ Carol Dixon, another Hampshire parent added, “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 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”.¹⁹¹

151. However, in oral evidence, Brian Gale of the National Deaf Children’s Society observed “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”.¹⁹²

152. The National Network of Parent Carer Forums says

[we are] concerned that there is no clear mandate for the active participation of parent carers in strategic planning, or the development of the Local Offer [...] Our concern remains that without a mandate in relation to the participation of parent carers within the development of the Local Offer, some areas, due to their own internal pressures, may be more inclined to work in a tokenistic fashion with parent carer forums and parent carer representatives.¹⁹³

Evidence from the Nottinghamshire SEND Pathfinder echoes this point and concludes that “the role of the voluntary sector and Parent Partnership Service should be defined further within the draft legislation, thereby acknowledging their role along with the role of

189 Ev w348, para 10.1

190 Q144

191 Q143

192 Q55

193 Ev 348, para 11.1 - 17.1.2

schools and colleges in meeting the needs of children and young people with SEN and those young people not in education, employment or training”¹⁹⁴.

153. The Department of Education states that “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”. *We support the Government’s focus on engaging parents and young people in the development of Local Offers. However, given the importance of parents’ and young people’s roles in developing this aspect of the proposals, we would like to see them given a clearer mandate in the draft legislation. We therefore recommend that Parent Carer Forums be listed as partners under draft clause 8 (Co-operating generally).*

Advice and information

154. Clause 12 of the draft legislation requires local authorities to make arrangements for advice and information about special educational needs to be provided for the parents of children, and young people, in its area with those needs. This represents an expansion on current duties for local authorities to provide information to parents through Parent Partnership Services, to provide information to young people. The draft clauses carry the assumption that young people will receive information from the same sources as parents.

155. Tom Schewitz—a young person who provided oral evidence to our inquiry—described how he felt the information and advice required by parents and young people with SEN was necessarily different:

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.¹⁹⁵

Tom’s views are supported by evidence from the Manchester Pathfinder which is

concerned that Clause 12 proposes the provision of advice and information to young people becomes a parent partnership function: this could be a conflict of interest for the service—whose current responsibility is to represent parents, also parent partnership staff are not generally trained to work with young people. This should be the responsibility of staff trained and qualified to work with young people, such as careers adviser, Connexions personal advisers, young people’s advocacy workers, who should have a duty to provide impartial advice and information.¹⁹⁶

194 Ev w262, para 7.1

195 Q154

196 Ev w565

156. We recommend that the draft clauses make reference to fact that the information provided to parents and carers and that provided to young people needs to be tailored as appropriate to its audience.

7 Extending choice and direct payments

Choice of school

157. Clause 18 of the draft legislation makes provision for young people and parents of children with Education, Health and Care Plans to express a preference for Academies, Free Schools, further education colleges and non-maintained special schools in the same way as they can now for maintained schools (special or mainstream) and have their preference met unless it would not be suitable for meeting their special educational needs, or would be incompatible with the efficient education of others or the efficient use of resources. Clause 20 makes clear that where a school or further education college is named in an EHCP they will be required to admit the child or young person. This proposal has met with widespread support in evidence submitted to our inquiry.

158. Our evidence shows a great deal of support also to include independent special schools and colleges in the list of schools for which parents have the right to express a preference. The National Association of Independent Schools and Non-Maintained Special Schools (NASS) points out that, currently, 1 in 10 children with Statements of SEN in special schools are in independent provision and that a high percentage of specialist autistic spectrum condition provision is within the Independent sector—including schools run by the National Autistic Society.¹⁹⁷

159. Josh Pagan, a young person who gave oral evidence to our inquiry told us that his experience in an independent special school for pupils with significant behavioural, emotional, social and complex learning difficulties was good. He added, “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”.¹⁹⁸

160. The Royal National College for the Blind adds weight to the case for including independent specialist colleges (ISCs) in the legislation:

ISCs are not listed as an option for young people aged 16-25. The Bill hopes to offer those with a special educational need or disability ‘the same life chances as every other child.’ Yet most young adults have the opportunity of mobility, to move away from home and experience independent living. As drafted the Bill restricts the freedom of movement of young people with a disability as it restricts their options to their own local area. As drafted the Bill does not contain a mechanism to ensure that local authorities meet their obligation to offer young people aged 16-25 and their parents a meaningful choice and transparency of options. [...] ISCs have a focus on achieving independence and developing key lifeskills. The loss of this provision from the sector will increase the demand for adult services as more people with a disability

197 Ev w444

198 Q179

will be reliant on ongoing care and support. This will lead to a drain in resources, additional expense for local authorities and potential bottlenecks as the first generation affected reach adulthood.¹⁹⁹

161. NASS refers to former Minister Sarah Teather’s letter to the Committee in which she claimed there was a mixed position from the independent sector on whether to be included in the draft provisions. NASS disputes this assertion and states that “we are united alongside the Children’s Services Development Group and the Independent Schools Council in calling on the Department for Education to clearly define what constitutes an “Independent Special School” for the definition of the Bill”.²⁰⁰ It calls for the Department to include those schools in the list of schools for which parents can express a preference. NASS believes that “the DfE could make a clear distinction between schools to be included within the proposed duty and schools to remain outside by basing the definition of Independent Special School on the percentage of students publically funded (we suggest a figure of 90%) and/or the percentage of students with Statements of SEN (we suggest a figure of 75%)”.²⁰¹

162. Both the Association of Colleges²⁰² and The Association of National Specialist Colleges put forward the case for the inclusion of independent specialist colleges, the latter arguing that

we strongly believe that young people should have the right to request a place at an independent specialist college when this will best meet their learning and support needs. [...]

The specialist colleges that Natspec represents wish to be included in clause 18 (2) and are prepared to take on the consequent duties, including the duty to admit and the duty to co-operate with the LA. These colleges are included along with other types of provider in respect of the funding reforms, which are intended to produce a more equitable system, so it does not make sense for them to be excluded from these proposals.

We know that one area perceived to be problematic is the lack of a definition for specialist colleges. In fact, they all share two common characteristics, which is that they are all approved for EFA funding and they are all inspected by Ofsted under the common inspection framework for learning and skills. Colleges are also listed on Edubase, for which purpose a definition was agreed with the then YPLA.²⁰³

163. We asked the Minister if he would change his mind as to whether independent special schools should be included in the list of schools for which parents can express a preference

199 Ev w497, paras 7, 15

200 Ev w444, para 2

201 *ibid.*, para 20

202 Ev 74

203 Ev w50, para 11

and if he would provide a definition of “independent special school” in the legislation. He replied:

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.²⁰⁴

164. We welcome the extension of the list of schools for which parents can express a preference in an EHCP to include academies and free schools. The case for also including independent special schools and colleges is well made. We recommend that the Government prioritise agreeing definitions so that these schools can be included in order for pupils with SEN to have access to appropriate educational provision.

Personal budgets and direct payments

165. A further proposal aimed at improving choice for young people with SEN and their parents is contained in draft Clause 26, which requires local authorities to prepare a personal budget for children or young people with an Education Health and Care Plan if asked to do so by that young person or their parent. Pathfinders were set up to advise on the operation of personal budgets which, in turn, will advise on regulations governing the operation of the scheme. As this stage, very little is understood as to how direct payments will operate in practice and the Pathfinders are still at early stages of developing approaches to operating the scheme.

166. Whilst the majority of witnesses support the principle of personal budgets, the National Union of Teachers is opposed because of the risk that it might lead to a reduction in the range of services available. It reports that “teachers feel strongly” that parents should not be able to use direct payments and personal budgets in relation to education provision and that decisions on the appropriate type of educational provision must stay with the school.²⁰⁵ The regulations which set up the pilot scheme to trial direct payments give head teachers a veto over whether students or parents can use personal budgets in relation to their school. The NUT wants to see this veto replicated in the draft clauses.

167. The Association of School and College Leaders also sees difficulties in the introduction of personal budgets:

School leaders are also very concerned about the implications for school budgets, it is important that schools do not lose funding to help target the special support they have identified as being necessary for their students because that child’s parents have

204 Q273

205 Ev w519

decided that the funding for their child would be better spent other than through the school.²⁰⁶

168. Several submissions to our inquiry also highlight serious potential pitfalls which the Pathfinders are starting to uncover. The largest Pathfinder, SE7, warns:

The current regulations allowing Pathfinders to make education direct payments are significantly flawed and it will be essential for future regulations on these matters to be better crafted based on an understanding of the Pathfinders' experiences and learning.²⁰⁷

169. We recognise the critical importance of learning from the Pathfinders when formulating regulations on personal budgets and direct payments. It is essential that Ministers take these lessons fully into account.

206 Ev w50

207 Ev w526, paras 19-20

8 Concluding remarks

170. We welcome the general direction of the Government's reforms of SEN provision with some caveats. Expectations have been raised and it is important that the goodwill expressed towards these proposals is not lost. There are points of detail in the draft legislation which must be addressed before the Bill is presented to Parliament and we believe it is important that lessons from the Pathfinders continue to inform the legislation as it goes through Parliament and the regulations and the Code of Practice thereafter.

Conclusions and recommendations

In the report conclusions are shown in **bold**; recommendations are shown in ***bold italics***. In this list, recommendations are shown in italics.

Introduction: our report

1. *We recommend that the Department for Education examine with close attention the written evidence provided to our inquiry on issues not covered in our report and give careful consideration to the points raised by witnesses in drafting the Bill which is to be presented to Parliament. (Paragraph 10)*

The draft clauses: process and context

Detail, timing and Context

2. We agree that the draft legislation is moving in the right direction and we support the Minister's ambition to keep up the momentum in finalising this legislation by 2014. We do not recommend any significant delay in introducing the Bill, but more work is needed and we welcome the Minister's emphasis on getting it right rather than sticking to a self-imposed timetable. For this reason, we strongly support the Government's decision to extend the Pathfinders for a further 18 months and we seek assurances that the findings from the Pathfinders will be drawn upon in detail to inform the final make-up of regulations and the Code of Practice to accompany the legislation. (Paragraph 26)

Joined-up thinking? Co-operation between agencies

3. The active involvement of the NHS—in commissioning, delivery and redress—is critical to the success of the legislation. Despite the acknowledged difficulties, in order for this to work, the Government must ensure that the NHS is obliged to participate fully. (Paragraph 36)

Terminology

4. *We recommend that, in the absence of any consensus or strong support for a change, the new legislation continue to use the established terminology of "special educational needs". (Paragraph 37)*

Provision from birth to 25

Funding and post-16 education

5. We commend the Government's increased spending on supporting pupils with SEN but are concerned at claims that the SEN Pathfinders are failing to involve colleges adequately in trialling the approaches for 0-25 provision described in the draft clauses. We seek reassurances that this shortcoming will be addressed in the extended Pathfinder schemes so as to understand fully the financial and administrative impact the proposals will have on colleges and local authorities in

securing provision for pupils with SEN up to the age of 25. The Government must ensure that the extension of the statutory SEN framework from 16 to 25 is not allowed to extend provision for some at the expense of the quality and quantity of provision for all. (Paragraph 43)

Provision for 19-25 year olds

6. We are concerned that a potentially confusing picture is emerging over responsibility and rights for 19 to 25 year olds. Some stakeholders are interpreting the new system as providing guaranteed education for all young people with SEN to 25 years of age. This is doubtful. However, although it is more likely that the priority for the majority of young people with SEN (in particular, those with an EHCP) will be to move post-18 into independent living and employment, for some young people with an EHCP education will be the best route. It is vital that the responsibility, funding and, where appropriate, access to advocacy for these young people is clarified so that all those involved know what they can expect from the new provisions and who is accountable for providing it. If the purpose of the legislation is to extend education as a right to 25, then the Government needs to make that clear and fund that; if not, then that should also be made clear. (Paragraph 50)
7. We seek reassurance that the extension of approaches for 0-25 provision will also address the needs of young people pursuing higher education. (Paragraph 51)

Integration provision and Education Health and Care Plans

The integrated assessment process

8. Little seems to be understood at present as to how the integrated assessment process will work in practice. This is an area where we welcome the additional time given to the Pathfinders to test approaches and report back on how to improve on the current Statementing process. We agree with our witnesses who prioritise the need for guidance on how quality assessments can be assured. *We recommend that regulations make clear the necessary skills for individuals undertaking assessments. In addition they should create a presumption that a key worker/lead professional will be appointed unless there are good reasons not to do so.* (Paragraph 60)

Co-operation between local authorities and health

9. Our evidence suggests that the duty of joint commissioning between Health and local authorities will not in itself be sufficient to secure improved engagement from Health in assessments of SEN and provision of Health services to children and young people with SEN and disabilities. We accept that there are constraints presented by the NHS Constitution, but duties can and should be imposed on the NHS which do not conflict with it. Regulations could, for instance, commit Health to adhere to timetables for assessments. (Paragraph 67)
10. We are also concerned by the lack of a single means of redress/appeal. The Government seems to be relying on the duty for joint commissioning to reduce the incidence of appeals from parents and young people later on. This is too optimistic and we believe that greater protections for parents and young people in securing the

provision described in an EHCP will be needed along with more coherent routes for redress for all aspects of an Education Health and Care Plan. (Paragraph 68)

11. The lack of duties on Health creates a specific concern about securing services such as therapy services which may either be defined as supporting health or special educational needs. The legislation needs to make specific reference to such services to ensure that local authorities and Health cannot deny responsibility for their provision due to disagreements over which element of the EHCP they underpin. It also needs to be made clear how this provision will be funded, and by whom. (Paragraph 72)

Entitlement to integrated provision and EHCPs

12. *The evidence makes a strong case to include disabled children, with or without SEN, in the scope of entitlement to integrated provision and EHCPs. We recommend this. The legislation should also make clear that the entitlement covers children from birth upwards, including those too young to be in an educational setting but for whom an early assessment might highlight educational needs.* (Paragraph 78)

Triggering assessments and timescales for conducting assessment

13. *Improving processes for requesting, securing and carrying out assessments of SEN are top priorities for parents of children with SEN. We recommend that current protections be reiterated in the new legislation, and that timescales for responding to a request for an assessment, and for conducting an assessment be set out in regulations. It is essential that there is an alignment of assessment timescales between local authorities and Health. Whatever the difficulties, they must be overcome.* (Paragraph 84)

“Specifying” verses “setting out”

14. *We recommend that draft clause 17, which relates to how special educational provision should be described in EHCPs, require that an EHCP “specifies” detail contained within the Plan, as opposed to “setting out”, as currently drafted. It should be absolutely clear on the face of the Bill that EHCPs carry the same legal status as Statements.* (Paragraph 89)

Stopping and starting the EHCP

15. *We believe that the cut-off point for EHCPs should be when educational outcomes are achieved but there must be regulatory provisions to ensure that 18-25 year olds with SEN can quickly have their plan reinstated if they move back into education. We acknowledge the particular position of NEETs and apprenticeships and the potential of EHCPs to assist them to reach desirable educational outcomes. We recommend that the legislation provide entitlement to EHCPs to NEETs of compulsory participation age and to young people undertaking apprenticeships.* (Paragraph 98)

Reviewing the EHCP

16. Regulations should allow flexibility in the frequency and timing of EHCP reviews. (Paragraph 100)

Appeals and mediation

17. We note the strong resistance to compulsory mediation in the evidence we have received. We consider that the main focus should be on ensuring early and meaningful engagement and discussion with parents. At present, in the family courts, the applicant and respondent in certain circumstances are expected to attend a family mediation information and assessment meeting (a “MIAM”) to find out about and consider mediation, or other forms of non-court based dispute resolution. The Government’s draft Clauses on family justice which will be included in the same bill as the SEN clauses propose that, in future, attendance at a MIAM should be compulsory for every person who wishes to apply for a court order in family proceedings of a certain type. We consider that this provides a useful model for the SEN dispute procedures and *we recommend that the mediation proposals be changed so that it is compulsory to attend a meeting to consider mediation but not compulsory to enter it.* (Paragraph 110)

Transition from statements to EHCPs

18. The Pathfinders will be important in testing the best approach to the transition from Statements to EHCPs and we look forward to the evaluation of their emerging results in this area. (Paragraph 116)

Children with SEN but without a plan

19. We are concerned by the lack of clarity as to how pupils currently receiving support under the School Action and School Action Plus categories will be supported under the new proposals. We understand that initiatives such as Achievement for All have much to contribute. However, the Government must make clear at this early stage what is expected of schools in delivering better outcomes for pupils with SEN who are not entitled to an EHCP. (Paragraph 127)
20. The revised Code of Practice will contain much of the vital detail on school support for pupils with SEN but without an EHCP as well as on other matters which will be critical to the success or otherwise of the Government’s plans. It would seem a retrograde step to remove the code from parliamentary scrutiny. *We recommend that the Code of Practice remain a statutory document, subject to consultation and laid before Parliament under the negative resolution procedure. This would maintain the potential for meaningful scrutiny whilst minimising disruption and delay.* (Paragraph 129)
21. *We also recommend that the role and status of SEN Co-ordinators in schools be strengthened in the draft legislation, by requiring that SENCOs be teachers qualified for the role.* (Paragraph 130)

Local Offer

22. We welcome the fact that the legislation will give Free Schools and Academies the same duties and responsibilities as mainstream schools with regard to pupils with

SEN, and believe that these responsibilities need to be spelled out more clearly in primary legislation. (Paragraph 139)

23. We encourage the Minister to take up the offer from Ofsted to work together with the Department to create an improved accountability framework for achievement of SEN pupils in schools based on outcomes. (Paragraph 139)
24. The importance of getting the Local Offer right cannot be overstated. Where this does not happen parents will seek EHCPs as they currently seek Statements in those local authorities where provision normally available is perceived as deficient. *The weight of evidence received by our Committee clearly supported minimum standards and we recommend that the Pathfinders be used to inform what should constitute minimum standards for Local Offers, particularly to address the provision that will need to be made available in schools to support pupils with low to moderate SEN without EHCPs. We also recommend the establishment of a national framework for Local Offers to ensure consistency, together with accountability measures by which they can be evaluated.* (Paragraph 146)

Young people and parental involvement in designing local offers

25. *We support the Government's focus on engaging parents and young people in the development of Local Offers. However, given the importance of parents' and young people's roles in developing this aspect of the proposals, we would like to see them given a clearer mandate in the draft legislation. We therefore recommend that Parent Carer Forums be listed as partners under draft clause 8 (Co-operating generally).* (Paragraph 153)

Advice and information

26. *We recommend that the draft clauses make reference to fact that the information provided to parents and carers and that provided to young people needs to be tailored as appropriate to its audience.* (Paragraph 156)

Extending choice and direct payments

Choice of Schools

27. *We welcome the extension of the list of schools for which parents can express a preference in an EHCP to include academies and free schools. The case for also including independent special schools and colleges is well made. We recommend that the Government prioritise agreeing definitions so that these schools can be included in order for pupils with SEN to have access to appropriate educational provision.* (Paragraph 164)

Personal budgets and direct payments

28. We recognise the critical importance of learning from the Pathfinders when formulating regulations on personal budgets and direct payments. It is essential that Ministers take these lessons fully into account. (Paragraph 169)

Formal Minutes

Wednesday 12 December 2012

Members present:

Mr Graham Stuart, in the Chair

Alex Cunningham
Bill Esterson
Pat Glass
Charlotte Leslie

Siobhain McDonagh
Ian Mearns
Craig Whittaker

Draft Report (*Pre-legislative scrutiny: Special Educational Needs*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 170 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 5 September and 17 October 2012).

[Adjourned till Tuesday 18 December at 9.15 am

Witnesses

Wednesday 24 October 2012

Page

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. Ev 1

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. Ev 8

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 Ev 15

Tuesday 6 November 2012

Josh Pagan, **Tom Schewitz**, **Carol Dixon**, Participation Co-ordinator, Parent Voice, Hampshire, and **Sharon Smith**, Chair, Hampshire Parent/Carer Network Ev 22

Edward Timpson MP, Parliamentary Under-Secretary of State, Department for Education Ev 29

List of printed written evidence

(published in Volume II)

1	Blackpool Council	Ev 42
2	National Deaf Children's Society (NDCS)	Ev 46
3	Peter Gray, Senior Consultant, Strategic Services for Children and Young People	Ev 49
4	Every Disabled Child Matters campaign and the Special Educational Consortium	Ev 50
5	Hampshire Parent/Carer Network (HPCN)	Ev 55
6	Department for Education	Ev 59, Ev 78
7	Graham Quinn	Ev 72
8	Association of Colleges	Ev 74
9	Special Educational Consortium	Ev 79

List of additional written evidence

(published in Volume III on the Committee's website www.parliament.uk/educom)

1	Christine Willett, Parent Partnership, London Borough of Waltham Forest	Ev w1
2	Anne Brown/A Little Bit of a Structure Home Education Forum	Ev w1
3	City of Bradford MDC	Ev w4
4	Dr Simon Jenner	Ev w6
5	London Borough of Havering	Ev w10
6	Gill Guest	Ev w11
7	Lynn Pashby	Ev w12
8	Jewish Special Educational Needs Services (J-SENSe)	Ev w13
9	Darren Langton	Ev w14
10	Cued Speech Association UK	Ev w15
11	Michael Connelly	Ev w16
12	Simon Cramp	Ev w19
13	Simon Gibbs	Ev w20
14	Alastair Patterson	Ev w22
15	Kieron Smith	Ev w26
16	Victoria Thompson, Ambassador for the National Autistic Society	Ev w28
17	Jonathan Rix	Ev w30
18	Buckinghamshire County Council, Children and Young People Services	Ev w35
19	Salford City Council	Ev w36
20	Trafford Parent Partnership	Ev w38
21	Hull Parents Forum	Ev w40
22	Stephen Roberts, Principal, St Vincent's School	Ev w41
23	Inclusive Education Community Brighton & Hove (IECBH)	Ev w41
24	Amaze	Ev w43
25	BACPAC (Bolton Area Council for Parents and Carers)	Ev w44
26	Alexandra Stafford	Ev w46
27	PODS (Parents Opening Doors)	Ev w48
28	The Association of School and College Leaders	Ev w50
29	Barnsley Metropolitan Borough Council	Ev w55
30	Leicester City Steering Group, Single Assessment Workstream and Northants Steering Group	Ev w57
31	Anita Devi	Ev w60
32	British Association of Supported Employment (BASE)	Ev w64
33	SCARF (Supporting Special Children and their Relatives and Friends)	Ev w65
34	Stephen Broach, Barrister, Doughty Street Chambers	Ev w68
35	BATOD (British Association of Teachers of the Deaf)	Ev w71
36	Orchard Hill College	Ev w74
37	Fiona Nicholson	Ev w76
38	NISAI Group	Ev w79
39	Rina Brahmhatt	Ev w85
40	National Parent Partnership Network and Bristol Parent Carers	Ev w87

41	Eastern Region Parent Partnership Network	Ev w89
42	Young Epilepsy	Ev w90
43	Queen Alexandra College (QAC)	Ev w91
44	Independent Schools Council	Ev w93
45	Birmingham City Council	Ev w98
46	Alison Hood	Ev w100
47	Better Futures Group	Ev w102
48	Lancashire Parent Carer Forum	Ev w104
49	w Special Educational Advice (IPSEA)	Ev w108, Ev w559
50	British Psychological Society	Ev w117
51	Dr Artemi Sakellariadis, Centre for Studies in Education (CSIE)	Ev w120
52	The Children's Trust, Tadworth	Ev w122
53	National Parent Partnership Network	Ev w124
54	Mencap Local Kids First	Ev w125
55	Hereward College	Ev w129
56	Hollybank Trust	Ev w133
57	Family Rights Group	Ev w134
58	Afasic	Ev w136
59	RNIB/Action for Blind People	Ev w140
60	British Academy of Childhood Disability (BACD)	Ev w144
61	Scope	Ev w147
62	The Autism Centre, Sheffield Hallam University	Ev w151
63	Children's Rights Alliance for England	Ev w151
64	Jacqueline Spigel, Parent Participation Officer for the Lewisham Parent and Carer's Forum	Ev w154
65	Brahm Norwich, Graduate School of Education, University of Exeter	Ev w155
66	Hackney Learning Trust	Ev w159
67	YoungMinds	Ev w162
68	West Midlands Parent Partnership Network	Ev w163
69	Dyslexia Action	Ev w164
70	Elaine Maxwell, MG Law Limited	Ev w168
71	Michael Cotton, Principal Educational Psychologist and lead officer for SEND Pathfinder, and Lynda Dyson, Head of Assessment and Commissioning (Education)	Ev w172
72	Enfield Parent Partnership Service	Ev w174
73	AEP	Ev w177
74	Kent County Council Education Learning and Skills Directorate	Ev w179
75	Peach	Ev w183
76	AFA	Ev w186
77	Local Government Association	Ev w188
78	British Association of Music Therapy	Ev w192
79	Patoss, the Professional Association of Teachers of Students with Specific Learning Difficulties	Ev w193
80	Dr Roger Shipton, Head Teacher, Wings School, Kirklington Hall, Nottinghamshire	Ev w196
81	Michael Webster, Head Teacher, Wings School, Whasset, Cumbria	Ev w197

82	Hackney Parent Partnership Service	Ev w197
83	Roger Morgan, Children's Rights Director for England	Ev w199
84	Julian Brown	Ev w200
85	St Catherine's	Ev w201
86	Wandsworth Council	Ev w203
87	Special Educational Needs Assessment and Review (SENAR), Birmingham Local Authority	Ev w206
88	CLIC Sargent	Ev w209
89	NAHT	Ev w212
90	SOS!SEN	Ev w216
91	Dyslexia, Specific Learning Difficulties Trust	Ev w219
92	Carers UK	Ev w221
93	City of York Council	Ev w223
94	Hampshire County Council	Ev w225
95	Calverdale Pathfinders Project	Ev w229
96	ASSET (Advisory Services and Special Education Training)	Ev w232
97	Pre-School Learning Alliance	Ev w234
98	VIPER Project (Voice, Inclusion, Participation, Empowerment, Research)	Ev w236
99	Christopher Robertson, School of Education, University of Birmingham	Ev w239
100	Suffolk County Council	Ev w242
101	SEND Pathfinder Project, Wigan Council	Ev w244
102	BDA	Ev w246
103	Together Trust	Ev w248
104	Together for Short Lives	Ev w253
105	Impact: SEND Delivery Partner for Short Breaks	Ev w257
106	Sense	Ev w258
107	Nottinghamshire SEND Pathfinder	Ev w262
108	Hillingdon Autistic Care and Support	Ev w265
109	Educational Psychology Service, Newcastle Local Authority	Ev w271
110	National Autistic Society (NAS)	Ev w273
111	Association of Directors of Children's Services	Ev w279
112	I CAN	Ev w283
113	Carers Trust	Ev w286
114	Rotherham Council	Ev w290
115	Brighton and Hove—SEND Pathfinder Local Authority	Ev w292
116	NGA	Ev w293
117	The Rainbow Parents Carers Forum	Ev w295
118	London Borough of Merton	Ev w297
119	Mencap	Ev w298
120	NASUWT	Ev w312
121	Sylvia Lamb, Chailey Heritage Foundation	Ev w316
122	ES Trust	Ev w317
123	Hackney Independent Forum for Parents/Carers of Children with Disabilities	Ev w319
124	Bromley and Bexley SEND Pathfinder	Ev w321
125	Point	Ev w325

126	Hampshire Parent Partnership Services	Ev w327
127	Westminster Parent Participation Group (WPPG)	Ev w332
128	Jean Gross CBE	Ev w333
129	All Party Parliamentary Group for Autism	Ev w336
130	Shropshire Parent and Carer Council (PACC)	Ev w340
131	Medway Council	Ev w343
132	Brian Lamb OBE	Ev w237
133	National Network of Parent Carer Forums (NNPCF)	Ev w348
134	West Sussex Parent Carer Forum	Ev w351
135	North Tyneside Local Authority	Ev w353
136	Herefordshire Parent Carer Voice's	Ev w355
137	SEN LEGAL	Ev w356
138	The Driver Youth Trust	Ev w360
139	Essex County Council	Ev w363
140	Contact a Family	Ev w366
141	Eva Jussola	Ev w370
142	The National Sensory Impairment Partnership (NatSIP)	Ev w371
143	Ambitious about Autism	Ev w375
144	London Councils	Ev w381
145	KIDS London	Ev w384
146	West Sussex Parent Partnership Service	Ev w385
147	Whizz-Kidz	Ev w386
148	The Lincolnshire Parent Carer Council (LPCC)	Ev w387
149	The Alliance for Inclusive Education (ALLFIE)	Ev w403
150	Bromley Parent Voice	Ev w411
151	Stimulation Through Education Ltd	Ev w413
152	Nasen	Ev w414
153	St Christopher's School, Bristol	Ev w418
154	The Children's Society	Ev w419
155	Cathal Lynch, Director of Education, Arc School	Ev w422
156	David Duncan, Head Teacher, Rossendale School	Ev w424
157	Stephen Bajdala-Brown, CEO and Principal, Priors Court School	Ev w424
158	Action Duchenne	Ev w426
159	KIDS	Ev w427
160	Signature Scotland	Ev w428
161	Linkage Community Trust	Ev w430
162	Trafford	Ev w434
163	The National Star College	Ev w437
164	Dr Teresa Regan, Catalyst Psychology	Ev w440
165	UNISON	Ev w441
166	National Association of Independent Schools and Non-Maintained Special Schools (NASS)	Ev w444
167	Positive Parent Action, Wandsworth's Parent Forum	Ev w447
168	Parent Carers' Council (PaCC), Brighton and Hove	Ev w447
169	Norfolk Children's Services Additional Needs and Disability Partnership	Ev w448

170	Family Voice Surrey	Ev w451
171	West Sussex County Council	Ev w454
172	Doncaster Council	Ev w456
173	Royal College of Speech and Language Therapists	Ev w458
174	University of Northampton and Patoss	Ev w462
175	Kent Parents as Equal Partners CLC	Ev w464
176	John Keever, School Governor and member of SENDac	Ev w465
177	British Association for Community Child Health and British Paediatric Mental Health Group	Ev w467
178	Aiming Higher Together	Ev w468
179	Devon County Council, Integrated Children's Services	Ev w469
180	SE7 Parent Carer Group from SE7 Pathfinder	Ev w473
181	Up on Downs	Ev w477
182	REACH Wokingham Steering Committee	Ev w477
183	Interface	Ev w479
184	The Association of National Specialist Colleges (Natspec)	Ev w489
185	Mark Sherin	Ev w492
186	Children's Heart Federation	Ev w493
187	Royal National College for the Blind	Ev w497
188	Communication Trust	Ev w499
189	Southampton Pathfinder, Southampton City Council	Ev w504
190	Gloucestershire's SEND Programme, Gloucestershire County Council	Ev w507
191	Association of Teachers and Lecturers (ATL)	Ev w508
192	Disability Rights UK	Ev w512
193	Bexley Voice for Special Education Needs	Ev w518
194	Surrey County Council Pathfinder	Ev w519
195	National Union of Teachers (NUT)	Ev w519
196	Parent Partnership Oxfordshire	Ev w526
197	South East7 Pathfinder Regional Leads	Ev w526
198	Wiltshire DCA Pathfinder, Wiltshire Council	Ev w529
199	PAX (Parents and Carers are experts, the Poole forum for Parents and Carers)	Ev w532
200	Tim Gilling	Ev w534
201	Children's Services Development Group (CSDG)	Ev w535
202	Hackney forum for parents and carers of children with disabilities and special education needs	Ev w537
203	Karen McKerrow	Ev w538
204	Children's Services Development Group, National Autistic Society and the National Association of Special Schools	Ev w539
205	Julie Spicer-Thornton	Ev w540
206	Guide Dogs for the Blind Association	Ev w543
207	Gateshead Council	Ev w457
208	Parental Rights Campaigner	Ev w548
209	Newlife Foundation for Disabled Children	Ev w553
210	National Association of Parent Partnership staff (NAPPS)	Ev w555
211	Every Disabled Child Matters	Ev w556
212	Ian Dowty, Tricia Farey and Fiona Nicholson	Ev w558

213 IPSEA

Ev w559

214 Manchester Council Pathfinders

Ev w564

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010-12

First Special Report	Young people not in education, employment or training: Government Response to the Children, Schools and Families Committee's Eighth Report of Session 2009-10	HC 416
Second Special Report	The Early Years Single Funding Formula: Government Response to the Seventh Report from the Children, Schools and Families Committee, Session 2009-10	HC 524
Third Special Report	Transforming Education Outside the Classroom: Responses from the Government and Ofsted to the Sixth Report of the Children, Schools and Families Committee, Session 2009-10	HC 525
Fourth Special Report	Sure Start Children's Centres: Government Response to the Fifth Report from the Children, Schools and Families Committee, Session 2009-10	HC 768
First Report	Behaviour and Discipline in Schools	HC 516-I and -II (HC 1316)
Second Report	The role and performance of Ofsted	HC 570-I and II (HC 1317)
Fifth Special Report	Looked-after Children: Further Government Response to the Third Report from the Children, Schools and Families Committee, Session 2008-09	HC 924
Third Report	Services for young people	HC 744-I and -II (HC 1501)
Fourth Report	Participation by 16-19 year olds in education and training	HC 850-I and -II (HC 1572)
Fifth Report	The English Baccalaureate	HC 851 (HC 1577)
Sixth Report	Services for young people: Government Response to the Committee's Third Report of Session 2010-12	HC 1501 (HC 1736)
Seventh Report	Appointment of HM Chief Inspector, Ofsted	HC 1607-I
Eighth Report	Chief Regulator of Qualifications and Examinations	HC 1764-I and -II
Ninth Report	Great teachers: attracting, training and retaining the best	HC 1515-I

Session 2012–13

First Report	The administration of examinations for 15–19 year olds in England	HC 141-I (HC 679)
Second Report	Appointment of Chair, Social Mobility and Child Poverty Commission	HC 461-I
Third Report	Governance and leadership of the Department for Education	HC 700
Fourth Report	Children first: the child protection system in England	HC 137-I
Fifth Report	Support for Home Education	HC 559-I
