



Department
for Education



Department
of Health

Consultation Response Form

Consultation closing date: 9 December 2013
Your comments must reach us by that date

**Consultation on Draft 0-25 Special
Educational Needs (SEN) Code of Practice,
Draft Regulations and Transitional
Arrangements**

If you would prefer to respond online to this consultation please use the following link: <https://www.education.gov.uk/consultations>

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Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	

Name: Anne Fox	
Please tick if you are responding on behalf of your organisation.	<input checked="" type="checkbox"/>
Name of Organisation (if applicable): The Communication Trust	
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If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the department's 'Contact Us' page.

Please mark the box that best describes you as a respondent.

<input type="checkbox"/> Maintained primary school	<input type="checkbox"/> Maintained secondary school	<input type="checkbox"/> Special school
<input type="checkbox"/> Academy/free school	<input type="checkbox"/> Subject association	<input type="checkbox"/> Governing body
<input type="checkbox"/> Parent	<input type="checkbox"/> Young person	<input type="checkbox"/> Higher Education
<input type="checkbox"/> Employer/business sector	<input type="checkbox"/> Local Authority	<input checked="" type="checkbox"/> Organisation representing school children
<input type="checkbox"/> Organisation representing school teachers	<input type="checkbox"/> Other	

Please Specify: The Communication Trust is a coalition of nearly 50 voluntary and community organisations with expertise in speech, language and communication. We harness our collective expertise to support the children's workforce and commissioners to meet the speech, language and communication needs (SLCN) of all children and young people, particularly those with SLCN.

We do this by raising awareness, providing information and workforce development opportunities, influencing policy, promoting best practice among the children's workforce and commissioning work from our members. The Trust is advised by specialist advisors and works with a broader network of partners.

The Trust, which is contract holder with the Department for Education, was set up in 2007 by children's charities Afasic and I CAN, with BT and Council for Disabled Children.

This response form covers questions on the draft Special Educational Needs Code of Practice, regulations and transitional arrangements. To enable you to identify which questions you wish to answer they have been split as follows:

Questions 1 – 27 cover the draft code of practice

Questions 28 – 42 cover the draft regulations

Questions 43 – 52 cover the transitional arrangements.

Overarching comment on the draft Code: The Trust believes that that draft Code has been significantly improved from the indicative version published in March. In order to ensure that the needs of children and young people with SLCN and their families are met, we have suggested solutions under each of the areas that we feel could be improved. We would be delighted to work collaboratively with the Department to help implement these solutions, to develop specific guidance around SLCN and to ensure the final Code meets the needs of the young people with SLCN and their families.

DRAFT SPECIAL EDUCATIONAL NEEDS CODE OF PRACTICE

General

1 Is it clear from the structure of the draft Code of Practice where you can find the information you need?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- While the draft Code has been significantly improved from the indicative version published in March, the structure needs further consideration to make it clear and accessible to families and professionals. Overall the Code is a very detailed document, but information is often fragmented, making it potentially ambiguous and difficult for professionals and especially families to establish the pathways for what should happen when, and to find clear lines of accountability at each stage.

Solutions we would suggest

- To avoid ambiguity and improve the accessibility of the Code, there should be greater use of flowcharts and diagrammatic representation of pathways for children, young people and their families - we found the flowchart to show the assessment process for children with education, health and care plans useful and feel there should be more of these.
- These flowcharts should illustrate pathways and include expected timeframes and what support (e.g. keyworking) is available at each stage. The flowcharts should illustrate the different scenarios below:
 - a young person with SEN with a Plan
 - a young person with SEN without a Plan
 - resolving disputes in general and clearly explaining the process of mediation

- the role of Designated Health Officer in resolving disputes
 - personal budgets
- All of the above examples should refer to children at different ages and stages so that the 0-25 nature of the reformed system is clear. Whilst we recognise that there may be a limit to how many flowcharts are used in the Code itself, the flowcharts could be part of specific documents that provide additional guidance as suggested below.
 - To help families to relate to these pathways, a welcome addition to the document would be case studies illustrating how these pathways work in practice by describing the journey from a family's/young person's perspective, starting with outcomes.
 - It may be worthwhile to consider a separate companion guide for parents as there may be too much complexity within a document which is for a broad audience. We recognise the fact that this guidance is for organisations who work with and support children and young people with SEN. On the other hand, we also know that families and young people need to have access to this guidance in a form that is understandable. Whilst the Code is primarily aimed at a professional informed audience who have responsibilities with respect to the Code, families and young people also need to be able to access the information contained within, and the most appropriate way for this may be through a separate guide, developed in partnership with a broad range of families with different experiences of the system.
 - It is also important to remember that parents are not a homogeneous group and some will also have their own SEN. We would be happy to work with our Consortium members to make sure that a broad range of parents are consulted in the pilot of a draft if the Department does want to consider this. Although some members of our Consortium had concerns as to having separate information for professionals and families, there was a general consensus that the current guides for families are useful and that presenting information for a targeted family audience can be extremely effective and useful.
 - We would also advocate a separate document for practitioners providing further practical advice. It would also be useful to have illustrative case studies of best practice to promote innovative solutions across all ages and the full spectrum of SEN. This document could also provide links to further advice and information that practitioners may find useful.
 - We suggest that some specific, targeted guidance documents would be helpful. These could be produced by the DfE but probably better that they are produced by the groups themselves, e.g. professional bodies or organisations such as The Communication Trust – we would be delighted to discuss this further with the Department.
 - An introductory overview of the Code, indicating how the different sections are inter-dependent, would also be useful. For example, it would be useful to clearly demonstrate for those using the Code that the chapter on joint-commissioning underpins Local Offer, that all settings need to understand joint-commissioning and

Local Offer etc. We fear that without this sort of overview a school would think that only the section on schools was relevant for them, without realising that the principles behind joint-commissioning and the Local Offer are vital to the development of their own offer.

- It would also be helpful if indicators could be embedded into the text to denote where more detail is provided in another section, so the document reads more like an interactive manual and less like an information booklet.
- A *frequently asked questions* section and a *glossary of terms* would also be a welcome addition to the Code to help guide parents and professionals alike.
- Numbering the paragraphs for ease of identification and listing the subheadings on the contents page would be useful for those who need to refer to the document.

What is the detail of our concern and the evidence for this?

- We found it particularly interesting that several of the Pathfinders have highlighted the importance of understanding and representing the 'parental journey', particularly Hampshire County Council, and we would like to see this learning reflected in the Code, or accompanying guidance.
- The current structure does not quite ensure that the Code is a practical document to support effective working and we would be very happy to support any redrafting as appropriate.
- Our members were concerned that the draft feels uneven, as if different sections had been stitched together in one piece rather than reading well as a whole.
- If the yardstick is 'will this make things better for children and young people and their families?', then we are not sure this draft is an improvement on the current Code.

2 Is the guidance clearly written and easy to understand?

Yes

No

Not Sure

Comments:

Our overarching concern

- Overall we believe that the Code is very technical and presumes a prior knowledge of the subject. This could be considered too daunting, particularly to families new to the SEN system.

Solutions we would suggest

- To alleviate this problem we believe there needs to be a glossary of key terms within the Code that could also signpost where parents could go for further information on each of the areas, such as key working.
- The Department should consider developing a “starter’s guide” to the Code to provide an overview of the document and assist newcomers. We recommend that this is thoroughly tested with a good cross section of the intended audience, and again we would be happy to assist if helpful.

What is the detail of our concern and the evidence for this?

- There is a concern that the only people engaging in this consultation will be those already familiar with the system, be they families or professionals. We feel it is important that the Draft is also developed with those new to the system in mind, and should be tested with families who do not know the SEN system and trainee professionals who have not yet had specialist training on SEN.
- We would encourage a greater consistency in how information is referenced (including website addresses).
- We would recommend that local authorities and support organisations, such as the Trust, are made aware of how families that do not have access to the internet are able to view the Code.

3 Are the statutory duties in the Children and Families Bill and the draft SEN regulations clearly explained?

Yes

No

Not Sure

Comments:

Our overarching concern

- It is currently unclear where families should go if responsibilities that ‘must’ or ‘should’ be followed are not being met. This relates to a wider concern about the lack of accountability for commissioners and providers that will likely lead to expensive and unnecessary legal challenges unless the Code provides clear routes of redress. Below we highlight the areas we feel need clearer explanation.

Solutions we would suggest

- We welcome the distinction between ‘must’ and ‘should’ and strongly recommend that this is retained in the final draft. It is also positive that ‘**must**’ appears in bold type. However, it is hoped that the final version highlights statutory duties and legal guidance in text boxes so it is clearly marked, as it is in the current Code.
- We would like to see each chapter or each pathway (as described in our answer to question one) to include clear information on accountability and where families should go to seek redress if necessary.
- We have concerns about the lack of accountability for ensuring the children’s workforce are adequately trained and supported. We would like to see the responsibility for delivering training to align with the principles of professional/workforce development set out in the Green Paper, as workforce development is essential if the reforms are to improve outcomes for young people. To encourage this, we believe the principles section of the Code (2.1, page 12) should include a section ensuring that local authorities and health agencies have regard to the competence of the workforce to implement the Code.

What is the detail of our concern and the evidence for this?

- We have concerns about clarity of a number of the specific duties. We feel the following need to be made clearer:
 - duties around key working;
 - duties around mediation – especially the training and competency of mediators – for example, reference is made in the Code to ‘accredited mediators’ (9.5, p 166), but there is no reference to a national accreditation system. Regulations regarding mediation are also very weak (please see our response to question 38);
 - joint duties around education and health and specifically how this might impact on commissioning of Speech and Language Therapy;
 - the duties of Designated Health Officer, which could currently be considered confusing;
 - routes of redress for families if a service such as Speech and Language Therapy is not included in the Joint Strategic Needs Assessment (JSNA), and the Local Offer. It is not currently clear which body has responsibility for overseeing commissioners and holding them to account;

- routes available to seek impartial advice, ask questions about funding and contact parent partnership services;
 - steps that follow the appeals system for the Local Offer – ‘the right to comment’, once the local authority has responded to these comments and how the comments and response will be used to inform the officers and elected representatives that hold the local authority to account;
 - responsibilities of health agencies to respond to concerns over the Local Offer;
 - further clarity for schools on their duties with regards to SEN funding and guidance on the commissioning process.
- We also feel that the Code does not highlight the duties of the Equality Act in general and the anticipatory duties in particular. Settings have an anticipatory duty to make reasonable adjustments to ensure that disabled pupils can access education rather than wait until they are ‘falling behind or making inadequate progress’.
 - A pupil with SLCN or hearing loss for example, has a right under the Equality Act¹ to have their communication needs met in order to access education in any setting. Under the Equality Act, the setting will be expected to provide an auxiliary aid or service for a disabled pupil when it would be reasonable to do so and if such an aid would alleviate any substantial disadvantage that the pupil faces in comparison to non-disabled pupils, rather than that setting wait until they fall behind. Early intervention is absolutely critical in securing longer term successful outcomes and this must be reflected and recognised to ensure appropriate support is put in place.

4 Does the guidance provide sufficient focus on the full age range from 0-25 including early years and post-16 as well as school-age children?

Yes
 No
 Not Sure

¹ Schools have a duty to provide auxiliary aids and services to disabled pupils as part of the reasonable adjustment duty.

Comments:

Our overarching concern

- The Trust's strongest remaining concern as the SEN reforms have progressed is how needs are identified and met in early years settings. Whilst we welcome the repeated references to early years support through the document, especially in Chapter 6, we believe that guidance needs to be both strengthened and made clearer. Transitions are crucial for children and young people and evidence from the Better Communication Research Programme supports the importance of focus on transitions for children and young people with SLCN; we do not feel that the Code adequately explains or supports these transitions.

Solutions we would suggest

- We would suggest further guidance on how needs are identified and met in early years settings would be extremely useful and would be happy to work with the Department to ensure that the information is strengthened:
 - how identification and support will be ensured in PVI early years settings;
 - how responsibilities for identification and support prior to the 2 year check will be shared between health services and local authorities;
 - clearer information on the role of Health Visitors in relation to the 0-2 age range;
 - clearer information on how families of 0-2 year olds will access support to help their children communicate.
- The Code does not provide adequate guidance to cover support for children in the 0-2 age range, as prior to the 2 year check the responsibilities of health services to identify needs are not clear. Neither is how local authorities are involved in their assessment of their needs at this stage. There is the need to be clear how professionals, starting normally with health service staff, will work together and with parents to develop an appropriate programme of intervention and support.
- The Code should also recommend that health services should signpost to parents where children with needs may find support with their emotional, social and educational development – including speech and language.
- The Code needs to state that health services should not rely on waiting for the 2 year old check before needs are identified and should put arrangements in place, jointly with local authorities, to ensure that children of any age may be assessed for an Education, Health and Care Plan (EHCP). The Code must reflect that 0-25s must be supported not just in name but in its detail, as it stands the Code effectively only covers 2-25s.
- The Code should also make clear that should health services believe that the child is not eligible for assessment for an EHCP but could benefit from special educational provision for their early years development, they should refer the parent to the local offer and support them with securing suitable provision.

- We would like to see further detail on the vital transitions children and young people go through. This is particularly the case for the 16-25 age group where there are added complexities relating to different thresholds for different child or adult services. Further illustrative detail would be helpful, highlighting key transitions to recognise likely changes in support needs.

What is the detail of our concern and the evidence for this?

- The Trust's strongest remaining concern as the SEN reforms have progressed is how needs are identified and met in early years settings. It has been conveyed to the Trust by Ministers and officials that the Code will provide clear guidance in this area which will allay our concerns with the Bill. We have therefore applied focussed scrutiny to the early years sections, as unless children with needs such as SLCN are identified and supported early then evidence has repeatedly shown that they are likely to fall far behind their peers, with consequences for their entire educational journey. Therefore while we welcome the repeated references to early years support through the document, especially in Chapter 6, we believe that guidance needs to be both strengthened and made clearer.
- We have concerns that the Code is not adequate in its guidance for children aged 0 – 2 and has some inconsistencies. For all children this is the key age for language development and for some children with SEN, such as those with sensory impairments or multiple needs, support from diagnosis will a) greatly improve their outcomes b) reduce costs in the long term. The Code recognises this theoretically; in 6.2: 'the benefits of early identification are widely recognisedimproves long-term outcomes for the child or young person' but does not, we believe, offer strong enough guidance in this area.
- Section, 6.4, 'Identifying needs in the early years' has some examples of support, including 'specialists' 'discussing communication' with parents. We would like to see links to further guidance in this section and vitally, we believe parents' rights to have support to enable their (for example, sensory impaired) child to access language from birth and learn to communicate, should be clearly articulated here.
- The section 'From birth to 2' does not promote an integrated approach to supporting babies and very young children and their families, The reference to the Early Support 'Programme' is not helpful in this respect. It would be more helpful to say 'evidence shows that families benefit from coordinated services, based on a principled way of working, such as the Early Support approach and resources, including key working support.'
- Currently the Code does not make it clear how responsibility for identification and support prior to the 2 year check will be shared between health services and local authorities. We strongly welcome the findings of the recently published report '*Information Sharing in the Foundation Years: a report from the task and finish group*' and suite of best-practice tools which looks at barriers to information sharing between different services. Please see our response to question 13 for further detail.

- We would like to see the 0 – 2 age group given more acknowledgement in the Code’s guidance in regards to what is included in the Local Offer. Section 5.2 ‘What needs to state that local offers should include ‘early years education and provision available for the 0-2 age range’. The suggested ‘support available to parents to aid their child’s development’ also needs to clarify whether this is available from birth or just for funded early education from two.
- When the Trust consulted young people with SLCN about the Code, they expressed concerns that if misinterpreted it may delay the full independence and self determination of young people until after 25. To alleviate this, a pathway indicating the transition to adulthood would be helpful.
- While we welcome that information has been included for further education settings, it appears to be less substantive than that available for schools throughout the Code and clearer guidance may reduce the impression that further education has been included as an “add on”.

Chapter 1 – Introduction

5 Does Chapter 1 explain clearly the purpose of the Code of Practice, who it applies to and how it applies to them?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We do not feel that Chapter 1 is clearly presented nor the audience clearly stated. If this is a document which is also to be beneficial for parents and young people then Chapter 1 is not a particularly user-friendly introduction to or overview of the Code itself. We feel that there are omissions around who the Code applies to particularly around workforce development; without adequately trained and supported staff, the aspirations of the Bill will not be realised. We also feel that the Code implies that it provides ‘practical advice’ when it does not currently do so in all areas.

Solutions we would suggest

- Given the importance put on workforce development by the Better Communication Research Programme, the most extensive research study into SLCN and the emphasis on workforce development in the Green Paper, we feel it is vital that the opportunity is seized through the Code to:
 - Ensure that organisations that train the workforce who will deliver SEN

- provision are covered by the Code and should be listed in the section on 'who is this guidance for' section. This should particularly include Initial Teacher Training Providers and Awarding Bodies for Early Years Qualifications.
- Ensure that employers of the children's workforce are also covered by the Code to ensure continuous professional development by listing them as employers here and by ensuring the principle that local authorities and health providers are responsible to ensure they provide training and CPD to enable their workforce to implement the Code, is embedded in Chapter 2.
- The introduction states that the Code provides 'practical advice' on how to identify, assess and make provision for young people with SEN. We feel that the advice given is not actually particularly practical and could be misinterpreted by certain audiences where the information they usually receive of a "practical" nature is more detailed and specific. This applies particularly to identification where there is neither enough practical guidance nor information on where to go to find sufficiently detailed practical advice and guidance. We believe a supporting guide which gives practical examples and links to further guidance may be helpful as we have outlined in question one.
- What is the detail of our concern and the evidence for this?**
- Workforce development is particularly pertinent if the needs of children and young people with SLCN are to be met. The Better Communication Research Programme report *Improving provision for children and young people with speech, language and communication needs* summarises the programme themes and contains the main recommendations.²
 - A key recommendation from this report is that '**A programme of initial and post qualification training is required in order to meet the varied needs of children and young people with SLCN and to develop the joint planning and implementation of evidence based provision and intervention which is necessary.**' The report recognised that despite important, recent steps around workforce development, 'there is a need to develop training which addresses what professionals provide for children with SLCN and how language learning needs are addressed in classrooms. Data from the prospective study illustrated that often it was difficult to identify curriculum differentiations. Also, observations using the Communication Supporting Classrooms Observation Tool illustrated that professionals had often structured the environment to support speech and language but there was less evidence of structured opportunities and interactions to develop oral language. There is, therefore, a sound foundation for fuller development to ensure a comprehensive programme across all relevant practitioners. These initiatives require expansion to provide comprehensive training, and evaluation of the new practices delivered in terms of child outcomes.'
 - The Department for Education have confirmed through the Communication Council (of which the Trust is a member and host) that they are working to provide an annex

² Lindsay G et al, (2012) *The Better Communication Research Programme: Improving provision for children and young people with speech, language and communication needs*, Department for Education

to the Code which includes information about institutions for whom the Code has 'relevance' but who are not named on the face of the Bill as having to have regard to it-. We would welcome this and would like to see training institutions, professional associations and Awarding Organisations e.g. ITT Universities, CACHE, City & Guilds, Edexcel, etc. mentioned in this list as well as Ofsted.

- Parents and young people should also be listed in the 'who is this guidance for' section if this is the intention of the Department, and there should be signposting to other sources of information for parents and young people.
- We also would appreciate clarity around the apprenticeships legislation that impact on the Bill (and therefore Code's) application to youth justice settings.
- We have concerns around the implementation timeline for the Code of Practice which we cover in question 51.

Chapter 2 - Summary

6 Does Chapter 2 summarise how the principles described there are reflected in the Code of Practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- Although this section in general describes the principles given clearly, we believe there are some omissions, particularly around workforce development.

Solutions we would suggest

- We believe this section should include the principle that local authorities, education and health providers are responsible to ensure they provide training and CPD to enable their workforce to implement the Code.
- Unless this principle is clearly stated in the Code and is enforceable, there is a danger that the aspirations of the Green Paper around workforce development, and indeed many of the other duties of the Code will not be met. Please see our answer to question 6 for the evidence to support why workforce development is so important for meeting the needs of children and young people with SLCN.
- The section on 'high quality provision for children and young people with SEN' only appears to refer to teaching and no other aspect of provision covered by the Code. Whilst we wholeheartedly support what this section says about quality first teaching, we believe that there are other areas that should be covered in this section such as

all other aspects of young people's education and wider development rather than solely teaching and learning. Additionally, there should be more 'practical advice' on quality first teaching in Chapter 6 and we cover this in question fifteen.

Chapter 3 – A Family Centred System

7 Is Chapter 3 clear about the information, advice and support young people in particular may need, and how agencies should work with them and their families?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- The Code does not outline a single point of redress for families on how to hold authorities to account for their services. More broadly, we do not feel that Code as it stands is easy for families to use. The Code is at times confused and confusing and often requires prior knowledge of the system. This issue will be particularly difficult for families new to the system.

Solutions we would suggest

- We would suggest the following solutions:
 - clear lines of accountability for families in this chapter and across the Code;
 - flow diagrams of the pathways for families, with timeframes, will be particularly welcome, drawing on the experiences of the Pathfinders in researching the 'parental journey'
 - looking at the possibility of producing companion guides for families, akin to quick start or user guides for those intended to benefit from the system as users.
 - clearer information on Personal Budgets, drawing on the experiences of the Pathfinders
 - further guidance on planning, monitoring and evaluation of individual provision, including the involvement of specialists, so that families can have confidence in the quality of support that they are receiving or a framework with which to challenge it if not.

What is the detail of our concern and the evidence for this?

- The Code does not outline a single point of redress for families. Without a designated regulator, particularly to ensure local authorities provide the services set out in their local offers, there could be unintended consequences for the appeals and mediation process. For instance, if families are not satisfied with the SEN

services available for their children without an EHC Plan, while their children may not be eligible for a plan, parents may demand an assessment of their child's needs and use the appeals process to complain about a local authority's wider service provision.

- Initial suggestions from the SEN pathfinders indicate that there have been difficulties developing a personal budget system that parents are able to use effectively; we are concerned that the intentions for personal budgets may be too ambitious while evidence that they work in practice is so limited. We feel the information on Personal Budgets needs to be clearer.
- We would like the Department to explain separately how an impartial information and advice service, which includes Independent Supporters, will work in practice.
- We feel that there is not enough guidance given on how the planning and evaluation of individual provision should be structured. Although we recognise that Individual Education Plans were never statutory and will not be included in the Code, it is important that the Code ensures that parents are fully involved in planning, target-setting and monitoring.
- Our parent-led member organisations tell us that target driven support, developed not just by a teacher but also by specialists and parents is invaluable - and this approach should not be lost in the new Code. The Code should be clear on parental involvement and steps families can now take to secure such support and joint working with professionals.
- Although we recognise that the section on 'involving parents and pupils' states that schools must provide an annual report and should meet parents termly, there was a concern amongst some of our members that the lack of structure will not support schools who do not already have good practice. What's needed is a Code that will raise the standard of practice in all schools, improving practice in the worst as well as encouraging innovation in the best.
- We feel further guidance and support to schools in this area would be of use here, particularly around the involvement of specialists, to give parents confidence in the level of support they receive.
- Similarly, the Code does not outline sufficient information about requirements or processes for monitoring progress and adjusting support accordingly for children, particularly in light of the removal of levels within the Curriculum. Being able to monitor progress effectively, which may often be in small incremental steps, is essential for pupils with SLCN and their families and is currently well-valued. The importance of this approach with parents is highlighted through the Better Communication Research Programme.

8 Is it reasonable to expect local authorities to provide the advice and support specified in Section 3.3?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We are keen that families get the support that they need and can benefit from the principles of keyworking. The draft recommends that these services are provided at arm's length, but does not make it mandatory. We are concerned about the accountability for such services if they are not provided directly, although some members have raised concern as to whether services can be impartial if provided by the local authority.

Solutions we would suggest

- We would like to see more detail about accountability for the advice and support specified in 3.3.

What is the detail of our concern and the evidence for this?

- In our internal consultation, members commented that the quality of Parent Partnership Services (PPS) varies considerably, and raised concerns that some PPS may struggle with all the responsibilities listed being placed on them. Key questions include those around sustainability, funding implications and independence. There are also concerns over sustainability for voluntary organisations' roles, given the current economic climate.

9 Does the Code provide an accurate description of key working?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We don't believe the information regarding key working is adequate. There is a lack of clarity and reference to all the evidenced benefits of key working.

Solutions we would suggest

- Reference to previous work undertaken on the issue such as the paper on key working which is available as part of the Early Support resource bank (www.ncb.org.uk/early-support) would be an important addition.

What is the detail of our concern and the evidence for this?

- The Green Paper emphasised the importance of key working for parents and children. There are only three mentions in the Code and these lack clarity. An explanation of the key working role is also absent.
- Multidisciplinary working needs integrated key working and this is not detailed in the Code. Key workers should be knowledgeable in multidisciplinary work to be able to fully contribute in multidisciplinary meetings about a child, and should be separate from independent advice.
- Members have reported that it can be hard to find key workers with a background in both health and education and therefore training and support will be vital.
- Some members also raised concern as to whether key working can be independent if provided by the local authority.

10 a) The 'Independent Supporters' described in Chapter 3 are intended to provide support for children, parents and young people through the Education, Health and Care assessment and planning process.

Do you agree that this sort of support should be available to children, young people and parents if they ask for it?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We are concerned that the aspirations of the Green Paper are being lost in regards to Independent Supporters and key working. Independent Supporters are 'subject to availability' (p23) and only apply to those with EHC plans.

Solutions we would suggest

- We would suggest this support should be for everyone, not just those with EHC Plans and should be offered to all parents and children, not just those who ask for it, or for the workforce to be trained to offer this universal provision as support for all families of children with SEN.
- We would like to see the Green Paper's aspiration for training 'a wider range of professionals' to work in partnership to support families' needs to be realised so that families can receive the; the holistic support they value so much.

What is the detail of our concern and the evidence for this?

- Where Independent Supporters are referenced, the focus is only on those who will have an EHC Plan, who may ('subject to availability') get an 'independent supporter' / designated key worker. We believe that this approach should be available across the continuum of need and support.
- This recommendation is supported by evidence and experience of practice. Children with SLCN are often under and misidentified and the BCRP found that it was essential to monitor and profile children over time, particularly at key transition points. This demonstrates merit in providing access to Independent Supporters for children without EHC plans to ensure that provision is kept under review and for whom key working could be an extremely important approach.
- Our view is that key working is a way of working rather than an additional service (as demonstrated by Early Support as detailed below). We feel it's important that the Code embeds both key working and independent supporters in order to achieve the aspirations of the Green Paper, rather than presenting them as optional bolt-on services, and that authorities consider a broader approach to ensuring holistic care and support, as set out below.
- The Green Paper (2011) on SEN and disability states: "Parents with disabled children are likely to face higher levels of stress, and they value the practical and emotional support of a key worker...In order to extend the use of key workers for families...we need more people to be trained as key workers from a wider field of professionals" (pp 43-44).
- Charged with building on this aspiration, Early Support's definition of the aim of key

working³ is: **to ensure the provision of holistic care and support to meet the individual requirements and aspirations of the child, young person and family.**

- As such, it is a way of working rather than an additional service, covering a set of functions: emotional and practical support; coordination; planning and assessment; information and specialist support – interlocking categories which support strong and resilient families.
- These functions can be carried out by **either** by **designated** individuals – where their job is confined to key working and where they may support a large number of families; or through a **non-designated** approach – where a practitioner may be offering other kinds of support (e.g. a Portage Worker) where they may offer key working to a smaller number of families.
- The concept of an Independent Supporter means that only one approach to key working is being promoted; and that in itself, would be ‘subject to availability’. It therefore disregards the Green Paper’s aspiration for training ‘a wider range of professionals’ to work in partnership to support families’ needs; and means that the holistic support which families value so much becomes a discretionary service, subject to budget constraints.
- Within the draft Code, there is no obvious redress for families who ask for, but are not provided with, an Independent Supporter; and there is no duty on local authorities to produce a plan which spells out how families will be able to access the full range of support they may need both for children with or without an EHC Plan.

10 b) What might help ensure such support is available to families that need it?

Comments:

- We would like to see the Code contain promotion of the evidence about the benefits of key working (including the SQW evaluations) so that authorities can understand the benefits for outcomes and efficiency.
- Training for strategic managers to share the evidence base on the benefits and practicalities would also be extremely useful. This should be supported by support for local area needs analysis and sharing of data between education and health for effective provision planning.

Chapter 4 – Working Together Across Education, Health and Social Care

³ As set out in ‘Key working: improving outcomes for all: evidence, provision, systems and structures’
www.ncb.org.uk/early-support

11 Does Chapter 4 describe clearly how the new joint commissioning arrangements will support children and young people with special educational needs?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- Joint commissioning arrangements need to be strengthened and made more transparent; we are working with the RCSLT and the Department on revisions to the legal language. We have specific concerns around what commissioning arrangements and responsibilities there will be for children and young people with SLCN who do not meet the threshold for an EHC Plan but who do require specialist support. Identification is crucial for effective joint commissioning, given the current under-identification of SLCN, we are concerned that the Code doesn't do enough to improve the situation for those not currently having their needs met.

Solutions we would suggest

- We are working with the RCSLT and the Department on revisions to the legal language around joint commissioning on the face of the Children & Families Bill.
- In addition we would suggest:
 - that there is guidance on how specialist services for children and young people without an EHC Plan are commissioned and clear lines of accountability;
 - a flowchart to illustrate the pathway for a young person without an EHC Plan e.g. a child who stammers who requires fluency services;
 - that the Code presents a clear view of the national perspective and prevalence of SLCN, in order to ensure that commissioners have the right information to meet the needs of children and young people, especially due to SLCN's evidenced under-identification;
 - that guidance on the importance of identification is strengthened. Identification is crucial for effective joint commissioning, however the Code does not give settings enough guidance on improving identification procedures and needs to do more to ensure that schools, FE providers and pre-school establishments are aware of the pupils they have who need services commissioned. If this guidance is too detailed for the Code then accompanying guidance should be clearly signposted due to the vital importance of early identification.

What is the detail of our concern and the evidence for this?

- We have particular concerns in relation to the limited and decreasing profile and prominence of speech and language therapy in the Code. Given the prevalence of

SLCN and its evidenced under-identification, its impact across education, social, and economic outcomes and the often complex relationships between health and education provision for children with SLCN, it is essential that the Code reflects the significant improvements made in the past 15 years with regard to the profile of speech and language therapy across health and education.

- Guidance relating to the identification of SLCN needs to be more robust, including referring to the role that speech and language therapists play in the process.
- It is essential for commissioners to have a clear view of the national perspective and prevalence of SLCN. It is essential for commissioners to know the significance of SLCN, including the fact that around 10% of children in the UK – over 1 million – have speech, language and communication needs (SLCN), which are likely to be long term and persistent. 7% of all children have a specific language impairment (SLI), meaning the SLCN is their main need. Additionally, at least 3% of children have SLCN linked with other impairments, including those with hearing impairment, autistic spectrum disorders, specific learning difficulties, such as dyslexia and general learning needs⁴. 0.5% of children have the most severe difficulties with communication that affects their ability to express their most basic needs⁵. Many more children have language delay, which left unaddressed often becomes long term SLCN, and in areas of social deprivation incidences of language delay are particularly high. In these areas, upwards of 50% children may start school with language delay⁶.
- The latest Department for Education data on SEN, published in July 2013, found in state-funded primary schools 30.6% of pupils with SEN had speech, language and communication needs as their primary need – the most frequent type of SEN at primary level. However, this actually equates to only 2.3% of primary pupils, an issue that the Better Research Communication Programme reported that SLCN was significantly under-identified among children.
- Despite these high figures, actual prevalence of SLCN is likely to be significantly higher – which is a key issue with regards to commissioning. There are serious issues with the identification of SLCN that cut across both health and education sectors which impact on the accuracy of recognised prevalence levels. These include but are not limited to:
 - a lack of training and professional development about SLCN given to some key professionals including health visitors⁷ and school nurses;
 - a lack of clear understanding in the children's general and health workforce

⁴ Lee, W. (2013) *A Generation Adrift*, The Communication Trust

⁵ Communication Matters (2013) *Shining a light on Augmentative and Alternative Communication*. Communication Matters

⁶ Lee, W. (2013) *Talk of the Town evaluation report*, The Communication Trust.

⁷ Health visitors are often the first point of contact particularly for early years parents- the 2 year check for instance offers some opportunity to identify speech development concerns. However, there needs to be specialist training/information. For example, health visitors' referrals for stammering to speech and language therapists for 2 year olds are unlikely as onset is typically 32 months therefore health visitors need to be able to advise parents accordingly, particularly if there is a family history of stammering.

- about developmental expectations for children and young people's speech, language and communication development;
 - misinterpretation of signs and symptoms of SLCN for other issues such as behavioural problems or attention issues, this is often particularly the case as children get older;
 - problems with effective and timely referrals to specialists such as speech, and language therapists, particularly for older children;
 - the variation in specialist provision and services across the country;
 - the gaps that exist within health and education provision which children and young people with SLCN too often fall into;
 - SLCN can be complex and difficult to identify.
- Given the current under-identification of SLCN, we are concerned that this chapter doesn't do enough to improve the situation for children and young people who currently are not having their needs met. **Identification** is crucial for effective joint commissioning, however the Code does not give enough guidance on improving identification procedures.
 - Whilst the content of the chapter had improved from the indicative draft, it is not adequately accessible. Diagrams and case studies would help as well as clarification of the audience.
 - We feel that it would be helpful for this chapter to reflect best practice in relation to commissioning of services for children and young people with SLCN. There is no reference to best practice or where this can be found despite the research, guidance and case studies on best practice published by the Royal College of Speech and Language Therapists. The Code needs to draw on evidence and signpost to best practice if the aspiration is to improve outcomes for children and young people.
 - We have specific **concerns around children and young people who do not have EHC Plans but who require specialist support both in terms of what joint commissioning arrangements will be in place, and what the accountability will be** for these. We would suggest some visuals around the route children without EHC plans' service provision will look like within the local offer to gain specialist support.
 - On page 31 the Code should explicitly say that it is about a whole range of children, not just those with Plans.
 - We are concerned about the implications of the **JSNA process for the local offer** and the **'making best use of resources' section on page 37** which effectively talks about prioritisation and decommissioning services.
 - **Who is monitoring the Commissioners?** We have concerns as to what will happen if specialist services are decommissioned. Families will need to be able to challenge this decision if they are not receiving the support they need. For example, if a young person has been identified as needing specialist speech and language therapy but this has been decommissioned, the family will need a line of redress.
 - Our members felt that this was a particular concern for SLCN, due to the evidenced

under-identification and lack of visibility of SLCN and awareness/willingness in the named bodies (particularly health) to recognise children and young people with SLCN, and therefore to invest in and commission for them.

- There are assurances around requirements for commissioning equipment for children and young people with complex SLCN such as augmentative and alternative communication (AAC) aids. However, we are concerned that there is not an adequate understanding of, or commitment to emphasising, the need to commission training to ensure all those using the equipment are confident in using it. For example for AAC, equipment in many cases will come from specialist regional commissioning, but the local authority will have to provide the essential and ongoing support and ancillary services which are essential to ensure that a child or young person can actually learn how to use the equipment and be taught appropriately. It is essential that the ongoing local support dovetail with regional specialist provision; this should be specified in the Code.
- **Accountability issues around named health bodies-** Both CCG's and Health and Wellbeing Boards are crucial for joint commissioning but the mechanisms for holding them to account are not set out and there are concerns- 'have regard to' is a weak descriptor of the levels of accountability to the Code expected from these bodies.
- **Financial commitments-** we are concerned around the serious threat that commitments made by previously existing health bodies or groups will be eroded or removed by new health bodies who are not minded to continue or fulfil on them. This is happening already.
- The Code needs to be clearer about the roles of 'commissioners' and 'providers', as the use of the two terms may be found to be confusing.
- We do not feel that the roles and responsibilities for social care teams, LAs and health services (page 32-4) and joint delivery (39-49) are robust enough, which will lead to confusion for professionals and families alike. A diagram or table would be helpful to indicate their overlapping and specific duties.

12 Is the role of the Designated Health Officer described clearly?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- We welcome that the Designated Health Officer role doesn't need to be a doctor. This is a positive as it is more flexible than before but the Code needs to explain more clearly what their role is. However, we do not feel that the information on the role of the role or accountability of the Designated Health Officer is described clearly.

Chapter 5 – The Local Offer

13 Does Chapter 5 describe clearly the purposes of the local offer?

Yes

No

Not Sure

Comments:

Our overarching concern

- The accountability of local offers remains a fundamental issue. We are concerned that all the other positive recommendations in the Code regarding the local offer may be redundant unless local authorities are held accountable for meeting these recommendations. We do not believe the review function is sufficient as a means of accountability for local authorities and we are also unclear as to how concerns raised by young people and their families through this review process are escalated or how joint accountability is enforced.
- As the local offer will be the document most accessed by families, children and young people it is essential that it is fit for purpose and crucially must illustrate pathways and be linked to outcomes for young people.

Solutions we would suggest

- We would suggest the following solutions and would be happy to work further with the Department in order that the guidance on the local offer contains:
 - clear lines of accountability for the provision of services listed within the local offer so that families know where to go if their needs are not being met;
 - both the regulations and the Code reflecting clause 21(5) of the Bill, acknowledging that speech and language therapy will normally be special educational provision;

- clear guidance that the local offer must be based around outcomes for children and young people;
- clear pathways for families through the local offer – the Pathfinders have extremely useful learning from their research with families that should be reflected in the Code and the requirements for the local offer;
- the graduated approach (universal, targeted, specialist) to be reflected in the local offer as has been demonstrated as useful by several of the Pathfinders in helping families navigate local provision;
- the recommendations and learning from the Pathfinders around minimum standards and templates to be shared through the Code or accompanying guidance;
- further guidance on ensuring 0-2 age range and all early settings are included within the local offer;
- We would like to see a statement of intent for the local offer that reflects the principles and standards set out in other chapters, particularly around access to education and high aspiration;

What is the detail of our concern and the evidence for this?

Accountability of local offer

- **A fundamental issue remains the accountability of local offers.** The Code suggests that parents and the local community will hold local authorities to account on their offers. However, there is little detail about the process for parents feeding back, and against which criteria they are making judgements.
- When local authorities propose a reorganisation of SEN provision they should demonstrate to parents and the local community how the new arrangements ‘are likely to lead to improvements’ in SEN provision. However, we feel this wording is weak, as there is no benchmark to measure improvement against, no national standard and the requirement to meet the standard of their local community is not strong enough as there is no body holding the local authority to account on behalf of the community.
- The regulations and the Code require the local offer to include information about health care provision for children and young people with SEN. However, they both still mention speech and language therapy as health care provision without acknowledging that it will normally be special educational provision. **They therefore need to be changed to reflect clause 21(5) of the Bill.**
- We are concerned about the implications of the **JSNA process for the local offer** and the prioritisation of services (please also see our comments in the joint-commissioning chapter).
- **Identification-** settings are not confident or well trained enough to know what to look for especially in children with SLCN. This will result in them not knowing what they need and not demanding the right provision from their local offer- a vicious

circle of insufficient supply based on ineffective analysis of demand.

Principles of local offer and suitability for families

- Given that a core purpose of the local offer is to support families, children and young people to make informed choices, we feel that the guidance in the Code as it stands is not clear enough in enabling them to do this.
- Without a structure and process for making decisions, showing families good practice and support based on best available evidence which links clearly with outcomes, it is difficult to see how they are able to make informed choices as is suggested on page 24 of the Code.
- The local offer currently is too activity based with not enough focus on outcomes. Several of the draft local offers already produced appear to be directory of services. In terms of outcomes, the Better Communication Research Programme has found,
'Parents valued outcomes related to the increasing independence and inclusion of their children and recognised the vital role that communication skills play in the achievement of these skills. The challenge is to identify the pathway from the underpinning communication skill to the functional outcome and the evidence-based interventions that achieve them.'
- We need to ensure that a coherent offer of intervention based on the three graduated levels of provision and with good high quality universal elements, such as workforce development, is in place. We have good evidence of the outcomes preferred by children, young people and their families – and these could be clearer to guide the content of the local offer for families. We would like to see **a statement of intent for the local offer**. Currently the Code sets out **principles and standards** in other chapters which are not reflected in the local offer.⁸
- There needs to be consistency with the rest of the Code; some users may well only access the local offer section of the Code and it therefore needs to be consistent and representative of the whole document. For this reason we would like to see a section that means a local offer must make an over-arching declaration of intent such as, 'the local offer will set out how we aim to:
 - provide support for children with SEN which fulfils our duties under the Equality Act by.....
 - support parents to aid their child's development at home
 - include children and young people with SEN in all opportunities available to other children and young people,
 - give access to language, learning and to the curriculum.
- **There are no pathways for families**-a solution to this could be a 'Principles of

⁸ e.g. 'everyone covered by the Code has duties under the Equality Actand must make reasonable adjustments' - 1.9 page 10 and 'Lessons should be planned to address potential areas of difficulty to ensure there are no barriers to every pupil achieving' - 6.5 p 73.

Provision Pathway' – a set of principles which should govern the expectation for families on a local offer, showing clearly what is best practice, what it should reasonably provide and how – with clear expected outcomes.

- For example, research from the Better Communication Research Programme indicates that provision at three levels: universal, targeted and specialist is a best practice model allowing for cost effective allocation of resources. It is difficult to see how families would be guided towards this solution through the current Code. In this respect it is hard to see how universal support such as workforce development would be commissioned for children either with complex or less severe needs. Our members have programmes which demonstrate the effectiveness of support organised across three levels, showing improved outcomes for children's language and communication – with impact on educational progress (such as I CAN's *A Chance to Talk* programme - www.ican.org.uk/achancetotalk)
- There is not enough information on involving families and young people who will not have EHCP level support. Children, young people and families who have engaged with the process through the pathfinders are much more likely to be those with more complex needs. We need to be sure that the system will support these young people and their families who don't have a plan.
- Separately, the Code is unclear on the frequency to which local offers should be reviewed by the local authority. The National Deaf Children's Society (NDCS) believes that it should be subject to an annual review, in the same way that schools are required to annually update their information on SEN.

Scope of local offer

- We have concerns about the information on **early years services**. The addition of 'support available to parents to aid child's development at home' (p 46 and again under SENCOs duties) is good and set under 'early years' but then limited to 2, 3 and 4 year olds. It must be across the whole age range and extended to 'from diagnosis'- when it will be more effective and more cost-effective.
- We welcome the Code's endorsement of the use of Area SENCOs to liaise with early years settings to provide support. We would recommend the Code encourage their use even more strongly because of the positive impact they have on the identification of and support for children's needs across early years settings.
- **There is very little information on the 0-2 age group** despite the fact that this is a key period for communication development, deaf children and also for learning development. There should be recognition in the Code that we should be investing in this period of development for children, highlighting that it not only improves outcomes for children and young people but also saves huge amounts of money in the long run.
- Across the Code there are very few mentions of health visitors and their potential role in identification and support for the 0-2 age group. Health visitors are often the

first point of contact particularly for early years parents. The 2 year check for instance offers some opportunity to identify speech development concerns.

- Page 45 talks about adaptations and access to aids and assistive technology but not to access to language for development and to the curriculum itself. Though this might be implicit, it needs specifying as its often not currently happening.
- Third sector organisations can contribute to the development of local offers and can play a key role in signposting to an area's offer. A clear process for developing a local offer would support organisations that have national offers to be made available and used locally. This would increase choice and approaches available to families. This is particularly vital at this time when many organisations in the VCS are shifting from dependent funding models to sustainable ones and a clear process would simplify this transition and support more VCS to have a wider reach in working collaboratively with local areas where children and young people may benefit from their services.
- In the same way, while we welcome the fact that Local Authorities are required to list non maintained schools used by the Local Authority, we would like to see this extended so that **all** LAs have a duty to list non maintained schools whether they are an existing provider or not.
- We feel that there are some areas where the local offer is not consistent with the rest of the Code. For example the local offer does not require the local authority to undertake to make education accessible, this is covered (but only implicitly) in:
 - 1.9- the local authority must meet its obligations under the Disability Discrimination Act and in 6.3 4) 6th para.
 - 2.2 (page 15 4th para)- a culture which expects SEN children to be included 'in all the opportunities available to other children and young people'.
 - 6.5- 'requirements of the national curriculum 'lessons should be planned toensure that there are no barriers to every pupil achieving'.

We would like a more positive, proactive statement here about a local authority's proactive, anticipatory duty to make sure all disabled children can access education.

- The regulations (Clause 30) say the local offer should include information about 'adapting the curriculum' 'how facilities...can be accessed' and 'what activities are availablein addition to the curriculum' but nothing about access TO the curriculum.

14 Is the guidance clear about what local authorities and their partners must do to develop, publish and review the local offer?

Yes

No

Not Sure

Comments:

Our overarching concern

- Every family should have the information they need through the local offer no matter where they live. There is a concern that without a framework for information or any accountability for either information or service provision, that some families will be disadvantaged. As previously stated, we do not believe the review function is sufficient as a means of accountability and we are also unclear how concerns raised by young people and their families through this review process are escalated or how joint accountability is enforced, particularly for health.

Solutions we would suggest

- We would like to see further guidance for local authorities in developing their local offer, particularly utilising learning from the Pathfinders including:
 - guidance for local authorities on how providers of national programmes can be included in local offers;
 - learning from Pathfinders and case studies of best practice to be shared, particularly in terms of engaging with families and voluntary sector organisations, perhaps through separate guidance to append the Code;
 - stronger guidance on the review process including on concerns raised by young people and their families are escalated and addressed and where ultimate responsibility lies if they are not;
 - ultimately, we believe an independent regulator must be appointed with the authority to demand a local authority review its local offer in circumstances prescribed by regulations.

What is the detail of our concern and the evidence for this?

- As indicated above, we would like to see guidance for local authorities on how providers of national programmes can be included in local offers. Currently, through the Pathfinder programme, our members are being approached on an ad hoc basis. Where existing relationships already exist, local authorities may approach a national voluntary sector provider, but where none exists then this approach is unlikely to happen. This will lead to inequity of access to services.
- We have a number of extremely compelling case studies from our member organisations of families who have found the support that meets their children's needs by accident rather than by local referral. The following example illustrates the experiences of a family of a profoundly deaf young man:

None of our local professionals had suggested to us that there might be a way of him accessing English as a first language, so it was fortuitous that through an email group for parents we heard about Cued Speech. We were astonished to discover that none of the local professionals had heard of CS before..... by age 6 he had a reading age of 10; he achieved Level 5s in his SATs in Year 6; and now, at 13, he has a reading age of 15+ and is thriving in a small mainstream

secondary school, still with CS-based communication support. As his parents, we will always feel grateful and relieved that we realised the importance of his language acquisition before it was too late, and, almost by chance, that we found out about the only tool that could make this a possibility for him.

- We remain concerned about what happens if services aren't listed within the local offer, including services and schools provided by national providers.
- We are concerned as to how families might know what services could or should be there, particularly if these families are new to the system. This is particularly concerning given the comments made in the Code around the process for decommissioning based on 'local priorities' (pg 37)- and the transparency of this process of prioritisation. Families will need to be reassured of the motivation behind decisions, especially for services to support children and young people with low incidence high cost needs or under identified needs.
- Although we recognise the positive aspiration of the local offer to ensure local needs are met and to drive resource distribution, our members had concerns that the changes could lead to decommissioning of services that are expensive or specialist. **There is a fundamental concern that there is no requirement for commissioners to secure any services that aren't included in EHC Plans and a lack of accountability for any provision not included within a Plan.**
- **We are keen that the opportunity of the local offer is seized so that no child's outcomes are left to chance and that the standard of information across the country is improved so that no family has to struggle to find the information they need.**
- As we have outlined in previous sections, we do not believe the review function is sufficient as a means of accountability for local authorities.
- There is not enough information on what a local authority must do when it receives comments on the local offer. If this is the main mechanism for accountability, there needs to be information on how any concerns raised are escalated to those responsible, not just as an information duty but as to how the concerns will be addressed and dealt with. We need full responsibility for how this feedback will be acted on, how issues will be escalated to those democratically responsible, what is the redress for families who do not feel that their needs have been met and who has ultimately accountability. It is also not clear what the role of health agencies is within this. There needs to be joint responsibility for the joint-commissioning aspects of the local offer.

Chapter 6 – Early Years, Schools, Colleges and Other Education and Training Providers

15 Does Chapter 6 make clear the importance of involving children, parents and young people in decision making?

Yes

No

Not Sure

Comments:

Our overarching concern

- We feel that chapter 6 of the Code demonstrates the least collaborative process for working with families; consultation with young people and families in this section focused more on reviewing provision in settings rather than on establishing outcomes. However, as we will highlight, the latest evidence on SLCN demonstrates that active involvement of pupils and their families in developing outcomes is the most effective process.

Solutions we would suggest

- Drawing on the findings of the Better Communication Research Programme we would like to see this section provide:
 - clear guidance on how to work with children and young people and their families around outcome setting;
 - recognition that parents may have SEN and guidance on how to ensure that information and processes are accessible to all families;
 - recognition that settings may work with parents who do not accept their child's SEN assessment;
 - and for this section to be subject to consultation with parents who are not familiar with the SEN system.

What is the detail of our concern and the evidence for this?

- It is essential that mechanisms for involvement have equal representation of those who currently use services at all levels as well as those who may have future need for services. For example- the shaping of services for children with long term needs post 16 should be shaped with younger children as well as those using services in that age range currently and consultation should involve those with high incidence, low support needs as well as vice versa.
- Evidence of the benefits of involving young people in shaping services for their SLCN showed positive benefits within the Better Communication Research Programme report, *The perspectives of children and young people who have speech, language and communication needs and their parents* by Sue Roulstone and Geoff Lindsay.
- There is clear evidence from the above report which identifies critical factors for involving families and this should be included in, or referenced from, the Code. We have included the key issues and recommendations below.
- The report highlighted the following key issues from children's perspectives

- Children's reports of their quality of life suggest that they are particularly vulnerable regarding social acceptance and emotional well-being.
- Features of children's lives that cause enthusiasm and interest were not reflected in the school targets that they could remember.
- The report highlighted the following key issues from parent's perspectives:
 - Parents' reports of the process of identification showed variability in the age and process of early identification.
 - Although many parents were satisfied with provision for their children, there were marked discrepancies: parents of children with ASD reported that their children received higher levels of provision and reported higher levels of satisfaction than parents of children with language impairment.
 - Lack of clarity about the use of the term SLCN was also identified as an issue that may impact upon provision.
 - There were a number of parents who were not aware of the level of provision that their child was receiving.
 - **Parents valued outcomes related to the increasing independence and inclusion of their children and recognised the vital role that communication skills play in the achievement of these skills. The challenge is to identify the pathway from the underpinning communication skill to the functional outcome and the evidence-based interventions that achieve them.**
- The report made the following recommendations that should be reflected in the Code:
 - Practitioners need to check and make themselves aware of the perspectives of children and young people, particularly in terms of their views on their own social acceptance and emotional well-being.
 - Understanding the perspectives of children and young people is also fundamental to the process of developing relevant, meaningful, functional and motivational targets that are shared with and by the children and young people.
 - Parents need easy access to information about developmental indicators of speech, language and communication development and the factors which practitioners recognise as cause for concern.
 - Parents need better ongoing information, not just at the time of assessment of special educational needs, about what is happening with their child, who is seeing the child, and when.
 - Parents also need improved information about the evidence underpinning intervention decisions so that they can be real partners in planning discussions and can make evidence based choices.
 - Services should systematically collect evidence of children's and young people's outcomes that can be shared with parents; importantly, the outcome data collected should reflect the concerns of parents.
 - Research to investigate the effectiveness of interventions should include measures of outcomes relating to independence and inclusion.

- **Since there will be differences of interpretation of the two higher level outcomes (independence and inclusion) for particular children and young people, an explicit discussion of the targeted outcomes for any intervention, whether in a practice or research context, should take place with children and young people and their parents.**
- As is shown by the BCRP findings, children and young people play an important role in this process; Chapter 6 needs to better demonstrate this and build on the importance of this shown in the CDC versions of the Code for young people.
- Settings should also be encouraged and minded to engage with those who use their services at different levels of frequency and intensity. This would better support the shaping and review of services for people by peers and avoid focus being on more complex needs users for all service types. If the reforms aim to result in a more flexible, preventative service model then appropriate attention needs to be given to review and development by its intended users.
- We are also concerned as to what happens if children and young people are not involved in the process and the recourse they will have.

16 Is the guidance clear about what education providers should do to identify and support children and young people of different ages to achieve good outcomes?

Yes
 No
 Not Sure

Comments:

Our overarching concern

- Overall, we are concerned that there is not enough guidance in this chapter on how to ensure that children and young people's outcomes will be met better than previously. Although there is more detail in this draft compared to the indicative version, we feel settings need more guidance and examples of best practice to inspire innovation.

Solutions we would suggest

- We have specific suggestions as to how this chapter could be improved, drawing on input from our members and from the Better Communication Research Programme. We would be happy to work further with the Department in order that the guidance for settings contains further detail on:
 - workforce development;
 - identification;
 - information for early years providers, so that all children get the support they need regardless of the setting they are in;

- graduated approach;
- outcomes setting with families and young people;
- SENCOs;
- specialist support.

Further detail on these solutions is given under the headings below.

- We are very pleased that page 69 of the Code states that ‘in the final term of the year in which a child turns five the EYFS profile must be completed for each child. We are extremely concerned that in the Department’s proposals to transform Primary School Accountability, there was the suggestion that the EYFS Profile might be made non-statutory, particularly since the Better Communication Research Programme has evidenced how a monitoring approach such as EYFSP should be used ‘rather than a one off screening measure’ in order to best support identification of current and future educational need.
- **Workforce development** - there is an implication that all teachers will know all aspects of SEN fully and effectively. This is often not the case. It is vital that the Code states that those who provide initial training for the children’s workforce must have regard to the Code and that those who employ them must have regard to it for continuous professional development. The Code should signpost to useful professional development tools such as the Trust’s Speech, Language and Communication Framework (SLCF), which outlines what the children’s workforce needs to know and be able to do in order to support children and young people’s communication, developed with our members as part of our contract with the Department.
- **Identification**- we feel the Code is not specific enough on guidance on how to identify SEN, what are the triggers for specialist support and where does the responsibility lie for the availability and quality of this support. The Code should emphasise the importance of training and CPD for staff to be confident in identifying effectively and signpost the workforce to best practice on how to identify needs, such as the Trust’s identification tools and resources.
- **Early years** – concerns remain about the mechanisms for ensuring that all children in early years will have their needs identified and met. This currently doesn’t happen as it should and we need to seize the opportunity of the Code to improve the situation. **We have concerns that the references to EYFS in relation to SEN support in the early years (page 69) are not robust enough given that equity of access or outcome for children with SEN in PVI settings is not assured. Our starting principle is that all children under five should have their needs met whatever setting they are in. The Code should reflect this and we are keen to continue to work with the Department to ensure that this is the case.** We feel that it is assumed that the majority of 0-5 are in nursery. This is not the case and limits the effectiveness of the Code. The impact will be particularly significant from the early intervention perspective.
- **SENCOs** – they are most effective if on the leadership team. We welcome the

recognition of this but feel the Code should say that SENCO's **should** be part of the leadership team. We are also concerned about the consistency across all phases- and that the SENCO training award will no longer be funded. It is still mandatory to have this award but without subsidy, the Code should state the responsibility of a school to put the SENCO through the training.

- **Graduated response** – ‘plan, assess, do and review’ is not an unfamiliar concept to teachers but we feel the emphasis is too much on a ‘project management’ style cycle and not on clearly defined, practical steps for a setting and clarity about when it is necessary to move to a higher level of support. This links inextricably to the reduced information available to teachers about comparable levels of performance through the removal of levels and other consequences of the primary accountability consultation. The Code should be more specific and introduce defined practical phases of intervention that can be effectively monitored.
- **Specialist support section** – we feel this is part requires further clarification, especially for further support outside of the primary and secondary areas; for instance colleges and early years timely use of specialists is not made clear enough. Separate regulation detailing training requirements for different professionals and quality standards may be useful. The RCSLT provides useful guidance for schools as commissioners for example. We do however warmly welcome the specific reference to specialist teachers of children with sensory impairment (page 90) and the reference to the mandatory qualification - for the first time it says that teachers working in support services need to have this qualification too which is an excellent step forward. This needs to be retained.

What is the detail and evidence for our concerns?

Professional/workforce development

- In order to enshrine the principles of professional/workforce development set out in the Green Paper and to act on the recommendations of the Better Communication Research Programme, there should be a commitment to workforce development in the principles of practice section as highlighted in Chapter 2 but this should also be highlighted at every opportunity throughout the Code and particularly in chapter 6.
- The Trust and its members have developed The Speech, Language and Communication Framework (SLCF) - which outlines what the children's workforce needs to know and be able to do in order to support children and young people's communication. The SLCF is an online self-audit tool which signposts practitioners to training to help develop the areas they are less confident in. We would be keen for this free resource to be listed in the Code or accompanying guidance for schools.

Identification

- We are concerned over how the Code will ensure that the mechanisms for early identification will work in practice across all educational phases and also on local authorities' ability to identify needs as early as possible, and to respond to these

needs. There also needs to be clearer guidance across health, education and social care on how to identify SLCN, ensuring they are identifying to expected levels of prevalence relative to their context.

- We are concerned that the way that 'adequate progress' is described in the Code (page 72) is narrow and unhelpful. Teachers are guided to note whether pupils are making adequate progress in order to identify whether they may need additional support and yet the measures focus on academic progress, and not progress in areas such as emotional and social development.
- While many children and young people with SLCN will struggle academically, those with primary social needs may have their needs missed if only academic progress is taken into account e.g. those with pragmatic language impairment or those on the Autism Spectrum.
- In addition to this the descriptors make reference to previous rates of progress – which may in themselves have been inadequate.

Early years

- We have concerns that the references to EYFS in relation to SEN support in the early years (pg 69) are not robust enough given that equity of access or outcome for children with SEN in PVI settings is not assured. Our starting principle is that all children under five should have their needs met whatever setting they are in and we are keen to continue to work with the Department to ensure that this is the case. We feel that it is assumed that the majority of 0-5's are in nursery. This is not the case and limits the effectiveness of the Code- the impact will be particularly significant from the early intervention perspective.
- During Oral Education Questions on 22nd April, Education Minister Elizabeth Truss raised concerns that "33% of children arrive at school without the requisite communication and language skills to take part in school education". These figures are even more striking in areas of social disadvantage, where around 50% of children are likely to have significantly delayed language (although many will not have been identified). Meanwhile, the Ofsted Annual Report for 2012 highlighted that children from the poorest 20% of homes are 19 months behind children from the richest homes in terms of their use of vocabulary at the age of five.
- There is clearly an issue that too many children are entering school without their SLCN being satisfactorily addressed or even identified. Therefore, the Children and Families Bill (CFB) presents an invaluable opportunity to ensure the necessary mechanisms are in place to facilitate the identification of SEN and the provision of SEN services for children before they reach school age. However, while clause 21 of the CFB sets out the special education, health and social care provision that children should receive from birth, as the Bill currently stands only 'relevant early years provision' (for children under five) provided by the maintained sector will be encompassed within this definition. In the Code it is only maintained nurseries who must ensure that a qualified teacher is designated SENCO (page 70).

- 80% of early years providers are from the non-maintained (PVI) sector, which is only likely to increase after the introduction of childminding agencies and the impact of policy initiatives like the achieving 2 year old programme and the Department VCS grant prospectus focus on stimulation of the early years market. The Trust is deeply concerned that most young children will not be given access to an EHC Plan or wider SEN provision, and therefore the specialist support they require to meet their education, health and care needs. By not naming non-maintained (PVI) early years provision in EHC Plans, the Government will make it harder for some parents to secure appropriate early years provision for their children with more severe or complex needs and deny settings extra resources attached with the plans.
- When probed during the Committee Stage of the Bill in the House of Commons, after an amendment tabled by Liberal Democrat MP Annette Brooke at the request of the Trust, Children’s Minister Edward Timpson stated that he did not wish to burden non-maintained (PVI) providers by placing statutory duties on them to be listed in Education, Health and Care Plans. The Trust understands this argument, yet we do not accept that nothing can be done to resolve it. Too many children’s needs are not being identified and supported because they receive their early years education in non-maintained settings, which is having consequences on their education in later life.
- If, as Education Minister Elizabeth Truss rightly said, “33% of children arrive at school without the requisite communication and language skills to take part in school education”, primary schools are going to have to make considerable efforts to address these issues, especially if pupils have not had their SLCN identified or met because they were among the 80% of children receiving their early years education in settings outside of the scope of the Bill. This is especially concerning when you consider that evidence shows that spoken language skills are strong predictors of later academic success. Language development at age two has been shown not only to strongly predict children’s performance on entry to primary school but it is also linked to outcomes into adulthood, while children with poor language and literacy development at five years are at substantial risk of low achievement at 7 years and beyond. Good spoken language predicates reading and writing, with literacy gaps often widening as children progress through school. We also know that language development in the early years has a significant impact on the behaviour, social and emotional development of children. As an example, deaf children typically acquire language at half the rate of their hearing peers, but there are early intervention approaches which accelerate the rate of language development so that deaf children start mainstream school with age appropriate language⁹. Access to such support is critical.
- The inequity of SEN provision in early years settings will also have a significant impact for wider Government education policies. Under the Government’s recent primary school accountability proposals, a value-added progress measure will be introduced to assess how pupils progress from one stage of their education to the next. As part of this proposal, the Government is considering introducing a baseline

⁹ Such as auditory verbal therapy and cued speech provided by charities that form part of the Communication Consortium.

check early in reception, which will enable progress made in reception, year 1 and year 2 to be measured and reflected in the accountability system.

- ‘School readiness’ is both an education and public health concern. Poor early years provision will impact negatively on the speech, language and communication elements of school readiness.
- With early years special education provision, and particularly the identification of SLCN, inconsistent and varied, schools whose intake is largely from maintained settings, where children’s needs have a better chance of being identified, may be placed at an advantage to those schools whose feeder nurseries are in the PVI sector because they can better prepare to enhance their pupil’s progress – essential criteria in the proposed school accountability requirements. However, most schools will find that the majority of their intake’s needs have not been identified and the onus will be on them to both identify and support those children, placing them at a disadvantage to those schools where a larger proportion of their intake have had their needs already identified. The Children and Families Bill should take the opportunity to address this inequity by ensuring that children in all settings have their needs met.
- We know how vital identification and support is for language development in early years. The Better Communicating Research Programme report, *Language and Literacy Attainment of Pupils during Early Years and through KS2*, found that **teachers were able to make valid judgments of children’s development in language and literacy and could accurately monitor their pupils’ progress in key reading skills**. Children deemed by their teachers to be developing slowly after one year in school typically performed below national expectations in KS1 assessments. Teachers were therefore able, with appropriate training and using a reliable measure, to identify children at risk of educational difficulties. **However, the report highlighted that this should be viewed as part of an ongoing system of monitoring through the early years, KS1 and beyond rather than a ‘one off’ screening measure.**
- Early identification of children’s additional needs is important and key elements of development can be assessed at age five. Children who attained below the nationally expected level in reading at the end of KS1 were already developing slowly at the end of Early Years and their progress in phonics was poor both at the end of reception class and at the end of year 1. Slow developers were typically characterised by delayed development of Communication, Language and Literacy. Of the EYFSP scales, the best predictors of educational success were measures of language, communication and literacy. Between 45 and 51% of the differences between children in Key Stage 1 attainments could be accounted for by teachers’ ratings of their Communication, Language and Literacy at the end of Early Years on the EYFSP. Of the EYFSP areas of learning, Communication, Language and Literacy was the best predictor of later attainment at KS1 and in year 3 not only in Literacy but also in mathematics.
- We are concerned that in the Primary Accountability consultation, there was the suggestion that the EYFS Profile might be made non-statutory. Page 69 of the

Code states that ‘in the final term of the year in which a child turns five the EYFS profile must be completed for each child. A key finding of the BCRP research was that the EYFSP could also be used to support early identification of difficulties with language and communication and children at risk of educational difficulties. The Trust therefore feels that the EYFSP should remain a statutory profile as described in the Code to support both early identification and the formative assessment process recommended in BCRP.

- We would like to see further detail around multidisciplinary working added to the outline of the early years SENCO role on page 70 to bring it into line with the schools SENCO role description, particularly considering the importance in early years of interfacing with health and other services.
- Concern about the responsibilities put on health providers to identify needs at 0-2 – there is no mention of any training that they will need to be able to do this effectively for such a misunderstood and missed issue as SLCN. There needs to be an expectation that health professionals are trained to a relevant level for the services they provide.
- We also strongly support the findings of the recently published report ‘*Information Sharing in the Foundation Years: a report from the task and finish group*’ and suite of best-practice tools. As the report states:

*Information exchange about young children is an issue for **all** agencies providing education, health and social care services. Currently, local authorities struggle to get basic information from the health service about live births, so that children’s centres can let new parents know about the services they offer; the health service struggles to get information about what schools children attend so that school nurses can pass on vital information about healthcare needs to teachers. Education and children’s services staff are not always sufficiently aware of parents’ rights to be asked for consent to share information. They may, for example, discuss information with health staff about a family’s difficulties without seeking an agreement first. Conversely, information governance models in health services can place a stress on confidentiality that goes way beyond sensible sharing of information about a child’s developmental status and needs.*

- The report states that some of the issues can be resolved by strengthening information sharing lines in strands across a range of current national guidance – and we would strongly urge that the opportunity of the Code is seized to strengthen guidance on information sharing between agencies and to highlight the best practice identified in the report.
- We have concerns about the information on **early years services**. The addition of ‘support available to parents to aid child’s development at home’ (p 46 and again under SENCOs duties) is good and set under ‘early years’ but then limited to 2, 3 and 4 year olds - It must be across the whole early years age range.
- It is also interesting that the Code endorses the use of Area SENCOs to liaise with early years settings to provide support when they are not statutory; we have backed

the amendment to the Bill regarding Area SENCOs to insist they are statutory.

- Early years are not covered in the funding arrangements outlined on page 89 and should be as their funding models are different.

SENCOs

- In general, a lot is expected of SENCOs in the Code. Despite being given many responsibilities, they are not necessarily given the power to enforce these responsibilities as their position on senior management team within settings is not mandated. **We would like to see the wording strengthened to ‘should’ be on the senior leadership team.**
- There is a welcome move from SENCO’s role as a do-er to become more of a facilitator/advocate who is more strategically responsible for SEN but this needs to be reflected in their position in the school and should also be made clearer in the SENCO regulation and Code. Throughout this section it needs to be made clear that the SENCO leads SEN within a setting and has strategic responsibility for the whole-school approach but that they don’t necessarily have to do it all – all staff must play their part.
- There is a lack of consistency around the role and indeed presence of a SENCO in different phases- they are referred to in the early years section while the reality is not all EY settings have SENCOs and neither do FE Colleges. This is a weakness in the Code and shows an inequitable approach across the 0-25 age range.
- Section 6.5 - Schools - Role of the SENCO - p. 78-79. The wording of the paragraph requires those who have not been a SENCO at another school within a year of taking up a new post to achieve the National Award within three years, implying that a teacher who has been a SENCO at previous school and transfers directly to the post of SENCO at another school, but who does not have the National Award, does not need to obtain the National Award within three years.
- The SENCO regulations state that a Headteacher can be the SENCO, although this is not mentioned in the Code. We would like clarity as to whether the requirement to achieve the National Standard for SEN Co-ordination within three years of taking up the post apply to them as well.
- We very much welcome the prominence of the National Award in the Code. Some of our members expressed concerned that the award will no longer be funded.
- We would also like to see further guidance on the role of the SEN Link Governor.
- Some of our members have highlighted their concern about the state of school readiness for this SEN Act- SENCOs are always expressing anxiety on their Forums, they feel that they will be overwhelmed, expected to have specialist knowledge of a multitude of conditions, many regret the failure to retain the IEP, many consider that one single designation of SEN is insufficient for effective management of provision and allocation of resources making it harder to argue a

child's case when children of tremendously varying needs have the same designation.

SEN information regulation

- It is extremely important that this does not become a standard list of processes.
- We want schools to focus on outcomes for pupils and would like to see further detail on how a school will set, monitor and evaluate outcomes for pupils with SEN. We need to avoid the situation where a school just lists its SEN policy and links to it on its website.
- It needs to be clear who will monitor that the SEN Information regulations have been published and that what is published is sufficiently detailed to meet the regulations and what will happen if it is not. There isn't any guidance as to the level of detail required.
- We feel that many settings will need further guidance and support in order to meet the needs of the SEN information regulations. It is not clear how schools will be advised as to the necessity of doing this and what guidance they may receive, so this requirement will need to be publicised very clearly.
- In particular, as it is such a crucial part of the process, we would like to see clear links to where schools can find guidance on developing policies for identification.
- Data publishing and record keeping sections of the Code do not allow for easy cross school comparisons- the variations in the ways schools are able to keep data and the ways they are able to track progress make it very difficult to compare across settings and this has implications for the ability of local authorities to plan, for commissioners to be held to account and also for parents.

Graduated approach

- 'Assess, Plan, Do and Review'- while we are pleased to see an approach which aims to be graduated rather than a single category, our members felt that the emphasis is too much on a 'project management' style cycle and not on clearly defined, practical steps for a setting and clarity about when it is necessary to move to a higher level of support. This links inextricably to the reduced information available to teachers about comparable levels of performance through the removal of levels and other consequences of the Primary Accountability consultation.
- We know how vital a graduated approach is for SLCN from the BCRP report *Improving provision for children and young people with speech, language and communication needs* which summarises the themes and contains the main recommendations.¹⁰ The BCRP reports give three reasons why a graduated approach is important:

¹⁰ Lindsay G et al, (2012) *The Better Communication Research Programme: Improving provision for children and young people with speech, language and communication needs*, Department for Education

- to ensure all children get a level of support appropriate to their needs
 - to provide a pathway for intervention based on need
 - to provide a framework for effective and efficient use of resources, especially at the specialist level
- The report states ‘support for developing children’s speech, language and communication should be conceptualised at three levels: Universal provision for all children; targeted provision for children requiring additional support within mainstream settings, guided by specialists (e.g. speech and language therapists: SLTs); and specialist support within mainstream or special settings with a high level of direct intervention or frequent and sustained consultation by specialists with non-specialist staff (e.g. teachers, teaching assistants).’ A Chance to Talk, for example, is an evidenced programme run by I CAN demonstrating the effectiveness of support organised across three levels, showing improved outcomes for children’s language and communication- with impact on educational progress (www.ican.org.uk/achancetotalk)
 - We feel that the cycle described in the Code needs to provide more detail and structure to how schools should assess, plan, do and review – particularly around how schools should evaluate and record the evidence of effectiveness. It is not enough to demonstrate what is being done to support children and young people with SLCN; evidence of a differential positive change as a result of the support provided is also needed, and if no positive change is seen from the support the ‘review’ needs robust measures to work to find a more appropriate form of support. This is especially important from the SLCN perspective as children may often be misdiagnosed, or their needs misinterpreted, it is therefore important that their outcomes are measured closely and support is flexible.
 - Against the backdrop of the changes to the Curriculum and removal of levels, there are also implications for how schools will monitor and review progress for pupils with SEN. The Trust agrees wholeheartedly that effective assessment is part of good teaching and that there is a need for formative assessment and meaningful feedback. Although we appreciate the rationale for reconsidering national curriculum levels and level descriptors, we have huge concerns about the impact of this on all children and particularly those with SLCN/SEN, particularly as we know that the children’s workforce’s confidence in identifying and supporting SLCN is low.
 - We have responded to proposals set out in recent consultations around accountability to highlight our concerns. We also feel that if they were to go ahead, these proposals will also impact negatively on the intended outcomes for the Code. We are particularly concerned that:
 - **National curriculum levels will be removed and not replaced**- there are significant damaging and impactful implications for how possible it will be to monitor progression for pupils with SEN and SLCN in particular. At worst, the recommendations negate the possibility of effectively monitoring and supporting effective progression for these children; at best they make it incredibly difficult;
 - **Schools will be able to introduce their own approaches to formative**

assessment- we are particularly concerned about the implications of this as we know schools and teachers are not confident, and in many cases competent, in identifying language levels for all children, including those with SLCN¹¹ without the appropriate structures. The result could be unintentional inflation of levels and under identification of SLCN, resulting in pupils' needs not being met;

- **The DfE will not prescribe a single system for ongoing assessment and reporting-** as the Department will know, pupils from deprived areas often cluster in particular schools and, without a national standard for teachers to refer to there is a real danger that schools may develop their own attainment targets related to expected local levels. This would mean they would fail to recognise that SLCN is far more prominent in a particular school or community than it would be among a more linguistically able cohort of pupils because their only barometer for comparing expectations would be within the class intake itself. This is something that happened before national standards were introduced. Secondly, there is a relatively small but significant amount of pupil mobility that is often more prevalent in our most vulnerable pupils, again causing complications for pupils, parents and potentially outcomes of these most vulnerable children and young people.
- Looking back to an era when curriculum guidance was thin, programmes of study were vague and there were no level descriptors, there was initial concern about over prescription and inhibition of individual teaching style when the current system was introduced. However, there was a lot of poor teaching at the time, little accountability, idiosyncratic curriculum and teaching practice, and the needs of pupils with SEN in general and SLCN in particular were identified and met more by chance than planning. Although we agree teachers should be given more professional autonomy and that approaches to education certainly should be based on a solid foundation of evidenced good practice, we certainly do not want to return to that era where the approaches to assessment for children with SLCN/SEN were inconsistent and often ineffective.
- We would like to see a fair and equitable system introduced for assessment and measuring progress, which has an appropriate emphasis and takes account of emotional and social development as well as academic progress, and would encourage Ministers to look at the systems recommended by the Better Communication Research Programme as a way of achieving that for speech, language and communication. The Trust and its members would be delighted to discuss the programmes and resources we have to support this are.
- As mentioned earlier, The Trust would also argue strongly for the continued use of the EYFS profile to support the baseline and formative assessment of children; we have serious concerns around the proposed introduction of a baseline check at this stage and particularly around the proposal to make the EYFS Profile non- statutory.

¹¹ Lindsay G et al, (2012) *The Better Communication Research Programme: Improving provision for children and young people with speech, language and communication needs*, Department for Education

Further guidance

- In general, we do not feel there is enough guidance on what best practice looks like to ensure that children and young people's outcomes will be better met than previously. We would specifically like to see more guidance be made available on:
 - **High quality teaching-** The emphasis in the previous draft on the fact that 'every teacher is a teacher of SEN' has been removed from this version- this is a loss. We would like this emphasis included but with guidance on how teachers' skills can be achieved through initial and continual training and professional development.
 - Though there is still emphasis throughout the Code on the knowledge staff should have to effectively support and identify children with SEN and provide high quality teaching, there is no specific indication in the Code as to how this should be achieved. Our members have strong descriptors of good classroom practice in supporting children's communication skills , which could be referred to as exemplars. No explicit information about the training and support provision that should be given to staff- this is lacking and should be included where possible throughout the Code. It should also be added in to the principles of practice section- local authorities and schools have a responsibility to ensure that their staff are well enough trained to deliver effectively on the Code and it's requirements. Interestingly it is also highlighted that Ofsted inspectors and health bodies with duties to identify etc. should also be bound by this training and support requirement in the Code.
 - **Monitoring of progress-** Though we are glad to see in this draft an acknowledgment of the importance of a graduated response, we believe that the 'Assess, plan, do and review' approach is more a process driven cycle than an active graduated response.
 - The detail and emphasis around the plan and review stages in particular are not made enough of- they are of central importance for getting effective provision for children and young people. We would also like to see reflection on what the implications are of the removals of levels.
 - **Individual Educational/Learning Plan-** The Code suggests lots of best practice ideas and the ethos behind IEPs should be included. We are pleased to see the inclusion of provision management and maps in the Code.
 - **Ofsted-** There is an important opportunity in the Code to make reference to the role of Ofsted in inspecting SLCN as part of schools SEN provision- it is essential that the inspectorate are well informed about approaches and high quality effective techniques that will support Ofsted to hold schools to account better.
 - **Assessment of interventions** – we would like to see more detail on supporting evidence-based practice. The Communication Trust has been working with academics and practitioners to develop and refine the *What Works* database. This type of resource should be promoted alongside the principles of assessment and evidence based practice.
 - **Effective deployment of TAs** – we would like to see guidance on this important issue.

- Although we totally support the intention behind the EHC Plan reforms to re-focus support in terms of what's effective and gets good outcomes and rather than an over reliance on 1 on 1 time with support staff, we would like to see the valuable role support staff can play in effective SEN support clearly outlined in the Code or Regulations. Making clearer the principles of 'effective' TA deployment should help to combat this, gaining better outcomes for pupils and also for support staff and teachers.
- We would also like to see where possible a stronger emphasis on the importance of securing good quality and appropriate training for support staff, and particularly for those who work with pupils with SEN. The Trust for example has developed a Level 3 Award in Supporting Children and Young People's Speech Language and Communication designed for early years practitioners and teaching assistants from all educational settings, support staff in a variety of childcare, health, social care, play work and youth justice settings.

Chapter 7 – Assessments and Education, Health and Care Plans

17 Is Chapter 7 clear about how to carry out assessment and planning for children and young people 0-25, including helping children and young people prepare for adult life?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We do not believe that this section is clear for families. In particular, our parent-led member organisations felt that this chapter would benefit from further consultation and work with families to ensure that it is fit for purpose. There was a general consensus that case studies would be very helpful in this section. We did feel however, the section about transferring between local authorities is well written and detailed.

Solutions we would suggest

- The Code is missing information about parents' right to intervene and give evidence to the local authorities about decisions to make assessments at an early stage. We also feel that parents need to be informed about their right to appeal.

What is the detail and evidence for our concerns?

- There was concern that the timescale for assessment and planning has been

reduced to twenty weeks, meaning six weeks have been lost. There was also confusion around the time in which parents must respond – does 15 days mean 15 working days or two weeks?

- With regard to the transition to adulthood, some of our members felt that though the principle of extending the Code to 25 was to be welcomed and a positive step, in reality, the vagueness around this area that currently exists in the code is having the effect of delaying the transition to adulthood to after 25 rather than providing additional support. It needs significant strengthening if it is to be effective and meaningful in improving the transition to adulthood for young people with SEN.
- In section in 7.15, when a child with an EHC plan transfers between local authorities or CCGs, there is a legal time limit of 15 working days in which the information must be transferred to the new authority. However, if the child is moving to Northern Ireland, Wales or Scotland, the Code states on page 128 that 'the old authority should send a copy of the child or young person's plan to the new authority or board.' We are concerned as there is no legal requirement and no time limit, authorities could just not act or could delay in transferring the relevant information. In order to support pupils with SEN, the duty to transfer important information quickly should apply wherever the child is moving to in the UK.

18 Is the guidance clear about the importance of engaging children, young people and their parents in decision making on assessment, planning and reviews?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We are keen that consultation with children, young people and their families is meaningful and that authorities and health agencies consult across the spectrum of SEN, from those requiring little support to those with complex needs. Also it has to be acknowledged somewhere that the views of CYP may be at odds with the views of their families.

Solutions we would suggest

- We feel the sentiment of meaningful engagement of children and young people and their families is most effectively communicated in the accessible versions of the Code available through CDC. They discuss the details and indeed some of the complexities of really meaningful engagement of children and young people including some of the difficult discussions that might be necessary as children and young people get older and may have differing views from their parents on what's right for them. The accessible version should inform and be reflected more strongly

in the Code itself to strengthen this area'. Reference could be made here to practical guidance from CDC and Early Support resources , which cover the full age range 0-25.

What is the detail and evidence for our concerns?

- The flow chart on page 99 appears to be more relevant to the old system than the new system – there is very little on how families are involved or in multi-agency working.
- As previously mentioned, the Better Communication Research Programme is very clear about the benefits of both involving children and families – especially *The perspectives of children and young people who have speech, language and communication needs and their parents* by Sue Roulstone and Geoff Lindsay.
- BCRP also found changes in profiles of need over time and so children and young people and their families need to be involved in regular review
- Assumptions must not be made about a young person's ability to understand and contribute just because they have a speech and language impairment and/or profound physical disability.

19 Is the guidance on the content of Education, Health and Care Plans helpful?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Our overarching concern

- We are concerned by the guidance on page 106 of the Draft Code, where it states that EHC Plans should include the following: 'Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it' and the barrier it poses for smaller private, voluntary and independent provider organisations. In addition, we believe that 2 weeks is not enough time for local authorities to inform a school in advance of any annual reviews.

What solutions can we offer?

- We can offer two solutions to this chapter:
 - for the guidance on page 106, we believe this statement should be changed to align with the Minster's own comments to say: 'Provision should be detailed and specific and **may be quantified in consultation with parents and young people**, for example, in terms of the type of support and who will

- provide it';
- we also believe that the 2 weeks that local authorities have to inform a school in advance of any annual reviews should be extended. In reality, the date of the review needs to be set at two-three months in advance, to ensure that those contributing can attend and have sufficient time to prepare and submit their reports in time for them to be copied and circulated two weeks prior to the review meeting.

What is the detail and evidence for our concerns?

- We believe that the guidance on page 106 would be a huge barrier for private, voluntary and independent provider organisations, such as CENMAC- a London based SEN support service and a member of the Trust- to be able to provide the support services that children and young people rely on. The guidance suggests that local authorities undertaking assessments for EHC Plans would have to be aware of the provider before it could be named on the plan, thereby excluding small organisations such as CENMAC who are not known to all local authorities. CENMAC and other small PVI providers with limited budgets do not have the marketing capacity to make themselves known to all local authorities so they would then be able to name them on EHC Plans. This allows schools and parents to seek the best provider of the named provision for the child, rather than a local authority's preferred provider.
- As it stands we strongly believe this section of the Code would prohibit new providers from accessing the SEN service market, restrict choice and ultimately lower the quality of provision available for children and young people. This issue was raised during the SLCN Working Group on the Children and Families Bill on 19th July, attended by the Children's Minister Edward Timpson. The Minister himself reassured the group in a minuted meeting attending by over thirty representatives of the Trust's consortium, that the intention of the Bill is not to exclude potential providers and in fact the EHC Plan will only name what is required to be provided for SEN support and not who provides it.
- Our members felt that the two weeks in advance of any annual review that local authorities have to inform a school in advance was not enough time. The LA can require the school to organise the review on its behalf and those organising the review are required to give 'at least two weeks notice' of the meeting. They are also required to 'seek advice and information' from those invited to attend and circulate it 'to all those invited at least two weeks before the meeting'. In reality, the date of the review needs to be set at least two-three months in advance, to ensure that those contributing can attend and have sufficient time to prepare and submit their reports in time for them to be copied and circulated two weeks prior to the review meeting.
- Currently, written reports are required in reviews, but the Code now only states that 'information' is needed. It needs to be clearer what form the information constitutes.

20 Is the guidance appropriate and relevant to professionals across education, health and care?

Yes No Not Sure

Comments:

- We are concerned that speech and language therapy is not mentioned in health provision and that social care is missing/not explained in the Code.

21 Does the guidance adequately reflect the essential features of the *Inclusive Schooling* guidance which is being replaced?

Yes No Not Sure

Comments:

-

22 Does the guidance cover the necessary features of the *Learning Difficulty Assessments* guidance which is being replaced?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

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Chapter 8 – Children and Young People in Specific Circumstances

23 Does Chapter 8 provide sufficient information about support to be provided for children and young people in the specific circumstances described?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Sure
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Comments:

- At least 60% of young people in custody have communication needs.
- In the majority of cases, these young people’s communication difficulties have not been identified and their needs go unmet at great cost to both the young people themselves and the public purse.
- Therefore we remain extremely concerned about Clause 70 of the Bill and will continue to work with the Department to see the wording of the Bill changed and hope that this section of the Code will therefore need to be amended to reflect the legislative change.

24 Are the duties of local authorities and others towards children and young people in specific circumstances explained clearly?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Chapter 9 – Resolving Disputes

25 Does Chapter 9 provide sufficient support and information to help parents and young people understand the different routes for appeals and complaints?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- Chapter 9 illustrates there are a diverse and wide range of routes for appeals and complaints that many parents will be find confusing.
- We would like to see a flow chart to guide parents through the different routes of appeals and complaints.
- We welcome the fact that parents/carers can appeal if the Plan is not amended after review. However, there is no indication on time limits to appeal, only that the local authority must inform them of their right to appeal.
- We support our member NDCS in their belief that a more supportive approach would be to review how a more joined-up appeals and complaints process could be achieved that reduces the potential for confusion and stress on parents. For example, NDCS believes that consideration should be given to allowing the Local Government’s Ombudsman to look again at complaints about SEN provision in schools. NDCS understands that an evaluation of a pilot into this was positive.

26 Is sufficient guidance given on what makes effective disagreement resolution and mediation services?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- In general, we feel that this guidance is contradictory and confused and could be improved.
- Although we understand the explanation of mediation itself, we do not understand the process, particularly around the issue of certification.
- A flow chart to aid understanding would be helpful, as there is a lot of information which is poorly presented and it is not clear what you need for mediation.
- There was also concern regarding the competence and training of mediators. Reference is made in the Code to 'accredited mediators' (9.5, p 166), but there is no reference to a national accreditation system.

Any Other Comments

27 Please provide any further comments on the draft Code of Practice here.

Comments:

DRAFT SPECIAL EDUCATIONAL NEEDS REGULATIONS

The Special Educational Needs (Local Offer) Regulations (Clause 30 and chapter 5 of the draft SEN Code of Practice)

28 Do the draft regulations set out clearly what local authorities are required to do to prepare, publish and review their local offer?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
Comments		
<p>Please see our answer to question 13.</p> <ul style="list-style-type: none">• In summary our overarching concern remains the accountability of local offers. We are concerned that all the other positive recommendations in the Code regarding the local offer may be redundant unless local authorities are held accountable for meeting these recommendations. We do not believe the review function is sufficient as a means of accountability for local authorities and we are also unclear how concerns raised by young people and their families through this review process are escalated or how joint accountability is enforced. As the local offer will be the document most accessed by families, children and young people it is essential that it is fit for purpose and crucially, must illustrate pathways and be linked to outcomes for young people.• We would suggest the following solutions and would be happy to work further with the Department in order that the guidance on the local offer contains:<ul style="list-style-type: none">○ clear lines of accountability for the provision of services listed within the local offer so that families know where to go if their needs are not being met;○ both the regulations and the Code reflecting clause 21(5) of the Bill, acknowledging that speech and language therapy will normally be special educational provision;○ clear guidance that the local offer must be based around outcomes for children and young people;○ clear pathways for families through the local offer – the Pathfinders have extremely useful learning from their research with families that should be reflected in the Code and the requirements for the local offer;○ the graduated approach (universal, targeted, specialist) to be reflected in the local offer as has been demonstrated as useful by several of the Pathfinders in helping families navigate local provision;○ the recommendations and learning from the Pathfinders around minimum standards and templates to be shared through the Code or accompanying guidance;○ further guidance on ensuring 0-2 age range and all early settings are included within the local offer;○ We would like to see a statement of intent for the local offer that reflects the principles and standards set out in other chapters, particularly around access		

to education and high aspiration;

The Special Educational Needs (SEN co-ordinators) Regulations (Clause 62 and chapter 6 of the draft SEN Code of Practice)

29 Do the draft regulations set out clearly the requirements on schools in relation to the qualifications and experience, role, functions and responsibilities of their Special Educational Needs Co-Ordinator (SENCO)?

Yes No Not Sure

Comments:

- Overall, we welcome the SENCO regulations. However, a lot is expected of SENCO in the Code and despite being given many responsibilities, they are not necessarily given the power to enforce these responsibilities, as their position on senior management team within settings is not mandated. **We would like to see the wording strengthened to 'should' be on the senior leadership team.**
- In regards to the National Award, we very much welcome the prominence of the in the Code. Some of our members have however expressed concerned that the award will no longer be funded.
- We would also like some details around the Awards clarifying:
 - the wording of Section 6.5 (p. 78-79) requires those who have not been a SENCO at another school within a year of taking up a new post to achieve the National Award within three years, implying that a teacher who has been a SENCO at previous school and transfers directly to the post of SENCO at another school, but who does not have the National Award, does not need to obtain the National Award within three years.
 - The SENCO regulations state that a Headteacher can be the SENCO, although this is not mentioned in the Code. We would like clarity as to whether the requirement to achieve the National Standard for SEN Co-ordination within three years of taking up the post apply to them as well.

The Special Educational Needs (Information) Regulations (Clause 65 and draft SEN Code of Practice)

30 Do the draft regulations set out clearly what information schools are expected to publish about their arrangements for identifying, assessing and supporting children with special educational needs?

Yes No Not Sure

Comments:

- We feel it is extremely important that this does not become a standard list of processes. We want schools to focus on outcomes for pupils and would like to see further detail on how a school will set, monitor and evaluate outcomes for pupils with SEN.
- It needs to be clear who will monitor that the SEN Information regulations have been published and that what is published is sufficiently detailed to meet the regulations and what will happen if it is not. There isn't any guidance as to the level of detail required.
- We feel that many settings will need further guidance and support in order to meet the needs of the SEN information regulations. It is not clear to us yet how schools will be advised as to the necessity of doing this and what guidance they may receive, so this requirement will need to be publicised very clearly.
- In particular, as it is such a crucial part of the process, we would like to see clear links to where schools can find guidance on developing policies for identification.
- Data publishing and record keeping sections of the Code do not allow for easy cross school comparisons- the variations in the ways schools are able to keep data and the ways they are able to track progress make it very difficult to compare across settings and this has implications for the ability of local authorities to plan, for commissioners to be held to account and also for parents to access.
- A few points about the Schedule of information to be included in the SEN Information report:
 - How will we avoid the situation where a school just lists its SEN policy and links to it on its website
 - Within section 3 we suggest an additional bullet point around the process for progressing the graduated response to the point of requesting an assessment for an EHC plan
 - In section 5 we think it should say 'specialist advice and expertise'
 - In section 7 as recognition of the duty on the school to inform parents if their child is considered to have SEN – it should address the arrangements for informing parents as well as consulting with them.

Remaining in a special school or post-16 institution without an Education, Health and Care plan Regulations (Clause 34 and chapter 7 of the draft SEN Code of Practice)

31 Are the draft regulations clear about the circumstances in which a child or young person without an Education, Health and Care plan may remain in a special school or special post-16 institution following an assessment of their needs?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

32. Are the draft regulations clear about what should happen where a child or young person without an Education, Health and Care plan remains in a special school or special post-16 institution following a change in their circumstances?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Education (Special Educational Needs) (Assessment and plan) Regulations (Clauses 36, 37, 44 and 45 and chapter 7 of the draft SEN Code of Practice)

Are the draft regulations clear about what action a local authority should take regarding:

33 a) Education, Health and Care assessments?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

33 b) Education, Health and Care plans?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

33 c) Timescales for Education, Health and Care plans?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- We welcome clarity on the right of parents to appeal an annual review assessment amendment, however, there is no indication on time limits to appeal, only that the LA must inform them of their right to appeal.

33 d) The transfer of Education, Health and Care plans?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- The section about transferring between local authorities is well written and detailed.
- However, when a child with an EHC Plan transfers between local authorities or CCGs, there is a legal time limit of 15 working days in which the information must be transferred to the new authority. However, if the child is moving to Northern Ireland, Wales or Scotland, the Code states on page 128 that 'the old authority should send a copy of the child or young person's plan to the new authority or board.' We are concerned as there is no legal requirement and no time limit, authorities could not act or delay transferring the relevant information. In order to support pupils with SEN, the duty to transfer important information quickly should apply wherever the child is moving to in the UK.

33 e) Reviews and reassessments?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- We would welcome clarity on the right of parents to appeal an annual review assessment amendment; however, there is no indication on time limits to appeal, only that the local authority must inform them of their right to appeal.
- In Section 7.7 - Advice and Information for EHC assessments (p. 100 – paragraph), we welcome the inclusion of different methods of communication to enable young children to express their views but the specific mention of the 'Picture Exchange Communication System' is not necessarily the most appropriate, since it is a commercial product and not a general approach or method to aiding communication. We would suggest alternative wording such as "using whatever communication method is most appropriate for, and familiar to, the child or young person, for example signing, use of symbols, spelling or a voice output communication aid."

33 f) Ceasing to maintain Education, Health and Care plans?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations (Clause 41 and chapter 7 of the draft SEN Code of Practice)

34 Are the draft regulations clear about which institutions can be approved for the purposes of requests to be named in an Education, Health and Care plan and the matters the Secretary of State will take into account in giving and withdrawing his approval?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

The Special Educational Needs (Personal Budgets and Direct Payments) Regulations (Clause 49 and chapter 7 of the draft SEN Code of Practice)

35 Are the draft regulations clear about the arrangements for seeking a Personal Budget and the local authority's duties in respect of Personal Budgets?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- We have concerns around this issue. Our members have questions as to where the allowance comes from, what can be funded, how it will work, what the relationships are to direct payments, what the relationship is to school offer/budget to be able to know more about personal budgets and whether they can be used to top up.
- Our members felt that there is too much depth and not enough explanation. An illustrative case study may be useful. Parents need a clear demonstration of how the system works. Clearer flow charts would help answer questions regarding personal budgets.
- One of the Pathfinders is looking to use a 'resource allocation system' model, which has been used many times in social care and adult care settings but is very new to education settings. In general, we would like to see the learning from Pathfinders highlighted.
- Some of our members have raised concerns about the impact on the funding processes – if the funding for PBs comes out of the delegated funds/budgets, how will schools and services be able to plan service delivery?

- There is a danger that in some schools you could have a range of individually funded therapists (through personal budgets) needing to work with school staff about different children putting immense pressure on SENCOs in co-ordination and local services in planning a coherent and consistent approach for schools.

36 Are the draft regulations clear on the arrangements for direct payments?

Yes No Not Sure

Comments:

The Special Educational Needs (Appeal) Regulations (Clause 51 and chapter 9 of the draft SEN Code of Practice)

37 Are the draft regulations clear about the circumstances in which appeals may be brought?

Yes No Not Sure

Comments:

- The new right of appeal for parents with regard to amendments made in annual reviews is a positive step and though it has been around for a while, it is good to see it outlined in the regulations.
- We welcome the fact that parents can appeal if the Plan is not amended after review. However, there is no indication on time limits to appeal, only that the local authority must inform them of their right to appeal.

The Special Education Needs (Mediation) Regulations (Clause 52 and chapter 9 of the draft SEN Code of Practice)

38 Are the draft regulations clear about how arrangements for mediation are intended to work?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- The group felt that this had not been thought through properly and was contradictory and confused.
- We would like it to be made clearer in the Code that parents have different options; mediation is not mandatory and other options are available. However, as there are so many potential avenues for redress and this, in itself, may be confusing for parents. A flow chart to aid understanding would therefore be helpful, as there is a lot of information which we feel is not always clearly presented and is sometimes confusing.
- There was also concern regarding the competence and training of mediators. It seems to be that there will be no accreditation system for mediation and therefore no set regulations.

The regulations may cover “requiring a local authority to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit”.

39 a) What expenses do you think it would be reasonable for the regulations to cover?

Comments:

-

39 b) Should there be prescribed limits and, if so, how much should they be?

Yes No Not Sure

Comments:

-

The Special Educational Needs (Children's Rights to Appeal Pilot scheme) Order (Clause 54)

40 Does the draft Order set out reasonable arrangements for local authorities to pilot giving children the right to appeal to the Tribunal?

Yes No Not Sure

Comments:

-

41 Will this provide a sufficient basis on which to decide whether to extend the right to appeal across England?

Yes

No

Not Sure

Comments:

-

Any Other Comments

42 Please provide any further comments on the draft regulations here.

Comments:

-

TRANSITIONAL ARRANGEMENTS

Transferring Children and Young People with Statements of SEN and Learning Difficulty Assessments to Education, Health and Care Plans

43 Some children and young people will be undergoing special educational needs assessments on the current system on 1 September 2014. Should that assessment result in a statement/Learning Difficulty Assessment or an Education, Health and Care plan? Please explain the reason for your opinion.

<input type="checkbox"/> Statement/Learning Difficulty Assessment	<input type="checkbox"/> Education, Health and Care Plan	<input checked="" type="checkbox"/> Not Sure
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Comments:

- Ideally it would make sense to conclude the assessment with an EHC Plan, particularly since a statement would only have to be transferred into a Plan at the next annual review.
- However we are informed that the rationale, ethos, and process for the assessment and collaboratively drawing up a multiagency EHC plan is very different and therefore marrying two systems during the process is likely to lead to an EHC plan in name but a Statement in form.
- A way round this would be to state a date in the summer from which all initiated assessments must follow the EHC process, whereas those before that date must be issued as a Statement and then put in the transition cycle for transferring to the new system within 3 years.
- Ultimately it will/must depend on the readiness of the local authority involved to implement such properly and in full.

Pace of Transition

44 Do you agree that the overall period for transition from statements of SEN to Education, Health and Care plans should be three years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- Three years seems a reasonable time period.
- The main concern here will be the resource implications for local authority SEN depts. in leading this transition process. There is already much understaffing following the cuts over recent years resulting in authorities struggling to stay on top of the current system so the additional demands of a new Code and an efficient transition will need to be resourced.

45 Do you agree that Learning Difficulty Assessments should be phased out within two years? Please explain the reason for your opinion. If you do not agree, please say what timeframe you think would be appropriate.

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Sure
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Comments:

- It is not made clear in the consultation document why there is a differential between Statements and LDAs.

The Process for Transition

46 Do you agree that local authorities, following consultation with young people and parents, should determine the best point in any given year to transfer a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, and that this should replace the usual annual review?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- It is going to be vital for local authorities and parents to be fully prepared with all the relevant information prior to a 'transfer' review which will probably result in an EHC Plan.
- This will need to be carefully scheduled across all services to enable it to be carried out effectively and fairly. Therefore some relaxation in review dates will be needed to ensure they are spread evenly across the year. Ultimately it makes sense to do so at annual review and avoid another meeting.

47 Do you agree that where a child or young person makes the transfer from a statement of SEN/Learning Difficulty Assessment to an Education, Health and Care plan, their plan should be written using the principles set out in section 7.9 of the draft SEN Code of Practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- EHC plans should be drawn up according to whatever the final principles at 7.9 look like after consultation to ensure consistency across transfer plans and new plans.

48 Do you agree that the right to request an Education, Health and Care Plan should be limited to new referrals during the three year transition period? If not, why not?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- It makes sense for a clear 3 year plan of transfer to be published by a local authority so that all parents know in which year they will have the transfer review prior to a probable EHC plan.
- A restriction on requesting transfer to an EHC plan which will prevent local authorities being overwhelmed during a difficult transition period is understandable and reasonable. A child with an existing Statement is still getting their needs met whilst waiting for the annual review at which they will transfer to an EHC plan. This would prevent parents demanding Personal Budgets when local authorities are still figuring out how to implement them.
- As para 21 of the consultation states there may well be circumstances that require an earlier transfer review and we would suggest that some guidance to local authorities is given as to which circumstances would be considered reasonable for bringing forward the transfer review.

Phasing the Transition

49 a) Do you agree that government should establish a broad framework setting out the slowest acceptable rate of transfer from statements of SEN to Education, Health and Care plans? If not, why not?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

- This seems very sensible.

49 b) If yes, which of the two proposed frameworks for transfer from statements of SEN to Education, Health and Care plans do you support? Why do you support this option?

<input checked="" type="checkbox"/>	Option 1: Transfer at end of key stage	<input type="checkbox"/>	Option 2: Transfer at end of current phase of education	<input type="checkbox"/>	Not Sure
<input type="checkbox"/>	None of the above	<input type="checkbox"/>	Other (please specify)		

Comments:

- This works best over the 3 year plan with only pupils in year 3 having to be considered separately. This format will be the easiest to explain to parents and make sense to them.
- A transfer review at the end of key stage will often be linked to a transition to a new school (nursery to school, infant to junior, primary to secondary, school to 6th form etc) and so will be timely to complete the process at one time.
- Option 2 is less structured and will lead to greater uncertainty.

50 Do you agree that young people with Learning Difficulty Assessments should be able to request to transfer to an Education, Health and Care plan at any point during the proposed two year transition period? If not, why not?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Sure
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Comments:

Implementing the Local Offer

51 Which approach to implementing the local offer should be adopted? Please explain why.

<input type="checkbox"/> Option 1: Introduce all local offer requirements from September 2014	<input type="checkbox"/> Option 2: Introduce all local offer requirements from April 2015	<input type="checkbox"/> Option 3: Introduce the local offer progressively from September 2014
<input type="checkbox"/> Not Sure	<input type="checkbox"/> None of the above	<input checked="" type="checkbox"/> Other (please specify)

Comments:

- We feel that a progressive approach is best but that ultimately we should learn from the Pathfinders. We know that for them, even with dedicated resource, it has taken considerable time to implement change. We need to learn from their experiences in time scales and process as well as content.
- The benefits of the progressive approach is that the faster LA's can support those that are not ready and share their learning to spread best practice and learn from mistakes. However, there also needs to be an end point
- The aim should be to have the local offer and publication of the new assessment and EHC processes in place from September 2014. Given the tight timescale this is unlikely to be achieved in all local authorities so this will need to happen progressively. However, the end date in Option 3 is September 2015 which could be problematic - April 2015 may be more realistic as the time all must be in place but

with a progressive start from September 2014.

Any Other Comments

52 Please provide any further comments on the transitional arrangements here.

Comments:

53 Please let us have your views on responding to this consultation (e.g. the number and type of questions, whether it was easy to find, understand, complete etc.).

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply.	X
E-mail address for acknowledgement: chillis@thecommunicationtrust.org.uk	

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, please confirm below if you would be willing to be contacted again from time to time either for research or to send through consultation documents.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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All DfE public consultations are required to meet the Cabinet Office [Principles on Consultation](#)

The key Consultation Principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and consult with those who are affected
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Responses should be completed on-line or emailed to the relevant consultation email box. However, if you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Coordinator, tel: 0370 000 2288 / email: carole.edge@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed responses should be sent to the address shown below by 9 December 2013

Send by post to: Ministerial and Public Communication Division (CSDSD Team), Department for Education, Area 1C, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ.

Send by e-mail to: SENCodeOfPractice.CONULTATION@education.gsi.gov.uk