



## **SHADOW HEALTH AND WELLBEING BOARD: 14 DECEMBER 2012**

### **REPORT FROM THE DIRECTOR OF CHILDREN AND YOUNG PEOPLE'S SERVICE**

#### **SUPPORT AND ASPIRATION: A NEW APPROACH TO SPECIAL EDUCATIONAL NEEDS AND DISABILITY**

##### **Purpose of Report**

1. The report provides a summary of the main issues in the Green Paper on Support and Aspiration: a new approach to special educational needs and disability. It proposes further joint work on an integrated Special Educational Needs (SEN) and Disability Policy.

##### **Existing Framework/previous decisions**

2. There has been longstanding dissatisfaction with the Special Needs framework amongst parents, who can't get the support their children need; schools and other agencies who lack resources to support young people; and politicians, whose mailbags are full of complaints from parents. A series of reports has recommended changes and the new government in 2010 promised reform in a Green Paper Support and Aspiration:

Successive reports, such as the 2006 report of the Education Select Committee and Brian Lamb's report in 2009, have described a system where parents feel they have to battle for the support they need, where they are passed from pillar to post, and where bureaucracy and frustration face them at every step. According to the Council for Disabled Children, on average a disabled child experiences 32 assessments as they grow up. That is unacceptable. Resources that could be spent on support and teaching are diverted into bureaucracy. That is inefficient. Children and young people with SEN don't achieve as they could – by the time they leave school these young people are more than twice as likely to be out of education, training or employment as those without. That is wrong. We are letting these children and young people down. The case for change is clear.

We want to give children the best chance to succeed by spotting any problems early, extending early education and childcare, and bringing together the services they need into a single assessment and a single plan covering education, health and care. We want to make the system less stressful for families and less costly to run by promoting mediation before appeals, giving parents more information about the services and expertise available locally and more support in navigating their way through the assessment system. Our proposals will also mean that children themselves can appeal if they feel they aren't getting the support they need. We want to give parents more control by offering every family with a single plan the right to a personal budget by 2014, making a wider range of short breaks available in all areas, and ensuring more choice by allowing parents to name in their child's plan, a preference for any state-funded school. By encouraging the setting up of special Free Schools we will make it less likely that existing special schools will close and create the opportunity for voluntary organisations and parents groups to establish new schools. ([DfE Green Paper "Support and Aspiration, March 2011 \(https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208027 \)](https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208027))

## **Background**

3. The Department for Education (DfE) produced the Green Paper on Special Needs and Disability (Support and Aspiration: A New Approach to Special Educational Needs and Disability) in March 2011. The Queen's Speech on 9<sup>th</sup> May 2012 announced the government's intention to legislate for these changes through a Children and Families Bill to be published in draft form by the summer. The Bill is to be developed through further discussion, and enacted by Spring 2013, the end of this parliamentary session. On 15<sup>th</sup> May, a progress and next steps document was published by the DfE. In September 2012, DfE published draft SEN clauses for the Children and Families Bill. It asked the Education Select Committee of the House of Commons to undertake pre-legislative scrutiny, and the committee have held meetings during October 2012.
4. The key drivers for the Green Paper are:
  - Ofsted published a report in September 2010 arguing that too many children had been labelled as having special educational needs, when what they really needed was good teaching; the report was based on a very large sample of case work.
  - In opposition, the Conservatives commissioned research on SEN. The Balchin report, published in 2007, argued for radical change: statements replaced by special needs profiles drawn up by expert consortia, allowing allocation to a banded funding system, which parents could take to any school of their choosing. They argued that too many children (by international comparisons) were getting SEN support, in effect diluting what was available for the neediest. Local Authorities were currently the assessor of need, controllers of funding, and provider of services. Parents were said to see this as a conflict of interests with statements of SEN describing what could be afforded rather than what was needed. The report concluded that inclusion was a failed ideology and special schools should be given academy status to allow market based expansion of the sector.
  - Government wide interest in applying market principles to the delivery of services, commissioning of more work from the voluntary sector, under the "big society" banner, and high level support for the public sector to "spin out" operations into social enterprises.
  - Reform of the adult social care system with the application of market principles to service delivery, Local Authorities becoming commissioners rather than service providers, a front end "Resource Allocation System" to determine access to services, re-ablement services to reduce demand, and individual budgets for recipients of support.
  - A government commitment to radical reform of the SEN system and the establishment with the green paper of a series of pathfinder projects which were essentially designed to test adult social care system elements in the children's services arena.
  - The Aiming High programme designed to improve support for families with disabled children brought a step change in parental control of service design, and a shift of focus from residential to more flexible and responsive short break provision.
5. The main proposals in the published draft legislation are more modest than the aspiration of the green paper:
  - To replace statements of SEN with Education, Health and Care Plans, extending from birth to 25 years, but with the same definition of SEN, and same access to plans through education

- Introduce a requirement for joint commissioning between health, education and social care. There is no new duty on health to deliver individual programmes of support, but considerable parliamentary pressure mounting to introduce such a commitment
- Apply SEN legislation directly to academies and free schools
- Offer the option of personal budgets for families
- A requirement on schools and agencies to co-operate with the Local Authority (but not with each other as presently drafted)
- The production of a “Local Offer” of services families can expect to receive in a particular area.
- Develop the proposed clauses as new information comes in from pathfinder local authorities.

6. Pathfinder Local Authorities’ progress has been the subject of three recent reports (October 2012). These conclude:

- Pathfinders have taken time to set up the multiagency governance arrangements to support pilot activity
- Most were at a very early stage of delivery to individual families
- Individual budgets work has focussed on some very specific aspects of service delivery (eg transport) rather than a complete package of support

a. The Council for Disabled Children report on the pilot evaluations and conclude:

*“High retention rates and positive feedback from the families involved suggest that many have accepted and welcomed the IB approach - specifically citing better access to social care services; more control over services received and greater satisfaction with the support received. Broadly speaking therefore, we are now in a position to state that the Individual Budget pilot has successfully improved parental choice and control, although in relation to impacts, the results are less conclusive.”*

7. The draft clauses for the SEN components of the Children and Families Bill have been published and are the subject of pre-legislative scrutiny by the House of Commons Education Committee. The proposals for Education Health and Care Plans look very like the statementing process, and comments in the press have begun to question the extent of the move forward they represent for families.
8. New school funding arrangements for April 2013 bring significant change for SEN funding. Schools are responsible for the first £6000 of additional provision for statemented children, with any additional costs met by the Local Authority from the high needs block. Specialist placements must be commissioned and paid for individually and in close to real time, requiring new funding formulae for special schools and units. This work is progressing well, but is throwing up searching cost comparisons between different provisions. In particular- future top up costs for Pupil Referral Unit placements look prohibitive.

## **Conclusions**

9. The new statutory framework is not likely to be implemented before September 2014. Parental expectations of the biggest change for 30 years may not be met. (an The minister in charge, Edward Timpson, has told the select committee that a delay might

be needed to get the details right.

10. In the meantime, school funding arrangements, including the high needs funding block, together with the need to find savings are likely to push change for local authorities and schools.
11. The adult social care system of high thresholds, resource allocation system, choose my support (an LA website to aid access to a market of services), and marketised services is seen as offering parents greater control over the support for their children. Individual budgets are already a feature of children's social care. This thinking appears to be driving the development of DfE policy.
12. Personal budgets, and the high needs funding block funding high cost provision as individual pupil entitlements, both work to move the statutory framework in this direction.
13. Proposals over a duty on Local Authorities to publish a "Local Offer" (of what services families should expect to receive locally) will remain unclear until detailed guidance is published.
14. While delegation from local authorities to schools is an underlying theme of education legislation (local autonomy is seen as good for innovation, choice and standards), further delegation of SEN support services to schools is problematic. On the one hand, schools would largely welcome the increased flexibility such delegation would bring; on the other hand, voluntary sector organisations and local families are nervous, and the parliament has moved to protect low incidence services from academy funding arrangements.
15. The requirement to develop joint commissioning arrangements is welcome and needs taking forward.

### **Resource implications**

16. It is hoped that the policy development work will feed into the commissioning decisions of education, health and social care services.

### **Equal Opportunities Implications**

17. This paper addresses some of the challenges faced by families with children with SEN and/or disabilities.

### **Partnership Working implications**

18. The draft legislation introduces a requirement for joint commissioning between health, education and social care.

### **Risk Assessments**

19. There are risks in the following areas:

- a. The imposition on Health Services of a stronger commitment to provide therapy services, distorting CCG priorities.
- b. The extension of Education Health and Social Care Plans to groups of children and young people previously not covered. For example, those who are NEET or on apprenticeships, young people up to the age of 25 years, those who have a wider range of needs and vulnerabilities.
- c. The costs of production of EHC plans and transferring from the current statementing process.
- d. The potential extension of transition planning being needed for a wider group of young people.
- e. The requirement to produce a local offer of services with a statutory entitlement to those services.
- f. The disconnect between the branding of reforms as the biggest change in 30 years, and the actual perception of EHC plans as “statements with knobs on” among local parents.

### **Recommendation**

20. There are opportunities to improve joint commissioning and joint planning across health, education and social care services. It is proposed that the Health and Wellbeing Board take a lead role in this important work by:
  - a. Establishing a working group to develop a joint policy on SEN and Disability
  - b. Seeking membership from Health Commissioner and provider organisations, together with education and social care representatives, and the voluntary sector, including parent organisations.
  - c. Completing a scoping report for the board within 6 months, with an action plan for further work.

### **Background Papers**

21. Support and Aspiration Green Paper:

<https://www.education.gov.uk/publications/eOrderingDownload/Green-Paper-SEN.pdf>

Progress and Next Steps:

<http://media.education.gov.uk/assets/files/pdf/s/support%20and%20aspiration%20a%20new%20approach%20to%20special%20educational%20needs%20and%20disability%20%20%20progress%20and%20next%20steps.pdf>

Pathfinder reports (Oct 12):

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR248>

Council for Disabled Children report on Pathfinder Progress Report:

<http://www.councilfordisabledchildren.org.uk/news/july-december-2012/send-pathfinder-evaluation-reports-published>

### **Officer to Contact**

**Gareth Williams**

Director of Children and Young People’s Service,

Leicestershire County Council  
Telephone: 0116 305 6300  
Email: Gareth.Williams@leics.gov.uk