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Wednesday 31 July 2019

## **ADCS response to the Department for Education's call for evidence on provision for children and young people with special educational needs and disabilities, and for those who need alternative provision**

### **1. Introduction**

1.1. The Association of Directors of Children's Services Ltd (ADCS) welcomes the opportunity to respond to the Department for Education (DfE) call for evidence on the provision for children and young people with special educational needs and disabilities (SEND), and for those who need alternative provision (AP). ADCS is the professional association for directors of children's services (DCS) and their senior management teams. Under the provision of *The Children Act (2004)*, the DCS is the chief officer responsible for the discharge of local authority (LA) functions with regards to education and children's social care and acts as a champion for children across the local area.

1.2. In recent weeks and months members of ADCS have met with various government officials and indeed with ministers to discuss SEND, with a focus on additional funding as well as the system-level solutions required to address the crisis we now face. This response reiterates many of the points made in those different fora rather than answering in detail the questions put forward in the consultation. Funding decisions are unique to each local partnership's makeup, priorities and legacy arrangements. Questions about the reallocation of existing funds are best answered by local experts as such changes will give rise to winners and losers, which may serve to further destabilise already fragile local systems.

### **2. Local authorities**

2.1. As part of the *Children and Families Act (2014)*, the government introduced a series of ambitious reforms to reshape support for children with special educational needs and disabilities (SEND), including extending education provision from birth to 25 years. Children's services were not funded to meet these expanded duties towards 19 to 25-year olds and retain responsibility for their education and employment outcomes when that responsibility, together with health and social care, previously transferred to adult services at the age of 18, along with full budgetary responsibility. Latest government data show that the number of learners with EHCPs increased by 35% in the five years to 2017/18 ([DfE, 2018](#)), with notable growth in this older cohort.

2.2. This rising demand for support is in part down to the better identification of need, particularly in the early years, as well as greater awareness amongst parents/carers – all positive developments in terms of meeting the individual needs of children and young people. However, the system was not designed, or crucially funded from the outset, to manage the level of need/demand we now see and predict in the future. The shortage of skilled staff, from education psychologists, speech and language therapists to occupational therapists, is a real challenge.

2.3. In such a personalised area of provision it is difficult to forecast demand let alone reduce costs and funding simply isn't keeping pace with the levels of need evident in local areas; next year it is estimated that 90% of LAs will tip into overspend on the high needs

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block (HNB) ([LGA, 2018](#)). The reforms rightly raised the expectations of children and families but there is growing frustration and dissatisfaction despite record levels of spending as evidenced by the system becoming increasingly litigious.

2.4. The reforms charged LAs, schools and the health sector with coming together to develop meaningful partnership approaches, supported by joint commissioning, in order to both assess and meet the needs of children and young people with SEND. However, alongside the introduction of the biggest education reforms in a generation for children and young people with special educational needs, the school system is in the midst of radical reform; health services have been going through a prolonged period of change and LAs have seen funding fall by 50% in real-terms since 2010 ([NAO, 2018](#)). During this same period there has been a significant increase in the need for help and support from LA children's social care.

2.5. ADCS members cite managing the HNB as one of the most pressing challenges they face. The new national funding formula for schools and the reformed high needs funding arrangements will not sufficiently address the issues recognised in the consultation document, namely the shunting of costs around the system, a drift away from inclusion in mainstream schools and an over emphasis on securing an EHCP in order to access support.

### **3. Schools**

3.1. Schools are raising concerns about their ability to meet record levels of need and the first £6,000 of costs of a learner's education plan. The notional SEN budget can act as a disincentive to taking and/or keeping learners with SEND in mainstream schools given the 8% real-terms fall in their funding in the five years to 2019/20 ([NAO, 2016](#)), which has impacted on the amount of support available in the classroom e.g. teaching assistant and pastoral staff. Growing numbers of learners are being moved out of mainstream schools into specialist or alternative provision, a worrying trend that risks two decades of progress on inclusion.

3.2. The removal of School Action and School Action Plus to define SEN support has resulted in an increase in requests for statutory assessments. Parents report being encouraged by schools to request an EHCP assessment as a means of unlocking additional support and/or alternative school placements if they cannot access SEN support. Conflicting pressures on schools to achieve high academic standards can act as an additional disincentive to some to be inclusive and can also act as an incentive to schools to seek an EHCP rather than a SEN support plan.

3.3. There remains a shortage of special school placements, which is driving greater usage of more costly independent placements, usually located outside of the geographical boundaries of a child's home LA. The DfE has funded strategic SEND reviews and provided capital funding for new free special schools, however, this has been done in a piecemeal way which does not reflect local need for new specialist provision. Plus it will take some time to build new schools and realise any savings from reduced reliance on independent provision. There are also concerns within the sector about future revenue funding streams to sustain these new places. Greater coherence is needed and a clear long-term strategic plan with regards to place planning.

3.4. With more and more learners moving out of mainstream schools into more specialist placements, LAs have sought to 'top up' budgets by using reserves or transferring funds

from the general schools budget to the HNB, however, the government has moved to restrict this flexibility which is exacerbating budget pressures. Curbs have also been placed on borrowing making balancing the books difficult and investment in early help and support services virtually impossible. Recent research shows that over the last four years the system has moved from a net surplus to deficit position with a projected HNB deficit of an astonishing £1.2 to £1.6 billion nationally by 2020/21 ([LGA, 2018](#)).

3.5. Groups of LAs are working together to reduce out of area SEND placements by increasing local capacity, however, both the capital and revenue funding to support the required shift is limited. The East Midlands regional LAs are collaborating in order to reduce distant SEND placements, see [here](#).

#### **4. Further education**

4.1. Whilst growing numbers of young people with SEND are accessing FE placements, funding has not increased adding further pressure to LA budgets. Post-16 per-pupil funding in FE settings has fallen by 16% in real terms between 2010/11 and 2018/19, double the 8% school funding fall over a similar period ([Education Select Committee, 2019](#)). This context is important. Previously FE colleges received a capped SEND funding allocation directly from the ESFA. In 2014, this funding was transferred to the HNB and the cap remains in place. Presently, if FE settings exceed £6,000 expenditure on an individual package, they can claim the total cost back from the HNB on top of the individual place funding they receive from ESFA. This effectively incentivises the identification of additional needs, even when students did not receive additional support in their previous school placement.

4.2. Going forward it would be helpful if FE funding increased and/or LAs had the flexibility to make provisions for the needs of all high needs learners during a given time period rather than dealing with individual packages. ADCS is aware that at least one LA has allocated capped three-year block budgets to their local colleges to allow them to plan and commission services for all high needs learners during this period. It is expected administration costs will fall by as much as 70% as a result. The national funding formula does not allow for a similar approach in schools.

#### **5. Alternative provision (AP)**

5.1. AP offers a valuable alternative to mainstream schooling for learners who find it difficult to access a full-time timetable or the national curriculum, as well as those who have been excluded from school. Fixed term and permanent exclusions are rising; 7,720 learners were permanently excluded from school in 2016/17 at a rate of 40 per day (up from 35 per day the previous year). Learners with SEND account for half of all permanent exclusions despite representing only 14% of the school population and over three quarters of children attending pupil referral units, have additional needs or a disability.

5.2. Currently, school leaders take the decision to exclude a pupil but the LA meets the costs of the new placement from the local HNB, enabling some school leaders to act with impunity. ADCS is concerned that the cumulative impact of increased competition in the school system, a high stakes inspection regime, ongoing exam and curriculum reforms and an ever-tighter funding regime means that exclusion can be seen as a shortcut to improvement. This is resulting in some of the most vulnerable learners, including those with emotional and behavioural needs or speech and language difficulties, being squeezed out of

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the mainstream schooling system, either into specialist or alternative placements or even becoming electively home educated.

5.3. In his recent independent review of exclusions ([DfE, 2019](#)), Edward Timpson recommended that schools should be responsible for commissioning and funding of AP placements and that they should remain accountable for the educational outcomes of learners who are either 'off rolled' or excluded. ADCS is supportive of these proposals. There is another AP funding pressure that must still be addressed. Presently, LAs must fund new AP free schools from the HNB from the third year of operation onwards yet the application process is centralised and the DfE do not yet routinely consult the relevant LA about whether a strategic need for AP places had been identified locally.

## **6. Health services**

6.1. The *Children and Families Act (2014)* places a duty on local partners to develop joint commissioning arrangements to meet the needs of children or young people in an area with SEND. Inspection outcomes demonstrate inconsistencies in health contributions to EHCPs and varied attitudes from health partners as to their perceived responsibility (which is linked to varied financial commitments). Inspectors have noted that health outcomes are often based on service deliverables rather than being child-centred and the commissioning of child and adolescent mental health services has not yet caught up with the 0 – 25 agenda.

6.2. Complex organisational structures, including a commissioning and provider split, and footprints that do not mirror local government arrangements have resulted in a disjointed funding system. This does little to support the goal of equality of access for all based on need. Similarly, ADCS members report that health partners are not consistently funding the equipment and aids, including therapies, wheelchairs and nursing support. Instead CCGs argue these costs sit outside of health budgets and are required for learners to access the curriculum resulting in some schools and LAs picking up these costs.

6.3. Likewise, shared funding arrangements for those children who need the most specialist placements or for whom very expensive placements are agreed by Tribunals are hugely varied and dependent on local arrangements, with the majority of the financial burden landing on the HNB. This is clearly not acceptable and the Department of Health and Social Care has an important role to play in addressing this behaviour. It must also acknowledge that its own Continuing Health Care Framework does not foster integration and urgently requires a more substantial review.

## **7. Tribunals**

7.1. The strong emphasis placed on parental preference was never sufficiently costed in the funding model. Going forward it is important to find a balance between parental preference and the amount of funding available in a locality. Where threshold-based decisions around assessments are being made, these are successfully being challenged via Tribunals. Similarly, a growing number of placement decisions driven by parental preference rather than professional judgements are being upheld at Tribunal. Up to 70% of placements in independent non-maintained special schools are Tribunal directed and ADCS is aware of examples of some individual packages costing upwards of £100,000 per year, which is clearly unsustainable in the current context and the funding model for such placements is unregulated.

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7.2. As the cohort of learners with SEND continues to grow and funding falls further behind levels of actual need, difficult decisions must inevitably be made about the fair and equitable apportioning of available funding, particularly when set against a backdrop of austerity and myriad limits placed on LA's ability to manage funds and the fact that approx. 85% of HNB expenditure is tied to individual pupils and placements (LGA, 2018).

## **8. Concluding remarks**

8.1. ADCS members unreservedly support the principles underpinning the SEND reforms introduced by the *Children and Families Act (2014)*, of co-production, integration, personalisation, extension of eligibility to age 25. The complex interplay between these reforms and other significant public service reforms overlaid with the impact of nine years of austerity have all contributed to the situation we find ourselves in presently. That the majority of LAs cannot meet their duties within the allocated budget points to serious systemic issues that needs to be addressed rather than a weaknesses in local leadership or a lack of ambition. Put simply, the number of children and young people with EHCPs has increased by more than a third over the last five years, funding has not.

8.2. More money is urgently needed to fully realise the potential of the reforms, but this is not all that is required. There are other things the government can do to bring about improvements, including:

- Introducing fee capping to stop the continued escalation of costs in independent non-maintained special schools and/or exploring the possibility of academisation to bring these settings, for which there is only one purchaser, into the state sector.
- LAs should be allowed to open new special schools, particularly in relation to post-16 or post-19 provision, creating savings whilst allowing young people to stay connected to their local communities.
- Similarly, there should be greater consultation between central and local government about the need for, and siting of, new AP free schools.
- Allowing greater flexibility around capping budgets for funding EHCPs to groups of schools and/or FE colleges to meet pupils' needs locally, via legislation if necessary.
- Provision of additional advice to Tribunals, parents and other stakeholders on a suitable test of the efficient use of resources in considering different placement options.
- Investment in the wider children's workforce and support offer, to enable us all to meet the needs of learners with SEND better and for the wider responsibility of an effective local offer to be delivered, including an increase in short break support where it is needed. A campaign that highlights the benefits and rewards of working with children and young people with SEND, from health and teaching to support staff would be a very good start.
- A review of the Continuing Health Care Assessment Framework.
- A clearer articulation of what success looks like, particularly with regards to commissioning and desired outcomes for 19 – 25-year olds, both of which is not yet clear from issued guidance or inspection outcomes to date.

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- More focus also needs to be given to how we support children and young people with the most complex needs, who may be in Tier 4 child and adolescent mental health beds or 52-week residential school placements, transition back to the community to live and learn successfully.
- Greater focus and attention on the benefits of an inclusive mainstream education. All but the most severe or complex needs should be met locally so children can stay within their local community, close to friends and family networks.

8.3. LAs carry lots of different responsibilities in this space but in a needs-led system have few levers and little control over demand. The scale of this reform programme requires further significant cultural and systemic change on a partnership basis. And, whilst some progress has been made, we are at the beginning not the end of the journey. Greater focus and, crucially, investment is needed to enable the aspirations for the reforms to be realised. ADCS members call on government for the appropriate, long term funding of these vital services to ensure no child or young person is left behind.

8.4. ADCS would welcome the opportunity to discuss any of the points raised in this response in further detail at a future meeting of our Health, Care & Additional Needs or our Resources and Sustainability Policy Committees. Please contact the relevant ADCS policy officer in the first instance via [Nicola.harrison@adcs.org.uk](mailto:Nicola.harrison@adcs.org.uk) to arrange.