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21 July 2022

ADCS response to the SEND and Alternative Provision Green Paper

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) under the provisions of the *Children Act (2004)*. The DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education.
2. ADCS welcomes the publication of the SEND and Alternative Provision Green Paper and the focus on inclusivity which sits at the heart of these plans, including the focus on strengthening collaboration and accountability across all partners in the system, clarifying their roles and responsibilities, and creating a less adversarial, more child-centred system, one based on children's needs.

The case for change

3. The current national SEND policy, as devised in the Children and Families Act 2014, has not achieved its aims and as a result, the system is increasingly unsustainable with no firm evidence that the needs of children and young people are better met. Implementation has resulted in a number of unintended consequences; a drift away from inclusion in mainstream education, shunting of costs around the system, an over emphasis on securing an education, health and care plan (EHCP) in order to access support, an increased parental expectation that education will continue until 25, and an over reliance on independent specialist provision. Prior to implementation of the 2014 reforms, the DfE's projected forecast on recurring new burdens was £24.5m. The most recent estimates suggest the deficit could reach £2.4bn by March 2025. Lessons from the past must be learnt; change must be thought through carefully as unintended consequences can cost more in the long term.
4. The funding local authorities receive via the high needs block has not kept pace with the demand for services and ADCS members cite managing the high needs block as one of the most pressing challenges they face. Many local authorities now report in year and cumulative deficits in the high needs budget and while the recent injection of additional funds has been welcome, this is nowhere near enough to address the growing deficits within the system.
5. The Green Paper does not acknowledge the baked in costs in the system which will continue for some time – potentially until all children currently in the system reach 25. ADCS members are not convinced that the Safety Valve and Delivering Better Value programmes go far enough to address the deficits. Both programmes are predicated on overspend in the high needs block, this is the result of historic funding and is not a reflection of current practice or the ability of the local authority to impact on it. If this is not addressed, the level of financial deficit across the

system will inhibit the implementation of the reform programme and continue to pose an existential threat to the financial viability of many local authorities.

6. The case for change and responses contained in the Green Paper are silent on the growth in support for those over 19 and how the system can best support young people to live independent, good quality lives in adulthood. More clarity is needed over the definition of education for this age-range, with some specialist day and residential provision having a higher focus on care rather than education. There is also little detail on transitions.
7. Underpinning the reform programme must be a commitment to co-production and therefore it is disappointing that the Green Paper does not adequately reflect the voice of the child and their parents/ carers. ADCS members would welcome further consideration as to how this can be achieved, ensuring the right balance between children and the other voices in the system. The challenges within the current SEND system are systemic, collective partnership challenges which cannot be solved by single agencies operating in isolation. Solutions must be worked through collaboratively with children, parents/ carers, practitioners, commissioners and other partners. Parental confidence in the system will be key and children and families must be at the heart of this work. All partners must work towards building a relationship based on trust.

A single national SEND system

8. ADCS welcomes the concept of a single national SEND system setting out the expectations of mainstream settings, the circumstances where an EHCP may be required and when specialist provision is most appropriate for meeting need. Such standards must also define roles, responsibilities and accountabilities of partners across the system to ensure each is playing their part in delivering for children with SEND. It is right that such national standards are then translated into what this means locally for children and their families through an open and transparent local plan which drives inclusivity; this should be a prerequisite for any provision included in a local plan. The drive towards inclusivity that is implicit in the Green Paper is welcome and should be amplified, not least through inspection. ADCS's mantra has been that no school should be considered to be a 'good' school unless it is good for all of the children in the school's community, including the most vulnerable and those with special educational needs. This needs to be made explicit and written through inspection practice.
9. Establishing a SEND partnership on a statutory footing may help to influence the local system and ensure all partners are playing their part in delivering better outcomes for children, however the inter-relationship with the schools forum remains unclear. Schools and MATs across an area will be key partners in the partnership arrangements. The proposals do not state if the statutory multi-agency panels will make recommendations or indeed have decision making powers. The remit and responsibilities of the panel will be key, along with the levers it has if partners do not act on decisions and/ or recommendations. Standardised digital templates and process will support the concept of a national system and will help to ensure a smooth transition when children move between local authority areas.

Children should transfer to digital plans at key transition points, using existing procedures.

10. If children are to grow up to be fulfilled, independent adults, connected to their communities, it is right that they are educated as close to home as possible. Long distance placements do not offer some of the key outcomes we want for our children and young people. The local plan will have a key role in identifying provision that can meet a range of need as close to home as possible. It also provides an opportunity for partners in the SEND system to further develop meaningful relationships across settings that have been quality assured and are deemed to support the inclusive vision across a place. There is some very specialist provision, such as schools for deaf children, which have a national, rather than regional or local footprint, and the relationship with local plans will need to be thought through here.
11. For some time, ADCS has called for a backstop power to direct academy trusts to admit children. Clear and swift timescales are needed to adequately support the power and ensure no child is without a school place for any longer than is needed. Backstop powers will be used only when necessary and as a last resort, the influence of local authorities as partners in place should be the key lever in encouraging all schools to play their role in an inclusive education system. Inclusivity must be tested through the new accountability framework; the backstop power will have little effect if a directed placement breaks down due to a school not delivering what is needed.
12. Strengthening early redress approaches to ensure disputes can be resolved as soon as possible will help the shift to a less adversarial system. The concept of mandatory mediation will need careful consideration to avoid it being seen as an additional hurdle for families. As parental confidence in the system increases, the use of redress mechanisms and the Tribunal should reduce and only in exceptional cases.
13. The current level of open access to a judge-led process to challenge all aspects of an EHCP is something that is not seen in other parts of the public sector. ADCS supports the reframing of the Tribunal as proposed in the Green Paper so it becomes more proportional, used as an option of last resort and only under certain circumstances. This will be necessary if banding and tariffs, underpinned by professional expertise, are to be introduced; the Tribunal should not be able to undermine a new system.

Excellent provision from early years to adulthood

14. The principle of early intervention is accepted, the sooner a child's needs can be identified and appropriate support put in place the better, this may help to avoid the need for an EHCP and high cost support at a later stage. Early identification does not only happen in early years and post pandemic, there has been a decline in the demand for early years provision in certain areas of the country, e.g. London. Consideration needs to be given to what early intervention looks like in primary and

secondary settings as it is likely that, over the coming years, an increased number of children will arrive at primary school with little or no educational input.

15. The current system is designed to assess and identify the individual needs of children and young people. This is based on a medical model of disability. ADCS would support a shift to a system underpinned by a social model of disability, one which looks to remove unnecessary barriers which prevent people being able to participate fully in day-to-day life. The social model was endorsed in 2014 by the Government Equalities Office which recommended the model is used by all government departments in the way they interact with disabled people. The proposed reforms should explore how the impact of environmental conditions in settings can be identified and addressed. In some situations, changes to the conditions in which children learn may have wider benefits than individual support plans.
16. The Green Paper does not address the challenges many young people face in accessing support from adult social care and health services if they do not meet the relevant thresholds. An effective early help offer is needed for young adults transitioning to adult services who may need more than simply an education or employment setting. This gap in provision means some young people continue to have an EHCP for too long or young adults remain more dependent on their parents because there is no alternative. Greater clarification is needed over the roles and funding responsibilities of adult social care and health partners to ensure that young people with SEND transition into adulthood successfully.
17. The development of the workforce as set out in the Green Paper is welcome. Training and development opportunities need to support the inclusivity agenda and upskill all staff to support children, rather than refer them on to more specialist services.
18. The role of SEN case officer is critical in the system yet is completely underdeveloped. A case officer brings together a range of professionals and a wealth of information, yet it is the single role within the system that does not have a professional footing. Investing in the professional development of case officers would, over time, help to instill parental confidence that children were receiving the right support within a system of bandings as set out in a local framework. Such teams are currently funded via the general fund, however, it would be more appropriate for the cost of this much needed resource to be met via the high needs block.

A reformed and integrated role for alternative provision

19. Alternative provision (AP) must be viewed as an integral part of the system approach to inclusive education, it cannot be seen as a standalone service. A more defined role for AP is needed which sets out the high quality nature of the service, the need for it to be close to home with the aim to support children and young people back into mainstream education; AP is an intervention, not a destination, and reintegration should always be a primary aim. Wherever possible, the onus of the proposed three tier system should be targeted support in

mainstream settings to enable children and young people to stay in the setting they know, where they have relationships with both professionals and their peers.

20. While the need to put AP on a more viable financial footing is understood, the detail around multi-year funding arrangements need to be worked up to understand the implications. The relationship with the schools forum and the government's commitment to introducing a 'hard' national funding formula will also impact here.
21. The AP performance framework focus on post 16 transitions is helpful however the narrow view of attainment is disappointing, ADCS members would suggest progress is just as important in this context. A substantial number of AP settings are now academies, yet there is no detail as to which body will judge performance against the framework. Presumably this will be DfE Regions, therefore clear accountability lines must be established. The review of how children move around the system is fine in principle but must acknowledge from the outset that some managed moves, when done in a child centred way, are a positive alternative to exclusion. Any statutory framework in this space must be based on the principles of inclusion and allow for some flexibility to avoid exclusions while meeting children's needs.

System roles, accountabilities and funding reform

22. Policy changes over the recent past have resulted in the SEN system becoming unsustainable. It is questionable as to whether those who design the system should also be the regulator of it. As the DfE Regions group develops, it will want to assure itself that it has the capacity and capability needed to be an effective partner in the new system as outlined in both the Green Paper and Schools White Paper.
23. The Green Paper sets the response to poor performance as intervention. Accountability is not a one way street and a new SEND system requires visibility of accountability for all partners. For example, who is to be held accountable for delays to decisions around funding for new special schools and the impact on local budgets for such delays? There must be clarity around levels of accountability and the specific role of both the DfE and health partners in helping the SEND system to function within its means, and where this isn't achieved, what the consequences are across the partnership system. Integrated Care Systems (ICSs) have key responsibilities for meeting the needs of children and young people with SEND, providing adequate and timely funding for community health provision including occupational therapy, physiotherapy, speech and language therapy, etc. These services are vital for young people to engage successfully in education and therefore, how effectively these responsibilities are met must be considered and appropriately judged as part of inspection arrangements.
24. The aims of the Green Paper can only be achieved if the system is founded on high quality inclusive mainstream schools. There is an obvious role here for local authorities in terms of working with DfE Regions to ensure the appropriate challenge is brought to bear when the system isn't operating as designed. The statutory academy standards are a critical element here and must set expectations

for mainstream inclusion which are built into the regulatory framework. ADCS is keen to work with DfE and partners to ensure these are framed in a way that helps to deliver the inclusive vision that has been set out by government.

25. Alongside the development of the new SEND inspection framework, work must be done to define what 'good' looks like, both within the current system and also in transitioning to a new system. The proposed dashboard should reflect this also, considering not only outputs, but quality measures and outcomes for children and young people. ADCS members would be concerned if inspections under the new framework resulted in a graded judgement. These are a blunt instrument that do not lend themselves to a multi-faceted system with complex accountability arrangements.
26. ADCS members welcome the development of banding and price tariffs, evidencing what is available for identified needs and associated cost, including the responsibilities on health to joint fund and invest in placements for children with complex needs. Requirements for health partners to financially contribute to such placements should be set out in statutory guidance to avoid disputes at a local/individual case level. A children's Improved Better Care Fund may work well here. The devil will very much be in the detail for banding and price tariffs, as will the transition process. ADCS are committed to working in co-production, however, professional evidence linked to need will be key to establishing equity. There may be some learning from the experiences in the NHS where price tariffs are an integral part of the NHS Standard Contract.
27. The concept of a notional SEN budget has failed in the current system; ADCS members would welcome replacing it with a reformed funding formula that is based on pupil need which includes a clear SEN budget. If it is to continue as a concept, it must be included in bandings, providing transparency as to how schools are funded for this and what they are expected to deliver. This is missing in the current system and drives the perceived need for EHCPs. More attention should be focused on funding for all children and young people which in turn, will also promote greater inclusion with appropriate top ups where needs are such that more resources are required. The DfE commitment to revisit the notional budget threshold is timely as this has not changed since 2014.
28. As has already been mentioned, the challenges associated with high needs block funding threaten the future financial viability of local government. The Safety Valve and other associated programmes are merely sticking plasters. The funding formula for high needs must be completely reformed to address the funding challenges and ensure they do not overshadow a new system of SEND. It is an anomaly in the system that high needs deficits belong to the local authority and yet surpluses belong to schools. It simply doesn't make sense that many schools and multi-academy trusts, often in some of the more affluent areas of the country, are sitting on healthy and rising balances and yet high needs funding is under such pressure. A tweak in the national funding formula could help local authorities to start to rebalance the books.

Delivering change for children and families

29. The establishment of a cross-government delivery board reflects the need to bring all partners together to deliver change for children and families, the DfE cannot do this alone.

30. As the country starts to recover from the impact of the pandemic, the potential of the health reforms and the opportunities integrated care systems provide must be harnessed to ensure the needs of children and young people are prioritised. To support the SEND agenda, a national review of services for children with poor mental health and wellbeing is urgently needed to address the disconnects in the system that lead to children waiting for treatment for over a year whilst in distress, contributing to family breakdowns, while the number of bed days for treatment in clinical settings has been reduced. Funding and associated accountability arrangements for autism assessment, diagnosis and support should also be reviewed as children's needs are currently not being met.

If you would like to discuss any of the points raised in this consultation further, please contact Esther.Kavanagh-Dixon@adcs.org.uk in the first instance.