

## Consultation Response

**'Right Support, Right Place, Right Time': SEND Green Paper**

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### Executive Summary:

- The intent of the SEND reforms in the Children and Families Act 2014 to place children and families at the heart of the system was laudable. But the Act has not achieved its goals as its implementation did not provide local authorities with the sufficient funding, powers, or defined partner agency contributions to meet them.
- At present, the system is not working optimally for either parents or local authorities. The raised expectations of families of children with SEND not always being met. At the same time the majority of local authorities – and particularly CCN member councils – are under significant financial pressure resulting from rising costs arising from their statutory duties around SEND. Many have only been prevented from facing potential collapse by the statutory override currently allowing deficits to be kept off council budgets.
- The fact that almost all local authorities are struggling with the current system to some extent suggests that the existing problems are not being driven primarily by poor performance in local authorities, but challenges in the system itself. As such the priority for reform must be to address the systemic cause of most of the problems – i.e. matching parental and societal expectations for support for children with SEND within an appropriate funding envelope for schools and local authorities.
- The Society of County Treasurers (SCT) has conducted regular analyses of High Needs Block deficits over recent years. Their most recent analysis outlined in this response, covering 53% of the total top tier local authorities (including 90% of SCT members), has found deficits of £1.36bn from these respondents as of March 2022 rising to £2.6bn in 2024/25. Exploration of these responses by SCT to arrive a total deficit for all authorities in England estimates the deficit to be £1.9bn in March 2022, rising to £3.6bn by 2025 with no intervention.
- Whilst the Safety Valve and Delivering Better Value programmes being introduced by the Government are welcome, they must be applied to the system as a whole and not just a targeted group of local authorities. The scale of the deficits accrued are now unmanageable for most local authorities and CCN calls on the Government to write them off to help councils in making the system sustainable going forward. This is important not only as a means to addressing the deficits across the system as a whole. Given the historical component that has been involved in determining funding allocations as well as the use of council reserves to reduce deficits in the past some councils may feel that they are now being penalised for past good management of their SEND systems — sending out a poor message from central government about incentives for fiscal prudence.
- Until it is certain that the dial has been fully turned in most councils' ability to balance the demands on their SEND services with the funding envelope available, the Statutory Override remains imperative as a means to prevent some of the worst-hit councils having to make catastrophic financial decisions around cutting other services through no fault of their own or their residents.
- CCN do not object to the proposals in the paper for further scrutiny by the DfE of the processes that they are administering on the ground, such as through the Delivering

Better Value programme. It is expected it will provide a means for central government to better understand the scale of imbalance presently in the system (although CCN warns that more bureaucracy brought into the system is only likely to further draw on the funding available to support provision for children with SEND). To reiterate, in most circumstances this imbalance is not being caused by local authority management – as some of the measures being proposed might implicitly suggest – but by a mismatch between the expectations of what can be provided for children with SEND and the reality of the funding available for local authorities to meet this.

- As such the proposals in the Green Paper to properly designate a system of banding and price tariffs is welcomed as a means to better clarify and quantify expectations of what the system can provide – and what provision is likely to be most appropriate to meet what needs – for all stakeholders engaging with the system.
- A national framework of standards will provide clarity over expectations for all stakeholders in the system but will only be successful if accompanied by sufficient resources to meet them. It must also come with clear responsibilities and enforcement measures to ensure the role of partner bodies working alongside the local authority such as Multi-Academy Trusts, Integrated Care Systems, OFSTED, and SEND Tribunals.
- The Green Paper’s emphasis on early intervention and prevention is welcome. This must be supported by sufficient resources across the whole education system (including early years) reversing the disinvestment in this area over the past ten years which CCN has detailed in several of its recent reports.
- The consistent rise in the numbers of EHCPs being issued must be brought under control. This will only happen when there is trust from parents that the mainstream school system can meet lower-level SEN needs. A ‘carrot and stick’ package of incentives must ensure that all schools are clear in their responsibility to include and meet the needs of children with SEND, rather than seeking to move children with milder conditions into the specialist or Alternative Provision (AP) systems. CCN supports measures ensuring schools retain some responsibility for the attainment of children with SEND. Moreover, introducing a new ‘fixed term EHCP’ for certain conditions that are hoped to be temporary (such as some mental health issues) may form part of a solution to shift the presumption towards mainstream inclusion of pupils with SEND as the default position. Cessation of an EHCP needs to be properly viewed as a positive achievement by the system, not a withdrawal of a right.
- Whilst the role of Alternative Provision (AP) has substantial overlaps with the SEND system, given the cohort of children it supports, CCN is concerned that the synergy in the Green Paper between the two systems risks blurring the distinction between pupils with SEND and those with conduct issues. This may risk AP being sought inappropriately by some schools to avoid costly or difficult responsibilities around inclusion and SEND – there must be sufficient protections to ensure this does not happen.
- The aspiration to improve the skills of all professionals working with children with SEND, such as teachers in mainstream schools, is the right approach. In addition to these measures the role of the Virtual School in supporting schools in this upskilling programme should be considered along with the necessary resources to ensure they have the capacity to carry out this extended role.

## **Introduction/Overview**

1. The County Councils Network (CCN) represents 36 English local authorities that serve counties. The 23 county and 13 unitary authorities that make up CCN are the largest part of the local government family. They represent all four corners of England, from Cumbria to Cornwall, Durham to Kent, North Yorkshire to Suffolk, Derbyshire to Essex. The essential services our members provide touch on the everyday lives of residents and businesses across 86% of England's landmass and 47% of its population.
2. CCN wishes to emphasise from the outset that meeting the needs of children with Special Educational Needs and Disabilities (SEND) is the number one concern relating to children's services raised with CCN by its member councils – ranking above all others including issues around children in the care system; the governance of local schools and the relationship between maintained schools and academies; and the need to provide early intervention for families, all of which are seen as important by CCN authorities
3. As such the conclusion of the SEND Review and the release of this Green Paper, understandably delayed due to the pandemic, is a very welcome first step towards tackling the many issues that have been building up in the system over the past few years.
4. CCN shares the government's ambitions to make sure every child with SEND has access to high quality education and support to enable them to thrive. CCN member authorities also want to see better outcomes for learners improved attainment, greater attendance, fewer exclusions, enhanced family satisfaction in provision, better preparation for adulthood, improved mental health and wellbeing, and ultimately more successes in higher education, employment and independent living.
5. Unfortunately, the current reality does not reflect this picture. At present, the system is not working optimally for either parents or local authorities. The raised expectations of families of children with SEND generated by the previous round of reforms in 2014 are not always able to be met. At the same time, the majority of local authorities are under significant financial pressure resulting from increasing costs arising from their statutory duties around SEND, with many only being prevented from facing potential collapse by the statutory override which currently allows deficits to be kept off their books.
6. Furthermore, the existing issues which led to the establishment of the SEND Review have now been further compounded by the pandemic. Successive lockdowns had a profound impact on the mental health of children and young people and this is likely to lead to increased demand in the coming years, on top of the disproportionate disruption (even in the context of wider school closures) that was caused to the education of some children with existing designated SEND issues due to the specific risks presented by the Covid-19 pandemic to their health and wellbeing or their ability to learn effectively though online means.
7. CCN member authorities are particularly exposed to these challenges with higher-than-average rates of SEND within their boundaries, and more extensive Home to School transport costs in line with their larger geographies. Almost all CCN's member councils have reported struggling with meeting demand for SEND services; managing the expectations of parents and carers; and working with schools to keep children with SEND in mainstream schools. Principally, though, their concerns stem from the unsustainable financial burden placed on local authorities by the unfunded extensions to provision that were introduced by the Children and Families Act 2014.

8. CCN and its member councils strongly supported – and still support – the principles behind the reforms introduced by that Act. But in practice the implementation of these reforms has been the source of the extensive problems that have led to this Review. Local authorities were given no additional resources to meet the raised expectations for support of parents and young people that resulted – including the unfunded extension of support to young people up to 25 years old – whilst schools lost access to schemes such as School Action and School Action Plus formerly used to support lower-level SEND need in the mainstream.
9. This has led to the present situation where the system has pushed local authorities towards breaking point – a term not used inappropriately given the potential for the present deficits generated by the SEND system to cause many to have to issue S114 notices if they were to be brought officially back onto councils’ budgets. Meanwhile EHCPs are at a record high providing more support to greater numbers of children than prior to the Act, yet public discontent with the system registers more highly than ever at both local and national level. The Green Paper presents an opportunity for significant reform to the SEND system which must be taken up.
10. Reform must therefore tackle five key challenges:
  1. Addressing the existing SEND deficits accrued by local authorities – estimated by the Society of County Treasurers (SCT) as currently standing at around £1.9bn and estimated to grow to £3.6bn by 2025.
  2. Halting the growth in – and over time reducing – demand for EHCPs which has risen by 110% in CCN member authorities between 2015 and 2022.
  3. Incentivising more children and their families to choose staying within mainstream education rather than opting for specialist placements which may not always be appropriate to their needs – often with Independent Providers charging extremely high rates.
  4. Fixing the broken market for SEND placements, particularly controlling these spiralling costs in the Independent sector.
  5. Matching funding in the High Needs Block (HNB) of the Dedicated Schools Grant (DSG) appropriately to meet demand sustainably – particularly ensuring that money is not required to be drawn out of the mainstream Schools Block which meets the needs of all children in order to cover overspends caused by excess demands on the HNB.
11. This response addresses the measures outlined in the Green Paper with reference to how far it is expected they will meet these challenges.

### **Addressing SEND Deficits**

12. Most urgently the Government must address the financial pressures that have already built up in the system over the past seven years. Local authorities all over the country have accrued extensive deficits in their High Needs Block (HNB) allocation from the Dedicated Schools Grant (DSG) over the past few years trying to cover the additional costs that have inadvertently been created by the changes in the Children and Families Act 2014.
13. The Society of County Treasurers (SCT), which represents 40 county and unitary authorities in England, has conducted regular analyses of HNB deficits over recent years with the support of CCN and its member councils. To inform this consultation response, SCT undertook a new HNB survey in conjunction with other treasurers’ society via a detailed Excel model and accompanying guidance to achieve consistency across participating authorities. The survey received a 53% response rate from upper-tier authorities in England. The breakdown of respondents by local authority type is provided below:

LA Type	Number of Responses	Number of authorities	Response Rate
SCT Members	36	40	90%
London Councils	26	32	81%
Other Local Authorities	18	79	23%
<b>Total</b>	<b>80</b>	<b>151</b>	<b>53%</b>

14. Table 2 shows that respondents reported that cumulative HNB deficits had reached £1.36bn by March 2022 and this figure is forecasted to continue to decline at a linear rate, almost doubling to £2.6bn by March 2025.

Year	SCT (£m)	London (£m)	Other LAs (£m)	All Respondents (£m)
2018-19	-£118,388	-£60,326	-£31,706	<b>-£210,420</b>
2019-20	-£357,577	-£162,049	-£88,475	<b>-£608,101</b>
2020-21	-£611,528	-£257,482	-£115,200	<b>-£984,209</b>
2021-22	-£878,608	-£327,573	-£150,125	<b>-£1,356,306</b>
2022-23	-£1,146,704	-£366,458	-£168,149	<b>-£1,681,311</b>
2023-24	-£1,509,710	-£417,494	-£180,671	<b>-£2,107,876</b>
2024-25	-£1,958,602	-£480,759	-£197,283	<b>-£2,636,643</b>

15. To establish a suitable estimate for total HNB deficits for all upper-tier councils in England, SCT aggregated the results to estimate the total deficit for all councils in England. The nine largest deficits (all SCT) were first excluded as they would likely inflate projections. Remaining responses were split by groupings ('SCT', 'London', 'Others') and these were used to estimate the national total of cumulative HNB deficits weighted by 2022-23 DSG allocations. Those excluded were then included to produce the upper-bound national estimated HNB deficits set out in table 3 below.

Year	SCT	London	Other LAs	England Total
2018-19	-£124,861	-£81,868	-£216,846	<b>-£423,575</b>
2019-20	-£376,502	-£194,395	-£380,307	<b>-£951,204</b>
2020-21	-£642,904	-£300,631	-£513,724	<b>-£1,457,260</b>
2021-22	-£922,538	-£381,576	-£655,284	<b>-£1,960,340</b>
2022-23	-£1,204,188	-£432,183	-£789,715	<b>-£2,428,489</b>
2023-24	-£1,581,802	-£484,324	-£710,961	<b>-£2,951,425</b>
2024-25	-£2,045,446	-£549,485	-£698,882	<b>-£3,585,226</b>

18. Their estimation is that as of March 2022 the deficit stood at £1.9bn in England. Projecting forward the total HNB deficit nationally is on course to rise as high as £3.59bn by 2025 if there is no intervention. SCT members will account for 57%, some £2bn, of this total national HNB deficit.
19. It should also be noted that even these figures may be an underestimate of the actual cost pressures that have been experienced by local authorities over the past few years. Previous

internal research conducted by CCN with its member councils – and shared with the SEND Review at its outset – showed that recorded HNB deficits were often lower than they actually were in reality, with many councils having offset some of the impact through different methods of accounting for some elements of spending as well as using reserves to cover overspends before the Statutory Override was introduced that year.

20. CCN member councils in general appear to be particularly hard hit by deficits due to a number of factors such as less mainstream SEND support in schools as well as vastly more extensive home to school transport costs compared to non-CCN councils (see section below).
21. It is also the case that the relative wealth of an area is a contributory factor to higher HNB deficits, with county and rural unitary authorities represented by CCN and SCT, overall, having lower levels of deprivation. Analysis undertaken by SCT as part of their survey shows that there is a negative correlation between cumulative deficits and deprivation (i.e., deficits are higher in less deprived areas). The correlation remains when accounting for DSG income too (i.e. Deficit/DSG income also negatively correlates with IMD scores), as shown in Figure 1 below. This suggests that there are greater proportions of affluent families better equipped to spot signs of SEND in their child and navigate the system to get support.

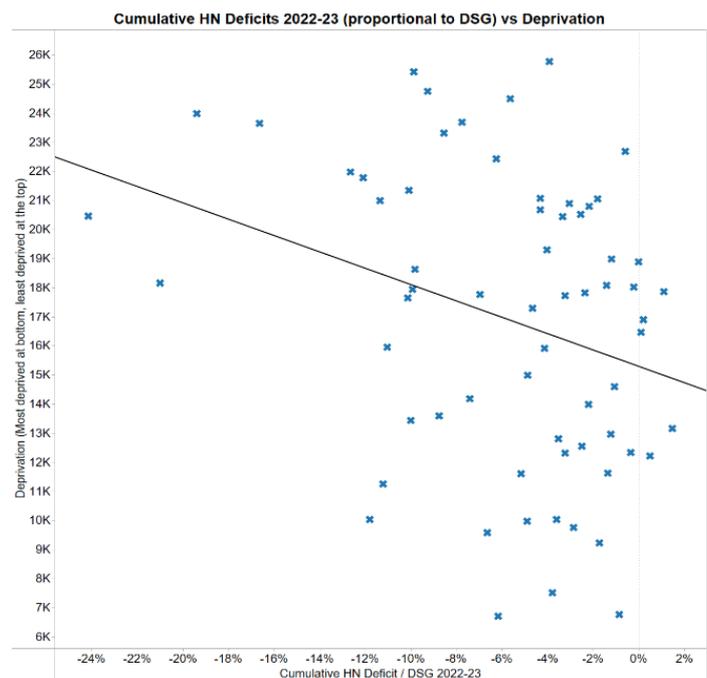
**IMD vs Cumulative High Needs Deficits 2022-23**

R-squared 8.3%  
**p-value 0.94%**

**IMD vs Cumulative HN Deficits/DSG 2022-23**

R-squared 9.0%  
**p-value 1.52%**

*Figure 1 – Cumulative High-Needs Deficits 2022/23 vs Deprivation*



22. Given the stark figures laid out above CCN member authorities welcome the introduction of the Safety Valve and Delivering Better Value programmes announced by the Government. It is hoped that the Safety Valve in particular will address the very specific problems being faced by some CCN member councils.
23. The Delivering Better Value programme just commencing will provide a means for further local authorities – including more CCN member councils – to receive support to help tackle the extensive problems they are facing with SEND deficits. But it is also expected that through this programme central government will hopefully gain to better understanding of the scale of imbalance presently in the system. To reiterate one of the key points being made by this submission: whilst there is always scope to improve performance in most

circumstances this imbalance is not primarily being caused by local authority management – as some of the measures being proposed might implicitly suggest – but by a mismatch between the expectations of what can be provided for children with SEND and the reality of the funding available for local authorities to meet this.

24. However, whilst the Safety Valve and Delivering Better Value programmes being introduced by the Government are welcome, they must be applied to the system as a whole and not just a targeted group of local authorities. The scale of the deficits accrued are now unmanageable for most local authorities and CCN calls on the Government to write them off to help councils in making the system sustainable going forward. This is important not only as a means to addressing the deficits across the system as a whole but in the interests of fairness. Given the historical component that has been involved in determining funding allocations as well as the use of council reserves to reduce deficits in the past some councils may feel that they are now being penalised for past good management of their SEND systems — sending out a poor message from central government about incentives for fiscal prudence.

### **Statutory Override**

19. Given the current state of HNB deficits in the DSG, the Statutory Override is completely necessary without significant additional government funding. It must be remembered though that this is, in effect, an accounting trick/fudge and in and of itself does not provide a solution to the current High Needs position.
20. Until there is a system-wide approach to assessing and addressing every council's individual position the Statutory Override must remain in place. Even then before being removed there must be certainty that the consuming financial problems being generated by the SEND system are being tackled at root and the system has been made sustainable. The Green Paper contains several measures likely to make a good start at addressing these systemic issues. Some of these – like the investment in both service and capital funding – will have an immediate effect, whilst others addressed later in this response are likely to lead to further benefits over the longer-term.
21. But the reforms will not be a panacea overnight. The current system has a high level of cost baked into it for the foreseeable future which is placing unsustainable pressure on local authorities. It is not clear yet whether even this sizeable proposed intervention programme will be able to fully address the very real and current challenges county authorities are facing in this area – and certainly not for some time.
22. Until it is certain that the dial has been fully turned in most councils' ability to balance the demands on their SEND services with the funding envelope available, the Statutory Override remains imperative as a means to prevent some of the worst-hit councils having to make catastrophic financial decisions around cutting other services through no fault of their own or their residents.

### **Stemming the growth in EHCPs**

23. The consistent rise in the numbers of EHCPs being issued must be brought under control particularly in county areas. Since 2015, the number of EHCPs for the 36 county areas CCN represents has risen from 100,020 in 2015 to 210,081 in 2022: a 110% increase, above the national figure across England of 97%.

24. It is thought that some of this growth can be attributed to the specific reform in the 2014 Act which extended provision from 18 to 25. This was always likely to have an incremental effect over some years with older young people (e.g. those who were 23 or 24 in 2015) unlikely to re-apply for an EHCP often having moved into adult services or more independent lives, whereas those no longer forced to transition at 18 are now more likely to just continue with their existing plan. Now, seven years after the Act came into effect, it is hoped that this element of growth will have plateau-ed in years to come.
25. However, this does not explain the wider growth in the numbers of EHCPs which is likely being driven by several trends:
  - (a) a reduction in the ability of the mainstream school system to manage SEND, as well as perverse incentives which can lead some schools to encourage parents to seek an EHCP to help reduce funding demands on their own budgets;
  - (b) the widely reported societal increase in child and adolescent mental health conditions, as well as better understanding and diagnosis of some other conditions such as autism or emotional and behavioural needs;
  - (c) a perception that the EHCP represents the 'gold standard' for support for SEND.
26. Fundamentally bringing demand for EHCPs back to more manageable levels will only happen when there is trust from parents that the mainstream school system can meet lower-level SEND needs – particularly those related to mental health or emotional and behavioural conditions which more likely to be responsive to early intervention to prevent them exacerbating.
27. A 'carrot and stick' package of incentives must ensure that all schools are clear in their responsibility to include and meet the needs of children with SEND, rather than seeking to move children with milder conditions into the specialist or Alternative Provision (AP) systems. CCN suggests that schools might retain more responsibility for the attainment of children with SEND regardless of whether an alternative education plan is decided upon.
28. The Green Paper also suggests standardising the yearly review process for EHCPs including discussion and recording about a 'step down to targeted support or cessation' which will make it easier to ensure EHCP level support can be more easily scaled back when it is no longer needed.
29. CCN would suggest that alongside this it may be useful to introduce a new 'fixed term EHCP' for certain conditions that are more likely to be temporary – such as some mental health issues. Just as a doctor does not prescribe an open-ended or 'lifetime' treatment plan for what is ordinarily a temporary medical condition that will heal (such as a broken leg), a fixed-term EHCP might better align expectations for conditions that are likely to be time-limited rather than needing ongoing open-ended support.
30. The fixed-term EHCP would of course only be appropriate in certain circumstances and would still be subject to annual review with full scope for continuation just as the Green Paper suggests. It could, however, help shift the presumption towards mainstream inclusion of pupils with SEN as the default position rather than encouraging the idea of the EHCP as the only means to access support for SEND conditions – in the minds of some schools as much as children and their families. Cessation of an EHCP as the child is deemed able to cope in mainstream education needs to be properly viewed as a positive achievement by the system, not a withdrawal of a right from children and families.

## **Home to School Transport Costs**

31. It must be recognised that a significant driver of additional costs around SEND for CCN member authorities comes from the greater distances that councils have to cover for SEND Home to School Transport, reflecting their geographies which include a number of remote rural and coastal communities.
32. CCN's report earlier this year *Home to School Transport: The challenge in counties* highlighted how the cost of transporting children with SEND to school has risen 33% in just five years – from £260.7m in 2016/17 to £347m in 2020/21. Across CCN's 36 member councils the cost of providing transport for children with SEND accounted for an average of 11% of the entire children's services budget in 2020/21.<sup>1</sup>
33. The reason for this increase is largely in line with the challenges identified in the Green Paper – that less trust in the local mainstream school system to adequately meet the needs of children with SEND is leading more parents to push (by tribunal if necessary) for specialist provision, which itself is often located in more remote areas far from the child's home. This is a particularly difficult issue for CCN member councils. If councils are to be able to achieve the aspirations set out by the Green Paper, they must receive additional support from central government to help reduce the proportion of their budgets spent on Home to School Transport so they are closer to being in line with the spend in more compact urban or metropolitan areas.

## **National Standards and Scrutiny**

34. The Green Paper contains a number of measures designed to provide a centralised control of the SEND system including a new framework of national standards and greater scrutiny of how money is being spent – such as through revised SEND funding agreements between the DfE and local authorities.
35. Whilst centralised intervention and support for councils may address elements of the variance in performance across some local authorities, it is unlikely to fully solve the deeper problems within the system. The fact that so many local authorities are struggling with the current system suggests that the existing problems are not driven primarily by a failure in local authority performance but a failure in the system itself. As such the priority for reform must be to address the systemic cause of most of the problems – i.e. matching parental and societal expectations for support for children SEND within an appropriate funding envelope for schools and local authorities.
36. CCN member councils do not object to the proposals in the paper for further scrutiny by the DfE of the processes that they are administering on the ground as it is expected it will provide a means for central government to better understand the scale of imbalance presently in the system.
37. Inspection and monitoring can be a key driver and influencer of practice. 'Local inclusion dashboards' to make roles and responsibilities within the system is one such proposal in the Green Paper that may be effective in this regard and if set up correctly could, for instance, help clarify financial responsibilities between different agencies which is desperately needed.
38. But equally such a measure must be introduced in a considered way and the indicators carefully designed so as not to drive unintended behaviours that could unintentionally lead

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<sup>1</sup> <http://www.countycouncilsnetwork.org.uk/download/4147/>

to even more inequality into the system. More widely, though, the Government should be aware of the potential risks overall of introducing greater national oversight and standards, – in particular the likelihood of creating greater bureaucracy at local (and national) level which is only likely to make further demands on the limited resources available to support provision for children with SEND.

39. In summary, CCN believes a national framework of standards will provide clarity over expectations for all stakeholders in the system. However, this will only be successful if accompanied by sufficient resources to meet these standards – as well as clear responsibilities and enforcement measures to ensure the role of partner bodies working alongside the local authority such as Multi-Academy Trusts, Integrated Care Systems, OFSTED, and SEND Tribunals.

### **Ensuring a functional market for SEND placements**

40. The Green Paper does not explicitly explore in detail the issues local authorities are experiencing around the increasingly dysfunctional market for SEND provision. Too much of the HNB deficits outlined above are being generated by a small number of extremely high cost placements, usually in Independent Special Schools.
41. At present local authorities have very little scope to prevent these placements where they feel they are inappropriate, as if requests are refused they are aware of the very limited chances of winning a tribunal if parents bring one. It should also be noted that the 96% rate of tribunal success quoted does not even take into account the number of cases CCN is aware of anecdotally which member authorities tell us never go to tribunal in the first place for the very reason that the council knows they are likely to have their decision overturned while adding further costs through legal fees.
42. With this in mind some of the proposals to bring more national standards into the system as suggested in the Green Paper may be very welcome in addressing this problem. For example CCN welcomes the proposed system of banding and price tariffs as a means to better clarify and quantify expectations of what the system can provide – and what provision is likely to be most appropriate to meet what needs – for all stakeholders engaging with the system.
43. Similarly the suggestion of mapping local provision so that a tailored list of appropriate settings that are available to meet a designated need arising from an EHCP assessment will hopefully minimise disputes at local level and reduce the amount of cases needing mediation or going to tribunal.
44. However, it is vital that tribunals are directed to recognise the authority of such lists, and guided to uphold a decision to send a child to a setting from the tailored list in most circumstances. Independent providers – being profit-making in most cases – are likely put together persuasive cases for their school meeting any need. Parents may not realise that such a school canvassing them might not be the most appropriate option when faced with marketing materials suggesting otherwise, leading to greater likelihood of a decision being challenged at tribunal.
45. Finally the capital funding being made available will also allow councils to create more of their own SEND provision, either attached to existing schools and alternative provision, or even stand-alone in some cases. This will also help to mitigate some of the negative effects that have been occurring in the market more recently.

## **Early intervention/identification**

46. The focus on early intervention articulated in the Green Paper to tackle – and potentially reduce – special educational needs is the right one. This will help to lead to better outcomes for children in many cases and at the same time help to start to arrest the sharp rise in the number of EHCPs over the past decade. In turn, this will potentially reduce the costs to local authorities of expensive specialist placements.
47. It is important that early intervention is seen in its broadest possible sense including universal interventions at young ages, not just specific efforts directed at children who may be struggling.
48. For instance it is possible the large growth in Speech and Language EHCPs issued over the past ten years may in part be due to ensuring proper exposure to speech and language while a baby or infant. For example, the growing proliferation of mobile phones and the use of headphones may be reducing some of the opportunities for early communication between parent and child (e.g. whilst in pram or pushchair) – but the importance of response and communication with a child (even before they are able to talk) can be easily explained to parents within quality early years provision as a very easy form of early intervention which can help to reduce such issues.
49. Early intervention of this sort is more important than ever. The pandemic has reduced the opportunities for socialising young children more generally, and anecdotally CCN is hearing that early years settings across England are reporting a further increase in speech and language development issues among very young children as a consequence of this.
50. However, it should be noted that a more strategic focus on early intervention will almost certainly lead to earlier identification of SEND, particularly in younger children. Whilst in some cases this may enable better treatment, it may also bring more children into the system earlier than might have otherwise been the case – potentially increasing demand for EHCPs, at least in the short term. The Government must be willing to support local authorities in the additional costs this may generate in terms of both assessments and eventual placements.
51. One important issue that would encourage early identification is to ensure that additional funding for early years settings is fully available. As most early years provision sits outside the state in private, voluntary, or independent settings the additional costs of meeting SEND needs can be considerable, with an impact on sustainability or fee levels.
52. Settings are required to meet any of a child's special needs by law – but often the resources that would make identification of SEND easily and readily available are not viable for settings needing to balance the books, with little incentive for them to invest more in this important function if it simply brings on more cost to the setting itself rather than access to greater support. Local authorities would like to offer more support to settings via the Early Years Block and the High Needs Block of the DSG, but given the extensive pressures on the HNB already outlined earlier in this response, it is clear using money to identify new need in the early years is unlikely to be prioritised above meeting the needs of those already in the system now.

## **Mental Health and SEND**

53. One particular facet of the present system which needs to be addressed is the complex relationship between mental health needs and SEND.

54. The overlap with the SEND system of the widely reported growth in child and adolescent mental health issues in recent years can be seen clearly in the Green Paper through its supporting table which shows the proportion of pupils with an EHCP by primary type of need.<sup>2</sup> Those related to social, emotional, and mental health have jumped by 35% between 2010 and 2021, even before the full effects of the pandemic (and lockdown in particular) on children's mental health is likely to show up in the figures. This is in contrast to the number of EHCPs relating to primarily physical conditions which have remained static, or even declined in some cases.
55. The seriousness of mental health conditions in children and young people is not to be underestimated and EHCP status is fully justified in supporting the additional needs of many children suffering mental health episodes. However, there can sometimes be misconceptions by parents and schools around how far many mental health conditions are recoverable from that would not be shared around physical conditions.
56. For example, whilst a school would be expected to make the necessary adjustments to support a child who had broken their leg to continue their learning with a clear trajectory for recovery, it is unlikely that an EHCP would be need to be issued in such circumstances. However, for mental health conditions it is unclear whether some EHCPs may be being sought less circumspectly by schools due to misunderstanding about the prospects of recovery with good treatment and support. The risks may be that a child is 'labelled' with a mental health condition well beyond the time they have it, and at worst being pushed further into specialist education and away from a mainstream education which may be totally appropriate from them after a period of recovery.
57. CCN research with Newton published last year demonstrated that the continuing rise in the numbers of children in care system is now not down to numbers coming into the system – which has been in decline since 2017<sup>3</sup> – but in children and young people staying longer in the system often with not enough early intervention support available to help them to return safely to their families. Similarly there needs to be more focus on how to move children with SEND back into the mainstream school system and withdraw EHCP arrangements when they are no longer necessary wherever possible.
58. As previously outlined in this response, a potential solution may be to develop a 'fixed-term EHCP' which could be used in circumstances such as these to ensure a child receives help to meet special educational needs for a determined period of time, but putting the onus on regular review with an aim to returning the child to mainstream schooling as soon as possible. This would need to be accompanied by resources from health to ensure reviews can be conducted on time, as well as a full and effective Child and Adolescent Mental Health Service to support the increasing number of children with mental health conditions across the country and promote early help in dealing with such conditions.

### **Partnership and Collaboration**

59. Change on a systemic level to make provision more inclusive and better capable of identifying and supporting needs cannot come through local authority influence alone. Only by creating a dynamic network of partnership and collaboration across all partners – including particularly health, schools, and early years providers – are reforms likely to be successful.

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<sup>2</sup> *Right Support, Right Place, Right Time* (DfE, 2022) p.90

<sup>3</sup> <http://www.countycouncilsnetwork.org.uk/download/4103/>

60. CCN welcomes the emphasis in the Green Paper placed on system roles and accountability. Some of the measures around placing more accountability on Multi-Academy Trusts (MAT) and improving ongoing monitoring of inclusion plans are most welcome. Whilst most schools recognise their duties to pupils with SEND and put in place support accordingly, a significant minority do not. It is vital that those not supporting these most vulnerable students are held to account as to the reasons why not.
61. The duty on MATs is particularly important as many at present have limited – or no – experience of providing specialist education or alternative provision. When seen in the context of the current Education White Paper it is crucial that as all schools are prospectively encouraged towards joining a MAT by 2030 that these types of provision are fully supported in the specialist ways they need to work to deliver for children, recognising where the differences – and similarities – are between mainstream and special education settings.
62. CCN would be supportive of the recommendation to the SEND Review made by the Education Select Committee that schools should not be able to be rated good or outstanding overall by Ofsted if they are not also rated good or outstanding with respect to SEND.
63. The role of health within the SEND framework is in major need of consistency across the country and it is not in the best interest of openness and transparency that each local authority must design and negotiate health commissioning for SEND support within the school.
64. CCN supports the concept that schools should be part of a strong supportive SEND system, recognising support and challenge from the sector. However, CCN also argues that structural reform through academisation will not drive an inclusive system in itself. Going forward there needs to be full clarity over wider enablers and local authority powers, supported through an inspection framework which promotes inclusion, ensuring that all schools welcome and meet the needs of all children within their communities, except for the very small minority who need specialist provision. Neither the Green Paper nor the Education White Paper have so far provided clarity over what these enablers should be.

### **Workforce**

65. CCN welcomes the proposal to change the culture and practice in mainstream education to be more inclusive, and better at identifying and supporting needs. In order to achieve this, high-quality 'joined up' universal provision must have a strong emphasis on inclusion by design to achieve person-centred support with co-production at its core. Unfortunately, the Green Paper and the Education White Paper fail to adequately identify how this will be achieved.
66. CCN recognises the current workforce challenges that all councils are facing within children's services. Increasing the knowledge and confidence of the workforce is vital to empowering teachers and other professionals and practitioners to help ensure children and young people with SEND have their needs identified and met earlier. Embracing the ethos of 'every teacher a teacher of SEND' creates a culture of inclusion, and whole-school approaches can build on this to foster a sense of belonging for everyone in a school/setting.
67. However, this must come with sufficient funding and powers to enable this to be achieved. Special Educational Need Co-ordinators (SENCO) should routinely have the opportunity to influence strategic decision-making at leadership level, and ongoing professional development and training must be provided for school, nursery, college-based SENCOs

amongst others. The same level of high-quality training must be extended to early years education, with early years settings having regular access to a SENCO and to further and higher education. Championing training, such as the accredited SENCO Award in Early Years, will help to ensure that early years practitioners in pre-reception settings have the knowledge and skills required to identify when children are struggling, or not developing to expected levels.

68. Overall training must be improved, and this needs to start with enhancing Initial Teacher Training (ITT) to ensure that all teachers are equipped to be a teacher of learners with SEND and learning differences, right from the start of their career.

### **Transitioning between children's and adult services**

69. CCN welcomes the measures in the Green Paper to encourage more support for older young people towards transition and preparation for adult life. CCN believes that more initiatives and resources are needed to support the transition between children's and adult social care services. Whilst many local authorities already employ a variety of methods to help prepare young people for transition to adult services, there are some areas where national policy presently makes this less joined up than it could be;

- (a) Firstly some CCN member councils have reported that an unintended impact of the Children and Families Act 2014 has been to shift the age at which many SEND young people now begin to prepare for independence. The option to extend of EHCP support until age 25 has broadly been a positive move – the aforementioned impact on local authority finances notwithstanding. But the intent of this reform was to provide a longer period of transition towards personal independence rather than the 'cliff edge' between children's and adult services at 18-19 which previously existed. Challenge 1 in the Green Paper identifies how *"...by age 27 they [young people with SEN] are less likely than their peers to be in sustained employment"*.

It is important that the opportunity for young people with SEND to remain in education until age 25 goes hand in hand with the associated imperative of being encouraged to move towards independence, and hopefully the workplace. It is important that children and their families – and indeed all settings – are encouraged to recognise an extended period in education or training between 19 and 25 as a vital opportunity to look ahead to personal independence rather than an end in itself. Otherwise instead of the benefits which the 2014 reforms originally intended, the changes will simply have replaced one cliff edge with another – but potentially a more disruptive one for young people and their families given the greater difficulty of change and transition that comes for many at the older age of 25.

- (b) As local health and social care services increasingly become integrated via statutory Integrated Care Systems (ICS) established by the Health and Care Act 2022, it is vital that sufficient attention is paid by ICSs to issues around SEND and transition between children's and adult services. As the new structures begin to take full shape it is vital that there is sufficient direction for children's services to be fully represented on the Integrated Care Partnership and that the ICS as a whole is formally directed to pay specific attention to children's health and care as part of its overall remit.

70. As such CCN supports the proposed supported internship programme outlined in the Green Paper as means to help address point (a). However, it is important that point (b) is also fully addressed and information routed to the whole ICS, not just the ICB, so that SEND is

placed as a key element of strategies currently being developed by ICPs across the summer and autumn.

### **Continue and clarify the expanded role of virtual schools with regard to SEND**

71. One of the principal challenges set out right at the start of the Green Paper is to improve the outcomes for children and young people with SEN. Virtual schools already have demonstrable experience of helping schools to meet the needs of one specialist cohort (children in the care system and adopted children) and their role could be further extended to support schools with the needs of more children with SEND.
72. It is to the Government's credit that in September 2021 they have already extended the strategic role of the Virtual School Head (VSH) to cover children with SEND who have a social worker. This has been a positive move, particularly in helping support local schools to improve the educational outcomes of this cohort of children, particularly given the higher proportion of children in the care system who have SEND (the virtual schools' main area of focus previously) and it is important that this extended remit continues as a key function for the VSH. This should include more responsibility for helping to train schools to understand and tackle lower level SEND needs such as emerging emotional and behavioural difficulties.
73. The virtual school can help provide a central locus for supporting all schools across a local authority in this regard and should be given a specific focus on helping schools in keeping children with SEND in mainstream education wherever possible, as well as fully supporting special schools and alternative provision to achieve the best possible outcomes for this cohort from their education – including around transitioning to adult services.
74. However, this approach will only be successful if virtual schools receive appropriate additional funding to support this extended remit. Government is therefore encouraged to give virtual schools a role in co-ordinating cross-authority support for schools to meet the needs of SEND children in their setting.