



House of Commons
Education Committee

Special Educational Needs and Disabilities: Government Response to the Committee's First Report of Session 2019

First Special Report of Session
2019–21

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The Education Committee

The Education Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Education and its associated public bodies.

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First Special Report

On 23 October 2019 the Education Committee published its First Report of Session 2019, [Special educational needs and disabilities](#) (HC 20). The Government's response was received on 20 July 2020 and is appended to this report.

In the Government's Response the Committee's recommendations are shown in **bold** type, and the Government's responses are shown in plain type.

Appendix: Government Response

Introduction

We are committed to the ongoing improvement of the SEND system and its outcomes for children and young people with SEND. We therefore welcomed the in-depth scrutiny of the Committee and also that of the National Audit Office (in their recent SEND value for money study). It has been particularly important to hear the experience of young people, parents and carers of how the system works in practice.

We welcome your finding that the 2014 reforms were the right ones—the principles of a child-centred system, with joint working between agencies and co-production with families was at the heart of those reforms. Whilst we do not agree with all your findings we readily acknowledge that, overall, the SEND system must improve. As we said in our written and oral evidence to you, there is lots of good practice around the country which we, along with school and college leaders and leaders of local authority and health services, must build on to raise the standards of support for all children and young people with SEND. So, we first wish to outline the main ways in which we are seeking to drive up the quality of the support across the country for those with SEND.

First and, for now, foremost we are ensuring there is sufficient funding. We are making more funding available to all schools so that they can offer high quality support to every child. This investment—including additional funding of £14 billion over three years, compared to 2019–20 funding levels, and levelling up funding so that all secondary schools receive at least £5,000 per pupil and (by 2021–22) all primary schools £4,000—will enable schools to improve how they meet the needs of all their pupils and students. As part of this additional funding we have, as you reference in your report, provided an extra £780 million high needs funding this year, which is an increase of 12% compared to 2019–20 funding levels and brings the total amount for supporting those with the most complex needs to £7.2 billion. This will be the largest year-on-year increase since the high needs funding block was created in 2013. This additional funding will help every pupil and student to access the education that is right for them so they can reach their potential.

Alongside additional funding, we are taking further action to improve outcomes for those with SEND. We have, as you acknowledge in your report, launched a major, cross-cutting review of the SEND system. Many of your recommendations fall within the remit of that review. The review team is actively considering the analysis and the evidence that the

Committee has supplied through its report. But the review is not standing in the way of us taking action now. In addition to boosting budgets significantly, some of the key actions we are taking to drive up the quality of the SEND system are as follows:

- **Inspection:** We have a comprehensive Ofsted/Care Quality Commission (CQC) Area Inspection/revisit programme and have strengthened the approach that we and NHS England take to respond to findings, especially in areas required to produce a Written Statement of Action (WSOA). The programme of inspections and revisits is temporarily suspended due to the pandemic, but we continue to work with partners, including Ofsted and CQC to support local areas to work across agencies to deliver their SEND responsibilities.
- **Improvement and intervention support:** We have expanded our team of SEND Advisers and regional case leads to respond more pro-actively and effectively where improvement is needed and we will continue to take appropriate action to accelerate progress, including the use of an Improvement Notice or Statutory Direction, as we have with Sefton and Kingston upon Hull. During the pandemic, our SEND Advisers remain active, supporting and challenging local authorities and others, including identifying issues, and gathering and helping share good practice.
- **Participation and co-production:** We have recognised the need to improve the quality of information, advice and support for children and young people with SEND and their parents. That is why we are investing nearly £28 million between June 2018 and March 2021 to improve local information, advice and support services—over and above what local authorities provide. This funding offers families access to a national helpline and online service. It is also important that parents can influence local and national decision-making, which is why we have provided grants of £15,000 to each parent carer forum since the 2014 reforms were introduced, and supported the charity Contact to provide forums with support and training and to support local forums and fund the National Network of Parent Carer Forums.
- We have also worked with Ofsted to introduce a new approach to the inspection of schools and colleges introduced in September 2019. Ofsted's new Inspection Framework requires inspectors to have a stronger focus on disadvantaged groups including those with SEND.
- We established the national SEND System Leadership Board in spring 2019 to provide cross-sector leadership between education, health and social care as well as the third sector and parents, to improve strategic joint commissioning outcomes and provision planning for all children and young people across the SEND spectrum. The Board seeks to promote early intervention by working with local areas to improve their ability to plan strategically and work jointly so as to allow them to commission timely and effective frontline provision for all children and young people with SEND, including those with more complex needs.

We include further details of this work below.

Before addressing the Committee's recommendations in more detail, we also want to address the impact of the Coronavirus (COVID-19) outbreak on education and support for children and young people with SEND. The great majority of children and young people with SEND have been at home during the crisis, and even those still attending their school or college have generally not been receiving their usual support, and not receiving it in the usual way. We appreciate that this has been and still is a particularly difficult time for children and young people with SEND and their families, but safety will always be our primary concern. We are sincerely grateful for everything children and young people with SEND, their parents/carers and families, and those in the SEND sector who support them have been doing at this challenging time.

While lockdown was a necessary step to save lives, it has been hard for children and young people and their families. We are grateful to those staff members, schools and colleges, and families who have supported children and young people during this time and continue to do so. We have introduced a number of measures to support these families:

- We have committed over £37 million to the Family Fund to help tens of thousands of low-income families with children who have complex needs and disabilities. This includes £10 million to respond to COVID-19, and will help buy a range of things including educational and specialist equipment for children.
- We have produced guidance to support Local Authorities, schools and colleges to risk assess children and young people with Education Health and Care (EHC) plans, which enabled, as of 9 July 2020, 82,000 children and young people with an EHC plan to attend an education and early years setting.
- On 1 May 2020 some aspects of the law on education, health and care (EHC) needs assessments and plans changed temporarily to give local authorities, health commissioning bodies, education settings and other bodies who contribute to these processes more flexibility in responding to the demands placed on them by coronavirus (COVID-19). We have produced guidance for special schools and specialist settings to plan for a safe full time return to school for all children from September (<https://www.gov.uk/government/news/schools-and-colleges-to-reopen-in-full-in-september>).
- We have published a list of high quality online educational resources to support home learning, including materials for children and young people with special educational needs and disabilities of all ages (<https://www.gov.uk/guidance/help-children-with-send-continue-their-education-during-coronavirus-covid-19>)
- We fund the charity Contact to provide a free helpline to families of children with SEND and provide £2.3m per year to support parent carer forums for parents of children with SEND.

The pandemic has also influenced our ability to respond to some of the Committee's recommendations in as much detail as we had intended to do by this time, because it means that we have had to pause some changes to services, for example the inspections change mentioned above. Because of this, we will write again to the Committee later in the year with an update. By that time we anticipate being able to say more about, for

example, the SEND Review, Ofsted and the Care Quality Commissions work on a new inspection framework, and on matters such as local authority capacity as, hopefully, we emerge from the Covid-19 crisis.

We would like to thank the Committee for its careful consideration of these issues, for its report and recommendations, and for its patience and understanding during the Covid-19 pandemic. Our detailed responses to those recommendations are attached.

1. We are confident that the 2014 reforms were the right ones. We believe that if the challenges within the system—including finance—are addressed, local authorities will be able to discharge their duties sufficiently. (Paragraph 17)

2. We recommend that when the Government makes changes to address these challenges, it should avoid the temptation to address the problems within the system by weakening or watering down duties or making fundamental changes to the law. (Paragraph 18)

The issue underlying the Committee's recommendation on finance is one the Government has recognised in the significant injection of an additional £14 billion into the schools system, over three years, including a 12% increase in the high needs budget for 2020–21.

Additional funding is necessary but not all that is required for the system to run effectively. The reforms of 2014 gave vital support to more children and young people and the underlying principles of the legislation remain sound. Yet there is a great deal of variation in people's experience of the system and it is right that we now look at these reforms, to understand how we could do more to support this group of children and young people and their families.

That is why in September 2019, we announced a cross-Government review of SEND. The review aims to understand how we can do more to boost outcomes and improve value for money, so that vulnerable children have the same opportunities to succeed, as well as improving capacity and support for families across England. The review's remit is wide-ranging and ambitious in its approach, working across Government so that children, young people and their families can have greater confidence in the system designed to offer them the help they need at the earliest possible point.

Given that the purpose of the review is to ensure that the system delivers the best possible outcomes for children and young people, we do not believe it would be right to rule out options yet. We do agree, however, that any further significant legislative change would carry risk and could not solve problems in isolation.

3. The Department for Education set local authorities up to fail by making serious errors both in how it administered money intended for change, and also, until recently, failing to provide extra money when it was needed. (Paragraph 20)

4. The significant shortfall in funding is a serious contributory factor to the failure on the part of schools and local authorities to meet the needs of children and young people with SEND. However, unless there is a systemic cultural shift on the part of all parties involved, additional funding will make little difference to the outcomes and experiences of children and young people with SEND. (Paragraph 21)

5. While we acknowledge the extra money provided in the spending review, both for schools and social care, we deeply regret that this spending review process was insufficient in tackling the fundamental challenges facing both children and adult social care. We acknowledge the Government's recent Budget announcement and hope that this will be tackled at that point. (Paragraph 24)

6. Nobody benefits when Departments avoid accountability and try and pass the buck. The Department for Education, together with the Department for Health and Social Care, should develop mutually beneficial options for cost- and burden-sharing with the health and social care sector. (Paragraph 25)

Paragraph 20: Funding for the additional costs to local authorities of the reforms We do not accept the Committee's finding.

We provided a total of £252 million to local authorities to support them to implement the new SEND duties in the Children and Families Act 2014. This includes £70 million in 2014 to help local authorities prepare and £153 million of 'new burdens' funding through our SEND Reform Grant, distributed from 2014–15 to 2017–18, which played a key role in enabling local authorities to review the 237,111 statements of SEN they maintained in 2014 and convert them into new EHC plans. In addition, we provided a further £29 million in 2017–18 to help local authorities embed the reforms. This funding was distributed through an un-ringfenced s31 grant, in keeping with the Government's approach to 'new burdens' funding: it is the responsibility of central Government to change the statutory framework and ensure no unfunded new burdens are introduced, but it is for local authorities to implement new statutory duties as they consider most appropriate.

We feel that in the best local authorities, the implementation grant was used for its intended purposes. For example, many local authorities used the grant to develop their Local Offer; most of these had a Local Offer in place on 1 September 2014, and the others followed soon after. All local authorities started the new EHC needs assessment process in September 2014. However, for some, there were ongoing challenges for some time to embed new ways of working across the full multi-agency workforce, and to develop the quality approaches intended by the reforms. The challenge of converting statements to EHC plans was also an issue for a small number of authorities. For all of these areas of development, the Department supported implementation and took action where there were individual concerns.

Through the cross-Government SEND Review we are working with the Treasury and a number of other Government Departments and bodies to understand the total costs of supporting pupils with SEND, including those which fall outside the education system. This will allow us to take a joined-up approach to considering questions of value for money and sustainability.

More broadly, we are also planning to launch a large-scale value for money study of SEND provision as part of the SEND Futures initiative, which would provide information on the outcomes achieved and costs of different types of settings for children and young people with EHC plans in England. Preliminary analysis needed ahead of the commissioning of such a study is currently underway. Publication of the report of the survey has been delayed due to the coronavirus pandemic, but it will be published as soon as possible.

Paragraph 21: additional funding and cultural shift over SEND.

We agree that a cultural shift is important and we are working to support that shift. For example, in terms of joint working between agencies, the joint Ofsted/CQC inspection regime considers all the partners in a local area. Similarly, the SEND Leadership Board brings together leaders across the SEND sector to ensure joint action, particularly on commissioning. The current National SEND Tribunal Trial is piloting whether the First Tier Tribunal making non-binding recommendations on health and social care matters is an effective means of ensuring better join up. The trial was due to end on 31 August 2020. However, given the understandable pressures local areas are under as a result of coronavirus (COVID-19), the Government believes it is not the right time to introduce any changes to this policy. We have therefore decided to extend the trial until 31 August 2021. Alongside this, we have supported the engagement of families and co-production by funding a Parent Carer Forum in every local authority in England.

Paragraph 24: Financing of children and adult social care.

The 2020–21 local government settlement set out proposals to increase local government resources by 4.4% above inflation, the largest increase in spending power in almost a decade. Under these proposals, core spending power will rise from £46.2 billion in 2019–20 to £49.1 billion in 2020–21.

We recognise the demand pressures on children's social care and the Government is serious about protecting and supporting the millions of people that rely upon both adult and children's social care services. Therefore, the settlement proposes local authorities to access an additional £1.5 billion for social care. This comprises £1 billion of additional grant—for both adult and children's social care—and a proposed 2% Council Tax precept for adult social care, which will enable local authorities to access a further £500 million. £150 million of the additional grant will be used to equalise the distributional impact of the adult social care Council Tax precept.

These additional resources sit on top of the existing social care package, which will continue at 2019–20 levels, and mean that local authorities will have access to almost £6 billion of dedicated funding across adult and children's social care in 2020–21.

For Spending Review 2020, the Department is working closely with other government departments and drawing on intelligence from the sector to further build the evidence base on funding for children's social care.

The SEND reforms set out in the Children and Families Act 2014 established a clear, multi-agency approach to supporting children and young people with SEND and we know that the SEND system can only work effectively when education, health and care partners all play their part. While some local areas have established strong multi-agency approaches to supporting children and young people with SEND, we know this is not the case across the country.

The importance of children's social care was signalled in the Government's manifesto, and we are committed to undertaking a review at the earliest opportunity. The review will be independently led and will be bold and broad, taking a fundamental look across children's social care, with the aim of better supporting, protecting and improving the outcomes of vulnerable children and young people.

Paragraph 25: Options for the education sector cost- and burden-sharing with the health and social care sector.

The Department for Education, Department for Health and Social Care and NHS England are committed to working jointly to improve outcomes for children and young people. In line with the response given above, the Department for Health and Social Care has said:

- We have provided councils with access to an additional £1.5 billion for adult and children's social care in 2020/21 on top of maintaining £2.5 billion of existing social care grants. This will support local authorities to meet rising demand and continue to stabilise the social care system.
- This includes an additional £1 billion of grant funding for adult and children's social care, and a 2% precept that enables councils to access a further £500 million for adult social care.
- The additional funding for social care was part of a Local Government Finance Settlement that increased Core Spending Power by 4.4% in real terms, the largest year on year real terms increase in a decade.
- Future funding for social care will be set out at the next spending review.

A key strand of the cross-Government SEND Review is considering how current accountability and funding structures influence cross-sector working. We recognise that further action is needed in this space to improve effective collaboration across health, education and care, to provide better and more effective support for children and young people with SEND, and will provide further detail through the SEND Review.

7. Nobody appears to be taking any action based on the counting and measuring that is taking place, but even worse, no one appears to be asking anyone to take responsibility for their actions. There appears to be an absence of responsibility for driving any change or holding anyone accountable when changes do not happen.
(Paragraph 27)

8. We are pleased that the Department for Education has asked CQC and Ofsted to design a second round of inspections for beyond 2021. However, simply designing "a revisit programme" to "keep going on that improvement journey" is insufficient.
(Paragraph 28)

9. The joint CQC and Ofsted inspections should not continue to be one-offs but should become part of an annual inspection process to which all local authorities and their partners are subject. CQC and Ofsted should be funded to be able to deliver this rigorous inspection timetable. CQC and Ofsted should design and implement an inspection regime that not only improves practice but has a rigorous framework that enables local authorities and their partners to be held to account and sets a clear timeframe for re-inspections. Ofsted and CQC should also clearly set out the consequences for local authorities and health bodies that fail their annual inspection.
(Paragraph 29)

Paragraph 27: Nobody appears to be taking any action based on the counting and measuring that is taking place.

The Department for Education's responsibility is to set and oversee the statutory framework that underpins the SEND system, monitor the overall health and success of the system and to respond where signs of failure are identified.

Our priority is to support and challenge local authorities and their partners to deliver high quality services and to hold them to account where this isn't happening, taking appropriate action that will support bringing about sustained and long-term improvement.

The Government has accountability arrangements in place, at both the educational setting level and the local area level, to hold partners to account for supporting children and young people with SEND.

In 2019 we required all local authorities (LAs) with a cumulative Dedicated Schools Grant deficit of more than 1% at the end of the 2018–19 financial year to submit a recovery plan setting out how they will reduce their deficit position. 32 LAs were required to submit plans. We have reviewed these plans and provided written feedback. To date we have held follow-up discussions to 24 local authorities who requested them, or we felt needed support.

In 2020, the DSG's conditions of grant were updated to require all LAs with an overall deficit on their DSG account at the end of the 2019 to 2020 financial year, or whose DSG surplus has substantially reduced during the year to co-operate with the Department in handling that situation. A new template and guidance will be published regarding this in due course.

Paragraph 28: simply designing "a revisit programme" to "keep going on that improvement journey" is insufficient.

We consider our programme of revisits and other related activities to be sufficiently robust in holding the system to account. In terms of local areas, the Ofsted/CQC joint SEND inspection framework sets out that LAs and Clinical Commissioning Groups (CCGs) are jointly responsible for leading the response to findings. Local areas are adapting to the biggest SEND changes in a generation and Ofsted and the CQC are finding strengths within all services, including those which also have some areas of concern. The inspections are identifying a number of local areas where improvement is needed, but they are also identifying strong performing local areas across the country.

Where concerns are identified, local areas are required to produce a Written Statement of Action (WSOA) setting out how they will address one or more areas of significant weakness identified by the inspectors. The Department works closely with partners, including NHS England, to support and challenge those local areas to help ensure children and young people get the support they need.

Our expanded team of 10 DfE SEND advisers are part of a Department for Education-funded package delivered by external contractors to provide support and challenge to local areas, including those yet to have their Ofsted/CQC inspection. This includes training and resources (including on effective practice), local authority-led regional networks and

school improvement. One specific area of activity undertaken by the team is follow-up to the annual SEN2 data publication, where the team challenge poor performance on key areas of performance, such as timeliness of assessments.

In December 2018 we introduced Ofsted and CQC revisits to all local areas with a WSoA—further strengthening the system. 9 out of 21 areas revisited by Ofsted and CQC so far have been assessed as having made sufficient progress against every area of weakness previously identified. Of the remaining 12 areas, one failed to make sufficient progress against any area of weaknesses. In this case, we issued a formal Improvement Notice which is the next step. We are holding these 12 areas to account through a local area led action plan setting out how local leaders will accelerate progress, with formal progress reviews taking place at least every 6 months. Where we have serious concerns about a local area's performance or progress we have the option to issue a formal Improvement Notice, as we did in Sefton. Ultimately we would issue a Statutory Direction, as we have recently done in Kingston-upon-Hull, where the Statutory Direction covers both SEND and children's social care.

Paragraph 29: The joint CQC and Ofsted inspections should not continue to be one-offs but should become part of an annual inspection process.

The Government is working closely with Ofsted and CQC to design a new inspection framework. We recognise the importance of making sure that this new framework is focused on the things that matter most to children and young people with SEND. We are committed to creating a sustainable forward approach, which builds upon our learning from the first set of inspections and is designed to drive the right behaviours of local areas to achieve lasting improvement. As part of this we will consider the Committee's recommendations, including whether to make SEND inspections continuous and include annual engagement activities with local areas.

10. Two select committees have independently identified a problem with the current extent of the powers of the Local Government and Social Care Ombudsman: It is now up to the Government to act. The Department should, at the earliest opportunity, bring forward legislative proposals to allow the Ombudsman to consider what takes place within a school, rather than—in his words—only being able to look at “everything up to the school gate”. (Paragraph 31)

We welcome the Committee's interest in this area and the way in which the Local Government and Social Care Ombudsman has engaged with us over the recommendation. We will continue to communicate with the Ombudsman and stakeholders to ensure complaints are handled appropriately.

11. We do not think that the Department for Education is taking enough responsibility for ensuring that its reforms are overseen, that practice in local authorities is lawful, that statutory timescales are adhered to, and that children's needs are being met. We are concerned that the Department has left it to local authorities, inspectorates, parents and the courts to operate and police the system. There is a clear need for the Department to be more proactive in its oversight of the way in which the system is operating. However, ultimately, local authorities must ensure that they are compliant with the law as opposed to waiting to be caught out by an inspection regime, parents or other professionals. (Paragraph 33)

In our response to recommendations 7–9 above we have set out that the Department for Education's responsibility is to set and oversee the statutory framework that underpins the SEND system, monitor the overall health and success of the system and to respond where signs of failure are identified.

Our priority is to support and challenge local authorities and their partners to deliver high quality services and to hold them to account where this isn't happening, taking appropriate action that will support bringing about sustained and long-term improvement.

The Government has accountability arrangements in place, at both the educational setting level and the local area level, to hold partners to account for supporting children and young people with SEND.

It is of course also right for inspectorates and SEND Tribunals to play the roles they are there to deliver as a way of ensuring local authorities are compliant. As also set out above we have an active network of SEND advisers in place to support and challenge local authorities, working alongside and feed into the Department for Education's SEND Improvement and Intervention Unit.

12. The Government should introduce a reporting and accountability mechanism for non-compliance so that parents and schools can report directly to the Department for Education where local authorities appear not to be complying with the law. It should also implement an annual scorecard for local authorities and health bodies to measure their success against the SEND reforms including, but not limited to, reports of non-compliance; the school placement of children and young people with SEND, including those without a school place; Tribunal hearings, and how local authorities meet statutory timescales. These scorecards, along with a summary document, should be placed in the House of Commons library no later than three months after the end of the year to which they relate. (Paragraph 34)

We believe that the accountability measures already in place, along with published performance data and existing routes for raising complaints about local authority performance, address this concern.

Where parents have significant concerns, they may already access the local authority complaints system or approach the Local Government and Social Care Ombudsman or First Tier Tribunal (SEND)—and they are supported in doing so by the Independent Advice and Support Services which exist in every local area, and through a range of charities and other organisations, such as IPSEA—the Independent Parental Special Educational Advice (IPSEA). They may also write directly to the Secretary of State to ask him to intervene where a local area has failed to meet its statutory duties or has acted unreasonably in doing so.

While it is not a requirement for local authorities to publish a scorecard, they are required to publish and maintain a Local Offer, describing the full range of services available locally. A range of performance data for children and young people with SEND (including on attainment, absence and experience of the system) is published throughout the year across Government. This information is collated into an annual summary publication by the Department for Education: SEN Analysis and Summary of Data Sources. The

Department also provides a comprehensive benchmarking tool, the Local Authority Interactive Tool (LAIT) hosted on gov.uk, to facilitate LA access to key SEND data: Local Authority Interactive Tool.

This data is also used by the Local Government Association to update its LG Inform data site at <https://lginform.local.gov.uk/>. This provides holistic SEND data reports for individual local authorities and allows them to compare their performance on SEND with that of other local areas.

All SEND inspection and revisit reports are published and where a WSoA is in place, a local area must publish this and keep it updated so that partners, including families, can see the progress being made with improving services.

Finally, Statutory Directions and Improvement Notices are published documents which set out the steps a local authority must take to improve following a poor inspection, revisit or Departmental progress review.

13. Additionally, we expect the Department's SEND Review to fundamentally address the relationship between need and available provision. (Paragraph 36)

14. We call on the Government to make the notional budget a focus of its review into the financial arrangements of provision for pupils with SEND, and for those in alternative provision. The Government should pay particular attention to ensuring that the funding system works for children and young people with SEND who do not need EHCPs so that they are not inevitably dragged into that part of the system. This issue must be sorted as soon as possible and not kicked into the long grass. As part of its SEND Review, the Department should identify local authorities with excellent examples of early identification and preventative measures and the spending of budgets upstream and ensure these examples are shared. (Paragraph 38)

Paragraph 36: the Department's SEND Review to fundamentally address the relationship between need and available provision.

We welcome the Committee's analysis and agree that the SEND Review should address the relationship between need and available provision. DfE is committed to making sure that every child gets the support they need to thrive, which is why the SEND Review is actively considering ways to deliver greater consistency in the quality and availability of provision to meet the needs of children and young people with SEND, including those without EHC plans.

Paragraph 38: the Government to make the notional budget a focus of its review into the financial arrangements of provision for pupils with SEND, and for those in alternative provision.

In summer 2019 the Department for Education called for evidence on the financial arrangements for supporting children and young people with SEND and for those in alternative provision, including the notional SEN budget that is included in all mainstream schools' annual allocations of funding. A range of views were expressed about the value of identifying a notional budget for schools, and how this could be changed. The SEND

Review is looking more broadly into the arrangements for supporting pupils with SEND in mainstream schools, as well as the statutory processes for EHC assessments and plans, including consideration of funding.

15. We heard a lot about local authorities' poor performance. But for children who receive SEN Support, they rely primarily on their school to get their support needs right. If, for whatever reason, a school fails to provide high quality SEN Support, the child is failed. We are pleased that Ofsted's new framework includes a focus on children with SEND. (Paragraph 41)

16. As the Office for Standards in Education, Children's Services and Skills, Ofsted is responsible for ensuring that "organisations providing education, training and care services in England do so to a high standard for children and students." We do not think enough is being done to ensure that every pupil with SEND receives a high standard of education and that all schools are inclusive. Ofsted must deliver a clear judgement, and through this assurance to parents, that schools are delivering for individual children with SEND. It should either seek to do this through its existing programme of inspections, or alternatively develop a separate type of specialised inspection focusing on SEND, with a particular focus on the school's responsibility to deliver for pupils on SEN Support and that inclusive schools get the recognition that they deserve. If this requires legislative change, the Department should work with Ofsted to bring forward proposals at the earliest possible opportunity. (Paragraph 42)

Response from Ofsted: paragraph 42

This is a recommendation to Ofsted. Ofsted has provided the following response:

Ofsted launched the Education Inspection Framework (EIF) in September 2019, following extensive consultation with providers, parents and stakeholders. The effectiveness of SEND provision features prominently in the new framework. The EIF makes it clear that schools should have an inclusive culture. Schools should identify and help pupils who have additional needs or have barriers to learning, drawing on specialist support where necessary, to make sure they have a positive experience of learning and achieve the best possible outcomes. In EIF inspections, inspectors take a rounded view of the quality of education that a school provides to all its pupils, including those with SEND, from the start of schooling to the point when pupils leave.

17. We recommend that the Department for Education strengthen the guidance in the Code of Practice on SEN Support to provide greater clarity over how children should be supported. The Department should also amend the guidance on Education Health and Care Needs Assessments and Plans to create a clearer and more standard interpretation of the process that should be followed for Education Health and Care Needs Assessments, with the aim of reducing paperwork and simplifying processes for all involved. (Paragraph 43)

We welcome the recommendation that the Department should "strengthen the guidance in the Code of Practice on SEN Support to provide greater clarity over how children should be supported," which chimes with the importance we place on the SEN Support system in mainstream schools. This is at the heart of our approach to SEN. However, we

recognise that we need to do more to improve support for pupils without EHC plans and are exploring whether we need to clarify the expectations on schools over the SEN Support they provide to children who do not have EHC plans as we revise the Code of Practice.

We know that the quality of teaching is the most important in-school factor for improving the outcomes for all children and that this is particularly important for pupils with additional needs. The initial teacher training (ITT) core content framework has been designed around how to support all pupils to succeed and seeks to widen access for all, including those pupils identified within the four areas of need set out in the SEND Code of Practice.

We also aim to ensure all teachers are equipped with skills to support pupils with SEND and are able to access specialist expertise when needed. Since 2018, we have contracted nasen to fund the Whole School SEND Consortium, to deliver a programme of work which aims to embed effective SEND provision within schools in order to equip the workforce in mainstream and special schools to deliver high quality teaching across all types of SEN. This involves ensuring the school workforce recognises the value of, and knows how to access, high quality training and continuing professional development (CPD) opportunities, and to identify appropriate, evidence-based interventions.

We have also funded the creation and publication of a breadth of good practice materials for mainstream schools on the SEND Gateway—a platform on which schools can assess information and resources about SEND. This includes a case study based ‘What Works’ resource to give school leaders, teachers and practitioners ready access to information and evidence-based practice that can be effective for SEN support, and a suite of condition specific videos to support newly qualified teachers to identify and support SEN in the classroom, amongst several other resources.

We agree with the Committee that the process for EHC plans should be looked at, with a view to clarifying and, as far as possible, seeking to simplify it. This is being considered as part of the SEND Review and decisions on that will subsequently inform our review of the SEND Code of Practice.

18. The Department for Education should, within six months of the publication of this report, issue updated guidance setting out that all SENCOs should undertake the NASENCO course upon taking on a SENCO role. It should also commission an independent reviewer to examine the cost implications of requiring all schools and colleges to have a full-time dedicated SENCO and recommending the size of school which should only be required to employ a part-time dedicated SENCO. (Paragraph 45)

We agree that SENCOs play an important role in schools, providing leadership and support to teachers and the whole school in meeting the needs of pupils with SEND, and ensuring that schools have a clear and effective approach to SEND. That is why there is a requirement on SENCOs to hold Qualified Teacher Status (QTS) and to complete the National Award in SEN Coordination (NASENCO)—the only other roles in the education system that require mandatory qualifications in addition to QTS are teachers of classes of pupils with Sensory Impairment.

All mainstream schools (maintained, academy and free school) must employ a SENCO who must be a qualified teacher. We are reviewing the learning outcomes that provide a

national framework for the NASENCO. We want to ensure that they reflect the changing needs of the educational system and continue to equip SENCOs with the skills and knowledge they require for the role.

SENCOs appointed after 1 September 2009 who do not have the requisite experience are required to achieve a Masters-level National Award in SEN Co-ordination (NASENCO), which must be achieved within three years of appointment. We believe that it is right that the requirement focuses on the time that it must take to complete the qualification rather than stipulate a time by which it must be started. Although the NASENCO must be achieved within three years of the SENCO being appointed, many NASENCO courses are typically delivered over one academic year so the Award can be achieved much sooner than the specified three years.

We believe that three years is the right amount of time to ensure SENCOs are able to complete the course, whatever their circumstances. We also believe that it is right that SENCOs employed before 1 September 2009, who have the requisite experience, are exempt from undertaking the NASENCO. As such, we reject the recommendation that the Department should issue guidance that all SENCOs should undertake the NASENCO course upon taking on a SENCO role.

The 0–25 SEND Code of Practice is clear in its expectations that SENCOs should have sufficient time to carry out their role. Schools are best placed to identify the individual needs of their pupils and consider the level of support they need. It is therefore right that schools should make decisions on how to resource their SENCO and determine whether the role should be full or part-time. The SEND Review is taking a fundamental approach to how we better identify and support children and young people including through mainstream education. In that context we do not accept that an independent reviewer to examine the role or costs of the SENCO is needed at the moment, but have noted the recommendation as the work of the SEND Review continues.

We have funded the development of a SENCO Induction Pack (<https://www.sendgateway.org.uk/whole-school-send/sencos-area/>) through the Whole School SEND Consortium, which was developed by SENCOs for SENCOs. It sets out the key requirements of the SENCO role and provides information that SENCOs will need to help them perform effectively in the role. It signposts them to a range of resources that will help deepen their knowledge and understanding.

We have also funded the development of an Effective SENCO Deployment Guide (<https://www.sendgateway.org.uk/whole-school-send/find-wss-resources/>) through the same contract, which is aimed at school leaders and will enable them to make best use of their SENCO both strategically and operationally, and deploy them more effectively within the school. The guide also includes a link to recommendations from nasen on the time schools should allocate to the SENCO.

19. The Government should encourage local authorities, and if necessary provide them with the relevant powers, to bring all SENCOs from all schools in their area together, in order to share best practice, knowledge and training. (Paragraph 46)

Most local authorities (LAs) already provide SENCO network meetings and work with groups of schools and other settings (early years and further education) to help support the needs of children and young people with SEND within the local area. Our sources

of information indicate that these meetings are equally well attended by SENCOs from maintained schools and academies. We do encourage local authorities to do this, via our network of SEND advisers.

This work includes a range of aims, including to ensure that SENCOs are up-to-date with national and local SEND developments, provide a professional development programme, and, in a few instances, to undertake moderation exercises such as to ensure that assessment or support are similar in different schools for children with similar needs or attainment. Many LAs also employ Area SENCOs who provide support, advice and training on SEND to schools and other settings including the early years sector.

We also work closely with the SENCO Forum Advisory Group who provide an online peer support space for SENCOs to discuss and share practical advice and knowledge on SEND related issues. The advisory group uses the intelligence it gathers from the forum to help feed and shape departmental policy and practice.

Given that there is a considerable amount of activity at local level that brings SENCOs together, we do not feel that statutory powers are needed to put this in place. In the small number of areas where it is not yet in place, we will continue to encourage this practice.

Since 2018, we have also funded the establishment and ongoing activity of Regional SEND leaders and deputies in each of the eight Regional Schools Commissioner (RSC) areas through the Whole School SEND Consortium. Regional leads have built relationships with Teaching School Alliances (TSAs), RSCs, local authorities, Multi Academy Trusts, and local professional networks (e.g. NQT, SENCO and headteachers groups) to understand and respond to their local SEND needs. Their activities, including 45 CPD training events within the 2019–20 contract year, have provided further opportunities for school improvement stakeholders including SENCOs to develop skills and identify and share best practice. Regional leaders work to ensure participants include other senior leaders or Heads, in addition to SENCOs, to ensure SEND is prioritised within school leadership and not seen as only the responsibility of the SENCO. This CPD activity is continuing throughout COVID-19 to provide valuable training and sharing of best practice within the schools' workforce so they can support pupils with SEND throughout this time.

20. When developing its new framework for inspections, Ofsted and CQC should ensure it includes a requirement to inspect the availability, take up, quality and provision of the training and continuing professional development regarding SEND law of all local authority professionals who are engaged in Education Health and Care Needs Assessments, plan writing and reviewing and Tribunal work. This should be explicitly reported on in inspection reports. (Paragraph 48)

As per our response to paragraph 29 of the report, the Government is working closely with Ofsted and CQC to design a new inspection framework. We recognise the importance of making sure that this new framework is focused on the things that matter most to children and young people with SEND.

21. As part of the Government's SEND Review, it should map therapy provision across the country and identify cold spots. This should be a priority and the results of the mapping published as soon as it is completed. Separately and subsequently, the Government should set out a clear strategy to address the problem. (Paragraph 50)

DfE agrees that getting prompt access to therapies to children is essential, and clearly LAs have considerable responsibilities in this area, working with CCGs to jointly understand local needs across education, health and care, and agree who will commission these services. Under s27 of the Children and Families Act, LAs must keep educational and care provision for SEND children under review, including its sufficiency. Under s30 of the Children and Families Act they must also produce the Local Offer setting out the education, health and care provision available and keep the Local Offer under review. The Local Offer also sets out information as to the health care provision such as speech and language therapies, physiotherapy, occupational therapy and mental health support, which LAs and CCGs should monitor in their joint commissioning arrangements.

While mapping 'cold spots' in provision is a useful exercise, the SEND Review team has sought to understand the underlying causes of why providing access to these therapies is difficult, informed by constructive conversations with relevant professional bodies. For example, whether difficulties in access provision is through lack of available healthcare specialists, or as a result of poor commissioning.

Inspections are already highlighting where there are gaps in services or lengthy waiting lists. Where they identify acute problems with provision, this is expected to form part of a Written Statement of Action.

22. We recommend that the Department for Education explores the potential for creating a neutral role, allocated to every parent or carer with a child when a request is made for a needs assessment, which has the responsibility for co-ordinating all statutory SEND processes including the annual review, similar to the role of the Independent Reviewing Officer for looked-after children. (Paragraph 52)

23. Navigating the SEND system should not be a bureaucratic nightmare, difficult to navigate and requiring significant levels of legal knowledge and personal resilience. A child's access to support should not be determined by a parent's education, their social capital or the advice and support of people with whom they happen to come into contact. In some cases, parental empowerment has not happened. Children and parents are not 'in the know' and for some the law may not even appear to exist. Parents currently need a combination of special knowledge and social capital to navigate the system, and even then are left exhausted by the experience. Those without significant personal or social capital therefore face significant disadvantage. For some, Parliament might as well not have bothered to legislate. (Paragraph 54)

24. The Government must see support for special educational needs and disabilities as a system-wide issue and ensure that all policies are 'SEND proof'. Central Government has introduced legislation which gives significant duties to local authorities and serious freedoms in how it can deliver them, but unintended consequences of other education policies, however laudable the original policy may be, have unfortunately limited local authorities' abilities to uphold these duties and meet all children and young people's needs. Ultimately the Government must decide whether it wants local authorities to retain the statutory duties it set in place in the 2014 Act. If it does, it must give them the necessary funding and freedom to meet their local population's needs, with the appropriate accountability to ensure that they do so. (Paragraph 57)

Paragraph 53: ...the Department for Education explores the potential for creating a neutral role.

The SEND system already provides mechanisms for ensuring that families have access to support during the EHC needs assessment and plan process.

Local authorities are bound by statute (by section 19 of the Children and Families Act 2014) to consider the views, wishes and feelings of children and young people with SEND, and their parents/carers, when making decisions that affect them. They also have a duty to have in place a local information, advice and support service. These services, usually known as SENDIASS (SEND Information and Advice Support Service) offer children and young people with SEND and parents free, impartial advice and support. As noted above, in the Introduction section, we have provided additional resources to improve the quality of local services, to provide a national helpline and online service, and to invest in parent carer forums. We therefore do not consider it necessary to create an additional neutral role in this area.

Paragraph 54: Navigating the SEND system should not be a bureaucratic nightmare, difficult to navigate and requiring significant levels of legal knowledge and personal resilience.

Paragraph 57: The Government must see support for special educational needs and disabilities as a system-wide issue.

Responsibility for managing the range of special educational provision available in a local area sits with the local authority. Section 14 of the Education Act 1996 places a duty on local authorities to ensure that there are sufficient school places in their area, including for those with SEND. Under the Children and Families Act 2014, local authorities are required to keep the special educational provision in their area under review, including its sufficiency, and to work with parents, young people and a wide range of providers, to ensure the needs of children and young people from the area can be met. The Department expects that LAs consider parental choice and diversity of provision in their local area. However, the Department recognises that there are system wide issues and the experiences of many parents are challenging, which is why we have established the SEND Review to look at further improvements that could be made.

25. The Department for Education should, in the absence of other plausible solutions, enable local authorities to create new maintained specialist schools, including specialist post-16 provision outside of the constraints of the free school programme. It should amend the capacity building guidance to ensure that local authorities are able to be more responsive to their local population's needs and address the unfortunate unintended consequences of the programme. This should not detract from the principle of inclusion and right to mainstream schooling. If necessary, local authorities should also be able to build more mainstream schools outside of the free school programme. This would create a level playing field for provision within and beyond local authority structures. (Paragraph 58)

The department has allocated £365 million in capital funding between 2018 to 2021 through the Special Provision Capital Fund (SPCF), specifically aimed at helping local authorities develop provision for children and young people with SEND, for example by building new places at mainstream and special schools, and to improve existing places to benefit current and future pupils. A condition of the SPCF requires LAs to publish,

through their Local Offer information about the ways in which they have consulted with parents and carers of children with SEND and worked with education providers to agree how the capital should be best be targeted. These plans make it clear that many LAs have chosen to use this funding to invest in SEN provision in mainstream settings through new SEN units and resourced provision.

SPCF funding is on top of our investment in the free schools programme, and the £7 billion in basic need funding we have already committed to create new school places, and where necessary new schools, between 2015 and 2021.

Where an LA determines the need for additional provision that does not warrant the establishment of a new school, it is possible to propose to establish or alter SEND provision within a mainstream school by following the statutory process for making prescribed alterations to maintained schools. Where the mainstream school is a community, voluntary or foundation school, a LA can both propose changes and decide on proposals. The governing body of a foundation or voluntary school can propose both the establishment and the change of type of SEN provision. Academies looking to make such changes are required to follow the 'significant change' process. The Regional Schools Commissioner, on behalf of the Secretary of State, is likely to be the decision maker for the applications received. Changes to an academy which affect pupils with SEND require a full business case. Further information on this can be found on pages 25 and 26 of the guidance document Making Significant Changes to an Existing Academy.

We expect LAs to establish and maintain strong relationships with all local schools and academy trusts to deliver the places needed. In the first instance, it is for the LA, alongside governing bodies/academy trusts, to decide whether there is a need for a school to expand. Where an academy agrees to expand in response to a proposal put forward by a LA to meet a local need for places, we expect that the LA should meet all associated capital costs.

If a local authority identifies a shortage of special school places for children and young people in a local authority area, resulting in a significant number having to travel a long way to access an appropriate placement, local authorities will need to consider creating or expanding specialist provision, either attached to mainstream schools or in special schools.

As part of the recent mainstream free schools wave 14, we welcomed bids from mainstream free schools with SEN units or resourced provisions, supporting children with EHC plans to access mainstream education. We expect to announce the successful schools in Autumn 2020. In addition to wave 14, we have recently assessed applications to open a further 37 special and 2 AP free schools. We anticipate announcing the successful proposer groups in Summer 2020.

When LAs identify the need for a new school of any type, they trigger section 6A of the Education and Inspections Act 2006 (the free school presumption). LAs are required to facilitate a competition to find a sponsor to run a new free school and the Department will support them through this process. The LA is responsible for designing the specification for the new school and ensuring that it meets the needs of their local community. The presumption does not prevent a LA from expanding existing schools or approving a new maintained school under section 10 (where they are the decision maker) where this would also meet the need for places. Where an expansion of an existing school is suitable, we

expect LAs to work closely with maintained schools and academy trusts to ensure that the expansion meets the needs of local pupils, their families and improves outcomes for all pupils.

It remains possible for LAs to establish new maintained schools at any time, in certain circumstances. Section 10 of the Education and Inspections Act 2006 allows LAs to apply to the Secretary of State for permission to publish proposals to establish a new voluntary controlled, community, community special, foundation or foundation special school. The Department provides further advice on this in the opening and closing maintained schools guidance.

Where the LA proposes a new or replacement community or community special school under section 10, the decision-making power is passed to the Schools Adjudicator; while the LA retains this power for the establishment of new or replacement foundation, foundation special or voluntary controlled schools. The Department expects LAs to have regard to local diversity data when taking decisions; including number of schools of the same category, their Ofsted ratings and any relevant data on religious character. Where a proposed school is intended to replace an existing school, the department expects LAs to consider contextual information, including range of provision offered and educational performance, for both the closing school(s) and replacement school to ensure there is no loss in educational quality or specialist provision.

26. More needs to be done to include children and young people in the writing of their Plans and decision-making about the support they receive. The Department for Education's SEND Review should identify best practice for including all children and young people's views in the support that they receive for their SEND. The recommendations and actions from the review should ensure that there is greater support for professionals to enable them to include their views and ensure they are central to the process. (Paragraph 62)

As noted in our response to recommendation 22, local authorities have a statutory duty to consider the views, wishes and feelings of children and young people with SEND in making decisions that affect them. Local information, advice and support services must be available to children and young people with SEND, as well as to parents. Part of the funding provided by Government to improve local services is specifically to help services to improve their support for children and young people. We are also investing resources to improve participation by children and young people in local and national decision-making in relation to SEND.

27. The ambitious zeal of the Green Paper has faded, and we are seeing too much wasted potential. The Department for Education, and the country as a whole, is not ambitious enough for its young people with SEND. A lack of focus by the Department on quality post-16 provision and opportunities for young people with SEND perpetuates this lack of ambition and impacts on the routes that young people are taking post-16. Unless there is a greater focus on supporting young people into meaningful and sustainable employment and independent living opportunities, we are letting down an entire generation of young people, putting greater pressure on the benefits and adult social care system, and creating long term costs that are unnecessary and unpalatable. (Paragraph 65)

28. The Department for Education, the Department for Health and Social Care, the Department for Work and Pensions and the Ministry for Communities, Housing and Local Government should establish a ministerial-led cross-departmental working group, with representatives from the private sector, to develop and oversee a strategy to develop sustainable supported internship, apprenticeship and employment opportunities for young people with SEND. This taskforce should report regularly to the Education Committee on its work and strategy implementation. (Paragraph 66)

Paragraph 65: The ambitious zeal of the Green Paper has faded, and we are seeing too much wasted potential.

Our ambition for children and young people with SEND is exactly the same as for every other child and young person – to achieve well in school and college, find employment and go on to live happy and fulfilled lives. That is why Preparation for Adulthood is at the centre of the SEND reforms and continues to be a focus of our activity. For a number of years, DfE has funded NDTi to provide expertise and support to local authorities and their partners to embed preparing for adulthood from the earliest years.

While we disagree with the suggestion that the Department is not ambitious enough in our aspirations for young people with SEND, we agree that there is more that can be done in supporting young people into meaningful and sustainable employment and independent living opportunities.

The Department is currently engaging with stakeholders from across the education and private sectors to strengthen pathways to employment. For example, building on the recently published CooperGibson report on Supported Internships, we are developing plans to strengthen the Supported Internship programme. The Department is also working to ensure that other pathways to employment are accessible to young people with SEND, including the reform of Traineeships, and our response to the Maynard recommendations on apprenticeships.

Paragraph 66: The Department for Education, the Department for Health and Social Care, the Department for Work and Pensions and the Ministry for Communities, Housing and Local Government should establish a ministerial-led cross-departmental working group.

We acknowledge the need for Government Departments to work together to deliver on this important issue. To this end, in 2018 Ministers from DfE, DWP and DHSC agreed that a working group should be established to increase opportunities for employment for people with learning difficulties and disabilities and/or autism, and this group continues to drive policy development in this area.

The manifesto commitment to produce a National Strategy for Disabled People and to reduce the disability employment gap provides a real opportunity to build on this cross-departmental working. Our Department has a major role in delivering on this vision, particularly in relation to preparing young people for employment. We aim through education to equip children and young people to be well-rounded individuals prepared effectively for a happy, healthy and economically productive adulthood.

29. The Department for Education, in partnership with the Department for Health and Social Care, the Department for Work and Pensions and the Ministry for Communities, Housing and Local Government, should review the capacity of local

authorities to meet the independent living needs of young people with SEND. It should develop a shared action plan, setting out how it will increase capacity and opportunities as necessary and stimulate the market to enable all young people with SEND to live as independently as possible as adults. (Paragraph 67)

There are already sufficient statutory responsibilities in place. The Code of Practice explicitly states that all children and young people with SEND should be prepared for adulthood, and that this preparation should start early.

Preparing for adulthood includes preparing for independent living – this means young people having choice, control and freedom over their lives and the support they have, their accommodation and living arrangements, including supported living.

If a young person over the age of 18 continues to have an EHC plan, they may have social care and health needs. Each local authority's Local Offer must set out:

- the relationship between the Children and Families Act 2014 and the Care Act 2014
- how the requirements of both acts are being implemented locally

The Care Act 2014 places a duty on local authorities to conduct transition assessments for children or young people, their carers and young carers, where there is a likely need for care and support after the young person turns 18.

It is critically important that CCGs and health providers work closely with local authorities to provide a co-ordinated and coherent offer to young people with social care and health needs after the age of 18.

30. We recommend that the Equality and Human Rights Commission conducts a monitoring review of apprenticeship participation by gender, ethnicity and by people with learning difficulties and/or disabilities every three years. Each review should recommend changes to improve Government policy and employer practice. (Paragraph 68)

Response from the Equality and Human Rights Commission: paragraph 68

This is a recommendation to the Equality and Human Rights Commission. The Commission has responded as follows: Education is one of the Commission's strategic priorities for the period 2019–2020. Our particular objective is to ensure that schools are truly inclusive places that promote good relations with others and respect for equality and human rights. Ensuring that disabled children receive the reasonable adjustments they are entitled to under the Equality Act is an important part of this work. Since the outbreak of Coronavirus, we have re-prioritised our work in this area to focus on the equality and human rights impacts of the pandemic and the Government's response, including as a result of changes to the support which local authorities and health bodies are obliged to provide to children with EHC plans. We have set out our key concerns and recommendations in relation to this issue in submissions to the Women and Equalities Committee and more recently to the Education and Select Committee, and are preparing

a letter from our CEO to the Minister reiterating these points. The Commission notes the Committee's encouragement to carry out a monitoring review of apprenticeships and will be responding directly in due course.

31. Government should bring forward legislative proposals to place the role of the Designated Medical Officer/Designated Clinical Officer on a statutory footing at the earliest opportunity. (Paragraph 70)

We agree that the Designated Medical Officer (DMO) and Designated Clinical Officer (DCO) roles fulfil an invaluable service in leading and supporting the SEND system from a health perspective. The roles are a requirement under the statutory SEND Code of Practice which Clinical Commissioning Groups (CCGs) are legally required to have regard to, so CCGs choosing not to have a DMO or DCO must be able to explain where they choose not to follow that requirement. Government has worked closely with NHS England to ensure that CCGs do meet this requirement, and NHS England estimate that over 80% of areas have sufficient cover for these roles. On that basis we believe legislative interventions are unnecessary at this time, but we are not ruling this out, and will continue to work towards an ambition that that every local area is supported by a DMO/ DCO. The SEND Review will work with NHS England and DHSC to consider the case for further reforms in this area.

32. The duties on health providers were referenced as being hard-won in public bill discussions. We do not doubt that there must have been significant work behind the scenes to bring this duty into the Bill. However, we think that once this hard-won duty was indeed 'won', the Department's drive stopped and it relied on local authorities and their partners to maintain the momentum of joint-working and joint-commissioning. (Paragraph 72)

33. There is not sufficient emphasis on joint working within the Government. We recommend that the Department for Health and Social Care, NHS England, and the Department for Education should design an outcomes framework that local authorities and CCGs are held jointly responsible for, to measure the health-related delivery of support for children and young people with SEND. Ownership of these outcomes should belong jointly to CCGs and LAs, as well as the Department for Health and Social Care, NHS England and the Department for Education. Monitoring of this outcome framework should sit within central Government, not an inspectorate or regulator, to ensure consistent monitoring and the ability for the framework to be implemented effectively. (Paragraph 73)

Paragraph 72: The duties on health providers were referenced as being hard-won in public bill discussions ... the Department's drive stopped.

The Children and Families Act 2014 makes local authorities responsible for securing the education and social care provision specified in an EHC plan, and that '*If the [EHC] plan specifies health care provision, the responsible commissioning body [usually the CCG] must arrange the specified health care provision for the child or young person.*' We are continuing to lead cross-Government work to improve the quality of joint commissioning, as set out below.

Paragraph 73: There is not sufficient emphasis on joint working within the Government.

The Department for Education, Department for Health and Social Care and NHS England work closely together to improve effective joint working across all systems, including in responding to the Covid-19 pandemic. In 2019 the Government set up the SEND System Leadership Board, chaired by Tony McArdle, to improve joint commissioning and working across education, health and care partners. The Board brings together senior officials from DfE and DHSC, together with representatives from local authorities, NHS England, Public Health England, and the voice of parents and young people.

In addition, these Departments are working closely with other interested bodies across Government through the SEND Review to identify how cross-sector working can be further improved to better support for children and young people with SEND. We will carefully consider the Committee's recommendation as part of this work, including the scope for an outcomes framework.

The delivery of health services for children and young people with SEND are currently considered through the joint Ofsted and CQC inspections of local area SEND services. A key consideration as we develop the future of inspections is how we can improve assessment of, and accountability for, delivery of services in the health and care space and we welcome the Committee's recommendation that consideration of health-related delivery is enhanced.

34. We agree with the Minister that co-production of the Local Offer is a positive thing. However, we are concerned that in many cases this is only symbolic and is used to suggest that parents endorse the Local Offer. We are concerned that Ministers are confused by the Local Offer's aims and intentions and are concerned that the ambition of the Local Offer has been severely diminished. The lack of heed taken to the warnings during the legislative scrutiny process has resulted in the failure of the aspirations of this policy to be realised: instead, they remain where they started—in the words of a Green Paper and the hopes of parents and young people. (Paragraph 77)

35. The Department should ensure that local authorities are producing Local Offers that are in line with the original intention of the Local Offer, and also demonstrate leadership and a grip on their obligations, including co-production, innovation, interactivity and accessibility. We also recommend that the Department for Education and the Department for Health and Social Care jointly conduct biennial reviews of each local authority's offer to ensure that the Departments take central oversight of both policy intention and delivery. These reviews should be done in collaboration with children, young people and their parents and carers. (Paragraph 78)

Paragraph 77: co-production of the Local Offer is a positive thing. However, we are concerned that in many cases this is only symbolic.

As chapter 4 of the SEND Code of Practice sets out, the statutory duties around the Local Offer are twofold: for local authorities and their partners to work with parents and providers to co-produce and review a Local Offer of services and provision to meet special educational needs; and then the publication of this offer on the internet.

Responsibility for managing the range of special educational provision available in a local area sits with local authorities, which are required to keep special educational provision

under review, including its sufficiency, and to work with parents, young people and a wide range of providers, to ensure the needs of children and young people from the area can be met. Local authorities and providers are under reciprocal duties to co-operate through this process and Ofsted/CQC will look at the strength of the Local Offer as part of its area inspection.

Paragraph 78: The Department should ensure that local authorities are producing Local Offers that are in line with the original intention of the Local Offer.

The Department has reiterated these principles of strategic leadership through co-production on a number of occasions and will continue to do so. For example, in 2017 we gave local authorities £23m in a high needs strategic planning fund alongside guidance on managing high needs pressures which recommended that local authorities work collaboratively with parents, young people and providers (including independent providers) to develop clear and consistent approaches to placements and funding, explicitly referencing the Local Offer duties. In order to access their allocations of the Department's £365m special capital fund, local authorities have had to consult parents and providers and publish their plan.

Ofsted and CQC's SEND local area inspections consider '*how local areas support these children and young people to achieve the best possible educational and other outcomes... They also intend to assist local areas in improving and developing their processes and support systems in order that local areas become more effective and deliver better outcomes for children and young people.*' The independent inspection process therefore already reviews the systems, services and provision which the local area organises to meet special educational needs—in other words, the 'Local Offer'.

We do not propose to carry out biennial reviews of each local authority's Local Offer. To do so would be disproportionate and costly, and the inspection process already fulfils what is a regulatory process.

36. The Department should map provision available through each local authority's Local Offer, identifying lack of provision available to children and young people with SEND and set out a plan for ensuring that all local authorities, through their Local Offers provide a minimum level of provision. (Paragraph 79)

Responsibility for managing the range of special educational provision available in a local area sits with the local authority. The Children and Families Act requires local authorities to keep the special educational provision in their areas under review, including its sufficiency, and to work with parents, young people and a wide range of providers, to ensure the needs of children and young people from the area can be met.

A key principle of the 2014 Act was that local authorities and their partners, working with parents, young people and providers, were best placed to determine the balance of services and provision which would work best for their area, taking account of patterns of need, existing provision, geography, culture and practice, distribution of resources and the views of parents, young people and practitioners. Again, Ofsted/CQC inspections will comment on the effectiveness of these arrangements.

37. The Ministry of Justice should, as part of its reporting on SEND Tribunal cases, publish a yearly digest, setting out relevant trends and information to enable local

authorities improve their service and ensure they are making lawful decisions. This should include information that assists with public accountability and scrutiny against performance. (Paragraph 82)

Data about the SEND Tribunal is published quarterly and shared widely. The Department for Education and the Ministry of Justice are in discussions about this recommendation, and more broadly, to consider what can be done to improve the data we have and how we can support local areas.

38. These adversarial experiences are the products of poor implementation, the inability to access the right support at the right time, and services struggling with limited resources. We were warned: Parliament was told that if the reforms were not done properly, the system had the potential to become more adversarial. Not enough was done to prevent this happening. We have a system of unmet need and strain. This unmet need is creating poor broader experiences, for children, young people and their families, schools, colleges and local authorities. (Paragraph 83)

We agree that the SEND system is not working as well as it should, for a number of reasons. We are committed to addressing so that the system works better overall as we have outlined in the introduction to this response, and in our more detailed responses to the individual recommendations of the Committee.