Written evidence submitted by The County Councils Network (CCN)

1. The County Councils Network represents 37 English local authorities that serve counties. The 20 county and 17 county 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.

2. 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. The areas represented by our members constitute 38% of local government expenditure; 44% of total public expenditure (£201bn); and generate just under half of all tax revenues (£255bn). The economies of our areas contribute 39% of Gross Value Added (GVA) and 42% of all employment.

3. The pressures facing Special Educational Needs and Disabilities services have been well documented in recent years. CCN are pleased that the Committee has launched this Inquiry and hopes that the government engages seriously with a reform agenda to create a financially sustainable system that provides families with the support they need.

Overview

4. It is widely acknowledged that the system for Special Educational Needs and Disabilities (SEND) is broken. It does not work for children, parents, schools or councils alike. Whilst reforms a decade ago that expanded eligibility for SEND support via Education Health and Care Plans (EHCP) were put in place with the best of intentions, they have led to significant unfunded demand; an over reliance on expensive special school provision; increasing waits for assessments; and little or no tangible improvements in outcomes for children.

5. Since these reforms were introduced in 2014, the number of students on EHCPs has more than doubled nationally from 240,000 in 2015 to 517,000 in 2023, whilst high-needs expenditure by councils has also more than doubled to an estimated £10.8bn this year. Over the course of the last Parliament, councils across the country have accrued unsustainable high-needs deficits as funding has failed to keep pace with demand, and the accrued total reached an estimated £4bn nationally by October 2024. These deficits have only been kept off councils' balance sheets using a mechanism called the 'statutory override'.

6. Despite this greatly increased spending there is little evidence to suggest that outcomes for children or the experiences of their families have improved. The gap in academic outcomes between children with SEND and the wider pupil population has not closed over recent years, whilst families report that the SEND system is more adversarial and personally draining now than before the reforms.

7. The perfect storm of demand and financial challenges has occurred despite all parties acting rationally in their interests – parents naturally wish to secure the best options for their child's education; schools must balance how best to use their limited resources to

address the needs of all students; and councils have a responsibility to spend public money effectively.

8. The last few years have seen reforms to the SEND system put forward by the Government to address these challenges. Whilst many of these have had positive elements, collectively they have fallen far short of addressing the deep-seated and complex issues that are driving demand and cost, nor will they lead to a more inclusive mainstream education system.

9. In short, there is no single issue within local government at present which is more pressing than the delivery of services to support children with Special Educational Needs and Disabilities (SEND). The issue is, if anything, even more urgent for CCN member councils given the disproportionate impact on county and unitary authorities the increased demand for SEND has had on the cost of Home to School Transport due to their larger rural geographies (meaning consequently longer travel to school distances on average in comparison to urban councils).

10. CCN has published extensive research on this issue over recent years. Most notably last year's independent report by ISOS Partnership, commissioned by CCN with the Local Government Association (LGA), sets out a comprehensive top-level plan for how the system might be reformed, based on wide-ranging discussions across the sector including with schools, parents, health bodies, and young people themselves as well as local authorities.

11. Whilst we summarise some of the key issues in this submission that should be considered when addressing the SEND challenge, we would urge the committee to study the following reports in more detail as part of their Inquiry, particularly the most recent work commissioned from ISOS Partnership:

- *Towards an effective and financially sustainable approach to SEND* (ISOS Partnership, CCN and LGA, 2024): https://www.countycouncilsnetwork.org.uk/download/5402/?tmstv=1737037930
- *From home to the classroom – making school transport services sustainable* (ISOS Partnership, CCN, 2023) https://www.countycouncilsnetwork.org.uk/download/5114/?tmstv=1737037930
- *Policy In Focus: Virtual schools – education's hidden asset* (CCN, 2023) https://www.countycouncilsnetwork.org.uk/download/5011/?tmstv=1737037930
- *SEND Green Paper – County Councils Network Consultation Response* (CCN, 2022) https://www.countycouncilsnetwork.org.uk/download/4380/?tmstv=1737038373
- *Home to School Transport – the challenge in counties* (CCN, 2022) https://www.countycouncilsnetwork.org.uk/download/4147/?tmstv=1737038459

Key points in consideration of reform

12. The Committee has asked for a focus on solutions to the SEND crisis, rather than a restatement of problems in the system, which have most recently been well documented in the recent reports by the National Audit Office and the Public Accounts Committee. As stated above, Part Two of the independent report by ISOS Partnership commissioned by CCN – *Towards an effective and financially sustainable approach to SEND* – contains a comprehensive blueprint of recommendations for reform which attempts to address

the concern of all stakeholders not simply CCN's member councils. CCN fully supports these recommendations which it believes should be delivered as a package to be fully effective. As such this response does not attempt to summarise the detail of these recommendations which are set out clearly in the report and are best read in full.

13. However, we recognise that the committee will likely be hearing many alternative solutions for consideration from across the spectrum of stakeholders. This response contains some specific issues for consideration by the committee highlighting some principal issues that CCN's member authorities feel to be most urgent needing attention, noting the challenges to reform in these areas.

- *Local authority finances and the 'statutory override'*

14. The most pressing consequence of the present SEND crisis for CCN's member councils is the very immediate threat it already poses to local authority finances. It is not hyperbole to state it is truly an existential crisis for the sector. CCN's most recent analysis in October 2024 suggested that nationally SEND deficits in English local authorities stand at around £4bn, expected to rise to £5,9bn in 2025/6.[1] This is even despite spending on SEND projected to rise to £12bn in this year, three times the amount a decade ago.[2]

15. The deficit has continued to grow in spite of the previous Government launching the 'Safety Valve' and the 'Delivering Better Value' programmes in 2020/1 which have sought to address deficits and reduce spending respectively with allocated central government support. Whilst these schemes have helped to mitigate circumstances in some areas, the continued growth of both demand and spending across England has proved them inadequate in addressing the scale of the challenge.

16. At present these deficits have not collapsed local councils – which must by law keep a balanced budget or issue a Section 114 (s114) notice (equivalent to a council declaring 'bankruptcy' as they must cease all non-essential spending), and submit to central government intervention – because of the 'Statutory Override'. This was introduced in 2020 and is an accounting practice which permits councils to hold high-needs deficits separately to avoid this outcome. The statutory override was originally scheduled to last three years to March 2023 but was subsequently extended until March 2026, during which time the deficits have continued to balloon.

17. If, as presently stated, the statutory override does end at this time it will lead to an unprecedented number of s114 notices being issued – some practically overnight. A total of 26 of the 38 authorities surveyed by CCN in October 2024 would be at risk of issuing an s114 notice before 2027, including 18 which would be insolvent overnight in March 2026. Only four councils believe they can remain solvent by the end of the parliament if their SEND deficit was transferred to their revenue budget.[3]

18. The Committee should bear in mind it is unlikely local authorities will be ever be able to pay off these deficits, certainly in the short- to medium-term. Any plan to reform the

[1] https://www.countycouncilsnetwork.org.uk/send-deficits-risk-bankrupting-almost-three-quarters-of-englands-largest-councils-by-2027-with-government-urged-to-take-action/
[2] *Towards an effective and financially sustainable approach to SEND* (ISOS Partnership, CCN and LGA, 2024)
[3] i https://www.countycouncilsnetwork.org.uk/send-deficits-risk-bankrupting-almost-three-quarters-of-englands-largest-councils-by-2027-with-government-urged-to-take-action/

SEND system effectively are likely to take significant time. ISOS's research suggests its proposals for improvement would take around a decade to implement. Even beyond that, the pressure on local authorities from other areas of spending, such as social care, are also growing rapidly, meaning there is unlikely to be any sustained surplus in council budgets for the foreseeable future.

19. However, equally it is not now easy for the Government to simply waive the existing debt (as the NHS benefitted from early in the outset of the Covid pandemic for instance). Given some councils have already spent significant amounts of their reserves helping to reduce their deficits in order to draw down additional central funding as part of the Safety Valve programme, whilst others have not yet joined, there would be significant inequity in this solution. The Committee should also be mindful that the new Government's proposals for large scale local government reorganisation – which it should be stressed, are welcomed by CCN – may further complicate the position where councils, and ultimately their debts, are disaggregated or merged in different parts of the country.

- *Absence of levers to reduce costs, input of health services, and impact of the SEND Tribunal*

20. At present local authorities bear most of the responsibility for ensuring the delivery of services for SEND children. But too often there is little leeway for them to affect or reduce the cost burdens placed on them, given the legal framework surrounding EHCPs and the reliance on other partners including health, schools and other services in supporting the response.

21. For example, health has a significant role to play in the lives of most children with SEND. Yet too often health services are not fully incorporated into the wider partnership of public services around these children. Local authorities are often held responsible for delays sometimes caused elsewhere in the system, such as in assessments for EHCPs (which was particularly the case during the Covid pandemic for instance, for understandable reasons). Many CCN member authorities have been written to by the Ombudsman on this matter – however if, say, the local authority cannot secure the requisite educational psychologist input then that will delay the assessment, but is outside the council's scope of control.

22. Similarly, in principle SEND Inspections are conducted jointly by Ofsted and the Care Quality Commission (CQC) to stress the joint responsibility for these children across both education and health. However, in practice it is usually the local authority which will bear the responsibility in the public eye for failures identified by inspection. There needs to be equal accountability where issues with health are a significant factor in the result of the inspection.

23. The SEND Tribunal is also in desperate need of overhaul. It compounds the adversarial nature of the present system, but also means local authorities have less ability to balance their budgets according to need, given the likelihood of their decisions being overturned. The ISOS report makes many useful suggestions for how Tribunals might be replaced by different processes outside the judicial framework, particularly over the placement named on the EHCP which it is understood is increasingly the reason for challenging decisions.

24. At present local authorities are still expected to manage limited high needs funding and allocate this accordingly to those most in need. Local authorities attempt to do this in spite of the threat of Tribunals. But ultimately if the legal position is that entitlements are prescribed by law where a child is deemed to have a specific condition, councils need to be adequately funded and able to draw down additional resources to deliver them where necessary.

- *Incentives for schools to be inclusive*

25. It has been well expressed by almost all stakeholders that the preference would be for a more inclusive mainstream school system open to all children but those with the most profound needs. This includes not only local authorities, but schools, parents – and perhaps most importantly children with SEND themselves. However, at present parents lack confidence in the mainstream school system whilst schools (often justifiably) cite that increased pressure on their budgets mean that they are often willing but do not have sufficient resources to meet needs.

26. The ISOS report talks consistently about the perverse incentives present in the system which currently leads to adversarial approaches from all involved. One of the principal issues is whether schools are appropriately incentivised to be inclusive. Whilst some schools provide extensive support for children with SEND, it is also the perception that others are too easily able at present to shirk their responsibilities in this regard.

27. This is understandable in some ways, given the additional costs that can be incurred by the school on children whose needs mean they are, on average, less likely to achieve the high academic performance that schools are predominantly judged on. However, being a 'free rider' in this sense is not only morally dubious in terms of schools' overall remit to helping children, but also potentially may encourage more schools to behave in this way over time. It is also likely to be at the root of the accelerating costs in the system given how much more expensive alternative education options are – particularly in the independent sector.

28. The ISOS report proposes that Ofsted should be given more teeth to assess schools directly on their commitment to inclusivity of pupils with SEND. Where a school can demonstrably be proved to not being inclusive in this regard they should not be able to achieve the highest Ofsted rating, regardless of their performance academically or otherwise. This is envisaged as being similar to the existing way in which approaches to inspecting safeguarding protocols are conducted.[4] It is encouraging that the newly announced Ofsted proposals for school inspection have placed additional emphasis on inclusion.

29. The other important consideration is better incentivising schools to be inclusive is to provide local authorities with greater powers over Academies admissions regarding SEND. The ISOS proposals recommend that a newly configured system should remove the separate admissions preference for those children with EHCPs, and instead ensure these children are included in a single admissions process for all local schools. This would look to ensure a level-playing field for all children and put more onus on individual

[4] This recommendation was set out prior to the new Government scrapping single-word judgements as part of Ofsted school inspections. CCN still believes such a policy to be necessary to help enforce better inclusion of children with SEND in the mainstream system. However, the committee may wish to consider how the move to longer descriptive judgements might impact the effectiveness such a change.

schools to have to explain clearly why they felt they may not be able to meet the needs of a specific child. It should be noted by the committee that during extensive consultation on the ISOS Partnership report across seven regional workshops with stakeholders (including representatives of schools and parents), no-one has objected to the sense of this proposal.

- *Home to School Transport*

30. As indicated earlier in this response, the ongoing crisis in SEND is having a knock-on effect on the spending need to deliver Home to School Transport (HTST), which is resourced from general local authority funding, not the Dedicated Schools Grant (which includes the bulk of high-needs funding). CCN's most recent research on the topic – again with ISOS Partnership – showed that costs increased 23% in just two years to 2023, with the main increase being driven almost entirely by costs for SEND pupils.[5]

31. This has a disproportionately large impact on rural councils such as those in CCN's membership where the far greater geographies mean longer journeys for all pupils given more children sit outside the minimum travel distance boundaries. But there are particular challenges for children with SEND who often need more support such as travel assistants or individual transportation – each of which compounds the greater spending need as the distance travelled increases. CCN councils accounted for 57% of this spending need despite only accounting for 42% of school-age children.[6]

32. It is vital that funding for HTST receives its own relative-need funding formula as part of wider local government funding to ensure that rural authorities have adequate resource to support this service. Longer term, given the disproportionate impact of SEND on these costs and the limited levers local authorities have to mitigate these costs given the legal position of EHCPs, the Committee should consider how issues related to SEND HTST might be addressed within wider SEND reforms.

- *Potential links between SEND system and school performance*

33. The exponential growth in demand within the SEND system over the past decade is now widely publicly discussed. The committee should note, though, that there has also been extensive coverage of the UK's improved performance in international league tables since 2010. Little has been done as yet to investigate how far these two issues might be inter-related. However, the committee should consider the possibility of how far improved academic success in mainstream schools may have been impacted by greater exclusion of pupils with SEND at higher cost. Any solution to the SEND system should further explore this issue and ensure that mainstream school system is able to meet the needs of all pupils locally whilst not compromising the high standards within our schools overall.

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[5] *From home to the classroom – making school transport services sustainable* (ISOS Partnership, CCN, 2023)
[6] https://www.countycouncilsnetwork.org.uk/new-report-spotlights-the-school-transport-challenge-and-sets-out-how-councils-can-improve-services-ahead-of-national-reforms/