

SEND review: right support, right place, right time

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) represents over 22,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation.

B. Key points

3. ASCL welcomes the scope of the Green Paper (GP), and in particular its attempt to address the complexity of the SEND system rather than smoothing over areas often seen as too difficult and intractable.
4. ASCL is particularly pleased to see three specific proposals: the nationalising of funding expectations, the standardisation and digitisation of Education, Health and Care Plans (EHCPs), and the involvement of Alternative Provision (AP) within a single system with mainstream and special schools.
5. The GP is successful in capturing the system challenges and providing a picture of 'what is'. However, it lacks detail in relation to what the system *should* be. ASCL would like to see the DfE undertake an urgent literature review into international approaches to strengthening SEND provision. Providing stakeholders with such a research summary would offer insight and scope for building on what we know about the efficacy of SEND and inclusion in other jurisdictions.
6. Many of the GP proposals deal with defining local SEND infrastructure. But much greater focus must be given, through the proposed national standards, to what constitutes a quality education for young people with SEND. Research tells us that quality of teaching has the single biggest impact on outcomes for young people. We would like to see far greater emphasis on how teacher education, teacher development and teacher supply will be an investment focus, providing the young people who need it most with access to teacher time and the teacher expertise they deserve. Current evidence shows that young people with SEND have considerably less time with a teacher than their peers without SEND.
7. The £70m implementation planning and funding commitment is insufficient to support investment in the root-and-branch system change required. Comparing this funding

allocation to that proposed for the Independent Care Review highlights how little is committed for such an important policy shift. The GP also lacks detail on the way in which this funding will be allocated.

8. ASCL believes that any changes in SEND policy and legislation should be aligned with wider reform. Chapter 4 of the Schools White Paper refers to a strong trust as being an inclusive trust. ASCL believes that clearly defining the expectations of an inclusive school and trust is essential, but this has not been attempted in either the GP or the White Paper.
9. An inclusive education system is described in the GP as one in which AP and special schools work together as one system. This is welcome. However, in our view this is a definition of an *integrated* system rather than a truly *inclusive* system. It is imperative that any legislation resulting from this GP stipulates the ambition for all learners to be included not just physically, but also socially and emotionally. Simply being physically provided for by the education system does not constitute inclusion. We must have a clear ambition that all children in mainstream schools have an inclusive experience, with access to a full curriculum, to peers and most importantly to good teachers.
10. ASCL is concerned that the GP lacks a definition of inclusivity along the above lines. This will impact on the efficacy of the proposed changes. Early intervention will not be sufficient to stem the increasing demand for EHCPs and their consequent costs if quality inclusive teaching is not made a central tenet of the proposed changes. Inclusive teaching and teacher development requires investment, which would be easily recouped by the resultant decrease in EHCPs. Without this investment, the GP proposals will fail to reduce the need for additional resource (an EHCP).
11. ASCL believes that health must play a statutory role. EHCP meetings in practice too often have no input or involvement from health. A commitment to address this shortage of specialist support is necessary for the success of the educational changes proposed in the GP. The DfE, individual schools or trusts should not cover or replace health and social care expertise when it is absent. Similarly, education should not cover the costs of replacing health and social care expertise when it is absent from the SEND identification and support process.
12. ASCL believes the SEND notional budget is unhelpful. It is our view that the profile of demand and distribution of pupils with SEND makes it difficult, if not impossible, to improve the accuracy of the notional SEN calculation to the point where there is a good fit between notional SEN budgets and underlying need. Instead, the government should focus on the sufficiency and weighting of factors in the national funding formula (NFF) methodology to ensure that schools have sufficient funding in their core budget, ensuring funding for additionality can be targeted entirely to support those pupils who are eligible.
13. If the notional budget is to stay, and current proposals on committing reforms to the NFF suggest that is the case, then a consistent methodology for calculation should be implemented.
14. The proposals in the GP do not tackle the need to remove current disincentives to inclusion. In particular, they are silent on the impact of accountability measures and funding shortfalls which actively discourage schools from being inclusive. Schools which prioritise SEND appropriately too often become known as 'magnet schools' in their local area, attracting a disproportionate number of children and young people with SEND without this being adequately recognised in either the funding they receive or the way in which they are held to account.

15. It will take several years for the proposals set out in the GP to be taken through the legislative process and become law. In the meantime, making additional high needs funding available via the 'safety valve' and 'Delivering Better Value in SEND' programmes is welcome. However, the government must go further to address urgent pressures within the SEND system. The government needs to review the level of high needs funding received by local authorities (LAs), and to ensure all LAs have sufficient funding to meet the needs of local children and young people with SEND while we wait for new legislation.
16. Mediation is a good idea in principle, but it is dependent on the whole system functioning effectively. There is a high risk that mediation will become a default delaying tactic and will simply build long-term cost as pupil and parent needs fail to be addressed early.
17. It is important to recognise the implicit threat to independent special schools of reducing the funding threshold for placement. This will remove places in a market already crippled by shortages. It will also risk reducing the quality of provision on offer in the short term. ASCL encourages the DfE to work carefully to ensure decision-making is based on the needs and best interests of young people, rather than on cost.
18. Alternative Provision (AP) requires a long-term, sustainable funding model that funds the institution rather than the children within it.
19. Early Years and SEND Support are essential considerations of any SEND education ecosystem. They are under-represented in the current proposals.
20. We have serious concerns about access to capital, particularly expediting legitimate applications for capital investment. Even where funding is available (acknowledging the £2.6bn capital made available for SEND at the spending review), the current mechanism risks over-promising and under-delivering.
21. The GP suggests a framework for centralised government planning for a system that seeks to reduce spend. It is not yet a plan which describes a system that can deliver a better quality experience for young people with SEND.
22. ASCL suggests that any White Paper or legislation resulting from these proposals must do the following:
 - Define inclusion based on the quality of access to, and participation in, school and the curriculum. It is the quality of education that young people with SEND receive that represents an inclusive school or trust, not simply their physical presence.
 - Address the perverse incentives in the system, rather than simply acknowledging them.
 - Require health services to play an integral part in provision for young people with high-level SEND.
 - Acknowledge that quality teaching is likely to be the single greatest influence on the outcomes of young people, and ensure significant investment in the education, training and confidence of teachers to teach children with SEND as central to change.
 - Provide a costed delivery plan including a timeline. This plan must clearly set out the capacity within the current spending review period, and what will be required from the next spending review.

C. Answers to specific questions

Question 1:

What key factors should be considered when developing national standards to ensure they deliver improved outcomes and experiences for children and young people with SEND and their families? This includes how the standards apply across education, health and care in a 0-25 system.

23. ASCL believes that clear expectations and a statutory framework already exist. The value of new expectations enshrined in standards will depend on their design and the accountability framework that supports their regular review. Many of the expectations outlined in the proposals already exist as part of the Children and Families Act. ASCL believes that aligning expectations of the school system is crucial.
24. New national standards could offer an opportunity to raise quality, demystify what is expected and ensure the legal expectations and accountabilities are upheld. Currently, the framework of school accountability doesn't always match the capacity of the setting, with many schools being held accountable without the resources to adequately meet need. An accountability framework which continues to operate in this way will further entrench an adversarial system. Standards and accountability measures need to align.
25. The proposed standard relating to pupil co-production and voice is welcome. However, current framing suggests this will be used for assessment and validation, rather than to innovate and be responsive to the genuine needs of pupils.
26. Any new standards must recognise the collective responsibilities of education, health and social care, emphasising the expectation of multi-agency support.

Question 2:

How should we develop the proposal for new local SEND partnerships to oversee the effective development of local inclusion plans whilst avoiding placing unnecessary burdens or duplicating current partnerships?

27. ASCL agrees that partnership working and local context will play an important part in determining the needs of the SEND population and their families. The local SEND partnerships outlined in the GP effectively describe the existing model of strategic commissioning led by the LA. It's unclear what is new about this proposal, or what the ambitions and expectations are in relation to the local offer.
28. ASCL supports the view that LAs should take the lead in working with other local organisations to plan for the population they serve, and the current and future needs of that population. School leaders and families need strong representation within these partnerships.

Question 3:

What factors would enable local authorities to successfully commission provision for low-incidence high-cost need, and further education, across local authority boundaries?

29. It is positive that the Green Paper recognises that the needs of every child and young person cannot always be met by provision in their immediate locality.
30. It is important that local partnerships are aware of future demand and can act in an agile, timely and, where necessary, innovative fashion to support young people with

more complex needs. LAs require funding to future-proof and grow provision where it doesn't currently exist. They need sufficient capacity to be strategic and plan long-term solutions which can keep as many young people as possible within their community and close to family and friends.

31. Transparency of funding is important here.

Question 4:

What components of the EHCP should we consider reviewing or amending as we move to a standardised and digitised version?

32. ASCL welcomes the proposed move to standardise and digitise EHCPs. This will be valuable for all schools, and particularly those which work across LA borders. For colleges, AP and specialist settings (particularly hospital schools) a standard template will offer greater agility and save significant time. There are also opportunities to overcome language barriers using a digitised EHCP.
33. ASCL would also like to see a limitation on the length of plans. Members currently report that plans often become too long and unwieldy, or that they are full of education commitments and not adequately supported by health and social care partners.
34. Digitised reports may support multi-agency engagement. The risk of poor engagement of health in particular needs to be mitigated if EHCPs are to serve their intended purpose.

Question 5:

How can parents and local authorities most effectively work together to produce a tailored list of placements that is appropriate for their child, and gives parents confidence in the EHCP process?

35. ASCL believes that every child deserves the best opportunity for full participation and learning. The criteria by which the list will be tailored are not clear.
36. The proposal to replace the current parental choice with "a tailored list of placements that is appropriate for the child" obviously raises the question of who will produce the tailored list and decide what's appropriate for a particular child.
37. If the purpose of a list is to assist parents in accessing placement information, which is not always readily available from LAs, then we would support this. This communication must be provided through collaboration between schools and LAs.
38. LAs working with parents on a co-approved list would replicate some of the existing problems that ASCL members are reporting. These include:
 - LAs allocating pupils to settings which are not able to meet the needs outlined in the plan.
 - Parents learning that they have a place at the school before the school does.
 - A failure by the LA to understand the needs of the child or of the setting, which can set both school and family up to fail and initiate an adversarial position. LAs and families need to understand context better and recognise the difficulties that can be faced by secondary schools in resource provision.
39. Collaboration is indeed key but must involve schools being able to clearly explain their capacity to support a child's educational needs, and the LA being equipped to respond respectfully when that capacity has been reached.

40. Page 71, paragraph 21 refers to 'magnet schools'. The problems of being a magnet school are acknowledged as being directly related to the accountability framework, but there is no attempt in the GP to propose a solution.
41. This proposal seems reliant on all stakeholders having a clear understanding of how the notional budget works in mainstream schools. As set out in paragraph 12 of this response, a notional SEND budget must be predictable, transparent and meaningful. The capacity of the notional budget at individual school level must be a consideration in utilising a placement list approach.
42. Creating a tailored list which may include schools which are unable to provide the necessary support will be counterproductive, and could lead to adversarial relationships between parents and schools.
43. We have included a salutatory case study in the appendix below of a 'magnet school' which feels its ambition for inclusion is damaging the quality of education in its setting.

Question 6:

To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation?

44. We are unclear about the value of mandatory mediation and believe its value will be dependent on the restructuring of the wider system and the details of implementation.
45. For mediation to be effective there has to be adequate availability of appropriate educational provision – sufficient special school places, resource bases, staff to pupil ratios, etc. – which support placement options. If these aren't available (based on the current resource proposals) then mediation may simply slow the process down.
46. The unintended consequence of delay may be a rapid escalation of problems in seeking a suitable school setting, such as:
 - young people being left out of school as the named school is deemed unsuitable
 - parents facing fines and criminal charges
 - parents agreeing to a child with SEND attending an unsuitable placement (whilst awaiting tribunal), leading to the child being excluded because of dysregulated behaviour
 - parents deciding to home educate
47. If statutory mediation is introduced, a skilled workforce is key. ASCL recognises that this will have significant resource implications for LAs, and questions whether this is the right focus for that additional resource.

Question 7:

Do you consider the current remedies available to the SEND Tribunal for disabled children who have been discriminated against by schools effective in putting children and young people's education back on track?

48. The phrasing of this question suggests that active discrimination by school leaders is the reason for tribunals. In reality, tribunals can be due to resource issues, appropriate peer group, distance from home and so on. In 2019-20, an estimated £55m of LA funding went toward tribunals. According to [SENDIST data](#), the reasons for going to tribunal included refusal to assess (29%) and refused EHCPs (10%), with the content of the EHCP the most contested element at 60% of judgements.

49. We believe that investment rather than new legislation and higher thresholds is the key to reducing the need for legal recourse.

Question 8:

What steps should be taken to strengthen early years practice with regard to conducting the two-year-old progress check and integration with the Healthy Child Programme review?

50. ASCL believes that good quality education in the early years for children with SEND is an investment in the system, an opportunity to engage parents in positive co-production, and to build a positive identity for young people who struggle.
51. The early years should be a key focus for investment, to pump prime the system and the experience of children and families. This is key to developing the virtuous system the Green Paper is ambitious for.
52. However, there are issues of supply and expertise which concern our members. There is a chronic shortage of skilled early years staff, and budgets in early years settings are dependent on offering minimum wage jobs. This has created a recruitment and retention issue which is impacting on the quality of education for young people with SEND.
53. Whilst the funding to train 5,000 SENCOs is welcome, this proposal is inadequate when considering the 71,000 early years settings and the high turnover of specialist staff in the sector.
54. ASCL believes that health checks at age two are important and should be a universal expectation. Health visitors have the power to galvanise multi-agency support where children are identified as having additional needs. Education progress checks are not a cover for professional health developmental reviews. It should not be the responsibility of a level 3 practitioner to offer diagnostic assessment. There are risks to this (parental alienation, categorising, misdiagnosis) that can outweigh the benefits. ASCL believes that all two-year-olds must have access to health checks as a priority and that these should feed into year two progress reviews carried out by Early Years Practitioners.
55. The lack of stability in the early years funding model exacerbates the challenges of early years provision. The distribution mechanism is very reactive and makes strategic financial planning in early years provision more difficult.

Question 9:

To what extent do you agree or disagree that we should introduce a new mandatory SENCO NPQ to replace the NASENCO?

56. ASCL believes there are pros and cons to replacing the NASENCO with an NPQ.
57. We welcome the move to position SENCO training within the leadership suite of NPQs. This sends an important message about this role being whole-school, senior and strategic.
58. We agree (as do the current providers) that the NASENCO Award requires updating to have a leadership rather than a managerial focus. It is important that the SENCO leads on both provision and strategy.

59. However, the NASENCo award does have status. It is an M level qualification which evidences a level of expertise that parents respect.
60. ASCL would like to see the benefits of the NASENCO award retained within the suite of NPQs, maintaining M level specialism and a focus on building a community of practice for SENCOs.
61. The GP says that the DfE will consider how the proposed NPQ for SENCOs in schools could be aligned to support those with oversight of SEN provision in FE settings. ASCL believes a separate pathway (with possible overlaps) should be recognised for SEND leads in FE.

Question 10:

To what extent do you agree or disagree that we should strengthen the mandatory SENCo training requirement by requiring that headteachers must be satisfied that the SENCo is in the process of obtaining the relevant qualification when taking on the role?

62. Gaining the NASENCo qualification is already a statutory requirement, but currently training must be undertaken within three years. The expectation of the new NPQ for SENCOs to take up training immediately on accepting the post will exacerbate existing recruitment issues.
63. The NPQ SEND should not be part of a delivery tendering cycle which might compromise the supply chain of professionals required by schools. There should also be an option for aspiring SENCOs to access this training.
64. Flexibility of design to maximise uptake of this much-needed training and role is key. Many NPQs follow a linear programme model running from September to July. School leaders tell us they often require SENCOs to take up post mid-year.

Question 11:

To what extent do you agree or disagree that both specialist and mixed MATs should coexist in the fully trust-led future? This would allow current local authority maintained special schools and alternative provision settings to join either type of MAT.

65. This decision should be based on what will offer a better experience for young people with SEND.
66. The concept of structural exclusion and how it manifests is useful for policy makers to recognise here.¹
67. The mixed MAT model can heighten the risk of structural exclusion. Having an AP as part of the MAT can lead to separating young people who are not thriving, rather than establishing systemic priorities to support mainstream schools to include those young people more effectively.
68. The current accountability framework incentivises structural exclusion. High-stakes accountability prioritises academic attainment and puts pressure on an under-resourced system to focus on assessment outcomes, ranking schools in accordance with those outcomes. The unintended consequence of this is a system pressurised to

¹ <https://www.tes.com/magazine/teaching-learning/secondary/why-we-need-talk-about-structural-exclusion>

raise attainment at all costs, providing an active disincentive to include pupils with SEND.

69. Those young people with SEND who struggle to learn easily, to attend or to regulate their behaviours require greater school investment at the risk of less impact (if that impact is always judged on the basis of attainment). Without sufficient investment it is very difficult for schools to meet the needs of these young people, which can lead to a belief that their needs would be better met in special schools or in AP.
70. Rather than addressing these disincentives, the proposal in the GP appears to suggest that the needs of these young people will be better met in AP. This sets up a substantive systemic risk. The offer of an attractive 'golden ticket' – a small school setting that has resources which mainstream schools don't have – risks encouraging exclusion ('your child will be better supported there') rather than actively incentivising inclusion.
71. If we incentivise the system to remove children who need additional therapeutic support or small classes we may directly strengthen structural exclusion.
72. On this basis, and for these reasons specifically, ASCL can only support the proposal for mixed MATs if the appropriate systemic safeguards to mitigate against these risks are put in place.
73. There are examples of trusts which have found ways to address these risks. For example, Springwell Trust uses a model which incentivises inclusion and supports self-regulation. The trust does not accept children in the trust AP from its own schools. It uses expertise within the trust to support young people to stay in school with the right support in place. (See case study 2 in the appendix below.)
74. Alongside systemic structures to provide flexibility to meet needs, such as well-funded therapeutic provision for low incidence SEND & SEMH needs, ASCL believes that mainstream inclusion must be actively incentivised through a change in funding models and the accountability framework.

Question 12:

What more can be done by employers, providers, and government to ensure that those young people with SEND can access, participate in and be supported to achieve an apprenticeship, including through access routes like Traineeships?

75. ASCL would like to see the government raise the profile of alternative employment pathways and incentivise employer involvement. Finding placement opportunities has become increasingly difficult. Employers are willing but they are not able to subsidise the support and investment required in the current economic climate.
76. We would like to see the government leading a strengths-based campaign targeted at employers, sharing the positive attributes that young people with learning disabilities can bring.
77. The focus on level 2 qualifications to access apprenticeship schemes is a barrier to many young people who could benefit from the training on offer.
78. Our members tell us there is a genuine inclusion issue with access to some of the more practical qualifications. Access to apprenticeships is based on a level of qualifications and not ability.

79. There have already been announcements about increasing the number of supported internships and the Access to Work passport, so this is not new. What we had hoped to see here is increased investment in FE as the numbers of young people with high needs continues to grow. Improved and more flexible opportunities are needed, as is access to specialist careers advisers and designated key worker funding.
80. ASCL believes more ambitious and well-regulated pathways into employment are needed. Perhaps most important here is a qualification system and employment pathway that shows what young people with SEND can do – rather than a low aspiration, unpaid, two-day-a-week opportunity to train alongside employers with the continued expectation to study for Maths and English. Many young people with high levels of SEND are actively deterred from these programmes at present by poor and inappropriate expectations which are not tailored to an individual's strengths and are contingent on a one-size-fits-all, lowest common denominator approach.

Question 13:

To what extent do you agree or disagree that this new vision for alternative provision will result in improved outcomes for children and young people?

81. Tightening up on AP and how it is used by LAs is to be welcomed, but is a vast undertaking.
82. This is an opportunity for a clearer definition of AP, including what this looks like in Post-16 provision. AP is currently wide-ranging, used differently by different LAs, and usually sporadic in terms of delivery. It rarely delivers on qualifications for the young person and frequently is less than a full-time offering.
83. ASCL welcomes the further integration of AP and the opportunity to develop specialist support opportunities. We agree that this is an opportunity to redefine the expectations of AP.
84. A focus on AP must not detract from the importance of building a better understanding of the reasons that currently lead to school absence and formal or informal exclusions. ASCL believes these can be addressed through system reform that provides greater priority and flexibility for young people with SEND. The research by the Excluded Lives Team at the University of Oxford² highlights the need for better understanding of the complex systems which require careful adaptation as part of these reforms.
85. Where there is quality provision, and AP is well led, ASCL believes that AP can contribute to improved outcomes. However, the quality of AP provision is currently variable.
86. Many examples exist of MATs wanting to establish good quality AP within their trust. The challenge here (as outlined in our answer to Question 10) is that this can incentivise a removal from mainstream as being in the best interests of the child. However, the result of this can be to take them away from their peers, and from a full curriculum offer.
87. If, as the GP suggests, we are to change the nature of AP to a small school approach which can offer expert provision, there is an even stronger argument for further significant investment in mainstream. If not, the AP will be seen as a 'golden ticket' to better provision that cannot be accessed in mainstream schools.

² <https://excludedlives.education.ox.ac.uk/publication/what-counts-as-evidence-in-school-exclusions/>

88. See the appendix below for a case study of a model that ensures AP is not viewed as a place for a trust to turn when a child is 'too difficult'. This is a model which can be strengthened by the stable funding the GP is proposing, and can underwrite the capacity needed to provide outreach and specialist expertise a trust needs.
89. For positive impact, significant investment is required. In addition:
- AP must not be seen as a sanction.
 - AP funding must align to the institution and its function, not to each child. This will stabilise funding and support outreach functions.
 - LA accountability must change. The current system too often leads to children being inappropriately placed in AP because there is insufficient resource or capacity for them to remain in mainstream settings.
 - AP provision must be sufficiently flexible to respond to regional needs and community context.
 - AP cannot sit within a trust to provide a provision for removal and sanction.
 - AP must offer outreach support – considerable training and development will be required to upskill the current workforce.

Question 14:

What needs to be in place to distribute existing funding more effectively to alternative provision schools to ensure they have the financial stability required to deliver our vision for more early intervention and reintegration?

90. On funding there are two distinct issues which need to be addressed: certainty and adequacy. The current system is a reactive, short-term funding model. A proactive, long-term funding model would provide certainty. We believe this is what is needed here.
91. AP requires a stable funding model which supports ongoing investment and development. A three-year rolling settlement for AP would help with this. However, we see a significant challenge in enabling this as LA settlements are made annually.
92. AP funding must align to the institution and its function, not to each child. This is the only way to ensure that AP settings can adequately plan and deliver their function.
93. A national approach to funding band frameworks would increase stability (see our answer to Question 18 below for more detail). As part of the development of a national framework, consideration should be given to a review of the relativity of top-up funding to place funding. We think that the increasing proportion of per pupil funding represented by the top-up in special schools and AP may be having a negative impact on financial stability at provider level. Consideration should be given to a place-funding factor value which tracks increases in mainstream pupil-led factors.

Question 15:

To what extent do you agree or disagree that introducing a bespoke alternative provision performance framework, based on these five outcomes, will improve the quality of alternative provision?

94. The five outcomes include effective outreach, improved attendance, reintegration, academic attainment in maths and English and successful Post-16 transition.
95. **Effective outreach support** – Outreach is a strategic role, not based on 'delivery' as a KPI but on the strengthening of inclusion in the receiving school or trust. The outcome is not the amount of outreach carried out but its impact. More nuanced indicators are

required here if we are to understand what is effective. Funding must be sustainable within the AP budget to provide good quality outreach to mainstream schools to strengthen their practice and not just firefight. ASCL believes that supporting a teacher influences their whole class, whereas the impact of working with a single student is much smaller. But both have a place; the focus should be on strategic collaboration and capacity building.

96. **Improved attendance** – ASCL agrees with the inclusion of this outcome, with the caveat that sustained attendance requires effective multi-agency support.
97. **Reintegration** – Measuring success based on reintegration is problematic. This is a measure for the receiving school rather than the AP. Instead, the inclusivity of a mainstream school should be measured to actively support the ambitions of the system. ASCL believes that reintegration should be an outcome of inclusivity for the mainstream school, not the AP. A focus on appropriate destinations is important. Structuring incentives that take young people back to a setting that doesn't work for them is not helpful. AP offers nuanced support for young people dealing with complex challenges, so the metrics to measure impact must also reflect and recognise this.
98. **Academic attainment, with a focus on English and maths** – Achieving predicted GCSEs above 5, 4 or any other measure is appropriate for some students, but can be counterproductive for many students in AP due to social emotional difficulties. A broader set of achievement indicators is more appropriate here.
99. **Successful post-16 transitions** – 'Not NEET' is a common measure which we should all be using. A focus on destination data would be particularly helpful and more flexible here. Post-16 provision is identified but is largely ignored in the proposal.
100. ASCL recognises the varied functions of AP and the importance of clear and shared expectations. A standard measure will need to be broad if it is to be appropriate. For example, the specific support of a hospital school will be different to a school with challenges of disengagement with school and curriculum. The measures of success must be relevant to that context and their young people.

Question 16:

To what extent do you agree or disagree that a statutory framework for pupil movements will improve oversight and transparency of placements into and out of alternative provision?

101. ASCL supports the proposal of a statutory framework for pupil movements. This should be helpful for all young people moving at all stages of education. Colleges in particular face difficulties when pupils have moved between settings.
102. The framework must recognise that young people with SEND, learning and behaviour difficulties come with a wide range of potential and prior attainment. Life skills courses need to be flexible to accommodate very different levels of skill, knowledge, and capacity. Preparation for adulthood must be tailored to an individual young person's needs and capacity.
103. As an example, an AP with early intervention and impact through early identification of needs can be very effective. However, spending time in such a setting does not necessarily mean that a child is able to go back into a mainstream setting with no further problems. Often family complexities have not changed, which can lead to the child needing further support in future, and perhaps another period in an AP setting.

This does not necessarily mean that the AP is not successful, nor that the mainstream setting is not fully inclusive.

Question 17:

What are the key metrics we should capture and use to measure local and national performance? Please explain why you have selected these.

104. ASCL believes that the current accountability measures need to change if we are to have any hope of building a truly inclusive system.
105. ASCL's *Blueprint for a Fairer Education System*³ sets out the need to move to a more equitable and proportionate approach to assessment and accountability, which recognises the achievements of all children and young people.
106. ASCL advocates the introduction of an 'accountability dashboard' or 'balanced scorecard' as the key accountability mechanism for all schools or groups of schools. This could include information on pupil outcomes (e.g. attainment measures, progress measures, destination data), on curriculum provision (e.g. subjects available, time allocations for different subjects), on staff development (e.g. teacher retention, time allocation for professional development), on inclusion (e.g. attendance rates, exclusion rates), and on the school or college's impact on and engagement with the broader education landscape.
107. Other measures of authentic inclusion of children and young people with SEND, which are as relevant to mainstream as they are to special settings, could include:
 - time spent with an experienced teacher (see research by Webster and Blatchford (2009-2018))
 - the prioritisation of life skills such as communication skills and confidence
 - a move away from models of linear attainment towards a basket of indicators relevant to individuals (excellent examples exist in special schools)
 - destination data (employment /independent living/university/college, etc.)
 - contribute to the community (DofE, fundraising, etc.)
108. For children and young people with high levels of SEND, metrics should relate to individual EHCPs.
109. The recent report by Anne Longfield on behalf of the Young Lives Commission proposes that inclusion should be a limiting factor in Ofsted judgements. This is a proposal which is worth exploring. ASCL members report that issues associated with being a 'magnet school' are such that they are unable to fund pupils with SEND appropriately. This is a system issue which is fundamental to the success of the SEND Review, but which the Green Paper fails to address.

Question 18:

How can we best develop a national framework for funding bands and tariffs to achieve our objectives and mitigate unintended consequences and risks?

110. ASCL believes that banding has the potential to offer national consistency. The bands should be sufficiently wide to allow for tailoring to individual need within the band. Narrow banding and tariffs risk being tied to diagnostic labels or thresholds which don't match the complex profiles of individuals with co-morbid needs.

³ [ASCL - Home](#)

111. ASCL broadly supports a national framework of funding bands, but we should be under no illusion about the complexity of the task. A national funding framework could create transparency for all types of schools and families.
112. One of the main challenges would be where to set the level of funding and how the differences in cost between geographical areas of elements such as staffing would be treated. The level of funding should not be based on average cost across the country. This would represent a huge risk. Current practice is influenced by local funding constraints, capacity, access to expertise and accommodation. These arrangements are defined (in part) by historic spending and therefore do not necessarily reflect current need. This makes it hard to know what success looks like. Developing a national framework for banding and tariffs should consider outcomes, sustainability, and affordability. Research should include all types of provision, including the independent sector.
113. There is a risk that national frameworks could exacerbate the adversarial nature of the system if funding and access to provision are limited. Required mitigations are likely to include straightforward and timely access to capital where needs demand extra provision, and sufficient resource for LAs to support necessary expertise and capacity building.
114. A national framework for funding bands will require standardising the construction and operation of top-up funding, such as a specified number of bands (developed alongside the updated SEND Code of Practice) and similar financial increments between bands. Standardising construction would highlight inconsistent process and challenge ineffective practice. This would help to determine what success looks like and create a common language to improve collaboration between different LAs and different types of provision.
115. We think it would be sensible to revisit the ISOS recommendations⁴ around agreement on the principles of operation of top-up funding:
- point of contact
 - planning
 - timescales
 - reporting and reviews
116. We think more research is required with regard to the number of funding bands and the breadth of need that can be met within each band. However, as mentioned above, we tend to think that fewer, 'wider' bands would be preferable. This model could deliver greater stability and mitigate the financial sustainability risks associated with variations in funding year-on-year, and reliance on the negotiation skills of school leaders. For example, tier one would aim to cover all 'through the door' costs plus a minimum/core level of top-up. Tier two would cover a broad range of more complex need. A third tier would be available for high-cost low incidence, with funding delegated on a case-by-case basis.

Question 19:**How can the National SEND Delivery Board work most effectively with local partnerships to ensure the proposals are implemented successfully?**

117. ASCL understands that the intention of this Board is to oversee the implementation of the national delivery systems and ensure quality assurance of the proposed system of accountabilities. We understand this to be a governance structure, although this is not clarified in the GP
118. For this to work effectively, the Board requires a strong understanding and oversight of the SEND ecosystem and how it operates. The Board needs to ensure that SEND provision is not seen as a silo, and to represent its interdependency and importance within the wider education system
119. The Board must be able to bridge the accountability systems for health, education and care to ensure they all play their part. The Board must have oversight of SEND at the micro (child and family), meso (school and local) and macro (national) level.
120. The Board must not be seen simply as having oversight of governance, but be a champion for SEND, ensuring the central consideration of SEND strategy within education development and reform

Question 20:**What will make the biggest difference to successful implementation of these proposals? What do you see as the barriers to and enablers of success?**

121. In the context of the Green Paper, ASCL sees the effective involvement of health, proper funding and accountability as the biggest enablers.
122. Universal whole-school CPD must be a more visible and better articulated part of the proposals. This is not mentioned in the GP, beyond professional development of the SENCO and the suggestion that setting national expectations will make a significant difference to quality
123. ASCL believes that SEND-specific education needs to be a 'golden thread' running through all CPD. For DfE-commissioned education training there must be an expectation that SEND training is 'built in, not bolted on'. The question 'And what does this look like for children with SEND?' should be a fundamental expectation of any CPD at any level of teacher or leadership development
124. The implementation of any proposals needs to be carefully thought through, with effective consultation with professional communities. One of the reasons the system is currently broken is because the implementation of – rather than the ideas behind – the 2014 reforms was unsuccessful.

Question 21:**What support do local systems and delivery partners need to successfully transition and deliver the new national system?**

125. They need time and collaborative opportunities to plan and problem solve locally in advance of changes.
126. The government – rightly – wants a system where incentives prioritise the needs of every child and young person and where effective, integrated local delivery is achieved

through collaboration, joint working and strategic leadership. This system is envisaged as one in which every partner – education, health, care, local government, central government, private providers, voluntary groups, the inspectorates and children and young people with SEND and their families – “will have a clear role and be equipped with the levers to fulfil their responsibilities to achieve this”. However, the GP does not fully explain how these partners’ roles will become clearer than they are already, or what levers partners will acquire that they don’t already have.

127. Ofsted and CQC local area SEND inspections surely have an important role to play, yet they are barely mentioned.
128. The Green Paper says that the DfE regional groups will monitor both delivery and spending. However, most of the detail on what these groups will monitor and when they will intervene focuses on financial aspects, with little information on quality of service or outcomes. Far more detail is required here.
129. Ofsted and CQC local area SEND inspections do not currently connect sufficiently with school inspections in the local area. This must change. Both inspection frameworks need to interface and inform each other to provide a local and national picture of the system. Both frameworks must ensure inclusion is rewarded and that it is the quality of provision that is at the heart of the review process, not simply SEND delivery.

Question 22:

Is there anything else you would like to say about the proposals in the Green Paper?

130. We question the focus in the GP on legislative change when the key problems are around implementation and the need for systemic structural challenges. It may, in our view, be better value for money to focus relentlessly on the implementation of the 2014 reforms, rather than looking to redesign the system again. The principles for change are well defined in the GP, but they were equally well defined in the 2014 Children and Families Bill. What was missing previously was a well-defined and well-funded delivery plan and clear accountability. Worryingly, this also appears to be missing in this set of reforms. For example, funding for 18-25 year-olds was not included in the funding calculation in 2014 and is still under-represented in the current proposals.
131. FE and early years are key areas of provision but there is little change or investment proposed here.
132. The GP presents a strong summary of what doesn’t work, but lacks an equally strong evidence case for what does. ASCL believes an international literature review should be urgently undertaken and shared with stakeholders.
133. The issue of mental health is neglected in the paper and needs careful additional consideration, particularly with regard to school funding.
134. Currently, SEN Support in schools is not on a statutory footing, and cannot be enforced – yet this is what most children with SEND rely on for adjustments and additional provision. The process for ensuring children and young people on SEND Support receive the right support, at the right time, and in the right place is again dependent on a school’s capacity to be inclusive.
135. ASCL believes that inclusivity is key to the success of this SEND Review, and that addressing the current barriers to inclusivity is fundamental to successful change.

D. Conclusion

136. The SEND Green Paper is a well-crafted document which articulates well the problems faced by the SEND system. The proposals suggest that a managerial model will address these issues. ASCL believes that the principles and architecture proposed here are sound, but fundamentally the paper is a delivery and management plan not yet accompanied by an implementation strategy. Without a strategy for implementation, the GP risks delivering 'right time, right place, with no discernible change'.
137. The proposals must go further in addressing the conflicting incentives in the education system which pose a barrier to inclusion and a threat to the efficacy of this plan.
138. The ambition articulated in the Schools White Paper for a strong trust to be an inclusive trust is an important opportunity to create an strong infrastructure which positively influences the whole education system and provides benefit to all young people.
139. The national education budget must be sufficient, sustainable and equitable. This is essential to ensure that funding allocated to all types of institution for SEND is not diverted to support core functions. A reformed approach to the distribution of the high needs block is needed so that the funding received by LAs, schools and colleges reflects local need and is not predicated on historic spend.
140. Health investment must be part of the wider solution. Education cannot replace the need for health intervention by simply upstreaming and offering early intervention. Without health playing an active and present role, costly educational interventions which fail to adequately meet the relevant support needs of children and young will continue.
141. ASCL believes there should be a review of the CPD funded by the Department of Education, which would commit to having SEND at its core. This is the way to model the change that is needed across the system, to build teacher confidence and to demystify SEND.
142. I hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

Margaret Mulholland
SEND & Inclusion Specialist
Association of School and College Leaders
21 July 2022

See over for appendix.

Appendix

Case study 1: The challenges of an SEN 'magnet school'

Context

Our school is a large community comprehensive with just over 2000 students, 750 in the sixth form. Staff and governors are committed to inclusion, but we wonder if this is used by other stakeholders to send more children with SEND our way, thereby relieving other schools of their responsibility to include these vulnerable children. Have financial pressures led to some schools choosing to reduce their SEND capacity and then present themselves as unable to meet the needs of SEND children?

According to DfE Jan 2021 data, 11.5% of pupils have SEN, but no EHCP – we have 22%. 2% of pupils at state-funded secondary schools have EHCPs – we have 5% (or 9% if we include our two Designated Special Provisions).

This is the spread of EHCPs across our LA. We are school N.

School	PAN	EHCP	+ Designated Special Provisions	School	PAN	EHCP	+ Designated Special Provisions
A	120	6		I	124	18	
B	210	18		J	135	5	
C	180	37		K	270	39	27 MLD
D	180	10		L	240	9	16 ASD
E	240	20	25 MLD	M	210	21	16 ASD
F	150	9		N	270	77	40 (Deaf Support; ASD/Autism)
G	180	12		O	240	15	4 (MLD/ASD)
H	240	26		P	240	7	
Total						329	128

Effect

We fear that the number of SEND children in some cohorts has a skewing effect on the experience of the whole year group. We do not want non-SEND parents to worry about this. Because of this, sadly, we no longer *promote* our SEN provision – and yet the numbers carry on rising.

The situation in our current Year 7 is particularly acute. 33 students (12%) have EHCPs. 87 students (32%) are on our SEND Record of Need. 19 (7%) of these are 'high needs', with no extra SEND money following them.

Therefore, we also have a financial issue across the school:

- Our notional SEND budget is £708 543.
- The SEND Code of Practice requires us to ring-fence £6k per EHCP child from this 6.8%, to top-up their EHCP funding to meet their needs. We therefore need to earmark £462k for the 77 non-DSP EHCP children we have.
- If we remove the EHCP element from our notional SEND funding, that leaves us with £246,543 to spend on all other SEND provision.

- From that residue we need to fund the needs of the 307 children we identify as SENDK. Depending on need, we need to provide up to 20 hours per week support, up to £6k per child. At its highest, this could be £1.842m, leaving us with a shortfall of £1,595,457.

LA support is challenging with their SEND department at 60% staffing capacity. It can only cope with Annual Reviews in Year 9 and 11, and Emergency Reviews.

Governors and leadership have also considered accountability. Ofsted are currently less focused on outcomes than on curriculum quality. However, when they consider 'impact' – how the curriculum plays out into performance – they expect that a '*well-constructed, well-taught curriculum will lead to pupils learning more and so achieving good results*'.

We are concerned that high numbers of SEND children make it significantly less likely for us to reach P8 0 or above. Our average EHCP progress is consistently better than national average for them, but SEN K progress is consistently worse. We experimented with modelling our SEND numbers cut by half, to national averages. While reducing the cohort improves our scores, we would still be unlikely to reach 0. This suggests that schools with even an average SEN intake are significantly disadvantaged in reaching 0.

Case study 2: The effective use of AP within a Multi Academy Trust

The Wellspring Academy Trust uses a model which incentivises inclusion and supports self-regulation. The trust does not place children in the trust AP from their own schools unless they follow the local protocols within the LA in the same way that all other schools do. They use their expertise within the trust to support young people to stay in school at all costs.

The Wellspring Academy trust is a multi-academy trust in Yorkshire and Lincolnshire with 28 academies. It is a 'mixed MAT' with 1 secondary school, 11 primary, 8 special and 8 Alternative Provision academies. All of the AP academies provide places commissioned by local authorities and are all embedded in local referral and admissions systems. They are not there to provide AP for the Wellspring academies and there is no MAT-based referral system for moving pupils into AP.

The trust academies are inclusive and have not permanently excluded any pupils since the conception of the trust in 2012. The SEND and AP expertise within the trust provides vital and valuable support to the mainstream academies in order to prevent the use of exclusion and/or AP. This support is coordinated and planned with annual training cycles, networks, and responsive 'emergency' support available through the trust's SEND and behaviour training and outreach service. The focus is on 'up-stream' working and prevention. If, however, a pupil genuinely requires an AP placement then the schools follow local protocol and practice with no short cuts or back door placements.

This example of a mixed MAT shows how the values, culture and expertise of special and AP schools can offer genuine inclusive support and training to the mainstream schools that co-exist within one organisation.