

Department for Education (DfE)
SEND Review: right support, right place, right time
22 July 2022

1. The NASUWT welcomes the opportunity to respond to the Department for Education (DfE) consultation, *SEND Review: right support, right place, right time*. Our response begins by setting out a number of key issues that we believe must be addressed if the aims of the Green Paper are to be achieved. We then respond to the specific questions posed in the consultation.
2. The NASUWT - The Teachers' Union represents teachers and headteachers across the United Kingdom.

GENERAL COMMENTS

3. The NASUWT supports the aim to have an education system where every child and young person can access the right support in the right place at the right time. If this ambition is to translate into practice, then it is vital that the reforms identify and address all of the factors which prevent a child or young person with special educational needs and/or a disabilities (SEND) from accessing the support that they need promptly and appropriately. The Green Paper does not do this. In particular, the Green Paper fails to address the systemic constraints and barriers that arise for the provision of education and the extent of support and resources that headteachers, teachers and support staff need. Further, it fails to set out how the Government intends to address

the significant additional resource implications for mainstream schools of including pupils with SEND, as well as the resources needed to successfully transition to a new SEND system.

4. As part of our response to the Green Paper proposals, we have listened carefully to the views of our teacher and school leader members. They are especially worried, with considerable justification that the primary driver for the reforms is to cut costs rather than to secure improvements across the system. They are also concerned that mainstream schools, teachers and headteachers are being blamed for the shortcomings in the system, which are an outcome of years in which the Government has underinvested and failed to provide the support needed. Teachers and headteachers believe that the Government's proposals will result in fewer children and young people with SEND receiving the support that they need, and that the demands of teachers, leaders and support staff in mainstream schools will become even more unsustainable.
5. Attempting to reform a system that is already experiencing huge constraints because of limited resources, whilst not identifying the additional resources needed, will undermine any effort toward system improvement. If the Government remains committed to the spending envelope set out in the 2021 Spending Review, the ambitions set out in the Green Paper will not be realised. We believe that the nature of ambition must be scaled up considerably through better support for schools and for wider children's services. This is essential if we are not to see the cycle of educational disadvantage of SEND pupils persist.
6. Before addressing the consultation questions, we set out our key concerns about the relationship between SEND and mainstream policy development and decision making; resourcing, including current funding developments; and the workload pressures on teachers and leaders in mainstream schools.

The relationship between mainstream education policies and proposed SEND reforms

7. While the Green Paper makes links to policy plans set out in the Schools White Paper, *Opportunity for all: strong schools with great teachers for your child*, and the Schools White Paper acknowledges some of the policy proposals in the Green Paper, SEND is not embedded into the mainstream education policy design and development processes. Instead, it is usually considered once policies have been formulated or there is simply an assumption that SEND will be addressed because it is referenced in standards and accountability measures. As a result, mainstream policies fail to recognise and address the needs of many children and young people with SEND, meaning that adaptations and adjustments are needed to enable those children and young people to be included. This has consequences for workload and resources, and impacts on teachers' and leaders' ability to meet the needs of those children.
8. If the Government is to realise the aim of more children and young people with SEND having their needs met effectively in mainstream schools, then it is vital that SEND is considered when any education policy is designed and developed. This does not happen at present, and many existing policies exclude or marginalise significant numbers of children and young people with SEND. For instance, reforms are needed to the curriculum, to policies for assessment and to school and system accountability measures in order for them to recognise and value the progress and achievements of children and young people with SEND. It is vital that schools that are serving the needs of pupils who have SEND are not penalised or criticised because of a failure to take proper account of the school's context and intake.
9. The SEND Green Paper makes reference to reforms to initial teacher training (ITT) and early career training (ECT) and cites the common core framework (CCF) for ITT and the early career framework (ECF) as

addressing the SEND-related training needs of trainee teachers and early career teachers. However, this is not based on an evaluation of whether the CCF and ECF are effective in preparing teachers to meet the needs of pupils with SEND. Feedback to the NASUWT from trainees, ECTs, teachers and school leaders suggests that the CCF and ECF are not providing trainee teachers and ECTs with adequate preparation. We are not aware of any provider that embeds SEND through the training. If it were to exist, we would expect SEND, equality and inclusion matters to be given priority at the start of the programme. We believe that the DfE should establish whether such practice exists. Where SEND is not embedded in training, the range of issues that need to be addressed in training limits the number of days that are allocated to addressing specific issues.

Example of ITT provision for SEND

In an example provided to us, nine days were allocated for 'professional practice' which includes training relating to SEND and equality and diversity. Just two of these days are allocated to SEND.

10. It is vital that steps are taken to ensure that trainees and ECTs receive high-quality training and development before introducing the SEND reforms. We would expect to see a clear national framework in which the expectations placed on ITT providers in respect of SEND are prescribed and where the entitlements of trainees is also clear. The framework must address questions of content, time and support for trainees and be underpinned by close monitoring, reporting and inspection of the quality and adequacy of SEND training and developmental support. The funding of ITT and ECF must also be matched to the expectations relating to SEND. As with training for trainees and ECTs, the same principles should guide the arrangements in place for the training of teachers and school leaders.

11. We note the reforms that are taking place in ITT as a result of the ITT market review. This includes the accreditation/reaccreditation of all providers who will deliver ITT from 2024. We have asked those responsible for overseeing the implementation of these reforms about the steps being taken to ensure that providers address SEND adequately through their curriculums. This includes asking about the steps being taken to ensure that DfE's ITT Associates, who will be supporting providers through this stage 2 accreditation process, have the relevant knowledge, skills and understanding to support providers to do this. The response that we received simply states that providers need to design curricula that address the CCF requirements and the Teachers' Standards, as these include reference to SEND. There is no explanation of the steps being taken, if any, to ensure that Associates have the skills and understanding to support this process. To reiterate our concern, even though the Teachers' Standards and the CCF set expectations in relation to SEND, current training does not appear to address SEND adequately and SEND does not appear to be embedded through training. The failure to ensure that improvements are secured through the ITT curriculum redesign processes means that the issue will persist.
12. The Green Paper fails to address the development and support needs of experienced teachers and the training, development and deployment of support staff. These are serious omissions. We pick up some particular concerns below under resources and workload.
13. While the Green Paper makes reference to amending school accountability measures to recognise those schools that are supporting pupils with SEND, we are concerned that this could simply reinforce the division between inclusive schools and other schools, rather than supporting all schools to be inclusive.
14. We believe that the accountability system needs to be overhauled so that it genuinely recognises the ways in which schools support all

pupils, including those with SEND. This requires a radical shift away from the narrow focus on academic performance measures to an approach that recognises the contribution of schools to the social, emotional, cultural and creative development of pupils, as well as giving greater recognition to practical and vocational training and qualifications. Further, we believe that the accountability system needs to recognise that schools do not operate in isolation, but that others, including the Government, contribute to what happens in schools. We believe that the school accountability system should also recognise and judge the role and contributions of these other players.

Resources, including funding

15. Teachers and school leaders are extremely concerned, with justification, that the main driver for the SEND Review was to cut costs and that the policy proposals set out in the Green Paper are designed to support this objective. The Green Paper does not address the additional resource needs of mainstream schools arising from the expectation that more pupils with SEND will have their needs met in mainstream schools. This includes the additional resources related to training and developing experienced teachers and support staff. It includes the need to ensure that schools are adequately resourced to address the workload pressures on teachers and leaders, including special educational needs coordinators (SENCOs), and the pressures created by more than a decade of austerity and real-time cuts to school budgets.

16. Half of respondents to an NASUWT survey about support for SEN reported that specialist support staff posts had been cut in the previous five years, with more than half reporting that other support staff posts had been cut.¹ Evidence from the Green Paper consultation meetings that we held with teachers, leaders and SENCOs in May and June 2022 confirmed that this is an even greater issue for schools now.

¹ NASUWT (2018) Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey Report.

Teachers report that cuts to support staff posts mean that they are often not allocated a member of support staff, even though they are supposed to have one in the class. Staffing pressures mean that support staff may be redeployed at short notice, making it difficult or impossible to jointly prepare for lessons. The consequence for the classroom teacher is significant and impacts adversely on their capacity to meet the needs of pupils with SEND. Further, the working conditions for many support staff are so poor that there is often a continual turnover of staff. Teachers tell us that support staff are often denied opportunities to access appropriate training and experience to develop in the role, leaving them without the quality of professional in-class support they require. The proposals set out in the Green Paper do not address these issues, which are about the resourcing of schools budgets generally and funding for SEN through the notional budget, as well as funding for high needs.

17. Evidence from respondents to the NASUWT's SEN survey highlights the significant challenges that schools face in accessing specialist advice and support for pupils who have SEND.² More than in four in five respondents (83%) said that the workload of teachers and school leaders had increased as a result of cuts to specialist services and three-quarters reported difficulties in securing meetings with external agencies.³ Respondents also acknowledged the challenges that external services faced as a result of being 'pared to the core' and the loss of experienced staff. They provided examples of thresholds for access to assessment and support being raised and the use of strategies to discourage and delay requests for support. They also reported massive delays in accessing specialist advice and support.
18. Feedback from participants attending the NASUWT-organised events on the Green Paper proposals confirms that the situation has deteriorated further since the survey was conducted, and that schools

² NASUWT (2018) Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey Report.

³ Ibid.

are left trying to provide the best support that they can when other services do not deliver. For example, participants reported long waiting times for accessing mental health support provided through Children's and Adolescent Mental Health Services (CAMHS) and that these services were themselves under intense resource pressures leading to a loss of continuity of support available. In the absence of specialist support services, schools are often left to support pupils as best they can even though their focus should be on teaching and learning. The Green Paper proposals fail to recognise and address these issues.

19. The Government's Safety Valve (SV) and Delivering Better Value (DBV) programmes are focused on authorities reducing their high needs deficits within a short space of time. While guidance recognises the value of increasing the support available to children and young people on SEN Support as a means of reducing the escalation of need and requests for education health and care plans (EHCPs), the requirement to reduce the deficit and become more efficient is likely to result in short term cost cutting measures taking precedence over long-term strategic decision-making and addressing the additional needs arising from mainstream schools meeting the needs of more pupils with SEND.
20. The timescale for achieving change as part of the DBV and SV programmes is very short and teachers and leaders attending the NASUWT events about the Green Paper proposals stressed the need for change programmes to be realistic about the time needed to transition to new systems and ways of operating. They said that two years is far too short a period of time to embed new practices and achieve effective change.
21. While there is an expectation that local authorities should work in partnership with leaders in different settings as part of the SV and DBV programmes, strategic leaders are actually responsible for decisions and for achieving funding efficiencies. Therefore, the relationship is

unequal. Feedback from NASUWT Representatives in SV authorities suggests that decision-making occurs at high level, decision-makers do not actively seek the views and needs of schools and providers on the ground, and communication about decisions is often poor. There is also concern that the distinction between the local authority becoming more efficient and the local authority cutting costs is blurred and that authorities are communicating the need to cuts costs.

22. We acknowledge that some local authorities do not manage their budgets effectively and efficiently. However, more than a decade of underfunding has also had a significant and adverse impact on local authorities' abilities to meet the needs of children and young people with SEND. The Government should provide support, where needed, to enable local authorities to adopt SEND systems that are both efficient and effective. In addition, we believe that the Government should engage with the NASUWT and other stakeholders to examine whether cancelling existing local authority deficits could be an effective and equitable means of placing the system on a more sustainable and stable long-term footing.

Workload and pressures on teachers and leaders in mainstream schools

23. The Green Paper fails to pay due attention to the resource implications of mainstream schools meeting the needs of more children and young people with SEND, which has profound implications for the workload and wellbeing of teachers and leaders in schools. The pressures on schools are already immense and have intensified since the pandemic. It is unrealistic to expect more children and young people with SEND to have their needs met in mainstream schools unless the policy proposals address SENCO, teacher and school leader workload pressures and include additional funding to meet both the current and additional demands on schools.

24. Evidence from the NASUWT's SEN survey⁴ along with feedback from teachers, SENCOs and school leaders attending the NASUWT Green Paper consultation events, illustrate the challenges that SEND reforms need to address.
25. SENCOs have different levels of seniority. Many SENCOs, particularly in secondary schools, are not senior leaders. For example, two thirds of secondary SENCOs responding to the NASUWT's SEN survey said that they were not a member of the senior leadership team.⁵ Many of these SENCOs carry heavy teaching commitments, limiting their time for SENCO-related duties.
26. While the majority of SENCOs in primary schools reported that they were members of the senior leadership team (70%),⁶ the majority of SENCOs in primary schools also juggle the role of the SENCO with other leadership duties. Participants in the NASUWT Green Paper consultation events described the pressures that they were under trying to balance responsibilities for SEN, typically with responsibility as the senior mental health lead and Designated Safeguarding Lead (DSL), as well as having other leadership responsibilities.
27. It should be noted that while a SENCO may not have the responsibility as DSL, several SENCOs reported that they were drawn into safeguarding issues for pupils with SEND because the pupil wanted to speak to somebody they knew and could trust.
28. In both primary and secondary schools, SENCOs stressed the need for reforms to take account of the school's context. SENCOs working in small schools and schools in rural settings face particular challenges and workload pressures.

⁴ NASUWT (2018) Special Educational Needs (SEN), Additional Learning Needs (ALN) and Additional Support Needs (ASN): Survey Report.

⁵ NASUWT (2018), Ibid.

⁶ NASUWT (2018) Ibid.

29. The demands on SENCOs' dedicated time for SEN are often taken up with tasks related to assessments, plans and external services. SENCOs report that they have very little or no time to provide support to class teachers, even though they considered this to be a vital part of their role.
30. Linked to the last point, time pressures on the SENCO and on class teachers mean that continuing professional development (CPD) and support provided by the SENCO often takes the form of briefings, e.g. half an hour at a staff meeting. Some teachers expressed the need for more personalised support from the SENCO, but time constraints meant that this was not possible.

Example provided by an NASUWT member

The teacher who now works in Alternative Provision (AP), compared and contrasted the training and support that she has received in this role with that when she was a class teacher in a mainstream school.

The training that she has received in the AP setting has included strategies to differentiate and include pupils who have SEND and strategies for managing behaviour. She said that this has been invaluable and helped to transform her teaching. She said that the training would have helped her as a mainstream class teacher.

However, time pressures would have meant that such training was not feasible in the mainstream school. She also reported that she teaches much smaller classes in the AP setting, typically five pupils, and has additional support from support staff. This was significant and means that it is possible to provide targeted support to pupils and manage pupil behaviour. It was much more difficult to differentiate and provide targeted support in a mainstream class of 30 pupils.

31. We wish to highlight the findings of the recent NASEN-commissioned research report by the universities of Birmingham and Bath Spa which addresses the issues of CPD and SEND expertise.⁷ The report outlines the need for guidance on CPD and support for the wider school workforce. The report also highlights the need for regular and carefully sequenced training and development. Further, respondents identified consultation with professionals and observation of colleagues as the most effective form of CPD, but the report finds that this is not the most accessed form of CPD. The report recommends that consideration is paid to how these activities can be facilitated. We believe that this is an extremely important point and that the Government's response to the SEND Review must include measures to address the workload pressures on teachers and leaders in schools and settings.

SPECIFIC COMMENTS

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.

32. The current SEND Code of Practice sets out standards. The issues that arise in respect of the Code of Practice are due to the Code not being implemented effectively. In the case of schools, this is largely due to the failure to ensure that they are adequately resourced and supported. We believe that the focus of the reforms should be on ensuring the effective implementation of existing legislation, including identifying and removing the systemic barriers to effective implementation.

33. We are concerned about the status of the proposed standards and the implications for existing legislation, rights and entitlements. Will the

⁷ Dobson, Graeme; Curran, Helen; Perepa, Prithvi; and Reraki, Maria (March 2022) *Understanding school workforce experiences regarding access to and the impact of special educational needs and/or disability (SEND) continuing professional development (CPD) and expertise* (NASEN and Whole School SEND)

Standards replace the Children and Families Act? How will the proposed standards impact on those who share a protected characteristic, particularly children and young people with a disability? We would strongly oppose any development that reduces or limits these rights and entitlements or that fails to identify and take account of the equality impact of what is being proposed.

34. There is a need to strengthen the requirements in respect of health and social care. In particular, there is a need to ensure that accountability mechanisms apply to health and social care, and not just to education and the local authority as a default. There is a need to clarify when specialist health and social care should be provided and that this should be provided by health and social care services.
35. Policies relating to SEND must not be seen in isolation from wider education policies and reforms. A holistic approach to education policy development is needed if the reforms are to be implemented effectively. There is a need to consider and address issues such as capacity, workload and resources in mainstream provision. We are extremely concerned that the Green Paper does not give due attention to these matters.
36. Local areas have different contexts and histories. Provision needs to be responsive to local context meaning that it may need to be provided differently in different areas. There are, for example, likely to be differences between urban and rural contexts. There is a genuine risk that approaches to reform that are rigid and inflexible will fail to take account of the long-standing and often deeply-rooted differences in approach and patterns of provision between local areas.
37. It is essential that mainstream schools are not left to address needs by default. Schools need to be able to focus on their core responsibilities for teaching and learning, drawing on support from specialist services when needed.

38. It is vital that schools are consulted and engaged in decision making about provision and support.

39. It is vital that a clear distinction is made between strategic leadership responsibilities and the responsibilities of the leaders of all the services and providers in contributing to the local vision. It must be clear that strategic leaders are responsible for ensuring that providers have the resources and support that they need in order to operate effectively. We are concerned that, currently, this distinction is blurred and that this could result in school leaders being expected to commit to the strategic vision when they have insufficient resources and support to deliver that vision.

40. There should be a broad expectation that every school is inclusive and is appropriately resourced and supported to be so. The Local Offer (LO) should make it clear what should be ordinarily available in mainstream schools. There is also a need to identify and challenge exclusive practices in admissions; for example, a school telling prospective parents that the inclusive school down the road would be better able to meet their child's needs. Early identification needs to include a clear focus on early years (i.e. 0-5 pre-school and particularly 0-3). This needs to address the roles of health and social care professionals in identification, as they are most likely to be providing those early years services.

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?

41. We are unclear whether the local SEND partnership fulfils a distinct and separate role to other partnerships.

42. There is a need to ensure that current partnerships work effectively. There is also a need to clarify how different partnerships interact with each other. Feedback on existing partnerships should be sought. This might be undertaken through survey or a more formal study to pick up issues. Potentially, it may be appropriate to rationalise local partnerships to ensure that they operate efficiently and effectively, including through their relationships with schools and colleges.
43. There is a need to explicitly identify and address the potential workload burdens for schools and colleges associated with engaging in and contributing to partnerships.
44. There is a need to ensure that local SEND partnerships engage with schools; that they seek the views of teachers and leaders in schools when developing policy proposals; that they understand the impact of potential policy decisions on teachers and leaders in different settings and contexts; and that they ensure that local inclusion plans address these issues.
45. There is a need to establish how the local inclusion plan (LIP) will interact with the LO. Steps must also be taken to ensure that LOs are accessible, kept up-to-date, and useful in explaining the provision that is available locally.

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?

46. Funding should be available to support the development of specialist high-cost provision across authority boundaries. There is a need to actively encourage and enable local authorities to work together in an area to establish provision and to challenge those that resist cross-authority working unreasonably. It may be appropriate for the DfE to provide direct funding for this purpose and to specify the authority

areas to be served, along with expectations about collaboration across the areas.

47. There is a need to recognise the historical factors which have operated as barriers to joint working across authorities. The DfE has a critical role to play in tackling the barriers to cross-authority working and in supporting or mandating the development of partnerships that work across authorities. There is a need to recognise the potential power imbalances between local authorities. Criteria for cross border working should ensure that participating local authorities are equal partners in decision making.

Question 4: What components of the EHCP should we consider reviewing or amending as we move to a standardised and digitised version?

48. There is a risk that standardising the EHCP to address different contexts and needs will result in the development of a burdensome and bureaucratic document. It is essential that measures are taken to ensure that this does not happen. The digitised form must be designed in such a way as to enable those completing the form or providing evidence to include information quickly and appropriately. The information provided must be necessary, meaning that the form should be flexible to take account of differing levels of complexity and need. There should be active engagement of users throughout the redesign process, and the document should be assessed for its workload impact before being finalised.

49. The challenge for the Government is not merely addressing the bureaucracy accompanying the EHCP process, but also making it a meaningful process in which all relevant agencies are engaged. Too often, in the absence of timely and appropriate support from other agencies, it falls to individual schools to manage the EHCP process. For example, engaging professionals from across education, health

and social care in the process often falls on schools and the SENCO. This proves to be extremely burdensome as SENCOs report that they often have to chase professionals repeatedly and that those professionals may be too busy to attend meetings. It is unclear how the proposals set out in the Green Paper will ensure that these other agencies prioritise engagement in the EHCP process.

50. There is a need to redesign the EHCP processes to reduce the bureaucracy and burdens on staff in schools. This might include automating processes such as the identification of meeting times, requests for information, and the sharing of information.

51. The processes for populating information to include in the EHCP, and how the information is shared across services and providers, should be standardised and digitised.

52. There should be templates for sharing information with teachers and staff in schools, colleges and settings. It will be useful to provide a number of examples that schools and settings might choose to use.

53. It should be clear that local authorities, not school staff should be responsible for writing the EHCP. We are concerned that guidance in the current Code of Practice is vague about this responsibility. This needs to be addressed through the standards. Schools do not have the resources to undertake this role, and placing the expectation on schools and specifically SENCOs/SEN teams means that they are often unable to carry out key responsibilities, such as providing advice and support to teachers and other staff because of the workload.

54. Measures also need to be taken to support other children's services so that they can fulfil the expectations placed on them to contribute to multi-agency team working around the child.

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?

55. We are extremely concerned about the proposal to amend the process for naming a place within an EHCP and to provide parents with a tailored list of settings that are appropriate to meet their child's needs. There is a very significant risk that this will be used to control costs at the expense of ensuring that the provision meets the child's needs and because arrangements for collaboration between health sector services, which are responsible for most 0-3 support, and other services that children access subsequently, including education settings, are too often not well developed or do not operate effectively.

56. We recognise the need to control the exorbitant costs of some specialist provision. However, we believe that there are mechanisms that can be used for this purpose. The proposed tariffs system can be used to control costs. The DfE might also fund some high-cost specialist provision directly as a means of managing costs and maintaining oversight.

57. The Government needs to focus on ensuring that children and young people receive the support that they need promptly. Early intervention will help to address the need for high-cost specialist provision. Many of the issues associated with EHCPs and high-cost provision arise because early intervention support is not provided.

58. The underlying message in the SEND Green Paper is that mainstream schools are to blame for the failings of the current SEND system. This is unacceptable. The focus needs to shift to ensuring that mainstream schools have the resources, advice and support to meet the needs of pupils who have SEND when it is needed.

Question 6: To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards

and mandatory mediation? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why, specifying the components you disagree with and alternatives or exceptions, particularly to mandatory mediation.

59. Strongly Disagree.

60. We do not think that mandatory mediation is appropriate and are concerned that this will prevent some children and young people and their families from seeking redress. Evidence cited in the Green Paper finds that in 2020/21, 96% of tribunals were at least partly in favour of the parent or carer. This indicates that parents and carers are justified in taking cases to tribunal and that the issue is not about parents and carers making complaints, but the fact that their children not receiving the support to which they are entitled. Therefore, the focus should be on improving the system and the support that children receive, and not on introducing measures to prevent parents from taking a case to tribunal.

61. It is not clear that new national standards will improve the system as the current Code of Practice sets standards. The issue is that these are not being resourced effectively to ensure effective implementation. Therefore, we believe that the focus should be on addressing the barriers to effective implementation.

62. While there is a need to address variation in access to, and the quality of provision, it is not clear that new national standards will do this. There is a risk that the proposed national standards will be implemented in ways that simply replicate existing problems such as assessment thresholds being used to control access to specialist support and manage resources.

63. There is a need to ensure that national standards respond to local contexts. While families should expect the same level and quality of

support wherever they live, this should not mean that the support is delivered in exactly the same way.

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? Please give a reason for your answer with examples, if possible.

64. We are concerned that despite evidence of discrimination, there has been an inadequate response from Government and other relevant agencies to investigate and tackle the root causes. All schools should fulfil their responsibilities in respect of the Equality Act 2010 and the public sector equality duty. We believe that the Government, Ofsted, the Equality and Human Rights Commission (EHRC) and the SEND Tribunal all have an important role to play in ensuring that the system operates fairly, that appropriate redress is available when discrimination occurs, and that lessons are learned from past failures across the system as a whole.

65. There is also a need for the Government to emphasise the importance of schools fulfilling their responsibilities in relation to the Equality Act. This should include stronger accountability measures relating to equalities and inclusion. For instance, tools that have been developed to support schools to make decisions about the curriculum and about financial decisions should include SEND data measures which enable judgements to be made about the extent to which a school is inclusive and reflecting the local SEND population. There should also be a greater focus on equalities matters across inspections. Further, Ofsted should be asked to undertake a thematic review looking at the extent to which equality matters are addressed across all aspects of the school or college.

66. We support the proposal to give local authorities the power to require a trust to admit a child where the trust is named in the EHCP. This brings multi-academy trusts (MATs) into line with maintained schools.

67. We believe that the Local Government and Social Care Ombudsman (LGSCO) should have extended power to investigate complaints from parents about SEN provision in all state-funded schools, including maintained schools and academies. This should include provision for those on SEN Support.

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?

68. There is a need to ensure that information collected by services working with the youngest children is shared with other services and settings, including schools and early years education settings. Specifically, steps need to be taken to ensure that the information from the two-year progress check is shared. This information about children's development will assist transitions into early years education and school, and allow those settings to plan for children's needs.

Question 9: To what extent do you agree or disagree that we should introduce a new mandatory SENCo NPQ to replace the NASENCo? Strongly Agree, Agree, Neither Agree or Disagree, Disagree, Strongly Disagree. – If you selected Disagree or Strongly Disagree, please tell us why.

69. Disagree.

70. We welcome the proposal that the SENCO NPQ should be a senior leadership qualification, in that it recognises that the SENCO should be a senior leadership position. However, we have concerns about NPQs and the implications of a mandatory qualification on the workload and wellbeing of SENCOs and aspiring SENCOs.

71. We are concerned that the market-led approach to NPQs results in variation in the quality and coverage of NPQ qualifications. We believe that there is a need to ensure that SENCOs receive broad training that prepares them for the role in different schools and contexts. We believe that particular attention needs to be paid to providing practical support in the role. We also believe that existing and prospective SENCOs should be consulted about the content of the NPQs and that the NPQs should be tested with SENCOs before they are approved.
72. We are extremely concerned about the excessive workload burdens of SENCOs and the impact that this has on their ability to undertake SENCO training. It is vital that the Government acknowledges these issues and takes measures to enable SENCOs to undertake the training. This should include providing grants/bursaries to cover the full costs of training and providing funding for paid cover while the SENCO is undertaking the training.
73. We have serious concerns that the Green Paper does not reference the training and development of teaching assistants (TAs) and support staff. TAs and other support staff have a critical role to play in meeting the needs of children and young people with SEND, and it is vital that they have the knowledge skills and understanding to carry out their role effectively.
74. We are also very concerned that many TAs and support staff posts have been cut and that many TAs are employed on insecure contracts. The shortage of TAs and support staff means that teachers do not receive consistent support and that it is difficult or impossible to involve the TA/member of support staff in planning.
75. The Green Paper fails to address the training and support needs of subject and class teachers. This is a serious omission which we have highlighted in our general comments. While the Green Paper makes reference to SEND being addressed in the CCF for ITT and the ECF,

feedback indicates that they are not preparing trainees and ECTs to meet the needs of pupils with SEND. We are particularly concerned that there is no evaluation of the quality and effectiveness of training and preparation under the CCF and ECF.

76. Experienced teachers tell us that they do not feel equipped or supported to meet the needs of pupils with SEND in their classes. Workload pressures mean that SENCOs are often forced to focus on managing the administrative demands of SEND and do not have time to provide the advice and support that class teachers need. Wider demands on teachers mean that they do not have time to collaborate with colleagues or to undertake specialist CPD.

Example provided by an NASUWT member

A Higher Level Teaching Assistant (HLTA) who has the role of Support SENCO was unable to find a relevant training course for support staff with SENCO responsibilities and so is following a NatSENCO course.

The course has helped her to improve her knowledge and understanding and carry out her role more effectively. However, the HLTA was unable to gain a formal qualification because she is not a qualified teacher.

Question 10: To what extent do you agree 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? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why.

77. Disagree.

78. We are concerned that the expectation as it is currently framed places the burden of training on the SENCO/prospective SENCO. This could

mean that the SENCO/prospective SENCO would need to fund the training and undertake the training in their own time. This may act as a disincentive to teachers considering taking on a SENCO role. We do not believe this to be appropriate. SENCOs/prospective SENCOs should be funded to undertake NPQ SENCO training and should be given time within the working day to undertake the training. We believe that the mandatory SENCO training requirements should be reworded so that the burden for demonstrating competence rests with the school rather than the individual teacher and to make clear that the headteacher is responsible for ensuring that the SENCO is able to undertake the required training and will be supported to do that training, including given time and funding for this purpose.

Question 11: To what extent do you agree or disagree that both specialist and mixed MATs should be allowed to coexist in the fully trust-led future? This would allow current local authority-maintained special schools and AP settings to join either type of MAT. Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why.

79. Neither Agree nor Disagree.

80. We do not object in principle to the proposal that specialist and mixed MATs should be allowed to coexist in a fully trust-led system. The critical issue for us is about what is meant by the 'fully trust-led future' in the context of the vision set out in the Schools White Paper. Without this clarity, which, to date, has yet to be provided, we cannot support the transfer of schools from the mainstream to the academies sector.

81. However, we do believe that all trusts and schools should be inclusive. It would not be acceptable for trusts to allocate a school or provision inside or outside the trust as the 'inclusive' school or provision for challenging children who should actually be educated in a mainstream school. It will be important to ensure that accountability systems can unpick how MATs function in respect of inclusive practice and specialist provision.

82. Also, covert admissions practices such as telling prospective parents that their child would be better placed applying to the 'inclusive school down the road' must be challenged. It is essential that academy providers are properly and robustly regulated in terms of their admissions and exclusion practice. There must also be a clear expectation placed on these providers that they will work in concert with other schools and children's services providers locally to ensure that the needs of all children in the local areas are properly addressed.

83. Further, the DfE should ensure that accountability and management systems can be used to identify such practices and there must also be a system which ensures transparency to parents and the public.

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?

84. We have concerns about the extent to which the process of developing apprenticeships is taking appropriate and adequate account of the needs of learners with SEND. There are particular issues with traineeships which fail to cater for the needs of young people with SEND. As stated in our general comments about the Green Paper, it is vital that catering for the needs of those who have SEND is addressed at the policy design and development stages, Action is also needed to challenge employers to fulfil their responsibilities under equalities legislation.

Question 13: To what extent do you agree or disagree that this new vision for AP will result in improved outcomes for children and young people? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why.

85. Strongly Disagree.

86. While we support the aspiration that the AP and SEND systems should be aligned, we are concerned that failure to acknowledge and address the reforms that are needed to enable mainstream schools to support more children and young people with SEND will mean that children and young people with SEND will not have their needs met, including through AP. As a result, we are especially concerned that the Green Paper proposals will result in many more children with SEND being placed in AP, remaining in AP and experiencing a revolving door where they move in and out of AP.
87. While we welcome the vision that AP should provide targeted support in mainstream schools for children and young people whose behaviour disrupts their and other children's education, we believe that mainstream schools also need to have access to other specialist support. The key point here is that children and young people in mainstream schools who have SEND need a wide range of early intervention support that extends beyond disruptive behaviour. There is a significant risk that limiting the focus of early intervention support to that provided by AP will result in children and young people (CYP) who have SEND not receiving appropriate early intervention support until their unmet needs manifest as a behaviour issue.
88. The plan to provide greater security of funding for AP is welcome. However, the Green Paper says that the Government will propose that local partnerships agree a multi-year budget for AP 'ideally for a minimum of three years'. We believe that measures are needed to ensure that partnerships set multi-year budgets which provide financial security and ensure that there is sufficient focus on early intervention.
89. The Green Paper references the need for partnerships to agree the cost of each service or placement type and how changes in demand will be managed within the AP budget. If this approach is to be effective, then it is vital that partnerships establish and maintain an accurate picture of the support needed in mainstream schools. This

means that partnerships need to actively engage with mainstream schools. This must be done in a way that is not burdensome or bureaucratic.

Question 14: What needs to be in place in order to distribute existing funding more effectively to AP schools, to ensure they have the financial stability required to deliver our vision for more early intervention and re-integration?

90. We welcome the proposal to separate funding for AP from the movement of an individual child or young person and to provide multi-year budgets based on local inclusion plans. It is vital that these budgets are properly costed and that AP is appropriately resourced. This needs to include full recognition of the costs of employing and retaining qualified and experienced teachers. It also needs to recognise the costs of training and developing teachers and support staff in AP settings. Further, particular attention must be paid to the costs of providing early intervention support in mainstream schools. The DfE needs to undertake an assessment of these costs.

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? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why.

91. Strongly Disagree.

92. We recognise the importance of academic attainment and the particular importance of English and maths. However, this should not be at the expense of other important outcomes. Any accountability arrangements must also recognise the social and emotional support that is provided to pupils and the importance of the broader curriculum (which may be academic, vocational or practical) in supporting engagement in education.

93. The Green Paper highlights the current challenges faced by AP in terms of staffing, with insecure funding leading to difficulties recruiting and retaining teachers and support staff. We believe that the national performance framework should also include an outcome that addresses staffing. This should cover the recruitment and retention of qualified teachers and staff in AP. It should also address the professional development and support provided to teachers and support staff.

94. There is a financial cost associated with recruiting and retaining a high-quality workforce, including qualified and experienced teachers. The Government must ensure that AP is sufficiently resourced so that it will retain, as well as recruit a high-quality workforce.

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? Strongly Agree, Agree, Neither Agree nor Disagree, Disagree, Strongly Disagree. If you selected Disagree or Strongly Disagree, please tell us why.

95. Agree.

96. We agree that a statutory framework for pupil movements may help to improve oversight and transparency of pupil placements into and out of AP. However, this will depend on what information is included, the ease with which the information is provided, and how the information is used to hold schools and providers to account. It is vital that information requirements are not burdensome and bureaucratic. It is also essential that pupil movement data is accurate and cannot be used to game the system. It must be possible to establish whether a pupil is moved into and out of AP on a revolving-door basis. It must also be possible to monitor pupil movements by SEN and by protected characteristic under the Equality Act.

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.

97. We believe that the data indicators need to be carefully selected and tested before they are introduced, to ensure that there are no unintended consequences. This includes ensuring that they do not create unhelpful incentives to generate performance outcomes to the detriment of provision focused on the needs and interests of individual children. Unions should be actively engaged in this process.

98. No performance metric or suite of measures can capture the full extent of the contribution that a setting makes to a child's progress, achievement and wellbeing. Those who use those metrics, particularly for accountability purposes, must recognise their innate limitations.

99. Some measures of success may be very specific to the child or young person who has SEND. Therefore, it is important to ensure that national and local measures either capture the breadth of success or do not limit recognition of the effective support. It will be particularly important to test potential national and local indicators in relation to this point before finalising any measures.

100. We recognise the importance of data about academic outcomes. However, we are concerned that there is a disproportionate focus on academic outcomes and a failure to recognise other outcomes and achievements. These are often critical in capturing the achievements of many pupils who have SEND. Therefore, it is vital that outcomes data does not just focus on academic outcomes, but also captures practical and vocational outcomes.

101. Acknowledging the points above, we suggest that consideration is given to the following as possible indicators of performance at national and local levels:

- SEND tribunal appeals and outcomes. This is recognised in the Green Paper, but there is a need to recognise the importance of not limiting access to appeals by introducing mandatory mediation.
- Admissions data and pupils on roll identified as having SEND, also taking account of pupils with different protected characteristics.
- Exclusions data by SEND and tribunal appeals of children and young people identified as having SEND, also taking account of pupils with different protected characteristics.
- Attainment should not just recognise English and maths and academic subjects. There is also a need to recognise other qualifications and for younger age groups to recognise the achievements and progress of those who currently are not meeting age-related expectations. Attainment data should also take into account outcomes for pupils with different protected characteristics.
- Attendance and absence rates (which is recognised in the Green Paper), also taking account of pupils with different protected characteristics.
- Wellbeing of children and young people who have SEND.
- Wellbeing of teachers, leaders and support staff.
- Staff development and confidence in meeting SEND needs, including SEND-related training in ITT and ECT and SEND-related development of experienced teachers in mainstream schools.
- SENCO and SEN staff retention rates.
- Teacher, leader and support staff recruitment and retention in AP and special schools.
- Waiting times for assessments and access to support, including by sector (education, health, social care), type of service provider (e.g. speech language and communication, and target group (e.g. advice/support to CYP with an EHCP, advice/support to CYP on SEN Support, external advice/support to SENCOs/ teachers/school staff).
- Surplus/deficits and in- and out-of-area spend budgets.

- Spending on early intervention and prevention, including for SEN Support. There is a need to recognise that quality support is an important dimension of the budgetary spend.

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?

102. There is a need for extreme care when developing bands. There should be extensive engagement, consultation and testing with all key stakeholders, including mainstream and special schools, to ensure that there are no unintended consequences.
103. Bands must not drive practices and decisions, but they must support decisions. We are concerned about feedback which indicates that local authorities and schools continue to disagree about banding decisions, with the suggestion that local authorities are basing decisions on budgetary considerations and schools are seeking more money to enable them to meet specialist needs.
104. Banding must not be burdensome and bureaucratic. Feedback suggests that some local authorities have developed very complex systems of banding that are burdensome to operate.
105. Banding needs to be flexible and enable the child or young person with SEND to have their needs met appropriately. It must not be about trying to fit the child or young person 'into a box'.

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

106. It is vital that the National SEND Delivery Board has thorough and effective oversight of the implementation of provision for SEND. In particular, it is essential that the Board can identify whether provision

for education, health and social care is implemented successfully or whether there are barriers to effective implementation.

107. Feedback from teachers and leaders indicates that there are significant difficulties in obtaining support from health and social care, which means that schools are often left to meet the needs. Further, they report difficulties arising from disputes about who should pay for provision. It is vital that the National Delivery Board is able to establish whether there are issues regarding the involvement of health and social care in an area, and if there is a problem, has the power to take action to address the problem.

108. We would expect National Delivery Board partners to take action to address issues at strategic level, e.g. through policy and planning decisions, as well as using their powers to challenge local practice.

109. We believe that the National SEND Delivery Board should seek periodic feedback from local partnerships about local provision and the implementation of provision, including barriers to effective implementation.

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?

110. Attempting to reform a system that is already experiencing huge constraints because of limited resources, whilst not identifying the additional resources needed, will undermine any effort toward system improvement. If the Government remains committed to the spending envelope set out in the 2021 Spending Review, it is clear that the ambitions set out in the Green Paper will not be capable of being met. We believe that the nature of ambition must be scaled up considerably through better support for schools and for wider children's services. This is essential if we are not to see the cycle of educational disadvantage of SEND pupils persist.

111. It is vital that additional resources are provided to support the reform process. Without the additional resources, the limited funding is likely to be diverted towards supporting changes to systems and structures, away from supporting learners and the workforce.
112. The Green Paper proposals fail to acknowledge and address the current pressures on schools and colleges, including the workload pressures on teachers and leaders. The proposals place even greater expectations on schools and will add to workload. This is likely to accelerate the recruitment and retention crisis.
113. There is a need to recognise and address the difficulties that CYP with SEND face in accessing support from specialist services when they need it. Services have been cut and specialist expertise has been lost.
114. SENCOs struggle to find time to undertake the NatSENCO qualification. As a result, they either do the minimum needed to get through the course or they do not take the qualification. We understand that as many as one third of SENCOs do not complete the award. This must be addressed, but placing a requirement on headteachers to check that a new SENCO is undertaking an NPQ will not solve the problem. There is a need to address the workload pressures on SENCOs.
115. Every teacher and school leader should have a CPD entitlement. This entitlement must be adequately resourced and should include ensuring that teachers have time within the working day to undertake training and development.
116. We draw attention to evidence which highlights the importance of carefully sequencing training and development that is tailored to the needs of individual teachers. We also draw attention to evidence about the importance of collaboration with colleagues as a form of

professional development. Collaboration and working closely with colleagues, e.g. to observe and discuss practice, may be particularly helpful in enabling teachers to establish appropriate strategies to include pupils with SEND. Reports about effective CPD include the Graeme Dobson, Helen Curran, Prithvi Perepa, and Maria Reraki (March 2022) report for Nasen: *Understanding school workforce experiences regarding access to, and the impact of, special educational needs and/or disability (SEND) continuing professional development (CPD) and expertise*. Also see: Teacher Development Trust (2015) *Developing Great Teaching: Lessons from the international reviews into professional development*.

117. The Government needs to take a direct approach to challenging providers who charge huge fees. While tariffs may help to address the issue, the Government should also look into the feasibility of funding the highest cost provision directly. Further, we consider the number of ‘for profit’ organisations running high-cost low-incidence specialist provision to be an issue as providers may use their dominance in the market to hold funders ‘over a barrel’. It is essential that the Government has a strategy in place to address the issue. We believe that the Government should be prepared to step in and take over running of provision if a provider threatens to pull out of running provision. Using the model adopted where rail companies are failing, the Government could bring in another provider to manage the provision on their behalf.

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

118. It is essential that the reforms are not rushed but are implemented over time, with time taken to review and respond to emerging issues. Too often, reforms are rushed in with no meaningful evaluation of their impact and effectiveness, including the changes that are needed to scale up from trail blazer and pilot programmes.

119. Additional resources, including funding and staffing, are needed if the SEND and AP systems are to transition successfully. There is a need to recognise that there are workload pressures associated with introducing reforms, including managing dual systems, and staff training and familiarity.

Question 22: Is there anything else you would like to say about the proposals in the Green Paper?

120. We have set out our key concerns in the general comments section of our response and flagged up concerns about the proposals in responses to specific questions.

For further information on the Union's response, contact: Sonja Hall, Principal Official (Education).

Dr Patrick Roach

General Secretary

NASUWT
Hillscourt Education Centre
Rose Hill
Rednal
Birmingham
B45 8RS

0121 453 6150

www.nasuwt.org.uk

nasuwt@mail.nasuwt.org.uk