

Revised CoP consultation:

1. Does the Code clearly reflect the changes made to the consultation draft to take account of the amendments to the Children and Families Bill to:

include disabled children and young people in the provisions on identifying children and young people, integrating education, health and care provision, joint commissioning, the local offer; and providing information and advice;

There would appear to be many instances where the words '**or disability**' have not been included. The Code needs thorough checking for all of these

'1.8 The Children and Families Act 2014 gives significant new rights directly to young people once they reach the end of compulsory school age (the end of the academic year in which they turn 16).' This is an example of when it is not clear which young people get these new rights – does this include young people with SEN and those with a disability? If so it would be helpful to clarify, as it would be further on when it refers to young people with SEN.

The ref to Ch. 6 is incorrect and is presumably meant to be Ch. 8. Chapter 8 focuses mainly on EHC plans, so may lead to further confusion about which young people it refers to. It would therefore be helpful if the list of new rights was spelt out clearly in 1.8. In particular it should be made clear that these are new rights **in relation to measures in the Children and Families Act**, and not a set of new rights generally

The table at 3.69 on joint commissioning needs correcting with regard to colleges (final row, right hand column) as it just repeats the schools accountability requirements which do not apply to colleges in the same way.

There is an interesting assumption in 4.13 that the parents of children with SEN do not work.

include children and young people in the local authority duties to provide information and advice;

provide for local authorities to set out what action they intend to take in response to comments from children, young people and parents on the local offer;

clarify when health and social care is to be treated as special educational provision

require local authorities to include the social care services they must deliver under the Chronically Sick and Disabled person's Act 1970 in EHC plans

clarify the duties on local authorities in respect of young people over 18 with SEN. These are to have regard to whether a young person requires additional time, in comparison to the majority of others of the same age who do not have special educational needs to complete his or her education or training, and to have regard to whether educational or training outcomes specified in an EHC plan have been achieved when considering whether or not to cease to maintain the plan

We have significant concerns about this, most specifically that 9.147 and 9.148 do not accurately reflect the amendment to the legislation.

9.147 says: *It is important to ensure young people are prepared effectively for adulthood and the decision to provide or continue an EHC plan should take this into account. The local authority, in collaboration with the young person, his or her parent where appropriate, and relevant professionals should consider whether there is clear evidence that special educational provision provided through an EHC plan will continue to enable young people to progress towards agreed outcomes that will prepare them for adulthood.'*

In 9.147 it is not acceptable to require 'clear evidence' that young people will be able to make progress in the future, this is a very high threshold of proof which will always be difficult to achieve and it is not clear who has the skills or expertise to make such a judgement – we do not have any confidence that LAs have it. Such decisions can only ever be based on making the best use of available information, and on the views and wishes of the young person who must be central to this process. The term 'clear evidence' should therefore be removed from this paragraph

'9.148 *There is no entitlement to continued support or an expectation that those with an EHC plan at age 18 must be allowed to remain in education or training from age 19 to 25.'*

The tone of this is entirely out of keeping with the premise of the Act, which is supposed to be about a ground-breaking new 0-25 system. The amendment was intended to ensure a conditional right for young people to keep an education health and care plan beyond their 19th birthday. These conditions are outlined in the remainder of paragraph 9.148, and are concerned with the young person wishing to remain in education and needing continuing special educational provision in order to achieve their outcomes. We would therefore wish this sentence to be deleted.

Of course not every young person with an EHC plan will wish or need to stay in education beyond 19. Those who do will most often seek another year or two beyond 19 in order to achieve their agreed outcomes, and only a few will choose to stay much longer than that. Older students are more likely to be those who acquire a learning difficulty or disability, or whose existing condition deteriorates significantly, and who need an assessment for an EHC plan beyond the age of 19. The above wording from the Code that 'there is no entitlement to continued support...from age 19 to 25' therefore risks undermining the conditional right the young person has to remain in education and continue their EHC plan.

The emphasis in the current wording will create confusion for local authorities and young people and families, and in particular does not make clear the rights of young people. The use of the wording 'from age 19 – 25' implies that young people will leave education at 18, or

stay right up until the age of 25, rather than leave at any time between age 19 to 25, as appropriate to their circumstances. The tone of 8.51 is far more positive and encourages LAs to be ambitious for young people and to provide the support they need to achieve their outcomes.

At the end of 9.148, the final sentence is confusing '*Support should continue to be reviewed at least annually. Local authorities should ensure that young people are given clear information about what support they can receive, including information about continuing study in further education, when their EHC plan ceases.*' We would suggest that it is re-written as follows

'Local authorities should ensure that young people are given clear information about what support they can receive when their EHC plan ceases. This could include information about continuing study in further education (see 8.55), and support for health and care as outlined in Ch. 8.'

Many of the decisions about education beyond 19 will be based on the achievement of outcomes. These are very poorly described in the Code and the wording used to describe the four outcomes for adulthood is variable throughout. More worryingly, the Code does not clearly define or demonstrate what is meant by an outcome – a term that is used differently across education phases and by various agencies. 9.59 (bullet point 5) says that '*Outcomes in EHC plans should be SMART (specific, measurable, achievable, realistic, time-bound)*' and 9.64 goes some way to clarifying this. Yet the example given in 3.30, '*Individual outcomes such as might be set out in an EHC plan: e.g. Martha can communicate independently with her friends at playtime*' is anything but SMART and consequently not a good example.

If the opportunity to continue or otherwise in education beyond 18 depends upon a shared understanding of what is meant by an outcome, further clarity is required

include young offenders in assessment and planning duties that are broadly similar to those for other children and young people; and

extend disagreement resolution arrangements and mediation to health and social care as well as education

Having read 11.13 and 11.17 numerous times, I am not sure how clear this is. There are so many 'see also' and sub clauses that it becomes a real challenge to work it out. For example, 11.13 notes '*different routes by which they go to mediation about the special educational element of the plan and the health and social care elements*' and then in 11.14 it says that '*Despite these different routes to mediation, where parents and young people want to go to mediation about two or all three elements of the EHC plan one mediation should cover all aspects of their concerns about it.*' However, the different routes are not clearly spelt out.

I am not entirely clear about challenging a LA which will not name the requested college on the grounds that '*to place the young person there would be incompatible with the efficient use of resources or the efficient education of others.*' Is this covered in bullet 3 in 11.40? In

other parts of the Code the term named or requested is used, rather than specified

2. Do changes to the Code, and the plans to produce supplementary materials address the responses to the main consultation on clarity, layout and accessibility?

The consultation asked respondents whether the draft Code of Practice was clearly written and easy to understand and whether it was clear from the structure where to find information needed. While there was considerable support for the format and layout, there was also significant comment as follows:

- a need for easier navigation, with paragraph numbers and key information highlighted
- a call for more illustrative examples of professional best practice and case studies
- a need for greater accessibility for children, young people and parents
- a clear demand for guidance materials tailored to specific audiences
- a need to explain the statutory duties more clearly.

The Code has been revised as follows:

- each chapter starts with a summary of what it covers and sets out the relevant legislation
- the key principles which apply across the Code, such as involving children, young people and parents and references to Equality legislation have been moved to an early chapter which focuses on principles
- content for early years, schools and further education has been moved into separate chapters, with an additional chapter focused on preparing for adulthood
- supplementary guides will also be produced for young people and also for parents setting out what the Code means for them and other web-based guides will highlight the key parts of the Code, relevant to different groups of professionals who need to have regard to it
- sources of good practice will also be referenced for practitioners.

Our main response here focuses on issues related to post-16. We welcome the new sections on Further Education (Ch. 7) and Preparing for adulthood from the earliest years (Ch. 8) and think this makes the Code much clearer. However, because of the way these two chapters are organised, Ch. 7 is very thin compared with the previous chapter on schools. Much of the information about provision in FE is included in Ch. 8, and there seems no reason why it should not be in Ch. 7 and referenced from Ch.8. Sections which could be moved to Ch. 7 include 8.32 on Study programmes and 8.33 - 35 on Pathways to employment

Chapter 7

The opening paragraph should say 'and independent specialist colleges **approved under section 41 of the Children and Families Act 2014**' rather than 'some independent etc...'

The list of legislation should include the **Section 41 regulations**

7.6 Implies that only S41 **colleges** (not schools, this needs amending) have duties under the Equality Act 2010. The exact position of specialist colleges with regard to this legislation has always been vague, but previously Equality legislation was included in the LSC/YPLA contract. This is no longer the case in the EFA contract. Are these therefore new duties for S41 colleges or does the Equality Act apply to all EFA funded providers?

7.8 – 7.21 This section is not clear about those students whose SEN are known in advance and those whose needs are identified on entry or later, and the different processes for responding to them

7.15 ‘*habilitation training*’ is not a commonly used term, and should be changed, though it is not clear if it is actually a type of support or a form of learning programme. The same applies to travel training, which is learning rather than support

7.16 The college should assess the student’s response to any action taken. Amend to: **The college should assess in discussion with the student the impact and success of the intervention.**

7.17 Add ‘which may lead to changes in **the type and level of** their support’.

7.20 This paragraph should have a new heading: **Requesting an assessment for an EHC plan.** This reflects a similar paragraph in the school chapter. However, it is not very helpful in providing clear guidance about the threshold for seeking an EHC plan, and it is important that time is not wasted at such an important stage in a young person’s education.

7.23 Needs amending to make sense ‘data is recorded accurately and in a timely manner **in line** with funding rules’

7.28 It would be helpful to add to this paragraph: **‘It will also help colleges to prepare their information for the Local Offer’**

7.29 The use of the word ‘should’ in the following sentence is of concern. ‘*The responsible local authority, usually the authority where the young person lives, should provide additional top-up funding where the cost of the special educational provision required to meet the needs of an individual young person exceeds the nationally prescribed threshold.*’ Surely once a LA has agreed a placement, then it **must** pay the top-up funding?

Although this paragraph is broadly accurate in stating ‘*There is no requirement for an EHC plan for a young person for whom a college receives additional top-up funding except in the case of a young person who is over 19,*’ nevertheless there will be a high degree of correlation between these two groups and the paragraph should reflect that situation as the norm, rather than focus on the exception. It should also refer to those who are 19 and over

Chapter 8

It is surprising that this chapter contains no reference to the Raising of the Participation Age, so that it is clear at the year 9 review that young people with SEN or a disability must participate in education or training, like their peers, until the age of 18. This could be referenced in 8.11 or 8.22.

8.3 ‘*the needs of SEN children and young people*’ should read ‘**children and young people with SEN**’.

8.9 It is not clear what is meant by ‘*economic regeneration*’ as a service to help young people prepare for adulthood

8.13 This is not a very accurate description of study programme, suggesting as it does that

there are fixed types of study programme to choose from; it should read: '...should also identify which **components of a** study programme will best prepare the young person for adult life' or similar.

8.15 -18 There needs to be something more in this section about the importance of external support/advocacy if a young person does not agree with their parents. Is this the support described in 8.20, it is not clear?

8.17 This paragraph seems to be at odds with previous statements about young people taking on responsibility themselves, as it says that LAs '*should continue to involve parents in discussions about the young person's future*'. Having granted '*significant new rights directly to young people*' (1.8) the Code needs to be consistent in how it describes these rights. This statement therefore needs qualifying with the words '*should continue to involve parents in discussions about the young person's future if the young person agrees*'. 8.18 It would be helpful to include something here about the identification of support for a young person being discussed at preparing for adulthood reviews and recorded in EHC plans.

8.20 It is not clear if the '*independent skilled supporter*' referred to here is the same as the Independent Supporter referred to in 2.19, which is a formal role. If it is the same, it should be written in that form; if not the wording should be changed to avoid confusion.

8.23 Many young people with SEN will not be taking exams so this is not the best example of why their plans may change. More often, young people at this stage in their lives change their minds frequently and should be allowed to do so.

8.28 and 8.66 appear to be the same

8.33 The use of the word '*overwhelming*' is inappropriate in a Code, especially when not backed up by evidence.

8.34 There is nothing in the Code for vocational learning and training providers, offering apprenticeships or traineeships to young people with EHC plans, to help them understand their responsibilities towards these young people.

Chapter 9

9.14 '*A young person who was well supported through the Local Offer while at school may move to a further education (FE) college where the same range or level of support is not available. An EHC plan may then be needed to ensure that support is provided and coordinated effectively in the new environment.*' This is a confusing statement, inferring as it does that FE does not provide appropriate support. The likelihood is that it will be the nature and type of support required that will be different, and that someone who has perhaps coped well in a smaller setting such as a school will indeed require more support in a large busy FE environment. It would be useful if this paragraph to be re-written to better reflect this

9.176 now gives **March 31st** as the date by which EHC plans – including specifying and naming post-16 provision – must be completed. This is an ambitious target and it is therefore important that compliance is monitored, so that young people and their families can be confident that decisions will be made in a timely fashion and that LAs are held accountable

General

We welcome the opportunity to comment on these changes, but the timing of this brief consultation is poor. It was circulated just before Easter weekend when many colleges were closed, and closes just after a bank holiday, leaving only a few working days for comment. Bearing in mind that colleges are subject to a Code for the first time, and that many of the changes relate to post-16 elements, this has given a very limited time for considered responses for a key group that must have regard to the Code

In general we welcome the revised layout of the Code and the chapter summaries.

We welcome the proposal to produce audience specific guidance. This will be particularly important for parents and young people in relation to Chapter 11 Resolving disagreements, which is extremely complex

Without sight of the re-drafted regulations it is difficult to be absolutely sure that this all joins up effectively