

Natspec response to Education Select Committee SEND Inquiry

Background

Natspec is the membership association for organisations which offer specialist further education for students with learning difficulties and disabilities. We represent 82 colleges and 4,000 students and provide training for the wider further education sector to help improve provision for an additional 27,000 students¹ with Education, Health and Care Plans.

As an organisation concerned with the post-16 education of young people with high needs, we have focused our response on the impact of the reforms on this group, their families, and the providers who support them. We have also made some recommendations that we believe would help achieve the vision behind the reforms.

Summary

Natspec fully supported the vision of the SEND reforms, summarised at the time by the Department for Education as a system characterised by:

- participation of children, their parents and young people in decision-making
- early identification of children and young people's needs and early intervention to support them.
- greater choice and control for young people and parents over support
- collaboration between education, health and social care services to provide support
- high quality provision to meet the needs of children and young people with SEN
- focus on inclusive practice and removing barriers to learning
- successful preparation for adulthood, including independent living and employment.

We worked closely with the Department of Education on developing the underpinning legislation and the SEND Code of Practice, and remain committed to the aspirations of the reforms. However, we do not believe that implementation to date has delivered on this vision. While our members report pockets of effective practice, there is a lack of systemic improvement.

In particular, we have not seen significant progress in achieving:

- fair access to high quality provision to meet the needs of young people
- a less adversarial, less bureaucratic and more transparent system that is easier for young people and their families to navigate
- greater personalisation, choice and control for young people and more involvement in decision-making

¹ [ESFA High Needs place numbers](#)

- effective collaboration, including joint commissioning, between education, health and social care.

We believe the difficulties in implementation can be largely attributed to the following factors:

- local authorities being required to take on multiple, conflicting functions, coupled with insufficient capacity to fulfil their duties
- insufficient accountability in the system
- insufficient strategic or long-term planning, with local plans driven too often by financial concerns, not young people's needs
- a lack of collaboration at regional and national level, with no infrastructure or incentives to support joint planning and funding for low-incidence disabilities
- impact measures focused on short term outcomes and not on the longer-term benefits of provision to individuals, the economy or society as a whole
- inadequate levels of funding overall, insufficient funding available to support post-16 and post-19 provision, and funding not always directed where it will achieve maximum impact
- a lack of focus on young people and further education (as opposed to children and schools), and a general lack of understanding of further education systems and purpose.

1. Assessment and support

1.1 There is an inherent conflict of interest in local authorities having responsibility for assessing, commissioning *and* funding provision for young people with SEND. These conflicting functions sometimes lead to local authorities focusing on provision rather than need, and commissioning what is affordable rather than what is needed. Many are overwhelmed by the administrative burden of fulfilling all these functions and the lack the resource to do so effectively. In addition, some local authorities are struggling to understand further education for young people with SEND, an area for which they have not traditionally been responsible.

1.2 Young people with low-incidence SEN seeking access to appropriately specialised provision experience a postcode lottery, resulting from a lack of collaborative planning by local authorities. While some local authorities are prepared to source highly specialised provision at a regional or even national level, others are not willing to place young people out of area, even where there is no suitable local provision. See paragraph 3.3 for more details.

1.3 Local authorities' decision-making is often focused on short term outcomes and heavily influenced by budgetary constraints. Working on an annual high needs budget allocation is causing some local authorities to make one-year-only post-16 placements despite a young person's clear need for a two or three-year programme to achieve their outcomes. This short-termism causes huge and unnecessary anxiety for young people and families. A recent survey of Natspec college revealed that 72% had one or more returning students where the local authority, at the end of May, had not yet confirmed their ongoing placements for September.

Some of our A level students who are coming to the end of the first year of their studies are still (in mid-May) waiting for confirmation of continuing funding for year two of what was always going to be a two-year programme.

Royal National College for the Blind, Hereford.

1.4 There is little consideration of the long-term impact of investment in post-16 provision, either in terms of social return or financial impact, including reducing dependency on adult social care or increasing the chances of disabled young people gaining paid work.

RECOMMENDATION 1:

DfE should commission independent social return on investment research or ask the National Audit Office to repeat or update its 2011 report, 'Oversight of Special Education for Young People aged 16-25', undertaken when the SEND reforms were still at Green Paper stage, and re-examine the issue of securing value for money from 16–25 special education in England.

1.5 Young people's wishes and preferences are not being given the due consideration promised by the SEND reforms. Some local authorities are adopting blanket policies that appear to be based on financial considerations, rather than on the needs or wishes of individual young people. These include:

- not using independent specialist colleges even when they are local
- only placing young people in a specialist college after they have attended an interview at a general FE college (GFE) which decides they cannot meet the young person's needs
- not placing any young people out of the local area, even when provision in a neighbouring borough is more convenient to the family
- not funding residential provision or only offering it following the breakdown of local placements.

These policies sometimes have negative and costly consequences; almost half of Natspec colleges responding to a recent survey had one or more students who came to them as a result of the breakdown of a placement at a GFE, having had their original preference for a specialist college over-ridden.

Some of our members have reported that parents and young people have been influenced into not expressing a preference for a specialist college because the local authority has indicated that it does not place its young people in this type of provision.

RECOMMENDATION 2:

Local Area SEND inspections should include a specific review of local authorities' decision-making about placements, including questioning whether placements have been made for short-term financial reasons or as a result of longer term planning, and the extent to which young people's views have been sought and their preferences duly considered.

1.6 Young people are not being given information about the full range of post-16 and post-19 options. The Local Offer does not always list specialist colleges, even when they are located in the local area² a clear contravention of paragraph 4.4 of the Code of Practice. There is a shortage of independent specialist information, advice and guidance, of the type once offered by Connexions Specialist advisers, to help young people work through their options. Although there has been considerable investment in the Information, Advice and Support Services (IASS), we believe that the main focus of these services has been on children and schools, rather than on young people and further education or preparing for adulthood.

RECOMMENDATION 3:

In implementing the careers strategy, government should ensure all schools and colleges have access to specialist careers advice. This might be through a resource shared by members of each proposed 'careers hub'.

² 19 of the 47 LAs with at least one specialist college in their area (42%) do not name this college or colleges on their Local Offer (May 2018)

1.7 Current assessment practices are sometimes flawed, making them a poor basis for determining suitable provision. Some local authorities are using tools or formulae that are based on a medical model with a disregard for the views of the young person or their family. See paragraph 3.8 for details on how this assessment practice is driven by funding considerations. Multi-disciplinary assessments and person-centred practice are not widespread, leading to a partial picture of a young person's needs. Considerations such as the Assistive Technology required by the young person to access their education are often ignored³.

RECOMMENDATION 4:

Local authorities should be offered more robust guidance on high-quality assessment practice, with stronger sanctions in place where area inspections identify that assessment practice is poor.

1.8 Providers are sometimes being asked if they are able to meet a young person's needs on the basis of paperwork resulting from a limited assessment process. They are not being offered the opportunity to meet the young person and their family or to conduct any of their own assessments. This approach can result in colleges accepting young people whose needs turn out to be far more complex (and costly) than anticipated and, in some circumstances, the breakdown of that placement where the college is unable to meet their needs. See paragraph 3.8 for details of the procurement approaches that are sometimes the cause of this poor practice.

1.9 Education Health and Care (EHC) Plans are not currently of good enough quality to fulfil their function as the legal document, underpinning the provision offered to a young person. A survey of Natspec members on their impression of EHC Plans⁴ for their students identified as key issues poorly written, vague and inappropriate outcomes and a lack of focus on preparing for adulthood. There was also a lack of co-production or person-centred practice in creating Plans, as well as issues with local authorities contracting out plan-writing to external writers who never meet the young person, and a failure to review or update Plans. There is considerable inconsistency between local authorities in terms of the structure, length, depth and type of information included, which contributes to the variation in quality. Providers are often asked by local authorities to re-write, complete or update Plans, and are not resourced to do so.

1.10 There is no consistent quality assurance process for EHC Plans. There is no requirement for any moderation of EHC plans and no specific qualifications or experience required for those who write them. CQC and Ofsted are not able to drill down to this level of detail in their wide-ranging area inspections.

RECOMMENDATION 5:

Ofsted/CQC should undertake a thematic review of EHC Plans to assess the quality of Plans; their findings should inform the development of a national quality assurance system. This should include mandatory moderation of EHC Plans, minimum requirements for qualifications/experience of EHC Plan writers, more robust guidance on completion of Plans, including expectations around the structure, length, depth and type of information, and more exemplars of the expected standards.

³ The [TechAbility Service](#), funded by the Ian Karten Charitable Trust, has submitted a separate response detailing the effect of the reforms on AT

⁴ For full results see <https://natspec.org.uk/wp-content/uploads/2017/11/EHCP-issues-and-recommendations-post-16.pdf>

RECOMMENDATION 6:

A national template should be introduced to support better quality Plan-writing.

RECOMMENDATION 7:

Where providers are asked to contribute to the production or writing of Plans, they should be resourced by the local authority to do so.

1.11 The system remains adversarial, despite the intention of the reforms. The number of appeals registered with the SEND Tribunal has risen each year since the reforms, and has now reached over 4,700⁵, an increase of 29% on the previous year, with cases decided in favour of the parent/young person rising to 89% in 2017. Respondents to a survey of Natspec colleges report a 46% increase, from 2017 to 2018, in young people seeking places at their college being involved in tribunals.

Tribunals represent a huge burden in terms of cost and time for all concerned, but critically they also impact negatively on the health and wellbeing of young people and their families. Families sometimes describe tribunals as 'a David and Goliath' scenario as they line up against a panel of professionals, with the local authority often supported by lawyers who specialise in SEND law. A shortage of advocacy services for young people makes it difficult to ensure that their voice is heard within this adversarial system. Natspec colleges report an increasing number of cases which are due to go to tribunal but are conceded by the local authority at a late stage, causing months of unnecessary distress to families, uncertainty for the provider and wasted resources for the local authority.

Parents of 13 young people from one local school completed preference forms on time and requested the Hive College as their first choice. The Local Authority decided to offer places at GFEs instead, advising the families that they must first visit these colleges and appeal if they were not happy with the provision on offer.

The parents did appeal. The tribunals process began for six of the students, but they have since been conceded, while 5 students are still (in early June) waiting for their appeal to be processed. This has placed unnecessary stress on the young people and their families, taken up further LA resources, and impacted on the college's ability to plan for the next academic year, particularly with regard to recruitment of specialist staff.

1.12 The adversarial system is favouring those who can navigate it (or play it) and disadvantages those who are less able to do so. Families must first be able to recognise when a local authority may be acting unlawfully and then have the time, energy, health, stamina, and level of education to press ahead with their challenge. There is emerging evidence amongst our members that young people of lower socio-economic status are becoming less likely to be placed in specialist colleges that can meet their needs – they may well be the victims of the complexity and adversarial nature of the system.

1.13 There is no underpinning accountability mechanism that reduces the risk of local authorities acting unlawfully in the first place or holds them to account when they do so. Over 40% of local area inspections have resulted in a Written Statement of Action (WSOA), but there is only light-touch monitoring of these, no requirement for the LA to publish government responses to the WSOAs, and no commitment for inspections to be on-going. Instead, there is a reliance on young people and/or families challenging the decisions of local authorities. Given the costly and stressful nature of

⁵ Sept 2016-Aug 2017 Ministry of Justice figures <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-july-to-september-2017>

tribunals, they should provide a route of redress for a small number of exceptional cases and not form the main system of accountability.

RECOMMENDATION 8:

There needs to be a more rigorous system of accountability, including penalties for poor Ofsted/CQC local area inspections which mirror the implications of an 'inadequate' Ofsted grade for providers. The cycle of local area inspections should be ongoing so that continuing delivery becomes the focus rather than implementation of reforms. In addition, government should consider the introduction of a SEND commissioner to assess the capability and capacity of local authorities to fulfil their duties under the Children and Families Act and support rapid improvement where needed.

1.14 Disputes about placements lead to late decision-making which is a source of great anxiety for young people and their families.

Sometimes, decisions are so delayed that young people end up missing out on considerable periods of education. Joining courses partway through the year can make adapting to their new setting much more stressful for the young person, as well as making planning very difficult for providers.

D's placement as a residential student at Farleigh FE College was delayed by a year due to the local authority initially not agreeing to funding. With the support of an SEN legal team, his parents were able to secure his place for the following year. During this year D had no educational input which has had a significant impact on his mental health and made his aim of achieving Level 2 qualifications even more of a challenge.

After two years in college, D is taking English and Maths GCSEs this summer, but he needs a further year to complete his GCSE Photography, a Level 2 Certificate in Digital Applications and NVQ Level 2 in Customer Service. The local authority has turned down the application for a third year and asked his parents to look at two more local specialist colleges, one of which does not even offer the GCSE that D is partway through completing.

2. Co-operation between education, health and social care sectors

2.1 Cooperation between education, health and social care is sporadic. The current wording of the SEND Code of Practice only calls for a local authority to integrate provision where 'they think that this would promote the wellbeing of children and young people with SEND, or improve the quality of special educational provision'. This has led to a situation where collaborative working only happens in relation to individuals and typically only in 'difficult cases' rather than as a general way of working.

RECOMMENDATION 9:

There should be a strengthening of the duties placed on local authorities to integrate educational and training provision with health and social care provision, so that active collaboration becomes a requirement.

2.2 There is little evidence of joint commissioning. Local authorities are sometimes asking providers or families to apply separately to a different department within the same authority for funding for the social care aspect of a single placement, rather than liaising with their colleagues. Late agreement on funding for placements is sometimes a result of internal disputes as to which budget (education or social care) within a local authority should be the source. The needs of the young person get lost in the battle and the chances of addressing their needs holistically are much reduced.

2.3 Some local authorities are using the further education funding formula to justify providing a maximum of three days provision per week for a young person with SEND, despite the clear statement in the SEND Code of Practice that they *may* offer a package of provision that combines education, health and care, that could result in a five-day provision.

RECOMMENDATION 10:

Guidance should be issued to demonstrate how funding streams can be combined to the benefit of children and young people with SEND, indicating where particular types of provision might normally be funded by each of education, health and social care, with good practice examples.

3. Level and distribution of funding for SEND provision

3.1 The current high needs funding system is complex, overly bureaucratic, and inefficient. The arrangements are highly technical, and the detail has changed several times since 2013. Even officials from the funding agency have found it difficult to explain on occasions. Different funding arrangements and regulations for different types of institutions⁶ lead to misunderstandings between local authorities and providers and ultimately affect young people because the confusion impairs planning of both provision and placements. For example, for post-16, FE colleges and independent learning providers work directly with local authorities to determine place numbers, whilst place numbers for specialist post-16 institutions (SPIs) are allocated centrally.

RECOMMENDATION 11:

As a matter of urgency, the Department for Education should consult on post-16 high needs funding, which was omitted from the main high needs consultation in 2017⁷, and include proposals to simplify the system, so that all FE providers are treated consistently.

3.2 The current localised system of post-16 funding for learners with SEND is inequitable and illogical, as it fails to recognise the breadth of catchment areas and travel-to-learn patterns typical in further education. Funding students with SEND differently from their peers (who are funded on a national basis) is inequitable, and often results in them being given little choice of education provider, sometimes only being funded to attend the college closest to their home, while their peers are able to seek out education and training opportunities from further afield.

RECOMMENDATION 12:

Within a simplified system for post-16 high needs funding, national and local funding should be allocated in more appropriate proportions, to acknowledge cross-local authority catchment areas and increased likelihood of post-16 and post-19 students moving out of their local area, and to provide institutions with a higher degree of financial stability.

3.3 The funding system hinders strategic funding, regional collaboration and long-term planning. The lack of incentive or mechanism for regional and national planning results in inefficiencies in relation to provision for low-incidence SEN and supporting young people with highly specialised provision for more complex needs. Attempts to replicate highly specialised provision in local areas have resulted in an unnecessary and uneconomical rise in the number of smaller, less specialised local providers⁸, diluting expertise and resources and reducing quality of provision for young people⁹.

Natspec has been exploring the mix and balance of provision needed at local, regional and national level to ensure the needs of young people can be met equitably. We believe that the majority of young people should be able to access the support they need locally, through specialist and/or mainstream provision according to their needs and preferences. However, within the mix of provision, there should be investment in a limited amount of highly specialised provision which should be planned at a regional or national level, as

⁶ Para 54, High Needs funding operational guide 2018 to 2019, ESFA

⁷ <https://consult.education.gov.uk/funding-policy-unit/high-needs-funding-reform-2/>

⁸ The number of ESFA approved Specialist Post-16 institutions has risen by 66% (from 75 to 113) in the last 5 years, with a further 19 approved for funding for 2018-19

⁹ Only two of the new providers achieved a "Good" Ofsted grade at first inspection; all others were graded "requires improvement" or "inadequate"

recommended by Christine Lenehan in her 2017 report on residential special schools and colleges, *'Good Intentions, Good Enough?'*¹⁰.

RECOMMENDATION 13:

The Department for Education should lead work to reach a national joint agreement and common set of expectations between local authorities and providers, to cover:

- what constitutes value for money and how top-up fees should be presented in a transparent way
- how much and what type of specialist provision should generally be available at a local level
- recognition that a very small number of young people with very complex needs or low incidence SEN will require support that is more highly specialised
- a mechanism or requirement for regional groups of LAs and providers to strategically plan provision to meet forecasted demand at a wider than local level.

3.4 The funding system for learners with SEND runs contrary to other government policy on restructuring the post-16 sector. The Area Review process¹¹ aimed for “a transition towards fewer, larger, more resilient and efficient providers”, whilst National Colleges have been created and funded¹² for high-level specialism. The SEND post-16 funding system, meanwhile, drives the creation of an increasing number of smaller and less highly specialised providers (see paragraph 3.3/footnote 8), and hinders the development of national centres of excellence. As a result, young people are left with fewer options and must accept (unlike their non-disabled peers) a post-16 placement in their local authority area. While it may seem cost-effective in the short term for local authorities to support the development of new local, specialist provision, it represents poor value for money in the long term, with the new smaller providers all requiring separate inspections and monitoring visits, and some needing new capital funding.

Separately allocating a small proportion of the high needs budget (around 4%) for highly specialised provision would reduce the budgetary pressure on individual local authorities, result in more consistent decision-making, reduce the need for high-cost mediation and tribunals, save hundreds of thousands of pounds in additional administrative costs and allow providers to budget effectively. Most importantly, it would remove the significant anxiety, stress and uncertainty from the young people and their families.

RECOMMENDATION 14:

The high needs funding budget should be reconfigured to take account of the spending required for the very small numbers of young people (around 3,500) who need highly specialised post-16 provision which cannot reasonably be offered locally.

¹⁰ <https://www.gov.uk/government/publications/residential-special-schools-and-colleges-support-for-children>

¹¹ <https://www.gov.uk/government/publications/post-16-education-and-training-institutions-review>

¹² <https://www.gov.uk/government/news/government-confirms-80-million-for-national-colleges-to-deliver-the-workforce-of-tomorrow>

RECOMMENDATION 15:

The approval process for new SPIs should:

- require local authorities to undertake a full options appraisal, including extending existing rather than creating new provision
- include more robust checks on the quality of the proposed provision, with a review of the proposed programme, curriculum planning, community and employer links, and effective transitions for the young people
- involve a quality visit by a skilled professional with strong experience of FE.

3.5 The overall level of funding for high needs is inadequate, and the proportion being allocated to post-16 learners is insufficient. The overall level of funding is not reflective of the increased numbers of children and young people or the increased workload of all organisations, particularly for post-16 education. It has not kept pace with the resources required to accommodate steep rises in post-16 and post-19 numbers: there was a 46% rise in the number of young people with EHC Plans in further education between 2017 and 2018.¹³

Support in a post-16 setting can be more costly than for children in school, as young people begin to access the community more frequently and engage in workplace learning, where their support needs may be higher. An increased need for more personalised programmes and individualised timetables as young people prepare for adulthood can also result in greater costs. For some young people with SEND, adolescence can also bring increased or new support needs in terms of mental health and challenging or risk-taking behaviours.

RECOMMENDATION 16:

The next Spending Review should result in an increased amount of funding for high needs, to include a proportionate amount to account for the rise in post-16 and post-19 learners requiring support to continue their education.

3.6 There is no system of accountability to ensure that local authorities have used implementation funding effectively or are allocating high needs funding fairly. Local authorities have not been held accountable for their use of implementation funding and have not had to show the impact of their spending. There has been no monitoring of how the £23m allocated for strategic SEND reviews has been spent, nor a requirement to publish the resulting plans, leading to a lack of transparency regarding how local authorities are making their funding decisions. See Recommendation 8, above, for suggestions on how to improve accountability.

3.7 Multiple contract arrangements as a result of local funding creates unnecessary strain on budgets. Post-16 providers are having to work within one national contract with ESFA - for the place funding - and multiple local contract arrangements with local authorities - for the high needs top-up - with their various associated monitoring and reporting systems. This has resulted in a significant additional burden on the staffing budgets of colleges, particularly specialist colleges, which on average deal with the commissioning arrangements of 19 local authorities¹⁴. Our members report they have had to employ between one and eight new administrative and finance staff (increases of between 100% and 500%) and have received no new funding to recognise this significant additional administrative burden.

¹³ [Statements of SEN and EHC plans, England 2018 \(DfE publication, May 2018\)](#)

¹⁴ Annual Natspec surveys 2016 to 2019

3.8 Some local authorities are using mechanistic systems to allocate top-up funding, as a means of managing limited budgets and simplifying decision-making. Some have introduced banding systems, as a “best fit” approach, which are often based on a medical model. These systems do not consider the full range of individual support needs or include an assessment of barriers to education. As a result, young people with the same primary impairment will receive the same levels of top-up funding, despite their very varying aptitude for study, personal ambitions, or the barriers they face in accessing local provision.

Two students from the same local authority were placed at a specialist college in the Midlands under a banded funded system. Student A was placed in a lower band, for moderate learning difficulties, and the college received just under £9,000 top-up funding. Student B was placed in a higher band for more complex autism, and the college received over £19,000 top-up funding. However, the levels of top-up funding for these two students did not recognise their personal, social and emotional situations, relying too much on the banded approach rather than being appropriate to their needs.

Student A had severe mental health problems, which were not accounted for in the system, and the college had to provide significant additional support, as the student was suicidal, self-harming, and required one-to-one support for much of the week. The actual costs for her support far exceeded the amount received from the local authority. Meanwhile Student B progressed rapidly at college, becoming an independent traveller, a peer mentor, and a confident communicator. His diagnosis of complex autism attracted more funding through the banding system than he actually required.

RECOMMENDATION 17

The Department for Education should require local authorities across the country to apply more consistent approaches to allocating high needs funding, resulting in fairer decision-making and hence reducing the amount of resource spent on appeals, mediation and tribunals.

3.9 Providers are unable to make further efficiencies and budget pressures have become intolerable. While local authorities are struggling to manage restricted budgets, the financial pressure on post-16 providers, both in mainstream and specialist settings, is now unsustainable. Budget cuts now risk the quality of provision and in some cases the viability of highly specialist providers. With such financial uncertainty, providers are unable to plan, recruit, train and retain specialist staff. Late contract confirmations, late payment of invoices, and lack of certainty over placements have led to severe cash-flow problems. Specialist providers, unable to rely on subsidies from a wider organisation, have had to take out loans and overdrafts, further adding to the pressure, and families have been asked to contribute to fees.

In November 2015, six specialist colleges reported that 80% of their LAs had not paid any fees at all, all six were awaiting payment of over £500,000, with one college awaiting overdue fees of over £2million.

In June 2018, 50% of colleges responding to a Natspec survey reported late contracts and overdue fees for students who had entered college ten months earlier.

RECOMMENDATION 17:

Implementation funding should be distributed more proportionately between local authorities and ESFA funded providers, to recognise the additional burdens that fall on both.

3.10 The increasing number of procurement frameworks and dynamic purchasing systems creates a huge bureaucratic burden for a comparatively small number of placements.

Pressure on high needs budgets has led to many local authorities creating procurement frameworks rather than placing students directly with a specialist college (GFE colleges, even though they are also independent of the local authority, are not required to join these frameworks). However, having established a procurement framework, often at high cost and using up scarce resources, it is frequently by-passed; specialist colleges report that they continue to receive placements without tendering. When the systems are used, the response paperwork is challenging to complete, even when a college is responding that they are unable to meet need. Providers are expected to give a price for a student without seeing them for an assessment, and sometimes they are even asked to provide a quote without seeing an EHC Plan (see paragraph 1.8 above).

This is a huge inefficiency for very small numbers of post-16 placements; in the north east, a system that took three years to establish and significant legal costs is now in place for fewer than 300 post-16 placements. The framework approach also undermines young people and their families as decision-makers in the placement process, which was a fundamental principle of the SEND reforms.

RECOMMENDATION 18:

The Department for Education should provide clear guidance on how the Public Contracts Regulations (PCR) should operate, preferably by directing local authorities to remove SEND placements from the PCR, or at the very least, ensure that they adopt equitable and light-touch approaches.¹⁵

3.11 The Schools Forum is an inappropriate mechanism for making funding decisions about SEND provision. The high needs block is not ring-fenced within the direct schools grant, and there is a limit of 0.5% that LAs can transfer out of their schools block to support high needs. Decisions are made by the Schools Forum, which does not have sufficient representation of post-16 providers and usually no representation at all from the specialist college sector. The lack of post-16 representation, together with a lack of understanding of the nature of further or adult education, results in a natural inclination and pressure to move money away from post-16 provision and into schools.

RECOMMENDATION 19:

The Department for Education should replace Schools Forums with appropriately named local representative bodies that can plan strategically and include full and proportionate representation from the wide range of providers across all age groups, with colleges and Section 41 providers given the same rights as maintained schools and academies.

¹⁵ Further recommendations at https://natspec.org.uk/wp-content/uploads/2017/06/acl_procurement_report_final.pdf

4. Provision for 19-25 year olds

4.1 There is limited access to post-19 education and training despite the fact that many young people with SEND need to stay in education and training beyond the age of 19 to acquire the skills that will enable them to make an effective transition to adulthood. The level of demand for post-19 provision appears not to have been anticipated, in part because of a lack of understanding of the wide range of circumstances in which continuing education and training is valuable. Insufficient funding has therefore been assigned to ensure that all young people who are entitled to post-19 provision are able to access it.

4.2 Local authorities are making inconsistent judgements about when an EHC plan should be ceased. This is happening for a number of different reasons including

- budgetary constraints
- a lack of understanding of how education differs from social care, particularly for learners with more complex needs
- an under-valuing of education focused on developing independence (as opposed to preparing for employment)
- a lack of understanding of what constitutes continuing progress towards outcomes
- a lack of clear guidance about when it is and isn't appropriate to cease a plan.

Inconsistent decision-making is leading to young people with very similar needs and in very similar circumstances being treated differently, according to which local authority they come under, with some continuing to benefit from post-19 education and others being denied the opportunity.

4.3 There appears to be an element of rationing of post-19 education. Some local authorities seem to be targeting this provision for savings, as they struggle to allocate their limited high needs funding fairly. While young people with an EHC Plan, up to the age of 18, are guaranteed funding for their education and training, when they reach 19, they are vulnerable to decision-making about the ceasing of Plans, that may have more to do with financial constraints than individual needs.

Some local authorities are applying blanket policies including only continuing EHC Plans post-19 where a young person is working towards tightly defined employment outcomes, such as full-time employment or an apprenticeship, or where they have yet to complete qualifications begun in Years 12 or 13. Where outcomes in an EHC Plan are unambitious or have insufficient focus on preparation for adulthood, young people are particularly vulnerable to having their Plans ceased, despite their potential to make continuing progress.

Greg, a non-verbal 17-year old with autism and global developmental delay, is currently at a special school. He has the potential to progress onto supported work in the future, having completed in-house and external work experience while at school.

In a transition review the local authority announced that Greg had already met all the outcomes in his EHC Plan, which focused on making progress at school. He therefore would not need to continue in education. A move from school to further education was considered unnecessary, despite Greg's own wishes – and those of his family – that he should go to college.

His parents took legal advice, and with the support of the IASS service have taken up the challenge with the local authority. So far this has secured a further year of education within the school setting, but still no place at college, where he would be able to develop his employability, communication and life skills.

Greg's family report huge levels of anxiety and feeling ambushed by the local authority when faced with the intention to cease his plan.

Professionals and family were confident that Oscar, who has severe learning difficulties and autism, was doing well and had further progress to make. His family were looking forward to discussing his post-school options at his transition review, but the local authority informed them that Oscar had no chance of gaining a college placement because he would not progress to work or independent living as an outcome. Neither Oscar nor his parents were asked for their views and wishes.

Oscar's family is challenging this position. They have taken legal advice and are compiling evidence against the decision, researching their rights and those of their son. After a considerable period of improved behaviour, the uncertainty about his future has made Oscar very anxious, resulting in him becoming aggressive. On one occasion he pulled his mother's hair, pulling her down to the floor. This episode has damaged their relationship and the family have had to put in place strategies to avoid injury of parents and siblings at all times. They have a different type of home life as a result.

Department of Education guidance¹⁶ on the issue of post-19 SEND provision has confused the matter further. While it acknowledges that young people with SEND often take a longer time to learn and achieve outcomes than their peers, at the same time it suggests that ceasing Plans at 19 is the norm. This guidance has been interpreted by some local authorities as encouragement to restrict post-19 provision to highly exceptional cases.

In some areas, the SEND team appears to be pushing young people towards cheaper social care (rather than education), which also happens to come from another department's budget.

¹⁶ <https://www.gov.uk/government/publications/send-19-to-25-year-olds-entitlement-to-ehc-plans/send-19-to-25-year-olds-entitlement-to-ehc-plans>

A is coming to the end of his first year of a three-year programme at St John's College. He has been steadily developing skills that are enabling him to progress towards meaningful employment, most likely with ongoing support, perhaps within a form of micro or social enterprise. Outside of the annual review process, and in contradiction to the decisions of his last annual review, his placement has been abruptly terminated by the local authority, who "acknowledge that A is making progress with his communication and life skills [but] it is considered that an educational placement is not required ...and it is more appropriate for A to now be supported by social care".

As a result of these low aspirations for his future and an unwillingness to invest in provision to help him build employability skills at a pace appropriate to his abilities, A is unlikely to achievement employment of any kind. His family is re-entering the SENDIST process for a second time to try to challenge the decision.

RECOMMENDATION 20: Existing Department for Education guidance should be revised and strengthened. The emphasis of the revised guidance should be on local authorities needing substantial reasons to cease a plan rather than to continue it; examples of continuing plans in order to support learners' progress towards outcomes other than employment or qualifications should be included.

RECOMMENDATION 21: Clear sanctions should be in place for local authorities applying policies which contradict Section 45 of the Children and Families Act.

4.4 There is a lack of appropriate options open to young people on leaving college. This includes a lack of appropriate personal support, employment support, housing options, and lifelong learning provision. There is also a lack of awareness amongst families about the range of provision that does exist; information on Local Offer websites is very thin in this regard. This is resulting in some families seeking to continue full-time education when it may no longer be the most beneficial option for a young person, but they believe it is the only means of enabling their child to engage in meaningful activity. Some families are even contesting evidence of progress made at college for fear that their son or daughter will not be seen as 'needy' enough to get the level of support they require once they leave.

RECOMMENDATION 22:

The Local Offer should cover much more fully the range of services available to young people as they move on from education; where there is a shortage of services, local authorities should plan for their development, as part of their strategic planning of provision for young people with SEND.

4.5 Delays in putting together support packages in time for a smooth transition out of college are negatively impacting on young people. They can lead to young people being unable to sustain supported employment, volunteer roles or other opportunities to contribute to the community begun while at college. A period of inactivity often results in a loss of skills and confidence making it much more difficult to for young people to capitalise on the learning they undertook in college.

Rory, a young man with autism, was due to leave college in July 2017. He had an offer of paid employment with a company he had been introduced to through the supported internship programme at the Royal College Manchester. He was looking forward to moving in with a friend he had met during his course, but the supported tenancy fell through.

The college agreed to extend Rory's course by one term, paid for from direct payments, while alternative living arrangements were sourced. When accommodation had still not been found by Christmas, his EHC Plan was reinstated in order that he could keep his college place and maintain his employability skills.

To date, no accommodation has been found for Rory, making it impossible for him to take up his job offer and he continues at college. His needs are not exceptionally high; there are simply too few placements available.

4.6 In contravention of the Care Act 2014, some local authorities have a policy that all 19+ learners leaving residential college *must* return home. This policy is applied even when the young person has expressed a wish to remain in the area where they went to college and live with friends they made at college – a further example of the preferences of young people being ignored.

RECOMMENDATION 23:

To ensure a successful transition out of college, statutory guidance should be issued on timelines for support packages to be agreed and in place for education leavers, ahead of their planned leaving date. Local authorities should be reminded that young people's wish to live in a different local area should be respected.