



# **Response to the Consultation on the Draft Special Educational Needs (SEN) Code of Practice**

Group response submitted by the Sheffield Parent Carer Forum (voluntary organisation)

November 2013

## General comments

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The draft Code is far too wordy, and there is a lot of duplication. It is not easy to find information on specific topics as it tends to be spread across many different sections, and often appears in sections where you would not expect it. For instance, the information about “reasonable steps” (pages 112-114) should really be in the section about the duties of education settings, not in the section on EHC Plans. The Code should be slimmed down by removing the duplication, and the information should be arranged by age groups and/or type of setting, to make it easier to find. There also needs to be more cross-referencing within the document.

**Use of terminology:** There is inconsistent use of terminology throughout the draft Code. Unless the guidance is very clear and meanings are unambiguous, any wriggle room will be exploited, potentially leading to conflict between local authorities and families.

**Rights and responsibilities:** It is really difficult to establish from the draft Code exactly what parents’ and young people’s rights are. If a parent had to argue a point with a professional or the local authority, or if they had to prepare a case for the Tribunal, the draft Code would be almost useless – there is just not enough information on roles, statutory duties, references to regulations and case law to be able to put a case/argument. We think it would be helpful to include a list of the rights of children, young people and parents at the start of every section.

**The role of parents of young people over 16:** We welcome the focus on the views of children and young people and on their role in decision-making, but the role of parents and carers of young people over 16 must be made clearer and more consistent. In the Introduction it is quite clear that local authorities must have regard to “*the importance of the child or young person, and their parents, participating as fully as possible in decisions; and being provided with the information and support necessary to enable participation in those decisions.*”

However, later on in the draft Code the involvement of parents of young people is inconsistent or nonexistent:

- For example on page 124, with regard to decisions about EHC plans for 19 to 25 year olds, the draft Code states that “*the local authority must make a judgement, in close consultation with the young person and their parents*”. Whereas on page 136, when making a decision to cease an EHC plan “*the local authority must consult with the child’s parent or the young person*” with no mention of the young person’s parents.
- Page 83, Identifying SEN, paragraph 1 states that colleges should discuss with “*the young person and his or family, what needs the student has*”. But by paragraph 2 this has become “*Colleges should involve the young person and, where they judge it appropriate, their family, in discussing what additional support is required*”
- Page 85 states that monitoring information should be “*used as part of the regular discussion with the young person, and in many cases their parents, about the young person’s progress.*”

**SEND as whole school matter:** The current Code lays out clearly the principle that issues around SEND are a matter for the school as a whole. From governors, senior staff to caretakers, teachers, TAs, office staff and ‘dinner-ladies’, SEND is something everyone must consider. The current Code states more than once that, “all teachers are teachers of pupils with special educational needs”. With the emphasis on inclusion in both the current Code and the draft Code, staff and teachers (particularly those in secondary schools) need reminding of their duties to pupils with SEND. This is particularly important for TAs as differentiation often falls to them – perhaps it shouldn’t, but this is the reality. There needs to be a stronger emphasis in the draft Code.

**Bias towards/against inclusion:** In Sheffield, we often hear from parents who would like their child to attend a special school or integrated resource, but who can’t get a place. We hardly ever hear from parents who feel their disabled child is being denied a mainstream placement, but that is not to say this never happens. What

we do hear, however, are many stories of children who struggle in mainstream because they are not receiving the right type or amount of support. Some people feel there is a bias *against* inclusion in the draft Code (because of fears that new specialist Academies may become a ‘dumping ground’ for children/young people with SEN but no EHC plan), others believe that there is a bias *towards* inclusion. Either way, the Code ought not to have ANY bias at all. The needs of each individual child/young person should be paramount, not an idealistic rush towards mainstream which doesn’t always have the curriculum, skills or experience to deal with SEN, or indeed a move towards placing children/young people with SEN but no EHC plan into lifelong placements in Special Academies.

## 1. Introduction

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**Page 6:** The use of the term “recipients” is confusing, it should say “organisations” like in the section it refers to.

*“Where the text uses the word should it refers to best practice contained in this Code.”* It would be helpful to point out that, although there is no requirement to follow the Code to the letter, organisations/settings must be able to justify any departure from its guidance, and be able to show that they are doing something equally good or better – the Code needs to be clear that doing *nothing* is not an option.

**Page 9:** Definitions of SEN. The Code needs to be much clearer in relation to definition (a) and clarify what it means to have *“a significantly greater difficulty in learning than the majority of others of the same age”*. It would be helpful to explain that this isn’t about reaching national averages, but about fulfilling individual potential. It would also be helpful to clarify that this isn’t just about learning in an *academic* sense, but also about learning life skills, such as independence, social skills, emotional resilience etc.

In relation to definition (b), it would be helpful to state that the ability to make use of “educational facilities” includes not just the ability to access classroom teaching, but also **physical access** (not only for wheelchair users, but also in terms of being able to cope with the sensory demands of a busy school environment), and access to the **social opportunities** provided by schools/colleges (i.e. breaktimes, clubs, outings etc.).

The term “special educational provision” must be defined in this section. In the current draft, there is no proper definition of this term until page 59. It would be useful to give some examples of special educational provision. The Code should clearly state at what point the “minor adaptations” cited on page 65 become “special educational provision” – since this is the point where “children/young people with disabilities” become “children/young people with SEN”. Since this would be little more than drawing an arbitrary line in the sand, it would be much better to include children/young people who are disabled but who do not have SEN in the legislation and the Code.

**Page 10:** The Code states that the term “SEN” has the same meaning as the term “learning difficulties” when used by post 16 providers. It would be helpful to explain some very similar terms which many parents find confusing, e.g. “specific learning difficulty” (e.g. dyslexia), and also the fact that the terms “learning difficulties” when used in relation to children, “learning disability” when used in relation to adults, usually refer to a cognitive impairment.

The introduction should also provide definitions of the terms “child” (a person under compulsory school age) and “young person” (a person over compulsory school age and under the age of 25). It should also explain the terms “compulsory school age”, “compulsory participation age”, and “statutory school age”, and it **must** state the actual age groups they refer to, as most parents will be unfamiliar with these terms. The term “child” is not used consistently in the document, e.g. in section 8.4 the term “child” appears to refer to a person under the age of 18.

## 2. Summary

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**Page 15:** We welcome the emphasis on ensuring that “approaches used are based on the best possible evidence”. Too often, however, approaches used by schools are not based on solid research, and it can take several decades before new scientific insights have an impact on teaching approaches. We also welcome the reference to “making friends and participating in society”, as this is something many schools don’t really feel responsible for.

## 3. A family-centred system

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**Page 17:** “Early years providers, schools and colleges should fully engage parents and/or young people with SEN when drawing up policies that affect them.” Insert “and reviewing” after “drawing up”. It is common practice for governing bodies to review policies without any consultation at all.

**Page 18:** We welcome the emphasis on person-centred planning. However, we fear that local authorities will struggle to create the extra capacity needed to carry out assessments and reviews in a person-centred way. Without the deployment of additional resources, there is a risk that the person-centred element of EHC plans will just be a fluffy add-on which has little bearing on the statutory part of the plan.

**Page 19:** As discussed above, the transfer of decision-making powers from parents to young people is a thorny issue, and this section will need a complete re-write to do it justice. The section should start by defining a young person as someone over the age of 16 – the term “compulsory school age” is not meaningful to parents.

**Page 20:** The prospect that it will be up to the “local authority and other agencies” to “establish how the family should be involved” in decisions affecting the young person is frightening for parents, who worry that vulnerable young people could be “leaned on” by education settings or local authorities more interested in saving money than the best interests of the individual – particularly when it comes to placement decisions. This section also states that schools and colleges should involve the families of young people with SEN “where that is their usual policy for students”. We do not think that following the “usual policy” is appropriate for young people whose needs may be far from “usual”.

There needs to be a clear process whereby it is determined whether a young person with an EHC Plan has the mental capacity to make decisions, and what should happen if they don’t. The Mental Capacity Act requires anyone assessing a young person’s best interests to consult those involved in the young person’s care and anyone interested in their welfare, which would normally include their parents. This should be clearly spelt out in the Code of Practice. A table indicating who should be involved/consulted, how and when would be useful.

If a young person is deemed able to make decisions but asks a family member to continue to support them or advocate for them, then this needs to be recorded and communicated clearly to everyone involved. Without a clear process, it is likely that communication with the young person’s parents will be ad hoc and inconsistent.

The Code should explain where young people with SEN have rights which go beyond the rights of young people without SEN. For example, young people with EHC plans have a right to request a Personal Budget. However, under contract law, the general rule is that a person does not have capacity to enter into a contract unless he or she is aged 18 or over. Presumably, this would mean that for a 16- or 17-year-old who holds a Personal Budget, parents would still have to sign a contract of employment with a PA. This could put parents in a very awkward position.

**Page 21:** We welcome the duty on local authorities to provide an information, advice and support (IAS) covering SEN, health and social care across the 0-25 age range, through a single point of access. In practice,

this service would be providing something very similar to a Parent Partnership Service whose remit has been extended to cover health and social care and the 19-25 age range. There seems to be an underlying assumption that the functions of the IAS service and the Parent Partnership Service would be merged and provided by one organisation. This needs to be made clearer in the Code. We believe it would help to increase transparency and avoid duplication if the Code required local authorities and CCGs to jointly fund an IAS service which included the duties currently covered by Parent Partnership. This service **must** (not should) be independent of the local authority and CCGs, and parents and young people **must** (not should) be involved in shaping it.

**Page 23:** The requirement to provide an Independent Supporter “subject to availability” is very weak. We know that Parent Partnership Services struggle to recruit Independent Parental Supporters. This can never be a substitute for a key worker.

**Page 24/25:** We are delighted that parent carer forums are mentioned in the draft Code of Practice. Despite having a section on parent carer forums early on in the document, the draft Code is less clear about their role in the rest of the text. For example, there are references to consulting with “family representatives such as parent carer forums”, with “children and young people with SEN, their parents, or representative groups” or simply with “young people and parents”. The Code does not differentiate clearly between participation on an **individual** level and participation on a **strategic** level – which are two very different things and require different approaches. The Code needs spell out clearly when local authorities and CCGs **must** consult with their local parent carer forum as the representative body in their area, rather than asking a few random parents off the street. For example, there should be a duty to review SEN and social care provision in consultation with parent carer forums, not just with “children and young people with SEN and their parents” (page 55). We would also like the Code to state that local authorities and CCGs **must** fund parent carer forums, and that they **must** work in partnership with them.

## 5. The Local Offer

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**General:** We believe that the local offer should include national minimum standards, and that these should be legally enforceable. Without enforceability, the local offer will do nothing to protect the rights of children and young people with SEN but without EHC plans - particularly as budget cuts are forcing local authorities to cut back on non-statutory services.

**Page 42/43:** We welcome the dual purpose of the local offer - of providing information as well as improving provision – but feel there needs to be a third purpose: that of ensuring appropriate provision for children and young people with SEN but without EHC plans.

Parents are often frustrated by the lack of transparency of panel decisions, and the requirement to publish eligibility criteria and explain how decisions are made and by whom is a big step forward.

**Page 44:** The local offer should also include information about the following:

- Parenting support (e.g. parenting courses, help with challenging behaviour, eating/feeding, toileting, sleep issues etc.); page 46 states that the local offer should include information for parents of pre-school children about the support available to parents to aid their child’s development at home, but we think this should apply across the 0-25 age range.
- Transition; this should cover not just transitions between phases of education, but also the change in legal status when a young person turns 16/18, the impact on benefits, the transition from paediatric to adult health services, the transition from children’s social care to adult social care, etc. We have

developed a Transition Timeline for Sheffield which provides a holistic overview:

[http://www.sheffieldparentcarerforum.org.uk/docs/uploaded/spcf\\_doc\\_203\\_070313126pm13.pdf](http://www.sheffieldparentcarerforum.org.uk/docs/uploaded/spcf_doc_203_070313126pm13.pdf)

- Disability benefits and concessions: We have heard from far too many families who missed out on DLA, Carer's Allowance, Blue Badge, Motability, CEA Card, travel passes etc., simply because nobody told them about these. We accept that most benefits and concessions are "national" rather than "local", but we feel that it would be a mistake not to include this information in local offers.
- Referral pathways, and who can make a referral
- Support available for home educators, and how this is accessed
- Support available for parents of children who are too ill to attend school
- Any timescales that apply, not just to EHC assessments, but also social care assessments, referrals to support services, etc.
- Average waiting times, and how cases are prioritised (particularly for referrals to health services)
- Direct Payments and Personal Budgets
- A directory of specialist short breaks providers
- A directory of specialist leisure/sports clubs
- Criteria and process for accessing additional funding – not just top-up funding in education, but also inclusion grants for out of school clubs, leisure providers, direct payments for childcare etc.

**Page 45:** The local authority must clearly set out the maximum level of support it expects settings to provide from their notional SEN budgets, e.g. in terms of hours of Teaching Assistant support per week, hours of input from therapists per term.

**Page 46:** *"The school-specific information should reflect the local offer and elaborate on it"*. The offer published by schools will only be useful to parents if it avoids bland statements such as "We welcome children of all abilities" (all schools claim to do that!), and instead provides specific, quantified information, such as the number and duration of review meetings (not parents' evenings!) per year, or the percentage of bullying incidents / exclusions involving children with SEN, the number of pupils with EHC Plans on roll, etc. This would enable parents to make direct comparisons between schools.

The information about Early Years provision should include information about funding arrangements for additional support, e.g. inclusion grants.

**Page 47: Other education provision:** the information should include eligibility criteria and how to access this provision.

**Health:** the information should cover referral pathways, timescales, and funding arrangements for therapies.

**Page 48:** The information should explain social care assessments (initial assessments, core assessments, Carer's Assessments, CAFs). It should be clear about the criteria used for determining whether a young person in post 16 further education requires social care or health support to access 5 days of provision.

**Page 58:** The local offer must include information about the criteria used to decide whether to carry out an EHC assessment or issue an EHC plan. The draft Code appears to suggest that only children and young people who require top-up funding from the High Needs block would qualify (e.g. see page 92: *"This is likely to be where the special educational provision required to meet the child or young person's needs cannot reasonably be provided from within the **resources normally available** to mainstream early years providers, schools and post 16 institutions."*) This completely goes against the principle of person-centred planning, and the Code needs to be reworded to avoid giving the impression of a financial rather than a needs-based threshold. The statement in the transitional document that *"the overwhelming majority of children and young people with statements and LDAs will require EHC plans, **unless local or individual circumstances have changed**"* is extremely worrying in that respect – as local authorities could argue that the recent changes to funding

arrangements (i.e. banded funding, national threshold for high needs funding) constitute a change in “local circumstances”.

The wording in relation to children aged 0-5 is slightly different, e.g. there are references to “severe or complex needs”, and to the need for “a particular service” or “specialist early intervention” (page 123). All of these terms needs require explanations.

It is important to bear in mind that what can be provided “from within available resources” will vary year on year and from setting to setting, as this depends on the number of pupils on roll whose needs take them close to, or over, the nationally prescribed threshold. Pupils with high needs are NOT spread evenly across settings and year groups.

The local offer needs to be clear about what can and cannot be included in a personal budget.

**Page 53/54:** The list of principles governing the local authority’s approach to involving children and young people in the development of the local offer is very good – but it should apply to children, young people **and parents** regarding their involvement in strategic decision-making **generally** (not just in relation to the local offer). The last point about the need to provide feedback is particularly important.

**Page 57:** We welcome the duty to publish comments about the local offer, however we think this needs to be done more often than annually. The phrase “*Comments must be published if they relate to: the content of the local offer, which includes the quality of existing content and any gaps in the content*” is ambiguous. Comments must be published if they relate to the quality of the **information** published or gaps in information, but also if they relate to the quality of the **services** provided and gaps in services. Several of the pathfinder authorities have included a “rate and review” feature in their local offer, which we think is a very exciting idea which could play an important role in the review and development of local provision. There should be a duty on services to publish the results of customer satisfaction surveys as part of the local offer.

## 6. Early years, schools, colleges and other education and training providers

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**Page 58:** Please provide a definition of the phrase “to use best endeavours”, as established through case law. How can parents tell if a setting has NOT used best endeavours?

**Page 59:** “...ensure that children with SEN take part in the activities of the school together with children who do not have SEN as far as possible” Add: “and as appropriate for their needs”

**Page 60:** We like the emphasis on early identification. However, the phrase “*it is important that all professionals listen and understand when parents express concerns about their child or young person’s development*” does not actually require professionals to DO anything when parents express concerns. There is a similarly vague statement on page 75: “*Where a child continues to make little or no progress, despite well-founded support that is matched to the child’s area of need, the school **should consider** involving specialists, including those from outside agencies.*” Parents frequently tell us that schools are slow to respond to parental concerns and act as gatekeepers to services like Educational Psychology or Speech and Language Therapy. There should be a **requirement** on schools to involve professionals when a child makes little or no progress or when parents express concerns, and specialist services should accept referrals from parents as well as from schools.

“*These outcomes are most effective where they reflect the views, wishes and feelings of children and young people and their families. In schools, support should be planned and reviewed by the class or subject teacher, in collaboration with parents, SENCOs, and, where appropriate, the pupil themselves.*” This section is very weak –

the Code should say that settings **must** involve children, young people and parents in setting outcomes and reviewing the progress towards these outcomes, and state that this must be done at least termly.

**Page 61:** We welcome the statement that consistent disruptive or withdrawn behaviours can be an indication of unmet SEN, and that an assessment should be carried out when there are concerns about behaviour.

**Page 65:** *“Some children and young people require special educational provision. It is this group that should be identified as having a SEN.”* On page 59, the draft Code states that *“Special educational provision is educational or training provision that is additional to or different from that made generally for others of the same age.”* The Code should clearly state at what point the “minor adaptations” cited on page 65 become “special educational provision”.

**Pages 72 and 75:** It is important to state that “progress” refers to not only academic progress, but also social skills, independence skills and emotional resilience. What is deemed “adequate” academic progress should be based on the individual’s potential (e.g. as indicated by their NVR score), rather than national averages.

**Page 72:** *“Schools should assess each pupil’s current skills and levels of attainment on entry.”* The Code does not specify how this will happen or the means of assessment and whether this means of assessment will be flexible enough to take into account a child’s history. A parent writes: *“My own child finds test situations very difficult and would perform far less well and in a very different way than in a situation where assessment occurs through different approaches.”*

*“Where pupils are falling behind or making inadequate progress given their age and starting point they should be given extra support”* Add *“to meet the child’s needs”* to ensure that schools provide adequate support and not simply what can be spared.

*“Adequate progress can include progress which:...matches or betters the child’s previous rate of progress”* The section on “adequate progress” should stipulate that simply making some progress based on a child’s history or simply closing the gap between the child and his/her peers should not mean that additional support or alternative means of addressing the child’s needs should no longer continue to be provided and reviewed. Although a child may make some progress with one type of intervention or additional support or alternative teaching methods, schools should be continually striving to enhance or adapt teaching methods to assist the child’s development and progression even further. Just because a child begins to make progress that may match or better their previous rate of progress, where a need has been identified a school and parents should continue to strive to adapt teaching methods in a way that best meets the child’s needs and to extend that progress even further.

*“Where pupils continue to make inadequate progress, despite high-quality teaching targeted at their areas of weakness, the class teacher, working with the SENCO, should assess whether the child has a **significant learning difficulty**. Where this is the case, then there should be agreement about the SEN support that is required to support the child.”* The Code should include a definition of the term “significant learning difficulty” to ensure that ALL schools adopt the same approach to SEN, and in order to prevent a two-tier system emerging. If schools are left to define what “significant” means, then a school which has more resources available to them may set the bar at lower level than a school with fewer resources or which has a high number of children with SEN on roll.

**Page 73:** *“Teachers should set high expectations for every pupil.....set targets which are deliberately ambitious”* These expectations and ambitious targets must also be achievable for the child whilst taking reasonable steps in advancing their achievements. To set expectations and targets which are unrealistic can be extremely damaging to a child’s self-esteem and also very concerning for parents. Additional pressure should not be placed on pupils and parents who may be experiencing difficulties, due to the pressures that school can place on children who are finding education and the education system hard. Teachers, children and parents need to

know and believe that a child can reach his/her long-term goals. However, failing to meet regular targets that are consistently set too high can be extremely demoralising for a child. Skill is required to balance ambition, self-belief and self-esteem in the child whilst also setting attainable small-step targets on the way to achieving their overall goal. Children must have ambition and a drive to succeed, but this will only come if they can achieve regularly along the way to their long-term goals.

**Page 74:** The section about planning support is very weak. It should state that schools **must** involve parents, that targets **must** be SMART, that support interventions **must** be evidence-based and provided suitably qualified staff, and that all teachers and support staff **must** be made aware of the pupil's needs. It is not clear whether the section "SEN support in schools" also applies to children/young people with EHC Plans, but we think it should do. Schools should follow the same principles for **all** pupils with SEN, whether they have EHC plans or not, i.e. a person-centred approach and a focus on life outcomes, broken down into a combination of long-term and short-term targets, clearly setting out the strategies and resources required to achieve them. We believe the guidance on IEPs in the current Code is very useful and should not have been removed. There needs to be a clear, nationally agreed framework which settings must follow as they record the needs, support and outcomes for pupils with SEN.

A parent writes in relation to the statement that school should compare parental concerns to the setting's own assessment and information on how a child is developing: "It is our own experience as a family that a child with special educational needs can behave extremely differently at school than at home. We raised concerns about our own child's behaviour in terms of social and communication skills with school for two years and were consistently told that there weren't any issues and he was getting on fine, despite him constantly coming home and telling us that he was having a difficult time with other children and had no one to play with at play times. His behaviour at school was conformist, polite, well-behaved, and calm. However, once collected from school all the day's anxieties would be expressed, he would be angry, extremely anxious; he would cry and get very upset about school. Schools need to understand these two extremes. In making comparisons, schools have to accept that a child can behave very differently in different situations, and the school behaviour and development may not reflect the true picture of what is happening. Schools need not only to accept and take seriously what parents say, they may need to prioritise it over what is happening and they are observing within the school environment in order to fully appreciate and understand a child's needs. Our own son was finally referred by our GP after we obtained an independent assessment from an educational psychologist, and has been diagnosed with autistic spectrum disorder. I very much welcome the focus upon the input of parents and children within the draft document. However, I feel that there is still an emphasis on the 'school knows best' and I feel that this is an excellent opportunity to correct the imbalance to create a 'partnership' approach between parents, schools, and the children concerned."

**Page 75:** *"The SENCO and class teacher, together with the specialists, should consider a range of well-founded and effective teaching approaches, appropriate equipment, strategies and interventions in order to support the child's progress."* Parents often have knowledge and experience of support, approaches, strategies, etc. that best suit their child's learning or their emotional or physical needs which will support their learning. Parents should not only be involved in the decision to involve specialists, but also in the decision making process between SENCOs, teachers and specialists. Parents can often supply valuable information and strategies based on their own extensive experience of parenting their child.

**Page 76:** We like the statement that schools should meet parents at least termly to review progress, and that these meetings will be longer than most parent-teacher meetings. However, we think this is a **must** rather than a **should**. It would be helpful to highlight the structured conversations developed through the Achievement for All programme as an example of good practice.

A parent writes: "Our recent IEP meeting was 'tagged' onto the parents' evening in a busy assembly hall with numerous other parents in close proximity. The teacher told us what would be on the IEP with little chance of

discussion. It would be preferable if the wording stated that schools “must” meet parents at least termly rather than “should”, as many schools, who are short staffed or have large numbers of children with a SEN, may feel that they are unable to accommodate this. This means that some children and parents will be receiving a better “service” than others and this may lead to a two-tier system in terms of involvement of parents, and the benefits of such involvement for their children, and both schools and parents will miss out on valuable input from the other on a regular basis. It could also be asserted that these meetings take place in a private setting to ensure confidentiality.”

*“Where a pupil is receiving SEN support, schools should meet parents at least termly to...identify the responsibilities of the parent, the pupil and the school”.* Parents and schools have responsibilities, and whilst older children and young adults may have responsibilities, younger children with a SEN need support, and potential goals to aim for, not pressure and responsibilities. There needs to be differentiation to reflect the age of the children concerned.

**Page 81:** Some parents feel that there is an underlying assumption in the draft Code that independence means moving away from home and living separately from the family. It would be helpful to include a note that professionals must not make assumptions or apply pressure on the young person or their family to take this step, purely because of the young person’s age .

**Page 82-85:** This section illustrates the confused approach to decision-making when a young person turns 16. The Code states that colleges should discuss students’ needs with the young person **and** his or her family, but they only need to involve the family in discussions about the additional support required “where they judge it appropriate”. We need more clarity about when the family should be involved, and it should not be left to colleges to decide this.

We understand that colleges are autonomous and that this probably explains the complete absence of “musts” in this section. This failure to impose the same duties on FE colleges as on sixth forms, however, perpetuates an unfair system.

**Page 86:** *“This will enable schools and colleges to provide clear descriptions of the types of special educational provision that they normally provide in the local offer.”* What a school or college can provide “normally” actually fluctuates year on year, depending on the number of pupils on roll whose needs take them close to, or over, the nationally prescribed threshold.

*“Where the cost of special educational provision required to meet the needs of an individual child or young person exceeds the nationally prescribed threshold, the responsible local authority, usually the authority where the child or young person lives, **may** provide additional top-up funding. This should be arranged as part of the placement of the child or young person in the school or college, and **should** reflect the cost of providing the additional support in the setting that is in excess of the nationally prescribed threshold.”* The Code should say that the local authority **must** provide additional top-up funding, and that this **must** reflect the cost of providing the additional support.

**Page 90:** The draft Code here says that Tier 3 of the CAMHS four-tier framework “*consists of specialist multi-disciplinary teams such as Child & Adolescent Mental Health Teams based in a local clinic. Problems dealt with here would be problems too complicated to be dealt with at tier 2 e.g. assessment of development problems, autism, hyperactivity, depression, early onset psychosis.*” This makes it sound as if autism in itself is a mental illness, which it is not.

## 7. Assessments and Education Health and Care plans

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**General comments:** The local authority is both assessor and provider – this problem from the old system is not resolved under the new one. The (educational) professionals consulted are still mainly on the local authority's payroll, e.g. Educational Psychologists. Therefore, the local authority is still the "gatekeeper" – they pay the professionals who judge whether a child/young person has a "significant enough" level of need, they hold the key to the cupboard with all the money in, they define what SEN is, they dictate decisions on placements. Parents/young people will still have to prove to the local authority that the child's needs meet the levels set by the local authority. The concern of parents is that decisions are based not on the child's/young person's needs, but on the local authority choosing to spend as little as it can get away with. There is a need for impartial decision making.

**Time lines/limits:** It is very difficult to figure out exactly who should do what and by when, although the flowchart on page 99 is helpful. The exemptions listed on page 98 worry us. A parent writes: "We have experience of the LEA saying they sent a document to school just before the summer holidays; school didn't receive it and then the LEA sent a second copy during the summer holidays! They were able to use this exception as a delaying tactic (we believe) to avoid sending our child's case to the panel. "

**Page 93-95:** Refusal to assess – the draft Code does mention parent/young person's right to appeal throughout, but there is no mention of a duty on local authorities to alert parents/young people to time limits for lodging appeals, so that they don't miss deadlines for the right to appeal. The end of paragraph 7.3 (page 95) mentions parental right of appeal after a refusal to assess and the "requirement for [parents] to consider mediation", but doesn't mention that they must contact a mediation advisor before appealing to the First Tier Tribunal (SEND).

A parent writes: "Our family has personal experience of this; we were encouraged to try and reach an amicable agreement through discussion with the local authority but were not told that we must apply to the Tribunal at the same time. The delay meant we almost lost our right to appeal."

**Page 93:** The draft Code is a lot less prescriptive than the current Code regarding the information a local authority must provide to parents when considering whether an assessment is necessary (see paragraph 7.16 in the current Code). We believe that the duties outlined in paragraph 7.16 of the current Code are helpful for parents and should be preserved in the new version.

It would be useful to include a reference to the section on requesting a re-assessment (page 133) in paragraph 7.2 (Requesting an Assessment). The Code should explain how "requesting an assessment" differs from "bringing a child or young person to the attention of the local authority" – do the same timescales apply? Do parents have the same right of appeal in both cases?

**Page 94:** Evidence for deciding to assess: Compared to the current Code, the draft Code is quite woolly on exactly what will trigger an assessment. Paragraph d) refers to "evidence of the action already being taken" by educators but, without standard/consistent methods/tools such as SA/SA+ or IEPs, evidence may be viewed by local authorities as subjective.

There is too much emphasis on academic attainment, and paragraph f) - evidence of "physical, emotional and social development and health needs" – looks a bit like an afterthought. We recommend that the wording of the current Code is preserved (7:38 – 7:45). We would also like the Code to highlight that what is deemed adequate academic progress should be based on the individual's potential (e.g. as indicated by their NVR score), rather than national averages.

**Page 95:** It is a real shame that the concept of keyworking, which was so strong in the Green Paper, has been watered down to a mere "This should include key working and, as appropriate, an Independent Supporter".

We would like to see a duty to provide a key worker to every family with an EHC plan who wants one. As stated previously, Independent Supporters are difficult to recruit and retain, and should not be regarded as a substitute for key workers.

**Page 96:** It is difficult to see how senior leadership teams can be “impartial” and act in the family’s “best interests” when they also hold the purse strings. As discussed above, it appears that a good idea floated in the Green Paper – the separation of the assessment and funding functions– has been abandoned.

**Page 100:** The draft Code mentions a requirement to consult a specialist teacher, but only for visually impaired or hearing impaired pupils. We would like to see this extended to many other disabilities, such as autism, dyslexia and Down Syndrome. There is a similar issue with the commissioning of peripatetic services for children under the age of two (page 122) – again, this section only refers to children with hearing impairments or visual impairments.

There should be a requirement for local authorities to take account of private assessment reports when conducting an EHC assessment.

**Page 101:** The idea that written submissions from professionals should provide advice about outcomes goes against the idea of person-centred planning. How can someone who may only have met a child or young person once during an assessment decide what their life outcomes should be? Surely these can only be determined in partnership with the child/young person and their parents.

The current Code talks about establishing “agreed local interpretation” (paragraph 7:37). It talks about “moderating groups” and “consistent decisions” and access to all the evidence on a child/young person – it says “the role of these groups must be clear, public and open to scrutiny”. There is mention of moderating groups in the draft Code, but no mention of public accountability. We could not find any mention in Section 7 of this need for consistency/accountability. On page 96, there is mention of “robust quality assurance systems” but this seems a bit vague.

**Page 101/102:** There is generally not enough detail in the draft Code regarding the advice and information which must be sought during an EHC assessment. The current Code provides detail on sources of evidence, what kind of evidence should be sought when assessing a child/young person, and how evidence might be evaluated. The draft Code does list those from whom evidence should be sought, but only says it should “be clear, accessible and specific” and says it will be up to the local authority to decide the structure and format that this advice/evidence should take. We think there should be national consistency here.

Everyone involved in the process needs to know the “ground rules”; this is especially important for parents if the local authority refuses to assess/issue an EHC plan and they want to mount a case for appeal.

**Page 102:** The local authority **must** (not should) provide feedback collected during the assessment process to parents and settings. It would be a huge waste of resources if they didn’t do this as a matter of course.

**Page 103:** Paragraph e (and also the section on outcomes on page 105) - There needs to be more guidance on what constitutes an outcome, what sort of timescales they should cover, and how they should be agreed. This is a completely new way of thinking for many professionals and parents, and there is a potential for conflict – for example, parents may want to set more challenging outcomes than local authorities, who may have a financial interest in outcomes being achieved when a young person turns 16 or 18, so that the EHC plan may be ceased. There appears to be no right of appeal against the outcomes specified in the EHC plan – but given their importance, we think there should be.

Paragraph f – We very much like this section and we hope this will enable parents to drive forward innovation, for example in terms of new therapies.

We do not think that the format of an EHC plan should be agreed locally. Localism has its place, but not in this case. It would make everyone's life so much easier to have a nationally agreed template – particularly for families moving between authorities, and for schools who have pupils from different authorities.

**Page 105/106:** *“Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it.”* This is a key statement which does not go far enough. Provision **must** be quantified, including in terms of **how often** it is provided, and for **how long**. Unless this is prescribed, we will end up with EHC plans which use the same unenforceable “weasel words” as statements do now, e.g. “access to speech and language therapy” or “regular support”. Cases where flexibility is required should be clearly defined (e.g. fluctuating medical conditions).

**Page 109:** Responsibility for provision: It would be helpful to clarify if social care provision which is made to enable a young person to access further education (e.g. by providing a PA to enable them to access work experience on days when they do not attend college) is to be treated as special educational provision. This is important for young people on 3-day courses who are unable to engage in independent study.

The draft plan: There's mention of a 15-day time limit for parents after local authority informs them of a decision – when exactly is this from? The date of the letter, or the date of receipt? The vagueness of the draft Code is an invitation to local authorities to use snail-mail/second-class post and any number of delaying tactics.

**Page 110:** Families need information about prospective schools much earlier than at the draft plan stage.

**Page 115:** It is not clear whether families have a “right to request a personal budget” or a “right to a personal budget” – two very different meanings! The Code should clearly set out under which circumstances a request for a personal budget can be refused.

**Page 119:** The section about the SEN element of a personal budget is not very clear. Should the element from High Needs block always be included in a personal budget, or is this to be decided locally? There is nothing in this section about personal budgets for families where home education or flexi-schooling is named in the plan. These families should be able to receive the education element (delegated and top-up funding) of the plan as a direct payment, to spend on home tutors, for example. This would also benefit families running time-limited home-based therapy programmes.

It should also be possible for a family to take the SEN element (delegated and top-up funding) of the plan as a direct payment and use this to part-fund a placement at an independent school, even when the local authority believes that a maintained school could meet the child's needs equally well.

*“Direct payments are cash payments made directly to parents, young people or their nominee, allowing them to arrange their own provision. They must be set at a level to deliver sufficient to cover the full cost of the special educational provision specified in the EHC plan that is to be secured by the direct payment.”* This principle must apply to **health** and **social care** provision as well, not just to the special educational provision. The provision of direct payments must not absolve local authorities of their duties towards children/young people with EHC plans. In particular, local authorities should be required to develop the market to ensure that the services families want to buy actually exist.

**Page 121:** There should be a requirement to ensure that teaching staff are aware of pupils' needs, and that they monitor and review their progress – it is a **must**, not a **should**.

Right of appeal: There is a disappointing lack of detail, clarity or consistency. Time limits, right/opportunity to appeal at different points in the process, the duty to inform parents/young people of their rights should

appear throughout the Code at every relevant point. Time limits and deadlines for all involved should be clearly laid out in the Code so parents/young people don't miss deadlines for their right to appeal.

*"A local authority may also decide to refuse a request for re-assessment if it thinks that a further assessment is not necessary, for example because it considers the child or young person's needs have not changed significantly."* The Code needs to spell out what constitutes a "significant" change in a child or young person's needs, otherwise this is too vague and open to interpretation.

**Page 124:** The statement *"Young people aged 19-25 have the right to request an assessment of their SEN at any point. 19-25 year olds do not have an automatic right to receive support through an EHC plan (...)"* is confusing. If they have an EHC plan, surely they have the right to receive support through it, regardless of their age?

For young people aged over 18, the Children and Families bill requires local authorities to have "regard to their age" when making decisions about conducting assessments and making, reviewing and maintaining an EHC plan. This is a vague and potentially confusing statement.

Is "ceasing support through an EHC" plan (page 124) any different from "ceasing to maintain an EHC plan" (page 136)? If there is a difference, then this should be explained; if there isn't, then consistent terminology should be used throughout.

**Page 126:** The Code should clearly spell out when a 5-day week in education is considered "appropriate" for a young person's needs, and how this should be funded. We know that some families are being asked to use direct payments originally given for respite to plug the gap in educational provision (e.g. for young people on 3-day FE courses). Some of these young people are not safe to be left on their own, or are unable to engage in independent study, but don't meet the criteria for support from adult social care – so how do you persuade adult social care to contribute?

**Page 129:** Section a) states that the child's parents **or** the young person must be invited to an annual review meeting. However, section g) states that the local authority must notify the parent **and** young person of their right to appeal. As discussed above, the Code is very muddled about the rights of parents of young people over the age of 16. There should not be an automatic assumption that parents of young people over the age of 16 should no longer be invited to review meetings. Instead, there needs to be clear guidance regarding the involvement of parents whose young person wishes them to remain involved, or whose young person lacks mental capacity.

We welcome the new requirement to notify the child's parent, the young person and the setting of the outcome of the annual review within four weeks of the meeting (section e). This solves the current problem of families not being able to appeal when local authorities drag their heels and don't notify them of the outcome of an annual review for many months (or not at all).

**Page 135:** We do not agree that an EHC plan should cease when a young person enters higher education.

**Page 136:** *"The local authority should also plan how health and social care support will be maintained, where it continues to be required, and whether this will continue to be provided by their home local authority or by the authority in the area they are moving to"*. This is a **must**, not a *should*. Clear guidance as to which local authority is responsible for funding support in which case needs to be included in the Code.

The statement that the local authority must have "regard to a young person's age" when deciding whether to cease an EHC plan for a young person aged 18 or over, is not very clear. It would be better to say that the local authority must consider whether it is in the young person's best interests to remain in education.

The draft Code states that the EHC plan will cease if a young person aged 16 or over takes up paid employment (including employment with training but excluding Apprenticeships). We don't believe that an EHC Plan should cease in that case, as the young person will still need a level of support whilst working and their health needs are likely to be the same. It does mention on page 137 that if the person is over 18, the Care plan will remain in place when the other elements of the EHC plan cease. However, what happens when you are 16 and start paid employment and your EHC plan ceases? It needs to be made clearer as to what support the person will have in this situation.

**Page 137:** We welcome the requirement to maintain an EHC plan for NEETs of compulsory participation age. However, we feel that condition a) – that the young person **wants** to remain in education or training – should not apply to those under the age of 18, because they are legally required to be in education or training.

*“Where the child’s parent or young person disagrees with the local authority’s decision to cease their EHC plan, they may appeal to the tribunal”.* As discussed above, there should not be an automatic assumption that parents of young people over the age of 16 should no longer be involved, and this is particularly important when a decision is made to cease to maintain an EHC plan. Presumably, parents still have the right to appeal to the SEND tribunal against a decision to cease to maintain an EHC plan for a young person (although this is not clearly spelt out in the draft Code) – a right which they will not be able to exercise if they are not informed about such a decision.

**Page 139:** There is a contradiction between the statement that transport should only be recorded in an EHC plan in exceptional cases, and the statement that transport costs may be provided as part of an agreed personal budget. How can a personal budget include provision which is not recorded in the plan? We believe that transport provision should always be recorded in an EHC plan.

## **8. Children and young people in specific circumstances**

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**Page 147:** Home education – This section should reference the Elective Home Education Guidelines 2007 (revised 2013).

*“In cases where local authorities and parents agree that a child or young person with an EHC plan should be educated at home and home education is ‘named’ on the plan, the local authority is under a duty to arrange the special educational provision set out in the plan.”* Further guidance is needed to clarify under what circumstances home education could be “named” in an EHC plan, and what exactly this means (i.e. who is responsible for what). At the moment, some families opt to home-educate their children with SEN because they have lost faith in the ability or willingness of the education system to meet their child’s needs. In Sheffield there are particular groups of children (e.g. those with high-functioning autism who cannot cope with the sensory demands of busy school environment) for whom there is no appropriate local provision, and whose parents feel they have no choice but to “choose” home education. Many of these families are battle-weary and don’t have the emotional and financial resources to carry on fighting to try and prove that their child’s needs can only be met through home education. The home educators we spoke to felt that local authorities would only “name” home education if they were ordered to do so by the Tribunal. Clear guidance would help to avoid conflict between families and local authorities, and to ensure that families are not left to struggle on their own. We also need to ensure that local authorities don’t push home education on families who would much rather see their children educated in a school, if only there was one that was appropriate for their needs.

It is also not clear how a local authority would go about “arranging” SEN provision for a home-educated child. Perhaps the easiest solution would be to offer the family a personal budget to cover the SEN elements of the plan (i.e. High Needs funding and delegated SEN funding), but many home-educating families are fearful of the

strings attached – not just because of the additional responsibility of becoming an employer, but also because families don't constantly want to have their choices scrutinised by the local authority. And what could a personal budget be used for in this case? Would the parents have to employ tutors, or could the parents themselves be paid to educate their child?

The local offer must explain how home educators can access services like Educational Psychology, specialist advisory teachers, speech and language therapy, occupational therapy, physiotherapy, CAMHS, etc. While NHS-funded services usually operate on the principle that they are services to *individuals* regardless of where they are educated, Education-funded services see themselves as services to *schools*, and many home educators find it difficult to access them. Access to these services should be based on the child's needs, not the setting where the child is educated, and they should be provided at the request of the parents, not imposed by the local authority.

*"As with children and young people with plans, local authorities should work with parents and consider whether to make provision in the home to help the parents make suitable provision."* There should be a *right* for home educators to access support, and a *duty* on local authorities to provide this, if requested. This should apply regardless of whether the child/young person has an EHC plan, and regardless of whether their EHC plan names home education.

Home educators can find it very difficult to get their voices heard, and without school staff to back them up, many end up paying privately for assessments – which are then frequently ignored by the local authority. Home educators should be offered the option being supported by an independent advocate or key worker.

*"The local authority's duty is to ensure that the child or young person's SEN are being met..."* There is no such duty in the Children and Families Bill, and therefore the Code should not give the impression that such a duty exists.

*"The local authority **must** review the plan annually to assure itself that the provision set out in the plan continues to be appropriate and the child's SEN continue to be met."* Again, this refers to a non-existent duty to ensure that the SEN of a home educated child are met. The law does not require local authorities to make a judgement about home education. Home educators tell us that some local authorities use annual reviews to criticise and undermine parents, but then don't offer any support if the provision made by the parents is deemed insufficient – that annual reviews are an interference which offers no benefits to the family. There should be a duty on local authorities to provide support if parents request this.

The Code needs to clarify whether the section *"Reviews where a child or young person does not attend a school or other institution"* (page 130, 131) applies to home educators, and if it does, we question the need to invite a social care representative to the review meeting by default.

*"They should work with parents and consider using their power to make provision in the home to help parents make suitable provision."* This should read "... and **must** use their power to make provision in the home to help parents make suitable provision, **should the parents request this, for example by offering a personal budget.**"

**Page 151:** *"Where possible this review should take place as early as possible when planning for release and ideally within a month of release from custody."* Surely it would be better to have this all in place when they leave custody.

## 9. Resolving disputes

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**Page 158:** Whoever provides the disagreement resolution service **must** be able and prepared to challenge local authorities who say/do/offer something to parents during resolution meetings which is inaccurate, misleading or even illegal. It is not enough that the service is impartial; facilitators must also ensure that families are fully informed of their rights, and that they do not settle for something less than what they are entitled to because of a lack of information.

**Page 163:** Requirement to enter mediation before appeal: This just adds a further delay to parents/young people who will, by this stage, be desperate to secure funding/support or make changes to a plan. The whole process seems lengthy and farcical – parents don't need a "certificate" to tell the Tribunal they don't want to waste any more of their children's time. Local authorities are paying big fees to professionals to appear at the Tribunal on their behalf instead of spending it on children/young people – now mediators will be getting in on the gravy-train too. If there is data which shows mediation works, it should happen much earlier and be used to prevent the waste of local authority resources on Tribunal cases (which are mostly lost, or settled early, by local authorities).

**Page 167:** It is not clear whether parents can only appeal to the First-tier Tribunal until their child reaches 16, or until their reach 25.

**Page 168:** Given the importance of outcomes in determining provision and deciding whether to cease to maintain a plan, it should also be possible to appeal against *outcomes* specified in a plan.

*"... appeals must be registered with the Tribunal within two months of the local authority sending a notice to the parent or young person..."* The timescale for registering an appeal should be from the date on the notice letter, rather than the date of receiving the notice.

We do not think that it is acceptable that there is no single point of appeal for the Education, Health and Care elements of a plan. Parents should not have to use three different complaints with three different bodies, with the likelihood of three different timescales for these complaints to be redressed. What will happen with the EHC plan in the meantime, if for example the SEND tribunal makes a decision in the appellant's favour, but then there is a substantial delay with one or both of the complaints processes for the other sections of the plan?

**Page 168:** The draft Code states that, when an appeal is about the decision to cease to maintain a plan, the local authority has to maintain the plan until the tribunal's decision is made. It is not clear here which parts of the plan the local authority must maintain. Is this limited to the SEN part of it, or does it include the social and health care elements as well? (Bearing in mind that the local authority is likely to have responsibility for the social care provision but perhaps not the health care provision)

**Page 172:** As stated above, we believe that there needs to be a single point of appeal for the Education, Health and Care elements of a plan. However, information about complaints to Healthwatch and to the Local Authority about social care provision still needs to be included in the Code for those without an EHC plan. A clear flow chart and explanation of the different appeal processes is vital, otherwise stressed parents/carers/young people are at risk of missing out on redress due to possible confusion over where to appeal.

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