

SENlegal

NEWSLETTER



Professional's Newsletter Edition 15

2022 SEND Green Paper Edition

HM Government
SEND Review:
Right support
Right place
Right time

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SEND Review:
Right support
Right place
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Missed the point by a country mile

Chapter 4 of the SEND Green Paper - Alternative Provision

The SEND Green paper review - a quick review

Bristol University Disability Discrimination Equality Act

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Missed the point by a country mile.

By Richard Nettleton, Solicitor



With the SEND review, ironically entitled “*SEND review: right support, right place, right time*”, being released after years of promise and hope building, all eyes turn to Chapter 5 which covers accountabilities and funding.

While figures such as £9.1 billion are referenced as proposed changes to high needs funding for 2022-23. I appreciate this is a big figure, but context is key.

£9.1 billion every year would be a great start for the changes required to the system overall, particularly if it was ringfenced to ensure more special schools are built. This would help avoid Local Authority temptation to hold students in inappropriate mainstream placements and forcing parents through the Appeal route, as these special school placements are seen as valuable. Therefore, the current Local Authority mindset dictates that they must be ‘guarded’.

Although, contextually, when you see other policy statements that reference that once this lump sum is used, future years will see considerably less money being spent, this promise begins to unravel. It further unravels when an emphasis is placed on ensuring Local Authorities remain on budget; if it's a choice between a lawful decision and hitting the budget target, all parents and schools know which decision the Local Authority will make.

The reality of the situation that the Green Paper fails to tackle, reference or even acknowledge is that even if this money was being provided yearly, that;

1) A toxic and pervasive culture exists in the vast majority of Local Authorities that even if they were provided all the money in the world, they would still make unlawful decisions and still continue to gaslight parents about their children's needs.

2) No system of accountability exists to hold Local Authority officers to account regarding decision making. The Ombudsman, who is not a regulator unlike the SRA (Solicitors Regulation Authority) or GMC (General Medical Council), lacks any power to ensure unlawful actions are not repeated on a daily basis. It also has questionable practices of its own through its hiring policy of new caseworkers that are often ex Local Authority employees working in their ‘SEN Tribunal Teams’. The police service does not hire new recruits directly from the prison system and serious questions would be asked if they suddenly did.

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The promise of 'dashboards' for parents to monitor their Local Authority's progress regarding statutory deadlines is meaningless without a system of accountability in place and when the authors of the Green Paper included the phrase "*Local Authorities are uniquely placed to be a champion for the best interests of every child and young person in their area*" they showed that they lacked a grasp of the real-world situation and hardship that families across the country face on a daily basis.

In summary, the Green Paper reads like a Dilbert comic strip and is a terrifying insight into the minds of the individuals who contributed to it, who thought extra layers of bureaucracy, a lack of accountability and substandard funding is going to resolve the monumental issues parents face getting the right support for their children's special educational needs.



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Chapter 4 of the SEND Green Paper - Alternative Provision

By James Brown, Solicitor

A whole newsletter could be dedicated to this chapter of the Green Paper. There is a strong focus on Alternative Provision throughout and it is a key issue for a lot of parents. The below is therefore intended as a guide of some of the key points and what impact they may have for children with SEN.

The focus within the Green Paper is a narrow view of Alternative Provision, as its focus is children and young people with challenging behaviour or health needs, as per paragraph 2, page 56. Paragraph 3, page 57 makes it clear the focus is on PRUs, alternative provision academies and free schools, unregistered providers and medical and hospital schools.



What is the Green Paper proposing for Alternative Provision?

- ✓ *make alternative provision an integral part of local SEND systems by requiring the new local SEND partnerships to plan and deliver an alternative provision service focused on early intervention*
- ✓ *give alternative provision schools the funding stability to deliver a service focused on early intervention by requiring Local Authorities to create and distribute an alternative provision-specific budget*
- ✓ *build system capacity to deliver the vision through plans for all alternative provision schools to be in a strong multi-academy trust, or have plans to join or form one, to deliver evidence-led services based on best practice, and open new alternative provision free schools where they are most needed*
- ✓ *develop a bespoke performance framework for alternative provision which sets robust standards focused on progress, re-integration into mainstream education or sustainable post-16 destinations*
- ✓ *deliver greater oversight and transparency of pupil movements including placements into and out of alternative provision*
- ✓ *launch a call for evidence, before the summer, on the use of unregistered provision to investigate existing practice*

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The above all sounds good on paper and, put simply, the Green Paper is seeking to set out a national vision to improve Alternative Provision, which can only be a good thing if done well. However, unfortunately, the chapter is high in rhetoric but lacking in any real detail, which is a theme you will note throughout the Green Paper.

The Green Paper proposes for mainstream schools to have a clear, tiered package of support from alternative provision settings to build capacity to address '*behavioural or other needs that present a barrier to learning*' and provide '*world class support*'. What is world class support? How will schools access this support; what will the criteria be? What other needs are intended to be met? Schools and parents are repeatedly requesting such support, without being able to access this. Without any proper detail as to how this support will be provided, significant suspicion is raised as to the impact this may have.

Nowhere does it highlight that EHC Needs Assessment should be taking place to identify the support the child requires, rather than moving straight to provision.

Funding is of course an issue and stability is required. The Green Paper states 7 alternative provision schools (yes 7, across the whole country), are approved to open. The £2.6 billion announced in the Autumn Budget includes spending on Alternative Provision, alongside the purported £11.3 billion investment since 2015. Again, all very good on paper, but whether this will be sufficient and spent wisely remains to be seen; recent years would suggest not. With budgets for children with SEN already extremely underfunded and unnecessarily complex for schools to manage and schools being short-changed by LA's for the support they provide, how will this proposed stability of funding guarantee support? '*Notional funding*' and '*High Needs funding*' is already in place and when looked at in detail, is simply a mess.

Crucially however, as Mr Zahawi's colleagues noted in the Education Committee's report in 2019 ([you can read about this in our November 2019 Newsletter here](#)), chucking more money at the system is not the solution. A systemic shift is required. The Green Paper does not appear to offer this systemic shift and the lack of accountability remains.

The DFE want to know what you think by Friday 22 July 2022. Please email them and tell the DFE what you think via the email sendreview.consultation@education.gov.uk.



[Click here to read the SEND Green Paper](#)

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SEND GREEN PAPER quick review



by Melinda Nettleton, Principal Solicitor

Told you so...

Nationally Standardised EHCPs are proposed, just like the old Statement of Special Educational Needs; we said abandoning that would lead to inconsistency. Page 27 Para 4 states:

“There is too much local discretion, to the extent that there are now in affect 152 Local SEND and alternative provision systems operating across the country”

Look out...

Two additional hoops for parents to jump through before Tribunal are proposed:

- 1) Mediation in all cases
- 2) Compulsory Panel Review before being able to submit a Tribunal Appeal.

adding further delay frustration and difficulty to navigating the already complex system.

Failed Solutions...

More of the same failed solutions and additional layers of bureaucracy are proposed. For example, administrative help for SENCOs - when the principal problem is caused by Local Authorities imposing disproportionate administrative burdens as part of their gatekeeping processes (for example, 3 or 5 terms documented results to get an EHCP). Sort out the disproportionate administrative burdens imposed by Local Authorities and the workload for SENCOs would reduce - along with the number of SEND Tribunal Appeals!

Similarly, a Designated Officer in Social Care is proposed to increase the engagement of Care with the SEND System. Education and Social Care have in Law been one department since The Children Act 2004. What can a Designated Officer achieve that a Joint Head of Department (Director of Education and Social Services) can't after 18 years? Legislation needs to require some genuine multi-disciplinary area teams and changes in social worker training and outlawing policies preventing bright children receiving help from Disability Teams. This is not even more of the same failed solution. It is less than the original failed solution.



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Bristol University Disability Discrimination Equality Act 2010

On Friday 20 May, Bristol County Court decided that Bristol University failed in their obligation to make reasonable adjustments for a student, who later committed suicide. £50,000 compensation was ordered, including the cost of her Funeral.



This was a County Court Case; the SEND Tribunal only deals with schools' cases. Unlike the County Court, the SEND Tribunal cannot order compensation. However, in the SEND Tribunal, you're not at risk of the school's legal costs. In this case, the family who brought the case, were at risk of having to pay the Legal Costs of Bristol University. Fortunately, they won, which means now they will also have their Legal Costs met by the University because the rule in the County Court is that the loser has to pay their own costs and the winning party's costs.

SEN Legal are concerned about vulnerable students attending Universities and, prior to the 2014 Children and Families Act, argued for EHCPs to be extended to Universities. No problems we were told. The Green Paper doesn't even mention this.

Why do Universities continue to be exempt from EHC Plans? How far can it be said that reasonable adjustments are doing a sufficient job for students at Universities when incidents such as these occur? It would appear to be another example of antiquated thinking in respect of what young people with SEN can and cannot do and attending University should not be a barrier to receiving the correct level of provision to meet their needs.

 A graphic for Papworth Trust. At the top, there are two circular portraits: a woman on the left and a man on the right. Between them is a purple square with the text 'Papworth Trust' in white. Below the portraits is a silhouette of a building. At the bottom, there is a silhouette of a group of runners in various poses, running across a green field. The background is a gradient of purple and blue.

Thank You

To everyone who donated to help James & Allys raise over **£600** for Papworth Trust!

The DFE want to know what you think by Friday 22 July 2022. Email via:

sendreview.consultation@education.gov.uk

