

Briefing Re Pressures in SEND System

The implementation of the Children and Families Act (2014) placed significant new and unfunded burdens on Local Authorities. The Act made wholesale changes to the previous system and brought with them a range of unforeseen consequences which have been exacerbated by broader societal challenges. This has seen an exponential increase in the number of children being identified as having significant Special Educational Needs and Disabilities, many to the level where it is felt that they cannot be provided for in their local mainstream school.

Local Authorities have, for a number of years, been flagging up problems within the system and a number of different reviews have been initiated to identify those factors which have created a system which is neither sustainable nor is delivering the outcomes that were envisaged for children and young people. Most recently, the SEND Green Paper identified a range of factors (following extensive consultation) some of which are, now, being tested through the SEND and AP Change Programme. Although broad, this change programme has some significant challenges: many of the things that are being tested are not the main drivers for demand nor costs and, more importantly, no legislative changes are being made as part of the programme and so those things which do drive demand and costs are not being addressed.

Set out below are some of the main issues with the current system, alongside some potential solutions, which are leading to both an inequitable and financially unsustainable system:

- The threshold for Education, Health and Care Needs Assessments was lowered as part of the C&F Act (2014) which has resulted in an increase in the demand for LAs who are not resourced to conduct the volume of assessments, let alone the provision which is requested as part of these. Associated with this is the statutory requirement for an Educational Psychologist to be involved in every assessment; this is a profession for which there is a national shortage and Local Authorities are, now, competing with each other to appoint to posts. Furthermore, Schools' Notional SEND Budgets are not sufficient to meet needs of children in their community, nor is this funding ringfenced. This means that there are insufficient resources in local schools to meet emerging SEN and a drive for this to be met with enhancements from the High Needs Block or in specialist settings.

Potential solution: A review of the threshold for a full SEND needs assessment is urgently required. As has been suggested elsewhere, an option would be to give mainstream schools the resources, autonomy and responsibility to support pupils with SEN short of an education, health and care plan (EHCP) without labelling them as such. This would allow for a readjustment of the threshold for accessing an EHCP, met only when it was evident that provision in a mainstream setting was either not possible or was possibly only with specified extraordinary support.

- Fees from Independent and Non-Maintained Special (INMS) Schools have risen significantly over the last few years, often at rates greater than inflation. In East Sussex, our current commitment to placing around 400 pupils with EHC Plans in these schools takes up 25% of our entire SEND budget, with average costs in this sector approaching £50k per pupil per year. LAs have no legal recourse to challenge

unreasonable price increases and the DfE/ISI are reluctant to hold INMS to account in adhering to the limited legislative requirements that are in place.

Potential solution: In addressing the rise in costs in INMS, a national tariff of costs has been mooted by the government on a number of occasions, but never taken forward and LAs have no 'teeth' whatsoever to respond to above-inflationary increases in fees. Establishing a fixed range of fees for pupils associated with their needs would ensure that costs in the independent sector are kept at a manageable level and would lead to a fairer level of resource compared to state-run equivalents. Short of this, giving LAs powers to specify the funding that would be allocated to provide for pupils of specific needs, then giving INMS the option to run provision based on these figures, would create a system that is comparable with other commissioning arrangements. Furthermore, legislating for any entity that receives state funding to be transparent with costs and outcomes would ensure that LAs can deliver better value for money and would deter people moving into the provider sector who, at present, see this as a for-profit investment.

- The Tribunal System is weighted unfairly against councils and local evidence suggests that Tribunals will often opt for a 'gold-plated' offer when this is on the table from the independent sector. The requirement for LAs to be effective custodians of the public purse is not given sufficient weight in decisions which is being exploited by those in the independent sector to present provision at any cost in the knowledge that there is a good chance that it will be deemed more appropriate than a lower-cost offer. Furthermore, judgements will include elements to be funded by the state that have a tenuous link to educational provision, often ignoring a parent's own duties to support their child (e.g. driving lessons).

Potential solution: Tribunals should be required to give greater weight to the costs associated with provision and take into account the need for councils to be responsible custodians of public finances. At present, a council must demonstrate that a school is not an efficient use of resources, which is open to a lot of interpretation by Tribunals. Furthermore, far greater clarity needs to be given with regards to the type of provision that should be funded by different sectors within the system (i.e. Education, Health and Social Care) and Tribunal decisions should be equally binding on all statutory partners, not just the LA.

- The capital programme overseen by the DfE is woefully inefficient and unable to deliver new buildings at the pace the current demand requires. New schools build and opened by Local Authorities are, usually, completed much quicker and have fewer procurement issues than large, national programmes. In East Sussex, we have one special school which was 90% complete when the large contractor appointed by the DfE went into administration. Due to the lack of profit and high risk associated with completing a school that is almost finished, finding a contractor at a national level has already delayed the opening of this school to new children with no sign of a new contractor being appointed any time soon.

Potential solution: A wholesale revision of the way capital projects for new special schools are delivered should be undertaken. At present, local councils only have control over the building of new schools where they have sourced capital funding. All

new DfE funded Free Schools are built through the Department. Evidence shows that the centralised programme is incredibly slow and local councils are far more efficient and effective at running local building programmes. A de-centralised model where more capital funding is devolved to councils (where more provision is needed) to commission and oversee building programmes at a local level would result in a swifter increase in specialist provision.

Set out above is strong evidence for the need for systemic reform to the SEND system that needs legislative change. The implementation of the C&F Act 2014 has been consistently proven to be ineffective in delivering the outcomes for children and their families and the only beneficiaries are the independent providers who are exploiting the limitations on Local Authorities. Although the Change Programme has the potential to make some minor improvements, without a total revision of the thresholds for assessment, the funding mechanisms for mainstream schools, the financial requirements on the private sector and the tribunal system, costs are only likely to rise and more LAs will fall into financial difficulties.