**Labour Party Review of the SEND provisions in Children and Families Act**

**National Deaf Children’s Society response (July 2016)**

The National Deaf Children’s Society welcomes the opportunity to submit evidence to this review of the SEND provisions in the Children and Families Act.

We’re the leading charity dedicated to creating a world without barriers for every deaf child. We provide information and support to parents of deaf children on all aspects of childhood deafness, including education and the special educational needs framework. Our response draws on findings from our casework team and also from a survey of parents of deaf children and deaf young people carried out in summer 2016.

We believe that one of the fundamental weaknesses with the Children and Families Act is that accountability remains weak. Changing the law does little to address the fact that there is no real meaningful consequence for local authorities in failing to follow these laws. We recommend that the Labour party review of SEN consider how the Government might strengthen the accountability framework around SEND.

In our response, we summarise the evidence we have of issues around:

1. Education, Health and Care plans
2. Local Offer
3. Specialist support to schools and concerns around funding
4. Accountability

**1) Education, Health and Care plans**

We have found that the equality of Education, Health and Care plans is, in many cases, poor and variable.

An audit[[1]](#footnote-1) of 40 EHC plans by the National Sensory Impairment Partnership (NatSIP)

identified a number of widespread issues and non-compliance with the statutory requirements. These issues include:

* Sections of plans not clearly labelled. 15 (38%) failed to meet the specification for EHC plans set out in the SEND Code of Practice because, for example, they missed out complete sections or did not provide the required content.
* No clear child view. 19 (48%) failed to include any information about the child’s aspirations or goals
* Weak on outcomes, steps and timescales. None of the plans reviewed included any SMART outcomes. Plans rarely make it clear when steps and interventions should take place. We found that only 7 (18%) of plans specified and quantified the provision that children needed.
* The plans were very weak on health / social care needs, with social care sections often left blank, even where it was clear that the child would benefit from support from health or social care services.

There is also evidence, from our casework team, that the process for an EHC needs assessment is not working smoothly in many cases. Common issues coming up in our casework:

* Refusal by local authority to assess for an EHC plan – this appears to be becoming a particularly significant issue in the context of early years.  Further, parents seem to be being advised it is too premature at the child’s young age to even make a request in the first place.
* Failure to meet statutory deadlines – including delays in completing early years EHC assessment process and issuing final EHC plan.
* Poor EHC assessment process – for example, failures by local authorities to obtain appropriate professional advice (failure to follow regulation 6 of the SEND 2014 regulations). This includes failure to obtain specialist advice of Teacher of the Deaf or advice on social needs.  In relation to post-16, failure of local authorities to adequately assess transition to adulthood needs is also a big concern.
* Inadequate or inappropriate advice being given to families – for example, local authorities using the old Code of Practice or telling parents wrongly that there does not need to a full assessment of need before a transfer to an EHC plan
* Related to the above, we have noticed a trend in Independent Supporters giving incorrect information or having excessive caseloads. We’re aware of one case where a family missed the deadline for an appeal because of incorrect information given by an Independent Supporter.
* In terms of mediation, there is great variation in the quality of mediators.  Some appear to have very little, if any, understanding of the SEN process.  Mediators are sometimes wrongly advising families they do not need a certificate as they are appealing Section I of the EHCP (placement) without appreciating that this might also entail appealing sections B and F which would require a certificate.  The lack of choice in mediation services given to parents/young people by local authorities is possibly of concern in some instances.
* Some parents continuing to feel that the appeals process is adversarial with legal firms such as Baker Small aggressively questioning parents at Tribunal or lodging appeals by default, inappropriately.

These findings from our casework are supported by the results[[2]](#footnote-2) of a survey we carried out last summer. This survey aimed to establish how the reforms were working ‘one year on’. At that time, the number of parents who had experiences of an EHC needs assessment is relatively low. However, where a child had an EHC plan or was being assessed for one:

* 59% of parents of deaf children who responded agreed that their views were sought throughout the assessment process, whilst 48% reported that their child’s views were sought.
* 29% did not feel that the local authority took steps to minimise disruption to their family during the assessment process.
* 58% had to repeat the same information about their child to different people.
* 40% said they felt their child’s EHC plan was easy to understand.
* 43% said they felt their child’s health needs were covered in their EHC plan, falling to 30% when considering social care needs.
* Just 18% agreed that it was made clear to them that they had the right to request a Personal Budget.
* Only a quarter - 25% - said they felt confident that their child would get the support they need to achieve good outcomes.

We are also aware, through our casework, of a number of families where there has been a delay in transferring from a statement to an EHC plan, particularly for young people post-16. Failure to issue a final EHC plan by 31st March naming a post-16 college placement is a significant issue. This means that, where the young person is unhappy with the choice of placement, they have no hope of having their appeal heard for a start in September. In one case, a young person had to decide whether to start at the college place the local authority has named (which she does not want to do) or stay at home until the case is heard.

In our survey last year, where a family had a child who was over 16, we asked about the young person’s involvement in the EHC needs assessment process. There were 18 families to which this applied. Of those:

* 28% reported that their child took a lead in developing their EHC plan.
* 35% felt that their child had the information and support they needed to play an active part in developing their EHC plan.
* Just 23% were confident that their child had the information and support they needed to make a successful transition to adulthood.

To address these issues, we recommend that the Department for Education (DfE) review the adequacy of training provided to professionals in undertaking good EHC needs assessments, correctly identifying needs and in preparing EHC plans.

**Variability in Local Offers**

Our evidence around the Local Offer is mixed on whether parents of deaf children are finding the Local Offer useful.

Local authorities are expected to make their Local Offer widely accessible. Despite this, our survey, carried out last summer, found that:

* Just 16% of parents who responded said they had seen the Local Offer for the area they live in.
* 17% of parents knew what a Local Offer was and what it was meant to show them.

Of those who had seen their Local Offer, many found it difficult to find information about provision for deaf children:

* 24% said it was easy to find the information they were looking for and 28% reported that the Local Offer gave them information about support for deaf children in their area.
* Only 8% reported that the Local Offer gave them information about the *quality* of support for deaf children in their area.

When the Local Offer was originally proposed, it was suggested that it would help improve provision by allowing parents to identify if provision in their area was poorer than in other areas, and so challenge their own local authority to improve provision. However:

* Only 2% agreed that it was easy to compare what support was available for deaf children in their area compared to others.

Relatively few parents of deaf children have been given a direct opportunity to help shape the Local Offer:

* 24% of parents said they had been given an opportunity to contribute to the development of the Local Offer in their area.
* Only 7% of parents said their child had been afforded a similar opportunity.
* 46% of parents did not feel that it was clear from their Local Offer that they could leave feedback on what they thought about it.

Feedback from deaf young people paints a similar picture:

* 69% did not know what a Local Offer was.
* Only 19% of deaf young people we surveyed had seen the Local Offer for the area they live. Of those, none reported that their Local Offer gave them information about support for deaf children in their area.
* Where young people had seen the Local Offer, they were more likely to say they had found out about it from the National Deaf Chldren’s Society, than from their local authority.

The Children and Families Act and the accompanying Code of Practice and regulations prescribe the content of a Local Offer. A court ruling against Warwickshire local authority[[3]](#footnote-3) found that local authorities must ensure that this content is provided. However, our audit of each Local Offer and the extent to which these were meeting the legal requirements in relation to deaf children, found wide variations and gaps in the content of Local Offers. The biggest gaps, at that time, were in the following areas:

* No clear reference to the local authorities’ accessibility strategy in 126 Local Offers.
* In 103 Local Offers, it was difficult to find information about auxiliary aids. In relation to this point, NDCS would expect Local Offers to, for example, include information about the local authority’s approach to radio aids and other technology that might assist deaf children in their learning.
* Difficult to find information about specialist provision **outside** the local authority in 93 Local Offers. As deafness is a low incidence need, there are a relatively small number of special schools and resource provisions for deaf children. Our findings suggest that the Local Offer would not support many families in finding out about these options.
* Worryingly, even in 41 Local Offers, it was hard to find out about specialist provision **within** the local authority. In addition, 21 Local Offers did not seem to include information about the specialist education service for deaf children (e.g. from visiting Teachers of the Deaf) in the area.
* No reference was made to the National Deaf Children's Society as a voluntary and community sector body that provides support to deaf children and young people across England in 60 areas.
* 28 Local Offers did not, in our view, make it clear what families can do if they have a complaint or concern about any provision set out within the Local Offer.
* 30 Local Offers were not clear about which particular services lend themselves to provision of Personal Budgets for families.

There was also rarely any clear evidence from our audit that deaf young people had been directly involved in drawing up the Local Offer. This was backed up by the findings of our survey of young people, where only 3 reported that their local authority had asked for their feedback.

To address these issues, we recommend that DfE:

* Reconsider if there should be a set format for the Local Offer so that it is easy for parents to compare provision in different areas and identify if their Local Offer is inadequate.
* Do more to share good practice in relation to the content of Local Offers and the involvement of parents and young people.
* Review how effectively children, young people and parents are being informed about these changes.

**Accessing specialist services within the school setting**

Most deaf children attend mainstream schools where they may be the only deaf child in the classroom. As deafness is a low incidence disability, it’s unlikely that mainstream teachers will have retained any detailed knowledge about the needs of deaf children from any initial teacher training they may have had. That’s why peripatetic Teachers of the Deaf - who have an additional specialist qualification in teaching deaf children - play such a vital role, in providing specialist advice to schools and also direct support to any deaf children enrolled.

According to the Consortium for Research into Deaf Education (CRIDE), there has been a decline of 4% in the number of qualified Teachers of the Deaf overall over the past five years[[4]](#footnote-4). More worryingly, there is also evidence that around half of all Teachers of the Deaf are due to retire in the next 10 to 15 years[[5]](#footnote-5).

There is also evidence of continued cuts to specialist education services for deaf children. The National Deaf Children’s Society has been challenging reductions to spending on deaf children’s education across England for the last 5 years, as part of our Stolen Futures campaign. These reductions appear to be growing in both number and severity. In the last month alone we have seen Teachers of the Deaf being made redundant in Walsall, plans to cut staff and close hearing impairment units in Manchester and proposals to reduce the number of Teachers of the Deaf in one authority in the West Midlands by over 50%.

DfE have proposed changes - recently postponed by a year - to funding which could exacerbate this situation. DfE have consulted on two proposals to change education funding. The first introduces a national funding formula for all schools in England, and the second reforms how high needs funds are allocated to children with special educational needs and disabilities (SEND). Together, we believe that they present significant risks to specialist education services for deaf children across England and risk leaving deaf children without the support they need to achieve, at a time when we are already seeing cuts to services.

Currently, within the dedicated schools grant, local authorities can move money between the three blocks of spending (early years, high needs and schools). In many areas, local authorities have used this flexibility to move money over from the schools block into the high needs block, in order to meet the rising costs of SEND pupils or to reflect the movement of pupils into different settings. Presently this is done with the agreement of the schools forum.

The National Deaf Children’s Society opposes the new proposals which will essentially ring fence the schools block. This would remove crucial flexibility needed by local authorities to move funds around to reduce pressures in different areas and it runs counter to the principle that funding should follow the child. It may result in the restriction of choices of settings for deaf children in some areas and reductions to overall funding for specialist support services for all deaf children. It could also make it harder to set up regional commissioning arrangements.

The National Deaf Children’s Society does not believe the proposals should go ahead in their current form and that a more thorough analysis of the impact they will have on small, low incidence specialist services needs to be conducted, such as sensory support services.

The National Deaf Children’s Society recommends:

1. DfE drop proposals to ring-fence the schools block, to ensure that funding can still be moved flexibly to meet the needs of high needs children
2. DfE introduce a statutory duty to secure specialist SEN support services, such as those for deaf children, in each area. These services play a vital role and yet there is nothing in legislation which requires local authorities to formally provide these. Putting these services on a statutory footing will help protect them from funding cuts.
3. DfE ensure that the funding system allows local authorities to work together flexibly across a region. DfE also consider what action they can take to broker this kind of joint working for high cost low incidence needs.
4. DfE conduct a comprehensive demographic analysis of the need for specialist places and ensure any plans are funded appropriately.

**Accountability**

As set out earlier, we believe that local authorities do not suffer any real meaningful consequence for failing to follow the SEND provisions in the Children and Families Act and the SEND Code of Practice and that the overall accountability framework is weak.

There are two specific concerns. The first is around the lack of reliable data on children with SEND in each local authority. The lack of data means it is very difficult for organisations like ours to be able to identify which local authorities are doing a better or worse job in supporting deaf children. Currently, DfE only publish data on children who have formally identified as having a SEN; data on children who are disabled is not collected. As a result, large numbers of children with SEND are being missed by official statistics. Figures from CRIDE suggests that around 40% of deaf children are not being captured by the School Census. Without data on all deaf children, it’s difficult to identify which local authorities are failing to ensure that deaf children achieve good outcomes.

Work by DfE to improve its data collection is painfully slow, having started in 2009, suggesting that it’s not a priority among Ministers.

The second concern is around the new Ofsted/Care Quality Commission inspections of local area SEND provision. The National Deaf Children’s Society heavily campaigned for this but we are concerned that the aspirations set out in debates on the Children and Families Bill on this issue by Labour MPs and peers are not being fulfilled.

The inspections started in May 2016 and, at the time of writing, we have had sight of the first two inspection reports. Evidence suggests that the inspection process so far is unlikely to lead to significant improvements in quality of support for deaf children. This is for the following reasons:

* The process by which parents are informed about an inspection in their own local area is flawed, as it relies on the local authority to be proactive in sharing this information. Many of our members had been unaware about any of the recent inspections until we had brought it to their attention.
* Opportunities for parents to get involved and have their say seem limited. We have observed ‘webinars’ which have provided very limited opportunities for interaction and feedback. There are no surveys available for parents to complete in their own time.
* The involvement of deaf young people seems very limited. The webinar, for example, feels very adult-focused and inaccessible to young people.
* The two inspection reports so far have been very short ‘letters’ with no real detailed information about support for children with different types of SEND. Neither of the reports, for example, contained any information about specialist education support services for deaf children.
* Ofsted have chosen not to use graded judgements. This means that it’s very hard for parents to establish if their local area is better or worse than others.

We recommend that there be a review of how well the accountability arrangements are working, with specific aims to improve data collection and strengthen the new Ofsted/Care Quality Commission inspection regime. In particular, we would like to see data collected and published by type of disability and also to see Ofsted report in more detail on quality of support received by different groups of children with SEND and specifically from local authority specialist education services. We would also like to see Ofsted start to use graded judgements.

Overall, we believe that unless action is taken to address failings in the accountability framework, current difficulties and challenges whereby local authorities are not held to account for failing to follow the law around SEND will continue.

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1. Available from the NatSIP website at: <https://www.natsip.org.uk/index.php/send-reforms/ehc-plans/770-new-report-an-analysis-of-40-ehc-plans> [↑](#footnote-ref-1)
2. [www.ndcs.org.uk/document.rm?id=10785](http://www.ndcs.org.uk/document.rm?id=10785) [↑](#footnote-ref-2)
3. <http://www.bailii.org/ew/cases/EWHC/Admin/2015/203.html> [↑](#footnote-ref-3)
4. See CRIDE England 2015 report: [www.ndcs.org.uk/document.rm?id=11142](http://www.ndcs.org.uk/document.rm?id=11142) [↑](#footnote-ref-4)
5. See CRIDE UK-wide summary 2014 report: [www.ndcs.org.uk/document.rm?id=9801](http://www.ndcs.org.uk/document.rm?id=9801) [↑](#footnote-ref-5)