

Statement from the Children's Commissioner in response to the SEND Improvement Plan

March 2023

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Statement from Dame Rachel de Souza



Introduction

The Department for Education (DfE) has today published the *Special Educational Needs and Disabilities (SEND) and Alternative Provision Improvement Plan* (hereafter the Plan).¹ The Plan sets out how DfE intends to deliver 'a single national system that delivers consistently for every child and young person with SEND and in alternative provision'. The review of the SEND system created an opportunity to identify how the whole system can work together more effectively to realise children's ambitions and improve the experiences of every child.

For the review to be successful it needed to have children's voices at its heart which is why I supported children and young people with additional needs to contribute to the consultation directly, alongside analysis of Education, Health, and Care Plans (EHCPs) and review of the children represented by my Help at Hand team.²³ I have also spent much of 2022 investigating the reasons why children struggle to attend school regularly, and through that work heard from children with SEND as well as their parents and the practitioners working with them.⁴⁵ The message from children was clear: they are extremely ambitious and passionate, yet often the system around them fails to mirror their ambition and instead uses labels as an excuse for poorer outcomes or exclusion from opportunities children without SEND take for granted.

Learning from what children told me, I set out three over-arching ambitions through my paper, *Beyond the Labels: A SEND system which works for every child every time*⁶:

- To ensure all children and young people get support that reflects their ambitions.
- To ensure that all children are getting timely and effective support, locally, with a focus on early intervention.
- To ensure that all children have consistent, excellent experiences wherever they are in the system.

I believe that only by meeting these ambitions will we see children with SEND supported to achieve the outcomes they are capable of. Delivering these ambitions requires a huge effort from across the entire system, joining up with the DfE's Children's Social Care Strategy 'Stable Homes, Built on Love'⁷, as well as the Department for Health and Social Care (DHSC).

The Plan goes some way to setting out a roadmap for meeting these ambitions and I am pleased that many of the recommendations I made to the DfE in response to the Green Paper⁸ have been reflected in the Plan. In particular, my call for Education Health and Care Plans (EHCPs) to be digitised is reflected, to improve their quality and make them more useful for young people.

I am also particularly pleased by this plan's focus on early help for families, many of whom face long, bureaucratic processes to get support for their child. My hope is that this, in addition to the increase in specialist school places, will help prevent families from reaching breaking point.

However, there are serious gaps in the Plan, particularly concerning support for looked after children with additional needs, which I believe need to be urgently addressed. Much of the Plan assumes that children will have familial support and does not consider how children in the care of the state will be represented and supported.

I am also concerned that the Plan does not go far enough swiftly enough. The DfE identifies in the Plan a vicious cycle of late intervention, low confidence and inefficient resource allocation that drives the challenges plaguing the system. With much of the Plan being delivered by the end of 2025, we have two more years of children being fed into this cycle with the commensurate poor outcomes that has

necessitated this review in the first place. Whilst it is right to be evidence led and provide time for co-design of major reforms, such as the National Standards, with the children they will impact, we must also consider the needs of children now.

It is now incumbent upon everyone involved in the system supporting children with SEND to get this right, so that we can finally realise a system that is as ambitious for children as they are for themselves. This iteration of the Plan will enable significant positive reform. However, I hope to see the DfE considering the gaps and I will continue to work with them, representing the needs of children whose voices are so seldom heard to ensure that all children are able to benefit equitably from the reforms.

Ambition 1: Ensure all children and young people get support that reflects ambitions.

Children, their voices, and their aspirations should always be at the centre of plans to improve their care. Children with SEND are no less ambitious than their peers but recognise that they need additional support to reach those ambitions, which requires the adults around them to listen to what they need. At the centre of many children's support packages is an EHCP, yet my research found that children were rarely involved in the creation or review of their EHCP, with many children unsure if they had one or what it contained. Additionally, when reviewing EHCPs I found that they were too frequently setting vague personal targets for children which were impossible to assess meaningful progress against. This is why I called for the digitisation of EHCPs to introduce a standard template across all local areas. This change to EHCPs should be used as an opportunity to improve guidance so that practitioners are:

- Setting personal targets for children and young people which are specific, measurable, achievable, relevant, and time-bound (SMART).
- Co-creating targets with children and their families.
- Placing more focus on the voice of the child.

That DfE has responded to these recommendations with a commitment to standardised EHCPs with supporting processes and guidance alongside developing a digital EHCP systems, is very welcome. The focus on co-production: that children, young people, and their families work together with services is

also crucial to the success of the new standardised EHCPs. I offer my continued support to the DfE to work with children and young people with additional needs to develop the new EHCP template, so that their voices are at the heart of the reform.

However, it is not enough for the DfE to simply encourage local areas to adopt the new template. There is a significant postcode lottery in the quality and timeliness of EHCPs, and this must end. For instance, in Stoke-on-Trent in 2021 only 3.7% of EHCPs were issued within 20 weeks, compared to 97% in East Riding of Yorkshire.⁹ DfE should look to mandate the use of the template through legislation and create statutory guidance to support its implementation.

In addition to improving the process for EHCPs, the right people need to be involved in their creation and support must be in place for children to have their voices heard. This is why I have called for improved advocacy for children with SEND to empower them to shape and challenge their support. Every child applying for an EHCP should have the opportunity to get support from an advocate if they or their family wishes to challenge the decisions being made, or the process for decision making. Advocates are crucial for ensuring that the voice of the child is considered, particularly where children are in care and lack the familial support around them that the Plan assumes. I am therefore disappointed that the Plan makes no reference to advocacy services for children with SEND. The multi-agency panels to be tested under the Plan could fulfil some of the function of joining up services on behalf of a child and challenging decisions, however they would be much better placed to do this if a children's advocate was a member of the panel.

My independent advocacy service 'Help at Hand' supports children in care and those leaving care to access the help and support they need. Every day I see how essential it is that children's voices are heard through independent advocacy. Yet we know that there is a gap in the provision for children in care with disabilities. We must ensure that there are sufficient numbers of non-instructed advocates that can support disabled children to advocate for what they need and want.

Designated Social Care Officers (DSCO) were proposed in the Green Paper to improve strategic leadership and engagement with the SEND system among social workers. DSCOs can also deliver better engagement between social care and other partners such as the Virtual School Head (VSH). The Plan sets out that DfE will strongly encourage the adoption of this role in SEND teams. However, through my work supporting children in care with disabilities through my Help at Hand service I have seen how

frequently children are let down by the current system with far too many children with EHCPs out of school for significant periods of time. The DSCO therefore offers an opportunity to join up the education and care elements of an EHCP with accountability for looking at children's circumstances holistically, rather than education and care being managed in silos. The DSCO should also be responsible for working with the VSH and a child's care team to ensure that looked after children who are placed out of area have an appropriate school place. Currently the system is fragmented for these children meaning that they can be out of school for substantial periods of time, potentially permanently impacting their education opportunities and outcomes. To take full advantage of the benefits this role can offer and to avoid a postcode lottery of implementation this role should be mandatory for all SEND teams.

Ambition 2: Children getting timely and effective support, locally, with a focus on early intervention.

Early identification and intervention are essential for children to have their needs met and to avert the risk of conditions worsening or behavioural side effects developing, which is why I set out an ambition to ensure that children get timely and effective support with a focus on early intervention. I am pleased to see this ambition mirrored in the Plan through the focus on early help.

To improve access to early help, I have called for increased training for the early years workforce, to enable all children to start from the same capabilities when they start school age five. The Plan's commitment to fund up to 5,000 early years staff to gain an accredited Level 3 early years SENCo qualification is therefore positive, however currently the commitment only runs to providing training until August 2024. It is unlikely that this will be enough to interrupt the vicious cycle that the Green Paper identified where late intervention, low confidence and inefficient resource allocation drives challenges across the system. This cycle is starting in early years settings, careful evaluation of the introduction of staff with these Level 3 qualifications will be needed to assess whether this is making a difference and going far enough.

I have called for easier access to speech and language therapists in early years settings to improve early recognition of need so that children are getting support as soon as possible. The Early Language and Support for Every Child (ELSEC) pathfinders, which aim to provide earlier identification and support, are therefore a welcome commitment from the Plan. To meet this aim, it is crucial that these therapists are

available during the early years, whether they are accessed through early years settings or through referrals to NHS services.

The Plan commits to a £450,000 pilot project to test approaches to establishing more robust links between SEND and the early help system in each area, as part of the Supporting Families programme. Taking a whole family approach is extremely important and having conversations with parents early is key to establishing positive relationships which can avoid conversations becoming adversarial and result in everyone working together in the child's best interests. This is what children and their families have told me they want to see, so this pilot needs to be rolled out quickly so that good practice can be established, and models developed which can be scaled up across more than only a handful of local areas.

Ambition 3: Consistent, excellent experiences for all children wherever they are in the system.

Children with SEND deserve excellent care and support regardless of what stage of life they are in, their level of need and where they live. However, evidence collected by my office has shown that this is often not the case.

Providing excellent experiences for children no matter where they are in the system requires sufficient funding. The increase to the High Needs budget of over 50% from the 2019-20 allocations is of course welcome. However, much of this Plan will not be delivered until 2025, by which time the current vicious cycle identified by the DfE of late intervention and inefficient resource allocation will have continued to operate across much of the country. As it is this cycle which has necessitated the 50% increase on 2019-20 allocations, the DfE should be prepared for a similar increase to be required by 2025-26.

The Plan also commits to investing £2.6 billion between 2022 and 2025 to fund new places and improve existing provision for children and young people with SEND or who require alternative provision. This funding is long-overdue. Since 2015/16, the number of pupils at state-funded special schools increased by 35%, while the number of schools increased by only 5%, leading to a system reliant on overcrowding and children out of school.¹⁰ Given these numbers, we should be cautious about how much of a solution

the new free special schools will be, given that 141 new schools equates to fewer than one per local authority.

Sufficiency in the system won't only be met by the introduction of new schools. Providing the right educational support to children with SEND also means better equipping mainstream schools to support them. This should include more support for schools looking to develop in-house alternative provision offers and encouraging more schools to work together via their family of schools or academy trusts to provide good quality alternative provision. I am glad to see the role of mainstream schools recognised in the Plan and the National Standards, however the commitment to deliver practice guides for mainstream schools by the end of 2025 doesn't offer enough to support schools to support children now. Additionally, the commitment to develop a longer-term approach for teaching assistants to ensure their impact is consistent across the system will likely have a positive impact. However, the DfE must recognise that the time lag between Plan and implementation will mean that children continue to be fed into the vicious cycle of poor support, which will necessitate greater funding for the High Needs Budget.

Children with SEND currently suffer from a lack of appropriate skills training or qualifications which support them to progress into appropriate places in further education, Higher Education, apprenticeships, or employment. This is particularly the case in mainstream schools, who have little to offer beyond GCSEs and colleges where young people with SEND are refused entry to anything other than SEND specific courses, despite their abilities. To address this, I called for identification of new ways for mainstream schools to offer a variety of subjects and skills training to children with SEND which aligns with the more bespoke training offered by some specialist settings. The Plan however asserts that children with SEND are offered a wide choice of different high-quality, evidence-informed academic and technical pathways through the existing qualifications system. This is not born out in the evidence collected by my office, which found that children with SEND and the schools supporting them often struggle to find appropriate qualification pathways, particularly for children with very complex needs. More needs to be done to understand how many children with SEND are currently excluded from attaining qualifications and the reforms to post-16 level two and below qualifications will need careful monitoring to assess how inclusive they truly are. More positively, the Plan does set out interventions to better support transitions including the commitment to publish guidance, invest £18 million to double

the capacity of the Supported Internships Programme by 2025 and working with the Department for Work and Pensions to smooth the transition into employment through the Adjustments Passport pilot.

The pain of transitions between child and adult provision isn't only felt in education and employment but also in the transition between child and adult social care services. I am pleased to see the Plan acknowledge that this transition can be challenging. It is a common story heard by my office for example, that young people transitioning between child and adult social care services must move to a different education provision, due to financial disputes between the services. However, the Plan does not provide any specific insight into how this transition will be improved for children. The DfE has committed to working with DHSC and NHS England to improve the transitions guidance and exploring good practice for smoothing the transition into adult services for young people with the most complex needs who may never be able to undertake paid work. The transitions guidance must address the cliff edge of support between child and adult services to ensure that young people receive the continuity of care that they need to thrive in adulthood.

References

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