

Response to the Education Committee Call for Evidence for pre-legislative scrutiny into Special Educational Needs (SEN)

The Communication Trust, a coalition of 47 voluntary organisations with expertise in speech, language and communication, is delighted to provide evidence for the Education Committee's scrutiny of the proposed reform of provision for children and young people with SEN.

The Trust welcomes much of the draft legislation and the Government's vision to improve outcomes for children with SEN, minimise the adversarial nature of the system for families, join up approaches across sectors and maximise value for money. We were particularly pleased that the Green Paper recognised the importance of early identification and intervention for children with speech, language and communication needs (SLCN) and want to see legislative support for this.

However, our members have some specific concerns about the effect of some of the changes on the 1 million children and young people in the UK with SLCN. A major concern for the Trust and its members is that children with SLCN who do not currently have a statement for SEN and so would not receive an Education, Health and Care (EHC) plan¹ are not disadvantaged by a 'local offer' which does not meet their needs.

Our overarching concerns are:

- Children with SLCN who do not qualify for an EHC plan, who will be reliant on a local offer to meet their needs.
- Local authorities' ability to identify needs as early as possible in order that they can be met by effective and cost-efficient early intervention.
- Lack of statutory framework to shape and underpin how the local offer is delivered potentially resulting in a post-code lottery; also the lack of clarity on channels of accountability for the quality and delivery of this offer, given the emphasis on localised provision.
- Emphasis on a local authority deciding to assess a child for an EHC plan without the right for a parent to request an assessment.
- Lack of parliamentary scrutiny for the Code of Practice considering its importance, particularly for children with SLCN who do not have a statement.
- Lack of support for young people post-16 not in education or employment considering the ambitions around vocational training and transition stated in the Green Paper.

¹ For example, 77% of deaf children are not currently statemented (CRIDE 2012 report) Whilst there is no comparable data for SLCN, the SEN Information Act's 2011 analysis shows overall, 86 % of all children with SEN do not have a statement. In addition, it is known that SLCN is often under-identified; a recent project called Talk of the Town evidenced that across a Federation of Schools, children and young people's SLCN were under-identified by up to 50% and in one secondary school staff under-identified elements of children communication by 52%.

The Trust is a member of the Every Disabled Child Matters Campaign (EDCM) and supports its response to the Committee; we have made our specific comments relating to speech, language and communication following the same format of response. We also work closely with the Autism Education Trust and the Dyslexia-SpLD-Trust and have submitted a letter to the Committee detailing common concerns across the three Trusts.

The Trust is committed to providing evidence-based, practical solutions to the issues it raises. In addition to this response, the Trust has also developed more detailed work highlighting solutions and practical examples for children with SLCN for each of the issues raised by *Support and Aspiration*, some of which we feel are missing from the draft legislation. We are also developing a detailed response to the local offer; an area of this legislation that we are particularly keen to input into to ensure the best possible outcomes for children with SLCN.

Definitions and scope (provisions 1-4)

- The Trust is concerned that the provisions do not apply to disabled children or children with a specific need unless they require special educational provision. We believe that the clause should be changed to include this wider group.
- We are concerned that the draft legislation is inconsistent in the way in which non-maintained early years provision is referenced throughout the document.
- We welcome the application of the draft legislation to academies and free schools.
- **Identification:** Research shows that early identification of SLCN across all educational phases provides the best opportunity to provide effective, cost-efficient interventions for children with SLCN, in some instances reducing the need for more costly, specialist support. In addition, research also shows that children with SLCN are often under-identified and parents must have confidence that their children will not fall through gaps in the system. The draft legislation (clause 3) stipulates that local authorities must exercise its functions ‘with a view to securing that it identifies all the children and young people in its area who have or may have SEN’. As this is such a crucial area of the journey for children with SLCN and their families, the Trust calls for the wording of this clause to be strengthened so that Local Authorities ‘must identify all the children and young people in its area who have or may have SEN’.
- While recognising the importance of early identification in the early years, we are keen that this concept is applied across the age range. SLCN in children and young people is often not identified until their primary school, or even secondary school years when some difficulties may only just become apparent. Academies and free schools must also work pro-actively with local authorities to identify children with SEN.

Local integration and information (provisions 5-12)

- **Promoting integration:** We consider that clause 5(1) should be strengthened to require local authorities not only to exercise its functions ‘with a view to’ ensuring the integration of special education provision with health provision and social care provision, but to review and improve that process, should it be found wanting.
- With reference to clause 5(2), communication is fundamental to a child’s development, relationships, learning, attainment and future employability. Every child has a basic right to be understood and should be supported to do so². Communication is crucial for well-being; we would therefore like to see ‘speech, language and communication needs’ added to the factors of well-being listed.
- **Joint commissioning:** The Trust welcomes the requirement to introduce joint commissioning arrangements. The criteria for integrating services however, need to be detailed and accurate. Jean Gross, whilst Communication Champion for Children and Young People undertook extensive consultation work with local authorities, health trusts and government in order to provide detailed guidance on joint commissioning arrangements for SLCN. This process still found that, particularly for those children with mild and moderate SLCN, joint commissioning happened only in three out of 10 Local Authority areas.
- It is essential that joint commissioning arrangements apply for all children with SEN and not just those with EHC plans.
- Under clause 6.5, we would like to see ‘other provision’ to specify that joint commissioning arrangements ‘have regard to ensuring that the children and young people’s workforce have the appropriate knowledge, skills and understanding to support CYP with SEN and disabilities.’ This is particularly pertinent for the workforce supporting children with SLCN. Staff knowledge is an essential part of identification and currently the universal workforce has limited knowledge of SLCN and low confidence in identifying difficulties, particularly ‘hidden’ SLCN³. Additionally, assessment of children with complex SLCN may need detailed multidisciplinary assessment.
- We would also call for the list of organisations that need to be part of the joint commissioning arrangements to be extended to include Health and Wellbeing Boards; joint planning and commissioning must be joined up with commissioning arrangements undertaken by Health

² This support includes educational support, specialised therapeutic support, communication aids and the optimum acoustic conditions which are essential for communication so that they can hear and be heard.

³ For example, a 2007 YouGov survey commissioned by I CAN has shown that over a third of teachers had received no preparation for meeting the needs of children with SEN during ITT, and 73% had no SEN training that covered speech, language and communication. A 2006 *Childcare and Early Years Providers Survey* showed that training in speech and language was often given very low priority in early years settings, with some practitioners such as child minders, having no additional training in speech and language.

and Wellbeing Boards with further accountability and clarity over the structural links between the existing legally established coordination bodies.

- **Duty to review:** We would also like to see a requirement to involve parents and, where appropriate, young people in this duty.
- **Cooperating generally:** We welcome this clause, but would also like to see the youth justice sector included in 8.2. The Trust has undertaken pioneering work with young people with communication needs in this sector. Research shows how young people with communication needs are disproportionately represented in the youth justice system, often due to the fact that their needs have not been identified or met⁴.
- Health services as well as education services must be accountable within these structures. We are concerned that the local authority does not have to make arrangements for ensuring cooperation with health services and would like to see this included in clauses 7 and 8(3).
- We welcome the inclusion of the National Health Service Commissioning Board in 8(2), a vital cooperation if the needs of children and young people who use augmentative and alternative communication (AAC) are to be met.
- **Local offer:** The Trust welcomes the principle of a local offer but feels it is essential that there is a legal duty to provide what is set out in the offer. We want to see the provisions currently set out under 11(4) and 11 (5) that 'may become part of regulations' to instead form part of the clauses within the Bill.
- Whilst we recognise that the Government does not wish to mandate the content of the local offer, we feel it is essential that the draft bill should set out principles and a framework that authorities can use to shape and underpin their local offer. We do not want a 'postcode lottery' for children and young people. The Trust has done further detailed work with its members on the local offer as we believe this to be an essential part of the legislation. We are also working with other partner organisations to develop generic principles that could support local authorities and give parents confidence in the process.
- As already shown, a significant number of children with SLCN do not currently have a statement for SEN and therefore would not receive an EHC plan⁵. We need to ensure that they receive the support they need which in many cases would have high efficacy and is very cost-effective. As the local authority is responsible for meeting these needs through the local offer, this part of the legislation needs to be strengthened with clear lines of accountability so that

⁴ At least 60% of young people who enter the youth justice system have communication needs. Bryan, K and Mackenzie J (2008), *Meeting the Speech, Language and Communication Needs of Vulnerable Young People*.

⁵ SEN Information Act's 2011 analysis shows that of all children with School Action Plus/statements in primary, 18.9% are at School Action Plus for SLCN as a primary type of need and 13.3% have a statement. There is no data for School Action however, and many children with SLCN will not have that listed as their primary type of need, including many who may not have a statement (e.g. those with Autism Spectrum Disorder, Specific Learning Difficulties, Moderate Learning Difficulties, Hearing Impairment)

parents can be confident that they know who to turn to if they feel their children are not having their needs met.

- The local offer must clearly indicate that it will support and dovetail with, any provision made from regional specialist commissioning, for example where a child or young people without an EHC plan requires a cleft lip and palate service that is provided regionally but also needs to access on-going local support through the local offer.
- We also have specific concerns that there is no need to record the offer of previous years, which service providers will be part of the offer, the frequency with which the offer needs to be updated and the outcomes expected.
- Employment services and the youth justice system should be included in clause 11 (2).
- The Trust welcomes the requirement for a local authority to provide information and advice to parents and children about matters relating to SEN provision and would be happy to discuss with the Committee the way in which the VCS is part of this solution, through national and local signposting. The Trust knows that finding information remains hard for many parents; we would like this clause to stipulate that information is regularly updated, relevant and in an accessible language and format.
- We would also call for 12 (2) to include providers of training and employment services and early years providers. The crucial importance of language and communication for children in the early years is well evidenced. Language development at age 2 has been shown to strongly predict children's performance on entry to primary school⁶ and is also linked to outcomes into adulthood⁷. Children with poor language skills in their early years are 6 times more likely to have reading difficulties⁸. Speech, language and communication needs impact on attainment, behaviour, social and emotional development⁹

Education, health and care needs assessment and EHC plans (provisions 16-28)

- **Education, health and care plans:** The Trust welcomes the concept of multi-agency plans from birth to 25. However, we would like to see a new statutory duty to monitor for outcomes, involve schools more in their construction and ensure that health and social care services are accountable in the plans. The plans must also clearly indicate how local provision will support, and dovetail with, any provision made from regional specialist commissioning for example where a child or young person requires a communication aid¹⁰.

⁶ Roulstone et al (2011), *Investigating the role of language in Children's Early educational outcomes* Research report DFE – RR134

⁷ Feinstein L (2003) *Inequality in the Early Cognitive Development of British Children in the 1970* *Economica* vol 70

⁸ Boyer E (1991) *Ready To Learn*, Carnegie Foundation, New Jersey

⁹ Hartshorne M, (2006) *The Cost to the Nation* I CAN

¹⁰ For example in the case of AAC, equipment will come from specialist regional commissioning, but the local authority will provide the essential and ongoing support and ancillary services, which are essential to ensure that a child can

- We have particular concerns around EHC plans with regards to early years. There are currently only 250 children in maintained nurseries England¹¹ with a statement of education need (0.6%); a small number compared to those in the first years of primary, indicating under-identification. Research shows that early identification and support are the most effective and cost-efficient interventions. Language development starts from birth and some communication difficulties including deafness will either be picked up at birth or emerge in early years; we are concerned that the focus on EHC plans might reduce the specialist early years provision across all settings to ensure identification and intervention for any child that is struggling¹².
- We are also concerned that the draft legislation gives licence to a local authority to remove an EHC Plan when they so choose but does not give parents a clear right to appeal if health and social care services do not deliver on what has been promised.
- We call for plans to cover young people whether or not they are in education or training in order to support all young people, particularly those most vulnerable who are not currently in education, employment or training. We also want to ensure that the 'local offer' also covers this important group of young people.
- **Assessment of needs:** The Trust is concerned that this provision has a heavy emphasis on a local authority deciding to assess without the right for a parent to request an assessment.
- **Non maintained special schools:** We welcome the provision to enable parents to name non maintained special schools on the EHC Plan
- **Personal budgets:** Our concern for support for SLCN is that what works best for many children is a graduated approach – individual budgets might pay for a speech and language therapist to work directly with the child, but the wider package is dependent on a strategic holistic joined up approach which may be difficult to maintain with individual budgets.
- This is an extremely complex area and we are concerned that if this is addressed through secondary legislation it will not have the appropriate scrutiny to ensure it best meets the needs of parents and families.
- Regulations should be extended to include reference to the provision of key working support in the management of personal budgets.

Mediation

- The Trust is concerned with this provision. Whilst mediation can obviously be a very useful solution, we are concerned about the compulsory nature of this. We would call for parents to be able to pursue an appeal and mediation concurrently, and for a quality standard for

actually learn how to use the equipment and be taught appropriately. It is essential that the ongoing local support must dovetail with regional specialist provision.

¹¹ SEN Information Act's 2011 analysis, published January 2012.

¹² We welcome the extension of statutory provision to birth, in some instances such as with deafness, this may require specialist support in the home as well as early years settings.

training for the ‘independent person’ considering the significant powers they will have to determine the outcome of the mediation or to dictate how the appeal is made.

- Regulations concerning clauses 28-32 must ensure that appropriate provision is made to meet children and young people’s communication needs.
- We are also concerned that the clauses around appeals and claims by children are not subject to more legislative scrutiny.
- It is vital that there is also support for parents in terms of advocacy and to meet access needs as well as consideration of where there is conflict between parent and child.

SENCOs (provision 40)

- We are concerned by the omission of duties by local authorities relating to the designation, provision and functions of SEN coordinators in non-maintained early years settings. This is particularly important considering the importance of early-identification and intervention and the issue of under-identification raised earlier under provisions 16-28.

SEN Code of Practice (provision 44)

- The Trust believes the draft Code of Practice must be laid before Parliament. The previous Code was important enough to lay before Parliament and we see no reason why this has changed; this is a crucial document that should be afforded the same process of consultation and should not be made any weaker than the current version. The Trust is happy to help facilitate meaningful consultation with our sector to help this process.

Appendix: Background information on Speech, Language and Communication Needs and the work of The Communication Trust

Background to SLCN

- As many as 10% of children in the UK – over 1 million - have speech, language and communication needs, which are not caused by language neglect, or by having English as an additional language or other external factors¹³. This means that in the average classroom, there are two or three children with such communication difficulties, which can be severe and long term.
- Of this group, a large cohort – between 5-7% of the child population - have specific language impairment (SLI), meaning that they have difficulties with acquiring, learning and using language that are not associated with factors such as general learning difficulties, or other conditions, such as cerebral palsy, hearing impairment or autistic spectrum disorders. A child with SLI might be bright, but struggle to hear, listen to and understand the language used in the classroom or use language to express themselves effectively, and thus struggle to attain and achieve. There is also impact on wider development through difficulties with interaction and social and emotional development.
- DfE annual SEN statistics demonstrate that SLCN is the most common type of primary need for pupils with SEN statements in maintained primary schools. In January 2011, 27.9% of pupils in maintained primary schools had SLCN registered as their primary need¹⁴.
- A further issue is that in areas of social deprivation upwards of 50% of children – equivalent to as many as 17 per classroom - are starting school with language delay¹⁵. This delay can be significant and impactful. And while their general cognitive abilities are in the average range for their age, their language skills are delayed. Evidence suggests these delays do not catch up and conversely can remain so into secondary school, impacting on literacy and more general attainment.
- At the end of primary school, although nearly 80% of all children achieve the expected level in English, just 25% of children with SLCN reach that level – a gap of almost 55%. The gap in Maths is 46% and in science it is 41%. At the end of Key Stage 4, the ‘attainment gap’ between children with SLCN and their peers is marked. Just 15% of children with SLCN achieve 5 GCSE

¹³ I CAN, *The Cost to the Nation of Children’s Poor Communication* (2006) and Law et al (2000) *Provision for children’s speech and language needs in England and Wales: facilitating communication between education and health services DfES research report 23*

¹⁴ DfE SEN Information Act, 2011 Analysis

¹⁵ Basic Skills Agency, *Summary Report into Young Children’s Skills on Entry to Education* (2002). Also Locke and Ginsborg, *Development and Disadvantage: Implications for Early Years* IJCLD Vol 27 No 1 (2002)

A*-C or equivalent compared to 57% of all young people. Many of these children are cognitively as able as their peers.

- SLCN can easily be missed or misinterpreted; almost 90% of all children with SLCN will have some degree of literacy difficulty; a high proportion of children either excluded from school or at risk of exclusion have unidentified SLCN and more than 65% of young people in youth justice sector have communication needs, many of which have previously gone unidentified.
- Communication is an issue for all our young people; a skills survey from the Institute of Directors, reveals that businesses suffering skills shortages named communication skills as one of the most difficult skills to obtain, with 22% and 18% of businesses experiencing difficulties in recruiting people with oral and written communication skills respectively

Background to The Communication Trust

The Communication Trust is a coalition of 47 voluntary and community organisations with expertise in speech, language and communication. We harness our collective expertise to support the children's workforce and commissioners to meet the speech, language and communication needs (SLCN) of all children and young people, particularly those with SLCN. We do this by raising awareness, providing information and workforce development opportunities, influencing policy, promoting best practice among the children's workforce and commissioning work from our members. The Trust is advised by specialist advisors and works with a broader network of partners.

The Trust was founded in 2007 by children's charities Afasic and I CAN together with BT and the Council for Disabled Children, to ensure that professionals can access the training and advice that they need to support the children they work with. We have developed a number of resources to support practitioners who work with children and young people and provide advice on speech, language and communication needs.

Speech language and communication skills are the foundation for other key life skills: learning, literacy, positive relationships and regulation of behaviour and emotions¹⁶. Speaking and listening skills underpin pupil outcomes; young people with good communication skills have a wider range of life chances¹⁷.

¹⁶ Silva P, Williams S & McGee R, (1987): *A Longitudinal Study of Children with Developmental Delay at age three years; later intellectual, reading and behaviour problems*. *Developmental Medicine and Child Neurology* 29, 630 – 640

¹⁷ *Improving Achievement in English Language in Primary and Secondary Schools* (2003) HMIE