

NatSIP response to questions asked in the Green Paper:

1. What key factors should be considered, when developing national standards to ensure they deliver improved outcomes and experiences for children and young people with SEND and their families? This includes how this applies across education, health and care in a 0-25 system.

NatSIP has significant concerns that the current legislation is still not well understood and implemented, especially in respect of the duties around the Equality Act 2010. **We do not welcome any potential development of legally enforceable national standards which undermine the existing legislative responsibilities or necessitated altering those without further national consultation.**

The most positive use of national standards would be as an exemplification of how to implement existing requirements within the legislation with a focus on the standards and support that should be available to support children with Sensory Impairment. For example:

- Recognition of low incidence disability (LISEND) and access to specialist SI professionals
- Setting out clearly the existing duties and reasonable adjustments that mainstream schools have to make for children with SI
- Standards for particular curriculum approaches with guidance on access and standards of support for children with SI (such as the NatSIP Eligibility Framework and Quality Standards)
- Standards and models for co-production with parents
- Quality assurance systems of accountability for all schools/academies/colleges and local authorities to meet SI need should be in place with an expectation of regular review, engaging with a range of stakeholders outside the organisation
- Accountability for SI learners who have experience of multiple exclusions and/or fixed term exclusions due to behaviours, not evidenced as unmet need, due to their SI.

National standards are more likely to raise parental confidence if they are clearly focused on strengthening early intervention and inclusion and not on constraining any existing parental rights.

- 2) How should we develop the proposal for new local SEND partnerships to oversee the effective development of local inclusion plans whilst avoiding placing unnecessary burdens or duplicating current partnerships?

It is vital that the proposal for local SEND partnerships takes into account LISEND including SI.

Legislation should require local SEND partnerships to include the different needs of children with SI. In current arrangements, the needs of these groups are often overlooked in local strategic planning as the parent and CYP voice is not always well reflected.

The proposed local inclusion plans must include adequate and protected high needs funding for LAs to deliver and appropriately staff specialist SI education services. Data gathering by NatSIP partner members, such as RNIB, NDCS BATOD and VIEW, of local provision shows that specialist services are under considerable pressure at a time when the numbers of CYP with SI who require specialist support is growing. More children and young people with vision impairment (VI) require

specialist support, yet many services have experienced budget cuts and inconsistent funding. Research found that more than three quarters of LAs have had budgets cut or frozen for specialist VI education support in the past four years. This is despite an eight per cent increase in the number of CYP accessing VI services since 2017, indicating that these services need more funding, not less.

LAs should be required to conduct a review of the specialist SEND SI workforce in the local partnership area to identify if and what steps need to be taken to ensure sufficient numbers of qualified SI professionals in coming years, and the CPD needs of the current workforce in the area.

3. What factors would enable local authorities to successfully commission provision for low-incidence high-cost need, and further education, across local authority boundaries?

The recent guidance document on sustainability in high needs systems supported the idea of combining specialist support services. In addition, there are strong arguments for the joint commissioning of very high-cost low incidence residential services, where numbers are not adequate to sustain a very local service. As well as continuing debate at national level for LAs to consider these arrangements where appropriate, Government could do the following to encourage the approach

1. **Research and model joint commissioning through pilot projects to establish best practice.** Some models already exist around this in Sensory Impairment see <https://www.natsip.org.uk/doc-library-login/send-reforms-implementation-support/joint-commissioning-files/1421-regional-commissioning-report-mar-2018>
2. **Introduce ongoing financial incentives for LAs to initiate cross-border arrangements.**
3. **Make it a requirement of local inclusion plans, by strengthening guidance on commissioning around the plan and through the SEND partnership.**
4. **The Department for Education (DfE) to actively promote regional commissioning through a brokerage role.** The proposed new funding agreements between the DfE and LAs should provide the Department with a mechanism to broker these cross-border arrangements where necessary and monitor their success.

4. What components of the EHCP should we consider reviewing or amending as we move to a standardised and digitised version?

NatSIP welcomes the move to a standardised and digitised EHCP. It is important the new digitised version of the EHCP is formally tested for accessibility to ensure it works for children, young people, and parents with SI, as well as for the professional working with them. The EHCP should also be available to request in alternative formats, including in paper form, large print, braille and audio.

There should not be any extension around timescales for decisions following an Annual Review. Four weeks is an unreasonable length of time for decisions to be made given that evidence and reports should already have been collected.

There will need to be clear and transparent national protocols that will remove the existing barriers to electronic sharing between different agencies and the related security requirements. There must be quality assurance of the process, including the annual review meeting, that involves stakeholders outside the organisation's structure to remove bias. Mandatory training of all SEND officers and SENDCos should be in place regarding understanding the needs and implications of low incidence sensory impairment needs.

We have serious reservations about proposals for new statutory local multi-agency panels. It is not clear in the proposals how the panels are intended to work in conjunction with existing arrangements and assessments. While the inclusion of parents on such panels is helpful in increasing transparency this could also leave individual parents in the position of policing the SEND system and other parent's entitlements which may not be desirable. This is especially the case if the Department chooses to give them statutory powers of direction as suggested in the Green Paper.

5: How can parents and local authorities most effectively work together to produce a tailored list of placements that is appropriate for their child, and gives parents' confidence in the EHCP process?

We do not agree with this proposal at this stage in the development of the SEND system. This is an unwarranted restriction on parental choice within the system at a time when the Government's own analysis suggests many parts of it do not serve children's and parents interests. We understand the concerns behind this approach and would support the aims of the inclusion plan to develop a clear strategy to support local provision wherever appropriate and provide parents with good quality advice about their options. However, the proposals should be revisited once there is demonstrable evidence that the system is working better in delivering high quality local provision and support, including that this is better integrated with special provision locally or otherwise. There should be no weakening of the current legal framework where parents can make an open preference for consideration of a setting that they think will best meet the needs of their child.

Making it easier for all parents of children with SEND to get their first-choice preference for an education setting, where that setting has specific provision for children with SEND, could be instrumental in raising parental confidence in the system whilst also potentially reducing demand for a statutory plan.

6: To what extent do you agree or disagree with our overall approach to strengthen redress, including through national standards and mandatory mediation?

NatSIP strongly disagrees with this proposal. The Government already consulted on this proposal in 2011 and it was completely rejected.

Cullen et al (2017) http://wrap.warwick.ac.uk/87432/1/WRAP_cedar-300317-wrap_-_cedar_review.pdf found that mediation is not always 'the right tool to use' and there were some issues that are 'unlikely to be resolved through mediation' (Cullen et al, 2017:116). They found that in more complex cases, mediation tended to be less successful at resolving the issues (Cullen et al, 2017:119). Mediation was refused where parents felt they were not being listened to or where trust had broken down. Further, the 'LA representatives in our study did not seem convinced of mediation's effectiveness in preventing escalation to appeal' (Cullen et al, 2017:116).

There is also a risk that if mediation is mandatory, that LAs will default to this process rather than attempting to resolve issues at the earliest possible stage. Given that the vast majority of appeals to Tribunal are conceded by LAs or successful for parents the focus should be more on improving the quality of LA decision-making and early discussion, rather than on mandating parents to attend mediation meetings.

The focus should instead be on ensuring LAs are complying with the law and meeting their statutory duties to children and young people with SI, whilst engaging with parents and schools at the earliest opportunity. As part of this, we want to see close monitoring of the SEND partnerships and local inclusion plans, with penalties in place if the national standards are not met.

7. Do you consider the current remedies available to the SEND Tribunal for disabled children who have been discriminated against by schools effective in putting children and young people's education back on track?

No these are not adequate. There have been a number of published cases where parents have had to take continuing legal action, at great cost, to get the results of their Tribunal implemented.

This could be addressed by;

1. Both the House of Commons Education Select Committee Report 2019 and the Triennial Review of the Local Government and Care Ombudsman have recommended extending the remit of the LGO to cover a wider range of Education Cases within schools and covering SEN support not just children with EHCPs, especially where a financial remedy might be appropriate given the circumstances of the case. <https://www.lgo.org.uk/information-centre/news/2021/dec/strengthening-and-modernising-ombudsman-sets-out-proposals-to-strengthen-public-voice> It was noted by the Select Committee a successful trial of this approach was undertaken but no action taken. The Committee reaffirmed their support for this approach in a letter to the SoS on the 12th of July 2022. <https://committees.parliament.uk/committee/203/education-committee/publications/3/correspondence/>
2. The Tribunal could be empowered to award financial remedy in cases where it concluded that this was the most appropriate means of ensuring that provision was secured, or parents compensated for additional costs in enforcing a Tribunal decision, see <https://www.specialneedsjungle.com/legal-action-launched-against-sendreview-consultation-over-misleading-disability-discrimination-tribunal-question/>
3. We do not feel that this power should be routinely used, as there is a danger that resources would be further drained from the system. However, it would act both as a deterrent to LAs and to service providers who do not make the provisions ordered by the Tribunal, so the power would only have to be rarely used.

8. What steps should be taken to strengthen early years practice with regard to conducting the two-year-old progress check and integration with the Healthy Child Programme review?

SI can significantly affect a child's early development and later life chances. Outcomes in the early years (from birth to age two) can determine likely outcomes across a life-course. It is essential that children with SI receive timely, high quality, assessment and specialist support in the early years. We are concerned that many children with SI may not be getting the support that they need in the early years and from diagnosis, which could significantly affect their early development and later life chances. Children with severe SI are at particular risk of 'developmental setback' in the early years – the plateauing, or loss of, cognitive, language and social skills.

Referral pathways from health services to education and social care can be convoluted, meaning that children and their families face delays in receiving early years support from education specialists. There needs to be closer working between the Departments for Health and Education.

To help secure high-quality early intervention, we believe it should be a requirement that Qualified Teachers of the Deaf (QToDs), Qualified Teachers of children with Multi -Sensory Impairment (QTMSIs) and Qualified Teachers of Vision Impairment QTVIs be involved in an integrated review of a deaf, MSI or VI child aged two and that they work closely with early years practitioners and health visitors as part of this. QToDs are already involved in integrated reviews in many areas.

9: To what extent do you agree or disagree that we should introduce a new mandatory SENCo NPQ to replace the NASENCo?

While we do not have a specific view on new mandatory qualification we are concerned about the current expectations and workload for SENCOs and how these impact on their ability to work successfully with specialist teachers for SI to support the development of appropriate support in schools and other settings. We would also like to see compulsory specific training on awareness of the impact of SI on learning as part of SENCO training. NatSIP has delivered for DfE such courses in the past and these have been highly valued. However, there is no access to national funding for these and NASENCo providers to not routinely integrate this training into their core offer on the course.

SENCo and NPQ training should be informed by the NatSIP's Mainstream Training Pack

<https://www.natsip.org.uk/mainstream-training-pack>

11. To what extent do you agree or disagree that both specialist and mixed MATs should be allowed to coexist in the fully trust-led future? This would allow current local authority maintained special schools and alternative provision settings to join either type of MAT?

Academy settings are not always transparent to parents and other stakeholders in their budget management of local authority funding. Many MATs are opting to hire or promote unqualified support staff, and unqualified assistant SENDCo staff to undertake the work of the specialist teacher. There is a legal requirement for staff in the role of a specialist SI teacher to have successfully completed their mandatory qualification within three years, and for the teacher with MQ to contribute to assessment and provision. There should be an obligation of any specialist or mixed MAT to be transparent in the revision of service level agreements for high needs funding provisions. This should detail the budget expenditure for resource provisions i.e., a requirement that the school can demonstrate how it uses, monitors and reviews the use of funding or resources allocated to it for the specialist resource provision to improve outcomes for deaf, VI or MSI CYP. Quality Assurance publications across the SI sector exist e.g., NDCS, with NatSIP, Quality Standards: Resource Provisions for Deaf Children and Young People in Mainstream Schools.

12: What more can be done by employers, providers and government to ensure that those young people with SEND can access, participate in and be supported to achieve an apprenticeship, including though access routes like Traineeships?

A focus on supporting young disabled people into employment is welcome. Many young people with SI leave school inadequately prepared for the workplace. To ensure young people with VI can access, participate in and be supported to achieve an apprenticeship they need support from a qualified habilitation specialist (QHS).

Despite the importance of QHSs, research has found low numbers of CYP with VI accessing habilitation support. Only one in five CYP on the active VI caseload (19 per cent) are receiving, or waiting to be assessed, for habilitation support. Of these, one in eight CYP await assessment. There

must be action from Government to boost the numbers of QHSs, including a clear and fully-funded plan of action to improve recruitment, retention and opportunities to qualify into the profession.

Most deaf young people and their families do not receive careers guidance that addresses their specific needs. E.g. they are not given the opportunity to discuss or learn about reasonable adjustments deaf people can have at work. They do not learn about the Access to Work scheme and what support can be funded in the workplace.

The following could improve careers programmes for deaf young people (and more widely, others with SI and disability):

- guidance should be strengthened, and the new transition standards must place clear responsibilities on schools and colleges to work together with specialists (QToDS, QTVIs and QTMSIs) to ensure disabled young people receive information about reasonable adjustments in work and post-16 education, work-based training opportunities (i.e., apprenticeships, traineeships and supported internships) and employment schemes such as Access to Work and Jobcentre Plus programmes
- Careers Hubs should include SEND representatives from LAs to ensure joined-up support
- the National Careers Service should be required to promote and provide access to advisors with specialism in disability
- young people with SEND should be prioritised for work experience placements. The national standards should place clear responsibilities on schools and colleges to secure accessible placements
- SEND Code of Practice should reference the Gatsby Benchmarks and use them as guide for provision.

17. What are the key metrics we should capture and use to measure local and national performance? Please explain why you have selected these.

Attainment data broken down by special educational need (SEN) and/ or disability is a key metric that should be captured and used to measure local and national performance.

The Department should amend how data is collected through the School Census to ensure that accurate data on all children with SI is being captured. However, **there are major problems currently with data collection by DfE across SI.**

Most of the official data that is published by the DfE, including on attainment, only relates to a pupil's primary SEN which therefore distorts and underestimates the real level of SEND and need in this area and provides a poor platform for local planning.

To address this, the Department should ask schools to collect data on whether a child has a disability, in addition to whether they have a special educational need. Alternatively, the Department should issue clearer guidance to schools that a child with any level of SI should be regarded as having a SEND on the basis that even a mild SI can have a significant impact and/or require schools to take advice from a QTSI.

Funding for local authority SI services is also recorded as a key metric. It is also important that the number of CYP on SI service caseloads, or known to services, are recorded as a key metric alongside the number of QTSIs and qualified QHSs. This will allow the ratio of SI specialists to CYP with SI to be monitored.

18: How can we best develop a national framework for funding bands and tariffs to achieve our objectives and mitigate unintended consequences and risks?

We do not support the proposal to develop a national framework for funding bands and tariffs. A national framework may provide a new flashpoint for disagreement and conflict which would contradict the government's goal to increase parental confidence in the system. It would grade children against funding requirements and not personalise assessed needs. A banding system is too blunt and inflexible for children with SI, who are a diverse population with very individual low incidence needs. Any new system risks leaving these children and young people without the necessary support they need to thrive.

The proposals do not indicate how pupil needs will be moderated to ensure bands are understood and used consistently across LA areas. There is no clarity about how bands could be similarly funded given that LAs are largely resourced for high needs on historical rather than needs-led basis.

Replacing the current high needs formula factors with LA 'band profiles' would introduce considerable perverse incentives, working against the principles of standardisation and equal opportunity.

We are unclear how any national framework for bandings and tariffs would interplay with the current statutory framework around Education, Health and Care (EHC) plans. There is a duty on LAs to secure any provision that is set out as necessary in section F and I of the EHC plan. We could not support any proposal that would erode or caveat this duty. **We think it is important that section F continues to take precedence over any bandings or tariffs that may be in place.**

The introduction of bandings and tariffs would result in less funding being available to specialist settings to meet the individual needs of children with SI. Even small changes in funding available risks undermining viability and reducing the specialist provision available to deaf children.

19: How can the National SEND Delivery Board work most effectively with local partnerships to ensure the proposals are implemented successfully?

There needs to be representation from low incidence groups on the Delivery Board or the needs of these groups will be overlooked. There needs guidance to the board on ensuring that LSEND are taken into account in their work.

Many NatSIP members are already embedded in local consultation forums such as the National Deaf Children's Society attending Children's Hearing Services Working Groups (CHSWG's). These multi-disciplinary groups bring together local services for deaf children in each area and include representation from parents of deaf children. Similar structures are being explored and piloted for VI in areas. NatSIP's close links with Heads of specialist education support services for children with SI (HoSS) can be called on in any planning.

20. What will make the biggest difference to successful implementation of these proposals? What do you see as the barriers to and enablers of success?

1. More funding for the SI workforce, which is declining in number. See; www.ndcs.org.uk/media/7641/cride-2021-england-report-final.pdf
2. Increased recognition of the importance of specialist qualifications in SI and funding for training of new specialist SI teachers.
3. Ensure that LAs continue to have the capacity to fund specialist SI support services at LA level and not move to a traded service model.

4. Require that the needs of children with SI are properly addressed in the new inclusion plan and planning process.
5. Parents of CYP with SI required to be included in new accountability arrangements so that there is no danger that they will not be represented in any strategic planning.
6. Developments of the proposals around what is 'Ordinarily Available' in schools require that resources and support that schools or setting offers on SI is clearly indicated. The capacity of the offer must be indicated, not just that they have access to a specialist service. To help schools meet these requirements they need to know that specialist support is going to be available from the LA to make this offer.
7. The NatSIP report commissioned by the DfE, to inform the Gap Analysis Report, clearly showed that there was a mismatch between the training resources available and those take up by schools.. <https://www.natsip.org.uk/doc-library-login/natsip-briefing-documents-and-papers/gap-analysis-the-availability-of-specialist-sensory-impairment-support-services-to-support-mainstream-teachers-and-ancillary-staff/1527-2019-03-gap-analysis-report-v4-natsip-0919>
8. Promote regional commissioning for high needs low incidence CYP to ensure consistent provision nationally so that needs can be met consistently.
9. More integration is required in any revised CoP between the SEND framework requirements and the Equality Act 2010 requirements.

21: What support do local systems and delivery partners need to successfully transition and deliver the new national system?

1. While NatSIP welcomes the Government's commitment to increase the capacity of the specialist workforce, it is essential this includes action to boost the numbers of Qualified SI Teachers and Qualified Habilitation Specialists. This should include a clear and fully-funded plan of action to improve recruitment and opportunities to qualify into the profession and retention of the current workforce. We would recommend the development of a clear national workforce strategy for specialist SEND professionals, especially SI.
2. Review and clarify the accountability framework so that families are clear what they should expect and are confident that any failings will be spotted and dealt with effectively and quickly and that SI is fully represented in local and national forums.
3. Ensure that the funding is in place at schools, colleges and LA level to deliver a complete offer for children and young people with SI.
4. A renewed focus in the CoP practice on the requirements in the Equality Act, especially around access planning but also in respect of ensuring staff are aware of reasonable accommodation requirements. This could be better monitored by LAs as part of the Local Offer, Inclusion Plan and Ofsted in school and college inspections. DfE should commission the Equality Commission to do new guidance on this area and support.

22: Is there anything else you would like to say about the proposals

NatSIP is disappointed that the Green Paper has a lack of specificity and linkages to low incidence specialist support, including SI, and fails to show how this will be secured in any revised system. NatSIP is very supportive of the move to ensure that all teachers can be good teachers of SEND but for this, and early intervention, to work the system also needs to recognise and address the specific skills and knowledge which need to be provided when supporting CYP with SI if they are to thrive and achieve better outcomes. Appropriate early intervention and ongoing resourcing allow parents and services to rely less on EHCPs as the route to securing necessary SI specialist support.

A market-based approach where schools know best and commission support is never going to work fully in these areas because of the low incidence nature of SI need. This was well established by work commissioned by the DfE from NatSIP. To effectively provide for CYP with SI, their families and the professionals who support them throughout their lives, we need more a structured strategic focus on what support needs to continue to be funded and guaranteed in the move to a more academy-based system. Without this, the aspirations of the Green Paper and the original reforms will not be met for children with SI.

The Green Paper has no proposals to address the erosion of specialist SI support services that are essential to increasing the capacity of mainstream schools to identify and respond early to SI children's needs.