

# United Response: SEND and Alternative Provision

## Green Paper response



## About United Response

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Since 1973, United Response has been supporting people with learning disabilities, mental health or physical support needs to live their life to the full. Our staff team of 3,400 people work across 330 locations in England and Wales to support around 2,000 people aged 16 to 65+ across care, support and education. We campaign to ensure the people we support have equal access to the same rights and opportunities, as well as challenging the negative attitudes and discrimination they face.

As a provider of specialist further education, we welcome the opportunity to respond to this important consultation and have answered the questions where we feel we can add value.

## Introduction

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The publication of the Government's SEND Review report: *Right Support, Right Place, Right Time* was long overdue. Chronic underfunding, lack of inclusion in mainstream schooling and increasing absence rates are just several of the ways children and young people with SEND have faced sustained deterioration of their human right to inclusive education<sup>1</sup>.

As we have been waiting for the Green Paper's release, the pandemic has affected all our lives, yet young people with SEND and their families continue to be disproportionately impacted. Lack of respite, limited access to therapy and increased anxieties have presented overwhelming challenges for families over two years of lockdowns<sup>2</sup>.

However, many of those issues were here long before the pandemic and as highlighted in the Green Paper, children and young people with SEND and their families are let down by a number of failings. What was sadly missing from the SEND Review Green Paper was the recognition of how a rights-based approach could address such failings and act as a mechanism to monitor the impact of the new reforms' implementation.

The Green Paper promises to deliver excellent provision from early years to adulthood but it has also failed to give weight to or recognise the challenges facing the FE sector. Instead, giving just five pages out of a 100-page document to the transition to further education and into independence. United Response nevertheless recognises the positives in the paper, such as a clearer definition of how social care will be required to feed into EHC assessments and the standardisation and digitisation of templates.

## Our recommendations

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- As a matter of urgency, fully incorporate the UNCRC and the UNCRPD into domestic law to ensure that children and young people's rights and those with a disability are central to SEND reforms and considered of paramount importance to the Government.

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<sup>1</sup> Inclusive Education – UK Government Assessment, Equalities and Human Rights Commission tracker, <https://humanrightstracker.com/en/progress-assessment/inclusive-education-uk-government-assessment/>

<sup>2</sup> Ofsted, SEND old issues, new issues, next steps, 2021. Available at: <https://www.gov.uk/government/publications/send-old-issues-new-issues-next-steps/send-old-issues-new-issues-next-steps>



- That the National SEND Delivery Board develop a co-production strategy with children and young people with SEND and their families to ensure that participation and co-production guide the development, implementation, delivery, and monitoring of the reforms.
- Introduce clear standards and monitoring to evidence how young people with SEND are being prepared for adulthood across the four Preparing for Adulthood (PFA) outcomes, ensuring that the standards link up with initiatives across government to reduce the SEND employment gap.
- Develop a robust data collection system that monitors how the SEND system is performing for students aged 16 to 25 years and their preparation for adulthood.
- Enhance and protect strategic joint commissioning so providers can develop responsive and holistic provisions to meet the needs of children with profound and multiple learning disabilities and those with complex needs.
- Invest in a wide-reaching campaign to raise awareness amongst public and private sector employers of the benefits of recruiting a diverse workforce of young people with SEND through an apprenticeship route.
- Increase funding for specialist SEND job coaches to help employers to understand the needs of young people with SEND and support students on their route to employment.
- Amend the Specification of Apprenticeship Standards for England to include cognitive assessments identifying learning support needs and implement supported internships as an access route for students with SEND to achieve an apprenticeship.
- Devise a funding and tariff structure that ensures full cost recovery for providers and enables them to meet the Real Living Wage for their workforce.

## Consultation response

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### 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 the standards apply across education, health and care in a 0-25 system.

The Children and Families Act 2014 and SEND Code of Practice already offer a robust framework for consistency. Through them, Local Authorities have clear legal and statutory duties to help children and young people achieve the very best educational outcomes<sup>3</sup>.

We believe a lack of compliance to those duties, because of funding deficits, has led to the challenges and failings that young people with SEND and their families face daily. Therefore, there needs to be more clarity on what oversight there will be of compliance with the new standards and who will be responsible. Along with clearer routes for young people and families to challenge non-compliance.

United Response would like to see any proposed national standards be developed in co-production with children and young people with SEND and their families and multi-

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<sup>3</sup> Children's Act, part 3, Children and young people in England with special educational needs or disabilities  
<https://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

disciplinary SEND specialists from across health, care, and education. This development would then be followed by a public consultation period.

The proposed introduction of new standards could provide more consistency but only if Local Authorities and providers are adequately resourced to meet them. In 2021 the County Councils Network (CCN) and the Society of County Treasurers surveyed County Council to grasp the scale of the funding gap and the findings were shocking, with 40 County Councils reporting growing high-needs deficits<sup>4</sup>.

Whilst we welcome the £70million of new funding attached to the Green Paper plans, we still have concerns that it will not fill and build on the current funding deficit<sup>5</sup>, so we echo Natspec's calls for providers to have adequate funding so that providers can meet the proposed standards<sup>6</sup>.

The Green Paper promises to deliver excellent provision from early years to adulthood but it has also failed to give weight or recognise the challenges facing the FE sector. Instead, giving just five pages out of a 100-page document to the transition to further education and into independence.

We would like to see clear standards on how young people with SEND are being prepared for adulthood across the four PFA outcomes. The Department of Education must clarify how these standards will link up with ambitions across other Government initiatives to reduce the employment gap for young people with SEND, such as in the National Disability Strategy and the Department of Work and Pension's Health and Disability Green Paper.

Any proposed standards that are introduced must support strategic joint commissioning to enhance rather than limit opportunities for providers to develop responsive and holistic provision for young people with SEND that meets their needs and ambitions. Particularly for those with profound and multiple learning disabilities and young people with complex needs, for whom it is unlikely that standardisation will meet their needs, but instead could marginalise them further.

## **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?**

We welcome the proposal for new local SEND partnerships, particularly their remit to include health and social care partners.

United Response strongly recommends that the partnerships have representation from the adult social care sector, so transitions out of education and into housing and employment are improved and there is a clear pathway from children's to adult social care.

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<sup>4</sup> <https://www.countycouncilsnetwork.org.uk/councils-call-for-urgent-action-in-spending-review-to-address-1-3bn-special-educational-needs-deficit/>

<sup>5</sup> The Observer, Councils in England facing funding gaps plan to cut special needs support <https://www.theguardian.com/education/2021/may/15/councils-in-england-facing-funding-gaps-plan-to-cut-special-needs-support>

<sup>6</sup> NATSPEC response to the SEND and AP Green Paper online survey questions <https://natspec.org.uk/wp-content/uploads/2022/07/Natspec-SEND-and-AP-GP-survey-response-FINAL.pdf>

As proposals develop, it will also be essential to have greater clarity on how the SEND partnerships fit into and work with Integrated Care Systems (ICS) ensuring accountability and shared resources across education, health, and social care.

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

At United Response, we are already addressing the need to commission provisions across local authority boundaries. Our specialist FE College is a college without walls, we deliver our education in the communities where our students live.

As a community-based specialist FE provider, we can deliver our tailored-learning plans in a way that fully supports a young person's transition into independence by meeting their needs, in their local area<sup>7</sup>.

Local authorities should look at how they can strategically commission this model with providers who have the knowledge and experience to support young people with high cost needs access to further education in their local communities, reducing the need for transport costs.

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

We welcome the digitisation and standardisation of EHCPs, this is long overdue. United Response would like to see the new standard, digital EHCP template created in co-production with children, young people, and their families so that the new plans can fully capture a child as a person and their full range of needs.

The new template for the EHCP should be explicit about where funding will be drawn from. Too often fragmented budgets across health, care and education leave children and young people without the necessary resourcing to fully deliver their plans.

**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?**

Children and young people's rights should be at the heart of any SEND reform so we, like many others, do not support the proposal for a tailored list of placements.

Article 23 of the United Nations Convention on the Right of the Child (UNCRC) states that: "Governments should remove all obstacles for children with disabilities to become independent and to participate actively in the community"<sup>8</sup>.

Furthermore, Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) states "the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity".

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<sup>7</sup> What it's like studying at ROC College <https://youtu.be/3S4CtRd8KhY>

<sup>8</sup> United Nations Conventions on the Right of the Child, 1989

We believe that the proposals for a tailored list will remove existing rights and limit young people's opportunities to choose their own, equal path to independence.

The Green Paper offers little reassurance that providers would not be excluded from the list due to cost reasons. Families already must battle for places in specialist FE colleges that will achieve the best outcomes for their child. The proposals run the risk of further exasperating this issue.

We would like to see the UNCRC and UNCRPD fully enshrined in UK domestic law to ensure that the rights of children and young people and those with a disability are at the heart of domestic law.

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

Strongly Disagree.

Mediation is a positive tool to support relationships between young people, families, providers, and local authorities, but we remain unconvinced that mandatory mediation will strengthen redress for young people and their families.

Parents and families already have an opt-out solution and need certification to prove that they have considered mediation. Making mediation mandatory will only add further barriers to young people and their families to accessing decisive and timely redress.

With 96% of tribunals falling in favour of the appellant<sup>9</sup>, United Response believes that there needs to be increased investment from the Department of Education to ensure better compliance and access to the SEND system.

**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 through access routes like traineeships?**

Statistics from NHS Digital reveal that only 5.1% of people with a learning disability receiving long-term support in 2021 were in paid employment<sup>10</sup>. In the same year, a Mencap survey found that the regulation for apprenticeships places unnecessary barriers to inclusion for people with a learning disability<sup>11</sup>. Amending the Specification of Apprenticeship Standards for England to include cognitive assessments identifying learning support needs would help to reduce this inequality.

We would like to see investment in a wide-reaching campaign to raise awareness amongst public and private sector employers of the benefits of recruiting a diverse

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<sup>9</sup> Special Educational Needs: support in England research briefing, Long and Danechi, 2022, <https://researchbriefings.files.parliament.uk/documents/SN07020/SN07020.pdf>

<sup>10</sup> ASOC, NHS Digital <https://digital.nhs.uk/data-and-information/publications/statistical/adult-social-care-outcomes-framework-asocf>

<sup>11</sup> Accessible apprenticeships report, Mencap, 2021, [https://www.mencap.org.uk/sites/default/files/2022-01/Mencap%20Accessible%20Apprenticeships\\_0.pdf](https://www.mencap.org.uk/sites/default/files/2022-01/Mencap%20Accessible%20Apprenticeships_0.pdf)

workforce of young people with SEND through an apprenticeship route<sup>12</sup>. This should be done in tandem with increased funding for specialist SEND job coaches to help employers to understand the needs of young people with SEND and support students on their route to employment.

We would also like to see Supported Internships as an access route for young people with SEND to achieve an apprenticeship.

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

Local and national performance measurements must include metrics that capture how the system is performing for students aged 16 to 25 years. Without, this cohort will face further barriers in their preparation for adulthood and risk slipping through support nets at this pivotal point in their life. This is acute for many young people, particularly for those diagnosed with co-occurring conditions at a later age than their peers.

Even with a diagnosis, the absence of long-term support and a working knowledge of their additional needs will place many of these students at a disadvantage when entering the workforce. A robust data collection system must take place to gauge the system's responsiveness in supporting young people with SEND.

Suggested metrics could include:

- Number of 16 to 25-year-olds with SEND accessing supported internships, traineeships, and work experience.
- Transitions metrics such as rates of young people progressing on to paid employment and long-term accommodation status post-25.

**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 agree with the proposals to introduce national funding bands and tariffs. The young people we support require highly specialised and tailor-made education programmes. This is not unique to our college, as highlighted by Natspec, this is common across the specialist FE sector<sup>13</sup>.

We believe that young people with profound, multiple and complex needs will be disadvantaged by these proposals and should have separate funding that is based on their individual needs.

Any funding framework would need to consider the changing needs of a young person with SEND across their life stages and should offer adaptability and flexibility based on their individual needs.

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<sup>12</sup> United Response welcomes the National Disability Strategy's commitment to increasing more disabled people entering apprenticeships and vocational education, but we feel that there needs to be a greater emphasis on supporting young adults to access these opportunities.

<sup>13</sup> NATSPEC response to the SEND and AP Green Paper online survey questions <https://natspec.org.uk/wp-content/uploads/2022/07/Natspec-SEND-and-AP-GP-survey-response-FINAL.pdf>



Like many employers, we are facing workforce cost pressures which are only being compounded by the ongoing cost of living crisis. Any additional tariffs would need to consider full cost recovery for providers and provide adequate funding for employers to meet the Real Living Wage.

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

We note that there is limited information in the Green Paper about how the National SEND Delivery Board will operate. However, United Response believes the Board should be led by the guiding principles of transparency and co-production so children, young people with SEND, and their families are at the heart of the Board's activity and decision-making process.

**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?**

Perhaps one of the greatest failings of the SEND system has been the lack of true co-production<sup>14</sup>. For the system to be truly reformed children, young people and their families must feel like true active partners. This starts at the ground level with the co-production of the new standard and digitised EHCPs and standards, then needs to take place at the system level with the development of a co-production strategy to outline how children, young people and families are active participants in the governance and monitoring of the new SEND system.

The implementation of the new reforms must include post-16 education as part of the plans. By failing to there is a risk that it will result in under-investment in the specialist FE sector and worsen transitions to independence for young people with SEND.

We also have concerns that young people aged 16 – 25 who have access to specialist FE colleges will fall through the gaps between the Skills and Post-16 Education Act 2022 and the SEND reforms, including those with the most complex of needs who already are the most marginalised in the system.

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

Clear communication and change management plans for all stakeholders will be essential to aid successful transition and delivery, along with clarity over how delivery of the new system will be quality assured.

There will need to be support for the recruitment and retention of staff across both school and post-16 education during the transition and delivery of the new national system, including funding for training and robust plans for the ongoing development of our workforce.

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<sup>14</sup> CoProduction is an illusion for parents and Sencos, Special Needs Jungle <https://www.specialneedsjungle.com/coproduction-is-an-illusion-for-parents-and-sencos/>

## 21 Is there anything else you would like to say about the proposals in the green paper?

What was sadly missing from the SEND Review Green Paper was the recognition of how a rights-based approach could address such failings and act as a mechanism to monitor the impact of the implementation of the new reforms.

The 2014 reforms and EHCPs were supposed to stop a hard transition into adult social care for young people with SEND, but the reality is that poor planning, lack of support and coordination<sup>15</sup> give young people and their families unnecessary stress and upset. We feel there has been a missed opportunity to take on Contact's recommendation for a Transitions Board with partners from the Departments of Health and Social Care, Education, Work and Pensions, the Disability Unit, and the voluntary sector with young people and their families.

## Contact

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<sup>15</sup> Contact, Transitions Survey Report 2020, [https://contact.org.uk/wp-content/uploads/2021/03/transitions\\_survey\\_report.pdf](https://contact.org.uk/wp-content/uploads/2021/03/transitions_survey_report.pdf)