

Ofsted and CQC

September 10th, 2022

## **The response of the Special Educational Consortium to the Ofsted and CQC consultation on A new approach to area SEND inspections**

### **Introduction**

The Special Educational Consortium (SEC) is a membership organisation that comes together to protect and promote the rights of disabled children and young people and those with special educational needs (SEN). Our membership includes the voluntary and community sector, education providers and professional associations. SEC believes that every child and young person is entitled to an education that allows them to fulfil their potential and achieve their aspirations.

SEC identifies areas of consensus across our membership and works with the Department for Education, Parliament, and other decision-makers when there are proposals for changes in policy, legislation, regulations and guidance that may affect disabled children and young people and those with SEN.

This response may be viewed in the context of wider system reforms currently taking place with regard to the SEND and alternative provision (AP) green paper as well as the Schools Bill (see SEC's response to the Green Paper SEND review [here](#)).

SEC welcomes the development of a new approach to area SEND inspections and is committed to supporting its development throughout the consultation period and beyond.

SEC is grateful to have been given the opportunity to discuss the inspection proposals with Ofsted at a meeting on 28th July 2022. This response reflects our position and our proposed considerations for Ofsted and CQC, as discussed in this meeting with Ofsted.

### **Context**

SEC supports the aims of the new area SEND framework to:

promote further improvement in the SEND system

ensure children and young people with SEND are well prepared for education, employment, independent living and participation in society

enable children and young people with SEN and Disabilities live healthy lives

We believe that the best way to achieve these aims is to take action to ensure existing statutory frameworks are put into practice in local areas backed by significant investment.

SEC welcomes:

- A focus on the impact that a local area partnership's SEND arrangements have on the experiences and outcomes of children and young people with SEN and Disabilities (inspection proposals 2 and 3).
- A focus on gathering more evidence directly from children and young people and their families, ensuring that their views and experiences are central to inspections.
- A commitment to applying a consistent approach when inspecting area SEND arrangements
- The inclusion of alternative provision (AP) within the framework
- The addition of an equality impact assessment before the formal response stage of the consultation.

## **How we have organized our response**

We believe that these are positive steps towards improving the current local area SEND inspection framework. However, we do have concerns which sit across several of the proposal areas within the consultation document and, for this reason, we have arranged our views thematically rather than in response to each of the 9 proposals. We set out these themes below:

### **1. Outcomes**

SEC is pleased to see emphasis placed on how well local areas are improving the experiences and outcomes of children and young people with SEN and disabilities within draft proposals (proposal 1). Yet, inspection proposals lack detail on what these outcome measures will entail. The term 'outcomes' is rather ambiguous and without clear understanding of what this means SEC are hesitant to fully endorse this proposal.

The lack of detail raises more questions than it answers. Who decides what these outcome measures are? How meaningful are they to all children and young people with SEN and disabilities? Can they be applied consistently across local areas within inspections and with objectivity? If not, there is a risk that for those whose progress cannot typically be measured using academic attainment or progress 8 scores, their experiences or indeed progress will not be counted or measured at all.

SEC believes that inspections must place more of a focus on life outcomes. We must utilise measures that would capture progress for children and young people with the most complex SEN

and disabilities as well as those who have low incidence needs such as those with a visual impairment.

Proposal 2 of the draft framework sets out the criteria for inspectors to judge the impact of a local area partnership's SEND arrangements. Criteria 5 states that '*children and young people with SEND are valued, visible and included in their communities*'. SEC is concerned that this is an ambiguous statement, open to subjective opinions dependent on the judgment of the inspector and as such, does nothing to improve the consistency issue acknowledged in the Green Paper and within these proposals. We believe that how we measure outcomes and what we are measuring is a very good indicator of how '*valued, visible and included in their communities*' children and young people with SEN and disabilities truly are. For inspectors to accurately assess impact and outcomes for a broad range of needs, the right measures and judgment criteria must be in place and training offered to inspectors which will allow for a more consistent approach.

Outcomes are particularly relevant when it comes to future planning. Children and young people with SEN and disabilities are disproportionately represented in negative life outcomes data. Mencap's 2019 Big Learning Disability Survey found that only 23% of working age adults with a learning disability have a paid job compared to 76% of those without. It goes without saying that those with the highest support needs receive the least opportunities once formal education ends.

SEC welcomes the emphasis on ensuring that **all** children and young people with SEN and disabilities are well prepared for the future. However, we are concerned that currently there are too few opportunities, a lack of specialist support and appropriate provision and not enough incentive for local authorities, partners and providers to improve employment inclusivity for those with high support needs.

To tackle this, Inspectors must be able to assess the extent to which local area partnerships galvanise local authorities, partners and providers across all sectors to provide further opportunities within the workforce and skills arena for post 16 and transition to adulthood stages. Local areas must be incentivised to develop creative solutions and alternative pathways to ensure children and young people have developed the knowledge and skills to gain employment and meaningful occupation, move on to further or higher education, live as healthily and as independently as possible, have good self-esteem, have made friends and feel safe, valued and visible in their communities (point 44, Experiences and Outcomes, area SEND inspections framework and handbook)

SEC is concerned about the omission of a mental health and wellbeing focus within the inspection framework. The link between SEN and disability and mental health difficulties, particularly in the wake of the pandemic, is well documented. Too many children and young people with SEND are unable to access targeted mental health support at an early stage. As a result, their learning and quality of life deteriorates. The inspection process should consider and report on how well the local partnership identifies and addresses mental health difficulties for children and young people with SEND; the strategic priority given to mental health and SEN and disability and the extent of effective and collaborative commissioning.

## **2. The voice of children and young people with SEN and disabilities, and their families**

SEC welcomes the clear efforts to gather the views of children and young people with SEN and disabilities as well as their families, before the on-site inspection work begins (proposal 6). This will provide the right lens to ensure people are at the heart of inspections rather than process. SEC is however, concerned that those whose voices are least likely to be heard, may be under-represented during discussions about individual experiences and outcomes.

Those with the most complex physical and/or learning needs are often under-represented in information gathering exercises. This may be due to a lack of resource to facilitate their participation, lack of incentive and/or lack of knowledge and skills. Children and young people with non-verbal communication methods or profound and multiple learning disabilities who may struggle with abstract concepts, may be missed from discussions with inspectors and sampling/tracking exercises and surveys. In a similar vein, those with low incidence SEN and disabilities being smaller in number but equally significant, risk being omitted from these activities.

Proposal 6 describes 'tracking' meetings to establish how individual children and young people experience the SEND system. SEC is concerned at the small number of children and young people suggested for this exercise. The idea that Inspectors will use a sample size of 6 children and young people whilst ensuring that they represent 'a range of needs, access a range of services and who are at different stages in their involvement with health and social care services', whilst also representing the demographic make-up of the local area and protected characteristic, seems almost impossible with such a small sample size. SEC is concerned that such a small sample will not allow for representation of the experiences of different groups of children and young people across a local area.

We welcome the proposal to include pupils on SEN support within tracking and sampling exercises but as explained in our previous point, anticipate the potential for some voices to go unheard. To achieve the representation suggested in proposal 6 and to reduce the likelihood of excluding specific groups of children, we believe the sample size must increase. Further thought must also be given to how the sample is chosen and who makes this decision. The answer to these questions could have a significant impact on the results obtained.

SEC whilst supportive of improved efforts to include children and young people with SEND and their families, is hesitant to fully endorse these efforts as there is insufficient details on how inspections will ensure that discussions, surveys and tracking meetings are accessible. Many of the children, young people and families chosen may need additional support to meaningfully engage and participate. SEC seek assurance that this will not be a barrier to inclusion and that all materials including digital formats, communications and delivery resources are planned and executed with the full range of accessibility requirements in mind.

### **3. Triangulation**

SEC welcomes the particular attention given to information gathering within proposals. Using mixed methods to assess impact (proposal 2) is likely to produce a realistic picture of how provision is experienced. The scope and variety of data that could be collected is also promising.

SEC would like clarity on how individual inspections of institutions will be used within local area SEND inspections. Will school Ofsted reports for example, be used by inspectors to build a better picture of what's happening in a local area? There may be context specific factors at play when assessing outcomes and experiences of children and young people. Whilst it is important to measure the impact school support offers, it is equally important to understand the context within which they are functioning. Funding, staffing, availability of places and local demographic all play their part but there are factors outside of a school's control which contribute to their impact on children and young people. Schools may be reliant on specialist services through their local authority or partnerships. Access to these services has become increasingly difficult in many areas reducing the capacity of schools to meet needs early.

The Green Paper acknowledges that poor outcomes are in part driven by late identification of SEN, late interventions and a system that then must allocate funding and resources when difficulties have reached crisis point. SEC seeks to understand how inspections will identify these challenges and ensure local area partnerships reverse this trend.

SEC has concerns that the local offer is not always a reliable indicator of what's on offer to children and young people with SEN and disabilities, and their families. Far too many families report that services are unable to accept their child with high needs due to a lack of places or availability of specialist support, information is out of date, or the services advertised are at capacity or unwilling to accept their child. Inspections must go further to address the effectiveness of the Local Offer and whether they meet the requirements set out in The SEND Code of Practice 2015 and other legislation.

SEC would like to draw attention to the wide range of ways that children and young people with SEN and disabilities may be out of education. There are reports of substantial numbers of children unable to return to education due to anxiety; some are awaiting placement; some families opt for home-education; others struggle to access transport options due to inappropriate support or their own health needs. We would like clarity on how inspections will gather information about children out of school and how this information will be used it to assess how effectively education settings are supporting those children to return to school as well as working with families to reduce barriers to education.

The local authority's Disabled Children's Register keeps a record of disabled children in a local area. SEC would urge greater use of the register within inspections, alongside other sources of information, to assess how local areas understand their localities and would encourage its inclusion during sampling and tracking exercises.

#### **4. Social care and family support**

SEC is fully supportive of the drive to ensure families' experiences are captured within inspections. To enable children and young people with SEND to access learning and to exercise their human rights, families must be supported well, both in a physical capacity and with positive mental health. SEC seeks further details on how parents and carers will be actively involved during inspections and anticipate a system that includes a parent/carer feedback method. It is essential

that this process does not become a form of lip service and receiving feedback is one way of identifying whether the level of support meets the needs of those in receipt and that the viewpoints of families are at the forefront of decision-making.

## **5. Alternative Provision**

The inclusion of Alternative Provision (AP) within the draft inspection proposals (proposal 7) received a cautious welcome from SEC. We agree that an emphasis must be placed on the experiences of children and young people who attend AP within inspections, but we are concerned that AP may gradually be viewed as an extension of the special school estate with which we are not in agreement.

SEC is keen to ensure that Alternative Provision placements are not misused due to a lack of special school places or delays in identifying SEND.

We believe local inspections are a good vehicle to explore the reasons behind placement within AP. Such explorations could reveal specific difficulties within a local area that requires further investigation. AP is a sector that requires a different lens and as such, would benefit from training for those inspecting AP to take account of the different lines of enquiry required within this sector.

## **6. Area of residence focus**

The draft proposals are clear about excluding children and young people with SEND who do not live in the local area from the sampling approach. However, it is not clear about whether children who live in the area and are educated elsewhere are included in the selected sample. SEC is concerned that children and young people who live in one area but are educated in another area may not be included in any local area inspection through this approach to sampling. SEC seeks to understand what happens to these children and young people?

## **7. Consistency**

SEC welcomes proposals for a more consistent approach to Area SEND inspections. Proposals 2, 3 and 4 within the draft framework set out:

- the criteria for evaluating inspections
- 3 distinct inspection outcomes and next priorities for local areas and further inspection timelines
- clear criteria for inspection reports

Previous reports were non-uniform in the type and level of detail provided. What was considered a strength in one area, could be considered a weakness in another. SEC is pleased that that judgements and reporting will be more consistent across local areas.

SEC welcome the addition of more precise recommendations in inspection reports in relation to specified weaknesses (proposal 4). However, SEC believes there is value in identifying and reporting examples of good practice in reports and through wider channels. We note that inspection findings may often provide limited examples in this regard and would encourage inspectors to place equal value on the specific elements that are having a positive impact on children and young people with SEN and disabilities. SEC believes an emphasis on strengths positively reinforces good practice and raises the bar in terms of what is possible for other local areas to replicate. It plays a role in developing consistency at a strategic level and in practice.

## **8. Process**

SEC is pleased to see a good level of detail within the inspection proposals with timelines set out clearly.

NICE recently published guidelines for disabled children and young people up to 25 with severe complex needs (*Disabled children and young people up to 25 with severe complex needs: integrated service delivery and organisation across health, social care and education*, NICE, 2022). The NICE guidelines are used within CQC inspections of health bodies so SEC believes it would be logical to establish how this could be used to ensure health organisations in the local area are complying with these guidelines as part of the inspection process.

SEC seeks to clarify the timelines involved from publishing to implementing priority action plans (proposals 4 and 5). We welcome the idea of such plans and would like to see a level of urgency in their implementation requirements.

SEC cautiously welcomes the inclusion of annual visits (Proposal 9). Gaps between inspections allow time for significant change within local areas and often this can mean opportunities to change course when things are not going well, are missed. Our cautious response can be attributed to the lack of detail on the form and the function of these visits. Further details will help shape SEC's view.

## **9. Policy**

SEC has submitted a response to the SEND green paper consultation which includes concerns that some of the proposals will not lead to better outcomes for children and young people with SEND. SEC is concerned that this inspection framework may have been developed with the expectation that the proposals within the green paper shall be fully implemented. If this is the case and the framework aligns with these proposals in their current state, SEC does not support this. The hope is that some of the more problematic points in the green paper will either be amended or removed.

## 10. Equality impact assessment

SEC warmly welcomes the addition of an equality impact assessment at this stage in the consultation process. We would like to see further consideration given to how well local authorities and their partners are meeting their responsibilities under the Public Sector Equality Duty (PSED). Will Ofsted assess whether schools have identified objectives to reduce inequalities? How will this be measured across other partners? Will Ofsted also show how, through Area SEND inspections, they are meeting their own objectives under the PSED? SEC would be pleased to have these points addressed in the upcoming consultation response.

### In conclusion

SEC would be pleased to clarify anything in this response or to provide further information. We would welcome the opportunity to contribute to further discussion as the proposals develop through the consultation process and beyond.

### For further information, please contact:

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SEC is supported by:  Afasic  Ambitious about Autism  Association of Colleges  Association of Educational Psychologists  British Dyslexia Association  Centre for Studies on Inclusive Education  Contact  Council for Disabled Children  Dingley's Promise  Down's Syndrome Association  Driver Youth Trust  Equals  Guide Dogs for the Blind  IASS network  I CAN  IPSEA  Just for Kids Law  Mencap  NAHT  Nasen  NASUWT  National Association of Independent Schools and Non-Maintained Special Schools  National Autistic Society  National Children's Bureau  National Deaf Children's Society  National Development Team for Inclusion  National Education Union  National Network of Parent Carer Forums  Natspec  Prospect  Royal National Institute of Blind People  Seashell Trust  SEND Community Alliance  SENDIASS  Sense  Square Peg  Thomas Pocklington Trust  United Kingdom's Disabled People's Council  Young Epilepsy