



THE NATIONAL SEND FORUM Minutes 25th May 2022

Virtual Zoom Meeting

Present: David Bateson OBE (DB) *Chair*, Lorraine Petersen OBE (LP) *FLSE*, Rona Tutt OBE (RT) *NAHT*, Caroline Wright (CW) *RCSLT*, Carol Kelsey (CK) *NNPCF*, Jo Harrison (JH) *NNPCF*, Jo Stooling (JS) *SWALSS*, Julie Walker (JW) *sen.se*, Stephen Deadman (SD) *NAHE*, Mari Davis (MD) *NASS*, Richard Boyle (RB) *engage*, Margaret Mulholland (MM) *ASCL*, Tina Wakefield (TW) *BATOD/NATSIP*, Lorraine Mulrooney (LM) *NHS*, Catriona Moore (CM) *ipsea*, James Waller (JW) *Equals*,

Guests: Benedict Coffin (BC) *DfE*, Amy Lomas (AL) *DfE*, Chris Stark (CS) *Browne Jacobson*,

Minutes: Andy Petersen (AP)

1. Welcome and Introductions

For Action

DB welcomed and thanked everyone for joining this “Hybrid” meeting

2. Protocol for meeting

DB went through some protocols for this “Hybrid” meeting

3. Apologies

Chris Rollings (CR) *FLSE*, Penny Barratt OBE (SSV), Rob Williams (NAHT), Haj Liaquat NSN), Jane Carter (pdnet), Kim Taylor (FLSE), Annamarie Hassall MBE (nasen), Mark Blois (BrowneJacobson)

4. Minutes of last meeting and matters arising

The minutes were agreed without alteration.

5. Draft Mental Capacity Act and Liberty Protection Safeguards Code

CS of Browne Jacobson gave a presentation on this new draft policy (copy attached).

DB queried whether the increase in cases reflected participants greater compliance. CS responded that in fact the greater number of cases had resulted from the “lowering of the bar” for DOL by the courts.

DB queried whether DOL legislation would apply to special schools particularly in a residential setting. CS replied that it would.

CK queried who would decide who should be the “appropriate person” in this scenario. CS suggested that this would normally be the person themselves. CK commented that there was a possibility of “muddle” for individuals that did not have capacity to make a choice. CS agreed and suggested that this was part of LPS which needed to be “worked through”, and might be the subject of litigation until LPS settled down.

JS commented that the training and roll-out process would be important to schools.

DB queried whether language capacity would be taken into account. CS responded that the code attempted to deal with this by requiring that a responsible person take all reasonable steps to ensure capacity. In emergency situations section 35 of the Children's Act allowed actions which were reasonable and proportionate to protect the welfare of the individual in question.

6. Policy and DfE update/ The SEND Green Paper (Benedict Coffin and members responses)

There was no update from AI. (AI attends the 2nd, 4th and 6th meetings of the academic year)

BC gave an update on the SEND Green Paper (see attached slides).

JH commented the Green Paper was welcomed by the NNPCF, however the concern amongst members was whether government would be offering our local authorities a greater stability of funding, and the accountability of organisations like MATs for effective use of funds. BC responded that MATs would be a particular challenge. DfE needed to look at this very seriously although there was potential to improve inclusivity.

KM raised the issue of local discretion and the high level of inconsistency between authorities. There was already a clear national legal framework. However, the problem was that it is not applied or not applied everywhere. High levels of non-compliance with the law occurred but there were no consequences for authorities that did so. The proposal to create a whole new set of national standards was an issue and KM wondered how this would mesh with the Children and Families Act. The Green Paper talked a lot about "clarity and consistency", but this already existed and was not implemented as evidenced by appeals to Ombudsmen etc. BC responded that DfE was working with Ofsted and CQC on what the inspection framework should be in the future. However, the real issue was the sheer volume of cases to be examined and their growth in recent years. So there were simply too many EHC plans for local authorities to manage given the resources they had. It would be better to take some of that resource and have less need for an EHC plan, because individual's needs could be met through ordinarily available provision. BC felt that "benign dictatorship" from the Department would serve all parties better and ensure better use of resources.

CW commented the RCLT broadly welcomed the Green Paper but was concerned whether support would be classed as education, health or social care and who would be funding it. There also did not seem to be much mention in the Green Paper of joint commissioning – was this a deliberate policy?

BC responded that one of the areas where there was unhelpful variation was around some of the responsibilities of education, health and social care. Teaching support staff were often quoted as doing work which a decade before would have been provided by other agencies. BC felt that the department needed to be clear about what is the responsibility of social care and of health education to deliver, and then make sure that there is appropriate accountability. CW commented that she was still concerned that there would be enough accountability for health provision. LM commented that health had got an accountability system for those with education, health and care plan, because it was written in law. But accountability across the NHS came through oversight, frameworks, inspections, etc. Thus, the NHS had invested in regional leads to drive improvement and hold the new integrated care boards, to account, support them, and challenge them, and work through their improvement plans. These would be implemented in early July and LM would be happy to discuss these changes further with CW separately.

CK commented that a primary driver for EHC plans was to secure health provision, but that even with such a plan the provision was not guaranteed.

DB commented that he was saddened by the executive summary of the Green Paper on behalf of those young people who have profound or significant or severe learning disabilities, to have them characterised as having poor outcomes, along with other people who may have no cognitive impairment, and have poor outcomes. It would benefit SEND if it were not homogenised in descriptions and distinguished between those with cognitive disabilities and those without.

RT commented that one of the best things about the Green Paper was that the government included a definition of inclusion which included special schools. RT felt that a large part of the SEND issues was that teachers in mainstream schools were often confronted with multiple problems which required support but the specialist teaching provision for these areas had largely disappeared. RT was pleased to see that the Green Paper supported the provision of Regional Centres of Excellence. BC responded that he would be interested to hear more about this initiative.

JW commented that in a lot of very specialist settings for children with severe learning difficulties, the aspirations and outcomes for those children were highly individualised to that child. This was because their needs were so complex that they didn't share the same outcomes or aspirations as their peers in their class, it was individual to each and every child. JW had hoped that there would be an acknowledgement that what those settings need to provide is actually something completely different than a watered-down differentiated version of what mainstream school was doing. BC was sympathetic to JW's view and suggested an offline conversation about the topic. BC felt that further deliberation would be required by experts to develop expectations on a national level.

DB concluded the discussion and promised that information on RCEs would be sent to BC. DB thanked BC for his time.

BC left the discussion at this point

DB asked members to state what they liked and disliked about the Green Paper.

CK stated that she was pleased that it had been prepared and that the White and Green Papers appeared to link up.

RB commented that his biggest concern was about standards and how these would be agreed. DB agreed and explained that he felt there should be a minimum operational standard. RB agreed but was concerned about the context of standards – whether they should be about “value for money or was it about the national curriculum, or was it about access to resources. RB felt that establishing these standards would be a huge undertaking and subsequent enforcement would also be an issue – would this be by regional OfSTED?

JS commented that establishing the curriculum for students with profound needs was important. The Green Paper seemed to give all the “umbrella standards” but did not deal with practical issues in meeting them. DB felt that one of the words missing was quality, in terms of what was the quality of the curriculum, what's the quality of the input.

CK felt that having a standard EHC plan and a computer system was positive. However, the data used seemed to be formulaic rather than qualitative. Also, the compulsion for mediation was an issue, particularly to parents. CK felt that compulsion was likely to be divisive.

DB highlighted the quality of Alternative Provision – a general discussion then ensued about alternative provision.

JW commented that she was concerned about funding and where the funding source was for the large amounts of money described in the Green Paper. JW also was concerned about improving

mainstream and making it more inclusive, and how that would link to the White Paper, because what you see in the early career teacher framework was not supporting that.

LP commented that until there was a change in accountability measures for mainstream schools, they were not going to be inclusive. Thus, schools needed to be able to adjust the performance measures to ensure that inclusion could take place. JW agreed with this opinion – she felt that the metrics by which schools were measured does not support inclusion. DB felt that students needed to feel that they were in a community that they related to.

HW felt that their needed to be more discussion and planning about provision to assist students in transition between primary and secondary schools and then onto adult life. CK commented that the issue of students with profound needs transitioning into adult life and paid employment had not been given enough thought in the Green Paper.

JW commented that anybody that's worked with children or adults or individuals with profound and multiple learning difficulties would know that conversations about any kind of homogenization or standardisation of curriculums and outcomes was a dangerous road to go down.

RT commented that the Green Paper did not have an organised structure and was hard to follow.

MD commented that NASS was concerned about funding and the national framework for funding bands. This seemed to contradict the independent review of children's social care that had been published recently. NASS were concerned at the implication that independent, non-maintained, schools were more expensive. CK suggested that the NSEND response should include a requirement that all local authorities predict the likely level of specialist places that they will need.

MD commented that the Green Paper was focused on reducing costs rather than addressing need.

CK was concerned that there was nothing in the Green Paper which was focused on helping parents to understand the system that their child was entering, which could be done relatively cheaply. Research showed that for all children, that the more engaged and supportive parents were able to be in their child's education, the more successful it was.

RB commented that he felt that the single thing that would help students was for better trained teachers/SENCOs. RB felt that there should be SEND teams in every school rather than an individual. DB felt that the SENCO should have increased status in the school and should be part of the SLT. CK agreed and felt that as well SENCOs should have more non-contact time.

LP felt that the biggest challenge in schools was that senior leaders did not understand the SENCO role. A discussion then ensued about the training of teachers in SEND issues and oracy and communication.

MD commented that there was no recognition in the Green Paper of the need for workforce planning. LP agreed with this sentiment and highlighted that a workforce with much wider skills was needed in the 21st century.

DB closed the discussion at this point.

Final discussions on the NSEND Forum response to the Green Paper will take place at the next meeting on 6th July. LP will circulate a briefing sheet (from Special Needs Jungle) to help members formulate their thoughts and responses.

8 Update from members: successes, issues and events

Batod/NatSIP – Tina Wakefield

BATOD

Actively involved in response to government papers, registration for specialist teachers of sensory impairment the development of a BSL GCSE and a specialist deaf curriculum. The contract process for the delivery of the mandatory qualification for teachers of the sensory impaired has now closed and DfE is considering applicants from universities to deliver the HI, MSI and VI MQ courses from 2023.

NatSIP

NatSIP has already held an online working day on the Green Paper proposals and has gathered views from across the SI sector. We will be following on with more specific events. NatSIP is broadly positive about the suggestions of enhanced accountability in the system but wants to see much more detail about how this is going to work and how low incidence need groups are going to be supported to be involved. It is unclear how their needs will be met in the development of inclusion plans. NatSIP is keen to develop proposals around regional commissioning for high needs low incidence groups as part of the proposals being developed. NatSIP has specific concerns about the lack of direct references to low incidence. The vagueness on how specialist support is going to be enhanced, within the stress on improving provision and support at the SEN support stage, is concerning. There is a lack of detail on developing the workforce capacity to meet specific SI needs.

Engage in Their Future – Richard Boyle

A statement from the Joint Chars of Engage in Their Future.

“EiTF are currently canvassing members and trustees’ views, regarding our future as a membership organisation as a result of limited income and the resulting reduced capacity for communication and resource provision.

The EiTF network of schools and leaders, remains a fertile ground for shared learning, experience and resourcing and we remain keen to contribute and have influence in SEND provision and SEMH sector in particular. EiTF must now consider the needs of our members and our capacity to deliver within our funding limitations.”

Equals – James Waller

EQUALS National Conference: 14-25 Education

What does Independence mean for young people with PMLD, SLD and MLD?

Practical Solutions and Possibilities

NCVO – Central London – 4th November 2022

9. Relevant updates from other affiliations, forums, trusts, alliances and partnerships

Nothing to report

10. NSEND operation

Nothing to report

11. Any focus for action and statements of agreement including future invitees

Nothing to report

12. AOB

13. Dates for 2021-22

Next Meetings to be held on 6th July (Venue/format) to be arranged

Dates for 2022-23 are on the following Wednesdays 10.30-14.45 ((10.00-12.30 when virtual): 28th Sept 7th Dec 1st Feb 29th Mar 24th May 5th July

Meeting Closed at 3pm