



## **The Local Government Association, the Association of Colleges & Natspec**

### **Arrangements for planning, commissioning, funding, and supporting provision for post-16 high needs students**

#### **Report**

**acl consulting  
November 2020**



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## Executive Summary

### Background

- 1 In January 2020, the Local Government Association [LGA], the Association of Colleges [AoC] and Natspec commissioned a consulting firm to undertake a review of arrangements for planning, commissioning, funding, and supporting provision for post-16 High Needs students.
- 2 The purpose of the review was to provide the study's sponsors with a clearer understanding of how local authorities [LAs] and providers within the post-16 high needs system – general further education colleges [GFECs] and special post-16 institutions [SPIs] – can work together to manage an increased demand for support for High Needs students, and what more can be done to make best use of resources.

### Methodology

- 3 Fieldwork was conducted in 10 LA areas, selected to reflect the range of authority 'types', High Needs block allocations, and the increase in the number of Education, Health & Care plans [EHCPs] in the period since the passing of the Children and Families Act 2014 and the introduction of the SEND Code of Practice [The Code].
- 4 Each LA was asked to identify up to 4 providers to whom it contracted a significant proportion of its High Needs funded provision for interview. Across the 10 LAs we spoke to 25 LA staff and 50 staff from 28 providers – 14 GFECs and 14 SPIs.
- 5 A third of the interview programme was completed during the first half of March 2020, prior to the coronavirus lockdown period, mainly on a face-to-face basis. Remaining interviews were completed between July and mid-August 2020; these interviews were completed remotely by phone or video conference platform (Zoom, Teams etc.).
- 6 Throughout the fieldwork period we also interviewed, mainly remotely, a number of stakeholders, representatives of the study sponsors, and other interested parties.

### Key findings and recommendations from the fieldwork

- 7 The following findings and recommendations are based on observations from the fieldwork for this study: all of them, to a greater or lesser extent, are currently being implemented by one or more of the LAs and providers in our fieldwork sample.

#### *Strategic planning of provision*

- 8 This study is not alone in seeing little evidence that longer term planning of post-16 High Needs provision is currently taking place; there is a general recognition that more needs to be done, and signs of actions being taken.

- 9 Block agreements [see paragraph 35 below for further details] potentially address a number of the issues identified by LAs and GFECs – in a planning-related context they enable a far more collaborative approach and better, more trusting, relationships to develop between providers and LAs, and allow for planning horizons to extend beyond the next academic year.
- 10 As part of improved planning, more collaboration – between LAs, between LAs and providers, between post-16 further education and other providers – should be prioritised. The project found progress being made in all of these; there is less to report in terms of engagement with the wider post-16 sector (principally school sixth forms, including special schools, and non-maintained provision). A strategic planning group for 16+ may be helpful.
- 11 Whilst it is early days, most LAs and providers are working towards having a single repository for data on High Needs students (current and potential), and developing the ability to analyse that data and the capability to act on what the data is saying. Such a repository will enable a more effective planning dialogue to happen, including with health and adult social care, and the development of informed plans, strategic and operational, to meet identified needs.
- 12 In the meantime, there is information and market intelligence available, and this should be used more widely for planning purposes. Whilst a complete dataset on who is coming through from schools and when is perhaps the ideal for planning purposes, and though there will still be issues caused by cross-border movement of students, there is still much that can be done by providers and LAs with the information available.

### *Development of new provision*

- 13 Having, through improved strategic planning, identified areas where new provision is needed, LAs should play a more active, innovative and creative role with providers, existing and new, in the development of that provision.
- 14 Providers and LAs should be proactive about approaching each other to discuss needs and, where necessary, make joint commitments and investments (broadly defined) to share/spread the risk and/or avoid the risk of unnecessary local duplication.
- 15 The fieldwork identified a range of approaches that providers and LAs are taking to develop new provision which are worthy of consideration by others:
  - Using an existing organisation (or establishing one) as a lead contractor to allow other, often small community interest, providers to deliver on a sub-contracted basis
  - Inviting an existing SPI to open additional provision in an area to meet the present and future needs of a defined group of students
  - Working with an extended range of local providers, some perhaps new to the sector, to develop additional provision

- Commissioning a package of provision from multiple providers for one student
  - The central provision by LAs of certain high needs support services, enabling more providers to deliver programmes to young people with high needs
  - An SPI training other providers' staff to enable them to offer a base level of support to their High Needs students with more moderate levels of need.
- 16 Any actions taken here should help to broaden the provider base, the current narrowness of which was a concern for a number of LAs.

### *Transitions into post-16 provision*

- 17 Securing better transitions between life stages and settings, including from secondary to further education, is a key focus of The Code. Post-16 provision should be determined, and funding agreed, by March 31<sup>st</sup> in the year of transfer. For a variety of reasons, this deadline is often missed, and a smooth transfer therefore often not achieved.
- 18 Post-16 providers should be given earlier (pre-16) access to young people. The earlier the contact between a young person and their probable post-16 provider, the more likely that the young person's post-16 needs and aspirations will be known in good time, and the more effective the planning of and transition to that provision will be. By the end of Year 10 most young people, including those with High Needs, should (exam results permitting, where relevant) have a clear idea of what is next.
- 19 Earlier clarification of what is next should enable 'consults' to become more of a formality, and other processes during the year of transfer to take place in a more considered and timely manner. Whilst late, unplanned and unexpected starts in post-16 provision cannot be entirely removed, they can be reduced considerably.
- 20 The currency and content of EHCPs needs to be improved if they are to be fit for post-16 purposes. To do this requires early input from staff with relevant knowledge and experience of the post-16 sector, and of the post-education options for young adults with High Needs. LAs must determine who is best placed to provide this input.
- 21 In this context, the development of a caseworker role to act as a single, trusted and well-informed point of contact for the young person and their family over a period of time, starting pre-16 and continuing post-16, is fundamental to improving transitions. The caseworker should be able to bring knowledge of post-16 provision into pre-16 settings, bringing a focus on what happens post-16 in from an early age.
- 22 For providers, the appointment of transition coordinators to work on transitions with 'feeder' schools and other pre-16 providers would also help to facilitate the transition.
- 23 More generally, anything that can be done to achieve greater standardisation of processes, procedures and documentation on a sub-regional or regional basis will be beneficial in smoothing the transition process and reducing the administrative tasks.

### *Transition from post-16 provision to adult social care*

- 24 For those young adults with High Needs whose destination includes adult social care, it is difficult to escape the conclusion that the transition to it from education is one of the weakest points of the present arrangements. The weakness is not in conception – there is general agreement on what should be done – but in delivery.
- 25 Organisational restructures – in particular the creation of “0 to 25[+]” directorates that bring education and social care under the same director – offer opportunities to rework processes and systems for more effective service delivery and to ensure that the young adult is not lost in transition.
- 26 As is the case for transitions into post-16 education, transitions to adulthood also work best when key Adult Social Care caseworkers are involved in transition planning from an early stage, and the relationship between them and the young adult is built over time.
- 27 To avoid “cliff edges”, education providers need to be able to “scale down” their input as more general adult social care provision “scales up”. Ideally elements of what was in place before transition will continue during and after it, rather than having provision that was terminated (by education) being recreated (by adult services).
- 28 The development of a thorough process for reviewing and ceasing an EHCP is an important element of the transition. Providing staff with training in the process, and supporting them in their decisions, whether this is to cease or to continue a Plan, will help – but only if this is in the context of the young adult and their family not feeling abandoned by a decision to cease.
- 29 In this context, it is important for parents and local authorities to develop a consensus on what constitutes “progression” for a High Needs student. An effective caseworker role will facilitate this.

### *Education, Health and Care: working together*

- 30 The duties that The Code lays on LAs and their partner commissioning bodies to develop joint arrangements for commissioning services for 0 to 25-year-olds who have SEND do not appear to be being met, particularly in respect of Health.
- 31 On the basis of this project, there do not appear to be any quick fixes. In a slow process of establishing and working through local arrangements, in all probability Children’s Services Departments will have to take the lead.
- 32 Examples of good practice in relation to other aspects of disability-related services may be transferrable. Children’s Hearing Services Working Groups, which coordinate inputs into the care and development of children with hearing impairment, could provide a basis for a similar group in every LA/CCG area that would monitor practice in relation to EHCPs to ensure that the aims of The Code are delivered.



## Funding

- 33 The fundamental principle – that LAs, as commissioners, are funding providers to deliver successful *outcomes* for young people, and that this is at root what the High Needs system is about – needs to be restated. Inputs are only a means to an end.
- 34 When a programme is commissioned there should therefore be a conversation about potential outcomes: LAs as commissioners should ask providers about how the inputs requested will lead to the outcomes desired; providers should draw on their experience to show how (broadly) similar young people in the past, having received support along the lines now requested, have achieved the outcomes that are now proposed for the young person (or group of young people) under discussion.
- 35 The project identified a number of incremental changes, possible within the current funding model, that if implemented would facilitate this conversation:
- Block funding. A means through which the calculation of Element 2 (and 3) can be simplified considerably [see paragraph 944 below for further details]
  - Payment for extra places. Payment of the LA contribution in full if these occur within the first 42 days of the start of the autumn term. A subsequent review (e.g. at the spring half term), with payment for these later placements at a reduced rate to take account of the fact that provision will not be for the full year, would help those providers whose starts do not follow the more usual September pattern
  - Element 3 payments. Where it is impossible to come to a full agreement on the costs of a particular programme in advance, an interim Element 3 payment for the autumn term, with further support subject to a November review of the EHCP
  - Standardised costing at sub-regional level. A standardised form, used by all LAs and all providers in a (sub-) region, to submit a request for Element 3 funding simplifies the process of costing provision. Indeed a standardisation of all paperwork (costing, monitoring and reporting) sub-regionally would be helpful.
- 36 However, the range of issues providers and LAs have with the current funding model – in particular with Element 2 – points to more fundamental problems with the funding model, and indeed with the High Needs system as a whole. The final substantive section of the Report (Section 9) therefore outlines recommendations for ...

## ... A more radical reworking of High Needs provision

- 37 Most if not all of the recommendations made above will still be relevant in any more radical reworking of the model; the paragraphs below outline the additional changes we consider are necessary. These represent practice that is not necessarily currently in place in the LAs and providers we have interviewed; indeed some of them may require changes to the Statutory Guidance or the Code of Practice.

### *Strategic planning*

- 38 Each LA should take a strategic view of emerging needs for post-16 provision and the providers best placed to meet these, and develop its provision accordingly in anticipation of identified future needs.
- 39 LAs should involve all post-16 providers in regular strategic planning discussions for post-school provision. For planning (and potentially funding) purposes, LAs should draw a distinction between major, significant and minor providers – the nature and content of the dialogue around strategic planning (and operational commissioning) between an LA and its providers varying according to which of these groups the provider is in.
- 40 LAs should more consciously consider the needs and plans of neighbouring areas and produce joint regional/sub-regional responses where this is appropriate.

### *Greater certainty of funding*

- 41 Better planning will enable LAs to give providers earlier clarity and certainty around their income – and greater and earlier certainty around calls on High Needs blocks.
- 42 A block agreement with a provider (where appropriate) will guarantee, within agreed tolerances, a fixed level of income in respect of a target number of 16+ young people with High Needs, simplify the costing of provision (no calculation of funds at the level of the individual young person is necessary), and thereby facilitate the planning process. Equivalent benefits arise for LAs. This arrangement will not suit all providers (in our strategic planning-related terminology, it should work best with major partners) – or all LAs, but may have attractions for many.
- 43 Where a block agreement is not suitable but certainty is still desired, a provider could be offered a guaranteed minimum funding level sufficient to enable it to plan, and a commitment that all young people actually placed with the provider will be funded at an agreed weekly rate from day 1, on an “advance and reconcile” basis. (In our strategic planning-related terminology, this might be best-suited to a significant partner.)
- 44 Other providers (minor partners) wanting certainty could be asked to propose an average weekly level of advance funding, based on experience and again on an “advance and reconcile” basis, which they can begin to draw down once a young person starts if agreement on the cost of the young person’s programme is delayed.

### *Funding for outcomes*

- 45 As already noted, what matters to the young person is *outcomes*. It follows that, whether focused on an individual young person or a group, commissioning discussions between an LA and its providers needs specifically to address expected programme outcomes.

### *A new funding model*

- 46 The recommendations made in the preceding paragraphs, though radical, would work within the current funding model. However we would like to suggest a more fundamental redesign be considered. This could include the following:
- Retain Element 1 as “core funding”, meaning that the changes have no impact on the wider post-16 funding model
  - Remove “Element 2” (and the associated workbook planning process) from the funding model, with the funds that would otherwise be deducted from each LA’s High Needs block and paid out by the ESFA being retained by the LA, and paid to providers as “top up funding” to cover the additional costs of High Needs provision above an agreed threshold. Effectively this would combine Element 2 and Element 3, though at no additional cost to the LA
  - Reduce the High Needs funding threshold from £6,000 to £4,000, effectively requiring providers to spend no more than ‘as much again’ as the base rate that underpins the calculation of Element 1 (i.e. £9,200 in total) before “top up funding” is triggered
  - Alternatively, or perhaps in addition, consider some form of additional “disadvantage block funding” to providers that is ring-fenced to support students with additional needs who do not meet the High Needs threshold.
- 47 In addition, we recommend that LAs ensure there is some form of plan in place for *all* young people receiving High Needs funding even when they do not have an EHCP.

## **Conclusion**

- 48 This project has attempted to identify opportunities for LAs and providers to use existing practice to develop a stronger and more robust approach to post-16 High Needs provision. Most of the recommendations are therefore based on practice that is already in place or in development in the sector and should be fairly readily transferrable elsewhere. Equally, we are convinced that our more radical recommendations in the final paragraphs above are entirely achievable.

## Introduction

### Our project

- 1 This research project was commissioned in January 2020 by the Local Government Association [LGA], the Association of Colleges [AoC] and Natspec (the membership association for organisations which offer specialist further education and training for students with learning difficulties and/or disabilities).
- 2 The purpose of the project as originally set out in the invitation to tender was to provide the study's sponsors with a clearer understanding of how local authorities and providers within the post-16 high needs system – principally general further education colleges [GFECs]<sup>1</sup> and special post-16 institutions [SPIs] – can work effectively together to manage an increased demand for support for high needs students, and what more can be done to make best use of existing resources.

### Context

- 3 The Children and Families Act 2014 [the Act] introduced significant reform to arrangements for supporting children and young people with special educational needs and/or disabilities [SEND], including the replacement of statements with Education, Health and Care Plans [EHCPs] and the extension of the age range for support to 25.
- 4 Alongside the Act, a Code of Practice<sup>2</sup> was published to describe the legal requirements and statutory guidance and explain the duties of local authorities, health bodies, schools and colleges to provide for those with SEND under part 3 of the Act<sup>3</sup>.

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<sup>1</sup> “GFECs” are to be taken in this context to include sixth form colleges, most of whom will receive some High Needs funding. For this project we did not conduct fieldwork with stand-alone sixth form colleges; we did conduct fieldwork with GFEC groups that included sixth form college provision.

<sup>2</sup> The Department for Education. (2015). *Special educational needs and disability code of practice: 0 to 25 years. Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities*. January 2015. DFE-00205-2013. Available at: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

<sup>3</sup> According to the Code of Practice:

- At xiii. “A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her”
- At xviii. “Many children and young people who have SEN may have a disability under the Equality Act 2010 [that is] ‘a physical or mental impairment which has a long-term [for a year or more] and substantial [more than minor or trivial, including sensory impairments and long term health conditions] adverse effect on their ability to carry out normal day-to-day activities’... Where [such] a disabled child or young person requires special educational provision they will also be covered by the SEN definition [and within the term SEND]”.

According to the Funding Guidance: “High needs students are those [SEND students] who receive additional learning support funding from their local authority high needs budget (often called top-up

- 5 Since the introduction of the Act and Code of Practice the size and complexity of the task faced by local authorities and providers in supporting young people with SEND has increased considerably.
- 6 As at January 2020 there were a total of 390,000 children and young people age 0 to 25 with an EHCP (a 10% increase in twelve months), of whom 25,213 were for young people age 20 to 25 (an increase of 34% over the same period). In 2015 there were 25,548 16 to 25-year olds with an EHCP or SEND statement: this had almost quadrupled to a total of 108,308 in 2020.<sup>4</sup>
- 7 While an additional £700 million in high needs funding was announced as part of the Spending Round for 2020-21, LGA-commissioned research has found that councils are facing a high needs deficit of at least £889 million for the same period<sup>5</sup> as the demand for support continues to rise.
- 8 Not unsurprisingly, member councils are continuing to highlight to the LGA that support for children and young people with SEND is one of the key budgetary pressures that they are having to contend with. The two principal membership bodies for post-16 high needs further education, the AoC and Natspec, also report financial pressures on their member colleges, not only because of the squeeze on LA budgets but also due to national real term cuts to FE budgets over the past 10 years.
- 9 Given this context, our research aimed to:
  - Understand the effectiveness of existing arrangements for the planning, commissioning, funding, and support of high needs provision
  - Establish what more could be done to make best use of existing resources and what changes would improve matters
  - Identify good practice and make recommendations to Government and others to ensure that resources are used as effectively as possible.

## Approach

- 10 We conducted fieldwork in a total of ten local authority areas with responsibility for children's services in the location concerned, selected to cover a range of authority

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funding or Element 3)". (But note that: "If the resident local authority does not agree a placement and top-up funding, students must not be recorded as high needs for funding purposes, even when the institution has assessed a student as requiring additional support [at the required level]".) Education & Skills Funding Agency [ESFA]. 2020. *Funding guidance for young people 2020 to 2021 - Funding rates and formula*. (The extracts quoted above are from paragraphs 147 and 150.) Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/904467/Funding\\_rates\\_and\\_formula\\_202021\\_v1-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904467/Funding_rates_and_formula_202021_v1-2.pdf)

<sup>4</sup> Data at: <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans>

<sup>5</sup> Data reported at: <https://static1.squarespace.com/static/5ce55a5ad4c5c500016855ee/t/5d1cdad6b27e2700017ea7c9/1562172125505/LGA+HN+report+corrected+20.12.18.pdf>

'types' and to take account of their high needs block allocation per deprived child and the increase in EHCPs experienced between 2014 and 2018<sup>6</sup>, as follows:

- 3 unitaries – two counties; one district
- 2 London boroughs – one inner; one outer
- 2 metropolitan districts
- 3 non-metropolitan counties.

- 11 We spoke to a total of 25 staff across our authorities – typically these included some or all of: the Director with overall responsibility for education (or their deputy/assistant with responsibility for high needs provision); the Head of SEND; other staff with operational roles relating to SEND in general and/or post-16 provision in particular; and staff with roles relating to finance, data, commissioning and/or planning. A copy of the semi-structured checklist used to guide these discussions is attached at Annex A.
- 12 Each authority was asked to identify between two and four providers to whom it contracted a significant proportion of its high needs provision for interview. Across the 10 authorities we spoke to 28 providers – 14 GFECs and 14 SPIs (including 3 “umbrella organisations” for community providers). A total of 50 staff were interviewed – typically these included some or all of: a member of the senior management team with responsibility for high needs; the Finance Director; the person with operational responsibility for SEND; other staff with operational roles relating to SEND in general and/or post-16 provision in particular; and staff with roles relating to finance, data, commissioning and/or planning. A copy of the semi-structured checklist used to guide these discussions is attached at Annex B.
- 13 Thus when in this report we refer to “local authorities” we are referring to those we spoke to (and not necessarily local authorities in general). A similar point applies to providers.
- 14 Around a third of the interview programme was completed during the first half of March 2020, prior to the coronavirus lockdown period, mainly on a face-to-face basis. Fieldwork was then paused until the middle of June, when we re-contacted those organisations and interviewees we had been unable to speak to pre-lockdown to confirm whether they were still willing and able to participate; the vast majority were, and we identified alternatives for those who were not. These interviews were completed between late-July and mid-August 2020; all of these second phase interviews were completed remotely, either by phone or video conferencing platform (Zoom, Teams etc.).

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<sup>6</sup> This classification was originally proposed by the ISOS partnership. Natalie Parish, Ben Bryant & Beth Swords. 2018. *Have we reached a 'tipping point'? Trends in spending for children and young people with SEND in England*. The ISOS Partnership. Available at: <https://static1.squarespace.com/static/5ce55a5ad4c5c500016855ee/t/5d1cdad6b27e2700017ea7c9/1562172125505/LGA+HN+report+corrected+20.12.18.pdf>

- 15 We also interviewed a number of stakeholders, representatives of the study sponsors, and other interested parties throughout the fieldwork period. All these interviews took place remotely by phone or video conference, mainly as part of the second phase.
- 16 The fieldwork was conducted on a non-attributable basis and all organisations and interviewees were promised anonymity; we have therefore not listed those we spoke to in an annex to the report.
- 17 We were also given access to background papers and reports from our sponsors. These helped us frame our interview approach and questions.

## Acknowledgements

- 18 We are most grateful for the cooperation that we have received from all of our interviewees, particularly given the unprecedented circumstances due to the coronavirus pandemic.
- 19 We are also grateful for the support from and understanding of the study's sponsors – in particular Clive Harris (LGA), Liz Maudslay (AoC), and Clare Howard (Natspec). They have helped steer our thinking and acted as a sounding board for our emerging findings.

## Structure of this report

- 20 The remaining sections of this report are structured as follows:
1. Provision
  2. Planning
  3. Transition into post-16 provision
  4. Funding
  5. Transition on from post-16 provision
  6. Collaboration and the involvement of others
  7. 19 to 25-year olds
  8. Coronavirus-related issues
  9. A more radical reworking of High Needs provision
  10. Conclusion.
- 21 Sections 1 to 8 follow a common structure:
- Introduction – setting the scene for the rest of the section. For example: a broad outline of how High Needs provision is delivered (Section 1); an outline of how the transition process should work (Section 3); a description of the funding model (Section 4)



- Issues – key findings and other points from the fieldwork, leading into ...
- Solutions from the fieldwork – how the LAs and/or providers that we interviewed have sought to address some of these issues
- [Our – i.e. acl's] Comments and conclusions – our views on which of the solutions seem to have the potential to be implemented more generally/elsewhere, and other observations from us, based on the fieldwork for this project and our wider experience of the sector. Our recommendations, which are presented in the Executive Summary, are drawn from these sub-sections.

22 In sections 1 to 8 we use text boxes to highlight points made in our interviews with local authorities and providers; these are not verbatim quotes (we do not record our interviews) but are intended closely to reflect what was said. We would expect the interviewee(s) concerned to recognise the content and sentiment of what we have reported if not the precise words we have used. We have indicated whether the points made came from interviewees in local authorities [LA], general FE colleges, [GFEC], or SPIs [SPI].



# 1 High Needs provision

## Introduction

- 101 We start with a very broad outline of how High Needs provision is delivered.
- 102 For the purposes of this report, “High Needs” provision for post-16 students is defined as provision funded jointly by local authorities and the Education and Skills Funding Agency [ESFA] which provides programmes of learning and support for students with additional needs. As will be explored in more detail below, the threshold for High Needs provision is that a student’s programme must have an annual cost of £11,200 or more (alternatively, an additional cost above the standard per-student fee paid by ESFA of £6,000 or more).<sup>7</sup>
- 103 Of course, many 16+ students whose programme costs do not meet this threshold have additional learning needs and require additional support over and above that which is routinely provided. Provision of support to these students is arranged differently and does not fall within scope of this report.
- 104 Provision for High Needs students is offered by GFECs and also by SPIs. GFECs will offer places to High Needs students alongside their mainstream student intake, and High Needs students will in many instances follow the same courses as their peers (but with support). They may also offer stand-alone provision for High Needs students, either on “foundation” programmes and/or or more specialist units for students with higher levels of need.
- 105 SPIs tend to offer High Needs provision to those students with higher levels of need. It is rare, though by no means unheard of, for an SPI to offer a place to a student not in receipt of High Needs funding.
- 106 GFECs may be independent stand-alone colleges or may be part of college groups, made up either from local colleges or in some instances from colleges across the country. SPIs can also be stand-alone or part of a larger organisation with branches in more than one part of the country. Most SPIs are not for-profit organisations – indeed SPIs are often run by charities. A minority are run for profit.
- 107 In addition, some SPIs – we will call them “umbrella SPIs” – exist to coordinate the work of a number of smaller organisations that offer placements to 16+ learners. Usually these placements are community-based in some way.
- 108 Both GFECs and SPIs are regulated by ESFA and Ofsted; additionally, providers offering residential provision are also regulated by the Care Quality Commission

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<sup>7</sup> This is for full time students studying for a full year. Part-time and part-year students are broadly treated pro rata. The actual funding methodology is too complex to summarise accurately here. The figures quoted are for 2020 and may change.

[CQC]. In order to qualify for ESFA funding a number of “due diligence” requirements need to be met<sup>8</sup>. We use the term “provider” to refer to GFECs and SPIs collectively.

### *GFECs, SPIs and local authorities*

- 109 LAs “commission” places at GFECs and SPIs effectively by agreeing to pay a share of the cost of the High Needs place for the student concerned – specifically that share above the £11,200 threshold already referred to. We will explore this in more detail later. LAs are obliged to take account of a student’s choice of where and what to study.
- 110 Neither GFECs nor SPIs have any formal relationship with the local authority in which their buildings are based<sup>9</sup>. LAs are free to commission places at any GFEC or SPI, taking into account students’ preferences of what and where to study, and there is no incentive in the High Needs system, financial or otherwise, for an LA to commission places at one GFEC or SPI rather than another. However, close working relationships often arise between LAs and providers (both GFECs and SPIs) and indeed – as this report will show – generally these are to be encouraged.

### *Provision not funded by ESFA*

- 111 LAs are free to commission services for young people over 16 in any way they want, subject only to the audit, due diligence and good practice requirements that apply to the kind of service being commissioned.
- 112 However, if a provider is not currently approved for funding via ESFA then a local authority placing a young person there needs to meet the *full* cost of the provision, not just costs above core (Element 1) funding.
- 113 In some instances a newly-founded SPI may not have completed the necessary steps to secure ESFA funding; if an LA offers to fund the entire cost of provision, then this “early sponsorship” may help the process along in any case.
- 114 For reference, by summer 2020 there were 133 SPIs on the DfE database; 108 were receiving ESFA funding; and 97 are being regularly inspected by Ofsted.<sup>10</sup>

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<sup>8</sup> The founding of new GFECs is sufficiently rare for it to be handled on an ad hoc basis, e.g. sponsored by the developer of a new town or community. Almost always in recent times the solution of a new campus for an existing GFEC has been adopted.

<sup>9</sup> With the exception of the concept of a “home” authority for Element 2 place planning in GFECs (not SPIs) – which we will return to later.

<sup>10</sup> Figures from Natspec, Principals’ Forum, 8 October 2020. One might expect some of the 25 currently unfunded organisations to become eligible for ESFA funding in the future; for that matter most if not all ESFA funded organisations will become automatically subject to Ofsted inspections in due course.

- 115 Generally speaking, placements in ESFA-unfunded provision are outside the scope of this study, and we did not visit any of these providers.

### *Programmes, costs and programme length*

- 116 For the purposes of ESFA funding, a “full-time” programme (“Band 5”) is any programme that includes 540 or more annual timetabled hours in an academic year<sup>11</sup>. It is possible to arrange this number of hours in a three-day week across 36 weeks.
- 117 In general, though with exceptions, GFECs tend to do this for most of their High Needs students. Students (or their families) must then decide what they will do on the other two days of the week (and for that matter in weekends and holidays), and may be able to turn to adult social care services for help if needed.
- 118 SPIs may also offer three-day programmes, but a proportion offer a “full five day” provision, offering social care and enrichment activities alongside the “education” component. Some SPIs offer “residential” places, (with or without weekend residence) and some offer 48-week residential programmes also. All these have different costs, and make it imperative that when comparing (e.g.) GFECs and SPIs one is comparing like with like.
- 119 LAs may also fund transport costs for students where their provider is not local, the journey is difficult, or the student needs to be accompanied.

## **Issues**

### *Local provision*

- 120 There is a clear preference among local authorities for provision to be as local as possible. In part this is cost-related – a perception that local provision is cheaper, particularly (and self-evidently) where it is as an alternative to a residential placement. (Of course, local authorities are barred under the Code of Practice from simply rejecting provision that would otherwise better meet the needs of a young person simply on the grounds of cost. However, they are allowed to consider ‘the efficient use of resources’<sup>12</sup>.)
- 121 Local authorities also consider that it is better to educate young people nearer to their homes because the transition out of education (to employment, supported living in their home community etc.) can be more effective if they remain close to home throughout their time in education. Our impression is that this is a continuing trend – over time, most if not all local authorities will continue to reduce their use of non-local

<sup>11</sup> See <https://www.gov.uk/guidance/16-to-19-funding-planned-hours-in-study-programmes#planned-hours-and-funding-allocations>, which also gives details of how hours are counted.

<sup>12</sup> See the Code of Practice, paragraph 7.3 second bullet (and elsewhere).

provision, where they can do so without reducing the range or quality of options available to their young people.

We intend to grow more local provision to replace (to an extent) the provision offered by SPIs. This is not particularly on the grounds of expense but because we believe it is better to educate young people near to their homes so transition to adult services at the end of their education can be more effective.

[LA]

The trend is to 'localism', with local authorities placing students with less severe needs close to home as day students.

[SPI]

Very few of our young people are now going out of area and we have a strong preference to avoid residential provision as this removes the young person from their community.

[LA]

- 122 Based on our interviews, we believe that the criterion for "localism" adopted by LAs is entirely one of distance, or perhaps travel time, and does not take account of local authority boundaries. In other words, a GFEC or SPI that *happens* to be in the same local authority is not preferred to one that is not if they are (broadly) more or less the same distance from where the student lives.
- 123 The reference to "out of area" is therefore just a reference to geographical distance, and not to local authority boundaries. Our work, both on this project and on other projects in post-16 Special Education, would we think tend to confirm that in placing post-16 students LAs simply consider distance, and (correctly) do not place much if any importance on administrative boundaries.
- 124 This is particularly strong in urban areas where LAs tend to be small and not necessarily consistent with housing patterns.
- 125 A consequence of this is that those students that are still being placed at SPIs, particularly in residential provision, are in general more likely to have more severe needs on average than has previously been the case.

[Since the introduction of the Code of Practice] our average residential fees have increased steadily and significantly. (At this provider more than tripling to c. £100K per student.)

[SPI]

- 126 Not surprisingly, some SPIs have concerns about the trend to more local provision. Partly this is because, as just noted, it may affect the balance of their student populations with the potential for this to affect the provision offered and the progress made by students. Indeed, a move to more local provision may disadvantage some SPIs purely through a decline in the numbers of students attending them.

- 127 It also reflects a concern, expressed to us by some SPIs but not all, that a radically different offer, lower in cost but – SPIs would argue – without the stimulation and long-term benefits to the young person that SPIs can offer, will restrict outcomes for young people to their long-term disadvantage<sup>13</sup>. It is at this point that competition becomes a concern for SPIs.
- 128 At the same time, a number of SPIs are working with local authorities to establish centres within the LA area concerned so as to offer more local provision that meets the needs of the authority's students. We return to this point in a subsequent section of this report.

### *Pressure on local provision to grow*

- 129 Demand for high needs places is generally growing – probably to the extent that it is exceeding the current supply of places in many local authorities.
- 130 A general increase in demand, when combined with the trend towards more “local” provision, increases the pressure to grow capacity at local or regional level where the facilities do not currently exist. “Growing capacity” in this context may include encouraging existing providers to invest in new types of provision, or in new locations, or for that matter seeking to attract entirely new providers.
- 131 Currently, the risk involved in creating or developing new (or extended) provision falls almost entirely on the provider/potential provider: this is potentially unsatisfactory, for a number of reasons:
- It can be difficult for a provider to raise sufficient funds if capital investment is required
  - It therefore obliges providers/potential providers to put at risk their resources (sometimes indeed personal resources) or the resources of a parent charity
  - In failing to share the risk with potential providers, local authorities may well end up paying more than they otherwise would for perhaps less satisfactory student outcomes – for example, because the new provision is never created, even though the need for it is acknowledged, or because it is developed in an ad hoc fashion and the potential gains (a lower price for the service) are never fully realised.

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<sup>13</sup> SPIs also argue that if the full cost of day provision is taken into account, including the costs of transporting young people to and from that provision and other support costs that may be incurred, then the cost difference may disappear altogether.

For the recent development of a new facility we had to take a market decision and invest up front in premises adaptation and appointment of staff ahead of time – essentially in the hope that ‘if you build it, they will come’. This only worked because we had an existing centre, part of which could be adapted at relatively low cost to provide the facility, and more importantly because we could source funds internally to front-load the investment, once our Trustees were convinced that there was a reasonable prospect of success.

[SPI]

- 132 Consequently, it is often easier for providers to continue to offer the same provision at the same scale year after year, possibly squeezing a little bit more from their existing sites (though that is not risk-free), than to make the level of investment necessary for step changes in the provision that is available locally to be made.

If we over-recruit then that is at our risk – we may or may not get paid; we will almost certainly end up carrying the extra costs for at least a term until additional funding is approved.

[SPI]

Even if we are asked to develop new provision, this is entirely at our risk with no guarantees or commitment from authorities that they will use it. So why would we? The system works against growing new provision.

[SPI]

- 133 The inability of the market to deliver sufficient new capacity at a time when it is clearly needed is a significant issue, and one we will address in detail later in this report.

### *Reliance on a small number of providers*

- 134 A potentially negative consequence of placing more provision locally is that an authority becomes more reliant on a small number of key providers for the bulk of its provision, placing it in a weaker position when it comes to negotiating programme content and fees with these providers, and when seeking alternative provision if those it uses are believed to be under-performing.
- 135 A further risk is that the LA will duplicate provision already existing elsewhere, particularly if it does not discuss needs with its LA neighbours before sponsoring new provision. This can be a particular issue when, as now, there are shortages of key specialist staff.
- 136 The need to expand the local provider base (as opposed to simply increasing numbers in existing local provision) was therefore an issue for a number of authorities we interviewed.

### *Lagged funding*

- 137 The lagged funding model is a particular issue for providers contemplating growing their provision or already experiencing growth.

- 138 With many already experiencing year-on-year growth as provision is brought closer to home, providers are already facing increased numbers of potentially unfunded students. The chances of these same providers finding the funding necessary for investment in new provision are likely to be reduced.

Lagged funding is a barrier to developing provision

["Umbrella" SPI]

We need a more diversified provider base but have been hindered in developing one by the funding model.

[LA]

- 139 The details of the funding model are for Section 4 *Funding* of this report. Lagged funding affects GFECs and SPIs in different ways. For GFECs lagged funding at present affects Element 1 of the three-element High Needs post-16 funding methodology: Element 1 payments are based on *last* year's numbers.

Lagged funding is a major issue for us as we have significant year-on-year growth in numbers – our income was £330K down compared to what the position would have been on a non-lagged basis and we have had to use our reserves to meet this. A bid to ESFA for exceptional growth funding was successful for the year just finished (2019-20) but not for the previous year.

["Umbrella SPI"]

- 140 Depending on the extent to which Element 2 is negotiated and agreed by a GFEC and its local authority, Element 2 may also, in effect, be lagged (e.g. if the authority's Element 2 submission is based on the prior year's data with no negotiation and/or change). It is also up to the authority to determine whether it will pay for additional (Element 2) places in-year, and the level at which these will be paid, which again introduces further scope for lagged payments. The effect of lagging is particularly marked on lower-cost programmes, where Elements 1 and 2 makes up a greater share of programme funding.

- 141 For SPIs, Element 1 is "lagged" in the same way. But Element 2 is *always* "lagged", being calculated (and paid) by the ESFA based on an SPI's previous year ILR R06 return. ESFA will, at its discretion, recalculate Element 2 for an SPI if actual numbers in the current year's R06 return greatly exceed the previous value: there is neither need nor the facility to apply for this as the process is automatic. However, nothing is guaranteed and the results of this calculation are not available until April of the year in question. In any case no consideration of additional Element 2 payments can be given if students start their programmes after the February census date upon which return R06 is based.



- 142 This can provide an incentive not to recruit over target, and in particular not to recruit after the February census date:

We tend to specialise in young people with SEMH; students are often referred at short notice when behaviour problems have surfaced at other placements. Of the 91 High Needs students placed with us at present only 72 are receiving Element 1 funding. Appeal for in-year adjustments have previously proved unsuccessful

["Umbrella" SPI]

### *Non-full-time provision in non-school settings*

- 143 The choice faced by most young people at 16 (and their parents) is between:

- The relative certainty offered by full-time provision in a school-based context (probably the same school that they are already attending)
- and
- Fifteen hours over three days at a new provider, and with the need to find other ways of meeting needs for the remaining two days per week.

- 144 Thus, decisions on whether to transfer to FE at 16+ may be based on this issue rather than on a young person's readiness to enter further education.

- 145 Providers and local authorities recognise the additional challenge that trying to place young people in further education at 16 poses, particularly when the extension of the eligible age range for High Needs support means that the option to go elsewhere will still be there for those with more complex needs at age 18/19.

- 146 The lack of a 'full-time offering' from a local GFEC also goes some way to explaining the desire some parents have for their young person to go from a special school to an SPI offering five full days' provision rather than another form of local day provision – and their willingness to push this to Tribunal if necessary. In particular, residential places at SPIs are seen as a way of "guaranteeing" a five-day programme, and in particular of ensuring that wrap-around packages of therapy and social care are automatically provided rather than having to be negotiated locally:

The principle [three days of education-funded provision only] is accepted by adult social care colleagues, but not necessarily by parents used to full-time five-day provision at their child's school (mainstream or special).

[LA]

## **Solutions from the fieldwork**

### *Developing new provision*

- 147 Currently new provision arises (or existing provision is expanded) when an individual, group or organisation spots an area of provision (based on geography or type of disadvantage/disability) that it believes is currently not being adequately met. The



gap can be spotted by either a provider/potential provider or a local authority (or authorities) – examples from our fieldwork include:

- Maintained special schools, either independently or with the support of their 'home' local authority, establishing an SPI

Existing local provision was not meeting the needs of around a third of our [special school] leavers – mainly because they were unable to cope in a GFEC setting. Social day care was not acceptable as an alternative to us, the young people, their parents, or the local authority. With the authority's support, we therefore established our own SPI.

[SPI]

- A local authority setting up or using an existing organisation as a lead contractor to allow alternative (often small community interest) providers to operate on a sub-contracted basis. The sub-contractors concentrate on delivering provision, typically to very small numbers of students, whilst the lead contractor handles the funding, data, quality, regulatory etc. requirements that would otherwise prevent the sub-contractors from delivering to this group of students

The requirements of registering with the ESFA, etc. do discourage some of the smaller 'community based' providers from taking part. This is a shame because some young people cannot cope with anything that looks like a school or college.

[LA]

- As described above, but with the local authority using its Adult Education Service as the intermediary/lead in order to enable alternative (small community interest) providers to deliver provision to SEND students

Our Adult Education Service acts as commissioner for a range of generally small specialist post-16 SEND providers across the authority.

[LA]

- A charitable company acting as the intermediary to enable alternative (small community interest) providers to concentrate on delivering provision, again as outlined above
- An existing SPI being invited by a local authority to open additional provision in the area to meet the present and future needs of a defined group of students
- A local authority working with a wide range of in-county providers to develop more bespoke alternatives to what mainstream providers are able to offer. The providers involved include those delivering EOTAS provision for the authority, a work skills provider, a social enterprise, and a community interest company – plus local SPIs.

148 Most of this new provision is meeting gaps in the local post-16 market – young people whose needs do not appear to be being met by the existing provision (as evidenced by frequent changes of provider, dropping out of provision, becoming NEET etc.). It is therefore often very tailored/bespoke with a focus on achieving outcomes that are not necessarily qualification-related but will enable the young

person to transition to adulthood – into employment, ideally with training, or simply to living more independently than would otherwise be possible.

- 149 The focus on non-GFECs for this type of bespoke provision is interesting. There is a perception among authorities that the adoption of formal qualification-based programmes and a (relatively recently) required focus on a restricted range of accredited learning outcomes from these programmes is seen as preventing GFECs from being as engaged with this type of provision as they could previously have been.
- 150 We also spoke to an SPI that had developed supported accommodation in a number of those local authorities that historically sent reasonable numbers of learners to it: this enabled it to combine specialist provision, delivered non-locally, with the opportunity for students to have a planned and supported transition into their home authority as part of their programme.

### *Multi-provider provision*

- 151 In similar vein, local authorities are enabling providers to work together to create more flexible packages of education and support that more closely meet the needs of students, particularly those for whom the standard GFEC offer is not ideal, by commissioning provision from more than one provider for the same student. This emerging model may be of great interest to SPIs in the future.

### *Central provision of specialist support services*

- 152 The central provision by authorities of certain high needs support services (e.g. for the visually or hearing impaired; speech and language therapy), though not without its challenges in terms of enabling access and integration into programmes, can help more locally based providers to develop their provision – they do not then have to retain this specialist support in-house in order to be able to offer places to students.

### *Local provision of a base level of support*

- 153 Similarly, local authority and, more particularly from the fieldwork, other providers' staff can train provider staff to a level that will enable them to offer a base level of service to their students without having to call in specialists. It is relatively early days, but again this sort of intervention could prove to be helpful for those seeking to develop their provision.

## **Comments/conclusions**

- 154 The funding model and the extent to which it discourages/prevents providers from growing their provision is a concern. However, there are still things that providers can do – and that local authorities can do to promote/encourage providers to develop their provision.

155 We will recommend elsewhere that local authorities carry out a strategic review of the provision they are likely to need for post-16 High Needs young people. (It was indeed this kind of review, informally conducted, that led to the instance of the SPI mentioned above opening additional provision.)

156 Having identified the need, it would seem sensible for local authorities to take one or two steps further and to find ways that they, as potential commissioners, can mitigate the risk that a provider faces in developing new provision. This need not mean investment – though we note that authorities are willing and able to invest in building additional special (free) school provision, and are aware that some have considered creating additional post-16 further education capacity<sup>14</sup>.

157 Local authorities could for example enter into a commitment to commission a certain (or minimum) number of places, at a certain (or minimum) rate, for a certain (or minimum) number of years. The need has already been identified, and the authority knows the extent to which this is projected to exceed the available provision, so offering some form of guarantee is fairly low risk from its point of view. The guarantee will give the provider confidence that the level of risk it is taking on is reduced.

Given notice and some guarantees (even if vague) we would be prepared to develop additional provision for more challenged young people, many of whom at the moment have no option but to go to outside the authority for their post-16 education.

[SPI]

158 To spread the risk on the authority side, this would also work in the case of a group of local authorities at regional or sub-regional level offering a guarantee. Indeed, providers may be more reassured if there is more than one authority committing to use its new provision. Equally, LAs may be reluctant to offer guarantees on their own where numbers of young people with a particular type of need are small/fluctuating but collaboration across LAs would make this possible.

159 Due care would need to be taken to ensure that the rights of a young person (and their parents) to express their views on what provision they would want to go to, and to have this named on the EHCP, were not restricted – and that they were not pushed towards the provider where the authority has ‘places it needs to fill’.

160 It is worth emphasising, indeed, that nothing in this report is intended to reduce the duty (both statutory and moral) on LAs to allow a young person as much choice as possible as to the location and nature of their post-16 education. On the other hand, and as we will argue later, LAs and their providers do need to “plan” provision at least to an extent as if a “supply and demand” model were in place. We do not pretend that reconciling these two imperatives is easy.

161 However, the general principle that local authorities should play a more active role in supporting the development of new provision – either by existing providers or by new

<sup>14</sup> In the end, the authority concerned created additional capacity in other ways.

ones – is important. There is no reason *per se* why authorities – or young people – need to continue to make do with the ‘closest’ fit currently available.

- 162 Of course, any actions authorities take here will also help to broaden the provider base.

## 2 Planning

### Introduction

- 201 Our planning-related discussions with LAs and providers started by focussing on longer term planning – the sort of activities that would, if they were taking place, inform the development of provision, as discussed in section 1 *Provision*.
- 202 We say “if they were taking place”. In practice we saw, it is sad to say, very little evidence that longer term planning of post-16 High Needs provision is currently taking place; there was a general recognition that more needs to be done in this area. Certainly it is a theme in a number of the post-Ofsted/CQC inspections of local area ‘written statements of action’ we have seen. “A significant gap in the data available to support commissioning, which is affecting the ability to plan for places” was also one of the key findings from the *London Post-16 SEND Review*.<sup>15</sup>

At present there is no “strategic” planning, for example no analysis of numbers and variety of needs, and no consideration of any timescale beyond a year.

[LA]

- 203 For most authorities, ‘planning’ therefore goes no further than the allocation of Element 2 places to GFECs on the one hand<sup>16</sup>, and the allocation of individual places for students at particular providers on the other. This is not of course “planning” in any real sense.
- 204 The allocation of Element 2 places takes place as required by the national funding timetable, with place allocations finalised around the end of January in any given year for September starts late that year.
- 205 The placing of individual students is statutorily required to be complete by March 31<sup>st</sup> each year (for a student’s September start) but can extend into August and beyond, in which case the notion of this activity constituting ‘planning’ in any meaningful sense of the term is highly dubious.

Discussions with our authority focus on Element 2 places and the process of placing individual young people – nothing in terms of planning seems to happen at the more medium term/strategic level. Even our more specialist provision, which you might have anticipated would be of interest to the authority in this context, has been developed largely by us.

[GFEC]

<sup>15</sup> Mime for The Department for Education & The Mayor of London. (2019). *London Post-16 SEND Review*. March 2019. Available at: [https://www.london.gov.uk/sites/default/files/london\\_send\\_post-16\\_review\\_0.pdf](https://www.london.gov.uk/sites/default/files/london_send_post-16_review_0.pdf)

<sup>16</sup> Element 2 places are not allocated to SPIs in this way.

There is no planning function or indeed planning-related communications with local authorities at all, except that involved in gaining their permission for an already offered place.

[SPI]

## Issues

### *Planning – a general lack of data*

- 206 There is a general lack of data that is sufficiently robust and comprehensive for it to be relied upon for longer term planning purposes.

Currently even the simplest of data needs – the number of post-16 high needs students over time; reviews due – cannot be met.

[LA]

We have no formal systems in place for data collection and analysis; there is therefore no formal planning of provision.

[LA]

- 207 Some authorities felt that the data in question was in fact being collected, somewhere, but that it was held by different people, in disparate locations, and it was therefore difficult to make any practical use of such management information as there might be.

The data is generally held somewhere within the authority, but is not brought together in one place, and therefore not used (or useable).

[LA]

- 208 Lack of data can also be an issue at provider level:

Data-wise, the college has been running a bespoke system, the development of which has failed to keep pace with users' needs, meaning that solutions have been bolted on, hidden spreadsheets have been created by users to meet their own needs etc. – and that the data (assuming it is somewhere on the system) is 'dirty' and takes too long to find and assemble into anything remotely useful.

[GFEC]

- 209 And also an issue when individually commissioning places:

Planning is very much about individual commissioning of places, with case managers trying to negotiate as effectively as possible but on an individual basis and often in crisis/last minute mode, making it difficult to challenge providers. High cost placements go to panel, with case manager decisions being overturned more often than they should because of the gaps in data and financial information etc. that would enable us to present our case effectively.

[LA]

### Longer term planning – engaging with SPIs

- 210 Authorities reported particular difficulties in engaging in strategic planning-related discussions with SPIs. On the other ‘side’, SPIs would welcome these discussions but feel that authorities are unsure how to engage, or are unable or unwilling to do so.

Planning is still largely absent. We offer a service that many local authorities know about and many send students to us, but very few engage in any ‘planning’ discussions.

[SPI]

Even our ‘home’ authority does not engage in any strategic planning with us. It seems to be left entirely up to families to decide if they want their young people to come to us.

[SPI]

- 211 Whilst numbers of young people may be small, LAs may still be spending significant sums with the SPIs where they commission places. For SPIs, and for the authorities that commission places with them, the lack of engagement feels like a missed opportunity.

If an authority was able to commit in advance to a number of places being taken up in any one year – even if the commitment was only binding ‘in honour’ – we could lower the fees we charged it.

[SPI]

Places need to be commissioned for an agreed number of years (ideally 3), subject to progression and achievement of relevant outcomes (for life, rather than simply education-based), to give some certainty over cash flow and to help authorities with the rates we have to charge.

[SPI]

- 212 It is worth pointing out that not much long term planning takes place with GFECs either, except in those LAs where “block” funding (see Section 9 below in particular) is in place. Block funding arrangements effectively *require* some degree of long term planning, though it does not follow that the LA concerned will then engage in planning discussions with any GFECs where it commissions places outside the block funding arrangements.

## Element 2 planning – number of places<sup>17</sup>

213 In those authorities that take Element 2 planning most seriously, discussions with GFECs on the number of Element 2 places required for the following September take place in the autumn term. The extent to which post-16 transitions have been planned in advance – or can be determined before Christmas in the year before transition – will have an influence on the accuracy of the figures initially agreed.

214 For those authorities where the population is broadly stable and movements in/out are not particularly significant, the process is relatively straightforward and generally reasonably accurate.

Early discussions in the autumn of the previous year take place as to the number of Element 2 places to be allocated to the College, and – since transition reviews are held quite early for prospective new students – the number arrived at is usually pretty accurate.

[GFEC]

215 However, this more often than not fails to be the case, with past data rarely being a good indicator of current and future needs.

The number of students with EHCPs is increasing at 20% a year, year-on-year – we are not seeing commensurate year-on-year increases in Element 2 places and this immediately creates difficulties for us, especially as we may not get any extra in-year payments for additional places.

[GFEC]

216 The mismatch between the timescales for final agreement of Element 2 places (early February in any given year) and the notional timescale for confirmation of transition plans (end of March in any given year), by when there should be a greater degree of certainty around where young people are going to be, was widely criticised by providers and authorities in our interviews. (Of course, the fact that many transitions are not confirmed by the 31<sup>st</sup> March is also not helpful in this context; we return to this in Section 3 *Transition into post-16 provision*.)

The deadlines for Element 2 funding make no sense in the context of the timescales for recruitment and assessment activities – place numbers are finalised well in advance of when the number of places actually required will be in any sense known.

[GFEC]

217 Finally, it is worth noting that since the LA planning of Element 2 places does not apply to SPIs the presence of two different “planning” approaches of itself splits

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<sup>17</sup> Element 2 planning, by local authorities, only applies to GFECs as already noted. For SPIs, again as already noted, Element 2 funding is allocated by the ESFA based on prior year numbers with no ‘planning’ element as such – any in-year variation is ESFA-controlled and purely on the basis of an ILR data-driven exercise. Note that this reduces the potential effectiveness of any coherent Element 2 planning process, since it will not cover significant parts of the provision in many local authorities.



providers unhelpfully into two groups for planning purposes, and may help to explain the lack of LA planning-related engagement felt by SPIs noted earlier in this Section.

### *Element 2 planning – imports/exports*

218 Each post-16 provider involved in Element 2 place planning (in effect, each GFEC) is encouraged to have discussions with its 'home' local authority<sup>18</sup>, and local authorities are encouraged to have discussions between themselves, about how many students from outside a particular local authority area will be coming into the area for post-16 provision, and how many will be going outside the area to providers located in other authorities. The resulting net movement of students is reflected in an adjustment to each authority's high needs block – net importers will gain funding at the rate of £6,000 per planned imported place; net exporters will lose funding on the same basis. The adjustment is made by the ESFA to each LA's High Needs block before it is paid to the authority.

219 Interviewees expressed concerns about the adjustment process as a whole.

The import/export adjustment is a major concern; as a region, we have raised the inequity of the system with the ESFA.

[LA]

220 Concerns were also raised about the specific impact of late placements on the adjustment process, particularly where these were significant in terms of numbers coming from other authorities year-on-year. The receiving authority's High Needs Block will take the hit in the current year, with compensatory offsets not coming in until the following year.

Cross-border movements are increasingly becoming an issue. Neighbouring authorities regularly send High Needs students to us – some no longer have their 'own' more specialist provision, only the option to support within mainstream provision.

There is little incentive for an exporting authority to get their processes right, to ensure place numbers are accurate, and to enable a smooth transfer. If everyone we are expecting comes in September, we have an additional 50 unplanned places for 2020-21; almost all of these are from outside our authority. (This from an interview that took place in early August 2020.)

[GFEC]

221 As more GFECs merge into pan-authority groups, the process of negotiating place numbers becomes further complicated. Indeed, in some cases the ESFA has taken over responsibility for Element 2 entirely from the GFEC's 'home' LA. From the home LA's perspective this removes the in-year risk of it potentially being called upon to cover Element 2 for a significant number of unplanned imports.

<sup>18</sup> Usually the local authority in which its 'main campus', loosely defined, is located. GFECs are independent corporate bodies.

- 222 For some providers cross-national border movements of High Needs students (between Wales and England, and between Scotland and England) and the treatment of looked after children for Element 2 purposes were also issues.
- 223 There is no doubt that import/export considerations are proving more complex than was envisaged when the system to reconcile them was set up. Moreover, the numbers of young people involved is far greater than anticipated. We shall argue later in this report that the “place funding” security offered to GFECs (but not SPIs) by Element 2 place planning is not particularly appreciated by the GFECs who should benefit from it in any case, nor by the ‘home’ LA that negotiates the number of places required, and we will be recommending that the current funding system (including Element 2 and in particular the import/export mechanism) is replaced by a far simpler system. In the present context, it is sufficient to note that having a complex funding mechanism that only covers some providers (i.e. GFECs but not SPIs) is by its nature most unhelpful for the planning process.
- 224 We note in this context that the AoC Policy Group and Natspec discussed with DfE in February 2020 the proposal to remove GFECs from the LA workbook, have Element 2 based on ILR data, and therefore make the process of discussions more strategic and less about negotiating numbers for that year’s workbook.

#### *Individual place commissioning – late consults<sup>19</sup>*

- 225 We cover this issue in more detail in Section 3 *Transition into post-16 provision*. However, there are particular planning-related difficulties caused by late consults that are worth including here:
- Financial uncertainty – this can extend well beyond the start of the new academic year. With negotiations on-going after the student has started, a provider will experience a not inconsiderable period of financial uncertainty and may indeed receive no funding, not even on a provisional basis, until agreement is reached<sup>20</sup>
  - Staffing (and other student-specific resources) – it takes time to put in place appropriate staff and other resources needed to support high needs students. Late consults often mean providers making arrangements at short notice for the use of agency staff to meet an immediate need for a person to support a high needs student; agency staff are necessarily more expensive than staff recruited in the normal way. Also, there will often be a time delay before other resources are available.

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<sup>19</sup> A ‘consult’, in this context, is a specific enquiry from a local authority about whether a particular provider can meet the needs of a named individual learner. We use ‘consultation’ in its generic English meaning in this report, to refer to any two-way dialogue on any topic.

<sup>20</sup> Natspec tell us that their data collected in May 2020 showed that 31% had NO September starts confirmed at this point and 77% had less than 40% of their new intake confirmed. The LA deadline, as we point out elsewhere, is 31 March.

- 226 The combination of late consults and placement decisions plus last minute resourcing inevitably means that the young person concerned will be getting a less than ideal learning experience for at least some of their first year.

We have received and responded to 185 consults for September starts, including 20 that came in in the last two weeks (i.e. after the end of term). We responded positively to almost all of these; currently we have had just 50 confirmations through. The knock-on consequences of this for the young person, their parents, and the provider are serious. [See the points noted above].

[GFEC]

We will not know what our final student numbers and profile of needs looks like until well into the autumn term; confirmation of funding can extend even further than this, and the delays before funding is actually paid can run into subsequent years. (This from an interview conducted in late July 2020.)

[GFEC]

The vast majority of consults come in after April – well after the 31<sup>st</sup> March deadline. Over 100 have come in since the end of June; they are still being received (in early August). For any that come in up to the end of June, we endeavour to respond ‘properly’ (i.e. with a costed response, having seen and assessed the young person); thereafter the response is based on the information in the EHCP only.

As of ‘now’, we are doing a daily check of enrolments to see which high needs students have confirmed. We will have reasonable certainty re. places shortly after the start of term; only a very small minority will have their funding agreed at this stage. Our funding position will be unclear until the end of the first term.

[GFEC]

Our main issue regarding planning will continue to be late consults – plus young people turning up ‘out of the blue’ in September.

[GFEC]

- 227 One of our GFECs (the one in receipt of 50 late consults at the time of our interview) had calculated that they would need to find an additional 1,000 hours of LSA time per week if all these consults became offered and accepted places. The majority of these hours would have to come from agency staff.

- 228 On the basis of our interviews, concerns about late consults apply more to GFECs but SPIs are also affected.

Our main planning-related issues are recruiting and retaining staff – we struggle because contracts cannot be guaranteed for more than a year. We are fortunate that we can use secondments from our special school; without this we would struggle to make our SPI work.

Planning is complicated by uncertainty over numbers and finance. This year, starts for September 2020 became clear in terms of numbers and funding from the ESFA in July;

funding from our authorities for Element 3s are still unclear [at the end of July], partly due to late consults and partly to uncertainty re. how requests for an additional term or year for students whose education has been affected by Covid will be received.

[SPI]

The process of planning collapses at the consult stage. We have two weeks to respond to consultations; authorities rarely come back on anything like as timely a basis to confirm whether or not our response has been successful; neither to us nor, as far as we are aware, to the young person/their parent(s).

[SPI]

*Individual place commissioning – whose responsibility is it anyway?*

229 LA colleagues to whom we spoke expressed some concern that the voices of the school, parents and post-16 provider were being heard in the placement planning process rather than the young person's.

230 LA colleagues also expressed concern that they were being by-passed at the early stages of place commissioning and being presented with a fait accompli, and a fee to pay, late in the day. At this point, in practice it is difficult for the authority to pull the process back from the position that has been agreed between school, parents, post-16 provider, and the young person.

Planning is initially very much schools-driven – they deal with post-16 providers directly on behalf of young people and their parents. On the positive side, this means that most should know where they are going by Christmas. Potential risks are that the details (fee, placement provider) are difficult for us to challenge, and that schools are promoting/creating an expectation of education to 25 that is again difficult for us to challenge.

[LA]

231 Of course the SEND Code of Practice requires the views of young people and their families to be central to the post-16 decision making process. But local authorities are charged, implicitly, with making efficient use of their resources and it is difficult for them to fulfil this requirement if they have no place in the decision making process at all.

232 We might also make the point that if local authorities participated more widely in Annual Reviews of EHCPs in the run up to transition they, and possibly the young person, might be more involved in the decision making process. We will return to this topic later.

233 Consortia can be the cause of similar difficulties with consortium members (sub-contractors) having discussions with pre-16 (18) providers, young people and parents without informing the lead provider.

### *Individual place commissioning – Tribunals*

- 234 The propensity of parents to take local authorities to Tribunal<sup>21</sup> complicates the placement planning process, with the potential (currently probability) that the decision will go against the authority in the vast majority of cases. Not only is this a sign that the LA is “getting its decision wrong” in far too many cases – parents should not need to seek quasi-legal redress to obtain a decision that should have been made in the first place - but in the present context the point is that the delay involved in the Tribunal process often means that a young person’s placement is sometimes not confirmed until January or even later in the first year of their further education, so disrupting the year that it may need to be repeated or the start of the placement deferred until the next academic year.
- 235 We return to this topic in more detail in Section 9 *A more radical reworking*.

### *Individual place commissioning – ability to meet need and other contractual issues*

- 236 This is an issue for both authorities and providers – especially GFECs.
- 237 Some authorities felt that GFECs were too prepared to say they could not meet young people’s more complex needs, thereby ‘forcing’ the authority to commission more expensive provision than they might otherwise have done. (It is not clear to what extent in these instances the young person/family actually “wanted” GFEC provision.)
- 238 Conversely, some GFECs reported that they were still being named in EHCPs, despite having either declined the opportunity to respond to a consult and/or said that they would not be able to meet need.
- 239 This brings us to a difficult area, which is relevant to a number of themes in this report. The commissioning of a High Needs place by a local authority brings together two separate and to an extent incompatible “models”:
- A “Code of Practice” model, where a young person decides where they would like to go for further education (and broadly what they would like to do there): when a preferred provider is ‘named’ in an EHCP, the provider is required to offer the young person a place
  - A “commissioning” model, where the local authority negotiates with one or more providers of post-16 education to deliver a service on its behalf – including negotiating the price for that service.
- 240 This is not a new incompatibility, and is usually resolved (eventually) with good faith on both sides. But in theory an LA could commission a place from a provider and unilaterally decide to pay £1 per year for it<sup>22</sup> even when it was clearly going to cost

<sup>21</sup> Technically the ‘First-tier Tribunal (Special Educational Needs and Disability)’. The shorthand ‘Tribunal’ is generally recognised.

<sup>22</sup> On top of the £11,200 threshold, to be fair.

the provider much more. The provider cannot “refuse to accept” this offer in the usual commercial way, that is by declining the offered contract, because it does not have the power to do so – it *must* take the young person concerned.

- 241 At the very least, and as we have already noted, an LA can decline to pay any money to a provider until an agreement on the cost of the programme has been reached – notwithstanding that this can take all of the Autumn term in some cases. The provider can set no deadlines for this process since it has no meaningful sanctions. If the £1 example is fanciful, this one is not – indeed we are told it is a relatively frequent occurrence.
- 242 We will have suggestions for overcoming this particular difficulty later, in Section 9. But fundamentally the two models of paragraph 239 are incompatible and this incompatibility will continue to cause difficulties until it is resolved.

### *Individual place commissioning – spot-purchasing in-year*

- 243 By definition, in-year purchased places are unplanned – often they are for young people who have dropped out of their initial placement post-16 and are in need of some form of alternative, more bespoke, provision.
- 244 Clearly no placement system is going to get things right first time in every case and the need for some in-year spot purchasing is therefore inevitable. In-year purchasing puts the authority in a more vulnerable negotiating position vis a vis its providers (the range of options available to it is likely to be limited). There is also a concern that, as more authorities initially opt for more local/less costly provision for more of their young people, so the risk of placements failing, and more provision needing to be spot purchased, increases.

## **Solutions from the fieldwork**

- 245 This is a daunting list of issues, mostly but not entirely stemming from the initial failure to give the post-16 sector the strategic planning input it deserves. However, there are exceptions to the general ‘lack of planning’ message that emerge from the fieldwork, and these suggest ways in which local authorities could quickly, and relatively easily, start to address these difficulties. We give some examples below.

### *Block agreement on places (and funding)*

- 246 An authority and its ‘home’ GFECs have come to an arrangement to agree what would elsewhere be Element 2 and Element 3 funding in a block rather than at individual learner level. Planning-wise this has brought forward the point in the year at which High Needs funding for the following year is agreed – effectively this is

known definitively by March: this has enabled the GFECs to plan provision and given the authority certainty over the majority of post-16 calls on its High Needs block<sup>23</sup>.

247 The immediate benefits of this new arrangement have been fourfold:

- A much earlier agreement as to the funds to be provided, now well in advance of the start of the year concerned, which in turn has led to ...
- ... far better relationships between the GFECs and the authority, which has enabled a far more collaborative approach to planning provision
- A reduction in disputes over the cost of programmes at an individual student level
- A great reduction in administration on both sides.

248 The partners, and other post-16 providers, are now looking at planning horizons beyond a year in order to address a projected growth in demand for high needs provision.

249 We discuss this approach in more detail in Section 9 *A more radical reworking of High Needs provision*.

#### *Authority support for new provision*

250 An SPI has worked with an authority (not its 'home' authority) to develop satellite provision in that authority's area to address an identified shortfall in provision for young people with more complex needs. Whilst no binding agreement was entered into, there was an understanding that the authority would refer sufficient young people to it for an agreed number of years for the provision to be worth the SPI making the investment.

251 Elsewhere, in similar vein, authorities have worked with special schools to enable them to develop post-16 SPI provision. Again, whilst nothing formal was in place in terms of guarantees to use the places created there was a level of commitment sufficient for the schools to be willing to develop the facilities<sup>24</sup>. (In one case this included making a redundant school available at a peppercorn rent for repurposing.) Both Ofsted and ESFA emphasise the need for any such new provision to be adult-focussed.

#### *Collaborating with other authorities*

252 Assuming that the LA in question is not a very large county, if there appears to be a shortage of a particular kind of High Needs provision locally then other neighbouring LAs may have a shortage too. It might be possible to collaborate to reduce

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<sup>23</sup> The arrangements do not apply to any out of authority provision – either provision commissioned by the authority in other areas or provision commissioned at the GFECs by other authorities – nor to provision commissioned from non-GFECs.

<sup>24</sup> We have argued that such guarantees could usefully be formalised in Sections 1 and 9.



development costs and ensure a more guaranteed future for the new or extended provider. No-one would want to see neighbouring LAs, facing the same shortage, develop virtually identical new provision on a small scale a stone's throw apart.

- 253 More specifically, we saw examples of where local authorities have become engaged in other activities to promote collaboration and otherwise to increase the capacity of the local high needs system to deliver. Examples drawn to our attention during our fieldwork include regional coordination roles, to help in-region SPIs with their local authority relationships and to facilitate aspects of the commissioning process. Potentially these roles could be broadened, or in the case of SPI-authority relationships, a similar role created, to cover out-of-region SPIs that contract with the region's authorities.

### *Encouraging providers to collaborate*

- 254 We found instances of providers taking collaborative steps to improve working arrangements. Two broad themes were development of other providers' staff, and providers working collaboratively.

Our strategy [to cope with growing demand for high needs provision in general] is not necessarily for us [an SPI] to expand but rather to set up a training centre for education and care professionals that will enable local authority colleagues (and others, including provider staff) to learn the skills to enable them to educate less severely challenged young people in other local provision. This will allow us to support the most challenged, and to provide further (possibly remote) support to those we have trained.

[SPI]

- 255 Providers are also being encouraged by local authorities to work more collaboratively to deliver provision that is more tailored to individual needs. This can range from local authorities taking an active role (e.g. by commissioning provision from a combination of providers), to simply facilitating/encouraging providers to work together (e.g. through provider forums; through the use of the adult education service as an intermediary to enable smaller providers to deliver as sub-contractors). Other examples include:

- Specialist support (OTs, SaLT, HI/VI specialists etc.) to provide support to local providers that will enable them to deliver some provision for SEND students who would otherwise have to go out of area, in all probability to an SPI
- Developing the capacity of mainstream schools to support SEND pupils – this on the basis that if young people are better-supported pre-16 (18), then they will be better able to cope in a mainstream environment post-16 (18)
- Promoting genuine cross-sector dialogue in relation to SEND, including with schools and special schools, in order to identify and investigate areas of mutual concern.

We have been able to have meaningful discussions about funding, commissioning arrangements, standardised rates, and working between providers.



Most significantly, discussions in this group have facilitated improved access for post-16 providers to schools, special and mainstream, pre-16, and opened up the debate about whether, when and how high needs should/could be met without an EHCP. We are now looking at alternative funding arrangements.

[GFEC]

- 256 We note a principle of the Code of Practice is that: “Special schools, SPIs and specialist colleges all have an important role in providing for children and young people with SEND, and in working collaboratively with mainstream and special settings to develop and share expertise and approaches.” These arrangements are entirely consistent with this.
- 257 Other than through lead contractor/sub-contractor arrangements, we found relatively few instances of providers developing collaborative delivery arrangements for programme delivery without input from local authorities.

### *Collaborating with other agencies*

- 258 Occasionally the list of those collaborating in the delivery of provision for High Needs students was extended to include other agencies with a potential interest. For example:

We have been working with the youth offending teams, who have an interest in what happens to a young person when they are discharged from a YOI. We are keen to ensure that they cannot be abandoned to the post-16 education team ‘for an EHCP’ on release without some input from the YOT to ensure their criminal behaviour is addressed.

[LA]

### *Earlier contact with young people*

- 259 This will be a recurring theme throughout our report, and we cover it in more detail in Section 3 *Transition into post-16 provision*. In this context, the earlier the contact, the more likely that the young person’s needs and aspirations for their post-16 destination will be known in good time, and the more effective the planning of provision at a longer term strategic, and at an individual level, will be.

Through a case management approach, we aim to gather more information on those in the SEND system, over an extended period of time, and to make better use of it to plan provision more effectively. This will allow us to move away from one-off placements to a point where provision is properly planned (potentially from early years through to 19 and beyond) for known cohorts of SEND learners as a whole. Gaps in what is needed will be filled through investment in new local provision where appropriate.

- 260 Some of our authorities and post-16 providers have been able to work with schools and their young people with high needs in years 9 and 10 – others have clear aspirations to do so. This needs to become the norm rather than the expectation: it is after all an implicit requirement of the Code of Practice. In this way authorities and

providers will build-up knowledge of the pipeline of students coming forward in future years – both numbers and needs.

### *New staff roles and structures*

- 261 Capacity is an issue for most authorities. Nevertheless, some are investing in new positions and processes – these include ‘progress chasers’, whose role is primarily to make sure the year 11 processes<sup>25</sup> happen as intended so that all placements are agreed by the required deadline; and planning officers who at this stage, not unreasonably, tend to be focused on the pipeline (i.e. those currently in pre-16 provision) on the basis that this will inform what is needed post-16 going forward.

The plan is that we will work on a dataset for schools in the first instance – this is where the bulk of the numbers are and, if this is done correctly, there will then be feed through of good data for post-16 provision that will enable a three-year plan across all provision to be developed.

[LA]

- 262 Organisational restructures – for example the creation of 0 to 25 directorates (see Section 7 *19-25 year olds*) – bring education and social care under the same director and offer opportunities to ensure that the young person is not lost in the transition from education to adult care services at 19.

### *“Working with what you know”*

- 263 Some providers stressed that they were not operating entirely in the dark vis a vis at least next year’s provision. Most will know:
- Those of the current cohort who are staying (and for whom they will be seeking a renewal of funding, and the probable level of that funding)
  - Those of the current cohort who are leaving
  - Those potential starters they have built a relationship with, have assessed and ‘interviewed’ etc., and which of these they believe are likely to start
  - Otherwise, those consults they have responded to, and – even if only on the basis of historical data – what proportion of these are likely to become starters in September
  - The number of places that have been commissioned, and some idea of how likely this is to be accurate
  - More general market information on provision locally – growth areas for provision; what other providers are doing in terms of growing, developing new specialisms (or withdrawing from the market). Etc.

<sup>25</sup> Or indeed year 13 processes for young people moving to further education at 18+

- 264 Our general point is that there is a lot of information and market intelligence available that can be used for planning purposes. From the provider perspective, this means that planning need not be an entirely passive process, simply waiting for the local authority to act/provide data. Nor should local authorities be wary of having discussions with providers about their views of the market. Whilst a complete dataset on who is coming through from schools and when is perhaps the ideal for planning purposes, and though there will still be issues caused by cross-border movement of students, there is still much that can be done with the information that is available.

In the meantime, we feel fairly well on top of what will be required through more informal intelligence from the market: we know the size of the high needs group; we know what areas of need are growing and what this is likely to mean in terms of new provision; we know the trends, and this is sufficient to enable us to identify and start to address things that we know will need doing.

[LA]

### *Being proactive*

- 265 One of the SPIs we interviewed has a more positive view of the ability to plan provision – it has a five-year strategy linked to current and, via discussions with key local authorities about their future needs, potential future locations for its programmes and services. In its experience, most authorities are looking to have more locally-based provision, regardless of the level of need – if a provider is able to help them do this they are usually willing to at least have a conversation.

### *New data systems*

- 266 Most authorities and providers are working towards having a single, local repository for all relevant information/data, the ability to analyse the data, and the capability to act on what the data is saying. This will enable a more effective dialogue to happen, including with health and adult social care. This will in turn help to develop: a joint strategic needs assessment; shared priorities; agreement on who owns which issue; and the development of informed plans, strategic and operational, to meet identified needs. Whilst it is early days for most of this – we do not believe that any of the authorities we spoke to would claim to have this ‘cracked’ and feel that they were in a position to share what they have done – in terms of awareness of the importance of the issue, recognition of the need to do something about it, and steps being taken, the signs are encouraging.
- 267 In the longer term, it might be possible to give existing and potential providers access to aspects of this data (GDPR notwithstanding).

## Comments/conclusions

- 268 We are extremely positive about block agreements (see paragraph 246 above), which appear to us to address a number of the issues identified by authorities and GFECs in our fieldwork for this project – both planning and other concerns<sup>26</sup>.
- 269 We refer to GFECs not to exclude SPIs from any block model but simply to recognise that at present it is more likely that GFECs rather than SPIs will have the high volume (typically in the hundreds) of relatively lower need 16+ learners to enable them to benefit from block contracts. Nevertheless, we would be interested to see if a block contract could be set up between an LA (or group of LAs) and an SPI (or SPIs), particularly where the SPI has created or is proposing to create local specialist provision for the LA(s) concerned. (We are aware of instances where a GFEC's centre for more complex High Needs students is funded on what amounts to a block basis.)
- 270 We would also encourage providers and authorities to be proactive about approaching each other to discuss needs and, assuming common ground can be identified (and we see every reason why this should be the case), to make joint commitments to the development of new provision – investment in the facility on the part of the providers and a commitment to use it, making a site available on favourable terms etc. on the part of authorities. There would appear to us to be considerable scope for this sort of joint development to be used to develop SPI provision at a (sub-)regional level, with multiple authorities working with one (potentially more than one) SPI to develop a sub-regional base (or bases) for provision for those with more complex needs.
- 271 In terms of the available data, we were struck by the (apparent) lack of any thinking 'outside the box' in most cases. If authorities did not have access to a comprehensive set of schools data, too often it seemed like that meant there was nothing that could be done planning-wise; providers seemed to find it difficult to contemplate filling some of their own gaps. Until new management information (client management systems) are in place, there is much that both parties could be doing with the data that is available.
- 272 Ideally, by the end of year 9 at latest most young people will be starting to form a picture of what they want to do next (in terms of GCSEs or alternative qualifications and programmes) and what this is likely to mean in terms of their post-16 destination. We can see no reason for the most vulnerable of young people – those with more complex high needs – to be in a different position to their peers. At its simplest, what is required is for discussions that currently generally take place far too late (in year 11) to be brought forward to take place much earlier (ideally in year 9; certainly in

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<sup>26</sup> We discuss a potential model in more detail in Section 9. We need to declare an interest here as we have worked with a local authority to develop such a model.

year 10); we can see no good reason why this should not be possible<sup>27</sup>. This is in line with Code of Practice requirements.

- 273 Subsequent sections contain more detail of how we envisage this working. Of course there will be gaps and not everything will work out as planned. But if it only ‘works’ for half the cohort, that is half the cohort you are not otherwise trying to deal with in year 11 (or 13), which must represent progress from the current position.

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<sup>27</sup> We do acknowledge the structural difficulty that in “the year that Year 9 planning is brought in” two *simultaneous* planning activities will be needed, one for Year 9 under the new system and one for Year 11 under the old one. This is always the problem about ‘catching up and getting ahead’. However, it is a one-off cost and worth investing in; thereafter it is arguably no more expensive to plan at Year 9 than it is now. If additional resource is really impossible to find then one supposes a phased school-by-school approach could be taken, though this is less satisfactory.

### 3 Transitions into post-16 provision

#### Introduction

- 301 Securing better transitions between life stages and settings, including from secondary to further education, are a key focus of the Code of Practice.
- 302 Further education providers should be involved in transition planning so that they are properly prepared to meet SEND students' needs and in the best position to ensure a successful transition. Chapter 8 of the Code, paragraphs 8.22 to 8.28, gives guidance to schools and post-16 providers on how they should work together to facilitate the transition. The remaining paragraphs focus on transition after Year 11; similar if not identical points apply to transitions taking place after Years 12 and 13.
- 303 In Year 9 the aim is to help young people with SEND explore their aspirations and how different post-16 education options can help them meet these. For post-16 providers we suggest that this might include: liaising with schools; providing information on opportunities; and organising visits, and ensuring that those attending these with SEND (in particular those with EHCPs) are known to the staff involved in hosting these visits so that they can discuss the opportunities available and how the provider would be able to meet their needs in fairly general terms.
- 304 In Year 10 the aim is to enable the young person and their family to explore more specific courses or places to study (for example, through taster days and more focused visits to particular departments) in order that provisional plans for the transition can be drawn up. For post-16 providers this will probably mean: attending/running next steps events; more individually focused engagements with young people and their families to establish the specifics of what they might do, and what support they might therefore need; and seeking further information from the school and other agencies about a young person's particular needs.
- 305 In Year 11 the aim is to support the young person as they finalise their post-16 plans and familiarise themselves with the expected new setting. Post-16 providers will: receive (and respond within 15 days to) consults; conduct any necessary assessments; where required, prepare fee statements for those young people with SEND they are likely to be asked to place; and prepare and deliver activities that will aid the young person's transition into Year 12.

In order for transition to "work" the following are required: early identification (ideally in Year 9); current and accurate documentation (EHCPs; reviews; assessments); and a bespoke transition plan. If any of these are not present, there is a distinct probability that transition will not go well.

[GFEC]

- 306 Thereafter, particularly during the first few weeks after the young person starts, providers will need to monitor young people with SEND to ensure that the support that is in place is sufficient and that, more generally, they are coping in their new

learning environment. They will also need to process unplanned/unexpected admissions and to identify any young people who were not assessed as having high needs on admission but who appear, having spent some time with the provider, to have needs sufficient to warrant assessment.

- 307 Throughout this process, the role of local authorities is at present focused in particular on those SEND young people with an EHCP – ensuring that reviews happen (potentially attending the Year 10 review); updating plans; making arrangements for assessments; managing the consultation process through to an agreed placement and an agreed fee; and preparing for tribunals where placements are disputed by the young person/their parents.

## Issues

- 308 It is important to note that some of the SPIs we spoke to believe they are generally good at transition – they are generally aware of a young person's interest well in advance (certainly before the start of Year 11<sup>28</sup>) and many of the transition processes can be completed in good time as a result (though this does not mean that all elements – decisions and confirmations in particular – are completed on time, or even before the start of term).

We have an initial assessment system that operates throughout the Autumn Term of the year before proposed admission. We will often be aware of the young person's interest in coming to us for a year or more beforehand. Assessments having been made, by February we are in a position to write to the local authority concerned with the offer of a place and a fee quotation. A decision is usually given some time before the end of August<sup>29</sup> in the vast majority of cases.

[SPI]

The transition/admissions process starts with the college liaising closely, particularly with its 'feeder schools', attending open days and progression days and inviting young people and their families to visit if they think they may be interested in applying. Applications come direct from the young people (or their parents) – providing it is broadly appropriate we invite the young person to an assessment week, at the end of which we decide whether needs can be met (and what this involves).

Assuming we can, at this point we write to the young person offering a place 'subject to local authority approval' and to the authority concerned offering a place and saying what it will cost.

[SPI]

- 309 Most SPIs were reasonably content to start the transition process in advance of receiving formal agreement to the placement from the LA concerned. Indeed, if transition is going to start in year 10 this must be the case (since LAs are not

<sup>28</sup> Or Year 13 as the case may be. Points made in this section should be taken to apply to transition at 18+ as well as at 16+ unless otherwise specified.

<sup>29</sup> Note that the statutory deadline is the end of March.

generally in a position formally to approve placements more than a year in advance). This is an example of where trust between an SPI and an LA can support good practice even if formal agreement has to follow later.

- 310 Of course, this does not protect SPIs from, for example, the vagaries of the consult process – viewed by many as being simply a means of testing the market to see if a (cheaper) alternative is possible – which may mean that confirmation of a place is delayed, creating unhelpful uncertainty for the young person, their family and the provider.
- 311 However, it is fair to say that most of the ‘issues’ that follow – though relevant to all providers – were raised by GFECs in the main.

### Access

- 312 Providers had mixed experiences in terms of securing the early access to young people envisaged by the Code of Practice – contacts in Years 9, 10 and 11 as outlined above.

It can be difficult for us to get into schools to see/interview the young person. This would be less of a concern if EHCPs were adequate but often they are not, are not current and/or are not prepared by someone with knowledge of FE. We have a particular issue with education psychologists in this regard.

[GFEC]

No contact with the young person or their parent is permitted<sup>30</sup> – there are ways to work around this to some extent (‘taster’ visits and ‘information meetings’) but these cannot be relied upon and the quality of information gleaned is generally poor.

[SPI]

### EHCPs

- 313 EHCPs were consistently criticised by providers for:
- Their currency – not being updated for reviews, to the extent that some wondered whether reviews had been carried out for some time

Matters are not helped by low standards of EHCP drafting in the pre-16 sector.

[GFEC]

- Their content – particularly for post-16 non-school providers, too many EHCPs displayed little or no knowledge of the further education sector in terms of the

<sup>30</sup> We are aware that preventing access to young people in this way may be unlawful. However this is as reported to us by the interviewee.



options available, the student experience, how programmes were delivered, the way support was provided etc.

- 314 In cases where young people arrived in their post-16 placement without an EHCP, providers felt that it was often not worth going through the process to secure one.<sup>31</sup> Often these students would be in the 'supported in mainstream programmes' group (those in foundation learning and SPI-type provision were more likely to have EHCPs extant on transition), and as such likely to only be with the provider for two years before moving on. Because the potential for any additional funding: (a) is limited, as the SEND would typically be comparatively minor; and (b) is in any case not provided retrospectively to prior years, providers tended to consider that pursuing the case for an EHCP was not a worthwhile exercise. These students' needs are therefore supported out of the provider's own funds.

If a student arrives without a plan it is generally not worth pursuing one – almost certainly by the time you have identified the issues, assembled the evidence, submitted this to the local authority, and they have come to a decision, at least a full academic year will have passed.

[GFEC]

- 315 There was a suspicion among some GFECs that some authorities were exploiting this – deliberately under-playing a young person's needs on transition in the knowledge that the provider was unlikely to challenge the lack of a plan.
- 316 And some providers felt that local authorities were more relaxed about the quality of EHCPs for young people who were going out-of-area for GFEC post-16 provision than for those who were staying in their area: this was reflected in the poor quality of the documentation received from some exporting authorities. We can only speculate why this might be so.

### *Panels*

- 317 A consequence of the inadequacy of EHCPs was the significant numbers of referrals being made to panel<sup>32</sup> for an adjudication – in essence, where a provider felt that a young person required more support than was indicated in the EHCP, or an EHCP where none currently existed, then the case is determined by a panel.
- 318 Providers reported more cases going to panel and the panel process taking longer than previously, with multiple representations of the same case as new evidence was

<sup>31</sup> EHCPs are not a condition of funding for 16 to 18-year olds with High Needs in any provider. However, our fieldwork suggests that in practice many authorities require an EHCP for High Needs block funding to be considered for this age group.

<sup>32</sup> A 'panel' in this context is a non-statutory local authority group that determines/approves the support that a High Needs young person will receive at a provider, and the fee (Element 3) that will be paid for it. In some local authorities, *all* placements go to 'panel'. In others, more routine placement requests – particularly where the young person is being included at the local GFEC – will be handled at officer level with 'appeals' being considered by the panel. Usually it is the student/parent, rather than the potential provider, that has to request an appeal. This mechanism is quite distinct from the statutory First Tier Tribunal, discussed elsewhere.

found and presented (sometimes to a differently comprised panel, meaning that ground previously covered had to be gone over again for new members).

- 319 Both reasons – more cases and cases taking longer – built delays into the place commissioning process, with knock-on implications for other transition-related activities.

*Delays in various Year 11 activities happening*

- 320 For young people moving from secondary school to a post-16 institution in the usual way (i.e. for a September start), the Code of Practice requires that the review and any amendments to the EHCP – including specifying the post-16 provision and naming the institution – are completed by March 31<sup>st</sup> (i.e. 5 months before the transfer occurs)<sup>33</sup>. Providers reported that this deadline is being regularly missed.

The wholesale defaulting on the 31<sup>st</sup> March deadline creates a real burden on inward transition.

[GFEC]

There is usually a pretty clear view of which young people will be going where in September *by the previous Easter* (i.e. after the deadline).

[GFEC]

- 321 This has knock-on implications for other parts of the process that are time-critical in Year 11 – in particular, consults and communicating the results of these, assessments, agreement of fees, and transition activities.

Planning needs to start earlier – Year 9 ideally, Year 10 at the latest – and to involve parents, schools and the young person: this almost never happens currently. At the time of speaking (mid-July, 2020), we have not agreed funding for 100 students who should be starting with us in September 2020. These young people will also not be able to participate in our six-week transition programme.

[GFEC]

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<sup>33</sup> The important point, in the view of providers, is that in order to ‘name’ the institution the local authority should have the agreement of the provider concerned and should also have agreed a fee (Element 3). Delay beyond March 31<sup>st</sup> is more often caused by failure to agree fees than, say, by any doubt on the provider’s part as to whether they can meet need. (But note that LAs can “name” a provider without the provider’s consent provided they have “considered [the provider’s] comments very carefully”: see below.)

There are delays in getting the EHCPs and consultation paperwork from local authorities which means delays in responding to these and identifying needs of the students. Simply ensuring a prompt supply of a full and accurate set of documentation would improve the transition process considerably.

[GFEC]

- 322 Delays may even affect a young person's choice of post-16 destination.

We are seeing young people opting out of education and going to day care simply because it is the easiest thing for them to do; the High Needs systems have become complicated for them to navigate. Delays in the process further complicate the picture. Parents are pushed towards choosing certain outcomes – those that offer most certainty soonest and are straightforward to accommodate – over others.

[SPI]

### Consults

- 323 The Code of Practice requires a local authority to consult a post-16 provider “and consider their comments very carefully” before deciding whether to name it in the young person's EHCP, thereby effectively making it the preferred placement provider. (If another local authority is the provider's home authority, they must also be consulted.)
- 324 For what sounds like a relatively innocuous process in the Code – the above (at paragraph 9.80) is the only mention of it – considerable negative comment was made in our interviews.
- 325 Our impression is that much of this is due to the consult process in practice becoming a (relatively ‘quick and dirty’) alternative to work that should have taken place well before Year 11. (The fact that consults should be responded to within 15 days is, in our view, indicative of the relatively little additional work that a formal consult is expected to require over and above what the Code implicitly assumes will have taken place already.)
- 326 Activities that should have happened in Years 9 and 10 to identify the most suitable post-16 provider, to allow that provider to meet and assess that young person well in advance of the year of transfer, and – subject to local authority approval – to make an offer (or not), are often not taking place as the Code of Practice envisages. Instead *providers* (i.e. more than one) are receiving (sometimes redacted) copies of EHCPs, reviews, assessments and any other relevant documentation, and being asked on the basis of the information provided if they can help (or ‘meet need’). This is not the simple confirmation, within 15 days, of a decision that had effectively already been discussed with and agreed by all relevant parties.
- 327 As a result, providers that have often put not inconsiderable effort into working with a young person on their transition pre-consult at the instigation of the young person, their parents, the school and/or its own staff's efforts, are put in the position of having

to complete a detailed application process in order to become the young person's preferred provider (again).

Earlier engagement with the young person would certainly help matters. Currently we are having to cram too much into the first two terms of Year 11. With earlier dialogue, reviews can be attended, EHCPs and other documentation accessed, a support interview to assess needs can be held, the transition can be properly planned, and funding requests can be made in good time to the local authority.

However, even if all this happened, there is still a risk that consults will cut across this. Why consult for a young person who has already decided where they want to go, and probably applied for and been offered a place?

[GFEC]

- 328 Equally, other providers are being asked to respond to a consult that – unless something dramatic happens – they have no hope of 'winning'. Providers are not clear why they are being consulted. In any event, this creates a significant volume of, for most, often pointless work all around, which simply serves to antagonise providers, and to delay transition planning and provision assessment and costing activities – thereby creating uncertainty for the young person and the provider (and indeed the LA).

There is no recognition of the fact that responding to any consultation, however inappropriate, causes the college a lot of extra work, often with little or no hope of any return.

[GFEC]

- 329 Whilst we can see situations where a more comprehensive consult might be appropriate, where a young person is genuinely unsure what to do next for example, these should be the exception rather than the rule they seem to have become. Most consults should surely be more of the formality they are in the following authority.

After annual review, the preferred provider is formally consulted. Consults are planned to be completed in January, which allows the best part of two terms to work on transition. If the provider believes needs can be met, the authority holds a commissioning meeting with the provider concerned to look at what programmes are accessible, what support is needed and its cost etc. (Ideally these discussions cover all relevant students, including returners already at the provider.) The outcomes of the Annual Review and the commissioning meeting may not dovetail exactly with the EHCP but what is important is what the young person wants to do, not the paperwork.

[LA]

*And, the same process viewed from the provider's perspective)*

In the vast majority of cases a place is offered (if it is going to be) and accepted well before the 31<sup>st</sup> March deadline. A planning meeting is convened with the authority before Easter at which the support needs of all the young people whom we wish to admit are discussed and broadly agreed. Every student has a provision map, directly linked to their EHCP, which sets out what additional support is needed; this is costed by us.

At that point, a specific transition programme for the young person is developed. Visits to us over the spring and summer terms are facilitated and encouraged; the young person will meet

the staff who will be teaching and (ideally – not always possible) supporting them. Everything is done to ensure that there will be no surprises for anyone come September.

[GFEC]

330 If this authority can carry out the process relatively smoothly and to the satisfaction of all parties, then presumably others can too.

331 Providers whose authorities are not as good as this have developed coping strategies – for example not responding to consults unless they know they have already seen the young person; in some cases not responding unless they know they have made an offer and had it accepted. However, these are still unnecessary activities – or would be if the prior processes had taken place as they should.

If we could change one thing it would be to get rid of consults in their current form. We have even contemplated adopting a 'no response to consults' policy, trusting to our relationships with 'feeder' schools, more general marketing efforts, and word of mouth from happy former students to attract new learners with EHCPs.<sup>34</sup>

[GFEC]

332 Four other points are worth making in relation to consults:

- They complicate the process. (Does the young person apply to college in the usual way or not? [They should.] If they do and are accepted, what is the status of this in relation to the consult?)
- They therefore risk taking responsibility for decision-making away from the young people (and their parents). We have already noted that some LAs are concerned about this.
- They tend to emerge in significant quantities at certain points in the year rather than being drip-fed throughout. Given the volume of information being asked for, this can be a problem for providers

Consults tend to arrive in blocks, and to go to a range of providers. (At the time of the interview – early March 2020 – this provider had 40 awaiting a response.) There is considerable duplication of work across providers, much of which would go if EHCPs were properly updated (i.e. a provider was named at an earlier stage) and the transition was properly planned.

[GFEC]

- The communication of outcomes can be subject to significant delays, leaving providers and young people uncertain about what happens next.

333 We presume these issues are related – the volume of consults being returned in large quantities at certain points being as overwhelming for the authorities to review as they are for providers to complete.

<sup>34</sup> This is not, of course, acceptable behaviour within the terms of the Code of Practice.

- 334 Finally, some providers were sufficiently exercised by LAs' delays in consults and indeed in confirming placements that they suggested that ideally there would be a cut-off (say after spring half term), beyond which colleges would be able to say 'No', regardless of what was in the EHCP with regard to a provider being named, on the grounds that a proper assessment, agreement of fees and transition could not take place before September. Again, this does not conform to the Code of Practice, but is evidence of the frustration that these providers feel over LAs' inability to work to statutory deadlines.

### *Administrative burdens*

- 335 Issues with the consult process outlined above are simply one manifestation of the administrative burden created by the transition process. Administration becomes a particular issue when different LAs require the same information – which, after all, is largely prescribed under the Code of Practice – in different formats and/or to be submitted in different ways etc.

Consistency of practice between local authorities would make a great difference to colleges like us that deal with a multiple of them. Forms, processes, timescales, format for presenting information for the local offer, calculation methods, etc. could all be standardised. In some cases, to realise all the benefits would need authorities to change their overall approach in a key area – for example the funding model [which may be asking too much]<sup>35</sup>.

However, often it is just that each authority has devised its own unique way of capturing pretty much the same information as everyone else slightly differently. This can add hours to the administrative task and for the college often stands in the way of standardisation of procedures and automation of manual tasks, which poses potential issues for quality and costs.

[SPI]

### *Unexpected and late starters*

- 336 GFECs referred to the added complications posed by young people with SEND turning up unexpectedly in September.

The vast majority of our High Needs students turn up unexpected in September. We attempt to liaise with each student's authority to determine whether there is an up to date EHCP, to get a copy of it, and to confirm it is fit for purpose. At the same time, we are assessing the young person over the first six weeks to determine if we can accommodate them and, if so, on what basis. There is a lot to do and it can be very disruptive.

[GFEC]

- 337 Some were feeling that the sector's traditional 'openness to all' was being exploited, to the detriment of all parties concerned and were reviewing their willingness to continue to offer places immediately at late or no notice.

<sup>35</sup> acl comment.

### *Staff turnover*

- 338 Primarily in authorities, this was an issue at both strategic and operational levels; restructures causing periods of instability whilst new structures bedded-in, and staff churn resulting in a loss of knowledge relating to individual students, and a lack of consistency in how individuals in apparently similar circumstances were being treated (e.g. how provision was costed; which providers were deemed to be appropriate).

### *The local authority role*

- 339 The Code of Practice envisages local authorities adopting a key worker approach, which provides “young people and parents with a single point of contact to help ensure the holistic provision and co-ordination of services and support”. On the basis of our interviews, we have concerns that in a number of authorities this role is either (a) split and/or (b) insufficiently proactive; in these circumstances we believe that it is difficult for the role to be performed as effectively envisaged.

The split role between SEN and Connexions in relation to High Needs is a real issue for us. The former owns the administrative aspects of the statutory SEN processes, which in this context means sending the consult out and following up on these etc.; the latter monitors and maintains the EHCP.

We get mismatches where the SEN team send the consult out, we decline on the basis we cannot meet need, but the Connexions worker still names us on the EHCP. In similar vein, we have a close relationship with our PRU, have already spoken to all their Year 11s, and offered places to the 13 we deemed suitable for our provision; all have accepted. A week ago, the SEN team sent out consults to us for all these leavers, including for those we had already determined were not suitable for a GFEC setting. How does this happen?

[GFEC]

### *Tribunals*

- 340 As already noted, the delays that already exist elsewhere in the process can be extended further if the placement is not agreed and the matter goes to Tribunal. In circumstances where the Tribunal cannot determine the case before September, parents will often keep their young person at home, rather than send them to the authority’s suggested placement (perhaps because to do so could weaken their case if the placement was deemed to be ‘working’). Whatever the outcome, the young person will then be starting their provision mid-year, which is never easy or ideal.

### *Voice of the young person*

- 341 Providers were concerned that this was not sufficiently heard during the transition, with the result that outcomes were what parents wanted. Many young adults with EHCPs have mental capacity but can find decision-making difficult, particularly if they have not been asked to make major decisions about their lives to date – it is the young person’s plan, not their parents’, and attempts need to be made to ensure that



they are engaged. The lack of a key worker, who may be able to ensure the young person is able to make their views known, may be a contributory factor here.

## Solutions from the fieldwork

### *A dedicated caseworker role*

- 342 The following paragraphs describe how one authority has sought to meet the key worker requirement – others have adopted, or are in the process of introducing, something similar.
- 343 Until Year 11, young people with high needs are the responsibility of the local authority's Schools SEN team. However, from Year 9 onwards a Connexions advisor will have had contact with a high needs young person in their role of providing careers guidance – for example attending Year 9 EHCP reviews. The aim is to establish a relationship between the young person and the Connexions worker at a relatively early stage. From Year 11, the Connexions worker takes on the SEN team member's role and becomes the lead caseworker for young people with high needs in their secondary or special school.
- 344 The idea is that involving a single person over a prolonged period of time allows discussions about transition with the young person, their family and their school to start earlier, for these discussions to produce a clear idea of what a young person with high need's next step should be, and for this to be properly planned for in advance of when the transition actually occurs.
- 345 In particular this has enabled all involved to develop a better understanding of the young person's needs, what a realistic outcome would be, and what inputs would be required. Throughout, the focus is on identifying and planning for an achievable longer-term outcome – more education or employment, via a study programme and/or a supported internship, where possible; otherwise life skills-type provision to enable as independent living as possible.
- 346 The development of the caseworker role has paid dividends in terms of:
- Building parental confidence in the other, non-residential, options available ...
  - ... and ...
  - ... developing new provision, including more bespoke programmes for individual students, thereby ...
  - ... generating budget savings. (In one case applications for out-of-area residential placements have not been used at all for the past 3 years, representing a significant saving on the High Needs block)
  - Improving the relationship with young people and their parents. (Almost no contested transitions – and only one going to tribunal; no challenges when ceasing plans, because the reasons for ceasing the plan are understood, and the young person retains their caseworker as a contact if circumstances change).



- 347 Providers are now involved in Year 10 and 11 reviews – “something that does not happen with other authorities”.
- 348 The key is developing the relationship between the caseworker and the young person and their family over a period of time. Responsibility for the young person is handed over early to someone who is a specialist in where the young person is heading (rather than where they currently are), and relationships develop over a period of time so the caseworker’s advice is trusted by the young person and their parent(s).
- 349 The caseworkers’ understanding of the post-16 landscape has been the key. Low turnover in the Connexions team has helped, meaning that some young people will know their caseworker for up to nine years, and at least six in most cases, and bringing a focus on what happens for these young people post-16 in from an early age.

We are focused on strengthening the EHCP process and the annual reviews, and on developing the casework model such that, over time, the caseworkers become the trusted advisor to the parent/young person – amongst other things, this will mean their views on the alternatives will carry more weight.

[LA]

There is no obvious reason why a decision on transition cannot be reached in Year 10: this would give the young person certainty and enable the provider to ensure the EHCP was up to date and ‘post-16 appropriate’ in good time, in turn enabling funding to be finalised and transition planning to be actioned before the young person starts. Building confidence in non-school options pre-16 could also start to be addressed earlier.

[LA]

- 350 Again, this is practice that could easily be replicated in other local authorities. In particular, ensuring that all LA staff with a SEND role have a good understanding of the range of post-16 provision would be helpful.

### *Cut-offs and sanctions*

- 351 A GFEC has introduced a policy whereby, if an individual’s place is not fully agreed for a September start – i.e. the EHCP is current and has been signed off; the study programme and costings have been agreed etc. – then they will only offer a delayed start date (after October half term; exceptionally after Christmas). This has tended to focus minds on making sure everything is in place in good time as no one wants to have to explain to a parent/young person why they are not able to start in September.
- 352 More generally there was a feeling among providers that there was a need to incentivise local authorities to perform the roles required by the Code of Practice within the timescales contained in the Code. Currently the belief is that authorities are ‘free to fail’, with the providers being left to do whatever they can to ensure that transitions still happen.

### *Standardising documentation*

- 353 We refer in Section 4 *Funding* to a standardised approach to the costing up of additional support, operated on a pan sub-regional basis by a group of local authorities.
- 354 Not something identified through the fieldwork, but which might be worth considering, is the introduction of a mechanism through which any provider could nominate a local authority to be its 'lead' authority for the purposes of commissioning high needs places. The government has already introduced a statutory process ('Primary Authority') that enables organisations operating in more than one local authority area to nominate one 'primary authority' to manage its relationship with all other authorities, and this has led to significant savings in administration<sup>36</sup>.
- 355 The 'primary authority' is able to issue robust and reliable regulatory advice on the areas in scope for the scheme which must be recognised by other local authorities that come into contact with the business for regulatory purposes.
- 356 Extended to a High Needs context, what could happen is that a provider would nominate one local authority to act as its interface with all the other authorities that it took High Needs students from. In terms of administrative burdens, the SPI and the local authority would then, for example, be able to agree a standard response from the SPI to all requests for costs that every other authority would have to accept – there would be no possibility of an authority requiring the SPI to complete its own form, spreadsheet etc.
- 357 It is worth noting that Primary Authority was introduced because previous voluntary arrangements were perceived to have failed – the fact that they were voluntary meant that individual authorities could, and did, choose to ignore these<sup>37</sup>.

### *Appointment of a transition coordinator*

- 358 One GFEC's specialist foundation provision has its own transition coordinator who works with local (mainly special) schools:

They are constantly in/out of their schools; attend all Year 11 annual reviews; arrange bespoke visits to our provision etc.; and ensure that the process works as required by the Code of Practice: as a result the transition works like a dream for our SLDD High Needs joiners.

<sup>36</sup> Primary Authority arrangements were introduced through Part 2 of the *Regulatory Enforcement and Sanctions Act 2008* [RESA] as a means of securing, by statute, greater coordination across, and consistency of enforcement by, local authorities of certain regulated areas of activity than had proved possible under previous voluntary arrangements. Areas in scope include environmental health, trading standards, fire safety.

<sup>37</sup> If this is an avenue that is considered worth pursuing, Primary Authority is an area that we have considerable experience of – including the process of the extension of its remit to include fire safety.

There is no transition coordinator equivalent for mainstream high needs students and the difference is stark: the transition is not as clean or effective; generally there are no invitations to annual reviews; EHCPs and other documentation are more likely to arrive late in the year (if at all); and we get students with no prior notification from the local authority.

We would like to appoint a full-time dedicated transition coordinator for mainstream high needs transfers to build relationships with schools etc. in the same way as for our SLDD students. Ideally, two such posts would be best – one for relationships with our own schools and, given the extent of incomers, one to cover schools from other areas who have sent students to us in reasonable numbers.

[GFEC]

- 359 Potentially it could be helpful to limit referrals so that they only came from those authorities who are part of an arrangement with the provider for transition support purposes: this would encourage authorities to work with their main providers, and to do this through some form of agreed protocol between the parties, and could reduce if not remove the incidence of unannounced arrivals at the start of term.

#### *Provider 'track and trace' system*

- 360 For applications and consults where it is named, rather than wait for notification from the local authority one GFEC in our sample operates its own 'track and trace' system as a means through which to obtain a clear and early indication of whether individual young people that have been offered a place will be taking it up.

#### *Share Point data management*

- 361 One of our GFECs is using Share Point<sup>38</sup> and consolidated spreadsheets to bring together aspects of the placement and transition process, helping the places negotiated to be agreed and costed in good time, and with the agreed number of places currently proving to be substantially accurate as at the end of March.
- 362 Thereafter monthly updates on the anticipated number of places, costings etc. are shared with the authorities the GFEC deals with. Of course, much then depends on what the authority does with the information provided. Where this is reviewed, queries identified, and these raised proactively and quickly, any problems are generally promptly resolved, and everyone is clear on the position of each individual young person. Conversely where no one actually seems to do anything, updates from the GFEC are often issued without comments having been received on the previous version(s), meaning that there is not the same degree of certainty at

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<sup>38</sup> SharePoint is a web-based collaborative platform that integrates with Microsoft Office; it is primarily sold as a document management and storage system, and allows for storage, retrieval, searching, archiving, tracking, management, and reporting on electronic documents and records. Specifically in this context, SharePoint's integration with Windows and Office allows for collaborative real-time editing, encryption, information rights restrictions and managed synchronization. (Other systems are doubtless available.)

anything like the same time for students. Whilst it may help, technology is not, in and of itself, a solution.

## Comments/conclusions

- 363 From an authority's perspective, getting the caseworker-type role and the consults process right seem to us to be fundamental to ensuring that the transition starts early, runs smoothly, and is completed in good time. On the basis of our fieldwork, this is an area where there seems to be quite a bit for many to do.
- 364 From a provider perspective, the coordinator role in building relationships with schools seems the most significant contribution that could be made that would have a positive effect on the transition.
- 365 Anything that can be done to standardise documentation and administrative processes will also benefit providers. The most obvious place for early action here is voluntarily on a (sub-) regional basis, and we are aware (from other work we have done) that some groups of LAs are making progress in this direction. If relevant, the introduction of Primary Authority, or something similar, is necessarily something for the longer term.

## 4 Funding

### Introduction

- 401 Whilst many will already be familiar with the detail, a brief introduction to the way in which provision for students with high needs is currently funded would be a useful start for this Section<sup>39</sup>.
- 402 The bulk of funding spent to support high needs students is derived from two sources: the ESFA, and the High Needs Block, which forms part of each local authority's Dedicated Schools Grant (the main source of government funding spent by local authorities on the provision of education in England).
- 403 Payments to all types of post-16 further education provider in respect of their high needs students comprise some or all of the following 'elements':
- Element 1. A fixed amount that is paid to providers in respect of every student regardless of whether they have high needs or not; payment is made directly by the ESFA to the provider with no impact on local authorities' high needs budgets. For High Needs funding purposes, the assumption is that Element 1 was £5,000 per high needs student in 2019-20 and was increased to £5,200 from 2020-21.
  - Element 2. Deducted from the provider's 'home' local authority<sup>40</sup> High Needs Block and paid directly to the provider by the ESFA at the rate of £6,000 per agreed High Needs funded place<sup>41</sup>. Element 2 is commonly referred to as 'place funding'
- (Element 1 and Element 2 are commonly referred to as 'core funding'.)
- Element 3. Paid directly to the provider by the student's 'home' local authority from its High Needs Block. It is commonly referred to as 'top up funding'.
- 404 The precise details for how elements 1 and 2 are calculated vary by provider type.

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<sup>39</sup> Full details can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920020/High\\_needs\\_operational\\_guide\\_2021\\_to\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920020/High_needs_operational_guide_2021_to_2022.pdf)

<sup>40</sup> The identification of a 'home' local authority for a given GFEC is not necessarily straightforward, especially for multi-campus college groups that may have campuses in more than one local authority. It is usually the local (children's services) authority within which the GFEC's 'principal place of business' happens to be located.

<sup>41</sup> Element 2 deductions from High Needs Blocks are subject to an 'import/export' adjustment to avoid a local authority whose providers receive a significant number of students from other local authorities taking year-on-year 'hits' to its High Needs Block, deductions from its Block being used to pay for the education of students that do not live in its area. The adjustment is lagged, so after the first year a net-importer's High Needs Block will take marginal rather than absolute hits. The import/export adjustment was covered in terms of its impact on provision planning in Section 2.

405 For GFECs:

- Element 1 funding is based on the numbers recorded in the prior year's ILR R04 data return (due in early December). For example, Element 1 for the academic year 2020-21 is based on the R04 return made in academic year 2019-20 – i.e. on the number of students at the institution in early November 2019<sup>42</sup>
- Element 2 funding is, as already noted, based on a “place planning” activity carried out by the institution's home local authority.

406 For SPIs, the ESFA is responsible for calculating Element 1 and Element 2; it does this based on prior year ILR data meaning that, in normal circumstances, SPIs will operate on a lagged funding basis for both these elements with funding for any additional students in the current year being paid in the following year. This approach works well for the majority of SPIs but causes particular issues for new SPIs with initially low student numbers and for rapidly growing SPIs. (Different arrangements apply to newly funded SPIs who have no “prior year data”; in addition there is an appeal mechanism which SPIs can use to apply for additional Element 1 funding when they are growing rapidly, but successful appeals are not guaranteed.)

407 For both GFECs and SPIs, Element 3 is paid in-year and is designed to cover costs over and above Elements 1 and 2 that a provider incurs when making provision for a High Needs funded student – in effect costs above £11,200 in total for 2020-21.

408 How providers calculate the level of Element 3 to be applied for is a decision local to them. Among the providers visited, the majority of SPIs costed out each High Needs student's programme on a largely individual basis, and then deducted expected values for Elements 1 and 2 to calculate an Element 3 “balance”. Some SPIs simplify this process by having their own tiered pricing structure, allocating students to a particular tier according to their needs with the option to make additional charges for inputs above what is usually required.

409 In GFECs, on the other hand, it is more common to calculate the contribution required from Elements 2 and 3 “directly”, by looking at the additional cost of providing the necessary support over and above the service provided by the college for all its learners (i.e. Element 1).

410 The local authority may however “short circuit” this process by proposing a fee to the provider (GFEC or SPI) based on their assessment of need rather than on any proposed programme:

- The local authority concerned may publish a ‘matrix’ of needs and levels, with descriptors – a young person's needs are compared with the descriptors and the ‘best fit’ triggers payment of the sum indicated in the matrix cell concerned
- The authority may operate a banding-based system, which is essentially a one-dimensional matrix.

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<sup>42</sup> We have already referred to the impact that the lagging of Elements 1 and, potentially, 2 has on providers – this was in the context of growing and developing new provision (see Section 1).

- 411 In addition, the authority may seek to prescribe ‘expected unit cost’ figures<sup>43</sup> that providers are expected to use in their calculations.
- 412 While theoretically an SPI could offer a placement with Element 1 funding only (c. £5,200), the nature of the student body at SPIs means that the majority of students will receive some level of Element 3 funding. The picture at GFECs is more mixed; certainly not all students with additional needs will reach the threshold of a full £6,000 additional cost required to trigger Element 3 payments.
- 413 To meet the additional costs of supporting those students whose needs do not cross the threshold for Elements 2 (and 3) support, Disadvantage Funding is paid in two blocks to providers by the ESFA. There are other calls on this funding; it is not reserved exclusively for high needs purposes. Almost all providers stated that after these ‘other calls’, the amount of Disadvantage Funding available for high needs purposes was insufficient to meet the full costs of providing support to those students whose high needs cost less than an extra £6,000 to meet.
- 414 Provider and authority views varied on the extent to which the overall approach to funding was ‘working’ as far as they were concerned; the current approach certainly has its supporters.

The general consensus is that the current arrangements work pretty well.

[LA]

We are quite supportive of the current funding model – specifically we would rather retain a degree of complexity for greater accuracy in the funding of individual students [than switch to an approach that is less individualised].

[GFEC]

## Issues

### *Element 1*

- 415 The principal issue with Element 1 is that the base funding rate for study programmes in the 16 to 19 funding formula for full-time 16- and 17-year olds, upon which it is based, remained unchanged in cash terms (£4,000 per learner) from 2013-14 to 2019-20; for 18-year-olds the full-time rate has been £3,300 since it was introduced in September 2014. The IFS has calculated that spending per full-time equivalent 16 to 18-year-old learner in GFECs and SFCs fell from £6,478 in 2011-12 to £5,698 in 2017-18 (a 12% fall in real terms)<sup>44</sup>.

<sup>43</sup> For example, hourly rates of pay for support staff that limit what can be claimed (regardless of whether or not the provider concerned can actually employ what it would view as satisfactory staff at the rate quoted).

<sup>44</sup> See the IFS’s 2018 *Annual Report on Education Spending*, available at <https://www.ifs.org.uk/uploads/publications/comms/R150.pdf> (page 38).



416 At the 2019 Spending Round, the Government committed to increasing the per-student base rate by 4.7% (to £4,188 for full-time students aged 16 and 17; to £3,455 for students aged over 18<sup>45</sup>) in 2020-21. We have commented extensively elsewhere on the urgent need for an increase in the base rate<sup>46</sup>:

“... our project suggests that GFECs and SFCs are currently facing significant cost pressures which, without an immediate (and significant) increase in income, many providers will have difficulties in meeting: this will have significant impacts on the sector.”

417 The report also referred to our concerns regarding “the capacity of GFECs to carry the extra costs of High Needs learners”.

418 It will be noted that the assumed level of Element 1 (£5,200) is £1,012 more than the base rate for 16 and 17 year olds and £1,745 more than the rate for students aged 18 and over. The base rate is subject to adjustment in the funding formula – principally for student retention and programme cost weightings – and disadvantaged funding also needs to be included, so the amount received per capita will be higher than £4,188 (or £3,455); it is beyond the scope of this study to establish whether £5,200 is a reasonable approximation.

## Element 2

### Threshold

419 As noted above, there is effectively a £6,000 threshold before any additional funding from Element 2 (and Element 3) becomes available for a student that has high needs.

420 There is therefore a considerable incentive for providers to make assessments of the additional inputs required by any given student, and calculate the costs of these inputs, such that the £6,000 threshold is reached, and additional funding is triggered. Of course, having described in some detail a student’s additional needs and secured additional funding to meet these, the provider has to demonstrate that the funding is indeed being spent in the way intended. Since there is no incentive to reduce the level of a student’s support below the point at which no High Needs funding is available, there is a possibility that this results in a number of students being over-supported. Equally others, who would have benefitted from some additional support but could not reach the threshold level in order for this to be triggered, are left to the

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<sup>45</sup> Note that 18+ students who are High Needs do qualify for the £4,188 base rate paid to 16- and 17-year olds, but only (by definition) if they *really are* High Needs in the sense of qualifying for Element 3. If their programmes fall short of the £11,200 threshold described above, they only qualify for £3,455.

<sup>46</sup> See our report for the Department for Education. 2020. *Costs and cost drivers in the further education sector*. February 2020. DFE- RR969. ISBN: 978-1-83870-071-3. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/863983/Costs\\_and\\_cost\\_drivers\\_in\\_the\\_further\\_education\\_sector.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863983/Costs_and_cost_drivers_in_the_further_education_sector.pdf)



vagaries of the Disadvantage Funding Blocks (we discuss this in more detail in Section 9 *A more radical reworking of High Needs provision* below).

- 421 None of this seems sensible, fair or likely to promote an efficient use of the available resources, particularly in GFECs<sup>47</sup>.

#### *Planned places*

- 422 The Code of Practice and Funding Guidance suggest that each local authority has discussions with all providers to whom it regularly sends students. Where GFECs for whom it is the “home authority” are concerned, these discussions are used as already noted to plan the number of (Element 2) places it wishes to commission. It must also consult with other authorities likely to send numbers of High Needs students to these providers. The discussions result in a submission to ESFA from each local authority that will indicate: the adjustments that need to be made from its High Needs Block allocation to account for its exports to, and imports from, other authorities; and the deduction that needs to be made from its High Needs Block allocation in respect of Element 2 places to be commissioned from GFECs based in its area, which the ESFA pays direct to the providers concerned at the rate of £6,000 per agreed (planned) place.

- 423 We were told of instances where the authority simply decided unilaterally on the number of places it would support and reported these to the ESFA with no discussions with GFEC providers.

Place allocations are entirely at the whim of the local authority – there is no requirement on it to negotiate or agree places with us, and no come back for us if it gets it wrong; all the risk is with us.

[GFEC]

- 424 Assuming that a discussion happens, and the number of places agreed is likely to be reasonably close to the number actually required, the in-advance, peace of mind, function played by Element 2 place planning was appreciated by some GFECs. However, the financial security on offer would appear to be relatively slight – the chances of High Needs student numbers ever falling enough for a GFEC’s peace of mind to be disturbed seems remote. Indeed, currently the real financial risk is probably mainly the other way – i.e. that GFECs recruit a large number of students for which no Element 2 places are available.

- 425 Where the number of places available to a provider is not sufficient for the number of students eligible for High Needs at the provider, the provider’s home authority can opt, at its discretion, to increase the number of places it will fund. We came across instances of authorities paying for any and all of the extra places providers asked for – and conversely having a policy of not paying for any. (The mid-point alternative,

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<sup>47</sup> Because most if not all students at SPIs will have needs sufficient to more than clear the threshold, the same issue does not apply to these providers – they will almost certainly all get Element 1, Element 2, and some Element 3 in respect of each of their students.

paying for some, is apparently difficult to sustain.) If you are an over-recruiting provider in a non-paying authority, then you are likely to have to carry the financial costs of this for the first year of a High Needs student's programme. (Hopefully, additional Element 2 places will be agreed for the second and subsequent years, though even this is not certain.)

- 426 Authorities generally felt that Element 2 places gave them little or no certainty – this was because once the number of places has been agreed, they are then used on a 'first come first served' basis; there is no notion of a certain number of places being reserved for a particular local authority.

Element 2s are a poor way of giving certainty *to us* that places will be available *for us*.

[LA]

- 427 A net-exporting authority (more of its High Needs students going to provision in other authorities than vice versa), has no real incentive to get its estimate of the places right – the net-importers' High Needs Block take the hit in-year, particularly if the net-exporter gets its consults out and can get the places it needs agreed early. In extremis, a local authority importing a significant number of students from other authorities may end up paying for places out of its High Needs Block that none of its students actually takes up. Of course, this will only be one-year problem as the import/export adjustment should address the issue the following year. Nevertheless, funding other authorities' High Needs students is a strange use of a local authority's High Needs Block.

### *Timescales*

- 428 As we have already noted (see Section 2 *Planning*), the mismatch between the timescales for final agreement of Element 2 places (early February in any given year) and the notional timescale for confirmation of transition plans (end of March in any given year), was widely criticised by providers and authorities in our interviews.
- 429 In practice, discussions over place numbers need to start early in the autumn term and are effectively finished by Christmas.

Why can't the calculation of Element 2 be delayed until after Easter, by when most providers should have a much clearer idea of the number of places needed?

[LA]

### *Inhibiting growth*

- 430 Element 2 works badly for a provider experiencing growth, particularly if its authority does not pay for any additional places.

Because of the rapid expansion in the number of places, for each of the last two years our allocation of Element 2s has been seriously short of the demand for places: this year we were 60 short. (Fortunately, the authority allocated a full £6,000 for each of the extra Element 2s we asked for.)

[GFEC]

*Sowing financial confusion in providers*

- 431 Interviewees were far from clear on some of the detail of how Element 2 works. For example:
- The operation of the import/export adjustment was not clear to many
  - Reference was made to Element 2 payments being “drawn down” by providers – rather than paid to them in full up to the number of places agreed between the provider and their home authority
  - What happens when the agreed number of Element 2s is exhausted is not clear either. The actual position is that the provider approaches its home authority for additional Element 2 places. Presumably by this point the provider will already have approached the student’s home local authority to check that they agree that the total programme cost for the student in question does exceed £11,200: if it does not, then the student is not High Needs and the need for an additional Element 2 payment does not arise.
  - As explained in the Operational Guide, the local authority approached for an additional Element 2 is under no obligation to pay Element 2 at the full rate of £6,000 or indeed at all. Providers are then obliged to deliver the full programme within the funding they have, covering the shortfall as best they can. Thus for example when a ‘less than full Element 2’ is offered (£4,000 rather than the full £6,000 for example) the full £6,000 is still deducted from the cost calculation, Element 3 can then be sought in the usual way, and the provider will be £2,000 ‘down’ on the deal overall.
- 432 Simply describing some of the potential Element 2 exceptions illustrates the problem, and it is no surprise that providers do not always understand how the calculation of Element 2 works. Having a funding model that is not readily understandable by those seeking to work with it is not a good position to be in. The safest advice to a provider considering whether to take on a student who will (may) require High Needs funding might appear to be not to do so unless and until the payment of Element 2 is confirmed: this cannot be right, and indeed is not permissible under the Code of Practice<sup>48</sup>. No other post-16 student will have their access to education restricted due to the potential non-availability of the necessary funding.

It is not clear to us what Element 2 is for or what it is supposed to cover; it seems entirely arbitrary in terms of its level and when and, for additional Element 2s, what amount is triggered – though we do tend to pay these in full.

[LA]

<sup>48</sup> Given the number of implicit ‘hits’ a GFEC is taking in providing SEND support to young people who do not quite qualify for High Needs funding, however, the idea that a GFEC will take an explicit “hit” of £6,000 on the cost of a programme for a student who absolutely does qualify for High Needs funding is not going to be an attractive one.

### Element 3

#### *Authorities as price takers*

- 433 Authorities were concerned at the extent to which they were being required to take (or leave) providers' estimates of inputs required and the costs of these inputs. (Authority-prescribed expected costs, 'matrices' and banding structures are designed by authorities to try to re-exert a degree of control over costings on their part.)
- 434 In a GFEC context, disputes tended to focus on the need for one-to-one support for students, particularly to support High Needs students in mainstream provision. A student may, of course, not need one-to-one support but, de facto, have it because there are no other High Needs students in their group that the support could be shared with. Again, it would – in our view – be wrong to restrict a High Needs student's ability to access certain subject areas or parts of the curriculum simply because their support cannot be shared with other High Needs students.
- 435 Authorities will generally review providers' views on inputs required and the costs of these but, in the final analysis, find these difficult to challenge. Conversations with providers (and referrals to panel for determination) are viewed as necessary but resource intensive, and often entirely counter-productive.

#### *Authorities as price makers*

- 436 On the other hand, an equally unsatisfactory situation can arise when – through the use of a matrix or banding model – a local authority seeks to 'tell' a provider how much it will have to spend on a particular young person. This 'do the best you can for £x' approach removes the focus away from seeking desirable outcomes for the young person concerned and gives the provider a ready justification for not enabling the young person to achieve as much as might reasonably be expected.
- 437 Conversely, it is conceivable that a band/matrix might in some cases deliver *more* funding to a provider than they would have asked for, which could represent a misuse of resources<sup>49</sup>.

#### *Timing*

- 438 Agreement of the funding required to deliver a young person's chosen programme may not be finalised when the offer of a place is made but can follow much later and take much longer to ratify – by report, up to December (i.e. after the student has

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<sup>49</sup> If a matrix or banding system is 'fair', it will over-fund and under-fund students in roughly equal (weighted) proportions. If then a provider can 'level up' this arrangement locally by adjusting resources between students then perhaps less harm is done. But of course any 'input audit' at the level of the individual student will lock the over-and under- funding in place, with consequences particularly for the under-funded students. And individual providers may not have the necessary mix of students that would allow them to level up – one may persistently end up losing out; another be always making a margin.

started); in some cases beyond this. This can be the case even when the original offer of a place was made before the 31<sup>st</sup> March deadline.

The financial element of the placement comes only after the placement and the content of the education and social care elements have been confirmed. If all runs smoothly, the placement will be confirmed in March and the finances by early July; in practice relatively few placements follow this path and we enter the summer holiday period with relatively little certainty about who is coming and the funding that we will receive.

[GFEC]

### *Elements 2 and 3 – method of calculating and presenting costs*

439 In its High Needs Funding Operational Guide (paragraph 82) DfE state that approaches to calculating funding need to “both create certainty for institutions on the level of funding they can expect to receive ... [and be] sufficiently responsive to changes in the number and needs of the pupils and students being placed ...”.

440 It is generally accepted that Element 1 covers the “standard” College costs incurred in order to be able to deliver a programme for any student (administration; management; learning resources for study programme delivery; premises costs and other general college overheads etc.). Elements 2 and 3 are for additional costs, either specific to an individual High Needs student or more generally incurred because the provider has High Needs provision, that are incurred in order to enable a person with High Needs to attend the provider. However:

- Authorities vary in the level of detail they require for fee calculations
- Some authorities struggle to accept that each High Needs student’s fee must contain a share of ‘overheads’, and more generally what can be regarded as Element 1 costs and what are eligible for Element 2 and 3 purposes
- Some require costs to be presented in a required format (Excel or Word); others are more relaxed allowing providers to use their own.

441 It is particularly frustrating when an SPI, necessarily claiming the fully absorbed cost of the placement it intends to provide, has to split this cost into three entirely arbitrary “Elements” according to certain rules that do not at all reflect the way it organises itself internally<sup>50</sup>.

### *Disadvantage funding*

442 The only source of additional funding for providers that can be used to support young people with SEND who do not meet the £6,000 “threshold” is disadvantage funding.

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<sup>50</sup> For an example, consider an SPI that offers 30 places at £40,000 each. “Element 1”, at £5,200, represents £156,000 of its total £1,200,000 budget. If it is expected to keep all its administrative, premises and other indirect costs within “its Element 1 allowance” it will probably struggle to do so.

- 443 Disadvantage funding (paid by ESFA) is made up of two blocks: one to account for the economic deprivation of the areas a provider recruits students from, the other to account for low levels of student prior attainment in English and maths. The funding received through these blocks is not ring fenced; providers are free to choose the best ways to use it – which may (or may not) include attracting, retaining and supporting disadvantaged students and those with learning difficulties and disabilities whose level of need is not sufficient to trigger High Needs funding.
- 444 Block 1 disadvantage funding is based on a student's postcode, with a funding uplift of between 8.45 and 33.6% depending on the postcode in question (assuming the postcode qualifies; the 27% most deprived super output areas qualify). The calculation is described in the Funding Guidance and associated publications<sup>51</sup>.
- 445 Block 2 disadvantage funding is paid at the rate of £480 per criterion per student (i.e. a student who had low attainment in both English and maths would trigger 2x £480 in disadvantage funding); this amount was not increased in 2020-21.
- 446 As a point of principle, whether the drivers of the blocks (economic deprivation and prior attainment in English and Maths) were a sufficiently good proxy for determining the funding the available to support non-High Needs high needs students was queried by some GFECs and authorities.
- 447 Because disadvantaged funding is not ring-fenced, the amount available from the blocks to support those with learning difficulties and disabilities whose level of need is not sufficiently 'High' is generally reduced by other calls on the blocks – for the pastoral team; for 'student services' more generally; for English/maths retakes; to support other provision for high needs students (e.g. foundation learning) etc..
- 448 In the GFECs who were part of our fieldwork, the proportion of students in GFECs with an EHCP whose needs were not sufficient to enable Elements 2 and 3 to be accessed varied considerably – from only 17% (i.e. 83% of students with an EHCP were High Needs funded) to 75% (i.e. one in four students with an EHCP is High Needs funded). The national figure, based on comparisons between SEN2 data and ESFA data, suggests that 58% of post-16 learners who hold EHCPs qualify for High Needs funding.
- 449 Clearly there are a range of factors at play here – the nature of provision offered by the GFEC; the LA's policy in relation to transferring young people onto EHCPs in 2015; the robustness of the EHCP assessment, failure to cease Plans when they are no longer appropriate for the young person etc..<sup>52</sup>

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<sup>51</sup> See

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/904467/Funding\\_rates\\_and\\_formula\\_202021\\_v1-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904467/Funding_rates_and_formula_202021_v1-2.pdf) , paragraphs 101 and following.

<sup>52</sup> The existence of large numbers of post-16 learners with “unfunded” EHCPs naturally has implications for our later recommendation (see Section 9) that the threshold for funding High Needs to be reduced from its current level of £6,000 additional cost. Possibly a significant proportion of these currently “unfunded” students will then indeed be brought into scope of High Needs funding. However

- 450 Conceptually, there are going to be a great number of young people in GFECs with additional needs whose needs will be relatively minor, often not sufficient to warrant an EHCP, and for whom the cost of providing an adequate support is relatively low; indeed arguably, given a probable 'long-tail' distribution, there are going to be far more of these than there are students with High Needs (i.e. those with needs costing more than £11,200 to meet). Inevitably definitions of this wider additional needs group are less consistent between providers, certainly when compared to whether a young person with an EHCP is/is not High Needs funded. However, estimates of one in four young people with additional needs having an EHCP would not be unreasonable.
- 451 Both of these groups – those with an EHCP but whose needs are not sufficient to require High Needs funding, and those in the wider group with some level of additional need that is not sufficient to warrant an EHCP – have to rely on whatever is left in the disadvantage blocks to meet their needs.
- 452 So, for the non-High Needs additional needs students, the position is particularly acute – high demand for support from an increasingly squeezed pot with an inevitable impact on the level of support received.

If there was an additional 10%, we would use it here – those with EHCPs tend to be sufficiently well-supported.

[GFEC]

To meet the needs of those with additional needs who do not have an EHCP or who don't meet the £6K threshold we have access to c20% of the disadvantage block. In practice almost all of this will go on staff-related additional support costs with little left for other expenditure, especially technology, meaning that it can be difficult fully to support delivery in mainstream classes.

[GFEC]

### *Uncertainty*

- 453 Providers made the point that any uncertainty in the process has the potential to impact on fees charged to authorities: this is particularly so for SPIs, who need to recover all their costs, including organisational overheads, through the charges they make for High Needs students.

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we do believe that the current £6,000 threshold is too high, and leaves too much cost for providers to find. Therefore the potential cost of reducing the threshold – and/or considering some form of additional “disadvantage block funding” to providers that is ring-fenced to support students with additional needs who do not meet the High Needs threshold – needs to be faced.



Our base costs have to be higher than they would otherwise be because we have to plan to recover all our costs on the basis of recruiting c.60 students in 2020-21 as this is what we know we will be funded for, rather than what we may well end up recruiting (which, historically, has always been above the number initially agreed).

[SPI]

### *Administrative burdens*

454 Providers referred to the administrative burdens imposed when dealing with multiple authorities. Differences in the documentation, processes, systems and procedures have already been referred to in Section 3, *Transition into post-16 provision*. In a funding context, variations noted relate to:

- The level of detail required when costing provision and subsequently invoicing
- The format that has to be used when costing provision and subsequently invoicing
- The extent to which end of year reconciliations of amounts received versus expenditure actually incurred took place
- The recording of what providers had agreed to deliver and the fees they would be paid – in some cases whether there was any formal record of this at all
- The application of agreed uplifts in funding to existing students
- Invoicing – the level of detail required, and the extent which providers were having to chase authorities for payment
- The extent of variations created additional costs for providers.

455 Invoicing and debt-chasing is a new, and significant, task for many providers.

We have a full-time staff of four handling invoicing, including one member of staff whose sole responsibility is credit control, in the absence of which we believe many invoices would go unpaid.

[SPI]

Debt-chasing has become a significant issue for us.

[SPI]

Extracting funds from all local authorities is now an issue – payment never happens on time as a matter of course. First payments are generally invoiced in October (after the first 42 days) but not paid until Christmas or the start of the Easter Term.

[SPI]



*“Paying for inputs”*

- 456 Our last issue is generic rather than specific. Because of the way in which High Needs funding works – in that it encourages providers and commissioners alike to plan for, and subsequently price up, the support a young person needs to undertake their post-16 programme – it is all too easy to focus entirely on the inputs to the programme that actually cost the money. Securing additional staff, identifying external support, purchasing additional equipment if required can become ends in themselves and the feeling can arise that once all this has been done and the programme has been put in place then ‘that was the task, and the task is finished’.

EHCPs are too often written in terms of what learners cannot do – and therefore the inputs and support they need – rather than in terms of what they will be able to do, and the support they need to help them achieve.

[SPI]

- 457 This feeling is not dispelled when subsequent audits from the local authority focus on checking whether in fact the inputs have been provided and the money properly spent on the individual concerned.
- 458 Yet of course all the inputs, expensive as they may be, are only of value if they help the young person to achieve the outcomes in terms of life goals that he or she aspires to. All too often, it seems, this aspect does not get the attention one might think it deserves.
- 459 Thus, at the point of commissioning local authorities do not necessarily require providers, or potential providers, to be fully explicit about what they believe their young people should be able to achieve with the resources being requested. Subsequently, it is reported to us, local authorities do not necessarily attend annual reviews while the young person is at college. And at the end of the young person’s programme there is no specific point where the local authority as commissioner and the college as provider sit down and review what actually the young person has achieved against the aspirations recorded at the start of the young person’s college experience – because none were.
- 460 As noted above, matrix and banding arrangements make all this worse, because the (potential) provider is not even *given the opportunity to say* what a young person might look to achieve before the funding is decided. (Effectively the message is: ‘See what you can do with this’.)

## Solutions from the fieldwork

- 461 In this particular instance, ‘solutions from the fieldwork’ are relatively few. The standard funding model is what it is and most LAs and providers do their best to work within the limitations of it.

### *Block funding of Elements 2 and 3*

- 462 Where large and relatively stable numbers of students are commissioned by an LA with a single provider, the introduction of provider-home authority 'block agreements' has removed the need for negotiation of individual support packages.
- 463 As far as we are aware, only one LA has chosen to use the flexibility introduced in 2019-20 to allocate Element 2 on a different basis to that described earlier in this Section.<sup>53</sup>
- 464 These arrangements are discussed in more detail in Section 9, but briefly they involve forecasting of the numbers of High Needs students and a subsequent agreement on the average cost per student (based on experience over previous years) to produce each provider's High Needs budget. In current terminology, Element 2 equals the number of agreed places multiplied by £6,000; the balance of the budget is Element 3. (Of course, under a block system the distinction between Element 2 and Element 3 serves no useful purpose and goes – it would still be needed for import-export adjustment purposes between authorities. See the 2020-21 Operational Guidance, paragraph 142.)
- 465 Both sides accept a 'margin of error' within which there will be no claim for under-funding by the provider or over-funding by the authority, and a definition of 'exceptional costs', in which case the student is removed from the block funding arrangement and individually costed.
- 466 These arrangements do not, in our view, need to be restricted to GFECs. However, where low numbers of placements are involved there is likely to be too much random variation in the actual number from year to year to make such agreements feasible.

### *Interim Element 3 payments and reconciliations to actual costs*

- 467 An interim payment to providers is made based on the average Element 3 amount paid in the previous academic year multiplied by the anticipated number of students eligible for Element 3 in the current year: payments are made monthly in arrears.
- 468 At the end of the academic year, a calculation based on exact student numbers, costs incurred, and support delivered is made, the sums reconciled, and an adjusting payment made as required.
- 469 This is one example of a more general principle, already operated by some local authorities, under which payments per student are agreed early in the placement process on the understanding that any 'unders or overs' are subsequently reconciled.

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<sup>53</sup> See paragraph 140 of *High Needs Funding, 2020-21: Operational Guide* ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/865166/High\\_needs\\_operational\\_guide\\_-\\_2020\\_to\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865166/High_needs_operational_guide_-_2020_to_2021.pdf)).

- 470 Some authorities and providers operate this on an on-going basis with regular reconciliations and adjustments throughout the first two terms as students leave and join, and as needs are reassessed. At the end of the spring term the final position is agreed and this forms the basis of the remaining payments from the authority to the provider over the summer term.
- 471 (The interim payment could be guaranteed at a much earlier stage in the previous year, so that providers did not need to wait until September before knowing their income. Indeed, it would not be unreasonable to fix it in, say, December, when the *current* year's student cohort has broadly stabilised, for starts from September the following year.)

### *Part-payment of extra places*

- 472 As implemented by one of our authorities, provided the additional starts amount to more than 10% of the total starts as at the beginning of November, the authority pays for the extra places at a reduced Element 2 rate, set at a level which is helpful but not especially generous given that two thirds of the academic year remains.
- 473 (Of course, there is an element of risk to the provider in taking on new students after the end of November – if the total number you recruit does not reach the 10% threshold then you receive no additional support for the rest of the year.)

### *Cost ranges*

- 474 Some authorities are producing sets of acceptable (or expected) ranges for costs; providers whose costs fall outside these are being challenged to explain why and may risk losing provision. Costs affected could be unit costs (e.g. salary ranges per hour) or overall guidelines for total costs per student – always accepting, of course, that there will be exceptional students.

### *Standardised costing at sub-regional level*

- 475 One of our authorities was in a sub-region that had adopted such an approach – interestingly the form and guidance are being reviewed currently but with a view to improving on the current version rather than withdrawing the approach, which suggests all parties feel it has value.

### *Bandings*

- 476 Some providers, SPIs in particular, have developed their own banded structure of fees which they propose, they claim generally with success, for all those authorities they take students from. In some cases the fees can be tailored to reflect additional individual support needs for therapies, medical needs etc.
- 477 Some authorities also operate their own banded structure for Element 3. Providers either allocate students to these bands or submit individual costings for each student and let the authority do the allocation. The provider's interest is in the quantum of

funding it receives and how close this is to the sum of the individual costings it has calculated.

- 478 (Given our earlier comments about 'paying for inputs', readers will understand our concerns that banding systems can never be truly satisfactory.)

## Comments/conclusions

- 479 Most of the above solutions and suggestions for improvement have some merit. However, we suggest that the range of issues highlighted in this Section, coupled with the fact that workarounds are being used by providers and authorities to overcome some of these, points to more fundamental problems with the funding model. Section 9 therefore contains our thoughts on more radical changes to it.

- 480 In the remaining paragraphs of this Section, we present some ideas on more incremental changes that could be implemented within the current funding model.

- 481 We start with a major "in principle" statement and then proceed to matters of detail.

### *"Paying for outcomes"*

- 482 We suggest that the fundamental principle – that local authorities as commissioners are funding providers to deliver successful outcomes for young people, and that this is at root what the whole system is about – needs to be restated. It has, in our view, become overlaid with concerns about 'what inputs are needed' and commissioners' subsequent concerns (understandable enough in their own way) that these inputs are actually being provided, to the young people for whom they are intended.

- 483 Thus, there should be an explicit conversation about potential outcomes when a programme is commissioned, and local authorities as commissioners should not be shy about enquiring how the inputs requested will lead to the outcomes desired. Nor should providers hesitate to draw on their experience to show how (broadly) similar young people in the past, having received support along the lines now requested, have indeed achieved the outcomes that are now proposed for the young person under discussion.

- 484 And to pick up a point made elsewhere, providers should be prepared to discuss how shortfalls in the funding requested might jeopardise these outcomes, and to what extent, and also (perhaps) how a small amount of additional funding might yield even better results.

- 485 Local authorities then *must*, in our view, attend at least annual reviews during a young person's time with their provider in order to satisfy themselves that the young person is on track to achieve these outcomes. Equally importantly, at the final annual review (or other end point of the programme) the authority and the provider should look back over the whole programme, and identify outcomes achieved, and use this information to inform future commissioning.

- 486 This may all seem entirely obvious, and indeed no more than the Code of Practice requires. However, on the basis of our fieldwork, it is by no means universal practice – which is why we state it here.
- 487 This link between funding and outcomes can still, of course, apply when ‘block funding’ is being considered (as discussed elsewhere in this report, particularly Section 9 *A more radical reworking of High Needs provision*). Here it is the outcomes of a group of young people that is under discussion during the various stages identified, but the discussion is still valid.
- 488 We turn now to some detailed suggestions drawn from the fieldwork as to how to improve current arrangements.

### *Block funding of Elements 2 and 3*

- 489 We have developed a model along the lines discussed above for one LA and ‘its’ GFECs and remain convinced that the approach has much to commend it as a means through which the calculation of elements 2 and 3 can be simplified considerably, to the benefit of all.

### *Part-payment of extra places*

- 490 We would like to propose that requests for extra places are paid in full (i.e. at the average rate for the provider, local authority, or both) if the need occurs within the first 42 days of the start of the autumn term.
- 491 A second review of places around the spring half term could be helpful for those providers whose programme starts occur mainly after September.

### *First term-only Element 3 payments*

- 492 If it is impossible to come to a full agreement on the costs of a particular programme in advance, then agreeing Element 3 payments for an initial one term only, with further support being subject to a review of each EHCP in November once matters are clearer, could be a way forward.
- 493 Providers could see this as problematic for a number of reasons: the additional work generated for staff; the difficulty of gathering sufficient data after a relatively short period of time; and how practical changing support mid-term/-year is in practice. However, some might view it as at least a helpful option to have.
- 494 (We suggest that the possibility of revising an agreement mid-year if a young person’s difficulties or disabilities, or the support needed to overcome them, are actually very different from those anticipated should always be retained.)

### *Standardised costing at sub-regional level*

- 495 The request has been made many times, but we suggest again that a standardised form be used by all authorities and all providers in a (sub-) region to submit what is effectively a request for Element 3 funding. The form would require providers to account for expenditure up to the threshold £11,200 level with any additional costs above this being identified and priced separately, forming the request for Element 3.

### *High needs students without EHCPs*

- 496 We have identified already that 16-18 High Needs students, even when entitled to Element 3 funding, do not currently require an EHCP<sup>54</sup>. But as also noted elsewhere this does not mean that the need to plan their programmes, and to identify outcomes and progress towards them, can be neglected. Our view is that any student in receipt of High Needs funding should have some form of plan in place for their learning, including objectives, and that this plan should be regularly reviewed.
- 497 We will return to this suggestion – and indeed to others made in the preceding paragraphs – in Section 9, which also contains some more radical thoughts on how the High Needs funding model might be changed.

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<sup>54</sup> Footnote 31.

## 5 Transition on from post-16 provision

### Introduction

- 501 A key principle in the Code of Practice is that, from Year 9 at the latest, preparing for adult life should be:

“... an explicit element of conversations with children and their families as the young person moves into and through post-16 education. For children and young people in or beyond Year 9 with EHC plans, local authorities have a legal duty to include provision to assist in preparing for adulthood in the EHC plan review”.

- 502 Chapter 8 of the Code of Practice sets out in more detail how professionals across education, health and social care should support *all* children and young people with SEND (specifically not just those with an EHCP):

“... to prepare for adult life, and help them go on to achieve the best outcomes in employment, independent living, health and community participation”.

- 503 In this context, the facility for LAs to continue High Needs funding to age 25 is not a licence to carry on adding extra years to a student’s education programme – it will be difficult for the vast majority of SEND students to achieve the necessary progression year-on-year that would enable this.

- 504 For an EHCP to remain in place post-19, the Code of Practice requires learners over the age of 19 to be continuing to progress towards the education or training outcomes contained in their EHCP. Providers are largely supportive of this, and would agree that they should not be funded simply to repeat any programme. Parents, however, are sometimes under the misapprehension that a 0-25 system guarantees a continuing EHCP and continuing education until 25. This may be related to a perception that there are fewer adult services to support a young person as they transition out of education into (say) adult social care. Clearly it is important that LAs and providers work to develop a consensus with parents on what constitutes “progression” and under what circumstances it is appropriate to cease a plan.

### Issues

- 505 It is important to note that the vast majority of students with SEND, like their peers, leave further education for employment, apprenticeships, university etc.

When it is time to leave, a large proportion of our students with SEND transition into work or close-to-work roles (including supported internships, apprenticeships, etc.) Only a small number (10 to 15) transfer into adult social care.

[GFEC]

- 506 For students transitioning to independent living alongside work or further study, providers are able to support transition, for instance with the support of Access to



Work<sup>55</sup> or Disabled Students Allowances<sup>56</sup> (and an institution's own scholarships, grants and bursaries for higher education). At the risk of a major generalisation, the providers we spoke to reported that this transition is usually relatively satisfactory, providing sufficient time and resource is invested into identifying support arrangements.

- 507 What follows in this section therefore primarily relates to those smaller numbers of students whose future life after “education” will include a significant element of adult social care. (This does not rule out the possibility of their holding gainful employment.) While every effort should be made to support SEND young people into work the increasing complexity of disabilities will mean there will always be a (hopefully small) proportion for whom work is not going to be appropriate. Moreover, the impact of Covid is likely to mean that it will be harder for those who might have found employment in 2019 to do so now, at least until the economic situation improves. The challenge for those working with this group of young adults is to enable routes to meaningful, contributory adulthood – something beyond palliative adult social care provision.

### *Planning for transition*

- 508 As required by the Code of Practice, a learning programme should be designed from ‘post-16 day 1’ (if not before) to prepare young people for their transition to successful adult lives.
- 509 Providers were generally concerned, and at times scathing, about the delays to and lack of local authority engagement in planning young people's transitions out of education – this applied to both the education and adult social care teams. Providers were keen to work with authorities to ensure transitions were properly planned but their experience was that authorities were not willing to engage.

The student having started at college, the local authority does not stay extensively involved in the provision made. The authority is always invited to annual reviews but does not usually attend unless there is a specific request from college, student, parent or carer to do so.

[SPI]

We invest time and energy in trying to get local authorities' adult social care staff 'on board' so as to make the transition process as seamless as possible. Local authorities generally make insufficient investment in this and, as a result, it is not always possible to ensure transition reflects the progress a young person has made. Decisions are made too late meaning that, in

<sup>55</sup> Access to Work is a publicly funded employment support programme that aims to help more disabled people start or stay in work by providing practical and financial support to those with a disability or long term physical or mental health condition practical, and advice and guidance to their employers. Providers were keen for us to note the important part Access to Work plays in ensuring a successful transition into work for many students with SEND.

<sup>56</sup> Disabled Students' Allowances are non-repayable and in addition to other student finance. These are designed to cover some of the extra study-related costs students incur due to an impairment, mental health condition, or learning difference.



some instances, we are asked to keep the young person for a further year because arrangements have not been made in time. It can be quite difficult to do this if the young person's whole programme has been steered towards a natural end point.

[SPI]

We often get late requests for another term/year [because transition has not been properly planned]. These can be difficult to accommodate because we are generally operating at capacity with commitments made to new starters.

[SPI]

- 510 There was recognition that adult social care services had suffered from cuts since 2010, and that this may have had the effect of reducing the investment that local authority social care services can make in this group.

Transition is not a strong part of the system. We invest heavily during the final year of 'education' in planning appropriate destinations, but the extent to which we can do this limited by what the authority can offer and their capacity to engage in the process. Adult social care services are heavily overstretched and find it difficult to identify resources for young people with disabilities, particularly if they have highly supportive families and are 'no trouble'.

[SPI]

- 511 However, the issue was potentially more fundamental than this.

In too many cases there is no focus on what should happen next, no idea of what 'next' looks like and how the transition will work.

[SPI]

We need greater clarity – and honesty – over what the purpose of post-16 'education' is for high needs SEND learners, and where the balance between it and preparing for the rest of their adult life lies.

[SPI]

### *Whose responsibility?*

- 512 Once educational outcomes in the EHCP have been achieved or the young person is no longer making progress towards them, there should be no need for further input from education – or certainly no need for education providers to take the lead. However, with others not taking over responsibility for what happens next it tends to be the provider that is left with the responsibility to make further arrangements:

We find that some local authorities – not always those furthest away – have an 'out of sight, out of mind' approach, believing that once a young person is safely placed [in FE] their job is done.

[SPI]

Transitions out, especially for our SLDD students, tend not to work well; too often it is left to GFECs to deliver the 'news' (i.e. that provision will cease) and to manage the transition out. We do not know what continuing provision and adult care services are on offer, and really do not feel we should be expected to, but will 'do what we can'.

[GFEC]

Where the young adult does not have their own social worker already, it is quite difficult to engage adult social services.

[SPI]

The idea of any other agency leading the transition is whimsical. Our staff are in almost all cases solely responsible for finding an onward destination for students – be this in employment, supported or otherwise, or in the community.

[GFEC]

### *A deferred cliff-edge*

- 513 If 'education' is thought of as a wedge, tapering away with time, then equally 'adult social care' should be a wedge tapering in the other direction, increasing with time, so that when a student leaves education their social care package is fully in place and has been built up progressively over the last two, three, five (or more) years.
- 514 What is not acceptable is for a student to leave college on a Friday and adult social care to start putting a package together for them the following Monday morning; unfortunately, this is what providers reported was happening all too often. It appears to be difficult to involve adult social care colleagues in the process early enough, and by failing to involve them early the opportunity for education colleagues to *help* the transition to adult social care support is lost.

We are not seeing adult social care engaging at age 22/23. The issue is sufficiently acute that we are under pressure to develop our own adult day care service offer.

[SPI]

### *Regression*

- 515 The risk is that if a transition is not planned or, if planned, not followed through, then young people may plateau in their abilities or even regress, with much of the progress that they have made during their time in college (and before) being lost.
- 516 Of course, this also represents a waste of the considerable amount of funding that the local authority has invested in the young person throughout their time in education. In some ways, this is just as serious a point.

### *Transition to adult health services*

- 517 If anything, the concerns regarding the transition from children's health services to equivalent adult health services were even greater than the transition to adult social care, not least because potentially more young people will be involved; in addition to those with more complex needs, many of those following the usual post-FE paths into employment, apprenticeships, university etc. will have on-going health needs. The diverse nature of adult health care services, coupled with the lack of any equivalent of a community-based paediatrician to manage the health care needs of young adults with SEND, was a particular issue.
- 518 At the risk of stating the obvious, in a society where the vast majority of health issues affect the elderly a young adult with high needs that does require health support is liable to feel very isolated.

### *Summary*

- 519 Self-evidently, there is a need for a multi-agency approach to transition for many of the sector's more complex learners. Many will need employment support, adult social support and health support, working together in a "package" that is built around the specific needs of the individual. Providers report to us that this need is not always met.

## **Solutions from the fieldwork**

- 520 First, it is worth pointing out that some LAs are making considerable efforts to ensure better joint working, for example by bringing education and social care staff into the same directorate and by jointly reworking processes and systems for more effective service delivery.

Social care is now much more engaged than health – especially around the 'other two days' per week and the transition to adult services once education-related progression is no longer possible.

[LA]

- 521 Whilst this is still work in progress, the signs are positive.

### *Planning for transition*

- 522 Transitions to adulthood work well when adult social care is involved in the transition relatively early. Where this is the case, some authorities and providers have been able to ensure that what was in place before transition in terms of supported employment, community-based activities etc. can be continued during and afterwards, rather than being terminated and having to be recreated by adult services.
- 523 Certainly, it is more difficult for local authorities to engage with non-local providers, including for transition purposes; in-area, non-residential placements will help.

However, we came across instances where SPIs were still able to build good relationships with some of their more geographically distant authorities, with benefits in terms of the quality of the transition flowing from these. (They could make a direct comparison with the situation with other authorities that were less engaged, so were well-placed to be able to comment.)

- 524 There is arguably a *greater* case for adult social care colleagues to engage specifically with young adults being educated out of area since the provider's staff may lack the contacts and networks local to the young person's home.

### *Early engagement with adult social care*

- 525 Where the young adult has their own social worker or a dedicated, transition-focused, member of the Adult Social Care team and they take the lead role then the perception of providers is that the transition generally works much better.

During the annual review specific links are made with the Adult Social Care Transition Officer; specific plans are made for the transition to adult social care if that is the preferred or likely destination for the student concerned. Adult Social Care acknowledges that this is their responsibility.

[SPI]

The college liaises with Adult Social Care and with other agencies to craft a transition process for the next stage in the young person's life.

[SPI]

- 526 This process can break down if a young adult does not have a named social worker. Providers reported that in some cases one is only provided if the young person is in crisis, or their parents are particularly good at pushing for one.
- 527 Accordingly, we suggest that LAs should consider identifying a named individual to take responsibility for supporting transition for students as their EHCP comes to an end. This would certainly be consistent with the Code of Practice even if it is not specifically proposed within it.
- 528 Engagement with adult social care is not solely a provider responsibility. The education team in one of the authorities we interviewed has been working with adult social care (and NDTi) to redesign processes and develop joint planning<sup>57</sup>.
- 529 'Deep dives' and case studies may help to facilitate the dissemination of good practice.

<sup>57</sup> The National Development Team for inclusion. See <https://www.ndti.org.uk/>.

### *Personal budgets*

- 530 Personal budgets may help some young people and their families to make appropriate choices but are not always easy for families lacking social capital to manage – in which case the local authority may be able to provide help to “navigate the system”.

### *0 to 25 services*

- 531 Establishing a ‘0 to 25’ service may help to improve the transition from young people’s to adult care services. As already noted, it certainly has the merit of ensuring that the relevant staff are working for the same part of the authority, which in turn should facilitate closer working between the education and social care teams.
- 532 In particular, it should help ensure LAs start planning for transition well in advance of the point at which High Needs funding must by law cease.

### *Removing the cliff edge*

- 533 If transition on the ‘intersecting wedges’ principle is going to work then, by definition, providers need to be able to “scale down” their education input as more general adult social care provision “scales up”. We are not aware of any specific difficulties in doing this, but some providers we spoke to were unsure about how this would be consistent with current post-16 funding arrangements.

## **Comments/conclusions**

- 534 It is difficult to escape the conclusion that transition from education into adult social care is one of the weakest points of the present arrangements. The weakness is not in conception – there is general agreement, we believe, across all parties as to what should be done – but in delivery.
- 535 We are not, we hope, naïve. We do appreciate that while the initial ‘education’ investment in a young person is by definition time-limited and aimed to give the young person the ‘best possible start’, adult social care provision will extend, and may ultimately increase, over the remaining years of a person’s lifetime. Arguably one cannot expect the same annual levels of support (and funding) that have characterised the ‘education’ years to continue all the way through adulthood.
- 536 But there is definitely a ‘momentum’ established by the initial investment in education that, as the young person transitions from ‘education’ to ‘care’, there is a strong case for maintaining even if the resources are lacking to increase it. Allowing the young person to slip back into being merely “taken care of” – perhaps even by parents, who of course will not live for ever and whose eventual death may leave a person with disabilities in late middle age more vulnerable than ever – is not a fair return on the significant investment already made in the young person, and more to the point is not fair on the young person, or the middle aged and elderly adult they will eventually become.

## 6 Education, Health and Care: working together

### Introduction

- 601 Chapter 3 of the Code of Practice explains the duties local authorities and their partner commissioning bodies have for developing joint arrangements for commissioning services to improve outcomes for 0 to 25-year-olds who have SEND.
- 602 This section outlines some of the main issues in relation to partner collaborations and describes actions that have been taken to promote collaborative working. Working relationships with adult and social services focus on the transition on from/out of education-led provision and provision for young adults with SEND; these are primarily covered in Section 5 *Transition on from post-16 provision*. Our focus here is therefore mainly on Health issues.
- 603 We must state at the outset that, whilst some interviews reported greater clarity around what support was required and from whom, in terms of the fundamentals – the engagement of partner commissioning bodies and determining who, other than or in addition to education, pays – one is forced to the conclusion that the requirements of the Code are not being met in this respect.

There are many examples of partners working to effectively support students with high needs; there are no examples of parties [other than education] paying for any of this.

[LA]

Often the only way to gain access to support that arguably should usually be funded by others (e.g. Health for speech and language therapy), particularly in the quantities that are required to secure the provision that would make a real difference, is for Education to fund it. This problem is well known: unfortunately, we have no particular local solutions to offer.

[LA]

- 604 However, at the provider and authority levels there are some interesting developments in relation to collaboration.

### Issues

- 605 Two issues were highlighted by our interviewees. Both were health-related: the difficulties authorities had experienced dealing with a multiplicity of clinical commissioning groups [CCGs], and the way in which services are offered.
- 606 With regard to multiple CCGs, this issue may now be historic. There have been a number of relatively recent mergers (18 with effect from 1<sup>st</sup> April, 2020), which should hopefully reduce the previous complications of a local authority having to deal with many CCGs on its operating patch. (We note, however, that CCG boundaries are still not uniformly coterminous with local authority administrative boundaries.)

- 607 Whilst it may be historic, it is interesting to note that the issue was still being referred to – quite possibly coronavirus has had an effect here, new arrangements being slower to be manifested in new approaches to collaborative working. And, of course, cross border movement-related issues will, we presume, apply as much in a health as they do in an education context in relation to students with SEND.
- 608 Also relevant here (potentially – we are by no means expert in the details of health structures and how they relate to the provision of support for high needs students) are sustainability and transformation partnerships [STPs<sup>58</sup>] and integrated care systems [ICSs<sup>59</sup>]. At the local level, the position seems complicated. So, for example:
- Leeds City Council and NHS Leeds CCG cover broadly the same geographical area; each are part of ...
  - ... the West Yorkshire & Harrogate [which comes under North Yorkshire County Council rather than West Yorkshire] Health & Care Partnership, which is an ICS. It comprises 7 CCGs; 8 local authorities; 8 NHS Trusts and Foundation Trusts (4 hospitals; 4 (different?) mental health trusts); plus various other organisations, including the Yorkshire Ambulance Service, community organisations and GP federations (we have not been readily able to identify precisely how many)<sup>60</sup>.
- 609 Some, closer to the system, may understand it and know what is happening and where to engage with it for SEND-related purposes. We believe many do not and are struggling. In these circumstances the path of least resistance, particularly given the timeframe for decisions, is probably simply to ask education to pay.
- 610 There is also a pervasive feeling that 'education is the funder of last resort'. Thus providers, for instance, send their Element 3 invoices to the relevant sponsoring Children's Services Department and it is up to that department to seek any reimbursement from the relevant Health body if it feels it can, and indeed from Adult Social Care, again if it feels able.
- 611 Arguably more importantly, this difficulty can also mean that sometimes the content of EHCPs as it relates to objectives and outcomes aimed at meeting the health and social care needs of children and young people is poor, with health practitioners not contributing to the EHCP process, not having copies of draft or final EHCPs etc. It is

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<sup>58</sup> A vehicle through which local NHS organisations and councils joined forces to develop proposals for improved health and care – these are England-wide (i.e. every council and NHS organisation will belong to an STP).

<sup>59</sup> A step on from an STP, involving a closer collaboration and collective responsibility for managing resources, delivering NHS standards, and improving the health of the local population covered by the ICS.

<sup>60</sup> At the time of writing this report (September 2020), the Partnership's website (<https://www.england.nhs.uk/integratedcare/integrated-care-systems/west-yorkshire-and-harrogate-ics/>) invites readers to "Find out about the projects that will be happening in 2018/19 ...", which does not augur well for the immediacy of the organisation's aims.



fair to note that in the inspection reports we have seen, this can be due to the CCG failing to engage rather than the local authority not seeking their input.

- 612 Our second issue – the way in which services are offered – is easier to explain. As we have mentioned elsewhere (see section 5, *Transition on from post-16 provision*), the (hopefully) more integrated model of healthcare provided to a young person pre-18 becomes fragmented post-18 with individual needs being met via a GP referral in most cases, resulting in discontinuities of service for young people once they reach the age of 18.

## Solutions from the fieldwork

### Health

- 613 On the basis of what we have seen and heard, there do not appear to be any quick fixes. The solution here feels like a slow process of establishing and working through local arrangements. In all probability Children's Services Departments will have to take the lead.

We have a history of collaborating with partner organisations in health. Initially this was for the delivery of a more integrated support service to older adults; over the years the approach has been extended to cover a wider age range.

[LA]

- 614 However, we have not specifically interviewed Health Service colleagues during this assignment. It is probably fair to say that the integrated education, health and social care arrangements for young people with SEND envisaged in the Code of Practice, and exemplified in the way the joint 'Education, Health and Care Plan' was designed to replace the education-led 'Statement of Special Educational Needs' (and LDAs), have never been implemented on the ground in the way that all, including Health Service colleagues, might wish.<sup>61</sup>
- 615 There may be specific good practice in some areas of disability that might point the way. The Children's Hearing Services Working Groups [CHSWGs]<sup>62</sup> are multi-professional groups that explicitly bring together Health, Children's Services (education) and Children's Services (social care) staff to ensure coordination of input into the care and development of children with hearing impairment. While they do not consider the progress of individual young people, they do ensure that interventions designed for young people (including EHCPs) receive inputs from all parties. By and large, as the referenced document shows, the CHSWGs are believed to work well.

<sup>61</sup> It is worth pointing out that the Code of Practice was specifically published as a joint publication endorsed by the Department of Education and the Department of Health.

<sup>62</sup> See <https://www.england.nhs.uk/wp-content/uploads/2019/11/what-works-chswg-guide.pdf>



- 616 Interestingly, they are not ‘optional’. All local authorities and associated health authorities are required to have a CHSWG and be in membership of it; annual returns to Government are required to demonstrate that the Groups are actually functioning as intended.
- 617 If it is felt – perhaps after fuller investigation – that Health Service colleagues’ involvement in shaping the progress of post-16 High Needs young people is indeed not as great as anyone (including those colleagues themselves) might wish, then perhaps a similar group might be set up in every local authority/CCG area to monitor collaborative practice in EHCPs and more widely, and to ensure that the collaborative working aims of the Code of Practice are delivered.

## Comments/conclusions

- 618 There have been any number of reorganisations of the National Health Service and its providers in recent years, and we are not about to suggest it may be time for another.
- 619 However, regarding the apparent difficulties experienced in involving Health services, something that draws on CHSWGs may offer a way forward.
- 620 We do wonder whether there would be value in a separate study that is focused specifically on this issue, thoroughly investigates and unpacks the problems, and identifies where and what progress is being made – and what can be drawn from practice in related areas.

## 7 19- to 25-year olds

### Introduction

- 701 Among fundamental changes introduced by the Act and Code of Practice were the extension of the age range for support from 0 to 25 and the inclusion of disabled children and young people, as well as those with SEN, in the target group for support. We were specifically asked to consider the impact of these changes at the upper end of the age range.

### Issues

- 702 For a number of our interviewees, the extension of the age range was not as significant an issue as it was for others.

The raising of the age limit [to 25] has had some implications but is not seen as a serious problem for us.

[LA]

We are not seeing a great deal of pressure from this age range.

[LA]

- 703 (To be clear, these are comments about the extension of the age range to 25, not about pressure on the High Needs budget as a whole.)
- 704 Whether or not the impact of the extension was significant appears, at least in part, to depend on each authority's approach to converting the Statements, and Learning Disability Assessments [LDAs], extant at the time the Code was introduced to EHCPs.
- 705 Those authorities that did a wholesale rollover from Statements to EHCPs are now starting to believe they may have "made a rod for their own back", significantly increasing the number of young people with EHCPs feeding through the system on an annual basis. Resources (staff and budgets) came under pressure in very short order, and have remained in that state for much of the intervening period. (It is worth noting that the deadlines by which any conversion of a Statement to an EHCP had to be carried out may have encouraged this practice.)

We have an on-going issue regarding transfers from statements [and LDAs] to EHCPs, which we did on an unconsidered and wholesale basis and with no account taken of the number of plans in existence, how they would be properly managed, or their content. We did not see each plan as a new, vastly different, document that needed to be written from scratch. We are now doing a full review of all older students' EHCPs to establish whether they are still needed and, if so, whether their content is appropriate or needs revising.

[LA]

- 706 In contrast, LAs who had a more considered approach to determining whether an EHCP was warranted have been better placed to retain a higher degree of control over the situation.<sup>63</sup>

*Delays in the system – further pressure on resources*

- 707 Any increase in volumes that is not matched with an equivalent increase in resources exacerbates issues that we have already raised in this report – increases in the number of young people with EHCPs meaning more annual reviews; more EHCPs to be revised with new support packages to be costed and agreed; more young adults to support in transitioning on from education-based provision etc..

Many of the problems are due simply to the increased number of young people, leading to delays in the system, coupled with a reduced resource in authorities to handle the volume.

[LA]

- 708 In an ideal world, LAs would be given more resources to reflect any volume increase they are experiencing. Given the current pressure on national budgets (not least in the light of the current pandemic) we would hesitate to predict that this is likely to happen.

*Delayed transitions post-16*

- 709 Authorities reported a concern that some special schools have used the extension of the age range simply to extend the time young people with more complex High Needs spend in school by a further two years: this is on the basis that young people can then still access other post-16 provision at 18/19.

Schools treat the extension as an excuse to keep students in education for a further two years on the basis that they will still get some further education after that.

[LA]

- 710 Some providers shared these concerns. They believed that when a student remains in school until 18 the decision on what happens next is simply deferred, often with no obvious educational benefit to the young person.

The years between 16 and 19 can be 'wasted' [in special schools] before a transfer to further education, which should have taken place at 16, occurs. The effect is to put older young people behind their peer group, and with a slightly younger group of students – which can in itself be problematic.

[GFEC]

<sup>63</sup> It is only fair to note that the Code of Practice is not as clear as it might be on this, saying (at paragraph xi., page 15) that "...it is expected that all those who have a statement and who would have continued to have one under the current system, will be transferred to an EHC plan", but also (at paragraph vi., page 14) that there should be "... a graduated approach to identifying and supporting pupils and students ... [with EHCPs] for children and young people with more complex needs".

- 711 Naturally the schools in question may have different views about this, and we should acknowledge that our fieldwork for this project did not include discussions with schools (mainstream or special) about their post-16 provision. Nevertheless the perception reported is interesting.

### *Ceasing plans*

- 712 The number of EHCPs in existence post-19 makes it more difficult for authorities to review these plans, and to cease those that are no longer required. Whilst some of these plans will be non-funded;<sup>64</sup> they will nevertheless be technically ‘live’ and therefore will require at least the annual cycle of review-related activities to be completed. As long as they remain ‘live’, the possibility exists that at some point up to the age of 25 they could be revived.

People who in no way warrant having an EHCP are still feeding through the system [due to a failure to cease the plan].

[GFEC]

We are not very good at formally closing-off those no longer required – there are many young people technically still in the system for whom all have agreed further educational progress is no longer realistic.

[LA]

The process for ceasing plans is not as strong as it should be – c.10% of our EHCPs should have been ceased but have yet to be. This is partly a capacity issue – we are not able to attend annual reviews due to shortage of case workers – and partly a data issue – we have simply lost track of where the young people concerned are.

[LA]

A data cleansing exercise to get rid of anomalies identified 300 EHCPs on file for which there were no current placements because the learners were aged over 25.

[LA]

<sup>64</sup> There is no minimum funding threshold for an EHCP. Thus meeting the requirements of an EHCP may lead to an education programme with an annual cost of less than £11,200. In these instances no Element 2 or Element 3 is payable to the provider. This is what is meant by “non-funded” in this context. Of course the provider will still receive Element 1. Self-evidently, a plan can also be “non-funded” if the young person concerned is not in fact currently attending any education provision at all.

*“Entitlement” to education to age 25*

- 713 The extension of the age range has created an “entitlement to education to age 25” attitude in the minds of some parents (and providers).

The introduction of the EHCP has not been especially helpful in this context – unchecked, it can allow parents and providers to ignore the importance of transition at 16 because they perceive there is an ‘entitlement to be educated’ to age 25. This can simply defer decisions that should have been taken at 16, potentially meaning that when education ends nothing is in place for what happens next.

[LA]

- 714 Parents can be very reluctant to see an EHCP cease, even when the desired reasonable outcomes for the young person have been met and no further programmes that represent progression have been identified. Providers, for that matter, may also have an interest in maintaining the plan because this gives the guarantee of further income from the High Needs block post-19. (All those we spoke to – local authorities and providers – were adamant that, other than in the most exceptional circumstances, the most appropriate age for a High Needs funded student to leave further education was usually no later than 21 or 22.)

There is an expectation among parents is that plans will continue to age 25; authorities and providers are currently reluctant to cease plans in the face of this.

[LA]

- 715 Managing these cases, which are those most likely to go to Tribunal, is heavy on time and resources for authorities – to the extent that some conceded to us that granting an additional year was sometimes the easiest way forward/path of least resistance.

Partly our lack of success at Tribunal is because our legal services staff have little appetite for defending the authority’s position, even when Children’s Services believe they have made the right decision and have the evidence to back this up.

[LA]

We try to make it clear to parents of HN learners that education to 25 is not ‘an entitlement’, but in this is not helped by the SEND Tribunal system, which tends to operate as if it is. The difficulty, it appears, is in how one decides that the student still has the opportunity to progress.

[LA]

- 716 And tribunals are not always helpful in their interpretations of, for example ‘progress’ – which, some LAs told us could include recycling around provision at the same level, provided the student’s knowledge was being extended in some new direction.
- 717 As noted in section 5 *Transition on from post-16 provision*, a further cause of an ‘additional year’ can be the failure of Adult Social Care colleagues to prepare and

help the young person transition to a lifetime social care plan. Often – and despite notice being given – the plan is simply not ready for the young person at the time when they had first intended to transition from education.

## Solutions from the fieldwork

### *‘Holding the line’ on progression*

- 718 Whilst there are exceptions, there was a general consensus amongst participants in this study, both LAs and providers, that most young people with SEND will in practice find it difficult to identify further programmes that represent progression opportunities once they have been in further education for a maximum of three years or so.
- 719 Consultees believed that most young people might therefore reasonably expect to remain in education until the age of 19 if they transition after Year 11, or 21/22 if they transition after year 13.

Many High Needs young people transfer from mainstream school to college at 16, and tend not to stay in college much beyond 19 or 20.

[GFEC]

Most young people have got as much as they can out of GFE after two or at most three years and should move on. We have very few over 21-year olds in the system and no plans for this number to increase.

[GFEC]

It is rare to have a young person in specialist provision beyond the age of 21 (two years after leaving special schools), and rare to have any young person with an EHCP in education-based provision beyond the age of 22.

[SPI]

- 720 This is not, of course, to say that young people with High Needs who progress to a work or work-related environment after their time at college will not or cannot benefit from further learning opportunities as their lives and careers develop. Many High Needs young people do indeed return to formal or informal learning to support their progression in employment in future years.
- 721 Nevertheless, LAs that saw themselves as successfully managing the challenges posed by the extension of the age range to 25 did so, they told us, by adopting a robust approach to ensuring that EHCPs should not be maintained unless they offer the real prospect of progression.
- 722 Interviewees – both LAs and providers - argued strongly against allowing young people to stay in education, potentially until age 25, if all they were doing was recycling around education programmes at the same level and not making any

progress – and, in particular, if they were not embarked on programmes that progressively prepared them for adult life.

- 723 The key word here is “progressively”. Some have argued that taking successive programmes at the same *level* in different *vocational areas* is a form of progression, since it widens the range of future work or close-to-work opportunities that a young person might attempt. There may be genuine cases where a particular vocational programme has convinced a young person that the vocational area in question is not for him or her: perhaps such students deserve a second chance. And certainly a range of non-accredited programmes that progressively increase a young person’s ability to lead a fulfilling adult life do qualify as “progression”. But most providers would argue that successive programmes at the same level are more a sign of not being prepared to face progression to the next stage in one’s life than a reflection of uncertainty about the vocational area which that progression should involve.
- 724 ‘Holding the line’ on the principle, and ensuring that the authority and its providers are jointly committed to it, has enabled some authorities to manage the impact of extending the entitlement to 25 on resources and budgets. The providers we spoke to generally did not take issue with this.
- 725 If the line is to stand more chance of being held, it is of course important to “educate” families about the circumstances under which it is appropriate, and for that matter no longer appropriate, to continue to fund provision post-19. Part of this will involve reassuring parents that adult services will be able to continue to provide necessary support. The development of a relationship between provider, parent, young person and a key (case) worker over an extended period of time (which we have covered in Section 3 *Transition into post-16 provision*) is important in this – it is generally accepted that you cannot tell a parent/young person that a plan will cease at the end of their current year in education and expect this message to be readily understood or well-received; the change has to be planned for well in advance and therefore ‘expected’.

Having one person build knowledge of and a relationship with a young person [and their parents] over a number of years, means that they can have the necessary discussions in a non-adversarial way and [usually] agree on the best way forward.

[LA]

- 726 This does not mean that the authority’s relationship with a young person ceases, simply that the nature of it changes – away from one that is based on education and towards one that is focused on how their life will be lived post-25.

The impact that extending the age range has had on workload and on resources forced our hands into looking much more closely at transitions and progression. All authorities, us included, are now looking closely at: when further educational progression is no longer possible; what this means for further support; when the focus needs to switch from education to work (either directly or via supported internships), or to social care; and where funding responsibilities lie.

[LA]



Our aim is to focus on developing sufficient local education provision to be able to accommodate most needs within the authority up to age 19, with the focus then switching to supporting transitions – to social care, into employment etc.

[LA]

### *Ceasing plans*

- 727 There may be a concern in some quarters that LAs are seeking to discontinue EHCPs in response to budget pressures. However, none of our interviewees (LA or provider) suggested to us that plans are being inappropriately ceased – i.e. when there is a continuing need for it for education, or for that matter health or social care, related reasons. What there seems to be is a change in emphasis with the focus increasingly now on justifying the need for another year rather than automatically assuming that the need is there.

We are now much better at avoiding repetition, ensuring progression, achieving outcomes, and moving the young person on to employment and independent living. If a further year does not support any of these then the EHCP is unlikely to be renewed and education-related funding will cease.

[LA]

- 728 To facilitate the review and ceasing process, authorities are putting time into designing a robust EHCP review process for the plans of young adults aged 19+ – one which will stand up to being tested, including at Tribunal if necessary – and ensuring that staff are trained in this process.<sup>65</sup> If plans that are no longer required are to be successfully ceased then it is important that those charged with doing this by the authority are confident in the process that they have to follow, and that they will be supported in their decision, whether to cease or to continue, by senior colleagues. Naturally the student's current provider will have a role to play in this process.

We are much more likely to push for a Tribunal – and to ensure that we are all signed up, and much better prepared, to defend a decision to cease [or refuse] a plan – than previously.

[LA]

Re-assessments by educational psychologists have been key in helping us determine whether there is evidence of probable progression – in which case the educational element of an EHCP can continue – or whether the plan can be challenged on educational grounds – in which case we work with the young person and their parents on the transition.

[LA]

<sup>65</sup> A consequence of raising the participation age to 18 is that authorities will almost invariably assume that an EHCP that is in place at 16 will, subject to modification at annual review, need to continue until the age of 18.

A key issue for us is the number of young adults who still have EHCPs – the challenge is to ensure that these are put through an annual structured review process to determine if they are still required and to cease those that are not.

[LA]

SEMH young people are the most challenging in this context – they are most likely to have either sporadic attendance or to have become NEET.

If they are aged under 19 then their plans will almost invariably not be ceased, and any exceptional decision to cease has to be taken by panel.

If they are over 19 then, after visits and other communications have not re-engaged the young person, there is a two-stage written warning process (a notification of review date – ‘please attend’; and a notification of intention to cease), after which, if again no response is forthcoming, the caseworker has the option to cease the plan.

[LA]

- 729 The number of cases a member of staff is running can be a useful indicator of where there may be plans that could be ceased.

We keep an eye on caseworker caseloads on a monthly basis to see where these are increasing, potentially to an unsustainable level – for example by reviewing the list: for unfunded plans (‘If there is no high needs funding then is the plan required?’); for those aged 19+ (‘Are they still in learning?’); and for those with sporadic patterns of attendance (‘Are they NEET? Have we followed up? If they have not responded, why has the plan not been ceased?’).

[LA]

### *Use of Adult Education Budget [AEB] funding*

- 730 Reference was made to using the AEB to support young people aged over 19 with a continuing need for education but no EHCP – some providers were already adopting this approach.

AEB is a much more effective way of funding older high needs students with, in practice, little difference in the level of financial support that can be accessed through it versus through High Needs Block funding for a 19+ student [with a relatively low level of need]

[GFEC]

- 731 The feeling was that this was a short-term fix rather than a general panacea – resources in the AEB being insufficient to make it otherwise. In particular, AEB funds would soon be exhausted, and therefore denied to adults in the general population, if they become the ‘go to’ funding route for 19+ young people with additional needs. In addition, using AEB funds in this way may not be a priority for some AEB budget holders and/or providers.

- 732 The AEB does however have some advantages in the way it is administered – being available to a GFEC, for instance, to spend on any adult who comes to them

regardless of their home address, home local authority or previous education history. It is also available to any 19+ student, whereas High Needs funding requires an EHCP to be in place for this group<sup>66</sup>. It represents a challenge to the unspoken assumption that the best route for High Needs funding is via local authorities, either through current arrangements or some variant of it. We return to this point in Annex C to this report.

### *'0 to 25 directorates'*

- 733 To help avoid 25 becoming the new 'cliff edge', authorities are extending the age range covered by what was previously 'Children's Services' such that it becomes a '0 to 25 Directorate'.
- 734 For our purposes, a key consequence of this is that it brings 16 to 25 SEND and adult social care to 25 under the same roof. This is seen as making a vital contribution to designing effective transition onwards from education plans for High Needs students. And, because there is no change of departmental responsibility for social care at 18, there is greater scope for whatever support has been put in place earlier in a young person's education career to continue unbroken through the various points of transition.
- 735 Those authorities that are pursuing this structure have high hopes for its potential to revolutionise approaches to transition for young people with disabilities. Moreover 25 is not seen as an endpoint either; ultimately for some the goal is to build 'lifetime pathways' where an initial package will be more or less in place before the transition point at 25 is reached and, for those who need to make it, the move from 0-25 services into on-going adult care services is seamless.

## **Comments/conclusions**

- 736 Holding the line on progression appears to be fundamental, with other necessary actions flowing from this – for example:
- Reaching consensus with students and their families about what progression means in practice
  - The development of a thorough process for reviewing and ceasing an EHCP, whether entirely or just for education-related purposes
  - Providing staff with training in the process for ceasing EHCPs to ensure that they feel confident in what they are doing, and, having followed the required process, that they will be supported in their decisions

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<sup>66</sup> We have been advised (not within the fieldwork of this report) that Combined Authorities may in practice (though not necessarily by statute) try to ensure that recipients of AEB funding live within the area of the Combined Authority. It is beyond the scope of this report to investigate this further.

- A willingness to defend cases at tribunals and, through the review process, to have the evidence base to enable a strong case to be made.

737 These are not just LA views; many providers we spoke to were broadly in sympathy with these aims.

738 In this context the development of a strong relationship between the authority, the young person and their parent(s), which is maintained as the young person transitions between providers and on from education-led provision, is also important. We have argued elsewhere in this report (primarily Section 3 *Transition into post-16 provision*) in favour of the authority having a single contact, consistent over time, to manage each of these relationships through the various transition points with no passing of the young person from one member of staff to another. The creation of a '0 to 25(+)' directorate would be supportive of this sort of relationship.

739 Use of the AEB to support students aged 19+ is possibly helpful at the margins but unlikely to be more than this in most cases.

## 8 Other issues – Covid-19

### Introduction

801 In our second phase interviews, post-lockdown, we were asked by the project's sponsors to discuss with interviewees what the impact of coronavirus had been in the academic year 2019-20, and what their expectations were for the impact that it would have on the academic year 2020-21. This was not part of our original brief but the opportunity to do so was there and the issues, we and our sponsors believed, were too important to be ignored.

802 We covered three broad areas of impact in our discussions:

- The impact of the lockdown, including remote working
- Commissioning – the processes associated with the commissioning of new places
- Programme delivery – how learning and support are delivered.

### The impact of the lockdown, including remote working

803 With regard to the operational impact of coronavirus on September 2020 starts, the providers we spoke to raised concerns about:

- (To the extent that transition and commissioning activities could not be completed pre-September 2020 – see the following sub-section for more detail) the risk of more young people dropping out of provision in the autumn because they had not been fully assessed, with the necessary support therefore not being determined and put in place, and/or planned transition support activities not being carried out
- The financial impact of the virus in terms of the impact on college resources – from a high needs perspective greatest uncertainty was in relation to disadvantage funding and the extent to which this would be available to support provision for those not eligible for elements 2 and 3, and whether funding for additional terms/years would be made available for those whose education or transition had been significantly disrupted.

804 For some the greater concern was the potential impact of the virus on planning activities for September 2021 starts: this is largely dependent on the extent to which key activities will be restricted in the autumn (2020) and spring (2021) terms. Concerns were raised about:

- Young people not being able to experience 'tasters' at the range of local provision that is available where this would normally have taken place over the 2020 summer term, and the extent to which this would lead to greater demand for places at non-local providers – with knock-on effects for tribunals, if the authority contests the placement; a further impact on the High Needs block, if the placement is approved; and delays to the place planning process

- The improbability of being able to determine pre-EHCP assessments in the required 20 weeks
- The potential difficulties posed by having to complete many transition-related tasks remotely, if they could be completed at all.

- 805 The change to remote working by the professionals involved was, with some reservations relating to student well-being which we will explore in more detail below, generally accepted. Subject to the widely and generally shared concerns re. remote working (isolation; lack of a suitable space etc.), most LA SEND teams were finding video-based options (Teams etc.) were working well for internal and external purposes – to the extent that the possibility of moving to a largely home-based service was felt to be a real possibility for larger, county-based services.
- 806 Authorities felt that parents, young people and providers were also broadly positive about communicating by phone and email.<sup>67</sup> Concerns were expressed about the ability of some to engage through video conference – having access to the technology (i.e. a screen that was bigger than phone-size), a package that gave the necessary capacity to be able to use the service, and a supportive home environment were the main issues.
- 807 Staff at authorities that cover a smaller geographical area were less likely to see benefits from remote working as moving between locations was less of an issue.
- 808 Authorities and providers felt that they would be better prepared should lockdowns return.

## Commissioning

- 809 The extent to which it had been possible to complete commissioning and transition activities for September 2020 starts pre-lockdown also determined the extent to which coronavirus has had an impact on commissioning to date.
- 810 Where commissioning processes had largely been completed before the 31<sup>st</sup> March deadline, the main impacts were in relation to:
- The non-completion of activities to support the transition (e.g. preparation days at the provider)

There has been a significant impact on transition activities for those joining in September, which would mainly be delivered over the summer term. High needs students joining in September will be less well-prepared when they join us than they should ideally be.

[GFEC]

<sup>67</sup> A comment was made at the 2020 Natspec Principals' Forum (8 October) that parents might indeed be more comfortable communicating via Zoom (etc.) rather than attending formal meetings.

- Agreeing requests for funding – in a normal year these would have been completed before the end of the summer term for most students; where GFECs in particular had decided to furlough staff in administrative roles, a backlog appears to have built up that was only being cleared in August.

Before the end of July, we had had fewer than 20 requests for funding going to panel. The first week in August we had 50; the following week another 40. In a normal year, these would all have been submitted in plenty of time – well before the end of the summer half term break for the GFEC concerned.

[LA]

- 811 Of course, we have already highlighted in Section 3 *Transition into post-16 provision* the number of late consults that some GFECs reported receiving; commissioning and transition processes are often subject to delay anyway. The extent to which coronavirus-related causes have accentuated the problem is difficult to determine. However, it would be unreasonable to expect that, as the LA above suggests, the virus did not play some part.

- 812 Where commissioning and transition processes were still outstanding, the impact has been significant in terms of the ability to properly assess a young person, and whether the provider can meet needs:

It has proved difficult for providers to meet/assess young people, even where [as vulnerable learners] they have been in school since March. Schools have been reluctant to have people on site who do not absolutely have to be there and have had other priorities – and the staff from GFECs may have been furloughed anyway.

[LA]

The assessment of young people (SaLT, OT, Ed. Psych. etc.) is happening remotely/virtually or not at all; offers that are being made are 'conditional', to be confirmed (hopefully) in September, and there is anxiety about placements and the transition on all sides.

Whilst decisions made will be the best given the information available, the fear is that there will inevitably be more switching/drop out during the year, placing further pressure on authority staff in particular ((re-)assessments; finding new provision etc.).

[LA]

- 813 Providers that rely mainly on spot purchases during the year, rather than block intakes each September, had experienced a significant drop in the number of referrals they were receiving.

Most concerning for us is the lack of new referrals [only one since April when we spoke in July], and the lack of any communications regarding how the situation is likely to evolve. Demand for our services is not going away – if anything it will be increasing – but we have no indication of how and when commissioning will restart.

[SPI]



- 814 Apart from not seeing what was available and the potential impact that this might have on choice of provision (noted above), interviewees were unclear what the impacts of the virus would be on September 2021 starts. Much depended on the extent to which the usual activities could be completed in the autumn and spring terms – there was a general expectation that some delays would be inevitable, that the 31<sup>st</sup> March 2021 deadline would therefore be breached in more cases than usual, and that more students would be unclear about what they would be doing next for longer.

The real challenge is to make sure that we do not lose 2021's students.

[GFEC]

## Programme delivery

- 815 Programme delivery is arguably not within the scope of this project. Nevertheless the following observations may be helpful.

### *On-line delivery*

- 816 The switch to on-line delivery of content to students was generally felt by providers we interviewed to have worked well in spite of the limitations – to the extent that delivery of some elements will remain on-line for the foreseeable future.
- 817 The combination of on-line (or posted) materials plus remote delivery and support via video, phone and email had worked well for most of those students who had decided not to attend the provider.

Our provision for High Needs students has continued. We have had a plan for each learner based on a combination of distance learning and delivered hard copies of materials.

[SPI]

We have been very impressed with the way our providers have stepped up – concerns re. vulnerable learners have been addressed by regular weekly contacts, and some of the online distance learning, especially by GFECs, has been fantastic. We have done some follow-up calls to High Needs students and their families to triangulate what providers have been saying regarding support, participation etc. and generally been very happy with the findings.

[LA]

- 818 For some providers, the opportunity to do things differently had led them to revise what they did and how this was delivered.

Attendance has actually risen for our young people with SEMH as we have done more online: this had led to a bid from us to our authority to run more of what we do on a mixed basis, some online; some in centre.

[SPI]

819 On the other hand:

Online delivery has proved challenging with question marks over the necessary equipment, other resources and parental support being available for young people at home.

[GFEC]

### *Progress reviews*

820 Providers and authorities were positive about the level of engagement that they, and others (social care colleagues in particular) were able to have now reviews were being conducted remotely. For the larger, county authorities the capacity to attend these had grown exponentially now that travel to and between meetings was no longer required. For these authorities, the hope is that this will become the new way of working and will enable more engagement by the relevant parties in more interactions with individual students, leading to a better service being delivered.

The virus has provided much needed impetus to migrate more activities online – both for transition, for programme-based learning and for reviews, which should now involve more (hopefully all) of the interested parties more of the time and be more learner-focused.

[LA]

### *Lost progress*

821 By the time the new academic year started in September 2020, most young people had not physically attended their provider for 6 months. Notwithstanding the efforts of providers to continue education remotely, at least some learning, broadly defined, will have been lost (e.g. loss of routines; of being comfortable going to college; of progress made to date education-wise, social skills-wise; relationship-building etc.), and the mental health of students is likely to have suffered.

822 Getting students back to where they ‘were’, in the wider sense, pre-Covid was expected to represent a real challenge.

We have a real concern that the length of the break will mean that the attitudinal and behavioural progress made by some of our young people will be lost.

[SPI]

### *Transition onward*

823 The impact of the virus on intended destinations of those due to leave their provider over the summer was a cause for concern for providers, especially for leavers from foundation and mainstream programmes who were hoping to enter some form of employment. The expectation was that many of the expected opportunities for apprenticeships, traineeships and supported internships would no longer be there in autumn 2020 – potentially for much longer.

- 824 For many students, their transition processes may have been on-going at the time of lockdown and have not been completed before the end of term. Reference was made to post-Easter 2020 withdrawals from programmes, which almost certainly means that transition processes will not have been completed.
- 825 Because onward transition planning had not been completed, the pressures to allow students to take an additional (unplanned) year were expected to be significantly higher than normal.

### *Student health, welfare and well-being*

- 826 Providers' and authorities' main concerns have related to the health and well-being of their students during lockdown. Providers have been able to maintain regular contact with their students throughout term time, with follow-up (including referrals to safeguarding and welfare visits where this was felt to be necessary) where there were causes for concern (e.g. irregular/non-attendance). However, many High Needs learners – and the wider SEND group – were already vulnerable and the virus will have only increased the risks they are potentially exposed to.
- 827 Of course, contacts will usually have ceased in any case at the end of term; the impact that a further period away from college, this time without any contacts, will have is at this stage unknown – it is an open question as to whether some students will feel able to come back to college at all.

Our main concern is for the mental health and motivation of students. Whilst we have done our best to maintain contact and put learning materials online, inevitably as time has gone on the extent to which students have engaged has declined. We will not know who is coming back, their mental state and/or their levels of motivation or engagement until September.

[GFEC]

- 828 GFECs have been revising their approach to risk profiling and what data is collected for indicator purposes, and reviewing their systems to help ensure that cases of concern are identified, and that appropriate and proportionate follow-up action(s) are taken.

### **Comments/conclusion**

- 829 Our overall impression is that authorities and providers have generally made considerable efforts to keep services 'as normal as possible' during the period March to September 2020. Some of the changes to working arrangements and the ways in which education, support and related activities and processes are carried out that have been forced on providers and authorities by coronavirus will become permanent; others will prompt more subtle changes to the way work is done.
- 830 The principal challenge now is achieving a positive outcome with September 2021 starts. The extent to which the processes associated with the commissioning of places for them and their transitions to further education can run 'as usual' over the autumn and spring terms is uncertain at the time of writing. However, it seems likely

that they will be less smooth, that commissioning will therefore be delayed, and that transitions will be disrupted – with knock-on implications for September 2021 and beyond.

## 9 A more radical reworking of High Needs provision

### Introduction

- 901 The previous sections of this Report have highlighted steps that could be taken to improve, incrementally, the current arrangements for High Needs funding post-16. In this section, based on the current project and our wider experience, we suggest what a High Needs funding model might look like if it were subject to more a fundamental redesign.
- 902 This is not to discount any of the good practice we have identified in the report to date; much of this is incremental in nature, can be implemented by individual LAs and providers now, as they see fit, and may well still be relevant in a more fundamental redesign. However, what we are suggesting in this section arguably requires a national commitment to change.
- 903 The model we present here is couched purely in terms of post-16 High Needs commissioning and funding, but clearly there would be implications for current pre-16 arrangements were this model to be adopted.
- 904 As we develop the model, we will suggest ways in which it might address some of the criticisms of current arrangements that we have made in earlier sections.

### Planning

- 905 Our first point is that provision needs to be ‘planned’: that is to say, local authorities should take a strategic view of emerging needs for post-16 provision and the providers best placed to meet them. Planning needs to be more than simply commissioning places for young people in the months before their post-16 programmes are due to start.
- 906 Plans should be based upon a local authority:
- Taking a view on the overall shape of provision it wishes to make for post-16 young people with, or potentially with, High Needs
  - Ensuring it has some measure both of the number of places for young people it is likely to need and broadly the kinds of specialisms that these young people will require
  - Identifying which providers (existing or potential) it will need to contract with to provide these places
  - In the case of existing providers, discussing with them the provision the local authority would like them to make, and helping them develop – if necessary – the resources and expertise to do so
  - In the case of (potential) new providers, working with appropriate organisations to develop the provision required.

- 907 GFECs and SPIs should be equally involved in this process. A strategic planning group for 16+ may be helpful.
- 908 LAs will also want to keep in touch with neighbouring authorities so as to ensure that, for example, any discussion of new provision is carried forward in a coordinated way.

### *Timescale*

- 909 In all but a handful of trauma-based cases, young people likely to require High Needs funding post-16 are usually identified or diagnosed many years earlier.
- 910 Of course, populations are not static. However, a local authority should be able to plan its post-16 High Needs provision with a reasonable enough level of certainty to provide the foundation for what might be called both 'strategic' and 'operational' planning, and to discuss this planning with the authority's 16+ High Needs providers.
- 911 By strategic planning we mean discussions about the overall size and shape of the 16-19 High Needs portfolio, and in particular discussions with providers (including potential new providers) as to the role they might play. By operational planning we mean discussing and confirming placements for individual named students.
- 912 Thus a strategic conversation between a local authority and a provider will cover likely numbers of young people with High Needs for whom placements will need to be commissioned; the nature of the provision (nature and level of disability or difficulty and/or, to the extent that it is clear, any implications for vocational specialisms) that will be needed; and any gaps in provision that might be met through new provision or provision in new locations. The conversation needs to look far enough into the future to allow for any necessary investment in new or improved facilities to take place, and for staff to be recruited and trained as necessary. We suggest a minimum timescale of three years in the future for these discussions – except in cases of proven emergency (e.g. the closure of an existing provider).
- 913 On the other hand, the operational discussion is all about ensuring that named individuals make a smooth transition from their current placement to their post-16 High Needs placement. We have suggested elsewhere in this report that young people's post-16 High Needs destinations should be largely determined early in Year 10<sup>68</sup> which suggests that the operational discussion with providers should take place in the early part of the calendar year (say January or February). The operational discussion will also check that everything necessary – including, subject to entry requirements being met, programmes of learning and fees – has been agreed for Year 11 pupils who are due to transfer to post-16 provision in the coming September.
- 914 These strategic conversations can take place at any time during the year – whether or not it is combined with the operational discussion will depend on the number of individual cases that the latter needs to discuss. We would however suggest that

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<sup>68</sup> Year 12 for 18+ school leavers, as already noted elsewhere.

both are given adequate ‘airtime’, and that the strategic conversation is not just tagged onto a meeting when very many individual students have been discussed.

### *Planning discussions with providers*

- 915 We would expect local authorities to have both strategic and operational discussions with all their current providers. The depth of discussion will naturally vary according to the proposed scale of commissioning from the provider concerned (in effect, the ‘importance’ of that provider in delivering the plans of the local authority in question)<sup>69</sup>.
- 916 Our brief in this report is restricted to post-16 further education provision, but we would hope that local authorities would see the planning of post-16 High Needs in the context of strategic planning for *all* special education, from age 2 or earlier. Though it is beyond our remit to say so, we presume that strategic planning along the lines we discuss here would benefit the entire sector.
- 917 For planning purposes – and indeed for funding purposes, which we will come to later – a local authority might want to divide providers into groups. Our example below envisages three: ‘major’, ‘significant’, and ‘minor’ partners, but of course other groupings and terminology are possible.
- 918 The distinction between major and significant in particular is essentially one of scale – for example it could reflect the number of places contracted with the provider (or the value of the contract in monetary terms) – but could also take account of growth ambitions (a provider taking a reasonable proportion of places but happy to carry on doing what they do could be minor rather than significant).
- 919 Other points of distinction might be that:
- A major partner to a local authority will seek to meet the local authority’s needs quite specifically, and will be willing to tailor provision (to a greater or lesser extent) to meet with the local authority’s plans. A GFEC that takes large numbers of High Needs young people from an authority is likely to be a major partner in these terms. Unless part of a larger group, it seems unlikely that a provider will be a major partner of more than one or two local authorities. It is possible, but less likely, that an SPI could be a major partner if a particular geographical area or High Needs specialism is not served by local GFECs.
- It is worth pointing out that an LA may have multiple major partners; for that matter a provider may be a major partner of more than one LA.
- A significant partner will take a reasonable number of young people from the authority in question each year, but the number is likely to vary as the local

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<sup>69</sup> Note that a particular provider may have disproportionate “importance” to a given local authority even when numbers of students are small if the provision made is highly specialist and difficult to replicate elsewhere. But even if a local authority only takes up a placement with a particular provider every now and then the authority can still be ‘blindsided’ by changes in what that provider offers if the opportunity for at least an outline strategic discussion is not taken.

authority explores other provision. It is likely that the significant partner will also work with other local authorities to a similar level. It will do its best to tailor provision to meet demand but will want to consider how it addresses the needs of young people from *all* its client local authorities and not necessarily focus only on meeting the needs of one<sup>70</sup>. Many SPIs are significant partners of their local authorities, but a GFEC that takes students from a neighbouring authority may also be a significant partner as far as that local authority is concerned

- A local authority's minor partner is, as the name suggests, any provider that the authority uses to a more limited extent or from time to time.

920 Membership of a particular group is not set in stone – it would be possible for a minor partner to become significant etc. and vice versa.

921 How the level of planning and commissioning dialogue between local authority and provider will vary across these three groups is for each local authority to determine. The following table gives an example.

	<i>Strategic discussion (covering a three-year plus time horizon)</i>	<i>Operational discussion (focusing on Year 10 and Year 11 pupils)</i>
<i>Major partners</i>	<p>Projected numbers</p> <p>Specialisms (current and possibilities for new)</p> <p>Development of existing provision - including partnership development between providers</p> <p>Gaps in specialisms , and how to address them – including through partnership working where appropriate</p> <p>Identification of what specialisms can be offered, and indications of likely numbers</p> <p>Options for resourcing development of new provision, and any authority support likely to be forthcoming</p> <p>Contractual developments/options (e.g. block arrangements<sup>71</sup>): identify potential for these; implement; review</p> <p>(Sub-) regional issues and potential for wider development of provision.</p>	<p>Progress of new provision/provision in development</p> <p>Review of previous cohorts' outcomes.</p> <p>Identification of (current) Year 10 pupils likely to transfer for Year 12, and outline agreement on their placement, so that transition can be planned</p> <p>Check that all arrangements for (current) Year 11 pupils, transferring in September, have been agreed – both programme and funding – and final check that transition is well under way</p> <p>Setting of outcomes for Year 11 pupils and ensuring that arrangements for reviews of EHCPs are either complete or in hand</p>
<i>Significant partners</i>	<p>Projected numbers and specialisms</p> <p>Commitment to minimum numbers (if this can be made) to assist providers'</p>	<i>As for major partners</i>

<sup>70</sup> Although young people from different local authorities may have similar needs, the extent to which a particular local authority commissions places in a significant partner, and the nature of what is commissioned, will depend to an extent on what *other* provision that particular local authority has at its disposal – hence the need of such a provider to consider *all* its clients when designing its provision.

<sup>71</sup> See below.



	<p>planning</p> <p>Discussion of partners' plans for new specialisms and early identification of potential take-up for these; identification of any authority support likely to be forthcoming</p> <p>Potential for any (sub-) regional collaboration explored</p>	
<i>Minor partners</i>	<p>Variable input, depending on individual provider's circumstances</p> <p>Local authority views of what the partner can offer. (Exchange of correspondence may be sufficient, particularly if no placements are currently planned.)</p> <p>Further discussions 'by request'. <sup>72</sup></p>	<p>Review of previous students' outcomes (if relevant)</p> <p>Funding protocols agreed</p> <p>Identification of current Year 10 pupils likely to transfer for Year 12, and outline agreements on their placement, so that transition can begin</p> <p>Finalisation of plans for Year 11 pupils including fee agreements, programmes and desired outcomes.</p>

- 922 Ideas of the way in which funding negotiations could feature in these planning discussions are below. However, it is not so much the detail of the description that matters, more the concept of local authorities having different levels of planning discussions with different providers according to how each party sees their role currently and going forward.

*School sixth forms (including special schools and independent special schools).*

- 923 We are not educationalists, but it has been suggested to us that, in some instances, staying on in a special school sixth form delays the start of a young person's vocational education, and associated transition to independent adulthood, for two further years; and that the vocational programme the young person finally starts at college age 18 or 19 could have been started with advantage two years earlier and allowed transition to be better planned and implemented.
- 924 There also arises an 'equity question' when some post-16 providers openly state that they set an upper limit of (say) three years on the length of time they can meet the needs of a young person before they should move to adult provision. If they apply this limit equally to sixteen- and eighteen-year olds, as they appear to do, then arguably the former are "missing out" on two years of education. Parents could be forgiven for campaigning to ensure their young person stays in school to 18 so as to ensure this does not happen, and this may itself lead to inappropriate decisions.
- 925 On the other hand, an excellent school sixth form (mainstream or special) may well have a great deal to offer to young people at 16+ to help them achieve their

<sup>72</sup> By way of illustration, one LA of which we are aware (not part of this study) currently contracts with nearly a hundred providers in respect of its c. 350 students in post-16 SEND provision. For over seventy of these providers, the number of students from the LA was two or fewer. Clearly the LA cannot hold "round-table" discussions with all its providers.

academic potential, prepare for adult life and/or to approach vocational learning at age 19+ in a way they would not have been ready to do at 16+. (It is important to acknowledge that our fieldwork for this project did not include schools, mainstream or special, and their sixth forms.)

- 926 We conclude therefore that school sixth forms that provide programmes for 16+ young people with High Needs are an important part of the map of post-16 High Needs provision, and should be included in the above discussions and planning rounds. If 16+ High Needs planning and commissioning is to be coherent, then the sixth form of a school in which a High Needs pupil is currently in Year 11 should not expect to have an exclusive right to retain that pupil, but is certainly free to demonstrate to the local authority (and the young person) that what it can offer better suits the needs of that young person – and their aspirations – than any of the other 16+ options available.

### *New providers, or extending provision by existing providers*

- 927 As it reviews the existing provision of High Needs places upon which it can draw, a local authority may well find that there are gaps in provision – or the potential for existing needs to be met in new ways – that could be filled by new providers, or by an existing provider extending its offering. We have already pointed out that, by sharing the business risks that new providers would otherwise run, local authorities can ensure both that new provision does indeed arise where it is needed and also that it is offered more effectively and at a more sustainable price.
- 928 One way of sharing risk would be for one or more local authorities to guarantee any or all of a certain number of places in any new or extended provision, at a given average annual fee rate, for a number of years. The guarantee(s) would necessarily be contingent on all necessary due diligence, inspection and quality criteria being passed in due course, and could taper over time if desired.
- 929 If there is genuinely a need for the additional places concerned, giving these kinds of guarantee does not seem to us to represent much of a risk for the local authority/authorities concerned.

## **Commissioning of places for young people**

### *Commissioning: outcomes, not inputs*

- 930 As noted in the table above, part of the short-term commissioning discussion in or before February each year should be the identification of young people to be placed with various providers, under the terms of (and at the conclusion of) the process outlined in the Code of Practice. This is the point at which outline funding should be agreed for current Year 10 pupils, and an actual funding agreement reached for Year 11 pupils, as noted above.
- 931 The crucial point, for us, is that the local authority is not 'commissioning inputs'. What matters to the young person is *outcomes*. Whether it focuses on an individual

young person or a group, the commissioning discussion therefore also needs to be specifically focussed on outcomes. This is why, in the table above, each operational discussion starts with a review of previous students'/cohorts' outcomes.

- 932 As part of the planning/commissioning process, we also favour 'margin' discussions about the impact on outcomes of the funding levels sought or proposed. What extra could be done with a higher level of funding than that under discussion, and what improved outcomes would the young person (or group of young people) achieve? Conversely, to what extent would outcomes be jeopardised if less funding were available?

### *Placements for individual young people*

- 933 Providers should have the opportunity to meet, and informally assess, a young person before confirming whether or not they can meet the young person's needs. If, as suggested above, an outline allocation of young people to specific placements takes place at the short-term planning point then coming to a decision on whether a young person's needs can be met could be separated from the process of working out what costs might be involved, and the costing carried out a year later. On the other hand, providers might want to carry out both decision making and costing at once.
- 934 The Code of Practice explains circumstances in which a young person may not get his or her first choice of post-16 placement, in particular on the grounds of 'efficient use of resources' or an 'inability to meet need' on the part of the provider. As part of the planning process, a local authority may therefore reasonably require that a young person visit/be assessed by more than one provider if it has reasonable grounds for believing that another provider may be able to meet a young person's needs more effectively. If the key caseworker role is being effectively delivered, as described in Section 3, then there should be relatively few instances where this is required (and the formal 'consult' should be a relative formality).
- 935 If local authorities are carrying out the strategic commissioning role outlined at the start of this Section, they should already have a map of provision (local and national) upon which they can draw when deciding which provider might be best for any individual young person. Should there be gaps in the provision map – for example, a local authority may want to bring additional specialist providers on board to meet an increase in young people with ASD – we strongly recommend these gaps should be filled by *generic* strategic discussions with providers (as suggested above) rather than being triggered by the immediate need to place individual young people.

### *Commissioning and SEND Tribunals*

- 936 As already noted, we are still finding examples in our fieldwork of providers (typically SPIs) where a significant proportion of young people are only placed after an application to a SEND Tribunal.

- 937 From a commissioning perspective, a significant number of 'lost' tribunals for a local authority represents an equally significant number of young people not being placed where the authority had planned to place them (it is likely that the authority's suggested placement did not coincide with the young person's wishes), and potentially being placed late.
- 938 On one level, a high number of 'lost' tribunals would suggest that an LA is all too often going against young people's wishes without having sufficient grounds to do so. In commissioning terms, this may deny the local authority the opportunity to have a full planning-related discussion with the providers concerned, and may also give it some difficulty with the providers – including those to whom they had *expected* the young person to go and where they are not now going.
- 939 More deeply, however, a high number of 'lost' tribunals suggests that the planning of a young person's transition into post-16 FE is not being well handled. We hope that our suggested changes to the planning process would produce improvements in this area.
- 940 If processes are improved, fewer Tribunals should be necessary, and fewer 'lost'. To help ensure effective planning and commissioning, local authorities will need to monitor, and ideally report to Members on, the proportion of SEND Tribunal "cases" they lose, and take action if this creeps much above a reasonable level.

## Funding to deliver outcomes

- 941 We now turn to the funding that local authorities offer to providers to deliver the outcomes mutually agreed for the young person (or group of young people), and suggest some principles that should be applied.

### *Alternative funding arrangements*

- 942 It is not always necessary, especially with larger student numbers, to associate funding with individual young people in such a way that the total funding available to a provider is the sum total of each High Needs young person's individual amount. Instead, it is permissible for a local authority to draw up a 'block agreement' with a provider.
- 943 The 2020-21 High Needs Funding Operational Guide extends the flexibility introduced in 2019-20 for "a local authority [to] reach agreement with [a GFEC post-16 provider], that [Element 2] of the provider's funding can be calculated and paid in a different way directly by the authority". This flexibility is designed to encourage local authorities and providers to work together in the expectation that this will, amongst other benefits, support improved provision planning<sup>73</sup>.

<sup>73</sup> ESFA. High needs funding: 2020 to 2021 Operational guide. October 2019. Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/865166/High\\_needs\\_operational\\_guide\\_-\\_2020\\_to\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865166/High_needs_operational_guide_-_2020_to_2021.pdf). This flexibility has been retained in the 2021 to 2022 Guide.

### *Block agreements*

944 One form of such an alternative arrangement is for a local authority to draw up a 'block agreement' with a provider under which a sum of money is guaranteed to a provider in respect of a 'target number' of 16+ young people with High Needs and where no calculation of funds at the level of the individual young person is necessary<sup>74 75</sup>.

945 Briefly, such a block agreement needs to specify:

- The target number of High Needs young people concerned, with an upper and lower bound. The provider undertakes not to ask the local authority for more resources until the number of High Needs young people it has exceeds the upper bound; the local authority does not ask for any resources to be returned until the number falls below the lower bound. Upper and lower bounds are chosen, based on the stability of local planning, to make either of these an unlikely event
- The range, in terms of need, of the young people covered. All young people 'counted' need to be High Needs (for which see below); but if a young person with exceptionally high needs<sup>76</sup> is placed with the provider there should be the opportunity to make a separate agreement on potential outcomes and costs for this particular individual so that the block agreement is not distorted
- The number of years the agreement is designed to cover.

946 For its part, and to meet local authority audit requirements, the provider will need to:

- Be able to produce, at any time, a list of High Needs funded young people covered by the block agreement and show that the number of young people on the list is above the lower bound. It should for that matter self-report if it knows that the lower bound has been breached<sup>77</sup>
- Be able, with sufficient notice, to demonstrate for each young person from the list that that young person is receiving (additional) support of sufficient value to enable them to be classified as High Needs<sup>78</sup>
- Be able to demonstrate that some form of education plan or programme with intended outcomes is in place for any young person chosen ('group' programmes and outcomes are arguably acceptable)

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<sup>74</sup> Though the Operational Guide requires that "students must have been assessed by the local authority as having high needs, and the institution must be receiving top-up funding for their support costs in excess of £6,000".

<sup>75</sup> One local authority in England has introduced just such an arrangement: in the interests of full disclosure, they received our advice in implementing this model.

<sup>76</sup> That is to say, relative to the usual level of High Needs with which the provider is familiar.

<sup>77</sup> It is clearly in the provider's interest to report any breach of the upper bound

<sup>78</sup> Though not, of course, support equivalent to the average per-learner amount in the agreement: some young people will receive more than this average and some less.

- At the end of the academic year, report on the extent to which young people covered by the agreement have achieved their various intended outcomes.

- 947 This kind of block agreement should, we believe, be considered for all kinds of provider. The main reason not to proceed down this route for a particular partner would be that the numbers of young people could not be predicted with sufficient certainty to make an upper and lower bound approach feasible. The number of young people concerned does not need to be particularly large. However, if the number of students placed with a provider is very small, or highly variable, it may prove difficult to set upper and lower bounds that give confidence to both parties but within which numbers have a chance of being kept.
- 948 Therefore, whilst the option of a block agreement should be open to consideration by all LAs and providers, it is likely to be most suitable for major partners in our above classification. (Major partners may be GFECs or SPIs: we are not intending to distinguish by type of provider.)

### *Flexible agreements*

- 949 Where a block agreement is not suitable, but the provider would like a degree of certainty re. funding, a 'flexible agreement' may be possible. Under this arrangement, the resources needed to support the achievement of outcomes would need to be determined on a student by student basis as at present. However, as part of the planning round in the previous autumn, the provider could be offered:
- A guaranteed minimum funding level for the following year, so as to enable it to plan. This should be expressed as a minimum number of young people placed multiplied by an average funding per place (perhaps based on the previous year's) and be refundable in extreme circumstances (bankruptcy – to the extent that the law allows – forced closure by Ofsted or CQC, etc.)
  - Again, if possible multi-year (in principle) guarantees should be given.
  - A commitment that all young people actually placed with the provider will be funded at a weekly rate from day 1 of their time with the provider on an 'advance and reconcile' basis.
- 950 The weekly rate might be calculated as, say, 95% of the average from a previous year in order that at final reconciliation (at the end of the academic year, say) it is highly unlikely that the provider would need to repay any money. Alternatively, a 100% rate could be set. But then it is an even chance (roughly) that the provider would need to make a repayment at year end.
- 951 In return for this streamlining of arrangements, providers could be asked to accept that in most instances they should not seek to claim additional funding for individual learners in-year when needs turn out to be greater than predicted, but should instead wait for the end of year final reconciliation.
- 952 In our planning-related terminology from the previous sub-section, such an arrangement might be best-suited to a significant partner.



### *Agreements with minor partners*

- 953 With minor partners, it is difficult to offer any guaranteed funding, not least because some may not be offered any students in any given year. Instead, they could be asked to propose an 'average weekly level of advance funding', again based on their experience, with the understanding that when a young person is placed with them they can start to draw down the average level of funding at once, before agreement on the cost of the young person's programme is reached, again as an advance to be reconciled when an agreed funding rate is established.
- 954 We are not suggesting that individual local authorities should *negotiate* the average weekly level of advance funding with multiple providers, or that indeed providers should negotiate different figures with multiple local authorities. It would be sufficient in our view for a provider to inform *all* local authorities what it proposes as an advance funding level. Some SPIs, particularly those serving well-defined parts of a (sub-) regional market, already operate on a not dissimilar basis.

## **Fundamental changes to the structure of High Needs funding**

- 955 The preceding paragraphs work within the current funding model. However we believe a more fundamental redesign of the funding model would yield additional benefits. The following paragraphs therefore outline a more radical approach.

### *Element 1*

- 956 We would propose that providers should continue to register all their learners with ESFA for 'standard' FE funding – equivalent to what is known as Element 1 in current arrangements, i.e. around £5,200 for a full-time study programme of a minimum of 540 hours or equivalent<sup>79</sup>. This continuation of the current approach means that our proposals have no impact on the wider post-16 funding model.

### *Elements 2 & 3*

- 957 We see no need for Element 2 or any 'place'-based funding. Most of our local authorities struggled to see any point in it. Beyond dubious 'guarantees of funding', which we suggest the block and flexible agreements outlined above give in a more effective manner, providers generally do not like it either.
- 958 In particular, Element 2 provides no protection against turbulence to SPIs (since they do not qualify for 'planned' Element 2 funding) and the protection it provides against turbulence for GFECs is hardly necessary given the large volume of High Needs young people most GFECs take.

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<sup>79</sup> The figure of £5,200 is the average used by DfE when calculating what most providers receive as basic funding from ESFA once weightings, retention factors etc. are taken into account. We discuss below the need to ensure that part-time arrangements can be made for young people undergoing a planned transition from education to adult social care.

- 959 Moreover, the equalisation (import/export) methodology between local authorities is cumbersome in the extreme, and there is confusion, as already noted in Section 4, about how it, and other aspects of Element 2, operate.<sup>80</sup>
- 960 We are not, of course, proposing that the funds currently devoted to Element 2 should be returned to Treasury. If Element 2 is abolished, then local authorities will have to pay £6,000 more in terms of what is now Element 3. But if Element 2 is abolished then the deduction from each local authority's High Needs block to pay for it will also cease and local authorities will, by definition, have the resources to pay the extra 'Element 3'<sup>81</sup>.
- 961 If this is really an issue, then ESFA could simply pay £6,000 to every High Needs student identified on the ILR R04 return when this information is collected (i.e. in year) and recharge this sum to the local authority concerned. But this suggestion only needs to be articulated to reveal that it adds bureaucracy without providing any financial relief or certainty to the authority in question.

### *The threshold for High Needs funding*

- 962 Whether or not Element 2 is done away with, however, we do need to consider whether we change the level at which a young person can be regarded as 'High Needs'.
- 963 At present the threshold of extra cost above the assumed rate of funding post-16 providers receive for any student is the Element 2 amount, £6,000. In other words, only young people whose programme can be shown to cost more than £11,200 (£6,000 + £5,200)<sup>82</sup> in a given year qualify for High Needs funding. If the cost of the proposed programme falls short of this amount, even if only by a few tens of pounds, then the provider concerned has to support the student as best it can with no additional funding, apart from whatever is left from the two disadvantage blocks. As we have noted in Section 4, these blocks are not ring-fenced for High Needs students so, in practice, are often largely consumed elsewhere (e.g. by the additional literacy and numeracy support provided to the wider student community).

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<sup>80</sup> We have not quoted from the fieldwork in Section 9. However, the words of the Head of an SPI/special school we spoke to are worth noting: "For the schools side of the operation I am confident of the financial position several months in advance of the start of term. I have no such certainty or confidence with the further education side; the funding model is arcane and complex, for no apparent reason and to no benefit for those who have to work with it."

<sup>81</sup> Technically, local authorities could argue that they occasionally pay less than £6,000 for an Element 2 place (as already noted). In practice, where the value of an Element 2 place is most up for debate – for additional places – most of our authorities either choose to pay the full amount, or pay nothing at all. (The 'morality' of a local authority deliberately choosing to pay less for one student than another simply because the place allocation is exhausted is questionable.)

<sup>82</sup> Or equivalent, as noted.



- 964 Based on our fieldwork, we consider the '£6,000 additional'<sup>83</sup> threshold too high. Of course there must be a threshold. But mainstream funding for FE is increasingly recognised as barely adequate (or worse) already, and having to find (say) an additional £5,000 to provide a programme for a not quite high enough to be funded as High Needs student is asking a great deal. Moreover, there is an obvious temptation to 'nudge up' the costs of an almost-High Needs student so that they clear the £6,000 threshold: the current threshold may therefore conceivably be costing money in some circumstances as much as it is saving money in others.
- 965 Clearly there is no one 'right answer'. However, we would suggest a threshold of £4,000 – i.e. spending just under 'as much again', in broad terms, as the ESFA base rate that underpins the calculation of Element 1 – as a reasonable starting point<sup>84</sup>.
- 966 We have already noted earlier in this report that this may bring a significant number of additional students into scope of High Needs funding. By definition, there is currently no data on how many students might be involved: once providers establish that the additional cost of provision for a student will not meet the current £6,000 threshold, they do not need to retain their cost calculation or make any form of return. In the light of our recommendation to reduce the threshold, DfE may wish to ask LAs to survey providers (principally GFECs) to gain an idea of how many young people may come into scope. But in any case our view is that the current threshold is too high, for the reasons stated, and the cost of reducing it must be faced.
- 967 As an alternative to lowering the threshold to £4,000 – or perhaps in addition to it – we suggest that Government might consider reinstating an element of the former college-based additional learning support funding mechanism (see Annex C) specifically to provide support for young people with additional needs whose additional support costs fall below whatever threshold is adopted. This might take the form of a further "disadvantage block", but ring-fenced to identified students. Colleges might be expected to have individual plans in place for these students (see below).

### *Care leavers from other local authorities*

- 968 Our attention was drawn to difficulties where a young person in care has been placed in foster care in a local authority away from their home, and then 'graduates' into post-16 education in their new local authority. The original local authority will have met any additional educational needs expenditure (and indeed the fostering costs) while the young person was in care, but there can then be an argument between the two local authorities concerned as to who should pay any High Needs subsequently.

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<sup>83</sup> £11,200 in total.

<sup>84</sup> As noted, the current arrangements – a threshold of £6,000 before additional funding is available – will inevitably lead to some upward pressure to price students' packages above £6,000 if at all possible. (Certainly there will not be many packages of £5,900 around.) Although lowering the threshold (say to £4,000) will in theory bring more young people 'into scope' this will in part be offset by a lowering of this upward pressure.

- 969 A GFEC has reported to us that it has often been made to wait for this argument to be settled before it receives any High Needs funding in respect of the young people concerned, but has no locus at all in the discussion and cannot take it forward.
- 970 The High Needs Operational Guide 2021-22<sup>85</sup> is, it seems to us, entirely clear on this issue: regardless of the age of the young person, and their status – i.e. whether they are currently a “looked-after-child” [LAC] or a “care leaver” – “the local authority where the LAC lives (is wholly or mainly resident) becomes responsible for maintaining their EHCP (including paying any top-up funding), in the same way as any child or young person who moves from one local authority’s area to another.”<sup>86</sup>
- 971 There are issues over the recoupment arrangements that may, or may not, allow this LA to recoup expenditure from the LAC’s original “placing” local authority, particularly where it is not clear when a particular 16-19 year old is still being looked after or not<sup>87</sup>. However – while we are not lawyers – we can see no ground for these issues (or the delay in resolving them) to delay the payment by the local authority where the young person lives of any High Needs funding to the provider in question.
- 972 What does remain unresolved in our mind is what should happen when the “placing” local authority disagrees with the level of funding that the local authority where the young person lives proposes to allocate. But again we can see no grounds for the latter to delay payments to the provider concerned because of any such disagreement.

## Plans and EHCPs

- 973 We have noted elsewhere<sup>88</sup> that 16-18 year olds in receipt of High Needs funding support are not currently required to hold an EHCP. This applies even to young people with very high needs, including potentially health and care needs. (All High Needs young people over 18 do need to have an EHCP before they can be High Needs funded. There is a specific provision in the Children and Families Act 2014 that keeps 19-25 year olds in scope for High Needs provided they hold an EHCP; those without an EHCP would transfer to adult funding.)
- 974 If local authorities are commissioning *outcomes*, educational and otherwise, for High Needs students, and not merely paying for inputs, there must be some way of

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<sup>85</sup> See

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920020/High\\_needs\\_operational\\_guide\\_2021\\_to\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920020/High_needs_operational_guide_2021_to_2022.pdf), Annex 2.

<sup>86</sup> Paragraph 246.

<sup>87</sup> See paragraph 249: “Children cease to be ‘looked after’ when they are over the age of 18 (some children will cease to be looked after at 16 or 17 and others will continue to be looked after until their 18th birthday).”

<sup>88</sup> Footnote 31.

identifying desired outcomes for each young person at the start of their programme year and then subsequently evaluating their progress towards these desired outcomes. These outcomes need to be recorded even when there is no EHCP in place.

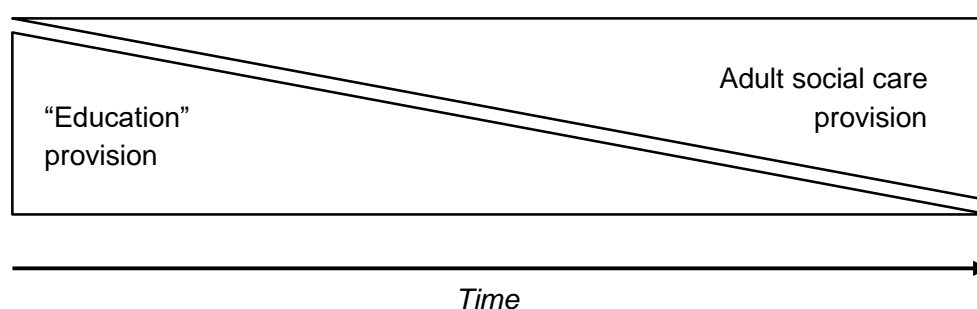
- 975 It is beyond our brief for this assignment to critique the Code of Practice or the underlying Regulations in any detail, but we do understand that an EHCP does take time to pull together 'from scratch'. And it is no help to the 16+ sector to say that young people with High Needs 'ought' to have an EHCP when they arrive at college at any age if in fact this is not currently the case. Our suggestion is therefore that:
- All young people receiving High Needs funding and for whom an EHCP is not (for whatever reason) in place should have some form of individual education plan in place at or shortly after the beginning of each academic year. The individual education plan should be entirely explicit about intended outcomes for the young person concerned.
  - The individual education plan should be reviewed towards the end of each year by the provider concerned in a formal way and the young person/their advocates and the authority should be able to contribute to this review
  - A copy of the individual education plan should accompany the submission made to the local authority for individual funding, or be available to be audited on a sample basis if a block contract is in place, so that the links between the plan (and particularly its desired outcomes) and the support for which funding is requested can be clearly seen.
- 976 It would clearly be a great help if some form of national standard for the 'individual education plan' could be arrived at, particularly when providers contract with more than one local authority. (We would be reluctant to add to the list of documents where local variants are possible.) There are any number of models in the recent history of special education upon which to draw.

## Transition

- 977 Earlier in this report, we have identified transition as one of the significant weaknesses of the current arrangements, and made pragmatic suggestions as to how transition between school and further education could be improved. In particular in this context, we regard the dedicated key (case) worker role already discussed as important
- 978 The commissioning and planning arrangements proposed above would also definitely support better transition planning for the move from school to post-16 further education provision.
- 979 Our focus here is on transition is at 'the end of further education'. The current commissioning and funding arrangements for High Needs (and, to be fair, our discussion in this Section so far) implicitly expect that a young person will be 'in education' until an agreed point, usually in a date in mid-July, after which they will be 'not in education'. If at this point the young person still needs support – and many will do – then this support comes from adult social care, possibly supported by some

adult education provision (though this is itself problematic). Transition arrangements regularly break down at this point.

- 980 A far better model would be a 'double wedge' approach where over time the proportion of a young person's overall programme that is 'education' decreases, and the proportion that is 'adult social care' increases. There will necessarily be a date when the education involvement finally drops to zero, and this may formally mark the end of a young person's education programme, but ideally the point should hardly be noticeable.



- 981 The great strength of being able to offer *some* 'education' to age 25 is that there is plenty of time for this transition to be arranged. Needless to say, this strength is lost if education effectively continues 'at 100%' up to age 25 (or nearly so) and then 'stops dead' just as it might previously have done at age 19.
- 982 For the purposes of this section of our report, the important point to make is that those charged with funding arrangements should ensure a 'scaling down' of High Needs education provision and a concurrent scaling up of adult social care. The need for social services and education to work collaboratively within an LA is paramount if this model is to work.

## Collaboration between local authorities, and consortium arrangements

- 983 Our discussion above has largely been predicated on individual local authorities 'acting alone', managing the commissioning of High Needs placements for the young people for whom they themselves are responsible. We are of course aware that in some areas of the country authorities have formed consortia of various forms to serve various, and evolving, purposes.
- 984 It would be interesting to carry out a general study of the advantages of consortia to local authorities, both in general and in these specific instances. Our own fieldwork for this project has probably had to be too limited to draw many conclusions about this. But we can perhaps make some general points:

- Any consortium arrangement that allows local authorities to employ more specialist staff<sup>89</sup> has got to be good practice
- Consortia are likely to be particularly effective in dense urban areas where boundaries between local authorities are to an extent arbitrary and there is no simple one-to-many matching between local authorities and providers. Providers who draw numbers of students from a range of neighbouring boroughs would appreciate only having to engage with a limited range of planning exercises
- Being a member of a consortium does not absolve an authority from the responsibility for strategic planning of its own post-16 High Needs provision
- A local authority that commissions places in its local GFECs itself, and commissions places in SPIs through a consortium, may well be making coherent planning of post-16 High Needs unnecessarily difficult.

985 Certainly, we do not believe that every local authority in the country is in the future likely to be, or is likely to want to be, part of a consortium. Given the scope constraints of this present project, our suggestion would be that our overall proposals should be evaluated on a 'single authority' basis, and that then ways in which any new arrangements might be supported by consortia where population and geography might be considered, possibly via a subsequent project. To reiterate the point just made, we would however recommend overall strategic commissioning of 16+ High Needs, and not separate approaches for GFECs and SPIs (including alternative provision).

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<sup>89</sup> In both senses: staff who are more specialist, and more staff who are specialists in the first place.

## 10 Conclusion

- 1001 In this report we have set out what, taken as a whole might seem to be an ambitious programme to improve the planning, commissioning, and delivering of post-16 High Needs learning by local authorities and their providers. We believe most will welcome the suggestions and recommendations.
- 1002 With the exception of some of the funding suggestions in Section 9, all our recommendations are based on practice that is already in place or in development in one or more of the ten English local authorities involved in our fieldwork.
- 1003 Although we are aware that there are inequities in funding between different local authorities, both by type (unitary, county, etc.) and by geographic region, it was by no means automatically the most advantaged authorities that demonstrated the good practice highlighted in this report. Nor is the good practice identified contingent on additional funding in the longer term – though we admit some ‘catching up’ may be necessary, and our more radical suggestions over lowering the £6,000 threshold and/or introducing a SEND-specific disadvantaged block) may well require additional funding.
- 1004 We also believe that – although this report has focussed on post-16 funding – there is nothing here inconsistent with good practice in pre-16 SEND.
- 1005 In summary, therefore, we have attempted to identify opportunities for all local authorities and providers to build upon existing good practice to develop a stronger and more robust approach to 16+ High Needs learning. If these opportunities are taken, then it may be possible to improve significantly the outcomes for High Needs students.

## Annexes

## A Interview checklist – local authorities

This annex includes a copy of the interview checklist we used with the local authority staff whom we interviewed. In each case the interviewee was sent the checklist in advance, and encouraged to identify particular areas of interest from the range of questions offered.

Not all questions were necessarily relevant to all interviewees.

Slightly different checklists were used in Phase 1 (broadly, pre-Covid) and Phase 2 of our fieldwork. The checklist given here is our Phase 2 version.



## Arrangements for planning, commissioning, funding, and supporting provision for post-16 SEND High Needs [HN] students

### Interview checklist – local authorities

#### Introduction

The LGA, Natspec and the AoC have jointly commissioned this independent research study into the planning, funding, and commissioning of HN provision for young people in general further education colleges [GFECs] and Special Post-16 Institutions [SPIs] in England.

The research aims to:

- Understand the effectiveness of existing arrangements for the planning, commissioning, funding, and support of HN provision
- Establish what more could be done to make best use of existing resources and what changes would improve matters
- Identify good practice and make recommendations to Government and others to ensure that resources are used as effectively as possible.

Other than reviewing the list of issues below, we do not expect that any particular preparation for our interview will be necessary. All our fieldwork interviews are being conducted on a non-attributable basis. A research report will be published in due course.

#### Background data and local context

- 1 To set the scene, it would be helpful if you would outline the local context in which your HN provision is planned and commissioned.
- 2 Some contextual information for HN provision for the current year would also be helpful:
  - A Post-16 HN student numbers – ideally split by age (16 to 18 and 19+), and by the type of provision they attend
  - B Your HN block expenditure on post-16 students – ideally split as for A above
  - C The extent of transfers from other DSG blocks into the HN block (and vice versa)
  - D The deficit on HN expenditure (or, if you are currently in surplus, if/when you are budgeting to move to a deficit position).
- 3 How has the data above changed over recent years? and how is it likely to change in future?
- 4 What factors are driving the changes in HN demand and/or expenditure?

#### Planning

- 5 How do you plan your post-16 HN provision?
  - *Over what timescale(s)?*
  - *Who is involved and how? (Schools – mainstream and/or special) and SFCs included?)*
  - *How do these discussions vary by provider (type, significance of provision to the LA)?*

- *Decisions on whether/when/how to develop/support additional local (sub-regional) provision*
- *Development of 'mainstream plus' and other co-delivery options (e.g. umbrella providers)*
- 6 What use do you make of data and other management information when planning?
- 7 What issues does the planning process raise for you, for 'your' providers, and for those providers that you work with that are based outside your LA?
- 8 What elements of the planning process work particularly well?
- 9 What changes, if made, would improve the planning process?

## LA resources

- 10 How do you manage the HN block allocation you receive in order to meet the calls on it?
- 11 How do you determine the share of the HN block that is allocated to 16+ provision?
- 12 What pressures do the processes associated with planning, commissioning, producing EHCPs and attending SEND tribunals put on the resources available to support HN students?
- 13 How have you restructured/reshaped your HN team (and/or do you plan any changes)?
- 14 How do you deal with non-local providers?
  - *Is there a need/any scope for regional (national) role(s) in relation to these?*
- 15 How do you monitor and support your HN providers in-year?

## [Element 2 - E2] Place commissioning and funding

- 16 How do you negotiate places with GFECs?
  - *Who is involved on your side and on the providers' side?*
  - *What issues do multi-college/provider, pan-LA groups raise?*
- 17 When is the number of places initially agreed with each provider?
- 18 How good has the match been between places initially commissioned and actually taken up?
- 19 Where additional places are needed, how are they negotiated – both the need for additional places and the level of additional funding provided for these?
- 20 What is your view of the approach to agreeing places for SPIs (using data drawn from the R06 ILR in February) compared to the negotiation process used with GFECs?
- 21 What stops the place commissioning process from working as well as it might?
  - *How appropriate is the current threshold? What would be an appropriate level for it?*
  - *Have you looked into the new funding flexibilities? Are you proposing to make any use of these?*
- 22 What elements of the place commissioning process work particularly well?
- 23 What changes, if made, would improve the place commissioning process?
- 24 What purpose does E2 serve? Is there a better way of achieving the same result?

## Overall funding

- 25 Describe the processes for determining Element 3 [E3], including timescales.
- *What form does your funding model take?*
  - *Do you include 'margin' (e.g.  $\pm 5\%$ ) discussions?*
- 26 To what extent are your payments to providers made for outcomes rather than inputs?
- 27 What stops the E3 part of the commissioning process from working as well as it might?
- 28 What changes, if made, would improve the E3 system?
- *Need for a national list of eligible costs, model to calculate fees etc.?*

## Transition into post-16 provision

- 29 What access do authority staff and providers have to individual learners pre-16 in order to plan their post-16 options?
- *What proportion of HN block-funded learners aged 16 to 19 do not have an EHCP?*
  - *Is there a need for an alternative form of plan for HN-funded learners aged 16 to 19 without an EHCP?*
- 30 What steps are taken to ensure an effective transition between provision?
- *Are there particular issues for those transitioning from 11-18 special schools?*
  - *How do you address particular areas of the Code of Practice that appear to be causing some concerns?*
    - *7.10 – involvement in transition planning*
    - *8.22 – information sharing*
    - *8.23 – becoming familiar with a GFEC/SPI environment*
- 31 How do you build learners' and parents' confidence in non-school options at 16?

## 19-25-year-olds

- 32 What impact has the extension of eligibility for HN block support to age 25 had?
- 33 How, if at all, does your approach to planning and commissioning provision differ between 16- to 19-year olds and 19- to 25-year olds?
- 34 How effective is the transition from education provision to adult social care work?
- 35 How do AEB processes and funding compare to their HN block equivalents?
- 36 What stops the systems, processes and funding associated with HN provision for 19 to 25-year olds from working as well as they might?
- 37 What changes, if made, would improve matters?

## Working with other authorities/involvement of other agencies

- 38 What is your experience of working with others in planning, commissioning, funding, and/or supporting the delivery of programmes for HN young people?
- 39 Do you have any examples where collaborative working is adding value?

- 40 (If this is an issue for you) How should 'out of area' young people with SEND be treated?

### Summary

- 41 How would you summarise your difficulties with the current system?
- 42 How might the current system be improved, either incrementally and/or more radically?
- 43 What impact have you seen/do you expect Covid 19 to have? For example, on:
- *Planning – disruptions to operational planning activities, funding agreements; impact of remote working*
  - *Commissioning – transition reviews/processes; impact of CVA s42 'relaxation'; learning packages*
  - *Funding – provider's financial health, viability and sustainability; impact on HN market; LA resources for HN*
  - *Support – how to deliver effective support remotely.*

## B Interview checklist – providers

This annex, similarly, includes a copy of the interview checklist we used with provider staff whom we interviewed. As before, the interviewee was sent the checklist in advance, and encouraged to identify particular areas of interest from the range of questions offered.

Not all questions were necessarily relevant to all interviewees.

Slightly different checklists were used in Phase 1 (broadly, pre-Covid) and Phase 2 of our fieldwork. The checklist given here is our Phase 2 version.

## Arrangements for planning, commissioning, funding, and supporting provision for post-16 SEND High Needs [HN] students

### Interview checklist – providers

#### Introduction

The LGA, Natspec and the AoC have jointly commissioned this independent research study into the planning, funding, commissioning and support of HN provision for young people in general further education colleges [GFECs] and Special Post-16 Institutions [SPIs] in England.

The research aims to:

- Understand the effectiveness of existing arrangements for the planning, commissioning, funding, and support of HN provision
- Establish what more could be done to make best use of existing resources and what changes would improve matters
- Identify good practice and make recommendations to Government and others to ensure that resources are used as effectively as possible.

Other than reviewing the list of issues below, we do not expect that any particular preparation for our interview will be necessary. All our fieldwork interviews are being conducted on a non-attributable basis. A research report will be published in due course.

#### Background data and local context

- 1 To set the scene, it would be helpful if you would outline the local context in which your HN provision is planned and commissioned.
- 2 Some contextual information for HN provision for the current year would also be helpful:
  - A Post-16 HN student numbers – in total and in respect of those for whom you receive HN funding – ideally split by age (16 to 18 and 19+) and by LA
  - B Your HN funding for post-16 students – ideally split by age and LA as above
- 3 How has the data above changed over recent years? How is it likely to change in future?
- 4 What factors are driving the changes in HN demand and/or expenditure?

#### Planning

- 5 How do you plan your post-16 HN provision with those LA(s) you contract with?
  - *Over what timescale(s)?*
  - *Who is involved and how? (Schools – mainstream and/or special and SFCs included?)*
  - *How do these discussions vary by LA?*
  - *Decisions on whether/when/how to develop additional provision*
  - *Development of ‘mainstream plus’ and other co-delivery options (e.g. umbrella providers)*
  - *For GFECs, both provision which qualifies for HN block support and that which does not.*
- 6 What use is made of data and other management information when planning?
- 7 What issues does the planning process raise for you and for the LA(s) that you work with?

- 8 What elements of the planning process work particularly well? How mixed is the picture between the LAs you contract with?
- 9 What changes, if made, would improve the planning process?

## Resources

- 10 Do you know how your LAs determine the share of the HN block that is allocated to 16+ provision? And to what extent is it being topped-up by transfers from other DSG blocks?
- 11 How does your college use the funding provided through the Disadvantage Blocks?
- 12 Do you use any other sources of funding to support your HN students?
- 13 Is the level of funding you receive currently sufficient to meet the costs of provision for your HN students?
- 14 What pressures do the processes associated with HN-related activities (planning, commissioning, producing and monitoring EHCPs etc.) put on the resources you have available to support HN students?
- 15 How have you and/or your LA(s) had to restructure/reshape the HN team, how services are delivered etc.? Are any such changes currently being planned?
- 16 How does (do) your LA(s) monitor and support you in-year? Where else do you receive support from?

## [Element 2 - E2] Place commissioning and funding

- 17 [For GFECs] Describe the process and timescales for negotiating E2 places.
- 18 When is the number of places initially agreed with each provider?
- 19 How close has the match been between places initially commissioned and actually taken up?
- 20 Where additional places are needed, how are they negotiated – both the need for additional places and the level of additional funding provided for these?
- 21 What is your view of the approach to agreeing places for SPIs (using data drawn from the R06 ILR in February) compared to the negotiation process used with GFECs?
- 22 What stops the place commissioning process from working as well as it might?
  - *How appropriate is the current threshold? What would be an appropriate level for it?*
  - *Have you looked into the new funding flexibilities? Are you proposing to make any use of these?*
- 23 What elements of the place commissioning process work particularly well?
- 24 What changes, if made, would improve the place commissioning process?
- 25 Does E2 serve a useful purpose? Is there another way of achieving the same result?

## Overall funding

- 26 Describe the processes for determining Element 3 [E3], including timescales.
  - *What form(s) do the funding model(s) you work with take?*

- Are 'margin' (e.g.  $\pm 5\%$ ) discussions included?
- 27 To what extent are the payments you receive for outcomes rather than inputs?
- 28 What changes, if made, would improve the E3 system?
  - Need for a national list of eligible costs, model to calculate fees etc.?
- 29 What elements of the process through which levels of funding are determined work well?

### Transition into post-16 provision

- 30 What access do your (and authority) staff have to individual learners pre-16 in order to plan their post-16 options?
  - [For GFECs] What proportion of your HN block-funded learners aged 16 to 19 do not have an EHCP?
  - [For GFECs] Is there a need for an alternative form of plan for HN-funded learners aged 16 to 19 without an EHCP?
- 31 What steps are taken to ensure an effective transition between provision?
  - Are there particular issues for those transitioning from 11-18 special schools?
  - How are particular areas of the Code of Practice that appear to be causing some concerns addressed?
    - 7.10 – involvement in transition planning
    - 8.22 – information sharing
    - 8.23 – becoming familiar with a GFEC/SPI environment
- 32 How do you build learners' and parents' confidence in non-school options at 16?

### 19-25-year-olds

- 33 What impact has the extension of eligibility for HN block support to age 25 had?
- 34 How, if at all, does your approach differ between 16- to 19-year olds and 19- to 25-year olds?
- 35 How effective is the transition from education-based provision to adult social care work?
- 36 How do AEB processes and funding compare to their HN block equivalents?
- 37 What stops the systems, processes and funding associated with HN provision for 19 to 25-year olds from working as well as they might?
- 38 What changes, if made, would improve matters?

### Working with others/involvement of other agencies

- 39 What is your experience of working with others in planning and/or delivering programmes for HN young people?
- 40 Do you have any examples where collaborative working is adding value?
- 41 (If this is an issue for you) How should 'out of area' young people with HN be treated?



## Summary

- 42 How would you summarise your difficulties with the current system?
- 43 How might the current system be improved, either incrementally and/or more radically?
- 44 What impact have you seen/do you expect Covid 19 to have? For example, on:
  - *Planning – disruptions to operational planning activities, funding agreements; impact of remote working*
  - *Commissioning – transition reviews/processes; impact of CVA s42 ‘relaxation’; learning packages*
  - *Funding – your financial health, viability and sustainability; impact on HN market; LA resources for HN*
  - *Support – delivering/receiving effective support remotely?*

## C College-based funding

### *Introduction*

- 1 One of our GFEC interviewees asked us specifically to consider a return to a former method of funding High Needs in GFECs, based very largely on colleges themselves and with no input from local authorities. We discuss this approach here.

### *College-based Additional Learning Support*

- 2 The Additional Learning Support [ALS] funding system was run by the then Education Funding Agency [EFA] in the early 2010s<sup>90</sup>, and provided additional resources for young people between the ages of 16-24. It was available to colleges only (i.e. not to SPIs).
- 3 It was based on a formulaic system where individual colleges completed a census describing the young people with High Needs whose needs they met and the approximate level of expenditure on each. A banding system was in place, starting at around £600. This census was completed mid-year and the results used to calculate the next year's ALS. Thus, funding was always one year in arrears, but appeals could be made if for any reason expenditure on ALS increased markedly from year to year.
- 4 The funding was intended to cover all expenditure on High Needs young people up to a maximum of £19,000 per young person. If the costs of ALS for a young person exceeded this maximum, then the LA needed to pay. However very few GFECs incurred more than £19k per young person so this was rare.
- 5 No further steps were needed to claim the money, but colleges did have to keep records of how it was spent. It had to be spent entirely on additional learning support for young people who needed it (i.e. no top slice for administration, unless the administration concerned was entirely devoted to the college in question's ALS service). However, spending did not need to be tracked at the individual learner level. Colleges did however need to carry out assessments of young people's needs, draft individual action plans, and review progress – all at the level of the individual. Individual files were subject to audit and each year SFA staff would visit and call for a sample of files to review (say ten to twenty). If for any reason a proportion of these were unsatisfactory then a much deeper audit would follow.
- 6 The same audit visit would check that all spending was appropriate, as already mentioned.

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<sup>90</sup> Given that Government materials on the Web are deleted when no longer relevant, it is unsurprisingly difficult to quote actual dates without considerable archival research. The exact “from” – “to” dates are in any case not relevant to our argument. However for those interested an account of the introduction and development of ALS can be found at [https://epi.org.uk/wp-content/uploads/2019/05/16-19-Funding\\_EPI-2019.pdf](https://epi.org.uk/wp-content/uploads/2019/05/16-19-Funding_EPI-2019.pdf)

- 7 EFA was not responsible for assessing whether the young people made the progress that might be expected (or that had been predicted). This was the responsibility of Ofsted, as part of its routine monitoring. Ofsted does not routinely look at the progress of individuals (even on a sample basis) so this element of “commissioning” – “Do I get what I am paying for?” – was effectively absent.
- 8 Otherwise the system had a number of benefits. It gave colleges certainty, well in advance of the year in question, about the High Needs funding that would be available. It reduced bureaucracy compared with the current system (as operated in most places) of requiring ‘costs’ of every individual learner’s High Needs programme. It imposed rigour through a sampling methodology that was usually robust enough to ‘catch’ those not treating the system completely fairly. And it offered a ‘level playing field’ as between local authorities.
- 9 SFA had a similar scheme for adult learners. Apprentices, however, were not well served and did not really have an adequate High Needs funding system.
- 10 Our interviewee wished us to recommend that serious consideration be given to re-introducing such a GFEC based system. However, we consider that to do so would arguably go beyond our brief for this project. In particular it would clearly be difficult to apply to SPIs, and would therefore deepen the college-SPI divide rather than help to blur the boundaries between the two sectors. This is important in a context when – as we have argued – some GFECs are considering developing local provision that matches some aspects of SPIs’ traditional roles<sup>91</sup>.
- 11 However there may be a role for an additional “disadvantage block” ring-fenced to meet the costs of educating students with additional needs that fall below the threshold (we have made recommendations to this effect in Section 9).
- 12 In addition, we consider that the merits of a ‘block funding system’, as already argued for above (most comprehensively in Section 9 of this report) would go a very long way towards providing the independence of action that colleges enjoyed under ALS while still maintaining the ability of local authorities to take ongoing responsibility for [young] people with High Needs at all stages in their lives.

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<sup>91</sup> Of course, it could be argued that a GFEC that had a more standalone, ‘in-house’, SPI-like provision could have its general High Needs provision funded by ALS and its SPI-like provision funded by the local authority as at present.