

## **DELIVERING BETTER VALUE IN SPECIAL EDUCATIONAL NEEDS OR WILL WE...**

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### **ABSTRACT**

This paper provides a commentary on the national ‘delivering better value’ (DBV) policy devised by the central government, for which various local authorities across the country have been ‘invited’ to take part. It seeks to gain a richer understanding of the reasons for the implementation of this policy and of the overarching system, along with the interconnected agents at play that affect the system, which the DBV is aiming to support and ultimately improve. It is not, however, a potted history as to the reasons why it has been introduced, nor does this paper provide an analysis of the policy. It provides a briefing for educators and academics who work within the system but may not be as familiar with the rationale behind its introduction.

**Keywords:** SEN provision, funding, policy

### **INTRODUCTION**

‘Education policy in the United Kingdom is devolved’ (Long and Danechi, 2023, p.1). As such, this policy and paper, addressing the delivering better value (DBV) policy related to special educational needs and disabilities (SEND), adopted by the government, are applicable to England only. Under the current government, the Children and Families Act 2014 brought in the Special Educational Needs and Disability – Code of Practice (COP) (Hodkinson, 2019, p.5). This ushered in sweeping changes, such as moving from ‘Statement of Educational Need’ (Statement(s)) to ‘Education and Health Care Plan’ (EHCP). There was an increase in the age range to which

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EHCP was applied, i.e., from 18 to 25 years. The changes were intended to increase the weight of the voice of the child and secure stronger parental engagement (Martin-Denham, 2023, p.11). It not only gave local authorities (LAs) new duties but increased parents and caregivers expectations, as Selfe et al. (2020) mentioned: “LAs were faced with new duties and to cater for a much wider population range (0–25 years) at a time of austerity and severe budget cuts. One impact has been to raise parents’ expectations, but with very little change in the availability of resources.” (Selfe et al., 2020, p.10). The act also amended the way a child’s needs may be classified, under the four broad areas under the COP (DFE, 2014, pp. 97–98). Prior to the reforms, the government tested its proposals as detailed hereunder:

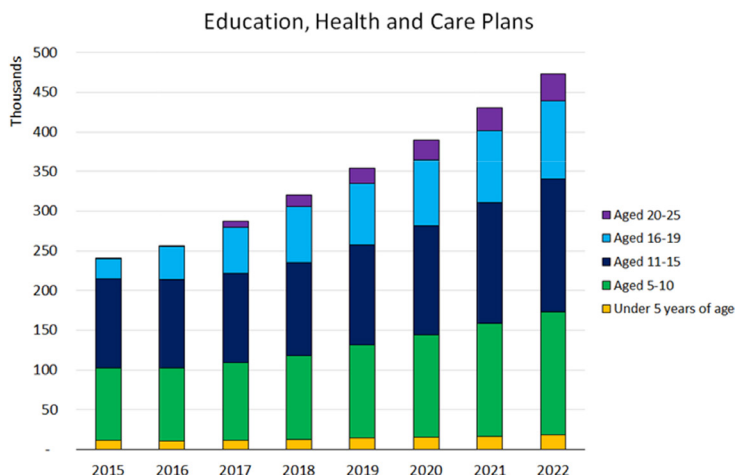
“In preparing for the 2014 reforms, from October 2011 the Department worked with 31 ‘pathfinder’ local authorities to test its proposals. This exercise helped to test the challenges involved in, for example, transferring children and young people to EHC plans and preparing a ‘local offer’ setting out the support available. The Department did not complete a formal regulatory impact assessment but published an evidence pack to support the passage of the Children and Families Bill.<sup>27</sup> It had not, at that stage, completed its evaluation of the local pathfinders.” (National Audit Office, 2019, p.35)

The National Audit Office goes on to say:

“In its evidence pack, the Department assumed that the reforms would lead to cost savings, including as a result of: reducing conflict and the number of appeals against local authority decisions; a more efficient market for services, leading to better local authority commissioning and less variability in the cost of providing similar services in different parts of the country; and earlier identification of needs, avoiding more expensive subsequent interventions. The Department did not quantify these impacts but expected that the benefits and savings would significantly outweigh the costs of moving to the new system. Local authorities told us, however, that the Department had not recognised the full cost of achieving the ambitions of the reforms.” (National Audit Office, 2019, p.36)

Up until this point, the number of statements issued year on year had remained relatively stable at 2.8%, but since the introduction of the COP, there has been a steady increase in the number of EHCPs (Hodkinson, 2019, pp. 13–14), as highlighted by Lepper (2022) and shown in the following graph:

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The Department for Education (DFE) did not fully assess the financial consequences of the reform and expected the benefits to outweigh the costs (National Audit Office, 2019, p.10). The government was repeatedly stating that they were funding education more than ever, and yet this rhetoric was alienating educators, parents, and caregivers, who had to work in and with the system:

“The Government’s mantra that ‘more money than ever is going into education’ has been counterproductive. Not only has it fuelled an unnecessarily adversarial relationship with parents and teachers across the country, but it has also given the impression of a Department unwilling to engage with the realities of funding pressures whilst signalling the Government was wrongly focusing on absolute funding levels rather than the more important question of actual sufficiency.” (Education Select Committee, 2019)

The DFE also acknowledged that “that weaknesses in mainstream schools’ support is likely to lead to growth in the demand for EHC plans and more costly special school placements” (National Audit Office, 2019, p.5), which is the predicament we find ourselves in now. With the increase in the number of EHCPs, the knock-on effect is placing further pressure on the high-needs budgets, which are overspending across the country (National Audit Office, 2019, p.8) by over £2 billion pounds, nationally (Crocker, 2022). The “High needs funding is provided to local authorities through the high needs block of the DSG, enabling them to meet their statutory duties under the Children and Families Act 2014” (DFE, 2023). There has been a “significant increase of 40% in high needs funding since 2019–20, to a national total of £9.1 billion in 2022–2023” (DFE, 2022c, p.8), with 81.3% of LAs overspending on their

high-needs budget in 2017–2018 (National Audit Office, 2019, p.6). One of the reasons for this is:

“that local authorities have been accused of developing and maintaining a postcode lottery of SEND provision....

...For example, some local authorities’ policies observe the building of new and more inclusive special schools; others develop inclusive provision by transferring monies from their special educational needs budgets to mainstream schools....

...This variety of policy approaches means that families are once again being faced with unacceptable variations in the level of service provision. (Hodkinson, 2019, p.113)

Hodkinson goes on to say:

“Many authorities have been placed in an impossible position by the government, for whilst they have to continue funding special schools, they are also required to provide funding to support early intervention and inclusive educational strategies for all as well as cut funding for local services due to ‘austerity measures. (Hodkinson, 2019, p. 114)

To understand why funding is important for the future success of this policy, it is vital to understand how LA has been funded and will continue to be funded. Perera (2019) discusses this in detail, stating:

Prior to 2014/15, funding for all pupils was allocated to local authorities through the Dedicated Schools Grant (DSG). It was a single amount and local authorities had the flexibility to determine how much to allocate to mainstream schools, special schools, early years and central local authority support functions (for example, for administering admissions arrangements). The DSG was, and still is, ringfenced, meaning that authorities cannot allocate funding for purposes other than education.

The DSG still exists, but, since 2013/14, it has been divided into 3 “blocks”: the schools block; high needs block; and the early years block. The reason behind these changes was, primarily, to enable the DFE to apply a national funding formula separately for each of schools, high needs, and early years. The DFE has also introduced new rules, which mean that local authorities cannot move money out of the schools block (i.e. to high needs or early years) without the agreement of the Schools Forum. If that amount exceeds 0.5 per cent of the schools block, then permission will need to be sought from the Secretary of State.

In April 2018, the Department used a new formula for allocating the high needs block to local authorities. The rationale for this was that the existing

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system was unfair, inadequate, and not responsive to needs across the country. The new high needs formula now consists of five factors:

- i) A basic per-pupil entitlement of those in a special school or post-16 institution
- ii) A sum based on the size of the entire local population aged 2–18
- iii) Deprivation (measured by eligibility for Free School Meals and number of children living in poor areas)
- iv) Low prior attainment (measured by attainment at Key Stages 2 and 4)
- v) Health and Disability (measured by the number of children declared as being in bad or very bad health on the 2011 census and the number of children aged 0–15 in receipt of the Disability Living Allowance)

(Perera, 2019, p. 4)

If the retrospective element of this funding continues, the actual amount needed by LAs may not be adequate with rising demand. The current policy of providing some initial funding to resource system-wide changes through the DBV programme, is requiring LAs to think differently and allocate scarce resources to the strategy, which is perceived to have the biggest impact on driving down demand and improving budgetary pressures. Notwithstanding this, each LA's approach is variable due to the national dismantling of the 'middle tier', through austerity and the education functions of LAs, through the introduction of the academies, and more demanding accountability measures for schools, causing a perverse incentive with the potential to marginalise pupils and young people with SEND. Atop of this, the context of each LA is different, depending on the political dimension of each council, school improvement, SEND and commissioning infrastructure, and the impact of austerity on the fabric of LAs (Selfe et al., 2020, p.42).

The government's policy was to provide 'one off' additional funding, with great fanfare, via press coverage to support LAs in addressing their overspend. While the government repeatedly provided additional sums, it did not address the legislation, and the amounts provided did not cover the combined deficits accruing (National Audit Office, 2019, p.11). Rather than bailouts in the form of money, and after much delay and under increasing pressure, the government finally published a more cohesive policy to support the system in the form of 'Green Paper', (DFE, 2022b) and 'the SEND and alternative provision improvement plan', DFE (2023), with support for children, their families, and schools through a policy of intervention at the middle tier level: LAs. Steve Crocker, chair of the Association for Supervision and Curriculum Development ACSD, said, "The SEND and AP system needs a reset to make it work better for all children and families, to strengthen accountabilities, and to reduce the insurmountable costs that threaten the financial sustainability of local authorities" (Crocker, 2023). Across the country, LAs are filling their special

schools due to the increase in the number of EHCPs. This has resulted in LAs having to turn to the independent sector in the form of AP and Independent Non-Maintained Special Schools (INMSS), many of which are vast distances away from the child's home, adding additional costs in terms of transportation costs to an already expensive placement.

With unsustainable pressures from increasing numbers of EHCPs, causing mounting deficits due to INMSS/AP and the associated transportation costs, along with a host of complaints from parents and caregivers. The central government introduced the DBV policy, aimed at LA, through three programmes. These are introduced on the DBV website (DFE, 2023a), along with the background surrounding it:

The Special Educational Needs and/or Disabilities (SEND) and Alternative Provision (AP) green paper identifies three key challenges facing the SEND system: poor outcomes for children and young people with SEND and in AP; low parental and provider confidence; and financial unsustainability.

The Department for Education recognises that change is needed but that this will take time. It is therefore currently providing three support offers to local authorities and their partners in relation to funding challenges and High Needs budget sustainability. The aim of all three programmes is to facilitate sustainable management of local authorities' high needs systems, with support and intervention tailored to the problems areas are facing. The programme will not 'write off' any High Needs budget deficits.

The three programmes are:

### **1. The Safety Valve Intervention Programme**

Introduced by DFE in 2020–2021 for those local authorities with the greatest financial challenges. Additional Safety Valve agreements have been made since the programme started.

### **2. The Delivering Better Value in SEND Programme**

Introduced in 2021–2022 as an optional programme providing dedicated support and funding to 55 local authorities – chosen based on those facing the greatest financial challenges after those authorities that have already been invited to join the Safety Valve Intervention Programme.

### **3. Education and Skills Funding Agency Programme**

Tailored support and challenge depending on the financial position of the local authority. All local authorities who are not on the Safety Valve or DBV SEND programmes will be contacted by the ESFA. Advice from the ESFA will draw on learning from existing programmes and relevant research conducted by the department (DFE, 2023a).

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Out of the 151 LAs, as identified on the DSG funding (DFE, 2023b), 34 LAs currently have safety valve agreements with the DfE, with the website saying that the DfE has made another 20 agreements for the 2022–2023 academic year (DFE, 2023b). DfE or DBV in SEND, is a programme:

“to support local authorities and their partners to improve delivery of SEND services for children and young people whilst working towards financial sustainability. Phase One of this programme is providing dedicated technical support and funding to 55 local areas which have opted to participate.” (DFE, n.d.)

DBV was commissioned by the DfE and split into two phases. In the initial phase, 55 LAs were invited to voluntarily be involved in the programme. These LAs were chosen due to their highest deficits, after other LAs who had already been invited to join the DfE’s safety valve programme. The DfE identified ‘Newton’, a consulting firm specialising in the public sector, and the ‘Chartered Institute of Public Finance & Accountancy’ as the phase one delivery partners for the DBV. The 55 LAs were split into three groups known as ‘tranches’ DfE (n.d.a.) (see Appendix A). Two LAs opted out of DBV and were replaced (DFE, 2022a, p.3). There are a number of reasons for the deficits across the country, as mentioned earlier; however, and more interestingly, the overarching rationale on the DBV website does not mention managing demand for EHCPs or cost-effective provision. Yet these are mentioned within the DfE guidance on intervention work with LAs:

There were two principal goals identified during the programme which were critical for the local authorities’ ability to reach sustainable positions:

- appropriately managing demand for Education, Health and Care Plans (EHCPs, including assessment processes that are fit for purpose
- use of appropriate and cost-effective provision - this includes ensuring mainstream schools are equipped and encouraged to meet needs where possible, whilst maintaining high standards for all pupils (DFE, 2022c, p.10).

The dilemma with ensuring mainstream schools are equipped and encouraged is interesting as LAs have no direct control or authority and can only ‘encourage’, as since the introduction of the academies programme initially by New Labour, but continued under the coalition and then conservative governments. The educational landscape has become a ‘pick and mix’, patchwork of LA-maintained schools, sponsored academies, academy converters, UTCs, and free schools, all across the country, with few LAs having any direct authority over schools within their areas. This is discussed by Critchley (2018): “education has been undermined is the effective removal of local government from education management” (Critchley, 2018, p.179).

Perera (2019) discusses the various interconnected issues related to why the high-needs funding is not adequately suitable and the reasons why there is increased pressure on budgets. Booth (2022a) discusses the issue of special schools lacking any capacity for further children, yet acknowledges that the government does not collect capacity data and, as such, has no central record of the actual number of places required (Booth, 2022b). Due to the lack of special school places in the maintained and academy sectors, LAs are having to use more expensive INMSS, which are costly and not always near the child's home, causing additional transportation costs or requiring boarding, removing the child from the family and community (Jayanetti, 2019). Perera (2019) mentions: "Placements in special schools, and particularly those in the non-maintained and independent sector, are typically significantly more expensive than placements in mainstream schools" (Perera, 2019, p.5). It is also not just the cost of the independent specialist placement but also the associated transportation costs, which the LA has to also fund. With the growth of INMSS and transport costs, this additional expense has escalated the rising deficits. Newton (2018) discuss this:

"the topic of spend pressures associated with SEND and home-to-school transport were raised as issues. All of the authorities felt that they were experiencing additional, unfunded pressures in these areas. This presented a challenge to balancing budgets and often required children's services to provide supplementary funding, for example to fulfil shortfalls in what the High Needs Block covered" (Newton, 2018, p.41)

Newton was tasked with providing an analysis of the situation and successes during these initial stages. The initial themes to emerge from the case reviews conducted by Newton identified some non-ideal outcomes.

The main themes contributing to a non-ideal outcome were the following:

- lack of parent confidence in mainstream settings;
- lack or limit of inclusive practice within a school;
- missed opportunities to use existing services; or
- a gap in service offerings (DFE, 2022a, p.2).

Another emerging theme, as identified in the DBV, was:

- To provide better support and outcomes for children and young people with SEND, the greatest opportunity exists in increasing the ability of local systems to support children in a mainstream setting.

The evidence highlights three priority drivers to achieve this: (1) increasing the ability of mainstream schools to provide day-to-day support for children with SEND; (2) improving the access mainstream schools and children have to wider system resources; and (3) increasing



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parent-caregiver confidence in the ability of mainstream schools to meet their children's needs (DFE, 2023a, p.1).

This is an interesting point, as schools are autonomous of LA control, and even LA-maintained schools, act with relative autonomy. "LAs play a central role in that they have a statutory responsibility to ensure that individual children, young people, and their families receive the support that they need." (National Audit Office, 2019, p.20). However, as Selfe et al. (2020) discuss, "Currently, there is an unsustainable situation whereby the LA has little or no role with academies and savagely reduced budgets but retains responsibility for meeting pupils' special education needs." (Selfe et al., 2020, p.20). This will require LAs to 'influence the school system more than it currently does in order to achieve these "goals"'. Yet with more complex children and young people coming through the system, will schools and MATs, which potentially cover more than one geographic area, buy into the LAs work around DBV? This is a conundrum, as if LAs don't, then the expected reduction in expenditure will not fall. The newsletter goes on to say:

If these opportunities are addressed (contingent on the availability of the right local resources to implement changes), then significant benefits - of improved outcomes and experience for thousands of young people, and an annualised reduction in expenditure vs unmitigated scenarios of between £158m and £250m - are achievable for T1 authorities. (DFE 2023a, p.1)

In order to achieve this, it will require LAs to leverage their relationships with partners across the system to influence the system. The aim of supporting schools to be more inclusive could be seen as contrary to other government policies related to education. Hodkinson discusses, saying:

In common with many other educational initiatives and policy development, inclusion has become defined and controlled by the government's agents of accountability, performativity and standards. Indeed, in their relentless drive to improve standards, new systems of accountability, policed by autocratic inspection regimes, have been created. (Hodkinson, 2019, p.109)

Hodkinson goes on to say:

Some have observed that the issue of school accountability is the biggest challenge to the development of inclusive education. It has been argued that English schools and colleges have become a laboratory for educational reform, and it is this coupled with accountability and performativity that has led to progress of inclusion being 'painfully slow' (Hodkinson, 2019, p. 111, citing Ainscow et al., 2006: 296)

While the impact of this policy is yet to be shown, initial analysis has identified ways in which LAs can reduce their deficits. Nevertheless, as the programme has developed, projects have been devised and implemented to address the increase in deficits in an attempt to reduce them. These were shared via the DBV in the SEND Newsletter in April 2023:

- Embedding new ways of working using person-centred planning approaches
- Establishing a multi-disciplinary team for ‘dynamic EHCPs’
- Developing a more inclusive mainstream culture through re-shaping specialist support services and the introduction of a mainstream inclusivity team
- Delivering workforce training to improve the capacity and capability of frontline services
- Delivering special school outreach to cover social, emotional, and mental health needs autism, learning difficulties, and moderate learning difficulties and specialist behaviour practitioners
- Supporting mainstream school inclusivity through creating inclusion champion roles, inclusivity data analysis, and bespoke training
- Providing strong inclusivity resources offering to all schools and strengthening the graduated response
- Establishing a ‘pathways’ team that will intervene earlier, plan for transition more deliberately, and prepare for adulthood more proactively
- Boosting change leadership capacity by recruiting a fixed-term casework team to address the review backlog
- Creating dashboards to actively manage performance
- Establishing a special educational needs coordinator SENCO helpline
- A transitions team who will work alongside primary and secondary schools to support children, parents, and caregivers through that transition period of their lives

(DFE, 2023b, p.2)

Notwithstanding the initial positive steps, between tranche 2 and tranche 2, demand across the LAs involved increased, with the following areas being identified:

caseload and annual cost of provision have been increasing. This indicates that deficits are being driven by both an increase in the number of EHCPs and an increase in the cost of supporting a child or young person with an EHCP (DFE, 2023b, p. 1)

It must also be recognised that there is also no meaningful way to compare LAs due to their sizes (unitary or county), corporate structures, which vary in

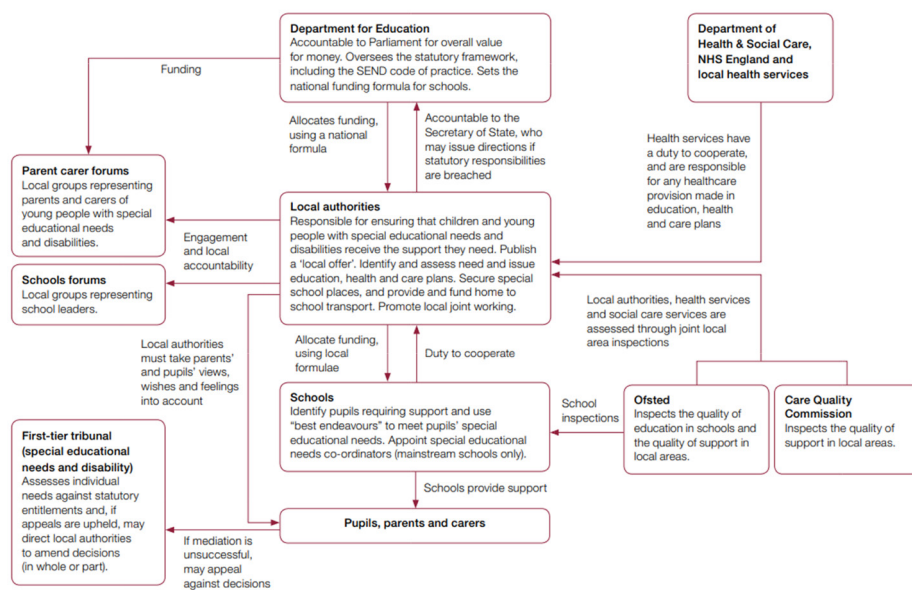
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terms of personnel and secondary support services available to influence the system. Atop of this, “There is considerable local variation across aspects of SEND provision (National Audit Office, 2019, p.11). This is discussed by Newton (2018, p.26), which discusses the variation across the country of child services spent per pupil and the variation in reporting by the council.

In respect to the development of inclusion, local authorities perform a number of functions; not only do they create local policy, but also they decide, in the main, the level of funding for such education. These two functions are crucial to the successful implementation of inclusive education within local schools. (Hodkinson, 2019, p.113)

The National Audit Office (2019, p.21) produced a diagram to explain the interconnected nature of each agent within the SEND system:

Supporting pupils with SEND depends on complex relationships between multiple bodies



Source: National Audit Office

Another aspect that has impacted the SEND system is the increase in tribunal cases. Which has also seen a growth in terms of numbers, causing more pressure on the system. Generally going against LA, with 96% of tribunals going in the favour of the appellant (Long and Danechi, 2023).

Part of the undercurrent of the DBV policy is to ensure mainstream schools are further supported to better meet the needs of all children and young people. However, no headteacher has ever said, ‘I am not inclusive’ or ‘I have low expectations or low standards’, quite the contrary. School exclusion data for children and young people with SEND is disproportionately high compared with their peers, and outcomes for children and young people with SEND are not in line with their peers. It doesn’t help that the

government's own rhetoric is ambiguous and lacks specificity in relation to quantifiable outcome measures expected from children and young people with SEND. This was highlighted by the National Audit Office (2019) as follows:

The government's vision for children with SEND is that they achieve well at school and live happy and fulfilled lives. The Department collects and publishes data on pupils' academic attainment and progress at school, which show that pupils with SEND have consistently made less progress than other pupils with the same starting points. The data also covers what young people with SEND go on to do after school. However, the Department has not specified, in measurable terms, the outcomes it wants to achieve from its support for pupils with SEND (National Audit Office, 2019, p.7)

As discussed earlier, schools are generally autonomous from the LAs, with the LA only able to 'influence' the system. If a higher number of children and young people are going to have EHCPs within mainstream schools, how do their needs get properly met against the backdrop of the accountability system? Ultimately, who is going to tell schools they are not inclusive enough?

Gray (2023), in the joint paper by the SEND Policy Research Forum, states: "Although the proposals sound sensible superficially, they do not address some of the key problems with the current funding system which are contributing to the 'SEND crisis'. There is limited analysis or substantive reflection on the range of purposes that funding systems are expected to deliver or how the impact of different funding systems might be judged" Gray, (2023, p.26). IPSEA (2022) echoes this and is very clear that they do not believe the government's SEND improvement plan will 'fix' the problems faced by the system. IPSEA commented publicly during the green paper consultation and did not hold back on their comments, stating that they felt the proposals would have "an overwhelmingly negative impact on children and young people with SEND", (IPSEA, 2022). In another article on the IPSEA website, Brock writes:

"The key takeaway from the Improvement Plan is that it contains no plans to change the law on support for children and young people with SEND. In the absence of any legislative change, the current SEND legal framework (set out in the Children and Families Act 2014 and The Special Educational Needs and Disability Regulations 2014) will continue to apply in its entirety. That means local authorities must follow the law, parents and carers can continue to rely on it, and the SEND Tribunal will continue to apply it." (Brock, 2023)

Brock goes on to say:

“The government has failed to tackle the real problem with the SEND system (or has chosen to wilfully ignore it).

The absence of any specific plans to address the persistent non-compliance with the law by many local authorities – an issue that the government has heard about repeatedly and which lies at the heart of the SEND crisis – means that nothing is likely to improve.

This isn't the only issue with the government's plans. The Improvement Plan is described as a “multi-year programme” to deliver an improved SEND system. But this government doesn't have multiple years. A general election will have to be held by January 2025, and most of the big ticket items (including the long-awaited EHC plan template) aren't expected to be introduced until at least 2025. This begs the question, how much of this plan will actually be put into action?” (Brock, 2023)

## CONCLUSION

It is too early to assess the impact of this policy initiative, and with a general election on the horizon, who knows what lies ahead for our children with EHCPs?

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**APPENDIX A**

<b>Tranche 1 (diagnostic underway)</b>	<b>Tranche 2 (diagnostic started January 2023)</b>	<b>Tranche 3 (diagnostic provisionally started August 2023)</b>
Bournemouth, Christchurch and Poole	Central Bedfordshire	Birmingham
Bracknell Forest	County Durham	Buckinghamshire
Brent	East Riding of Yorkshire	Cornwall
Bristol	Enfield	Borough of Halton
Cheshire East	Gloucestershire	Lewisham
Cumbria	Hackney	Tower Hamlets
Doncaster	Havering	North Yorkshire
Dudley	Kingston upon Hull	St. Helens
Hampshire	Middlesbrough	Sunderland
Kensington and Chelsea	Newham	Thurrock
Leicestershire	Oldham	Warwickshire
North East Lincolnshire	Reading	West Berkshire
Oxfordshire	Redcar and Cleveland	Wiltshire
Somerset	Rochdale	Wirral
Solihull	Rutland	
Southampton	Sefton	
South Tyneside	Swindon	
Stockport	Tameside	
Stockton-on-Tees	West Sussex	
Suffolk	Windsor and Maidenhead	
	Worcestershire	



## APPENDIX B

### *TIMELINES*

- **SEND COP** published in 11/06/2014 for 01/09/2014 implementation
- 16/12/2018 – DFE announced an additional £350 million to support children with complex needs and disabilities, with £250 million going to councils atop of the £6 billion already provided for the high-needs budget; the remaining £100 will go to creating more places within mainstream schools. New funding to support children with special educational needs - GOV.UK ([www.gov.uk](http://www.gov.uk))
- The Safety Valve Intervention programme was introduced in 2020–2021.
- In June 2022, the DBV in SEND programme began.
- **SEND and AP green paper** consultation ran from 29/03/22 to 22/07/22.
- January 2023: Launch of the DBV on the SEND website.
- **SEND and AP improvement plan: right support, right place, right time.** Published on 02/03/2023.
- **Analysis of the consultation responses to the SEND review: right support, right place, right time.** Published in March 2023, alongside the above.

