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A transformation or an opportunity lost?

The education of children and young people with special educational needs and disability within the framework of the Children and Families Act 2014

A discussion paper

Prepared for RISE

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Introduction

Introduction

The Coalition government began implementation of the *Children and Families Act 2014* ('the Act': TSO, 2014) and the *Special Educational Needs and Disability Code of Practice 2014* ('the Code': DfE/DoH, 2014) in September 2014. Ministers described these changes as 'a once-in-a-lifetime opportunity' for those with special educational needs and disability (SEND).

Since then, concerns about the implementation process and the extent to which the changes are improving practice have led to disquiet among disabled people and the parents and carers of those with SEND.

But there are likely to be longer-term and more far-reaching consequences of the changes. To explore this, we need to set the reforms within broad national and international perspectives on principle and practice. The paper argues that while the reforms enhance aspects of the previous English SEND framework, they:
- do not have adequate safeguards for introduction into an educational environment which is in many ways hostile to inclusion and equality
- take insufficient account of recent international research evidence, such as the fast-developing knowledge of the infant brain, which is already challenging our SEND resource priorities
- fall short of the highest international standards on difference and disability, particularly those set out in the United Nations Conventions on the Rights of the Child (UNCRC) and on the Rights of Persons with Disabilities (UNCRPD). The UK is a signatory to both Conventions.

There are already disturbing signs that the Coalition policies are affecting outcomes for children and young people with SEND, particularly those who come from poor families. For example, Lupton et al (2015) found that in 2014 the GCSE performance of children with special educational needs on free school meals (FSM) dropped, in comparison with the 2013 results, by no less than 32.8 percentage points (from 49.4 per cent to 16.6 per cent).

In the light of such evidence the Conservative government should review the interaction of the 2014 legislation and regulation with the environment into which they are being introduced. The recommendations at the end of this paper can support this process. They are also intended to help all those who care about the rights of disabled people in education in England create new institutional alliances with politicians and policy makers of all parties in years to come.

The education of children and young people with special educational needs and disability within the framework of the Children and Families Act 2014

Section 1: The international context

1.1 Introduction: the developing picture

This review does not deal with all aspects of the 2014 Act and Code of Practice. It concentrates on the Code, the nearest thing we have to a national handbook on SEND. The Code, perhaps inevitably, spends many pages on details of the Education, Health and Care Plan (EHCP), which is replacing the Statement of SEN for more expensive and costly intervention programmes.

The challenge for a national handbook, however, is to get the balance right in terms of detailing the 'ordinary' provision which will make the specialist less necessary. The legislation's biggest contribution to this is replacing the two stages of school-based SEN intervention established in 2001 with one, known as SEN support. This has reduced the numbers identified in schools as having SEN (DfE, 2015a), but will not necessarily improve provision.

Recent research on pre-school and school learning and the evidence on the importance of building a positive universal 'ecology' before providing interventions for minority groups can help us gauge the extent to which the 2014 Act and Code offer the balance of support for system change that is needed.

Section 2: Pre-school and school learning and development

2.1 The importance of the earliest days of life

Research on the first months of life is steadily reinforcing arguments for the significance of infants' environments for their future learning and well-being. It is now accepted that there is a demonstrable interaction between the social and physical environment in which a baby grows up and the way the physical structures of its brain develop (Fox et al, 2010).

Furthermore, neuroplasticity, the neurological structure's ability to change, significantly diminishes the older the baby gets. To put it at its gentlest, the most significant environmental influences on a typical individual's cognition and emotional and social development will take place before they are three years old. This work is thrusting its way into interventions relating to disability. Green and colleagues (2013) have published the first evidence on environmental provision aimed at enhancing the life chances of six-month-old infants at risk of autism.

2.2 Can 'the gap' be narrowed after the age of five?

Work on life chances (for example, Feinstein and Bynner, 2004) is increasingly suggesting that by five years of age, the gap in achievement

associated with socio-economic status is already visible in many countries. The association is particularly strong in England and the United States (Jerrim, 2012). The gap develops in the first years of life, outside the school system. Schools do make a difference but their effects on the gap are likely to be limited unless external circumstances and circumstances within a given school are propitious and the school system is built on a solid foundation of investment in the earliest years.

2.3 The new knowledge in the Act and the Code

The 1001 critical days: the importance of the Conception to Age 2 (All-Party Parliamentary Group for the under 2s, 2013) recognises these arguments and its influence was apparent in the 2015 manifestos of the major parties. In contrast, the Act and the Code of Practice Section 3 give little sign that a revolution in our thinking about learning and development in early years is taking place.

Thoroughgoing training for all educators/childminders working in early years is needed to enhance outcomes for children with SEND by five, perhaps ideally in a variation of the London Challenge model, with a small leadership group working with senior practitioners and early years SENCOs to encourage settings to:
- draw on specialist expertise
- build collective momentum for shared learning on imaginative and evidence-informed practice

Section 3: Ecologies and interventions

3.1 An emphasis on the ecology

If the neurobiological evidence on early childhood is just thrusting its way forward, the evidence for ecological emphasis when considering systems to benefit minorities has been around a long time. It is here that we find a mismatch between the Code's rhetoric and the likely outcomes of implementation given its internal contradictions and the 'weather outside', the environment in which the changes are being introduced.

3.2 Universal and targeted

When confronted with issues concerning minorities, whether disabled, poor or ethnically different, governments often prefer approaches that emphasise the 'special' and 'different' features of individuals and groups, rather than starting with changes to environments and attitudes. But evidence from many countries suggests that systemic emphasis on targeted responses is likely to produce skewed outcomes for many; cost-effective models start from an ecology that maximises the well-being and health of all planned in interaction with the targeted approaches that will be appropriate for some.

Related strands of literature in this area include:
- the 'asset-based' approach (Scottish Community Development Centre, 2010, Morgan and Ziglio, 2007): an emphasis on the creation of

conditions in which individuals, groups and communities flourish rather than a deficit-based approach
- 'proportionate universalism' (Marmot, 2010): service design for health built on universal provision ('prevention') with appropriate interventions
- an 'interactionist' approach to disability: the World Health Organisation (WHO) defines disability as 'a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives. Overcoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers.' (www.who.int/topics/disabilities/en/ accessed 28.4.14)
- a view of 'learning problems' in education as an interaction between what the learner brings and the environment in which they learn. 'Neither the child nor the institutionalised activity/practice in itself create learning or learning problems.' (Hedegaard, 2001). Adults create institutionalised activity and practice: if we don't analyse and, where necessary, act on what teachers are doing alongside what the pupil brings to the situation, we should not be surprised if 'learning problems' persist
- arguments that, partly as a moral imperative and partly for the development of successful societies, inclusion, the process of implementing the rights of *all* liable to exclusion to full participation in education or society, must drive system development

In developing the arguments above, we should remember that insights and interventions into individual impairments remain essential to successful systems, but cannot be the core of them.

Section 4: To what extent does the 2014 English SEND legislation and guidance respond to developing evidence and policy on difference?

4.1 Definitions of Inclusion

The term 'inclusion' is typically used in two senses (Norwich 2013):
- The process of implementing the rights of *all* liable to exclusion to full participation in education or society. The *Index for Inclusion* (CSIE 2011) argues that school commitment and action for inclusion should apply to staff members as well as students, which is fitting in a climate where there is concern about teachers' mental health (TSN, 2015).
- Increasing the placement of learners in mainstream education. Article 24 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) guarantees all disabled learners a right to participate in all forms of mainstream education with appropriate support. The UK ratified the Convention in 2009 with specific restrictions on its obligations.

4.2 The Children and Families Act 2014 and Inclusion

The Act is unusual, compared to similar international legislation, in only referring to inclusion once. This may be a trace of the early Coalition attitude to the term, notoriously signalled in the *Programme for Government* 'we will . . . remove the bias towards inclusion'[1] . It was widely assumed that this was about placement and was intended to contrast with previous Labour government policy, seen as encouraging the decline of state-funded special schools.

In fact, the balance of placements between mainstream and special provision has remained virtually unchanged over the last few years; of the 8,121,955 million pupils on roll in English schools in 2008, 115,915 (1.4%) were in state-funded and independent special schools and pupil referral units (PRUs); in 2015, of 8,438,145 pupils on roll, 118,705 (1.4%) were in special schools and PRUs (DfE, 2015a).

4.3 Inclusion, the right to choose and 'choice' in England

The Code (DfE/DoH, 2014: 1.26) gives the Coalition's (moderated) position; it is not as scared of inclusion as the Act. 'As part of its commitments under articles 7 and 24 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the UK Government is committed to inclusive education of disabled children and young people and the progressive removal of barriers to learning and participation in mainstream education. The Children and Families Act 2014 secures the general presumption in law in relation to decisions about where children and young people with SEN should be educated and the Equality Act provides protection from discrimination for disabled people.'

The principle in international law that parents have the right to choose the place of education for their young and the principle of inclusion in the UNCRPD, when taken as referring 'placement' in the mainstream, means that only states with a serious commitment to implementing Article 24 of the Convention will make headway. If 'the mainstream' is failing to provide adequately for a child, parents or carers will reasonably seek something different. Only governments can structure and resource the agenda if they are committed to the social benefits for society of transforming the mainstream so all can participate.

Any early move in this direction seems unlikely in England without significant change in policy. Brighouse (2003) argued that since the 1988 Act, 'choice' (of which the right to placement in a special school must be seen as part) has been a major factor in English education. The Blair government committed to increasing SEN participation in the mainstream, but gave limited funding to workforce development after 1997 when change might have been politically easiest. After that, many teachers in mainstream schools and parents of those with SEND, unsurprisingly argued that many inclusive placements were unworkable, even if desirable.

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

4.4 Exclusions of those with SEND

One thing has not changed. Pupils with SEND still dominate the exclusion data (DfE, 2014)[2] . Using the DfE's comparative census data we find that in 2012/2013 pupils with SEN, with and without statements, made up 68% of all fixed term and permanent exclusions. This is down from a peak of 75% in 2010/11, but not far off the 70% recorded for 2006/7. The Code has moved the categorisation of behavioural concerns from a label that incorporated the term 'behavioural, emotional and social difficulties' to the more medical but arguably more satisfactory, 'social, emotional and mental health'; the implication is that behavioural concerns may appear in relation to any SEND or none. It will be interesting to see whether this change is reflected in future data on exclusions and what, if any, change in practice takes place as a result of the re-categorisation. The July 2015 figures (DfE, 2015c) show how stubborn the preponderance of SEN exclusions remains: 'Pupils with special educational needs (SEN) (with and without statements) account for 7 in 10 of all permanent exclusions and 6 in 10 of all fixed period exclusions.'

4.5 A sort of quiet

Discussion of inclusion has quietened to a usually uncontested consensus that, provided progress and well-being for an individual is as good in segregated as in mainstream provision, worry about placement is unproductive.

This sounds sensible, but ignores the rights-based edge of the UNCRPD. Sending students to specialist institutions may give individuals a successful education but still takes them away from their peers, communities and families. From a national perspective, the practice lets less inclusive mainstream education and the politicians who allow it off the hook. Governments need a twin-track approach. Where a mainstream placement is failing, support individual moves appropriately; at the same time, maintain pressure and resource for changes in attitudes, practice and policy in the mainstream so that such moves become less likely. In England, discussion of mainstream changes to *increase* the numbers of disabled learners learning alongside everyone else stalled around 2008. The debate needs re-opening.

Section 5: The language of special educational needs and disability in the Act and Code of Practice

5.1 Definitions in the 2014 changes

The 2014 Act and Code of Practice retain a definition similar to that of the 1996 Education Act: 'A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made

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[2] 'Pupils with special educational needs(SEN) (with and without statements) account for seven out of ten permanent exclusions'
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338094/SFR28_2014_text.pdf

for them.' Having a special educational need is about needing provision which is special.

But the 2014 changes have sensibly sought to standardise definitions across the age range: 'Post 16 institutions often use the term *learning difficulties and disabilities*. The term SEN is used in this Code across the 0-25 age range but includes LDD' (The 2014 Code paras xiii-xvii). This is worthy, if not entirely convincing; SEN, which is essentially about provision, does not easily include 'learning difficulty or disability'.

5.2 The problem with SEN

Special education needs is a contested term. Apart from the tautology in the definition, many (e.g. Runswick-Cole and Hodge, 2009), argue that it excludes by labelling pupils as 'special' when diversity is universal and disability is a near-universal human condition. Having a medical or physical impairment will, if we live long enough, be the lot of virtually all of us; 45% of disabled people are over state pension age (DWP, 2012). We may agree with Peters (2004) that 'Individualised education is a universal right, not a special education need'.

Part of the confusion is that the Act and Code, in discussing SEN, say that the term implies eligibility for additional or different provision. But we usually talk of someone having an SEN, such as dyslexia, exactly as we talk of someone having a disease; nothing about provision or environment is implied. Any 'learning problem' clearly belongs to the student.

5.3 A chance missed?

The legislation has moved things forward; both assessment in schools and colleges for 'SEN support', as well as assessment by a local authority for the EHCP, should now be seen as formal processes involving professionals and parents. The language should reflect the changes; we could introduce a term (perhaps something like EADR, 'eligible for additional or different resource') that would acknowledge that someone has been assessed as having the right to additional or different provision and encourage 'SEN' to wither away.

Section 6: Learning and teaching

6.1 Building on the ordinary

'Our conceptualisation of inclusive pedagogy focuses on how to extend what is ordinarily available in the community of the classroom as a way of reducing the need to mark some learners as different. This is underpinned by a shift in pedagogical thinking from an approach that works for *most* learners existing alongside something 'additional' or 'different' for those *(some)* who experience difficulties, towards one that involves providing rich learning opportunities that are sufficiently made available for *everyone*, so that all learners are able to participate in classroom life (Florian and Black-Hawkins, 2010).

Florian and Black-Hawkins here summarise what has become for many the model of inclusive teaching (a similar view can be found, for example, in Ofsted, 2010), though it is not clear how widely the perspective is shared across the education community.

So teachers do not need to craft an infinite number of pedagogies for different 'needs', but can learn a limited repertoire, to extend or intensify for particular individuals or groups. Such approaches may *look* different from less intensive versions – compare the impression of a class with numbers of pupils with profound and complex learning difficulties with a class with a more typical population – but the essentials of pedagogy remain the same. Disability-specific insights, such as the need for care approaches with metaphor and simile when teaching English literature to students on the autistic spectrum, will always have their place.

6.2 What does 'the ordinary' consist of?'

The Institutes of Education, University of London and University of Exeter, disseminated one research-informed model of 'ordinary teaching' in a well-evaluated programme of SEND training for new teachers (Lindsay et al, 2011) commissioned by the Training and Development Agency.

It offered a three part planning model:
a. approaches that help all and can be modified to remove barriers for those with SEND (the 'pillars of inclusion')
b. approaches drawn from specialist studies of subject/curriculum area learning
c. disability-specific evidence and insights

6.3 Planning to help everyone learn and participate: 'the pillars of inclusion'

The TDA programme characterised eight aspects of planning as 'The Pillars of Inclusion':
• inclusive learning environments
• multi-sensory approaches, including the use of information technology
• working with additional adults
• managing peer relationships
• adult-pupil communication
• formative assessment/assessment for learning
• motivation
• memory/consolidation of learning

The model is not the only way of describing the significant areas. The point is that if teachers are not to create barriers to access, they need some such holistic model or checklist of differentiation in their minds.

6.4 From 'special' to 'ordinary'

If inclusive approaches are to prosper, silos that block the flow of ideas between 'ordinary' and 'special' thinking must be broken down. A classic example is the 'visual timetable', the graphic representation of a school day or

week schedule, which was introduced to support students on the autistic spectrum. Its universal value was quickly recognised and it is now standard in most primary classrooms.

Similarly, just as wheelchair spaces on buses benefit mothers with baby buggies, acoustic improvements in classrooms yield gains for groups other than the deaf, often improving behaviour; you become bored if you can't hear what's going on.

Specialists, such as speech and language therapists and education psychologists, are well able to help such systemic change if they are given the skills in their training and time in their professional portfolio.

6.5 From 'ordinary' to 'special'

Silos can also block the flow of ideas in the opposite direction; 'mainstream' evidence can be slow to affect the teaching of minority groups. Carol Dweck's insights (Dweck, 2000) that we all have personal 'philosophies of learning' triggered mainstream 'learning about learning' initiatives (Black et al, 2003).

But the universal significance of the insight was often ignored; it is appropriate whatever label is applied to us or our students. One child with 'moderate learning difficulties' may feel entirely differently from another with the same label about the way they learn and their capacity to learn. A research review (European Agency 2008), responding to concerns about engaging pupils with SEND in formative assessment, was needed to demonstrate that, provided communication was effective, all pupils could benefit from formative assessment.

6.6 Planning to help everyone learn and participate: subject learning and teaching

The learning of minorities, including those with SEND, within subjects/curriculum areas is under-researched and the Code is largely silent about it, though it usefully insists on schools' commitment to the fullest possible implementation of the national curriculum for all. The TDA programme (TDA 2010) sought to redress the balance by publishing booklets, written by national subject experts, discussing SEND issues within each primary and secondary subject area.
The Carter Review (Carter, 2015) noted the diminution of emphasis on subject knowledge and its effects in initial teacher education. This is likely to have limited trainee teachers' exposure to discussion of minorities' learning in particular curriculum domains.

6.7 Planning to help everyone learn and participate: disability-specific insights and approaches

The TDA (2010) consulted on how much all teachers should know about 'disability specific approaches'. The consensus was that all teachers should be equipped to understand potential barriers relating to the five SEND most commonly met in the classroom. Within the current categorisation these are usually identified (from school censuses) as the most common groupings:

- Speech, language and communication needs
- Autism
- Dyslexia/specific learning difficulties
- Social, emotional and mental health ('behavioural, emotional and social difficulties' until September 2014)
- Moderate learning difficulties

Section 7: The Act and Code's guidance on ordinary learning and teaching and the new category 'SEN support' – 'for those with SEN without an EHC plan'

7.1 Ordinary learning and teaching in the 2014 Code

The Code's Section 6.15 makes the good universalist argument that 'making higher quality teaching normally available to the whole class is likely to mean that fewer pupils will require such [SEN] support'. But it then sets out a very limited framework of what this 'higher quality' learning and teaching might look like. Section 6, the Schools' section, takes up only 29 of the Code's 282 pages.

The Code does, however, stress the ordinary teacher's role and responsibilities, as opposed to those of the SENCO and teaching assistants (TAs), in addressing SEND. This sensible emphasis builds on the conclusions of the Ofsted 2010 review (Ofsted, 2010), which drove the inspection framework forward by its concern to emphasise 'ordinary differentiation' before SEN intervention.

7.2 Intervention

The Code then moves to intervention when 'a potential special educational need has been identified'. A four-stage cycle (Assess, Plan, Do, Review), with possible support from specialists, is proposed (section 6.5). Section 6.19 encourages 'quality teaching to target [the student's] areas of weakness'. This under-developed perspective reflects the conflict between the document's principles and the model of its practical guidance. A holistic approach would start by looking at teaching, environment *and* what the student brings, including their strengths.

7.3 SEN support

The 2014 Act reduced the two 'School Action' and 'School Action Plus' stages of intervention to one, known as 'SEN support'. The latest school census report (DFE, 2015) notes the decline since 2010 in the number of children identified with SEN without a statement or EHCP, while the number with statements or EHCPs remains the same at 2.7% of the school population.

The Ofsted 2010 review (Ofsted, 2010) found over-identification of SEND in schools, but also noted that identification did not necessarily mean successful intervention. As you might expect, the reduction in 'stages' has continued the

reduction in numbers identified as having SEN from nearly 18% of the school population in January 2014 to 15.4% in January 2015 (DfE, 2015a).

Section 8: Beyond the Act and Code – curriculum, assessment and inclusion

8.1 Shrinking the path to success

A central plank of the environment into which the SEND changes are being introduced has been a narrowing of what is valued in terms of achievements. This has been pursued through curriculum design, high stakes assessment models, and a relentless commitment to emphasis on this value system in the name of standards.

8.2 Subject learning: narrowing the priorities and possibilities

The Coalition prioritisation of 'academic' subjects, such as English, mathematics and science learning, risks the potential of subject teaching to support the learning of those with SEND. Given the importance of communication, other than written communication, in the learning of all and particularly those with SEND, the strange lack of Ministerial interest in such communication has been profoundly unhelpful. Graham Stuart, Chair of the HoC Education Committee, recognised the danger of a curriculum that overvalues the academic. 'If the curriculum doesn't stimulate children, they will switch off, and the chances are that they will disrupt other children's learning.' (HOCEC, 2011)

8.3 The wider curriculum

These priorities have marginalised Personal, Social, Health and Economic Education (PSHEE), a significant area for pupils with SEND. The situation is different in Scotland where schools work within the Curriculum for Excellence, which designates health and well-being as a core area of learning throughout primary and secondary education. Unsurprisingly, an Ofsted thematic review (Ofsted, 2013) found that PSHEE teaching was inadequate or required improvement in 40% of lessons observed. The persistence of this situation during the Coalition's term will have done little to enhance the life chances of those with SEND.

8.4 National assessment systems: examinations

Assessment systems, particularly GCSE, the almost universal option at 16, are becoming less inclusive. Ofqual, the DfE's assessment agency, has argued that poor practice by teachers desperate for high examination marks makes anything other than written assessment unreliable. As a Government agency, rather than challenging the pressures on teachers to get the 'right' results, it has removed the oral assessment of speaking and listening (a chance for those less comfortable with written language to shine) from the English GCSE grade scores (Ofqual, 2013). Teachers wanting high grades will not emphasise areas that do not count.

Alongside this, the 'trading value' in performance tables of vocational qualifications has been reduced; modular assessments are largely phased out; GCSE retakes have been abolished. All are features of exam systems likely to be valued by those with SEND.

Disturbing recent GCSE results may reflect the early impact of these changes, though we must not read too much into one year's data and Lupton et al (2015) find it hard to disentangle results of the examination changes from those of growing poverty. In 2014 the performance of children with special educational needs on free school meals (FSM) dropped by no less than 32.8 percentage points (from 49.4% to 16.6%). Pupils with SEND make up 35% of those on FSM.

In September 2014 Ministers requested that Ofqual further toughen the GCSE grade system! (Ofqual press release, 11.9.14)

8.5 The abolition of national curriculum levels

The Coalition has abolished the national curriculum levels. This decision effectively removed much of the rationale for the P levels, the English response to the disability lobby's demand for 'a ladder' linking to the national curriculum levels. The model of the P levels has been debated, with suggestions that a less hierarchical structure, more akin to that of Wales, would be more developmentally appropriate. But no-one has ever argued that students with severe learning difficulties do not benefit when teachers share understandings about progress through assessments designed with those students in mind: 'Research shows that explicitly designing assessment to promote learning is one of the most powerful tools for raising standards, particularly among low-achieving pupils.' (European Commission, 2008)

8.6 Pupil grouping

As Weinstein (2002) has said, one of the perils of education systems such as ours is that 'The score has become the person and the person has become the score . . . The belief that such achievements result from individual qualities is consonant with the core values of our society.' Such attitudes make grouping 'by ability' seem an obvious response when grouping pupils at different levels of attainment, and politicians such as Tony Blair and Nick Gibb have strongly backed the approach.

But Scofield's meta-evaluation (2010), for example, is consistent with many others in arguing that ability grouping is likely to *increase* the achievement gap between lower-attaining students and their peers (see also Ireson & Hallam, 2009). Politicians who encourage the public and educators to ignore this evidence risk the life chances of the vulnerable, including those with SEND.

Section 9: Engagement, concern and equity

9.1 Engagement with parents, carers and students

The Act is with the international mainstream in stressing the duty of all teachers to engage with students with SEND (and, when appropriate, their parents/carers), listen to their views and act on them. Parent engagement is widely recognised as significant for all learners (for example, Desforges and Abouchaar, 2003). Perceptions and attitudes, for example about appropriate behaviour (Lindsay et al, 2007), often vary greatly between family and school, so engagement needs time and care. The Code mentions Achievement for All, a well-evaluated (DfE, 2011), structured approach for really listening to parents about their children that also sets out how schools can track the academic and social progress of pupils effectively (http://www.afa3as.org.uk). But, sadly, that mention is as far as it goes.

9.2 Listening to disabled students: the collective possibility

Formal collective consultation on issues central to learning can be powerful for students, though the Code does not discuss this. For example, a school council could ask disabled students, working with staff and speech and language specialists, to draft a code of conduct on accessible oral communication in lessons. This is in principle no different from creating a code on accessibility of written material, about font size, font style and so on. Research by the Children's Commissioner (Office of the Children's Commissioner, 2013) argues, 'Schools see better learning when student voice is included. Giving students control over aspects of their learning leads to much more engagement.'

9.3 Engagement and the new statutory assessment system

The Act and Code spend many pages on SEND provision beyond 'what individual institutions can reasonably provide'. The statutory Statement of Special Educational Needs is replaced with a statutory Education Health and Care Plan (EHCP) that remains in force from 0-25 years of age, as long as a young person stays in education. The changes respond to concerns about:
- failure of collaboration between services and schools
- late intervention in early years: the Statement only started at 3 years old
- inadequate intervention for many older groups, such as students with autism.[3]

The extension of the age range covered has been widely welcomed. It should facilitate consistency of early action on neonatal or earliest years concerns and allow proper follow-through of student support as students move from school to further education or other education pathway.

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[3] From the Pathfinders it appears that approximately 3% of any age group will have an EHCP, a simllar percentage to the 2.8% currently covered by the Statement.

9.4 The scope of the Pathfinders

Small Pathfinders (national pilot studies) of the changes proposed allowed some useful explorations, for example, of the 'key worker' role in bringing services together (DfE, 2013b) but were limited in scope. Within a model premised on 'bearing down' on outcomes rather than inputs, no Pathfinder trialled the actual delivery and outcomes of EHC plans or the resources and skills required to support them (Robertson, 2013).

9.5 Parent and carer concerns and interests

The reforms aim to make the SEND system 'less adversarial' between parents and authorities and institutions. Proper parent engagement is important but will not reduce the necessity of sharing resources equitably, one of the implicit, but often obscured, tasks of something like an EHCP.

9.6 The 'postcode lottery'

The changes, in conditions of austerity, seem unlikely to diminish the 'postcode lottery' of local provision for SEND (see, for example, DCSF, 2008). No minimum standards of resourcing or service provision are proposed. Instead the changes seek to raise services to an appropriate standard by requiring all local authorities to disseminate a 'Local Offer' making clear what is available within their area of responsibility. Parents, carers and young people have the right to participate in the Offer's creation and to challenge it if they see fit.

But 'parental challenge' is unlikely to promote a sophisticated network of school, local authority and health and regional provision without structured support, though people will often be prepared to take up the cudgels if an intervention their child needs is missing or failing.

Wedell (2008) suggests that parents and carers, with young people, should be involved in 'co-construction' of policies and services, collaborative action on reviewing and enhancing local services with SEND leaders, as well as challenging inequities and gaps in provision.

Encouragingly, there are Parent Carer Forums in every local authority to support such collaborative development. But the Forums need LA staff to talk to and the latest information suggests that cuts may be making this less easy (NNPCF, 2015). But the model has potential: it could allow, for example, comparative study of provision, outcomes, admissions and exclusions of pupils with SEND across a group of LAs working with parents' forums and, ideally, disabled student groups.

9.7 The 'Local Offer'

The 'Local Offer' (LO) has to cover 21 areas, including all provision considered relevant for SEND in schools and other educational provision, health provision and care provision. SE7, a group of Pathfinder local authorities in South East England, ended a presentation on compiling a Local

Offer with a single slide saying 'OVERLOAD'. [4] This major bureaucratic demand is not a 'nudge' in the sense of something that will push institutions towards virtue with slight effort. It risks encouraging neglect of other vital work on SEND and being simplified as a web-based directory, once immediate Government funding for implementation of the changes runs out.

9.8 Joint commissioning

While hard-fought-for legislation on joint commissioning (Clause 31 of the Act) between education, health and social care services is welcome, it is not clear that LAs have the teeth to make the system work. For example, if an LA finds that health services are providing inadequate occupational therapy for children with physical disabilities, 'joint commissioning' seems unlikely to move health leaders who say, in effect, 'Sorry. We have other priorities and no more money'. The Government rejected the recommendation of the Education Select Committee (HoCEC2012 para 146), based on 'the weight of evidence' to their Inquiry, to introduce national minimum standards for the Local Offer. The Select Committee argued:
'The importance of getting the Local Offer right cannot be overstated. Where this does not happen parents will seek EHCPs as they currently seek Statements in those local authorities where provision normally available is perceived as deficient. The weight of evidence received by our Committee clearly supported minimum standards and we recommend that the Pathfinders be used to inform what should constitute minimum standards for Local Offers, particularly to address the provision that will need to be made available in schools to support pupils with low to moderate SEN without EHCPs. We also recommend the establishment of a national framework for Local Offers to ensure consistency, together with accountability measures by which they can be evaluated.'

9.9 School and local authority funding

The balance of funding for SEN between schools and local authorities has been a bone of contention for years. The Government sought to clarify this through the national expectation that schools should fund the first £6,000 of resource of an individual SEN intervention. But a recent report points out that 'some schools in the system . . . are struggling to meet the first £6,000 . . . Typically the schools which are most likely to find themselves in this position are schools which are disproportionately inclusive and small schools.'

Interestingly, the authors' response to this includes exactly the sort of minimum standards of provision – a school Local Offer – the Select Committee asked Ministers to establish. 'We suggest that local authorities should work with their schools to agree a "core entitlement" that *all* schools in a local area will provide for children and young people with SEN as a matter of course. This agreement should be published as part of the local offer.' (DfE, 2015b)

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[4] http://se7pathfinder.files.wordpress.com/2013/10/se7localofferthejourneysofar.pdf : accessed 23.3.14

Section 10: The changes and the context

10.1 Effects of the current institutional framework

The policies of recent governments have created an increasingly stratified and unequal network of education institutions (Gorard et al, 2013). Nearly 20 years ago, Corbett noted that 'the increased emphasis on competition and comparison, prompted by a market ethos' is likely to retain the attitudes represented by the casual use of negative, stereotypical labelling (Corbett 1996). Full discussion of the impact of the diversity of school systems in this country is beyond the scope of this article. But we can note that HMCI's 2014 annual report (Ofsted, 2014) suggests that attainment is falling in secondary schools, over half of which are academies, particularly for disadvantaged pupils.

10.2 Collaboration and institutional structures

An inequitable framework weakens collaboration, not least because of the different levels of resource institutions can attract: if a school can fund a substantial team of SEND support workers or has few students with SEND, it may not engage fully on SEND provision across an authority, whatever the Act says.

Moreover, atomised systems of institutions tend towards a static state. LAs and partners, whatever their enthusiasm for development, are largely working, with diminished central support services, within the 2010 pattern of SEND institutions, with perhaps some free schools and enlarged schools as the only new developments. In this context, the changes seem unlikely to result in imaginative, cross-area planning that the Code seeks (DfE/DoH, 2014: Section 3.

10.3 The potential of Strategic Needs Assessment

The Strategic Needs Assessment, now part of the local authority Health and Wellbeing Board's (HWB) strategy development, (DfE/DoH, 2014 para. 3.13) could create positive change. But it is unlikely to affect the scene greatly, partly because so many institutions and developments are no longer within local control. It is not clear what will happen if, for example, a local authority and the HWB, after a Strategic Needs Assessment, with strong local parental support, feel that an academy special school should be closed and its resources distributed to create specialist bases in mainstream schools (Ofsted, 2014).

10.4 The growth of teaching assistants

The number of teaching assistants continues to grow, despite the evidence that suggests that their effective deployment is far from easy.
It seems likely that the Pupil Premium has supported this: conservative estimates set the current cost of TAs at at least £3 billion per annum. The DISS team (Blatchford et al 2009) found that a pupil with SEND with a teaching assistant often makes slower progress than a similar pupil without a TA. Resources are now available (MITA, 2015) to help schools ensure the

cost-effectiveness of their TAs. But, given the level of expenditure nationally, more robust government challenge to the TA as the first line of support would be helpful, perhaps by suggesting alternatives such as part-time, school-based specialists in SEND, for example in autism. The Code does not discuss this.

10.5 Accountability and quality assurance

The 'external 'accountability of schools and other institutions has largely been left to Ofsted and assessment outcomes as local authority capacity has weakened. But an accountability system that encourages individual institution success above all is likely to discourage thoroughgoing local collaboration, however hard some school and LA leaders try to make it happen.

Ofsted may not have the resources or the time to do the job properly in other respects. A quick survey of Ofsted inspections over 2010-13 on all the SEND units (in-school provision) in one local authority just outside London revealed just how little inspection was offering parents of the children involved. Even a school resource centre for 40 or so children with SEND (an expensive institution) does not rate more than a few lines in an Ofsted report.

If a similar number of pupils were in a special school, they would have an inspection report to themselves. In fairness, since 2013 the inspection framework has placed more importance on checking the progress of pupils in in-school provision for SEND, but the information in any given report remains very limited.

Giving the responsibility for accountability to a single body can create its own dilemmas. Laura McInerney (McInerney, 2015) considered the remarkable success of special schools in Ofsted inspections; she recorded that 35% of special schools visited by Ofsted received an 'outstanding' grade during the autumn term 2014. This compared with 9% of mainstream schools graded 'outstanding' over the same period. McInerney found herself unable to decide if this success was due to superior practice or whether it was a matter of lower expectations: 'inspectors are overly moved by a syrupy view of disability.' The point is not so much which view is correct, though one obviously hopes the success is due to superior practice, but that it has been difficult for a parent or anyone else to crosscheck such an opinion with others who should know, for example with a local authority officer. Ofsted has recently announced a number of changes, including bringing more posts in-house and introducing collaborative working with LA and other colleagues. It is not yet clear how these will affect the picture.

10.6 Professional development on SEND

While local authorities have been funded to promote the Act's changes in 2015/16, and the DfE has continued to support accredited courses for SENCOs and on sensory impairments, more generally the Coalition Government's continuing professional development model for SEND has combined limited disability-specific approaches, involving school-to-school and within-school transmission, and support for online resources such as the

SEND Gateway hosted by NASEN. Special schools and voluntary bodies have taken up the challenge, some successfully. But over time the approach risks weakening the quality and quantity of research evidence to which teachers are exposed, as can be seen from the work of Sabel discussed below. This is significant in the fast-changing world of SEND knowledge.

The Carter Review expressed concern about new teachers' SEND learning, noted the positive effects of placements in SEND specialist provision (explored in a DfE/UCL Institute of Education programme in 2014/2015) and encouraged more attention to the place of subjects in ITT, which could encourage overdue mainstream development of subject domains as part of inclusive pedagogy.

10.7 A Scandinavian lesson?

Sabel and his colleagues compared Denmark (comprehensive, high funding, middle scoring in PISA) with Finland (comprehensive, high funding, high scoring in PISA) and concluded that a key factor in the difference in scores was the difference in professional development models (Sabel et al, 2010).

The Danes only promote school-to-school transmission; the Finns acknowledge the strength of school-to-school contacts, but also embed 'top-down' transmission so that up-to-date research reaches all teachers.

Section 11: Conclusion

There are good things about the English system for SEND. Many aspects have been driven by aspirations intended to improve education for all.

The 2014 Act and the 2014 Code of Practice sometimes reflect these aspirations, including the greatly improved direction taken on coordination of institutional and service provision and the extended age range covered.

But at its heart the reformed system is divided against itself. The ultimate arbiters of its creation did not know or did not care sufficiently about the United Kingdom's commitment to international rights conventions or about the research literature which all points in the same direction: to enhance the education and well-being of minority groups in the streets, homes or classroom you must start by enriching the environment and experiences of all, across and within institutions, extending universally designed provision as necessary in individual cases. The earlier you create these universal positive environments and support measures, the less likely you are to need explicit interventions for individuals, as the 2014 Code (para 6.15) says.

Careful reading of the Act and Code reveals the ideological fault lines in their creation, the struggles between laissez faire and inclusiveness over the last five years. It is easier to see, beyond the SEND legislation and guidance, how the education ecology has been swung decisively away from the development of contexts to diminish the risk of exclusion of minorities, particularly those with SEND.

Above all, competition and emphasis on a narrow group of educational standards have been elevated to an extent where they stifle the progress of inclusive education in England, and menace the life chances and well-being of children and young people at risk of failure while bringing stress and ill health to teaching and other staff. Drops in attainment of pupils with SEN/FSM at GCSE, failing secondary schools in disadvantaged areas, high levels of new teachers leaving the profession and problems of recruitment tell the story clearly enough.

The SEND changes need to be kept under continuous review to prevent England's drift away from the front rank of nations implementing international conventions on disabled learners.

Section 12: Recommendations

Thoroughgoing recommendations on SEND would amount to a full reform programme for the English education system. They are beyond the scope of this article. The proposals below may offer some threads for development.

Basis of recommendations

The proposals attempt to re-establish a transparent and secure connection between the relevant United Nations conventions (UNRC and UNCRPD) and well-founded modern research that can drive national policy-making on minorities in education.

Create an Institute for Equity in Education to:
- disseminate the most significant evidence on inclusion and encourage teacher-driven research programmes relating to it
- rather like the Institute for Fiscal Studies, publicly challenge politicians who obscure the evidence on SEND-related policy and practice, for example in relation to the pros and cons of ability grouping
- be a practical, altruistic champion of co-construction with policy-makers of developments in SEND practice

Establish a model of peer review of progress, the SEND and Inclusion Data Sharing Day.

A group of LAs (perhaps 4 or 5) brings a team and relevant data on provision, outcomes, admission and exclusions of pupils with SEND to a share and compare event, where teams can ask questions and share ideas on how they are meeting the UNCRDP and enhancing equity in education. Teams would include members, officers, parents, students with SEND and teachers.

The National Audit Office to consider the cost-effectiveness of the current balance and interaction of services and institutions across England in terms of outcomes for individuals, systemic outcomes (value for money, efficiencies, effects on overall system progress), particularly looking at special/ mainstream distribution, health/social care/education/age distribution of resources.

The Teachers Support Network to be funded to carry out a study on the well-being of disabled staff in schools and other institutions, particularly in relation to their mental health, to explore any evidence that the current environment is making mental health problems more prevalent and propose ways ahead.

Fund the Office of the Children's Commissioner to expand the representation and role of disabled children and young people in school councils and similar bodies (the 2014 Code, para 8.3) to give them collective weight in the development of inclusive learning in their institutions and beyond.

Sections 3, 6 and 7 of the 2014 Code of Practice to be supported by guidance issued to include detailed expectations of what should be ordinarily available in every setting in terms of the anticipatory duty on DDA/ Equality Act 2010 in terms of assessment, curriculum and pedagogy:

- an interactive model of disability
- inclusive pedagogy, including e.g. Pillars of Inclusion/subject area development for all
- Achievement for All frameworks (schools)
- knowledge about specific impairments
- assessment after end of national curriculum levels/P scales

Professional development

- Ensure SENCOs will be trained in all schools.
- Maintain funding for training on sensory impairment.
- Enhance ITT for inclusion within the Carter Review process, to ensure all:
  - learn an inclusive model of pedagogy
  - understand how curriculum domains offer particular possibilities and barriers for SEND
  - have a holistic model (such as the 'Pillars of Inclusion') of the aspects of 'ordinary' teaching they can expand or emphasise to support individuals' learning
  - have specific insights from research on the five most commonly met SEND
- From PGCE cohorts: at minimum, enrol 5% in enrichment programme. Will work alongside SENCOs in schools during PGCE year and be supported through a Masters Module in inclusive SEND practice with funding for school mentoring etc in the NQT year.
- Develop range of possibilities for placement in special provision (on and off site) for increasing numbers of trainees and NQTs.

Curriculum and Assessment

- Ofsted and the Equality and Human Rights Commission to assess the effects on students with SEND of the recent emphasis on academic learning as a specific human rights issue.
- Government to make PSHEE mandatory, to include Parenthood Education from age 5.

- Ofqual to review recent changes to high stakes examinations, such as the GCSE, and the expectations of them, in the light of the recent decline in scores of SEN/FSM students. Government to act swiftly on the findings, which may well include reconsideration of many current policies on assessment such as the abolition of retakes, reintroduction of secure oral and practical assessments and modular assessments.

Timeline

- **1944** The 1944 Education Act requires local education authorities to ascertain what treatment a child with special needs requires and provide it

- **1970** The Education (Handicapped Children) Act 1970 transfers responsibility for the education of 'severely handicapped' children to local education authorities from the care of health services

- **1981** The Education Act 1981 introduces the statutory assessment and the Statement of SEN, clarifies terminology and the LEA role and enhances parents rights to involvement and appeal of LEA decisions

- **1988** The Education Reform Act 1988 introduces the National Curriculum and associated assessment framework and local management of schools; it does mention special educational needs

- **1994** The first SEN Code of Practice introduced

- **1999** The new National Curriculum documents include an 'Inclusion Statement' on teachers' duty to modify the curriculum for minorities

- **2001** The Special Education Needs and Disability Act (SENDA) includes inclusion as a legal requirement and extends anti-discrimination legislation to education providers

- **2001** The second SEN Code of Practice introduced

- **2002** Increasing concerns (Ofsted and the Audit Commission) about the 'statementing system' as bureaucratic and a waste of money

- **2004** The DfES publishes *Removing barriers to achievement* emphasising early intervention, inclusion, high expectations and achievement, and the development of partnership networks

- **2010** The Ofsted review of SEND *A Statement is not Enough* asks about whether those identified by schools as 'SEN' achieve appropriate outcomes and makes headlines for its concerns about the numbers identified who may only need 'ordinary differentiation'

- **2012** The Government publishes its plans for SEND and the Pathfinder trials and consultation process begins

- **2014** The Children and Families Act 2014 receives Royal Assent

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