

## Talking Points

The NNPCF is a membership organisation and our mission states that “we aim to empower our members to ensure that their voice is heard at a local, regional and national level.”

Working with our membership we have identified a number of key “talking points” - these are topics and themes that are the most important to our membership and the ones that have been prioritised by the NNPCF.

Based on feedback from our membership and from other partners and stakeholders, the “talking point” summarise:

- The lived experience of our members about each topic,
- What is working and what is not working, and
- What we would like to see changed.

The talking points have been created using a range of feedback which includes:

- Surveys (including the SEND surveys)
- Feedback from our annual conferences
- The topics raised at regional meetings
- Themes and topics raised by our membership on social media ☒ Face to face conversations with our membership

## Education Health Care Plans

Amanda Spielman, in the Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (January 2020)<sup>1</sup> recognises the demand for EHC plans continues to grow year on year.

### Some key statistics

- 3.3% of all pupils in schools in England have an Education, health and care (EHC) plan, a rise from 3.1% in 2019. The most common type of need for pupils with an EHC plan is autistic spectrum disorders representing 30% of all plans, an increase from 29% in 2018. Speech, language and communication needs are second representing 15% of all pupils with an EHC plan and remains unchanged from 2019<sup>2</sup>.

<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/859422/Annual\\_Report\\_of\\_Her\\_Majesty\\_s\\_Chief\\_Inspector\\_of\\_Education\\_\\_Children\\_s\\_Services\\_and\\_Skills\\_201819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859422/Annual_Report_of_Her_Majesty_s_Chief_Inspector_of_Education__Children_s_Services_and_Skills_201819.pdf)

<sup>2</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/special-educational-needs-in-england>

- 12.1% of all pupils have SEN support, without an EHC plan, up from 11.9% in 2019 with the common type of need being speech, communication, and language needs<sup>3</sup>
- There were 390,100 children and young people with Education, Health and Care (EHC) plans maintained by local authorities as of January 2020. This is an increase of 36,100 (10%) from 2019. This is driven by increases across all age groups, with the largest percentage increases in the 5-10 (10%) and 20-25 age groups (34%)<sup>4</sup>.
- There were 53,900 children and young people with new EHC plans made during the 2019 calendar year, an increase of 5,000 (10%) when compared against 2018<sup>5</sup>.
- Of the new EHC plans made during the 2019 calendar year (excluding cases where exceptions apply), 29,895 (60.4%) were issued within the 20-week time limit, a small increase from 60.1% in 2018<sup>6</sup>. When including cases where exceptions apply, 49,519 (58.7%) were issued within the 20-week time limit, an increase from 58.0% in 2018<sup>7</sup>.
- There are now 336, 890, children and young people with EHCP's that are receiving provision in a setting named in their plan. However, it is reported that following statutory assessment, 2060 children or young persons are not in the school or education setting named in their EHC plan, despite being agreed through statutory consultation<sup>8</sup> which is concern also recognised within the aforementioned annual report<sup>9</sup>

<sup>3</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/special-educational-needs-in-england>

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

<sup>5</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans>

<sup>6</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans#dataBlock-4504a64d-bd1c-408d-ae24-d15379fa58cd-tables>

<sup>7</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans#dataBlock-4504a64d-bd1c-408d-ae24-d15379fa58cd-tables>

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/805014/SEN2\\_2019\\_text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805014/SEN2_2019_text.pdf) Table 1 and 2

<sup>9</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/859422/Annual\\_Report\\_of\\_Her\\_Majesty\\_s\\_Chief\\_Inspector\\_of\\_Education\\_Children\\_s\\_Services\\_and\\_Skills\\_201819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859422/Annual_Report_of_Her_Majesty_s_Chief_Inspector_of_Education_Children_s_Services_and_Skills_201819.pdf)

- Prior to appealing to a First-Tier Tribunal, parents and carers have the option to contact a mediation adviser. There were 4,100 mediation cases held during the 2019 calendar year. Of these mediation cases, 1,000 (25%) were followed by appeals to the tribunal during the 2019 calendar year<sup>10</sup>. This is a small decrease from 2018 when 26% of mediation cases were followed by appeals. However, it should be noted that that some mediation cases in the 2019 calendar year may have been followed by appeal to the tribunal in 2020 but have not been recorded within this data set.
- In relation to appeals, evidence shows a marked increase from 6023 appeals in 2018 which represented 1.6% appeal rate, based on the overall amount of total amount of appealable decisions, to 7385 in 2019 which represented 1.8%. The majority of these cases can be attributed to a refusal to assess for an EHCP and against the contents of sections B, F and I of plans<sup>11</sup>.

## Areas of Concern

The annual report<sup>12</sup> states that that during the 2018/19 academic year, Ofsted and CQC jointly completed 33 Local Area SEND Inspections. It is reported that one of the main areas for development that inspectors found during these inspections was in relation to the statutory process, stating:

*“Arrangements for EHC assessment and planning are not working well enough. Too many EHC plans are not finalised within the 20-week timescale and the quality of plans is too variable”*

The National Audits report (2019) Support for pupils with special educational needs and disabilities in England, which the NNPCF provided a consultation response for, states that there were *“disparities and inconsistencies not only between, but also within, local areas in identifying and assessing pupils’ needs, allocating funding and providing access to services”*<sup>13</sup> which further compounds the lack of quality of plans as reported in the Local Area Inspections.

<sup>10</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans#dataBlock-bf760d01-f4f6-4030-8e2f-793ac3dd86cd-tables>

<sup>11</sup> SEND Tribunal tables: statistics on the appeal rate to the SEND Tribunal. <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2020>

<sup>12</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/859422/Annual\\_Report\\_of\\_Her\\_Majesty\\_s\\_Chief\\_Inspector\\_of\\_Education\\_\\_Children\\_s\\_Services\\_and\\_Skills\\_201819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859422/Annual_Report_of_Her_Majesty_s_Chief_Inspector_of_Education__Children_s_Services_and_Skills_201819.pdf)

<sup>13</sup> [https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO\\_report.pdf](https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO_report.pdf)

Parent Carer Forums have made it clear that they regard local area inspections as the cornerstone of the accountability regime for SEND and the NNPCF continues to represent these views to the Department for Education and to the inspectorates<sup>14</sup>. NNPCF welcome the news that’s Ofsted and Care Quality Commission (CQC) have been commissioned by the Department for Education (DfE) and Department for Health and Social Care (DHSC) to visit local areas to help improve their SEND systems following the COVID-19 disruption<sup>15</sup>.

The annual report also highlights the problems for children with SEND accessing the right education and support stating that *“Compared with pupils without SEND, they are over five times more likely to have a fixed-term exclusion and five times more likely to be permanently excluded from state-funded primary and secondary schools”*

The permanent exclusion rate for SEN pupils with an education, health and care (EHC) plan is 0.15, and for pupils with SEN with no EHC plan (SEN support) is 0.32, compared to 0.06 for those without SEN. The fixed period exclusion rate is higher also; at 16.11 for EHC pupils and 15.59 for SEN support pupils, compared to 3.57 for those who do not have SEN<sup>16</sup>.

The NNPCF continue to raise concerns around exclusions and in particular concerns around behaviour related exclusions and mental health problems following the return to school after lockdown amid the current COVID-19 pandemic<sup>17</sup>, and area of concern also recognised in the 2019 National Audit Office report<sup>18</sup>.

### What do families think about EHCPs?

The National Audit Office report (2019)<sup>19</sup>, suggested that the parents and carers<sup>20</sup>, were nearly all were unhappy with the support that their children had received and in respect to EHC plans. Parents and carers reported “difficulties in getting local authorities to assess children for education, health and care plans (EHC plans), or their refusal to provide an EHC plan”. This coupled with the statistics for First-tier

<sup>14</sup> <http://www.nnpf.org.uk/wp-content/uploads/2018/06/Accountability-update-20200223-004.pdf>

<sup>15</sup> <https://www.gov.uk/government/news/supporting-local-areas-to-prioritise-and-meet-the-needs-of-children-and-young-people-with-send>

<sup>16</sup> <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>

<sup>17</sup> <http://www.nnpf.org.uk/your-back-to-school-experiences-nnpf-steering-group-brief-minister-vicky-ford/>

<sup>18</sup> [https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO\\_report.pdf](https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO_report.pdf)

<sup>19</sup> [https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO\\_report.pdf](https://councilfordisabledchildren.org.uk/sites/default/files/uploads/NAO_report.pdf)

<sup>20</sup> It should be noted that the report did not consider them to be representative stating that between October 2018 and June 2019, they received 52 submissions.

tribunals led the report to suggest that the 2014 reforms meant “that parents’ and carers’ satisfaction with the system has not improved as the Department intended”

Whilst the parents review in the report may not be considered to be representative, the NNPCF continue to raise concerns over these key issues, especially in the light of the current COVID-19 Pandemic.

### COVID-19 Crisis

In response to the global pandemic, the Coronavirus Act 2020<sup>21</sup> was enacted on 25 March 2020. This Act and subsequent guidance meant that some aspects of the law on Education, Health and Care (EHC) assessments and plans were changed temporarily to give local authorities, commissioning health bodies and other bodies who contribute to the EHC process more flexibility in responding to the demands placed on them by COVID-19.

- A notice from the Secretary of State issued under the Coronavirus Act 2020 to modify section 42 of the Children and Families Act 2014 (duty to secure special educational provision and health care provision in accordance with EHC plan). The duty on local authorities or commissioning health bodies to secure [or arrange] the provision is temporarily replaced by a duty to use ‘reasonable endeavours’ to do so. This was effective from 01<sup>st</sup> May 2020 to 31<sup>st</sup> July 2020.
- The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020<sup>22</sup>, temporarily amended four sets of Regulations that set out timescales that apply to local authorities, commissioning health bodies and others: principally in relation to processes relating to EHC assessments and plans. There are maximum time limits for various processes relating to the EHC system. Where it has not been reasonably practicable to meet that time limit for a reason relating to the incidence or transmission of COVID-19, the local authority or other body to whom that deadline applies will instead have to

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<sup>21</sup> <https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

<sup>22</sup> <https://www.legislation.gov.uk/uksi/2020/471/contents/made>

complete the process in line with the requirement specified in the 2020 Regulations (such as 'as soon as is reasonably practicable thereafter')

NNPCF and parent carer forums have continually gathered the concerns of families of children and young people with SEND during the Pandemic and provided details on a regular basis to the Department for Education, the Department for Health and Social Care and NHS England. A summary of key concerns in relation to the statutory process and amended legislation and guidance are as follows:

- Local areas were misinterpreting the powers granted to the Secretary of State for Education in the Coronavirus Act 2020 with reports of local areas suspending EHCP timelines, named school placements and annual review timetables prior to the Secretary of State authorising such "easements", which subsequently came into force 1st May 2020.
- Parent carer forums reported examples that risk assessments have been used to *prevent* a child returning to school because of the additional support that a child with SEND needs. We raised concerns that the focus of the risk assessments being carried out was in relation to the school, not the child in many cases.
- A huge variability in the way in which local areas are applying the Coronavirus Act easements. Some Local areas are withdrawing services in a blanket fashion and not involving families.
- The lack of onus on local areas to justify why the provision in a child or young person's EHCP could not be delivered with if they are at school and community health services have been restored.
- That there was little or no coproduction with families around how easements were applied. It was rare for families to have had a meaningful conversation about the provision their young person will be receiving during this period. At best, many were just been informed about a change or suspension of service

## Single Route of Redress

COVID-19 has also impacted on the single route of redress national trial. The trial gives SEND tribunals the powers to make non-binding judgements on health and social care aspects of Education, Health and Care (EHC) plans as part of a special educational appeal.

The NNPCF is represented on the stakeholder group and we submitted our recommendations to the Department for Education calling for the extended powers of the tribunal to be made permanent<sup>23</sup>. However, due to pressures local areas are under as a result of coronavirus (COVID-19), the Government believes it is not the right time to introduce any changes to this policy and have therefore decided to extend the trial until 31 August 2021.<sup>24</sup>

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<sup>23</sup> <http://www.nnpcf.org.uk/wp-content/uploads/2018/06/Accountability-update-20200223-004.pdf>

<sup>24</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/893099/SEND\\_Tribunal\\_\\_single\\_route\\_of\\_redress\\_national\\_trial\\_guidance2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893099/SEND_Tribunal__single_route_of_redress_national_trial_guidance2.pdf)