



Question 20: What will make the biggest difference to successful implementation of these proposals? What do you see as the barriers to and enablers of success?

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SNJ's response to Question 20

1. You're asking how can the DfE make sure these changes will work in a way that the last reforms didn't? What can stop them from working? This is an astonishing question - haven't you extensively researched why the previous implementation failed? Haven't you read the SEND Inquiry report and the plethora of other reports? They contain chapter and verse on why the reforms failed and our responses here underline them.
2. What follows are some quotes (in Italics) from the *House Of Commons Education Committee, Special Educational Needs And Disabilities, First Report Of Session 2019-20* and our suggestions to prevent the same mistakes
3. **Responsibility:**

"We do not think that the Department for Education is taking enough responsibility for ensuring that its reforms are overseen, that practice in local authorities is lawful, that statutory timescales are adhered to, and that children's needs are being met. We are concerned that the Department has left it to local authorities, inspectorates, parents and the courts to operate and police the system. There is a clear need for the Department to be

more proactive in its oversight of the way in which the system is operating.”

“Nobody appears to be taking any action based on the counting and measuring that is taking place, but even worse, no one appears to be asking anyone to take responsibility for their actions. There appears to be an absence of responsibility for driving any change or holding anyone accountable when changes do not happen.”

3.1. Suggestions:

- 3.1.1. Take responsibility to ensure your reforms are overseen in real-time
- 3.1.2. Be proactive
- 3.1.3. Ensure LA practice is lawful, that statutory timescales are adhered to, and that children’s needs are being met.
- 3.1.4. Do not leave it to local authorities, inspectorates, parents and the courts to operate and police the system.
- 3.1.5. Make sure that the same people that are currently in post in the DfE SEND department stay in post for a significant period of time. Make sure that the Minister who has thankfully retained responsibility for SEND, Will Quince, continues in this position after any reshuffle when the new Prime Minister takes over.

4. Success measures

“We asked the Department for Education how it is measuring the success of the SEND system. We are troubled by the inability of the Ministers to clearly explain how they are using the document published in 2015 which set out how the Department was going to hold the system to account, both locally and nationally.”

*“The Department did not need to preside serenely over chaos for five years to see that things were not quite going as planned...
...The distance between young people’s lived experience, their families’ struggles and Ministers’ desks is just too far.”*

4.1. Suggestions:

- 4.1.1. Ensure you have the right measures for success - this means that children’s outcomes are being met and other

suggestions we – and the SEND Inquiry report and others have made.

- 4.1.2. Ensure that money given to LAs is properly accounted for. Don't just give money for buildings, money for people - teaching assistants, therapists etc are badly needed. Teaching assistants are so poorly paid that you end up with mums with no experience of SEND doing it for pin money - because that's what it amounts to.

5. **Know where taxpayers' money is going**

“Decisions by the Department for Education to allow local authorities to spend their implementation grant with little or no oversight or safeguards was at best naïve, if not irresponsible and misguided.”

“The significant shortfall in funding is a serious contributory factor to the failure on the part of schools and local authorities to meet the needs of children and young people with SEND. However, unless there is a systemic cultural shift on the part of all parties involved, additional funding will make little difference to the outcomes and experiences of children and young people with SEND”

5.1. **Suggestions:**

- 5.1.1. Ensure that you know where implementation money is going and how it is being spent. Last time, the DfE could not account for the use of their SEND reform grants,
- 5.1.2. Make sure that you fund implementation properly. The £70 million currently allocated is a tenth of what was spent last time. Then make sure the system is properly funded and the right people are in the right posts - culture is key.

6. **Accountability & ensuring lawful practice**

“We have found a general lack of accountability within the system. We do not think that the current approach to accountability is sufficient—the absence of a rigorous inspection regime at the beginning set the tone of a hands-off approach. This has been perpetuated by the fact that those required, or enabled, to ‘police’ the system have been limited in part by an apparent unwillingness to grapple with unlawful practice, while others are limited by the narrowness of their remit.”

“Accountability is not just counting and measuring, it is being held responsible for actions taken. Nobody appears to be taking any action based on the counting and measuring that is taking place, but even worse, no one appears to be asking anyone to take responsibility for their actions. There appears to be an absence of responsibility for driving any change or holding anyone accountable when changes do not happen.”

6.1. Suggestions:

- 6.1.1. Ensure Ofsted’s new inspection regime is ready in time and properly funded.
- 6.1.2. Take lawlessness seriously and create punitive measures that include funding coming with
- 6.1.3. Don’t dish out funding without restrictions on what it can be spent on and a requirement to account for what it funded in a timely fashion
- 6.1.4. Ensure that the LGSCO’s remit is what it is currently asking for and that it is funded to be able to resolve complaints more quickly and has the power to issue more significant fines

7. Ensure that those charged with holding the system to account have the powers to do so

“We were surprised that Ofsted and the CQC told us that it was not in their remit to report on compliance with the law. We were surprised by their apparent lack of conviction: Ofsted is prepared to act proactively and make judgements about unlawful practice in relation to—for example—extremism and unregistered schools, and we see no reason why it should not do the same in relation to unlawful actions regarding special educational needs and disabilities.”

7.1. Suggestions:

- 7.1.1. The LGSCO has repeatedly asked for the right powers to do the job and the funding to respond to complaints more promptly. Likewise, Ofsted /CQC inspectors don’t have the powers they need. Give them the powers that they need.

8. Make it easier to bring poor practice to light

"The Government should introduce a reporting and accountability mechanism for non-compliance so parents and schools can report directly to the Department for Education where local authorities appear not to be complying with the law. It should also implement an annual scorecard for local authorities and health bodies to measure their success against the SEND reforms including, but not limited to, reports of non-compliance; the school placement of children and young people with SEND, including those without a school place; Tribunal hearings, and how local authorities meet statutory timescales." Education Select Committee SEND

8.1. **Suggestions:**

- 8.1.1. The SEND Inquiry report recommended that parents and schools should have the right to report directly to the Department for Education when local authorities behave in a way that goes against what the law and the SEND Code of Practice say. We believe this is helpful.
- 8.1.2. MPs have also called for an annual 'scorecard' for local authorities and health bodies to measure their success in putting into practice various aspects of the SEND reforms. This could include things like reports of non-compliance with the law, the number of children with SEND who do not have a school place, the number of Tribunal appeals, and whether local authorities meet the required timescales for carrying out EHC assessments and producing EHC plans. Most of the data for this already exists. We ourselves produce an annual ["Hall of Shame"](#) that costs precisely nothing. We also believe this would be helpful.

9. **Stop parent blaming**

"We heard countless examples of local authorities not meeting their statutory duties, and of schools deliberately or otherwise off-rolling, excluding and even discouraging parents from sending pupils to their schools. Many parents and carers are engaged in struggles with their LA. Some of these struggles are by-products of the challenges of the current system, which has led to the experience of an acutely adversarial system. In some local authorities this is particularly problematic, with a minority having acted appallingly, against both the spirit and the letter of the law."

“There is a clear need for the Department [for Education] to be more proactive in its oversight of the way in which the system is operating. However, ultimately, local authorities must ensure that they are compliant with the law as opposed to waiting to be caught out by an inspection regime, parents or other professionals.”

9.1. Suggestions:

9.1.1. The SEND Inquiry found no fault with parental behaviour and that the issues were all the fault of local authorities and local health bodies. So this need to “balance the needs of everyone” is nonsense. LAs need more money; parents need the current law upheld.

9.1.2. However, throughout the SEND Review the consultation process we have heard officials say, “*Well, parents won’t get everything they want.*” and even “*If no one likes mandatory mediation, there must be something in it.*” (yes, it’s a terrible idea). The focus must move away from parents as being the problem and towards finding ways to solve the real problems in the system.

10. What parents want is singular: for public bodies to comply with the law. What they don’t need is for the government to change the law so that it’s easier for LAs not to meet children’s needs.

10.1. Suggestions:

10.1.1. IPSEA has clearly explained the legal issues with the proposals and we do not need to repeat these as they are the experts. Needless to say, we concur with their views.

10.1.2. Again, the DfE’s mantra that it has to balance the needs of LAs and that of parents is erroneous. You need to make LAs UPHOLD THE LAW. Even Mr Quince has acknowledged publicly that the law is fine. There are areas that need tightening as IPSEA have explained in their own response and again, with which we concur.

11. Ensure that everyone tasked with supporting disabled children understand the letter and spirit of the law

“We have heard that there is a lack of knowledge about SEND law and local authority procedures which are, in some cases, abused or taken advantage of. This ignorance, wilful or otherwise, serves

no one well, least of all the children and young people who the system is intended to support.”

“We are not convinced that all local authorities have sufficiently invested in training for these front-line staff. Where staff are unsupported or poorly trained, mistakes may be made that let down young people and their families.”

“We heard a lot about local authorities' poor performance. But for children who receive SEN Support, they rely primarily on their school to get their support needs right. If, for whatever reason, a school fails to provide high-quality SEN Support, the child is failed.”

“We heard that many of the eagerly anticipated initiatives are not living up to their ambition and name. The role of health providers is pivotal, but unsurprisingly, the meshing of two systems has not worked. Unless health and social care are ‘at the table’, we are no further on, and the Education, Health and Care Plan is no more than a Statement by another name.”

11.1. Suggestions:

- 11.1.1. Training, training, training. The programmes exist from IPSEA and similar
- 11.1.2. You have already begun with the Universal SEND Services contract, which is a good start. These must also include the legal imperatives.
- 11.1.3. Proper deterrents for law-breaking.

12. Ensure there is money in the system and in the right places

“We are seeing serious gaps in therapy provision. We need to see professionals trained and supported so that they are able to support all pupils; these huge gaps in therapy provision across the country are letting down all pupils, but particularly those on SEN Support. We need to know where the gaps are, because children are falling through them, and what is going to be done about it.”

EDUCATION SELECT COMMITTEE SEND INQUIRY REPORT OCT 2019

12.1. Suggestions:

- 12.1.1. This includes properly funding SEN Support and moving it to primary legislation so that children have a right to that

support. This is what has happened in the Welsh reforms and you would do well to study them.

- 12.1.2. While it is true that The DfE has funnelled millions into the system, this is against a backdrop of massive public service cuts. Funding is still not where it needs to be across the entire system. This is a fundamental issue that needs to be addressed.
- 12.1.3. Match funding capital funding with ongoing funding for staffing and training. It's no use having nice buildings with no one to support the children in them.
- 12.1.4. Ask your researchers to forecast the number of children with SEND there are likely to be for the next 10 years, based on available data. Look at the ages that children are being diagnosed now, to be able to build in provision at the right places for the future. Look at where the types of SEND are increasing and where the schools to support these children are. Ensure mainstream schools have the staff and training to offer the right provision for the children who can reasonably be expected to be educated in mainstream

13. Stop messing about with disabled children's lives

13.1. Suggestions:

- 13.1.1. The big ideas in the SEND Review are largely the wrong ones. They require another massive system change and a lengthy implementation period that is completely unnecessary. At the heart are vulnerable children who will continue to not receive the support they are entitled to. STOP this misapprehension that the system needs this to function. You haven't properly implemented the 2014 system. Do that, add in the standard EHCP template that has always been asked for, Make SEN Support Mandatory, properly fund the system, and ensure training is mandatory, and you will see that these new ideas are not necessary.
- 13.1.2. If you persist with these ideas, it will become MORE difficult, not less, for children, young people and their families to get the SEND provision to which they are entitled. These are clear entitlements, and the scope of local discretion, that you claim there is does not, in the main, exist.

- 13.1.3. As one parent commented below: *“These proposals are, in themselves, the biggest potential “barrier to success” that this generation of SEND children and their families has ever had to face. They will strip children and families of their hard-won rights and make it much harder to seek redress. They will stop children with SEND from succeeding in education and in life.”*
- 13.1.4. Children get one shot at an education. By insisting on further system change you will squander what is a very slowly improving system, hammered by the pandemic, that needs supporting to speed up the pace. Attitudes ARE starting to change. Things are moving in the right direction, at the periphery at least. Don't wreck it now. Do more to support what we have. Don't blow it again.
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Responses from parents/SNJ readers

NB: These views are those of parents for whom we have acted as a conduit for their response to the Green Paper. The views expressed from here are not necessarily those held by Special Needs Jungle.



1. The proposals that I can most easily see affecting me concern National Standards, tailored placement lists and mandatory mediation.
2. National Standards – I can see this possibly working if it results in at least a plain English reflection of current standards set down by SEND law, and is accompanied by a system of accountability for meeting those standards with proper sanctions for failure. The current system is clogging up vital resources in the Tribunal service where LAs frequently waste public money on unwinnable cases. Perhaps something like an independent SEND Ombudsman, which was cheaper and more accessible to parents and LAs, could assist in making sure standards were kept. It could be an option before Tribunal was invoked.
3. Tailored placement lists – I cannot see how this would be successful in achieving anything other than moving a decision which is often a key

point of disagreement between parents and LAs to a different stage of the EHCP process.

4. Mandatory mediation – I do not see how this can be successful in anything other than helping to delay access to provision to which children with SEND are entitled.



1. Making changes to any system all involves a big risk to those that are in the system already and this is what concerns me most. If the changes go wrong or don't work then the system will be failing families. The failings of the past attempt to change the system were because the changes were brought in without consulting on how to implement them with the professionals involved. There was inadequate funding and training on the new systems and LEAS were expected to make the changes with little support. This has led to a lack of confidence in trust which in our county has certainly been a barrier to co-production and improvement. Actual real co-production is the only way that positive change can be achieved and the continual lip service of this by councils has not helped.
2. I strongly disagree with the premise of this question. These proposals should not be implemented at all.
3. These proposals are, in themselves, the biggest potential "barrier to success" that this generation of SEND children and their families has ever had to face. They will strip children and families of their hard-won rights and make it much harder to seek redress. They will stop children with SEND from succeeding in education and in life.
4. The biggest enabler of success for children and young people with SEND will be the enforcement of the current law, with proper accountability where LAs break the law.