

Submission to the NI Assembly Committee for Education: 25 May 2012

**Review of Special Educational Needs and Inclusion:
Children's Commissioner's outstanding concerns regarding the
Department of Education's policy proposals of 16 May 2012**

Thank you for providing the Children's Commissioner with a copy of the Minister for Education's paper detailing the Department of Education's (DE's) current policy proposals regarding the Review of SEN and Inclusion, presented to the Education Committee on 16 May 2012.

As per the Committee Clerk's request of 17 May, this paper provided by NICCY outlines outstanding concerns regarding the most recent policy proposals. The Commissioner's comments in the sections below follow the order of the 26 proposals outlined in the Department's paper.

Due to the time constraints in preparing her paper, the Commissioner wishes to note that this document is not comprehensive, and does not provide a full analysis of the proposals.

Introductory comments:

Following the publication of the Minister's "*broad direction of travel*" and "*key proposals*" for taking forward the policy in the Department's report of 31 January 2012¹, and the additional engagement between officials and stakeholders, the Commissioner voiced serious concerns about the potential dilution of protection for the rights and best interests of children and young people with SEN.

As the Committee will be aware, the Commissioner sent the Minister a detailed advice paper² on this matter on 29 February 2012, by virtue of her statutory duties and powers under articles 7(2) to (4) and article 8(2) of the Commissioner for Children and Young People (NI) 2003 Order. The Commissioner's Office has since met with the Minister on two occasions to discuss these concerns and to ask the Minister to amend his proposals.

The Commissioner welcomes the Department's paper presented to the Committee on 16 May. **On consideration of the paper, the Commissioner believes that significant progress has been made and there are many points within the paper which the Commissioner welcomes.** However, at the outset, the Commissioner must express her concern regarding the issue of whether it is anticipated that there will be a substantial decrease in the number of children

¹ Department of Education (January 2012) 'Summary Report of Responses to the Consultation on Every School a Good School – They Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment (Bangor: DE), page iii.

² NI Commissioner for Children and Young People (February 2012) 'Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion' (Belfast: NICCY).

expected to gain a coordinated support plan (CSP) (the replacement for statements of SEN) in mainstream schools under the new framework; and therefore, a substantial increase in the proportion of children with SEN for whom the school will be the responsible body, by virtue of a personal learning plan (PLP) (Levels 1 and 2 of the proposed framework; stages 1-3 of the current framework).

At page 34 of the Department's proposals it is stated that Level 3 of the proposed framework would:

*"Comprise of support that **some children in mainstream classrooms**, all children in learning support centres attached to mainstream schools and all children in special schools would receive through a statement of needs set out in a Coordinated Support Plan"* [emphasis added].

In theory, it should not matter what proportion of children with SEN will be entitled to a CSP as long as their needs will be met. **However, the Commissioner is yet to be satisfied that the proposed framework, as a whole, will provide the safeguards necessary in order to meet the needs of all children and young people with SEN, and specifically, those who would fall under the PLP category.**

As previously stated, the Commissioner does believe that the Department's 16 May proposals are much improved as compared with the January 2012 proposals. The Commissioner is very encouraged by progress achieved, including for example:

- The provision of further details regarding proposals, these have been made available.
- The extension of the two-level process proposed in January 2012 to a three-level process.
- The provision of some details regarding the proposed three-level process.
- No apparent decrease in existing rights of appeal for children with a statement/CSP (However, please note below the Commissioner's **concerns** about the proposals regarding appeal rights for children with a PLP, and the proposals regarding annual reviews of CSPs).
- The Minister's 'enthusiasm' for the concept of granting children the right to appeal to SENDIST (However, please note below the Commissioner's **disappointment** that no substantive proposals are proposed as part of the review).
- The extension of the transitional period to five years, rather than two years, as proposed as part of the 2009 consultation.

However, there are a number of issues in which further progress is required, including for example where the Commissioner expresses:

- Dissatisfaction regarding the PLP proposals, particularly regarding the need for stronger safeguards/duties to ensure that the PLP process will meet the needs of children with SEN in a timely manner, consistent across all schools.

- Concern of risk to principle of inclusion.
- Concern that there is insufficient detail regarding the strengthening of the duties on boards of governors regarding the PLP processes, including in terms of enforcement and monitoring mechanisms, particularly the DARS issue.
- Concern regarding the proposals relating to Learning Support Coordinators (LSCs) (SENCOs) – no proposal that the LSCs would be members of school senior management team.
- Dissatisfaction regarding the fact that is not proposed to put in place a duty to provide transitions support services to children with a PLP.
- Concern regarding the appeal pathways for children with PLPs.
- A need for clarification regarding the proposals to enhance Dispute and Avoidance Resolution Services (DARS).
- Disappointment that further progress has not been made at this stage regarding facilitating the child's right to appeal to the SEN and Disability Tribunal (SENDIST).
- Concern at the apparent lack of meaningful inclusion of children and young people within the development of the revised framework to date.

Commentary on each of the 26 proposals is outlined below. The sections correspond to each of the proposals outlined by the Department, and the relevant page numbers of the Department's report are referenced in each case.

1. Inclusion – Additional Educational Needs (AEN) Model

(Reference: page 7-8 of the DE paper)

The Commissioner's interest in this aspect of the proposals relates to the development of a revised statutory Code of Practice on SEN and Inclusion. The Commissioner notes with interest the statement on pages 7 to 8 of the Department's recent paper, outlining that:

"A revised statutory code [of practice on SEN and Inclusion] would emphasise the rights of the child, for example, within the context of the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and the child's centrality within the new framework".

Such an approach is welcome. However, the Commissioner has called for children's rights and best interests to be embedded within the new SEN and Inclusion policy and framework. One part of that embedment would include, as the Department proposes, emphasising children's rights within the context of the UNCRC and UNCRPD. However, the act of simply making reference to the UNCRC and the UNCRPD within a revised Code of Practice would not be sufficient.

The Commissioner has already summarised a range of outstanding concerns regarding the policy proposals. Further information is provided throughout this paper. If these issues remain outstanding, this would dilute the extent to which a revised Code of Practice could emphasise the rights of the child within the context of the UNCRC and UNCRPD.

As the Department has noted, any amendment to the SEN Code of Practice would be subject to consultation. **However, the Children's Commissioner would question the extent to which a future Code of Practice could "emphasise the rights of the child", unless there is reassurance that the outstanding concerns will be addressed through amendment to the policy proposals.**

2. Inclusion - Role of Special Schools

(Reference: page 9 of the DE paper)

In her recent advice paper to the Department, the Commissioner highlighted her concern that the January 2012 proposals could have a detrimental impact on the principle of inclusion of children with SEN within mainstream schools, and also the broader fear that the proposed SEN framework could be seen as retrogressive (it should once again be noted in this regard that the reduction in the availability of CSPs will impact on those children who attend a mainstream school).

While the Commissioner has acknowledged that the Department has outlined a number of positive steps in its recent paper, a valid concern remains in terms of the issue of the potential impact of the proposals, as a whole, on inclusion.

During the Minister's recent briefing to the Committee³, concern was highlighted regarding the continuing pressure on special schools to continue to meet demand for places, particularly given the fact that there is no currently no cap on enrolment numbers within special schools. This Commissioner shares this concern.

³ Northern Ireland Committee for Education Official Report (Hansard), 'Review of Special Educational Needs: Ministerial Briefing', 16 May 2012.

3. Early Identification and Intervention Framework

(Reference: page 11-13 of the DE paper)

The Commissioner supports the Minister's commitment to early intervention and capacity building of teachers. However, there are still a number of fundamental problems which must be resolved.

The latest proposals affirm that the *"majority of children"* with SEN and/or a disability should have their SENs addressed within their school setting. The Commissioner assumes that these will be the children to whom a Personal Learning Plan applies. The Department highlights that there is significant evidence from the Education and Training Inspectorate (ETI) that:

*"Many schools **can** meet the needs of the majority of children without external support for the child from the ELBs; other schools will require specialist external support to assist in meeting the needs of some children"* [emphasis added] (page 11).

The important phrase in the above statement is *"many schools **can** meet the needs"*. If many schools **can** meet the needs, does this presuppose that they **will** meet the needs?

The Minister presented recent ETI statistics regarding the effectiveness of schools in the delivery of SEN in a positive light to the Committee on 16 May. The statistics which the Minister referred to found that 82% of primary schools and 62% of post-primary schools inspected in 2010/11 were very effective in the delivery of SEN.

The Children's Commissioner has a very different perspective regarding these statistics: the inference is that **the arrangements in place to identify, assess and meet the needs of pupils with SEN were not of a sufficiently high standard in almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11**. This is a significant cause for concern. The Department acknowledges that many pupils do not achieve positive outcomes within the current framework at pages 11 to 12 of its most recent paper.

The Commissioner therefore welcomes a legislative amendment to the Education (NI) Order 1996 to strengthen the statutory duty on Boards of Governors (BoGs) of mainstream schools to identify, assess and make provision for children with SEN and/or a disability. As the Department outlines at page 12 of its most recent paper, the current principal legal duty on BoGs in mainstream schools to make provision for a child's SEN is found in article 8 of the Education (NI) Order 1996, which states that a BoGs shall 'use its best endeavours, in exercising its functions in relation to the school, to secure that if any registered pupils has special educational needs the special educational provision which his[her] learning difficulty class for is made'. The Department indicates in its most recent paper at page 13 that a strengthened statutory duty would:

- *"ensure that SEN provision, as appropriate, is made in schools, or the child referred to external supports at an early stage* [please note: the timescales for

referral to external supports will be crucial – please see Commissioner's comments under proposal 13: 'Stages of the SEN Framework'];

- *require that all those in schools responsible for teaching the child, and those supporting the child's education are made aware of the SEN; and*
- *Ensure that teachers... would take the necessary actions to identify and provide for those [SEN] needs".*

In order to assess the strength of this duty, the Commissioner would require clarification as to whether the above intended outcomes will be written into the legislation. In this regard, the Commissioner previously advised the Minister of her doubts as to whether statutory guidance regarding what schools should be doing in order to meet SEN would go far enough to ensure that those schools which are currently not achieving high standards will do so in future.

The Committee may wish to ask the Minister for clarification regarding the extent to which the duty on BoGs of mainstream schools will be strengthened, in order to ensure that schools identify, assess and make provision for children with SEN, as outlined in proposal 3.

Monitoring of BoGs and accountability:

The enforcement, monitoring and review mechanisms must be strong enough to ensure that schools which are currently not achieving high standards would meet the desired level in future. Some commentary regarding outstanding issues in relation to enforcement and review issues is provided on below, including within section 4 (proposal 4: personal learning plans) and section 22 (proposal 22, resolution and Appeals Mechanism – Dispute Avoidance and Resolution Services).

4. Early Identification and Intervention - Personal Learning Plans

(Reference: page 15-16 of the DE paper)

a) Duties on BoGs regarding PLPs:

As part of the January 2012 proposals, the Minister proposed that BoGs would have a statutory duty to ensure that every child with SEN has a PLP. The Commissioner stated that this would offer insufficient protection for children's rights in the context of those the overall proposals outlined by the Department in January.

Within the latest proposals of May 2012, the Minister has outlined that the relevant statutory duty will require BoGs *"to ensure that PLPs are put in place, monitored and reviewed"*.

Production of education plans (PLPs), review and monitoring mechanisms of education plans (PLPs) are currently addressed in the SEN Code of Practice. It therefore is to be welcomed that these will now be provided for in legislation (the Commissioner assumes that it is the case that the legislation will cover monitoring and review of PLPs, as well as their production). **However, clear statutory timescales must also be set in order to ensure that the child can move on from 'Level 1' of the new framework in a timely manner, as appropriate, and also in order to ensure that specialist support can be provided at appropriate times, when the intervention required is beyond the capacity of the classroom teacher and learning support coordinator (LSC) and what would be provided "ordinarily" by the ELB.**

The key issue is not whether there is a statutory duty upon BoGs to put in place a PLP for children with SEN, but whether the overall duties are of a sufficient strength in order to ensure that the needs of all children who fall within the PLP category will be addressed.

If it is still anticipated by the Department that there will be a significant increase in the proportion of children with SEN whose needs are to be addressed "within school" (through a PLP) following the transitional period, **it is particularly important that the duties on BoGs are strong enough to force those schools which are not putting in place high standards, to do so in order to meet the special educational needs of their pupils.**

b) Appeal, enforcement and review mechanisms for children with a PLP:

The enforcement and review mechanisms available prior to the proposed point where the right to appeal to SENIDST applies will be very important. Again, this is particularly crucial if it is still anticipated that there will be a significant decrease in the number of children who will be within the CSP category, and therefore a significant increase in the proportion of children with SEN whose needs are to be addressed "within school" (through a PLP at Levels 1 and 2).

The Commissioner welcomes the fact that the parent will retain the right to appeal to the SENDIST when an ELB decides not to carry out a statutory assessment (Level 2 of the new framework). However, the timescales within Levels 1 and 2 are crucial areas of concern. There must be clear, statutory 'trigger' points and timescales in order to ensure that children move along the processes associated with Level 1 and Level 2 in a timely manner.

For example, on page 15 of the Department's recent paper, it is stated that schools would be required to regularly review the progress of children with PLPs and revise provision where necessary. Will there be statutory timescales for this to occur? The Department also outlines on page 15 that if parents remain concerned that the (PLP) provision is not meeting the child's needs, they have the right to request that the ELB undertake a statutory assessment. Once again, will there be statutory trigger points and timescales for this?

The Department maintains a preference for disputes between schools and parents regarding provision for children within the PLP category to be addressed through the Dispute Avoidance and Resolution Service (DARS). In terms of the appeal pathways for children with PLPs as, it seems to be envisaged that if a parent feels that a PLP is not working – following negotiations with the school – their recourse is to DARS in the first instance and then to request a statutory assessment. If that request is refused, it seems this opens the door to a SENDIST appeal.

However, it is not recognised within the Department's paper that this process of statutory assessment (even under new framework proposed) will take significant time. In the experience of the Commissioner's Legal and Casework Team, this could lead to an academic year being "lost" to the child. This predicament should also be considered in light of the current backlog in Stage 3 assessments of which the Commissioner is aware (within the current framework). The Commissioner believes that the proposals will not resolve the problem of the Stage 3 logjam that currently exists.

The Department notes at page 15 of its recent paper that:

"A revised statutory code of practice will provide guidance on the content, management and review of PLPs, in partnership with parents and pupils, with a view to achieving a more meaningful document which has greater clarity and consistency than is currently the case for IEPs".

if it is still anticipated that there will be a significant decrease in the number of children who will be within the CSP category, and therefore a significant increase in the proportion of children with SEN whose needs are to be addressed "within school", coupled with the ETI statistics which highlight that the arrangements in place to identify, assess and meet the needs of pupils with SEN were not of a sufficiently high standard in almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11, **the Committee may wish to ask the Department for clarification as to how the "strengthened" duty on BoGs will apply in practice, particularly as regards the effective management,**

enforcement and review of PLPs. The fundamental question is how the strengthened statutory duty will impose greater accountability on BoGs.

The Commissioner’s concerns outlined above and in section 22 below regarding the issue of the DARS proposals should also be taken into account in this context.

c) Resourcing:

If it is still anticipated by the Department that there will be a significant increase in the proportion of children with SEN whose needs are to be addressed “within school” (through a PLP at Levels 1 and 2) following the transitional period, **it is also particularly important that schools are properly resourced in order to meet those needs, and that the relevant staff have appropriate time and authority to do so.** This issue links to a number of the Department's proposals, including proposal 11 and 12 regarding the 'Learning Support Co-ordinator', and proposal 24, 'Funding'. Please refer to the Commissioner's comments regarding these matters below.

Resources should also be delegated on the basis of objective need, reflecting the fact that schools may be accountable for meeting the needs of increasing proportions of children with SEN.

d) Involvement of the child:

At point viii) of page 16, the Department states that schools would be required to consider the views of the child and their parent in completion and review of the PLP.

The Commissioner would welcome a requirement for PLP processes to take into account the child’s views. Clarification would be required as to how the Department envisage the implementation of the proposed requirement.

5. Pre-School settings - PEAGs settings within revised SEN framework
(Reference: page 17-18 of the DE paper)

The Department states that it wishes to give further consideration to the position of pre-school education advisory group (PEAG) funded settings within the revised framework.

During the Minister's 16 May briefing the Education Committee⁴, it was highlighted that if a statutory duty was placed on ESA to treat PEAG-funded settings in the same way as statutory school settings that this would have implications for DHSSPS/health sector. The Committee may wish to ask the Department for an update on this matter. The Commissioner recently discussed with the Minister the matter of a statutory duty to cooperate and encouraged him to keep an open mind about this issue.

The Department proposes additional training for staff in PEAG-funded settings to optimise their capacity in identifying and meeting the needs of children with SEN. The Commissioner welcomes this proposal, however, it will be important to clarify how widely the additional training will be available.

As an aside issue, it should be noted that these proposals will not apply to non-funded providers. It should also be noted that pre-school attendance is not a mandatory requirement.

⁴ Northern Ireland Committee for Education Official Report (Hansard), 'Review of Special Educational Needs: Ministerial Briefing', 16 May 2012.

6. Pre-school settings – Pupil support services in PEAGs settings

(Reference: page 19-20 of the DE paper)

The Commissioner agrees that early intervention and identification is fundamental to improving the identification and meeting of special educational needs.

The Commissioner welcomes the original 2009 consultation proposal to allow access of PEAG-funded settings to ELB support services in the same way as statutory nursery units and school settings.

The latest proposal on page 19 of the recent DE paper differs from 2009, although it is welcome that the ELBs' statutory duty to prepare and submit a plan for the provision of pre-school education will be amended to require the ELB to ensure that appropriate provision is available for children with SEN.

A second element is proposed for this statutory duty, requiring ELBs to ensure to ensure that *"all funded providers will be able, with support where necessary, to identify and meet SEN or know when to refer for external support"* (page 20).

This raises an issue regarding the breadth of knowledge and availability of training regarding the identification of SEN in early years settings. Proposal 7 of the Department's latest proposals relates to the identification of needs in pre-school settings - comments are provided in the corresponding section below. There is also a further issue regarding the availability of ELB resources and the use of ELB supports. Page 19 of the DE paper states that **"guidance"** will be provided in a revised SEN code of practice on pre-school provision and associated ELB supports to which ELBs and early years' providers *"would have regard"*.

The Commissioner would be concerned that this is not a mandatory requirement. There is also a further predicament that the child could be seen to be fitting to the ELB supports, rather than the supports being tailored to meet the needs of the child. This issue was raised with the Commissioner by voluntary sector organisations in the context of the requirement for ELBs to set out the offer of services that they will "routinely" make available to schools (see proposal 13 below, *"Stages of the SEN Framework"*). However, the Commissioner believes that this predicament also has relevance regarding the early years' proposals.

7. Pre-school settings – Early Identification Officers

(Reference: page 21 of the DE paper)

Under proposal 6, the Department proposes a legislative amendment to:

"Require the ELB plans [in its plan for provision of pre-school education?] to ensure that appropriate provision will be available for children with special educational needs and that all funded providers will be able, with support where necessary, to identify and meet those needs or know when to refer for external support" (page 20 of the DE paper).

Proposal 7 of the Department's recent paper outlines the approach to early identification in pre-school settings. The Commissioner has previously welcomed the Department's commitment to building capacity at early years' provision. The Commissioner seeks clarification regarding the composition and training of early intervention teams. Will these teams comprise of teachers who have been trained to identify SEN?

The Commissioner will be keen to hear further details of the formal evaluation of the pilot early intervention teams, which the Department outlines on page 21 of its recent paper. A preference for a "multi-disciplinary" approach to the Early Intervention Teams is proposed. The Commissioner agrees that a multidisciplinary approach will offer a mix of skills rather than a "single officer" approach⁵, however, it will be important that clear lines of accountability are established at the outset in terms of the teams.

⁵ Northern Ireland Committee for Education Official Report (Hansard), 'Review of Special Educational Needs: Ministerial Briefing', 16 May 2012.

8. Training and Development – Initial Teacher Education

(Reference: page 23 of the DE paper)

In her advice paper to the Department of 29 February, the Commissioner raised number of questions regarding the 2-year pilot Post-graduate Certificate in Education (PGCE), including the following:

- Is the pilot a discrete PGCE course on SEN, or a module that forms part of all PGCE post-primary courses? If it is a discrete PGCE course, what option is available for students undertaking PGCE primary courses or other post-primary courses? **The Commissioner believes it is important that every student teacher is adequately trained.**
- Is it the intention for students who undertake the PGCE pilot to become Special Educational Needs Coordinators (SENCOs) (LSCs)?
- How will the course be quality assured? The Department should provide information regarding how learning developed on this course will be implemented in the school environment.

The Commissioner has not yet received a response to her advice paper, however, the Minister has assured the Commissioner that a written response is under preparation. The Committee may also wish to ask the Department for clarification regarding the above issues (the Commissioner is happy to update the Committee when she receives a response from the Department).

In light of the latest proposals paper from the Department, **the Commissioner would also be interested to hear how the PGCE links with the "early intervention team" proposals (see section 8 above) and the "diagnostic testing" proposals (see proposal 12 of the Department's paper/section 12 below).**

9. Training and Development – INSET /capacity building

(Reference: page 25 -26 of the DE paper)

In his recent briefing to the Committee, the Minister stated that he believes that the training and capacity programmes and the resources which the Department has put in place will result in improvements across the primary and post-primary sectors (in reference to the ETI statistics that the arrangements in place to identify, assess and meet the needs of pupils with SEN were not of a sufficiently high standard in almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11)⁶.

The Commissioner would be interested to hear whether those schools which are failing to achieve high standards have been/will be targeted by the Department, in terms of the provision of training and capacity building programmes. **The Committee may wish to ask the Department for clarification on this point.**

In her recent advice paper, the Commissioner highlighted the importance of making training available to practising teachers across all school types. It is equally important that teachers undertake that training. **Through her Legal and Casework Team, the Commissioner is aware of instances where a teacher has refused to attend training on SEN.**

a) Monitoring of implementation of resources:

The Department's proposals outlined within pages 25-26 of its recent paper mostly focus on the dissemination of 'paper/electronic' materials, conferences and workshops. In her February advice paper to the Department, the Commissioner asked for clarification regarding the arrangements for **monitoring the operational use** of the "*SEN Resource*" file made available to mainstream schools.

This query applies equally to all 'resources' as outlined in the Department's latest proposals. As previously stated, she has not yet received a response from the Department regarding her advice paper, however, has been advised that the response is under preparation. The Commissioner is happy to update the Committee on this issue when she receives such a response. However, **the Committee may also wish to ask the Department for clarification regarding this issue.**

The Commissioner is encouraged to note on page 26 of the latest proposals that the Department's commitment to revise the section of the SEN Resource file which relates to sensory impairment. The Commissioner had been advised by the National Deaf Children's Society (NDCS) NI of the poor quality of the existing section and the Department's commitment to revise it, due to interventions of NDCS and others. This is a welcome step.

⁶ Northern Ireland Committee for Education Official Report (Hansard), 'Review of Special Educational Needs: Ministerial Briefing', 16 May 2012.

b) Training for boards of governors:

The issue of training for BoGs has not been explicitly addressed in the Department's latest proposals. In her February advice paper to the Department, the Commissioner called on the Department to provide details of the training which it will propose that boards of governors are given in order to ensure they understand the content and application of the strengthened statutory duties proposed. As previously stated, the Commissioner has not yet received a response from the Department regarding her advice paper, however, the Minister has advised her that the response is under preparation. The Commissioner is happy to update the Committee on this issue when she receives such a response. However, the Committee may also wish to ask the Department for clarification.

The Commissioner is aware that while training currently exists for BOGs, there is no mandatory requirement for its completion.

10. SENCO - Name change to Learning Support Co-ordinator

(Reference: page 27 of the DE paper)

The Commissioner's concerns regarding LSCs are addressed under sections 11 and 12 below, which correspond to proposals 11 and 12 within the Department's paper.

11. Learning Support Co-ordinator – Career Pathway

(Reference: page 29 of the DE paper)

As part of his January 2012 update on the SEN and Inclusion Review, the Minister announced that the proposals would no longer require LSCs (SENCOs) to be a senior management position. The Commissioner advised the Minister against this proposal in her recent advice paper, calling for the LSC to be a member of the school senior management team (SMT). In its latest proposals, the Department advises against LSCs occupying an SMT position within the school. The Commissioner is not satisfied with the proposal.

The Department has indicated that "guidance" will be included within a revised statutory code of practice for senior management teams (SMTs) to accept responsibility for the needs of pupils, and to ensure that the "LSC has a voice" at SMT meetings. This was part of the Department's January 2012 update to the proposals. The Commissioner had advised the Department that she did not believe that this would guarantee a sufficiently strong, consistent commitment at the school leadership level in all schools.

The LSC in every school should be in a position to negotiate access to appropriate resources and to design and lead on SEN policies. If SEN is to be treated as a priority in all schools, the Commissioner believes that there should be consistency across all schools in terms of the status of the LSC in the school. This will be particularly crucial if it is still anticipated under the new SEN framework that there will be a significant decrease in the number of children who will be within the CSP category, and therefore a significant increase in the proportion of children with SEN for whom the school will "be in the lead" in terms of providing support.

At point ii) of page 29 of the Department's recent paper, it is argued that the number of pupils with SEN is small in some schools, and therefore a position on SMT "*may not be appropriate*" for the LSC. The Department also argues that "*the duties of LSC coupled with a leadership post would be onerous...*" in schools where there are large numbers of pupils with SEN. Instead, the Department propose that the school "*SMT must assume responsibility for SEN matters, including SEN as a key item at SMT meetings*" (page 29, point iii). Given the fact that almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11 failed to achieve high standards in meeting the needs of children with SEN, the Commissioner is not satisfied that such a measure would ensure that SEN is given priority across all schools.

The Commissioner would ask whether there is merit in making the LSC a member of schools SMTs, rather than giving an existing SMT member the responsibility of the LSC role. This question is asked in light of the Department's concern that the duties of LSC could be too "*onerous*" in schools where there are large numbers of pupils who have SEN. The other important point to consider in this regard is whether the number of LSCs in the schools should be appropriate to the number of pupils who have SEN. This would promote greater consistency for schools where there is a large proportion of pupils with SEN, as compared to schools where there is a lower proportion of such pupils.

Training:

A further issue is training of LSCs. The Department states at page 29 of its paper that *“School SMTs through their School Development Plans are required to **consider** the training needs of the LSC and plan accordingly. A revised statutory code will reiterate the importance of LSC training”* [emphasis added]. There must also be monitoring of how this part of the School Development Plan is implemented.

The Commissioner also believes that the provision of training should be mainstreamed throughout the school and all teachers equipped/trained. As stated above, **the Commissioner is aware, through her Legal and Casework Team, of instances where a teacher has refused to attend training on SEN.**

Protected time for LSCs:

The LSC must also have protected time to carry out their duties and undertake available training.

12. The Learning Support Co-ordinator - Diagnostic Testing

(Reference: page 31 of the DE paper)

The Commissioner was previously concerned that the 2009 consultation proposals for teachers to carry out “*low level diagnostic testing*” could infer that educational professionals would be expected to undertake duties of health sector professionals. The Commissioner welcomes the Department’s clarification that the teacher’s role would be in relation to “*educational assessment*”, rather than clinical assessment.

The pilot in educational assessment outlined in the Department’s latest paper was also highlighted in January 2012 in the Minister’s update on the SEN and Inclusion Review. The Commissioner welcomes the information provided to date regarding the pilot programme. The Commissioner also asked the Department for clarification regarding a number of issues relating to the pilot in her February advice paper, including:

- Is the pilot being undertaken during 2012/13 and 2013/14? (This question was asked in light of the Minister’s indication in January that the pilot would be “*rolled out over the next two years*”)
- Will the pilot also include pre-school teachers? Which schools (and early years’ settings, if relevant) are participating?
- Who will be responsible for delivering the pilot?
- How and when will the evaluation be undertaken?⁷

As previously stated, the Commissioner has not yet received a response from the Department regarding her advice paper, however, the Minister has advised her that the response is under preparation. The Commissioner is happy to update the Committee on this issue when she receives such a response. However, the Committee may wish to ask the Department for clarification on this issue on the Minister’s return to the Committee in early June.

⁷ NI Commissioner for Children and Young People (February 2012) ‘Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion’ (Belfast: NICCY), page 19.

13. Stages of the SEN Framework

(Reference: page 33-34 of the DE paper)

The Commissioner welcomes the Department's decision to proceed with the three-phase approach to the SEN framework, rather than the two-stage approach which the Department proposed in January 2012. In her February advice paper, the Commissioner had expressed serious concerns about the proposed two-level structure, and is therefore pleased that the Minister has revised this proposal.

The Commissioner had been particularly concerned that the two-level process proposed in January "lost" the trigger for the statutory assessment process, which is currently triggered as an outcome of stage 3 of the current five-stage framework. The Commissioner had highlighted this concern to the Minister. The Commissioner is therefore pleased to note that page 34 of the Department's proposals states that "*Level 2 [of the new framework] will equate to stage 3 of the current framework*".

The crucial issues regarding the three-level framework proposed at pages 33 -34 of the Department's paper will be the timescales, review processes, identification of need and putting into place of support services, etc. at Levels 1 and 2. It is understood that these details will be addressed within a revised SEN code of practice. Once again, there needs to be an effective mechanism for addressing any delays or concerns that parents are having as regards the meeting of their child's needs within Levels 1 and 2 of the framework. The Commissioner is yet to be entirely satisfied that the Department's proposals regarding DARS will address this (see section 22 below).

The Commissioner would also seek clarification that there will remain provision for children "new" to the revised SEN framework to skip the first levels of provision and move immediately to Level 3/obtain a CSP.

a) Level 2 – ELB services that will be "*routinely*" made available to schools:

In terms of Level 2 of the new framework, it is proposed on page 34 that the "*ELBs/ESA would have a statutory duty to set out the offer of services that they will **routinely** make available to schools, so that parents, schools and pupils will understand the services that can be expected to be available at Level 2*" [emphasis added].

This proposal was highlighted by the Department in its January 2012 update. At that stage, the proposals stated that ELBs would be required to "*set out clearly the range of supports they intend to **ordinarily** make available to schools and to SEN pupils*"⁸ [emphasis added].

⁸ Department of Education (January 2012) 'Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment' (Bangor: DE), page v of the Ministerial Foreword.

It is crucial that the Department clarify the meaning of the term “*routinely*” available. In her recent advice paper to the Department, the Commissioner also highlighted the need for consistency across all ELB areas in terms of the range of supports available. The Commissioner also called for clarification regarding the budgetary arrangements in place for ELBs to ensure the agreed supports are “*routinely*” available. The Commissioner further asked for clarification regarding whether such supports would be provided through the ELB budgets, and additionally, assurance that the award of supports would be based on objective need. As previously stated, the Commissioner is still awaiting a response.

An issue has also been highlighted by representatives of the Children with Disabilities Strategic Alliance (CDSA) regarding the ‘listing’ of resources to be “*routinely*” made available to schools. The predicament is that the child could be seen to be fitting to the ELB supports, rather than the supports being tailored to meet the needs of the child. This issue is also referenced in section 6 of this paper, above.

b) Level 3:

The Department proposes that CSPs will be available to “*some*” children in “*mainstream classrooms*”. This issue is highlighted on several occasions throughout the Commissioner’s paper and is discussed further in section 15 below, which corresponds to the proposal regarding the criteria for “*complex and multiple needs*” (those children to whom a CSP would be awarded).

In terms of those children who would gain a CSP under the new framework, it does appear that there will be no dwindling of existing rights of appeal, as per the current framework. The Commissioner is concerned that further clarity is required regarding the DARS proposals. This is discussed further in section 22 below, which corresponds to proposal 22 on DARS.

It should also be noted that the Commissioner still has concerns regarding the latest proposals for annual reviews of CSPs, these concerns are addressed in section 16 below (corresponding to proposal 16 of the Department’s paper).

In terms of access to SENDIST, as previously stated, the Commissioner does not believe the rights have been curtailed in terms of what is available under the current framework for children with statements. However, the Commissioner remains disappointed that the issue of appeal rights for children has not been progressed to date. This concern has been expressed to the Minister and is outlined in section 23 below, as per the relevant proposal.

14. Co-ordinated Support Plans (CSPs)

(Reference: page 35-37 of the DE paper)

A key issue is the need to ensure that the new SEN framework results in improved quality documents in terms of the statement of SEN as set out in the CSP, in comparison to the poor quality statements which result within the current framework.

The Commissioner notes at page 35 of the Department's paper that CSPs would be put in place for a child whose SEN relate to:

"Either education sector provision or combined education and HSCT [Health and Social Care Trust] sector provision".

The Commissioner would ask for clarification regarding situation of children with medical/ health problems. Such children may require their need to be addressed in order to facilitate their right to an effective education. However, they may not require educational support. In her recent advice paper, the Commissioner recommended that the Department consider the feasibility of introducing a statutory duty to ensure that provision is made to meet non-educational provision set out in a CSP.

As stated above, the Commissioner recently discussed the matter of a statutory duty to cooperate with the Minister, and has encouraged him to keep an open mind about this issue.

It is noted at point iv) of page 35 of the Department's paper that *"possible criteria for a statement set out in a CSP would be that **regular** access to external / additional educational supports , or health sector supports, are necessary to meet the child's needs"* [emphasis added]. The Commissioner would suggest that 'ongoing' access may be recommended.

The Commissioner welcomes the proposed monitoring mechanism outlined in point viii) of page 36 that an *"additional statutory duty"* would be placed on ELBs to set out and review the expected learning targets/outcomes set for the child as part of the statementing process.

In terms of point x) on page 36 of the Department's paper, the Commissioner has already stated above that she believes there are outstanding issues for clarification regarding DARS. This matter is discussed in section 22 below.

The Commissioner's concerns regarding the annual review proposals are outlined in section 16 below.

15. Co-ordinated Support Plans – Complex and Multiple Needs Criteria

(Reference: page 39-40 of the DE paper)

Part c) of page 39 of the Department's paper states a proposal that the new framework "*retains what is best*" within the current framework. The Commissioner would welcome clarification regarding this statement.

The Department outlines within part c) on page 39 that the statement would be for those children:

"Who are assessed as needing either additional education supports alone or a combination of additional education and health/social care supports".

As per comments in section 14 above (paragraph 4), the Commissioner would seek clarification regarding the situation of children with medical/ health problems who may require their need to be addressed in order to facilitate their right to an effective education, but may not require educational support.

Again, as highlighted above, the Commissioner has called on the Department to consider the feasibility of introducing a statutory duty to ensure that provision is made to meet non-educational provision set out in a CSP.

The Commissioner also recently discussed the matter of a statutory duty to cooperate with the Minister, and has encouraged him to keep an open mind about this issue.

Criteria for "*complex or multiple needs*".

The Commissioner notes on page 40 of the Department's recent paper that the criteria for "*complex or multiple needs*" will be issued as guidance in a revised code of practice, instead of introducing a statutory definition in legislation. The Department should direct the ELBs to engage fully with stakeholders at an operational level as early as possible regarding the development of the guidance.

16. Co-ordinated Support Plans - Annual Reviews of CSPs

(Reference: page 41-43 of the DE paper)

The proposals in the Department's recent paper have been amended following the January 2012 update. The January proposals indicated that annual reviews would be retained only when requested by the school or parent. The Commissioner strongly advised the Department against the proposal to make annual reviews optional, on the basis that this could disregard key rights under the UNCRC. This is illustrated through the following scenarios:

- By focusing on the rights of parents and schools to request an annual review, no regard is given to the child's rights to participate in the decision-making process.
- The reliance on parents and/or the school to request an annual review could disadvantage children whose parents lack capacity, whose parents are not fully aware of the value of triggering an annual review, or where they lack the confidence or the resources to engage in the decision-making process, including lower income families.

The Department argued that annual reviews of CSPs are not a necessary or effective mechanism. The Commissioner suggested that rather than making annual reviews optional, it would be more appropriate to consider ways of improving the overall review process.

Through discussions with the Minister, it is clear that some consideration has been given to the issues raised by the Commissioner, particularly the matter of potential disadvantage to children with vulnerable parents.

In terms of the Department's current thinking, the Commissioner notes that the annual review proposal would still require the parent or the school to "opt in" to the process. Therefore the Commissioner's above concerns still remain valid.

Point x) on page 42 of the Department's paper highlights that:

"Retention of this formal statutory process will mean that ELBs have a statutory duty to assure themselves, on an annual basis, that the level of provision and the funding expended through the statement in the form of a CSP is still required to support the child's needs".

The Commissioner would suggest that the annual review process should inform the ELB in making this judgment.

Point xii) on page 42 notes that:

"The importance of involving the child and hearing his or her views will be stressed through revised statutory guidance".

While this is welcome, clarification is required as to whether this statement refers to the involvement of the child/seeking of the views of the child within the annual review

process. If so, how will children's views be sought if their parent/school decides that an annual review is not necessary?

This also relates to the argument that, by focusing on the rights of parents and schools to request an annual review, no regard is given to the child's rights to participate in that decision-making process.

The Commissioner recommended to the Department in her recent advice paper that the optional nature of an annual review means that monitoring mechanisms should be put in place to identify if there is a failure to take up reviews, and to identify if this affects particular children, such as those from lower income families. This issue has not been picked up in the Department's latest proposals. The Commissioner is happy to update the Committee when she receives a response from the Department regarding her advice paper.

17. Transition Points – Access to transitions support services

(Reference: page 45-46 of the DE paper)

The Commissioner is extremely disappointed that there will be **no duty** to ensure all young people with SEN have access to transitions support services. In her February advice paper to the Department, the Commissioner stated that it will be absolutely essential to ensure that children with PLPs have the same rights to transitions planning services as children with CSPs. The lack of such a duty regarding pupils with PLPs is particularly disappointing given the Commissioner's additional concerns regarding the enforcement and review mechanisms for PLPs, as highlighted above.

The Department comments at point ii) of page 45 of its paper that:

“The original proposal could result in an increased burden on schools with limited, if any, additional benefits to the pupils”.

Given the fact that the Department forecasts that only “some” children in mainstream schools will be awarded a CSP, this will have a significant impact on the proportion of children for whom a duty exists to provide transitions planning support. In effect, there would be a “decreased burden” on schools if the most recent proposal is adopted.

The Commissioner's concerns regarding the proposed “optional” nature of annual reviews of CSPs should also be taken into account, as this would impact on transitions planning.

In terms of stated pupils' current access to transitions services (which it is proposed will be retained), it is noted on pages 45 and 46 that there will be continued provision of support for pupils with CSPs from Education Transitions Co-ordinators are responsible for ensuring that connections for post-school education, health and social care supports are made. The Commissioner would seek clarification as to whether it is proposed that this would also include support in terms of access to training, as well as education.

As a final point, the Commissioner is aware that not all HSCTs have Transitions Officer posts in place.

18. Developing Effective Partnerships - between education and health and social care (Reference: page 47-48 of the DE paper)

The Commissioner's position regarding the interface between education and health and social care sectors has been highlighted a number of times throughout this paper.

The Commissioner has called on the Department to consider the feasibility of introducing a statutory duty to ensure that provision is made to meet non-educational provision set out in a CSP.

The Commissioner welcomes the Department's communication of its preference for a statutory duty to be placed on the HSCTs to arrange provision "*which they have assessed as being needed*" (page 47 of the DE paper).

In her recent advice paper, the Commissioner made a number of recommendations to the Department which may be of interest to the Committee, including recommendations to:

- Outline the outcome of discussions with DHSSPS on the issue of a statutory duty regarding required health provisions as set out in a CSP.
- Clarify how joined up working between education and health is being pursued at an operational level, in addition to the policy level.
- Outline the role of the health sector with respect to the early years' pilot and the teacher capacity building pilot.
- Consider opportunities for progressing joined-up working between education and health sectors through the Children and Young People's Strategic Partnership.

Once again, the Commissioner would be happy to keep the Committee informed of the response she receives from the Department regarding her paper.

The Commissioner has also recently discussed the matter of a statutory duty to cooperate with the Minister, and has encouraged him to keep an open mind about this issue.

19. Multi-disciplinary Groups (MGs)

(Reference: page 49-50 of the DE paper)

In terms of the reference to pilots in early identification and intervention on page 49 of the Department's paper, it is assumed that this corresponds to the pilot "*early intervention teams*" outlined in proposal 7, which is discussed in section 7 above.

The Commissioner has highlighted her position regarding the need for effective joined up working between education and health sectors in several sections of this paper.

20. Effective Partnerships with Parents and Carers

(Reference: page 51 of the DE paper)

The Commissioner is aware that Department officials had planned to engage with parents through a series of reference groups which were established from February 2012. The Commissioner would be interested to hear what feedback was received from parents regarding how consistent partnership arrangements can best be achieved, and the Department's view regarding how this learning could be taken into account within a revised code of practice. It would be particularly useful to hear of any feedback which the Department received from parents of children at stages 2 and 3 of the current code of practice.

In terms of point ii) on page 51, the Commissioner would recommend that "communities" and "family support services" should also be included within the proposal for strong partnership arrangements within a revised code of practice.

The Commissioner welcomes the proposal to commission ETI to consider and make recommendations regarding how schools engage with parents.

21. Effective Partnerships with Children and Young People

(Reference: page 53 of the DE paper)

While the Commissioner welcomes the Department's commitment to give consideration as to how the revised framework can take account of children and young people's views (and, the Commissioner assumes, establish greater participation of children within the SEN processes), further detail is required regarding what the Department is proposing in this regard. For example, at part e) of page 53, it is proposed that consideration will be given to how existing legislative provision could be amended to require children and young people's views to be sought. The Commissioner welcomes this suggestion.

However, the Commissioner would also expect that the Department would have a clearer concept of what it actually envisages by this stage in the SEN and Inclusion Review process. The Commissioner is not clear what the Department envisages in terms of this proposal. Clear reassurance should be given that the CSP and PLP processes will require children and young people's views to be taken into account. The Commissioner outlined concerns above regarding the proposals relating to annual reviews (section 16) and transitions (section 17). A further outstanding issue is the need for implementation of the right of the child to appeal to SENDIST – this issue is addressed in section 23 below, which relates to the corresponding proposal.

Inclusion of children within the development of the revised framework:

As an overarching matter, the Commissioner has been concerned by the apparent lack of meaningful involvement/influence of children and young people in the policy development processes to date. This issue is not considered within the Department's recent paper.

The Commissioner advised the Department on this issue in her response to the 2009 consultation, in her meeting with officials in early February, in her recent meetings with the Minister, and, also provided guidance in her February advice paper.

On several occasions the Commissioner has expressed dissatisfaction regarding the way in which the Department led the process of engagement with children and young people through the formal consultation. Indeed, officials advised the Commissioner that the consultation exercise did not generate much meaningful feedback.

The Department did helpfully publish children's responses to the consultation exercise on its website⁹. In her advice paper to the Department and in a recent meeting with the Minister, the Commissioner highlighted her particular concern regarding **the apparent lack of analysis of the responses of children and young people to the 2009 consultation exercise**, and suggested such an analysis be undertaken.

⁹ At http://www.deni.gov.uk/appendix_9_-_responses_from_children_and_young_people.pdf [last accessed 25 May 2012].

In light of the issues regarding engagement with children during the consultation period, officials did actively seek advice from the Commissioner in February 2012 regarding how the matter of how engagement might be achieved. In response to this, the Commissioner provided an outline of guidance and recommendations in her advice paper¹⁰.

As previously stated, the Commissioner has not yet received the Department's response to her advice paper, but is happy to update the Committee on this matter when such a response is received.

One of the suggestions that the Commissioner made to the Department in her advice paper in terms of how children with SEN could be meaningfully involved in the Review process **on a basic level** was to meaningfully engage with them regarding some of the terminology used within the revised SEN framework. This concept arose out of NICCY discussions with stakeholders in order to inform the advice paper. The Commissioner noted with interest the Minister's comment during his recent briefing to the Education Committee that the Department still is still open to considering some of the terminology used within the SEN and Inclusion framework¹¹. Therefore the Commissioner's suggestion remains valid.

¹⁰ NI Commissioner for Children and Young People (February 2012) 'Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion' (Belfast: NICCY), page 7-8. Accessible at: http://www.niccy.org/uploaded_docs/2012/Consultations/Jan-Mar/Advice%20paper%20on%20updated%20SEN%20proposals%20FINAL%20word%20version.pdf [last accessed 25 May 2012].

¹¹ Northern Ireland Committee for Education Official Report (Hansard), 'Review of Special Educational Needs: Ministerial Briefing', 16 May 2012, page 7.

22. Resolution and Appeals Mechanism – Dispute Avoidance and Resolution Services (DARS) (Reference: page 55-56 of the DE paper)

The proposals emphasise a desire to enhance the DARS service. However, there is little detail provided on how this would actually be undertaken.

The Commissioner welcomes the proposal for a dispute avoidance and resolution service to have greater independence from the ELBs. It is suggested in point ii) of page 55 that a (voluntary?) service provider could be appointed by ELBs through a tendering process. The DARS function would require a body with highly specialised expertise. The Commissioner would welcome further detail regarding this matter.

The proposals suggest that DARS would be compulsory for parents before a case is heard at SENDIST (it is noted that parents would be able to lodge the appeal to SENDIST). **The Commissioner believes that such a duty on parents should only be considered if DARS is sufficiently resourced, and its powers extended/increased. Within the current SEN framework, there is no compulsion on schools to engage with DARS and there is no mechanism to enforce any agreements reached via DARS.**

The Commissioner notes at part ii) of 22(e) (page 56) that it is proposed that there would be **consideration** of a statutory duty on all parties to **engage** in dispute resolution. This matter requires clarification. For example, **what recourse is there if a party does not comply with mediation? How will any recommendations/agreements made via DARS be monitored and enforced? What recourse will there be if these mediated agreements are breached? Clear enforcement and penalties mechanisms are required. DARS must have be a body that can act with necessary force.**

The Commissioner's concerns regarding the DARS proposals should be considered in parallel to the concerns outlined regarding the enforcement, monitoring and review mechanisms regarding provision for children within a PLP (sections 3 and 4 of this paper).

23. Resolution and Appeals Mechanism - Special Educational Needs and Disability Tribunal (Reference: page 57-58 of the DE paper)

The Commissioner has welcomed the Department's commitment to ensure that children who are awarded a CSP under the new framework will have the same rights to appeal as currently enjoyed within the existing framework. The caveat to this statement is the Commissioner's dissatisfaction regarding the proposed "opt in" nature of the annual review process.

The Commissioner is particularly keen that children be granted a right to appeal to SENDIST.

In 2008, the United Nations Committee on the Rights of the Child made a specific recommendation to the UK Government and the devolved administrations to:

"Ensure that children who are able to express their views have the right to appeal... to special educational need tribunals"¹².

There has been no substantive movement on this issue in Northern Ireland, with the result that children still do not have the right to make an independent appeal to SENDIST. Furthermore, there is no formal mechanism for ensuring that their voices are heard as part of the appeal processes.

In Wales, a pilot programme has been introduced to give children an independent right of appeal, and the Commissioner understands that a pilot programme is also in the process of being established in England. The Commissioner was advised during her recent meeting with officials that the Minister wishes to await the outcome of the pilots in England and Wales before making any decisions regarding children having a right of appeal to SENDIST in NI. In her advice paper to the Department, the Commissioner stated her opposition to this position in light of the clear guidance from the UN Committee on the Rights of the Child and the provisions within in Article 12 of the UNCRC. The Commissioner has urged the Minister to address this matter.

It is disappointing that substantive action has not been proposed within the Department's most recent paper. The Minister has stated clear enthusiasm for the concept of giving the child a right of access to appeal to SENDIST. The Minister has also said that he is keen to bring in place a system in Northern Ireland, but no timeframe has been suggested.

The Commissioner warmly welcomes the Minister's comments and commitment to this issue in principle. Nevertheless, the Commissioner would wish to see further progress on this matter at this stage, including a timeframe for implementing this right. The Commissioner is concerned that Northern Ireland could be "lagging behind" England and Wales, in terms of the implementation of this right. The Commissioner assumes that such a

¹² United Nations Committee on the Rights of the Child (2008) 'Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland'.

predicament would not be looked upon favourably by the UN Committee when it is preparing its next report regarding the UK's compliance with the UNCRC.

The current Review process presents an ideal opportunity to embed pupils' UNCRC Article 12 rights in relation to access to SENDIST.

24. Funding – local management of schools

(Reference: page 59 of the DE paper)

In her advice paper to the Department, the Commissioner commented that:

“Given the fact that the [January 2012] proposals state that the majority of children in mainstream schools will have their needs met through PLPs, rather than statements, this implies that a significant amount of provision will have to be delivered at school level. The delegation of additional SEN funding to individual schools risks ‘draining’ the school’s available SEN budget, given the cost of providing specific assistance to children with PLPs from school level funding (for example, Classroom Assistants, technological and any other necessary resources, etc.). Given the limited information issued by the Department regarding how it envisages that SEN monies will be held, it is difficult to understand how schools will be able to provide for every child with SEN”¹³.

The Commissioner remains firmly opposed to the delegation of SEN funding to schools in the absence of appropriate ring-fencing mechanisms and strict guidelines for delivery.

In terms of the proposals on page 59 of the Department’s recent paper, the Commissioner welcomes in principle the fact that the Review of the Common Funding Scheme will consider whether or not a SEN factor should form part of the funding allocated to schools under local management of schools (LMS) budgets. Further details would be required regarding the issue of “ring fenced” budget allocations, including clarification of allocation and monitoring mechanisms.

If a SEN component was to be included within the Common Funding Formula, this should be strongly linked to outcomes for pupils with SEN.

¹³ NI Commissioner for Children and Young People (February 2012) ‘Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion’ (Belfast: NICCY), page 34.

25. Introduction of CSPs - transitional arrangements for new requests for statutory assessments (Reference: page 61 of the DE paper)

The Commissioner's comments regarding proposal 26 (section 26 below) are also relevant to this section.

It is stated in part c) on page 61 of the Department's paper that "*from the date of full implementation of a new SEN framework*" all new statutory assessments/re-assessments by the ELB would be conducted for a statement of needs as set out in a CSP. **The Commissioner would welcome clarification as to whether the phrase "*from the date of full implementation*" refers to the period following the end of the five year transitional period.**

The Commissioner's concerns outlined in section 4 above, regarding the appeal pathways for children with PLPs, has relevance to the matter of "new requests for statutory assessments" under the revised framework. The establishment of stringent timescales, trigger points and enforcement, monitoring, review and appeal mechanisms is crucial to ensuring that the process of statutory assessment occurs in a timely manner. This issue is also relevant to section 26 below.

26. Introduction of CSPs - transitional arrangements for children currently with statements (Reference: page 63-65 of the DE paper)

The Commissioner welcomes the extension of the transitional period to five years, rather than two years, as proposed as part of the 2009 consultation.

It is proposed that the transitional period will have three phases:

Phase 1: Relates to all new requests to the ELB for statutory assessment/re-assessment of a child's needs:

- It is stated that such requests will be managed under the criteria for the new framework.

Phase 2: Relates to children with existing statements:

- It is proposed that all existing statements remain and the current annual review arrangements apply **for the first two years** of the transitional period.

Phase 3: It is understood that this phase will occur **during the last three years of the five year transitional period**. During this phase, the ELBs would undertake transitional reviews of children:

- Children whose existing statements were allowed to remain as part of phase 2 would be subject to such transitional reviews, and could be subject to reassignment to Level 2 following that process.
- For those children who lose their statement (CSP) under a transitional review, it is proposed that the parental rights of appeal to SENDIST would apply in these cases and ELBs would not be able to cease the statement if the parent disagreed and lodged an appeal with SENDIST. **If a large number of pupils are reassigned to Level 2, the Commissioner would query whether this could result in a backlog of appeals to SENDIST. If so, what measures would be put into place to ease any logjam?**
- It is proposed at point x) of page 64 that young people in mainstream classes at Years 11 and 12/those beyond statutory school leaving age would continue to have their needs supported at Level 3 until they leave school, and would not undergo a transitional review by the ELBs. **Does this refer to those young people in Years 11 and 12/those beyond statutory school leaving age at the commencement of phase 3 (that is, year three) of the transitional period?**