

# **‘Too Little, Too Late’: Monitoring Report**

**15 March 2022**

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## 1.0 Introduction

The Northern Ireland Commissioner for Children and Young People (NICCY) was established under the Commissioner for Children and Young People (NI) Order 2003 with a principal aim ‘to safeguard and promote the rights and best interests of children and young people in Northern Ireland (NI)’. In exercising her functions, the Commissioner must have regard to all provisions of the United Nations Convention on the Rights of the Child (UNCRC).

On 31 March 2020, NICCY published ‘*Too Little, Too Late: A Rights Based Review of Special Educational Needs (SEN) Provision in Mainstream Schools in Northern Ireland*’. This Review was produced in accordance with the powers and functions set out in the NICCY Order. Under Articles 7(2) and (3) of the legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Review was undertaken in the context of NICCY’s strategic priority to address and advise on educational inequalities and the promotion of inclusion, to ensure that the provision and quality of education received by all children in Northern Ireland is of the highest standard, and develops every child’s personality, talents and abilities to the full. It assessed the adequacy and effectiveness of SEN provision in mainstream schools and identified the barriers which prevent children and young people with SEN, or suspected SEN, from fully realising their right to an effective education, as per Articles 28 and 29 of the UNCRC. It also examined whether the system is fit for purpose and ensures equality of educational opportunity inclusive of circumstance.

‘*Too Little, Too Late*’ (TLTL) involved a comprehensive process of engagement to capture the views of various stakeholders including Parents/Carers, Principals/Special Educational Needs Co-ordinators (SENCOs), Educational Psychologists (EPs) and representatives from the Voluntary and Community Sector (VCS). It also included an analysis of official statistical data, where this was available.

The Review revealed a system under extreme pressure, unable to respond to the scale of

need and the complexity of issues that children are facing/presenting. It yielded evidence of the detrimental impact on children’s education and mental health and wellbeing when their needs are not met. It also highlighted the frustrations of many parents and professionals in trying to have their voices heard by an education system that had consistently demonstrated an inability to prioritise and respect the perspective and experience of these key stakeholders.

Critically, the Review provided much evidence of the need for meaningful reform of the SEN Framework, in order to address the issues and barriers hindering the provision of appropriate, effective, and timely support and services to children and young people with Special Educational Needs and Disability (SEND); issues which have been endemic in Northern Ireland’s SEND system for far too long. It also provided a comprehensive outline of the significant flaws in the education system which have presented barriers for children and young people with SEN in mainstream schools in fully realising their right to an effective education. The Review contained 40 evidence-based recommendations across 12 thematic areas, outlined in Table 1 below.

Table 1: *Too Little Too Late* Review, Thematic Areas for Recommendations

1. Accessibility, Availability and Effectiveness of Statutory Supports and Services	7. Transparency of the SEN Process
2. Capacity Building in Schools	8. Communication and Engagement
3. Strategic Planning for Behavioural Support Services	9. Involvement of Children and Young People
4. Suspensions, Expulsions and Informal Exclusions	10. Multi-Disciplinary Working
5. The Role of the Educational Psychology Service	11. DARS and Appeals
6. Statutory Assessment and Statementing	12. Systemic Review

Although some recommendations in *TLTL* identified a specific Department or agency as having responsibility for taking the recommendation forward, a system wide response is required to address the challenges identified in the Review. NICCY made clear to all relevant agencies that they must co-operate to deliver the outlined recommendations and therefore an improved service for children with special educational needs. This need for

joined up working is a statutory duty as set out under the Children's Service Co-operation (NI) Act 2015.

NICCY committed to monitoring progress in implementing the recommendations in *TLTL*.<sup>1</sup> This is the first Monitoring Report containing an analysis of the government's response to the *TLTL* recommendations and the work undertaken in the two years since the Review was published. We will continue to closely monitor progress on the implementation of the recommendations and intend that our second Monitoring Report will be published in early 2023.

## 2.0 Implementation of *TLTL* Recommendations

Publication of the Review in March 2020 was an important step in NICCY's work to ensure systematic reform of SEN operations and provisions for children and young people in Northern Ireland. Both prior to and after the release of the report findings, NICCY liaised with the Departments and Agencies identified as having responsibility for addressing the report recommendations. This included the Departments of Education (DE), Health (DoH) and Justice (DoJ), the Education Authority (EA), Education and Training Inspectorate (ETI), Health and Social Care Board (HSCB), Public Health Agency (PHA), and Regulation and Quality Improvement Authority (RQIA). We also liaised with the NI Assembly Education Committee to disseminate the report findings. In doing so, we made clear our expectations to Departments and Agencies in progressing the recommendations. This included the need for:

- All relevant agencies and sectors to work together to deliver the outlined recommendations;
- A clearly defined mechanism to ensure the implementation of the recommendations, to facilitate a co-ordinated response from the relevant Departments and agencies, and to initiate action to progress the report recommendations. It was assumed that DE would adopt this role; and
- Development of an action plan, and identification of the resources to be deployed, to address the recommendations.

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<sup>1</sup> [niccy-too-little-too-late-report-march-2020-web-final.pdf](#)

We also made clear our intention to publicly report at periodic intervals on progress made by the relevant authorities in addressing the recommendations.

Overall, following acceptance of the recommendations, there was a highly positive response from the relevant authorities, all of whom indicated that they would co-operate in delivering on these across the 12 thematic areas. The, then, Minister of Education Peter Weir, wrote to NICCY on 6<sup>th</sup> April 2020 and outlined DE's intention to oversee the implementation of the recommendations via a cross-sectoral action plan. Other relevant authorities including EA, ETI, and DoH, also expressed their commitment to deliver on the outlined recommendations. A subsequent evidence session with the NI Assembly Education Committee in June 2020 gave NICCY opportunity to further disseminate the report recommendations and seek assurance from the Committee to assess progress in the implementation of these. Meetings with relevant authorities in the months that followed, focussed on progress made.

## 2.1 Overarching context for implementation

Despite this initially positive response, NICCY did not see much action or progress taken to address the recommendations in the months following publication of the report. The onset of the COVID-19 pandemic meant that Education and Health resources were diverted to deal with the crisis, particularly across much of 2020, which undoubtedly had implications on the expediency with which relevant authorities could deploy the necessary resource and activities required to implement the report recommendations.

Worryingly, during this period NICCY also saw a marked decline in the availability of supports and services for children and young people with SEN as a result of restrictions imposed during the pandemic. Between April and August 2020, children with SEN and disability experienced a dilution in the supports and services to which they were legally entitled, due to operation of the 'Coronavirus Act 2020 Temporary Modification of Education Duties'. DE recurrently issued 'Notices' in addressing the impact that the outbreak was having on the ability of EA and Schools (as well as DoH in Health and Social Care Services) to meet their legal duties as a result of reduced / redeployed Staffing and resources.

NICCY repeatedly expressed concern about the impact of the Temporary Modification of

Education Duties on statutory SEN operations, supports and services.<sup>2</sup> The abrupt suspension of services, coupled with the closure of schools, meant children were missing critical support received prior to the pandemic and many Parents / Carers experienced a withdrawal of vital respite services. Impacts on children and families included longer waiting times for statutory assessment of Special Education Need and on the processes for reviewing and appealing Statements of Special Educational need. These in turn, had profoundly detrimental effects on the education, health and wellbeing of children as well as on their Parents/Carers and siblings. There were some instances of having to resort to extreme measures including the use of chemical restraint,<sup>3</sup> as their children went without critical medical and therapeutic interventions normally provided by specialist services.

Overall, the already difficult situation that children and young people with SEN, and suspected SEN, were facing before the onset of the pandemic in accessing their right to education, was exacerbated by the response to the pandemic. It further magnified the need for fundamental reform to address the myriad issues preventing these children from accessing appropriate, effective, and timely supports and services, as identified by the findings of *TLTL* and other Reviews undertaken by the Northern Ireland Audit Office, the Public Accounts Committee, Council for Catholic Maintained Schools and Department of Education (DE).<sup>4</sup> Each of these subsequent Reviews identified similar priorities for change and critically, all reinforced the need to implement a significant programme of improvement in SEN services. Collectively, they generated over 150 recommendations for change across Northern Ireland's SEND system.

### 3.0 The Special Educational Needs and Disability Strategic Development Programme (SEND SDP)

In response to this irrefutable evidence base, strategic structures were established by DE and EA to address the recommendations from *TLTL* and the other reviews, including the

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<sup>2</sup> For example, see [Coronavirus Act 2020 Temporary Modification of Education Duties - Advice \(niccy.org\)](https://www.niccy.org/coronavirus-act-2020-temporary-modification-of-education-duties-advice)

<sup>3</sup> NICCY (2021) *A New and Better Normal - 'A New and Better Normal: Children and Young People's Experiences of the COVID-19 Pandemic'* (niccy.org)

<sup>4</sup> Northern Ireland Audit Office (2020) *Impact Review of Special Educational Needs*; Public Accounts Committee (2021) *Report on Impact Review of Special Educational Needs*; Council for Catholic Maintained Schools (2021) *Call for Change – Time for Action*, and [the Department of Education's SEN Learner Journey Project](#)

EA internal audit of practice. Importantly, the Special Educational Needs and Disability Strategic Development Programme (SEND SDP) was established to provide a single governance framework to co-ordinate all SEND development work including the SEND Act implementation and specialist provision planning, as well as to undertake work required to address the significant range of recommendations set out in *TLTL* and the other reviews. The SEND SDP aims to deliver on the following high-level outcomes:

- All schools & pre-school settings can access the necessary services and resources and provide the right SEND supports at the earliest possible point for all children who need them;
- Statutory assessment is leading to the right additional SEND supports being delivered at the right time in the right setting;
- Parents/carers & children and young people understand, engage fully with and are getting the right supports and services from the SEND system at the right time; and
- SEND stakeholders have a shared sense of ownership and confidence in the system.

The SEND SDP is governed by a Board which is chaired by the Chief Executive of the EA and includes senior representation from DE, DoH, ETI, and CCMS.<sup>5</sup> NICCY's Chief Executive sits on the Programme Board, through which NICCY advises on the implementation of the *TLTL* recommendations and progress on the SEND change agenda overall. The Board currently continues to meet monthly.

The SEN Governance Group provides overarching strategic oversight and co-ordination of the overall programme of improvements within the EA and DE, and the work of the SEND SDP. It is chaired by DE's Permanent Secretary and comprises senior officials from DE and EA, including the Minister's Special Adviser. The Chair of the SEN Governance Group provides quarterly progress reports to the Minister of Education on the SEN change agenda.

### **3.1 Structures established to facilitate stakeholder engagement**

There has been welcome acknowledgement by EA and DE that, given the complexities of the overall SEND change agenda, the need for partnerships has entailed bringing together Parents, Principals, Schools, Government bodies and agencies and other stakeholders.

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<sup>5</sup> The SDP Board now also includes representation from the Public Health Agency, Allied Health Professionals and Trade Unions.



EA and DE have aimed to ensure that stakeholders' perspectives are built into the Programme's design from the outset, with engagements focused on the Programme's strategic direction and the most urgent priorities for change.

A Programme Reference Group (PRG) was established drawing in representation from the community and voluntary sectors and wider education bodies (beyond those represented on the Programme Board). It includes the Controlled Schools' Support Council; Council for Integrated Education; Comhairle na Gaelscolaíochta; Governing Bodies Association NI; Council for the Curriculum, Examinations and Assessment; Catholic Schools' Trustee Service; and Transferor Representatives' Council. Other organisations represented include Autism NI; Children's Law Centre; Early Years; National Children's Bureau NI; Parenting NI; Parentkind; Royal College of Child Health & Paediatrics; the Safeguarding Board NI and the SEN Advice Centre.

The PRG has met regularly since the Programme's inception, when members have provided direct input to the Programme development process and have also facilitated indirect input from their own networks, including brokering a series of focus groups with parents and carers in late spring 2021. Although agreed that the PRG and EA would host additional open meetings for parents and carers in autumn 2021, these were postponed pending approval OBC funding. Unfortunately, delay of the OBC funding decision means that these meetings have not yet been organised.

Other mechanisms have been developed to engage Families, Teachers and School Leaders, Trade Unions and other key stakeholders in the programme's development and activities. The EA hosted a first round of awareness raising engagement regarding the SEND SDP in spring 2021. This included debate within the round of Locality Leadership Forum (LLF) events delivered across March and then a series of events for non-statutory pre-school providers and specialists. In June 2021, a second round of discussions with Principals was held, the primary focus of which was four projects to be delivered under the SDP aimed at enhancing improvements to SEN provision in the school setting.<sup>6</sup>

The EA also proposed to establish a bespoke engagement mechanism around the programme with trade unions (TUs). However, TUs indicated a preference for two

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<sup>6</sup> The four SDP projects that were discussed were the Review of Early Years SEN Supports; the Educational Psychology Service Model Review; the Integrated Multi-Disciplinary Model for Pupil Support; and the Consolidating the Adult Assistant Employment Model.

representatives to be included in the SEND SDP Board membership (one for teaching unions, one for non-teaching) and two representatives took up their membership in April 2021.

**NICCY welcomes the intention to ensure meaningful stakeholder engagement and reiterates the critical imperative to ensure that this collaborative way of working continues throughout the Programme’s implementation.**

### **3.2 Projects for delivery under the SEND SDP**

The SEND SDP is intended to draw together work that is already underway, including that in preparation for commencement of the new SEND Act (2016) policy framework, and to deliver a range of new projects to address the additional SEND priorities for change, as identified in the aforementioned reviews including *TLTL*.

Given the scale of change required and the range of potential projects that could be undertaken, the SEN Governance Group and SEND SDP Board agreed to prioritise and sequence the Programme’s activities, noting likely resource constraints. Whilst the original SEND SDP project dossier identified 30-40 projects which could potentially be required in order to deliver the programme’s desired outcomes and address all recommendations for change, the SDP Board has agreed on an initial Programme plan of 13 ‘first wave’ projects to be delivered over 18 – 24 months, subject to additional resources being secured and in place.<sup>7</sup>

Once first wave projects are well underway and the impact on the SEND landscape can be assessed, it is intended that the Programme Board will update the Programme plan and seek the necessary resource to deliver the next wave of projects that may be required.

We strongly welcome the SDP projects that seek to deliver substantive progress against the range of recommendations for change contained in NICCY’s *TLTL* Review and those identified in other Reviews.<sup>8</sup> Table 2 below lists ‘first wave’ SDP projects.<sup>9</sup> At time of

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<sup>7</sup> Education Authority (n.d.) Special Educational Needs and Disability Strategic Development Programme Briefing Paper.

<sup>8</sup> Cited at n.4.

<sup>9</sup> Projects 1 – 4 were already underway prior to the establishment of the SEND SDP but were included within the initial Programme plan given the broader implications on the wider SEND landscape.

writing an outline business case (OBC) has been submitted to the Education Department, which, once approved, will provide the necessary additional resource required for their implementation.

**NICCY consider it vital that the 13 SDP projects are fully implemented as soon as possible. We are very concerned that funding to finance this is not yet guaranteed, with consequent delays to the scheduled implementation of some projects.**

Table 2: SEND Strategic Development Programme First Wave Projects

<b>SEND SDP Project</b>	
<b>1</b>	<p><b>Implementation of the SEND Act (NI) 2016</b></p> <p>Following on from the public consultation which closed in spring 2021, DE has been working directly with key stakeholder groups and the Departmental Solicitor’s Office to finalise the draft regulations and Code of Practice, aiming for them to be affirmed by the NI Assembly as early as possible after the 2022 elections, with phased commencement to then follow across 2022/23.</p> <p>EA is leading on providing schools and education settings with support to prepare for and implement that new SEN framework.</p>
<b>2</b>	<p><b>Special Education Strategic Area Plan</b></p> <p>Public consultations on long-term planning frameworks for special schools and specialist provision within mainstream schools were completed in 2021, which allowed the first Special Education Strategic Area Plan (SESAP) to be developed. The SESAP is now undergoing consultation with a view to its first annual operational plans being initiated in September 2022. The relevant EA team is also delivering pilot projects for DE which will allow new provisions to progress through a streamlined planning process.</p>
<b>3</b>	<p><b>SEN Placement Project</b></p> <p>Across 2021, 100 new provisions were established to ensure that all children and young people with statements of special education needs were offered an appropriate placement for September 2021. Demand for special school and specialist mainstream provision continues to increase and this project is now focusing on September 2022 and 2023, at which point the Special Education Strategic Area Plan will be driving capacity.</p>
<b>4</b>	<p><b>Statutory Assessment Improvement Project</b></p> <p>This project has been operational since spring 2020. Processes and systems have already been extensively revised, substantially improving effectiveness,</p>

efficiency and statutory timeframe compliance (reducing the number of assessment cases which had been open for more than 26 weeks from over one thousand at the end of November 2019 to zero at the end of March 2021). The relevant staffing structures are currently being re-designed and expanded to allow preparation for SEND Act requirements (including the reduction in statutory assessment timeframe to 22 weeks).

#### **5 Review of SEN-Related Workload**

This is one of the nine review areas which are part of the agreement reached in 2020 to resolve the industrial dispute on teachers' pay and workload. A joint (NITC & Management) working group was established in November 2021, and sub-groups have been established to consider and progress the key issues as defined by NITC. The review is due to report findings, any agreements reached and any further proposals by September 2022.

#### **6 Review of Early Years SEN Supports**

Considering assessment and referral pathways, intervention effectiveness and impact, integrated working with health and early intervention focus. This project will also action recommendations from the prior public consultation around the SEN early years system. This project is dependent on additional funding being provided by the SEND SDP outline business case and so has not yet been initiated (although key preparatory tasks are already being undertaken by the EA).

#### **7 Educational Psychology Service Model Review**

A review of the form and function of the EPS, access to assessment, alternative referral mechanisms for wider support services and the balance of EPS role in terms of assessment versus therapeutic provision & support. This project is dependent on additional funding being provided by the SEND SDP outline business case and so has not yet been initiated (although key preparatory tasks are already being undertaken by the EA).

#### **8 Integrated Multi-Disciplinary Model for Pupil Support**

A fundamental review cutting across all of EA's SEN-related pupil support services (and linking into Projects 6 & 7 above), focusing on intervention effectiveness, child transitions across the services, options to integrate and driving earlier intervention. This project is dependent on additional funding being provided by the SEND SDP outline business case and so has not yet been initiated (although key preparatory tasks are already being undertaken by the EA).

<p><b>9 School-Based Innovations In Supporting Learning<sup>10</sup></b></p> <p>Building on promising SEN support innovations that have been developed by schools, capturing the resulting learning and feeding it into the wider Programme's roll out.</p>
<p><b>9 Consolidating the Adult Assistant Employment Model</b></p> <p>Developing a consistent system for recruiting, providing appropriate professional development and deploying adult assistants across NI's education settings. This project is dependent on additional funding being provided by the SEND SDP outline business case and so has not yet been initiated (although key preparatory tasks have already been undertaken by the EA).</p>
<p><b>10 Review of Multi-Disciplinary Working</b></p> <p>Significant cross-agency/sector collaborative work has already been undertaken in progressing the SEND Act's implementation, including the initial development of a joint co-operation plan between education and health sectors (as required by the SEND Act). Further work is now being scoped via a new CYPSP subgroup which has been established and will be chaired by DE.</p>
<p><b>11 Review of Suspensions, Expulsions and Informal Exclusions</b></p> <p>DE commenced this project in 2019 with the focus of reviewing the current legislative position and identifying key issues relating to suspensions and expulsions across NI schools. This project has now been completed, and DE is currently scoping an additional work research study which may be required to address SEN-specific exclusion issues raised in NICCY's review of SEN provision in mainstream school.</p>
<p><b>12 ETI Evaluation of SEN Provision in Mainstream Schools</b></p> <p>This project is nearing completion and has focused on the effectiveness of the new specialist provisions which were established in 2021 under the SEN Placement Project.</p>
<p><b>13 Transitions Project</b></p> <p>This project will review statutory planning and support arrangements for young people with SEND transitioning from school to adult life. The project was initiated in early 2020, but due to Covid pressures and resource</p>

<sup>10</sup> The SEND SDP Board postponed this project in light of the independent review currently being commissioned by DE (addressing PAC Recommendation 2) which includes an assessment of the impact of classroom assistance on children's outcomes and is due to report in autumn 2022.

constraints it was subsequently paused. The project is currently being re-established.

Unfortunately, since most projects are either still in development or at an early stage, it is not yet possible to assess impact on the overall SEND system. NICCY will continue to closely monitor the detail of the project briefs as these are developed to ensure that the scope and parameters of the work adequately meet the recommendations from *TLTL*.

#### 4.0 SEND Policy Framework

The period since the publication of *TLTL* has seen welcome movement in the policy and legislative context for SEN provision in NI. In September 2020, DE issued the draft revised SEN Regulations and draft Code of Practice for consultation. NICCY had repeatedly called for progress on the new SEN Framework as the delay in the commencement of the Special Educational Needs and Disability Act (Northern Ireland) 2016 (the SEND Act) provisions, together with the delay in the release of the revised draft Regulations and Code of Practice, had exacerbated existing pressures on the SEN system.

NICCY, like others, recognise that the new SEN Framework provides an opportunity for systemic improvements to be made, and that the revised Regulations and new Code of Practice are vehicles through which the recommendations from *TLTL* can be actioned. We have previously raised concerns, in [comprehensive submissions to DE](#), about the content of the revised Regulations and new Code of Practice, relating to:

- the proposed format of the Statement;
- the proposed separation of health and educational provision;
- advice to be sought at the statutory assessment stage; and
- issues in the Code which are not consistent with a child's rights approach to inclusion.

Within our submissions to DE, NICCY highlighted the amendments required to ensure that the recommendations from *TLTL* were addressed. NICCY also provided evidence to the Education Committee in June 2021, further reinforcing the need for significant development on the Framework. We subsequently met with DE officials in July 2021 to address our concerns on the content of the revised Regulations and new Code of Practice.

NICCY is strongly of the view that proposed amendments to the content of the revised Regulations and new Code of Practice must be fully addressed to ensure that the SEN Framework can effectively meet the needs of children and young people with SEN and suspected SEN and/or disabilities. NICCY welcomes recent updates, received through the SEND SDP Board, regarding commencement of elements of the SEND ACT. We note that DE has been working with key stakeholders on issues identified via the consultation process, with work ongoing to amend the Code of Practice and Regulations. **NICCY understands that that implementation of the SEND framework, including the Regulations and Code of Practice, will be a phased process and strongly recommends that this is commenced with least possible delay.**

## **5.0 Assessment of progress on the implementation of *TLTL* recommendations**

NICCY welcomes the progress update report collated by and received from DE in October 2021, providing details of actions, either planned or already taken, by relevant authorities, to address the *TLTL* recommendations. It is clear from the report that due consideration has been given to addressing the recommendations, both in the short-term, through immediate actions, and in the medium to long-term, through a range of SEND SDP projects. Our detailed assessment of these actions is presented in Section 5.3. NICCY has also published a separate Monitoring Table <sup>11</sup>, setting out actions taken to date by Relevant Authorities to address each of the recommendations, as well as our commentary on actions taken.

NICCY recognise that full reform of the SEN system will take time despite the time and delays experienced to date. In some cases, the collection of robust and relevant data must first be undertaken to inform evidence-based service re-design. Additionally, we acknowledge that some projects may not necessarily deliver immediate benefits to service users, but instead focus on increasing the long-term sustainability of wider system improvements.

**In this context, we strongly reiterate the need for a range of immediate actions to ensure that appropriate and timely support is available now, and in the future, for children and young people with SEND who need it.**

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<sup>11</sup> see [www.niccy.org/TLTLmonitoring22](http://www.niccy.org/TLTLmonitoring22)

## 5.1 Legal and Investigations Data

Data held by NICCY’s Legal and Investigations Department on complaints received provides a useful gauge of ongoing issues within the SEN system for children, young people, and their families. Notably, the vast proportion of NICCY’s casework enquiries for the last five years were education related, and of these SEN accounted for a substantial proportion of the enquiries (Table 3). This trend has continued since the publication of *TLTL*, with almost half of all education enquiries in 2019/20 and one third in 2020/21, related to SEN. Importantly, although the proportion of SEN related education enquiries decreased during this period, we anticipate that this may be reflective of Covid related measures, including school closures and limited services, rather than an overall increase in satisfaction with the SEND system.

Table 3: Breakdown of NICCY’s casework enquiries relating to education, 2016 to 2021

Year	% of casework enquiries related to education	% of <u>education enquires</u> related to SEN
2016/17	60%	32%
2017/18	62%	40%
2018/19	67%	45%
2019/20	75%	47%
2020/21	65%	34%

While SEN continues to be the largest area for complaints to NICCY, we are conscious that the impact of the pandemic including associated restrictions on the provision of children and young people’s services, has affected the nature of cases raised with the Office. Evidence from NICCY’s Legal and Investigations work highlights that, between 2019/20 and 2020/21, SEN concerns remained high for parents although the nature of complaints received changed as some struggled to provide home education to children with specific and complex needs.

NICCY provided advice to parents and children in relation to these cases and liaised with Special Schools themselves to ensure children’s rights in education were being met. Furthermore, the NICCY Legal and Investigations Team’s SEN complaints work also focused on delays in diagnosis and assessment exacerbated by the pandemic and restrictions put in place to tackle the virus. Assistance involved advocacy, liaising with



relevant authorities, providing advice and guidance, developing case statements and submitting appeals to the Special Educational Needs and Disability Tribunal (SENDIST) and providing representation at Tribunal hearings.

NICCY acknowledges that the SEND SDP Programme will take time to effect change, and for there to be a tangible difference in outcomes for children and young people. Nonetheless, it is disappointing that many parents/carers continue to face significant issues in accessing appropriate supports and services for their children.

As the Programme is rolled out, it is imperative that there are demonstrable and measurable positive impacts for children and young people.

**NICCY will continue to monitor the number and nature of cases raised with our Legal and Investigations Team and use this as a ‘marker’ of the direction of travel.**

## **5.2 TLTL Roundtable: Monitoring Implementation of Recommendations**

A roundtable event was held by NICCY on 27 January 2022 to reflect on progress made in taking forward *TLTL* recommendations. Representatives from the following organisations attended the event, which was held virtually:

- Department of Education;
- Education Authority;
- Department of Health;
- Health and Social Care Board;
- Education and Training Inspectorate; and
- Regulation and Quality Improvement Authority

The roundtable discussion focused on key findings from DE’s response to NICCY’s progress report, received in October 2021. For the purpose of the event, *TLTL* recommendations were clustered into six thematic areas<sup>12</sup>:

- 1.Provision of Services and Support;
- 2.Identification and Assessment of Need;

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<sup>12</sup> Recommendations in TLTL were made across 12 thematic areas which were clustered into 6 sub-themes for the purpose of this event

3. Monitoring and Evaluation;
4. Capacity Building;
5. Communication, Engagement and Involvement; and
6. DARS and Appeals.

The remainder of this section will highlight general themes that emerged during the roundtable discussion. Key points that were raised in relation to specific recommendations will be discussed at section 5.3 of this report, within the relevant thematic area.

The stakeholder discussion commenced with recognition that significant financial and human resources are being invested, across the education system, to progress systemic changes necessary to address SEN related issues and needs highlighted by NICCY's and others' Reviews.<sup>13</sup> It was noted that this process is not without challenges, particularly given the wider context of budget uncertainty, the growing number of children with SEND and the increasing complexity of their needs. Notwithstanding the significant resources required to restructure the SEND system, relevant authorities recognised that improvements to existing systems and processes are also needed to ensure that current resources available are used more effectively and with greater efficiency.

The importance of working collaboratively, particularly across education and health sectors, was a prominent theme throughout the discussion. As reflected in *TLTL* recommendations, greater collaborative working between relevant authorities is considered vital in order to address unnecessary delays currently experienced at different stages of the SEN process. It was reported that there have been considerable improvements in working relationships, communication and information sharing, but also acknowledged that further work is needed. The SEND SDP was highlighted as an important driver of positive change, while the need for different ways of working throughout the Covid-19 pandemic, particularly among those involved in supporting children with SEN, had also encouraged the development of new linkages and relationship across organisations. Overall, there was consensus that although progress is evident, there are ongoing challenges, particularly in relation to ensuring consistency of approach across different Trusts. NICCY welcomed the candour displayed in identifying key challenges, while commending progress to date.

Progress to-date in the inter-related areas of communication, involvement and engagement was also perceived as very positive. From the outset, improved

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<sup>13</sup> Cited at n.4.

communication, engagement and relationship building - with children, parents, schools and staff within the sector - has been a priority for relevant authorities, and work has been undertaken to address 'silo working', ensure lessons are learned and to reflect this learning in across policy development and practice. There was a strong consensus that progress in this area, as measured by trends in the number of complaints received by the EA, has been substantial. Importantly, as the number of complaints received has decreased, it has been possible to dedicate more time to the progression of statements.

Relevant authorities reported that the involvement of children and young people and parents through consultation and opportunities to influence change, has been integral to improvement processes. NICCY commended those involved for progress to date, while recognising the considerable journey ahead and the importance of sustained dialogue and engagement with stakeholders throughout and beyond the transition process.

### 5.3 NICCY's Assessment of Relevant Authorities' Progression of *TLTL* Recommendations

In the remainder of this section, we consider each of the 12 thematic areas in turn, recapping briefly on key issues and recommendations identified by *TLTL*<sup>14</sup> within each theme, before reflecting on progress to date, through the work of the Programme Board and the new SEND Policy Framework.

Each recommendation has been assigned a RAG status, coded as:

	Good progress evident	1
	Evidence of fledgling progress or potential	32
	No evidence of progress	7

#### 5.3.1 Accessibility, Availability and Effectiveness of Statutory Supports and Services

Throughout the Review, stakeholders were unanimous in their concern about the quantity, quality and accessibility of supports for children at all stages of the SEN process. In response, NICCY made eight recommendations aimed at improving pupil support

<sup>14</sup> For the purpose of brevity, some recommendations are presented in shortened form. *TLTL* recommendations can be read in full in [NICCY's \*TLTL\* Review](#).

services:

1. The EA must conduct a systematic review of all supports and services for children with SEN.	Yellow
2. The EA should review and make explicit the criteria to access Stage 3 services and take all necessary measures to ensure that access to services is always allocated on the basis of need.	Yellow
3. Comprehensive Stage 3 pupil support services must be made available. Information on referral pathways, criteria for access, waiting times, expected outcomes and processes for monitoring and evaluation must be transparent and publicly available.	Yellow
4. The EA must assess the feasibility of using school-based assessment to inform access to Stage 3 services.	Yellow
5. The EA must progress the development and provision of guidance to schools on supplementary evidence-based strategies that can be implemented whilst referrals for assessment are being processed.	Red
6. Quality training opportunities and funding for appropriate assessment tools should be provided to EPs by the EA.	Yellow
7. Systems must be developed by the EA to ensure the routine collection and monitoring of waiting time statistics.	Red
8. Processes must be established by the EA to ensure that children with SEN in both statutory and non-statutory early years' settings can avail of the services and support they require.	Yellow

### Assessment of Progress

NICCY welcomes the commitment by DE and EA to progress *TLTL* recommendations targeted at improving availability, accessibility and effectiveness of statutory supports and services, as well as recommendations set out in other Reviews.<sup>15</sup> This would in part be achieved through a number of SEND SDP projects, including implementation of the

<sup>15</sup> Cited at n.4

SEND Act (NI) 2016, the Development of an Integrated Multi-Disciplinary Model of Pupil Support Services, Statutory Assessment Improvement Project, Educational Psychology Service Model Review and SEN Early Years Framework. While we are very encouraged by the scope of these projects, concern remains in relation to resourcing of relevant projects.

**NICCY is very concerned that funding to finance several of these projects is not yet secured and that budget uncertainty constitutes a significant risk to their scheduled implementation.**

Other issues of concern are outlined below:

*Integrated Model for CYPS Pupil Support Service*

NICCY is encouraged by this SEND SDP project which will include review of the current form, function and resourcing of EA's SEND Pupil Support Services.

**We consider it vital that this project includes the development and implementation of appropriate systems to enable robust monitoring of data relating to distinct 'phases' of waiting times.**

We are pleased that the project includes the identification and implementation of a range of 'immediate actions' to address pressures within existing service models. However, we note that work on these actions will not commence until project funding has been secured and a dedicated project team has been recruited. It is very disappointing that the project, which was scheduled to begin in November 2021, has not yet commenced, and that specific timeframes for its progression will remain unknown until funding is confirmed.

*Educational Psychology Service Review*

We are very encouraged that this project will consider how the focus of services can be shifted from assessment to early years and early intervention.

**Given the medium to long-term nature of project, specific actions are needed now to ensure support is in place for children and to bridge the gaps while systemic**

**changes are made. Furthermore, we are very disappointed that the project has not yet been initiated, again due to funding delays.**

#### *Review of Early Years SEN Support*

As with the above projects, while we welcome this review, it is again of concern that the project - – previously scheduled for November 2021 - has not yet been initiated, and that timeframes for taking this forward are yet to be confirmed.

#### *Gaps in Services*

While significant improvements have been made to the menu of support services, we are aware, through our legal and investigation department, of children who are unable to access the dyscalculia support they need. We welcome that EA's Education Directorate is developing some resources and assessments for numeracy within Learning Support Classes in advance of the Integrated Multi-Disciplinary Model of Pupil Support Review, being commenced, subject we are informed to appropriate funding being allocated.

**Persistent gaps in the provision of numeracy services must be explicitly and comprehensively addressed as a matter of urgency.**

#### *Training Opportunities and Funding for Appropriate Assessment Tools*

NICCY is disappointed that there have been no training opportunities, provided to EPS, focused on "appropriate assessment tools".

#### *SEND Policy Framework*

A serious matter of concern is that implementation of key components of the SEND policy framework will be further delayed beyond September 2022 (while we appreciate that EA has conducted comprehensive consultation regarding arrangements for children and young people with SEN and disabilities under the revised SEND framework).

**NICCY stresses the importance of implementation of the Act as soon as possible. We are aware that implementation will be progressed on a phased basis.**

In NICCY's advice papers to DE, we reiterated that the issues relating to pupil support services are amongst the fundamental weaknesses of the current system. We emphasised the need for robust and transparent criteria in access to services; review of the role of Educational Psychologist as 'gatekeeper' to accessing services; clarity around processes for referral; and action to address the extensive waiting times for children to access services.

**We reiterate that these must be addressed through the new SEN Framework.**

NICCY welcomes that the new Code of Practice (Section 2) sets out a range of requirements for the EA to address issues relating to specialist supports and services when devising its Annual Plan of Arrangements. NICCY's views on the Draft Special Educational Needs (SEN) Code of Practice are discussed in detail in our Advice Paper to the DE.<sup>16</sup>

We welcome that the Code sets out a requirement on the EA to put in place suitable arrangements for ongoing monitoring, evaluation and review of the effectiveness and delivery of its plan of arrangements for special educational provision.

**The EA must ensure that its Stage 2 services are founded on evidence-based practice and demonstrating improved outcomes for children and young people.**

*EA Plan*

Critically, we stress that the EA Plan must contain actions to address unmet need and ensure children and young people are not waiting excessive time periods for additional supports, as is the case with access to the existing Stage 3 services. Although imperative that the new EA plan ensures all children can access services as soon as possible as a referral to Stage 2 is made, a maximum waiting time will further mitigate the risk of any delay.

**We reiterate the recommendation to DE that the new Framework introduces a maximum waiting time to gain access to Stage 2 services.**

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<sup>16</sup> [NICCY \(2021\) Advice to the Department of Education on its Consultation on Draft Special Educational Needs \(SEN\) Code of Practice.](#)

### *Guidance to schools on supplementary evidence-based strategies*

The lack of progress in developing guidance to schools on supplementary evidence-based strategies that can be implemented whilst referrals for assessment are being processed is extremely disappointing.

The **EA should progress the development of such guidance as soon as possible.**

### **5.3.2 Capacity Building in Schools**

NICCY made a series of seven recommendations to DE, EA and ETI to ensure that all school staff are trained, guided, supported and assessed on their ability to meet the diverse needs of pupils with SEN and disabilities in mainstream schools:

9. The DE and EA must ensure that all school staff are trained, guided, supported and assessed on their ability to meet the diverse needs of pupils with SEN and disabilities in mainstream schools.	
10. Specific guidance must be provided to teaching staff on the identification and assessment of SEN amongst Newcomer children. Existing assessment of SEN from other countries should be recognised and services provided accordingly.	
11. The EA must introduce robust evaluation of learning and development opportunities, to monitor reach throughout the region, and impact on the knowledge, skill and capacity of professionals supporting children with SEN in mainstream settings.	
12. Area based learning clusters must be consistently and regularly facilitated by the EA across the region as a mechanism for staff in pre-school, primary and post-primary settings, including both mainstream and special schools.	
13. School leaders, including Boards of Governors and Principals, must be supported to foster an inclusive culture and ethos founded on equality, and to ensure that children with SEN and disabilities maximise their educational potential.	
14. Schools should be inspected by the Education Training Inspectorate (ETI) on their willingness and ability to establish the conditions required to foster an inclusive culture.	
15. ETI should inspect schools on their ability to fulfil their duties regarding	



the preparation and review of Individual Education Plans (IEPs)<sup>17</sup>. Where health and social care provision is to be made, the Regulation and Quality Improvement Authority (RQIA) should work with ETI to ensure compliance of the statutory duty upon every children's authority to cooperate.<sup>18</sup>

## Progress

Since the publication of *TLTL*, support and development opportunities for schools have predominantly centred on the new SEN Framework, and on building an understanding of the new responsibilities and processes to be delivered by schools and SENCOs (to be replaced by Learning Support Co-ordinators) when the new Framework is in place. As outlined in our detailed advice papers to DE on the revised SEN Regulations and Code of Practice, we consider this support to be crucial.<sup>19</sup>

It is evident from DE's response to our progress report that a number of positive steps have been taken to build capacity in the system, this includes the ongoing Review of the SEN Resource File, the development of cluster groups and the implementation of a range of training opportunities, targeted at Teaching Students, Teachers, SENCOs, Classroom Assistants, Boards of Governors and other professionals in mainstream schools.

**NICCY strongly advises that appropriate systems are put in place to allow ongoing monitoring of training, including in both 'uptake' and 'reach' levels, as well as evaluation of the impact on knowledge, skill and capacity of professionals supporting children with SEN in mainstream settings.**

NICCY is significantly concerned about little, or no, progress being made on some important elements of our recommendations related to building capacity in schools. These include the implementation of a 'mandatory programme' of early (EPD) and continuous professional development (CPD) for all relevant school staff in identifying, providing for, and ensuring full and equal inclusion of children with SEN, and the 'provision of specific guidance' to teaching staff on the identification and assessment of

<sup>17</sup> To be later replaced with Personal Learning Plans through implementation of the new SEN Framework.

<sup>18</sup> Section 2, Children's Services Cooperation Act (Northern Ireland) 2015, available online at [http://www.legislation.gov.uk/nia/2015/10/pdfs/nia\\_20150010\\_en.pdf](http://www.legislation.gov.uk/nia/2015/10/pdfs/nia_20150010_en.pdf). Also, Article 4 of the Special Educational Needs and Disability (Northern Ireland) Act 2016 (SEND Act)

<sup>19</sup> Available at: [SEN Regulations and Code of Practice \(niccy.org\)](http://www.niccy.org)

SEN amongst Newcomer children’.

**We call for actions to progress recommendations to build capacity in schools as a matter of urgency.**

Regarding the provision of support ‘to foster an inclusive culture’, we consider that the actions detailed do not go far enough. We are disappointed that the model ‘Equality and Inclusion’ Policy which has been developed for schools, makes very limited reference to children with SEND, while training for Governors consists of 4 x 15 min sessions only.<sup>20</sup>


**NICCY recommends that greater consideration of how the model Diversity and Inclusion Policy and training for Governors might be further developed to address the recommendation more comprehensively.**

#### *SEND SDP Projects*

NICCY is encouraged by the proposed projects to be delivered under the first wave of the SEND SDP and that these are aligned to a number of *TLTL* recommendations. We also welcome EA’s facilitation of a series of awareness raising engagements with School Leaders regarding the SEND SDP, (the second round of which were held in June 2021) and aimed to provide them with the opportunity to directly inform four SEND SDP projects related to the school-based SEN provision. These four projects include: the Review of Early Years SEN Supports; the Educational Psychology Service Model Review; the Integrated Multi-Disciplinary Model for Pupil Support, and the Model for Consolidating the Adult Assistant Employment.

### **5.3.3 Strategic Planning for Behavioural Support Services**

*TLTL* highlighted that many schools lack capacity and skill to support children with social, emotional and behavioural difficulties. In response, NICCY recommended that:

<p>16. An early intervention and preventative approach to behavioural management should be introduced by the DE and implemented by the EA.</p>	
<p>a) support for parents and families; b) investment in workforce development;</p>	

- a) support for parents and families;
- b) investment in workforce development;

<sup>20</sup> [Equality and Diversity Policy – For Schools | Education Authority Northern Ireland \(eani.org.uk\)](https://eani.org.uk)

<p>c) early access to EA specialist supports; and d) tracking children’s progress against agreed milestones and outcomes.</p>	
<p>17. A comprehensive range of therapeutic interventions including nurture groups, sensory rooms, and counselling in all primary settings must be made available to children and young people in mainstream settings.</p>	

## Progress

NICCY is encouraged that 15 new nurture groups have been established in primary schools across Northern Ireland, with continued funding for a further 31 nurture. Feedback at the roundtable in January 2021 was that work undertaken through nurture provision will support a shift from a focus on ‘managing behaviour’ towards a more inclusive approach that prioritises ‘understanding’ and ‘restorative practices’. This shift in approach is very welcome.

While it is disappointing that only a small proportion of mainstream primary schools benefited from investment in nurture provision<sup>21</sup>, NICCY welcomes that a new ‘Nurture Approach in Education Programme’<sup>22</sup> is available to all primary, special, post-primary schools and Education Otherwise Than at School (EOTAS) settings. This is intended to allow schools without a funded Nurture Group to avail of training and support in nurture approaches. A Nurture Advisory and Support Service (NASS) is being established within the EA to take this work forward. The main output that NICCY has seen from this work to date is updated guidance to schools on nurture group provision, published in December 2020. This guidance sets out the purpose of Nurture Group Provision; conditions of funding; selection of children; roles and responsibilities of school staff; and details on monitoring and review. As yet, it is unclear what benefit or impact this guidance has had on schools.

**We note that a business case has been submitted to DE to fund expansion and extension of the SENEYIS. While this is very welcome, we are very concerned that additional funding to finance this is not yet guaranteed.**

<sup>21</sup> The Minister in September 2020 that up to £4 million will be invested in new and existing nurture groups across Northern Ireland.

<sup>22</sup> [Nurture Provision in Primary Schools | Department of Education \(education-ni.gov.uk\)](https://www.education-ni.gov.uk/nurture-provision-in-primary-schools)

Overall, NICCY welcomes that some progress has been made to provide further support to schools in this area. While cognisant of the time and resources required, we stress that all aspects of our *TLTL* recommendations in this area must be fully addressed, including provision of a comprehensive range of therapeutic interventions in mainstream settings.

### 5.3.4 Suspensions and Expulsions

*TLTL* highlighted the vulnerability of children with SEN and/or disability to suspension and expulsions, including informal exclusions. Recommendations 18-21 address the need for robust data to identify causes of the variance in rates of suspension and expulsion between children with and without SEN, and to ensure that children being educated outside of school are provided with specialist SEN services:

18. Robust data is required to identify the causes of the variance in rates of suspension and expulsion between children with and without SEN.	
19. The DE should undertake an urgent review regarding potentially unlawful informal or unregulated exclusions and issue comprehensive guidance to schools and the EA. This guidance should include formal recording of a range of practices.	
20. ETI must include the reviewing of these records as part of the school inspection process.	
21. Boards of Governors must be satisfied that schools have evidenced that all appropriate pastoral measures have been employed before suspension, expulsion or informal exclusion has been considered.	
22. The EA should work constructively with parents/carers to ensure that any children with SEN being educated outside of school, whether statemented or not, are provided with the specialist SEN services required. This should include additional support to parents/carers home educating children with SEN.	

### Progress

To date, limited progress has been made in addressing a number of the above recommendations. We recognise that it will not be possible to make a valid assessment of the incidence of suspensions and expulsions, including informal exclusions, for the 2019/20 and 2020/21 school years due to the pandemic and subsequent school

closures. Nonetheless, the scale of the issue will remain challenging to quantify until a more robust method of monitoring is established, particularly regarding the use of informal exclusions on children with SEN, or suspected SEN, and disability. We understand from progress update report that DE has taken steps to ensure the collection of robust data as part of its ongoing Review of arrangements for the suspension and expulsion of pupils. However, DE's progress update provides very little information regarding specific steps taken, making it very difficult to assess progress.

NICCY is encouraged that a Review of Expulsions, Suspensions and Informal Exclusions will be undertaken as part of the SEND SDP programme and note plans to submit a report to the Minister by March 2022. However, we are unclear about the scope of the review and, although aware that additional research to bridge the information gap around informal exclusions is being considered by DE, the vague detail provided to NICCY significantly hinders our ability to make an informed assessment of progression of the relevant *TLTL* recommendations.

We welcome DE's Circular 21/04 to remind Governors of their responsibilities in relation to suspensions and expulsions, however this provides insufficient assurance that informal suspensions and exclusions are not occurring.

**NICCY reiterates the need for greater clarity in respect of practices around potentially unlawful informal or unregulated exclusions. We also expect the Review to build on the findings of *TLTL* and to set out a series of actions aligned to its recommendations.**

A particular area of concern, highlighted at NICCY's Roundtable, relates to the disproportionately high rate of de-registered children with SEN and the processes currently in place to ensure that they are receiving the specialist SEN services required. NICCY views the development of the Elective Home Education (EHE) guidelines as a positive step but highlights the need for a more proactive approach to ensure that the needs of home educated children with SEN are met effectively.

**We re-iterate the need for detailed information on assessment, monitoring and inspection processes, planned, or already in place.**

Furthermore, while NICCY views the development of the EHE guidelines as a positive step, we strongly recommend that a more proactive approach is taken to ensure that the needs of home educated children with SEN are fully addressed.

NICCY acknowledges the policy intent of the new SEN Framework to guide schools on inclusive educational practices. However, that there are significant issues with the new Code of Practice, particularly Section 14 which focuses on 'Inclusion of Children with SEN and/or a Disability'. It is very concerning that some proposals in Section 14 run the risk of exclusionary or discriminatory practices. In particular, we draw attention to section 14.36 which suggests that a reasonable adjustment may involve placing a child on a reduced school day and call for this provision to be omitted from the Code. NICCY has received assurance from DE that this Section of the Code will be reviewed and re-written to ensure no potential discriminatory or exclusionary implications.<sup>23</sup>



**We will continue to closely scrutinise any re-drafts of the Code to ensure that it fully protects children and young people with SEND from exclusionary practices.**

### 5.3.5 The Role of the Educational Psychology Service

There was general consensus that a lack of early identification and intervention is a major failing of the current system. The Review identified delays at all stages of the SEN process: in the identification of children's needs, in the provision of supports and services to meet these needs, in the delivery of information and guidance to parents/carers, and in the assessment of children's progress. In response, NICCY recommended that:

23. The EA must review and systemically revise its existing model for enabling children access to an EP assessment.	
24. A more efficient and effective model of Educational Psychology service delivery is required with appropriate levels of investment: <ul style="list-style-type: none"> <li>a. EPs should be assigned to schools on the basis of age and stage;</li> <li>b. EP specialisms should be harnessed and more regular opportunities provided to deliver specialist advice and training of school staff;</li> </ul>	

<sup>23</sup> Meeting between NICCY and DE 1<sup>st</sup> July 2021.

<p>c. Appropriate levels of professional autonomy for EPs, including to decide to move to Stage 4 or 5 of the Code of Practice without the requirement to exhaust Stages 1 to 3.</p>	
<p>25. The DE and EA must issue a policy that ensures that all children who have, or may have SEN, have equal access to assessment and services regardless of their socio-economic background. Such a policy therefore must address the use of private Educational Psychology and other professional assessment reports.</p>	

## Progress

*Educational Psychology Service Model Review:* NICCY strongly welcomes the ‘Educational Psychology Service Model Review’ which will be undertaken as part of the first wave of the SEND SDP projects and will consider revision of the time allocation model.<sup>24</sup> We are very disappointed that this project, which was due to be initiated in November 2021, has not yet commenced. Given the prolonged timeframe involved in the implementation of recommendations arising from this project, NICCY welcomes that a range of interim measures have been taken to increase the accessibility of EPs and SEND Pupil Support Services.<sup>25</sup> **NICCY considers it imperative that the effectiveness of these measures in ensuring that children who require additional support in the intervening period are assessed without unreasonable delay is evaluated.**

To inform this review, the EA Educational Psychology Service completed an initial consultative process in the autumn term of 2020 with schools and SENCOs regarding future EP service delivery. We understand that consultation findings were used to scope out a formal service review and to inform an options identification process, which was further explored with Principals during consultative events in June 2021. We expect that

<sup>24</sup> The Review will also involve a review of the form and function of the EPS, access to assessment, alternative referral mechanisms for wider support services and the balance of EPS’ role in terms of assessment versus therapeutic provision & support.

<sup>25</sup> Interim measures include piloting of a Stage 3 referral process to the Literacy Support Service utilising school-based scores; introduction of additional referral pathways with Consultant/Community Paediatricians; actions to streamline and rationalise EPS processes; recruitment of Psychology Assistants and assistant EPs; establishment of a working group to review EPS Annual Work Plan; EPS rollout of self-evaluation processes across all areas of service delivery; introduction of more robust performance metrics to inform decision making and improve the service.

the emergent themes from this engagement will be shared with NICCY and other stakeholders, and that there will be appropriate opportunity to ensure that the scope is aligned with the recommendations from *TLTL*.

**NICCY considers it essential that barriers to assessment and support provision within Irish medium education are addressed as an explicit aspect of the wider educational psychology service model review.**

#### *SEND Policy Framework*

NICCY is broadly supportive of the new Code of Practice which reflects that access to EA resources, advisory and support services should not normally require educational psychology authorisation. We consider this an essential and an important development in easing access to EA's supports and services and avoiding delays.

We remain deeply concerned that the draft Code of Practice will accept reports from 'private' professionals as part of the statutory assessment process. It is our assessment that recommendation 25 which requires the implementation of policy to address inequality of access to assessment and services, arising from use of private educational psychology and other professional assessment reports has not been adequately addressed.

**NICCY reiterates that DE and EA must ensure equity of access to assessment and provisions regardless of socio-economic background through the new SEN policy Framework and will continue to monitor this.**

#### **5.3.6 Statutory Assessment and Statementing**

*TLTL* highlighted significant issues relating to the timeliness and effectiveness of the statutory assessment and statementing process, including low compliance with the 26-week statutory time frame. In response, *TLTL* made two robust recommendations to ensure that EA operational processes enabled legal compliance with statutory time limits:

<p>26. The EA must ensure that its operational processes enable legal compliance with statutory time limits. An action plan to address the delays in the statutory assessment process must be agreed between the health services and EA. Accountability measures must be established, and investigative action taken by ETI and RQIA if breaches arise.</p>	
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|--|--|
| <p>27. The EA must establish a more robust and transparent model of quality assurance and decision making at the statutory assessment stage. This must include:</p> <ol style="list-style-type: none"> <li>a. a review of existing assessment panels to explore the effectiveness, efficiency, and validity of their role in informing the route of children and the supports they will receive;</li> <li>b. the immediate publication of details about all existing assessment panels. This should include the terms of reference for each panel, the composition of the panel, frequency of meetings and the criteria used for making decisions. Evidence must be provided to validate the independence of panel members; and</li> <li>c. the introduction of a revised model of quality assuring assessment decisions.</li> </ol> |  |
|--|--|

## Progress

### *Statutory Assessment Improvement Project*

In early 2020, the EA initiated the Statutory Assessment Improvement Project to address problems in the system and tackle a backlog of cases where children had been waiting more than 26 weeks for their statutory assessment to be completed. The project, which was also a response to recommendations arising from EA's internal audit of practice relating to Statutory Assessment, aims to: address the backlog of statutory assessment cases, ensure sustainable compliance with statutory timeframes going forward, improve the accessibility of the system, and the support provided to families in navigating it. Since the project's initiation, a series of actions have been taken and processes established, to deliver these objectives and, in April 2021, EA reported that the backlog of pre-existing cases >26 weeks had been addressed. However, it is disappointing that 100% compliance with the 26-week timeframe was not met - at the end of December 2021, 6% of cases (n=93) were in breach, including 20 cases with 'no exceptions'.<sup>26</sup> Although improvement was evident in January and February 2022 (with 11 cases in breach at end of February, equivalent to 0.6%), full compliance with statutory timeframes was not achieved. While we understand that there were a variety of reasons underpinning delays, including increased parental referrals and health and social care

<sup>26</sup> An exception is a period of time during which a delay occurred in the processing of a case which was outside of EA's control, such as waiting on medical advice to be provided, and as such this period is deemed to be excluded from the 26-week statutory timeframe.

advice delays, this raises important questions about how well the system is able to cope with fluctuating external circumstances and, indeed, the long-term sustainability of compliance with statutory timeframes.

NICCY understands that exploratory work is being carried out to ensure that appropriate demand and capacity models are in place and resources are allocated where needed.<sup>27</sup> We welcome the recruitment process that is underway to increase staffing complement in SARS as part of this work. The development of a new online referral system which enables Parents, Schools and Educational Psychologists to request statutory assessments directly is also a very welcome development. Despite these positive developments, we are very concerned as to how prepared the system is to meet the forthcoming 22-week time limit under the new SEN framework.

**NICCY strongly recommend that specific accountability measures are introduced to address breaches of statutory time limits for assessments of special educational need.**

Regarding quality assurance, including the need for transparency of decision making at statutory assessment stage, we welcome that work has commenced on revising models of assessment and decision making. However, the lack of detail received to date makes it difficult to assess existing and interim processes, in particular whether current decision making is driven by children's needs rather than available resources.

#### *The New SEN Framework*

NICCY has advised DE and the Education Committee that the proposed revisions to the new SEN Framework are not sufficient in reducing the timeframe to complete a statutory assessment and issue a Statement. The new SEN Framework proposes to reduce the time limit for the issue of a completed Statement from 26 weeks to 22 weeks, however, this only applies where there are no 'valid exceptions'. Where valid exceptions apply, this time limit could be increased to a maximum of 34 weeks – this is an unacceptable delay constituting a large proportion of the school year and adversely impacting on a child's educational experience. We continue to query whether the extent of the delay is warranted and request further detail on the rationale for the proposed length of the

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<sup>27</sup> Information provided during periodic meeting between NICCY and EA, 25<sup>th</sup> June 2021.

extensions.

**We strongly recommend that should an extension be necessary, the statutory timeframe is extended by no more than 6 weeks, resulting in an absolute maximum of 28 weeks with interim support services provided.**

NICCY has also called on DE to closely monitor the roll out of these new time limits, as and when they are introduced, with close scrutiny of the frequency with which exceptions need to be made. Transparency around the requirement for valid exceptions and robust evidence provided to explain such exceptions are imperative. In turn, this must be thoroughly reviewed by DE and DoH (where relevant) and a centrally held record of valid exceptions kept for monitoring purposes. No delays can be permitted without a reason for valid exception.

Section 4 of the SEND Act (once commenced) places a duty on education and health to co-operate in the identification, assessment and provision of services to meet the needs of children who have or may have SEN and to prepare a joint plan to show how they intend to fulfil this duty.

**We were disappointed that work on the Joint Plan was delayed and urge that this is progressed as a matter of urgency.**

Overall, NICCY is encouraged by work undertaken so far but consider that much still needs to be addressed to ensure legal compliance with statutory time limits is consistently achieved and that a robust and transparent model of quality assurance is in place. Going forward, we will continue to closely scrutinise the new policy framework for SEND to ensure that no child is subject to undue delay in the statutory assessment and statementing process. It is critical that the progress made by the Statutory Assessment Improvement Project is sustained and, indeed improved, to ensure full compliance with the shorter timeframes to be met under the new SEN Framework.

### **5.3.7 Transparency of the SEN Process**

*TLTL* highlighted a lack of transparency in the SEN system, specifically with regards to the criteria for identifying and establishing the relevant provision for children with SEN in

mainstream settings. Stakeholders also identified issues with decision making processes at the statutory assessment and statementing stage. In response, NICCY made four recommendations to enhance the transparency of the SEN process:

28. Steps must be urgently taken by the EA Board and DE to investigate feedback from Educational Psychologists that their advice is not routinely accepted, and that recommended provisions are not put in place, at the statutory assessment and statementing stage.	
29. The EA should immediately adjust its statutory operation processes to ensure compliance with the legal requirement under Article 16 of the Education (NI) Order 1996 to specify special educational provision in Part 3 of statements of special educational need.	
30. The EA must, as a matter of urgency, publish, review and revise plans in relation to SEN provision, as per its new duty <sup>28</sup> in the SEND Act.	
31. The Annual Review process must be evaluated to examine its effectiveness in improving outcomes for children with SEN in mainstream settings. <sup>29</sup>	

## Progress

NICCY welcomes that action has been taken by the EA to enhance the transparency of the SEN system. Since publication of our Review, there has been a notable improvement in the nature of EA’s interactions with NICCY on SEN issues and other educational matters. EA leadership is committed to regularly meeting with NICCY and discussions are characterised by openness about any issues experienced or foreseen in enabling improvements to the SEN system. The attendance of NICCY’s Chief Executive on the SEND SDP Programme Board has enabled a clear insight into the Programme plans and any challenges posed to the delivery of the SEND improvement agenda.

The Statutory Assessment Improvement Project includes a workstream aimed at building confidence and trust of key stakeholders in the SEN system. NICCY recognise that the EA is continuing work to improve organisational culture with considerable early improvements evident, particularly in terms of communication and relationship building, with Parents/Carers, between EA teams and across organisations. We commend the

<sup>28</sup> Article 2 of the Special Educational Needs and Disability (Northern Ireland) Act 2016 (SEND Act)

<sup>29</sup> See Monitoring Table for the Recommendation 31 in full.

considerable progress to date in this area and expect to see this reflected in NICCY's annual legal and investigation data (see 5.1).

**In progressing this work, NICCY reiterates that the recommendations from *TLTL* must be thoroughly addressed, including the issues raised in the report with regards statutory assessment panels, decision making processes, and specificity of Statements.**

#### *Implementation of the New SEN Framework*

EA's duty to publish, review and revise plans in relation to special educational provision, under Section 2 of the new SEND Act, is an important commitment which should provide greater transparency and clarity. NICCY is very disappointed that anticipated date for issue of the annual plan of arrangements for special educational provision has been delayed to July 2023.

We welcome that the new Code of Practice sets out the principles on which the EA's criteria for deciding whether it is necessary to make an assessment (or if appropriate, make a Statement). Notably, Section 4 of the Code highlights:

- That those engaged in statutory operations fully understand and consistently apply the criteria and have the autonomy to make decisions on whether an assessment or Statement is needed; and
- Only where there is uncertainty on whether or not to make an assessment (or a Statement), should referrals be made to a wider group or panel to make a decision.

NICCY consider it critical that EA's adherence to the principles and criteria, set out in Section 4, is rigorously assessed by DE. Furthermore, EA must ensure that parents/carers, schools and other key professionals are familiar with the criteria, indicators, and factors/evidence to be considered at the statutory assessment and statementing stage. As noted, NICCY is aware that communication with stakeholders, including parents, has improved considerably as a result of the range of actions taken by EA to date which is commendable.

**We stress the importance of continued dialogue throughout the transition process**

**and, indeed, following implementation of the new Code of Practice and Regulations.**

As stated earlier, any decision relating to statutory assessment or statementing must be guided by a child’s needs and best interests rather than resources available. It is unacceptable that as at Section 4.41 of the Code, proposed principle (d) underpinning EA’s criteria for decision making, in the context of statutory assessments and statementing, it requires that ‘the EA make best use of the resources available to it’.

**NICCY strongly reiterates the need to amend principle (d) at Section 4.41 of the new Code of Practice, by omitting the phrase, ‘*make best use of the resources available to it*’.**

*TLTL* highlighted ongoing issues relating to lack of quantification and specificity in Statements, which was perceived as leaving recommendations open to dispute and less enforceable. We are therefore very concerned that the new SEN Framework proposes that ‘primary need’ only is recorded at Part 2 of a child’s Statement. There is a very significant risk that this will result in a child’s other needs being overlooked and consequently, that these needs will not be provided for at Part 3 of the Statement.

**NICCY considers this unacceptable and calls for the facility to record the full required range of a child’s needs in the relevant sections of the Statement.**

### 5.3.8 Communication and Engagement

A recurrent theme from the Review was a lack of clear and comprehensible information for Parents/Carers and other stakeholders, from both the EA and Schools, at different stages of the SEN process. This includes when drawing up Individual Education Plans (IEPs); when attempting to access supports; and, most commonly, during the statutory assessment and statementing process. In response, *TLTL* recommended that:

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| <p>32. The EA must review its policies for communication with parents and carers. Mechanisms must be established to give clarity to the SEN process for children, young people and their families. Therefore, the EA:</p> <ul style="list-style-type: none"> <li>a. should develop user-friendly guidance for children, young people and their parents/carers which explains the various stages of the</li> </ul> |  |
|---|--|

<p>SEN process; their entitlements at each stage; and guidance on where they can access additional information/support;</p> <p>b. conduct a comprehensive review of community-based services for children and young people with SEN, and their parents/carers, and produce a directory to be shared with parents/carers and schools;</p> <p>c. give consideration to the development of a free, accessible and one-to-one service and where each family has a named EA officer who could hear concerns and issues as well as provide individual advice from Stage 1 to Stage 5 of the current Code of Practice.</p>	
<p>33. The DE and EA must establish meaningful and robust consultation mechanisms concerning proposed changes in SEN policy or models of service delivery.</p>	

## Progress

As indicated earlier in this report, NICCY is aware that ‘communication and engagement’ is a priority area for EA, and other relevant authorities, and consider that this is reflected in the considerable improvements achieved to date. While commendable, we caveat that the outcome of actions to date can only be fully assessed through feedback received over time, from parents/carers, children and young people and other stakeholders.

### *Provisions under the New SEN Framework*

NICCY welcome provisions under the new SEN Framework for improved communication with parents/carers, children and young people, at various stages of the SEN process. Meaningful consultation mechanisms are of paramount importance as we transition to the new SEN Framework. DE must ensure that children and their parents are given access to as much information as possible, about the transition process and related timeframes, operation of the new system, what children and their families should expect, and the level of services to which they will have access.

**Section 1 of the 2016 Act**, which commenced in December 2020, places a mandatory obligation on Authorities to have regard to the views of the child. We consider that significant attention has been placed on embedding this principle in EA’s practices and

look forward to seeing the outworking of this.

**Section 7.15 of the Code of Practice** advises that EA should, ‘as a matter of good practice’, produce guidelines for schools for conducting annual reviews. We consider this an important provision in providing clarity for parents/carers, children and young people, many of whom lack understanding of the purpose of the annual review; the potential implications for continued access to services to their child; and their role in the process in submitting evidence and verifying recommendations proposed in the school report.

It is also critical that parents/carers are provided with clear information about new **Personal Learning Plans (PLPs)** and that evidence is provided to specify how schools have fulfilled their obligations in this regard. We welcome that the Code sets out an expectation on the EA to develop a ‘PLP fact sheet’, to facilitate consistency of approach across schools, and that schools are required to provide this fact sheet to parents to ensure clarity of understanding. We also commend work undertaken in advance of commencement of the new templates - through engagement with pupils and parents - to ensure that PLPs are written in an easy to read and engaging format and are structured in a way that provides parents and pupils the opportunity to contribute their views.

**While NICCY is encouraged by the intent of the new SEN Framework, we call for robust monitoring to be undertaken by DE and EA to ensure that communication and engagement with parents/carers is effectively and consistently realised.**

### 5.3.9 Involvement of children and young people

A key shortcoming of the SEN system, identified by parents/carers and NGOs as reported throughout *TLTL*, was the lack of effort and opportunity provided by schools and services to involve children and young people in the SEN process. *TLTL* recommended that:

34. In order to ensure that decisions are made in their best interests, children and young people must be placed firmly at the heart of the SEN system. Systems must be developed for engaging children and young people, and their parents and carers, and evaluating the impact of their contribution.

- a. Guidance should be developed by the EA to support schools to ensure the active involvement of all children and young people in



decision making processes.

- b. The involvement of intermediaries and advocates should also be explored and their participation considered, particularly where children or young people are reluctant to speak to parents, carers or education professionals.

### Progress

NICCY is pleased that there has been some progress in addressing this recommendation. In particular, we welcome commencement of Section 1 of the SEND Act in December 2020, which obliges EA and other relevant authorities, so far as is reasonably practical, to seek and have regard to the views of the child. Importantly, the mandatory duties on relevant authorities to have regard to the participation of the child in decisions affecting them, and to provide the information and support necessary to enable the child's participation in those decisions, are critical in ensuring fulfilment of Article 12 of the UNCRC and should be regarded as central tenets of the new SEN Framework.

We are also aware that work is underway to deliver on other legislative requirements of the SEND Act, and that engagement with young people is being led by the EA Youth Service. We have had positive initial discussions with the EA on the potential use of a Child's Rights Impact Assessment to inform its planning and processes regarding the involvement of children and young people and look forward to further progression of this.<sup>30</sup>

*TLTL* highlighted the need for guidance to be developed by the EA to support Schools in ensuring the active involvement of all children and young people in decision making processes. It is promising that EA has produced 'Seeking the Views of the Child' - a resource that aims to assist schools and SEN Services in actively encouraging and facilitating young people with SEN to contribute their views in a meaningful way.

With the commencement of Section 1 of the SEND Act, and as referenced in the previous theme, this includes monitoring of the involvement of children with SEND in decisions that affect them, and the extent to which schools and services are guided,

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<sup>30</sup> [Child Rights Impact Assessment \(CIA\) \(niccy.org\)](https://www.niccy.org/child-rights-impact-assessment-cria)

trained, supported and resourced to do so.

**We consider that robust monitoring will be essential to ensure that legislative duties are fulfilled by EA and other relevant authorities.**

**Section 11 of the SEND Act** once commenced, will confer additional entitlements for children over compulsory school age who have, or may have SEN, allowing them to make decisions that would have previously been undertaken by a parent.

**NICCY considers it imperative that appropriate action is taken by the EA to ensure awareness and understanding of these new rights among young people and will closely monitor this.**

The new Code of Practice reflects that those involved in planning and providing services for children with SEN should take account of two principles, namely, that the rights of children are central to decisions about their well-being, and that children and young people and their parents should be involved in the development of services which impact on them. This is very welcome and NICCY will monitor adherence to this provision following commencement of the Code.

**It is critical that a child and their parents/carers are informed and facilitated to actively contribute to the SEN process and that DE monitors how this is implemented in practice and over time.**

### **5.3.10 Multi-Disciplinary Working**

The effectiveness of multi-disciplinary arrangements in meeting the needs of children and young people with SEND was a recurrent theme in the Review. Stakeholders highlighted poor co-ordination and communication between education and health in relation to the initial identification and diagnosis, assessment and implementation of support needs, and in the ongoing monitoring of support of the child's and family needs.

In response, two recommendations were made to improve the effectiveness of multi-disciplinary provision for children with SEND.

35. Article 4 of the Special Educational Needs and Disability (Northern Ireland) Act 2016 (SEND Act) must be enacted immediately.	
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36. The DE, EA, the Department of Health (DoH), the Health and Social Care Board (HSCB) and Public Health Agency (PHA) must review and revise arrangements for the planning, assessment, diagnosis and implementation of supports/services to ensure that key services work collaboratively. This should include the establishment of:

- a. localised, specialised, multi-disciplinary teams across Northern Ireland. These teams should have a clear remit for cross-consultation, assessment and provision of advice and support for children with SEN in mainstream schools;
- b. protocols for the joint planning, assessment, diagnosis and implementation of supports/services. These must be informed by the staff and professionals working across the agencies involved; and
- c. fora across Northern Ireland, which involve statutory education and health & social care agencies and VCS organisations to develop local relationships and exchange knowledge. Consideration should be given to a facilitative role for the Children and Young People's Strategic Partnership (CYPSP) through its Outcomes and Locality Planning Groups.

## Progress

Despite progress in bringing forward the new SEN Framework, **NICCY is very disappointed that Section 4 of the SEND Act has not yet been commenced and call for this to be progressed as a matter of urgency.** We have not been advised of a specific timeline for this which makes it impossible to monitor progress. Moreover, while a renewed focus on improved multi-disciplinary working within the new SEN policy framework is welcome, there are outstanding issues of concern. These are highlighted below in our assessment of progress to date.

### *Regulations and Code of Practice*

The emphasis on improved collaboration and co-operation to meet the needs of children and young people through the new SEN Framework is very welcome. We positively note that various parts of the new Code of Practice detail the requirements on health & social care and education to co-operate in respect of children with SEN. Article 12A of the 1996 Order provides a statutory duty on EA and Health to co-operate in the

identification, assessment, and provision for children with SEN and in transition planning.

**NICCY strongly calls for the Regulations to make further explicit reference to the statutory duty on health and education authorities to co-operate with each other in the assessment, provision of services for children with SEN, and transition planning in the context of Annual Review.**

We are particularly concerned that the newly proposed Regulation 10 no longer refers to health treatments and services in the list of provisions to be considered by the EA, when obtaining advice for the purpose of assessment or for potential Statements.<sup>31</sup> This proposed revision somewhat dilutes obligations regarding cross-departmental co-operation in the assessment of children's needs and provisions as set out in the Statement.

**NICCY calls for this weakness in the Regulations to be addressed and requests details from the Department about specific measures that will be taken to ensure the EA is required to collect advice on all aspects of a child's needs.**

Further concerns relate to proposals within the new Regulations and Code of Practice to list health and social care provision at Part 6 of the Statement, 'non-educational provision', rather than at Part 3, 'special educational provision'. Given that Part 6 is not subject to the same legislative requirements regarding specificity and quantification as Part 3, this fundamentally weakens the duty to specify provision within Statements.

**NICCY repeat the call for revision of the Regulations and Code of Practice to include a requirement for health and social care provision to be detailed at Part 3 of the Statement.**

#### *SEND SDP*

NICCY is encouraged that a dedicated workstream is in place as part of the Strategic Development Programme, which will focus on embedding the practice of multi-disciplinary working. We note that a range of very positive steps have been taken to date

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<sup>31</sup> As was set out in the draft 2016 Regulations.

to improve multi-agency and collaborative working, including the development of integrated fora, establishment of multi-disciplinary groups, and a range of operational linkages between education and health agencies and look forward to an update on their impact. However, we are very disappointed that, due to resource constraints, the Transitions Review is paused and that no set timeframe for progressing this is in place. **NICCY will continue to monitor this.**

We welcome commencement of the EA/PHA Joint Co-operation Plan, as well other work in progress to improve information flow between Health and Education, including the continuing roll out of a common digital communication platform (AnyComms+). While this work is to be commended, we are aware that challenges remain, particularly regarding some inconsistencies in approach to collaboration across Trusts.

**NICCY will continue to monitor collaboration across Trusts and expects that the Review of Children’s Social Care, commenced in February 2022, will be relevant in this area.**

### 5.3.11 DARS and Appeals

Data analysed for the purposes of the Review revealed a stark rise in the number of appeals to the Special Educational Needs and Disability Tribunal (SENDIST) between 2015/16 and 2018/19, indicative of the fundamental issues with the SEN system. In response to the growing number of appeals to SENDIST, *TLTL* recommended that:

<p>37. The EA must ensure that the opportunity to resolve disputes as early as possible is made available to parents/carers.</p> <ul style="list-style-type: none"> <li>a. Information should be produced to raise parents/carers’ awareness of the Dispute Avoidance Resolution Service (DARS).</li> <li>b. An evaluation of the effectiveness of the new mediation mechanism should be conducted in order to engender confidence in the process and encourage other individuals to participate.</li> </ul>	
<p>38. An action plan should be prepared by the EA outlining the steps which will be taken to reduce the number of appeals to SENDIST.</p>	
<p>39. The Department of Justice (DoJ) must provide legal aid to support parents/carers’ requests for appeal at SENDIST.</p>	

## Progress

NICCY understand that the scope of the Statutory Assessment Improvement Project includes a focus on addressing the increasing numbers of statutory assessment appeals and concession levels. While too early to make an informed assessment of progress, we are optimistic about the potential for this work to address both the unacceptable number of tribunals and appeals to SENDIST and will continue to monitor this closely.

**We welcome the completion of the Diagnostic Review of SENDIST trends and causal factors and look forward to further discussion of findings.**

### *SEND Act (NI) 2016*

NICCY notes that the SEND Act, once commenced, will provide parents and young people with an informal way of resolving disputes about a decision made by the EA which carries a right of appeal to the SENDIST. It will also require the EA to arrange provision of mediation, and to provide for the appointment of an independent person who can facilitate the resolution of disputes or act as a mediator. Mediation will be provided by an independent provider, Global Mediation. We consider that, if mediation is effectively managed and implemented, with the best interests of the child as the primary consideration, it could provide a more positive resolution process than the Tribunal. We note the recent completion of an evaluation of mediation provided by Global Mediation and look forward to sight of this report as soon as possible.

Once commenced, S10 of the SEND Act will require a parent or young person to have a mediation certificate in order to appeal to a Tribunal. It is essential that this requirement does not result in blockage of access to appeal, particularly given the lack of awareness of DARS highlighted in our report and the proposed 4-week time limit for issuing certificates.

**NICCY strongly recommends a proactive approach, including the provision of clear guidance to Parents/Carers and Young People, about the necessity for contact with the mediation adviser and legislative requirements regarding the need for a mediation certificate within the set timeframes.**

NICCY have previously called on the DoJ to provide legal aid to support Parents'/Carers' requests for appeal at SENDIST. The Justice Minister wrote to NICCY at the time of the report publication to indicate that her Department would look at the level of help available by DoJ in relation to applications to SENDIST, and that this would be examined through the DE led process of constructing an action plan to address the recommendations. Disappointingly, we are not aware of any definitive action taken or proposed at this stage and continue to engage with the Department on this.

### 5.3.12 Systemic Review

In view of the deeply concerning findings of *TLTL*, recommendation 40 stated that:

40. The Terms of Reference for the 'external, independent review of education provision'<sup>32</sup> must include the structure and effectiveness of the EA in meeting the needs of children with SEN and disability.

### Progress

The Terms of Reference for the Independent Review were published in February 2021. Within those terms, DE indicated that it:<sup>33</sup>

*'has plans to conduct a review of the Education Authority in 2020-21, though this timeframe has been impacted by the COVID-19 pandemic. The review will consider the overall operations and governance of the Education Authority and the extent to which the organisation is effectively able to deliver against government/its priorities. In line with the Cabinet Office guidance, it will examine the extent to which the organisation is well governed and observes high standards of transparency and efficiency.'*

NICCY is encouraged that an external Review of the Education Authority commissioned by DE has now commenced and which NICCY has engaged with. The Review is expected to take 6 months and will consider the effectiveness and governance of the EA and the extent to which the organisation observes high standards of transparency and efficiency. The Review findings will inform the Independent Review of Education. Subject to availability of findings later this year, we will provide a detailed update in our next

<sup>32</sup> *New Decade, New Approach* published 9<sup>th</sup> January 2020.

<sup>33</sup> [INDEPENDENT REVIEW OF EDUCATION - REVISED DRAFT TERMS OF REFERENCE - FEBRUARY 2021.pdf \(education-ni.gov.uk\)](#)

monitoring report which we expect to publish towards the beginning of 2023.

**NICCY expects the scope of the external Review of the Education Authority to include the structure and effectiveness of the EA in meeting the needs of children with SEN and disability.**

NICCY looks forward to further engagement with the Independent Review Panel. It is expected that a final report will be completed within 18 months of commencing the Independent Review of Education. NICCY will review the outcome of their work in this area as part of our ongoing advisory and monitoring remit.

## 6.0 Conclusion

As highlighted throughout this report, there has been welcome acceptance and renewed commitment by relevant NI Government Departments and Agencies to address the fundamental weaknesses of our SEND system, in the 24 months following the publication of *TLTL* Report and recommendations. The findings of subsequent Reviews have confirmed flaws and gaps in SEND provision and reiterated priority areas for improvements.<sup>34</sup>

The Commissioner is reassured by the fact that the Government had accepted all 40 *TLTL* recommendations, and that strategic structures and a range of programme plans have been established to implement these as part of the broader SEND change agenda. However, **it is of deep concern that funding uncertainty has impeded the timely commencement of some SEND SDP projects, effectively delaying and undermining progress in the implementation of *TLTL* recommendations so far.**

NICCY will continue to closely monitor this situation, with particular attention to the implementation of *TLTL* recommendations and the impact on the overall SEND system.

We are encouraged that some progress has been made in commencing the new SEN Framework. However, as highlighted throughout this report, and as raised directly with the Department through meetings and advice papers,<sup>35</sup> we have a number of remaining

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<sup>34</sup> Cited at n.4.

<sup>35</sup> [SEN Regulations and Code of Practice \(niccy.org\)](https://www.niccy.org/SEN-Regulations-and-Code-of-Practice)



significant concerns about the content of the revised Regulations and new Code of Practice which must be addressed to facilitate the necessary systemic improvements required from the new Framework.

The Commissioner reiterates the need for clarity in the work that will be taken forward to ensure the realisation of each recommendation. This includes the need for clear timelines, specific actions and details of interim measures that will be initiated while we await the full implementation and impact of SEND SDP projects. We are committed to ongoing monitoring and review of progress by relevant authorities, with particular attention to ensuring that all *TLTL* recommendations are implemented in their entirety. In doing so, we aim to realise the vision that every child in Northern Ireland, including children and young people with SEND, fully experience their right to an education which develops their personality, talents and abilities to the full.