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NASS

National Association
of Special Schools

WORKING STRONGER TOGETHER

**Exploring the current and possible
future relationship between the state
and Independent Special Schools**



A NASS thought piece on the relationship between
the state and the Independent Special Schools sector

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To have ISS expertise and role valued and utilised more effectively.



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EXECUTIVE SUMMARY

About NASS

NASS is the national membership association for special schools outside local authority control and represents Independent Special Schools (ISS), Non-Maintained Special Schools (NMSS) and Special Academies (SA) – including Free Schools. NASS has over 400 schools and organisations in membership.

NASS works with its member schools to support, promote, and improve special school provision and to provide a voice for the sector via engagement with key sector stakeholders such as Government, Ofsted and local authorities (LAs).

Context

In March 2023, the Department for Education (DfE) published the SEND and AP Improvement Plan¹. Within this, DfE stated its wish to “re-examine the state’s relationship with independent special schools to ensure we set comparable expectations for all state-funded specialist providers”². In this paper, we take ‘state’ as including both central and local Government.

NASS set out to explore how ISS currently work with the state and what an effective future relationship might look like. ISS are the specific focus of the paper but we recognise that many of the points raised also speak to the relationship between the state and other types of special school.

This paper is informed by our member schools. An Independent Special School Working Group met several times between April and July 2023. Their proposals were further tested via a survey of wider ISS NASS membership and two workshops at NASS’s annual conference in October 2023.

1 HM Government (March 2023), Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan Right Support, Right Place, Right Time

2 HM Government (March 2023), Ibid pg 13

Key discussion points and recommendations

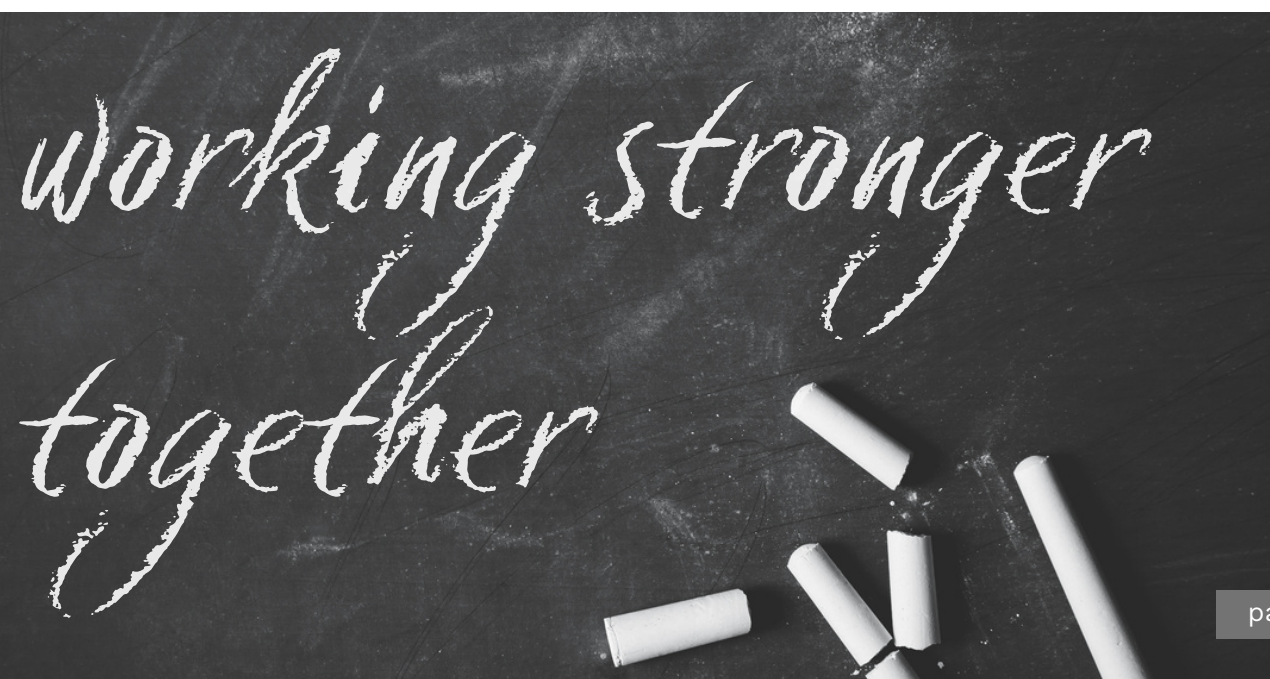
Our starting point was consideration of whether ISS are more effective and valuable to the wider system if treated as ‘just another special school’ or maintained as a distinct group of schools with a specific role to play.

In this paper, we make the case for utilising ISS as a distinct resource, which complements, rather than replicates, the wider SEND system. We discuss how the freedoms and flexibilities currently available to ISS allow these schools, at their best, to act as the sector’s specialist ‘rapid response’ service. We argue that these should be maintained but developed and refined to ensure that ISS can, and do, provide this resource.

The paper explores four principles which were identified by schools as being necessary for ISS to maintain and develop a specialist role:

-  **Defining and recognising the role ISS play in the wider SEND offer.**
-  **To have ISS expertise and role valued and utilised more effectively.**
-  **ISS should maintain the freedoms needed to innovate and respond at speed.**
-  **ISS continue to have the power to set their own fee levels and that these allow for reasonable surplus/profit.**

We make the case for utilising ISS as a distinct resource, which complements, rather than replicates, the wider SEND system.





Defining and recognising the role ISS play in the wider SEND offer.

ISS placements still represent a small percentage of children with Education, Health and Care (EHC) plans. The sector was established as a means of meeting needs which LAs had been unable to meet within its own provision.

Consequently, schools generally offer specialist services, focused on a specific type of SEND. Fewer than 30% of ISS placements are a child's first school placement;³ suggesting that the sector is used as and when a child's needs have been unmet elsewhere.

ISS have a growing evidence base of which children its provision impacts most positively.⁴ Many can now evidence the impact of the timing of placement has on the outcomes that might be achieved. This could, and should, result in the sector being used more effectively for the children for whom it can make the most positive difference.

ISS currently operate outside of the state-maintained SEND system but with local authorities as the primary purchaser of their services. We believe that maintaining that independence is crucial, in order for schools to maintain the ability to quickly adapt services to meet need. In return, schools accept the risk this brings in terms of fluctuating demand for places and not being eligible for state support.



To have ISS expertise and role valued and utilised more effectively.

Our ISS members wish to be seen as a resource that can support the wider SEND system. There is a clear desire to identify and realise opportunities to collaborate with mainstream settings, allowing ISS to share the valuable SEND skills, knowledge and experience from within ISS with others. There is considerable untapped potential for knowledge, skills and experience within ISS to benefit children with SEND far beyond those on the school role. However, there are financial and cultural barriers which hinder schools in realising this.

The sector has already invested resources in unlocking its expertise. In 2019, NASS ran an Incubator Programme with the Young Foundation which enabled nine schools to replicate and scale effective interventions across a range of topics from mental health to sex education and to maths vocabulary. We call for Government to replicate this via a national SEND Innovation Fund, to mirror the successful programme previously run for children's social care.

³ NASS (2017) NASS Survey of Parents of Children in NMISS Residential Placements for Lenehan Inquiry

⁴ Clifford, J., Hutchison, E., Kemp, J. and Cooke, C. (2023). 'Reaching my potential: The value of SEND provision demonstrated through learners' stories. A report for the National Association of Independent Schools and Non-Maintained Special Schools (NASS)', London. Sonnet Impact



ISS should maintain the freedoms needed to innovate and respond at speed.

Opening a new Independent Special School is currently the quickest route to establishing new SEND Provision. The sector has been agile in responding to need and there are many examples of LAs actively welcoming new ISS into their area. We believe that the Free Schools programme has not fully realised its potential. As of May 2023, 93 new special free schools have opened and are admitting pupils out of a proposed 179 schools. Two schools have closed and another two proposed schools have been withdrawn. 48 schools are in pre-opening stage, with 13 having been in 'preopening' for six years or more.

We recognise that ISS represent a relatively high-cost option but argue that this is an effective use of public resource if placements are made for those who benefit from them most. To this end, we believe that schools should not be subject to a 'duty to admit' and are best placed to judge which children they can best support. It is becoming increasingly common for schools to be named on a child's EHC plan against the wishes of the school and where they feel they are not the right placement. This is symptomatic of the current system where demand exceeds supply of placements. However, it is a poor use of both a specialist placements and public funding.



ISS continue to have the power to set their own fee levels and that these allow for reasonable surplus/profit.

ISS and commissioners need to be confident that the school's offer provides value for money and demonstrates a positive impact and outcomes. It is reasonable that commissioners should be able to see and understand the fee they are being charged and the service being provided.

We assert that schools should continue to be able to determine their own fees. ISS receive no direct state support and operate without the economic stability afforded to state-maintained schools. All activities and developments are funded through the fees raised through placements and all risk for these is entirely borne by providers. Operating surplus is a necessary condition of this and is a concept that is widely accepted across the educational landscape. We note wider concern about the role of profit within the sector and call on Government to work with NASS to explore and create an agreed position of the relative role of profit and surplus within SEND.

Recommendations

We recognise that all stakeholders play a role in achieving a well-defined, effectively used ISS sector. We have identified specific recommendations for different stakeholders:

For Independent Special Schools:

- ▶ **To work in partnership with LAs when developing a new provision to ensure that it will meet local needs and demand.**
- ▶ **To work with other parts of the sector to identify those students where 'step-down' from high to lower-level support might be possible.**
- ▶ **To work towards greater fee transparency so that LAs are clear what fees cover.**

For Department for Education:

- ▶ **To formally explore and define the future role of special schools, and the role of ISS within this.**
- ▶ **To formally explore and define the roles of surplus and profit within the SEND system and to create a position which sets clear expectations for all schools.**
- ▶ **To drive innovation in SEND by funding a dedicated SEND Innovation Fund, which enables effective interventions to be replicated and delivered at scale.**

For Local Authorities:

- ▶ **To make best use of their area needs assessments to forecast likely demand for specialist interventions.**
- ▶ **To work with providers as they develop proposals for new provision to enable ISS to be considered as an alternative to new state provision.**

NASS will continue to play a key role in gathering evidence, facilitating communication between stakeholders and offering thought leadership to support these recommendations.



INTRODUCTION

The share of learners with an Education, Health and Care (EHC) plan attending Independent Special Schools (ISS) has increased in recent years from 5.3% in 2015 to 7.4% in 2023. Demand for special school placements currently outstrips supply. This NASS thought piece explores the contribution ISS make to the wider SEND system and how to make best use of this resource.

Within the SEND and AP Green paper,⁶ and subsequent Improvement plan,⁷ the Government stated its intent to re-examine the relationship between the state and ISS.

Context: The Independent Special School sector

722

**Independent
Special Schools in
England and Wales
with capacity for**

35,749

**school places for
children and young
people with SEND**

In 2023, just over half (51.3%)⁸ of learners with an EHC plan were in mainstream schools: state-funded primary and secondary. The share of learners with an EHC plan attending ISS has increased in recent years: in January 2015,⁹ the share of all learners with statements attending these schools was 5.3%; in January 2023 the equivalent figure was 7.4% of all pupils with an EHC plan.¹⁰

There are 722 independent special schools in England and Wales, with a total capacity for 35,749 school places for children and young people with SEND.¹¹ As demand continues to grow and new places are not being created within

⁶ HM Government (2022), SEND Review: Right support, right place, right time - Government consultation on the SEND and alternative provision system in England

⁷ HM Government (March 2023) Ibid

⁸ DfE (2023), Special educational needs and disability: an analysis and summary of data sources (June 2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1164690/Special_educational_needs_and_disability_an_analysis_and_summary_of_data_sources.pdf

⁹ DfE (2015) Special educational needs in England (January 2015) <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2015>

¹⁰ DfE (2023), Special educational needs and disability: an analysis and summary of data sources (June 2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1164690/Special_educational_needs_and_disability_an_analysis_and_summary_of_data_sources.pdf

¹¹ Get information about schools data accessed at <https://get-information-schools.service.gov.uk/> (05/12/2023)

other sectors quickly enough, the ISS sector is supporting LAs to meet their statutory duty.

Working within a changing landscape

NASS members supported the development of this paper via a working group, a survey of ISS members and two workshop sessions at our 2023 Annual Conference.

We note the context in which schools work and possible changes that may arise as a result of both the SEND and AP Improvement Plan and the planned 2024 General Election.

The key question we have asked ourselves through this process is how can we get the best out of ISS, now and into the future? If, as a sector, we cannot develop clarity of where we want to be and what we want to achieve, how can we ask others to join us on the journey?



HOW CAN WE GET THE BEST OUT OF INDEPENDENT SPECIAL SCHOOLS, NOW AND INTO THE FUTURE?



Discussions have led to the development of four main principles:



Defining and recognising the role ISS play in the wider SEND offer.



To have ISS expertise and role valued and utilised more effectively.



ISS should maintain the freedoms needed to innovate and respond at speed.



ISS continue to have the power to set their own fee levels and that these allow for reasonable surplus/profit.



DEFINING AND RECOGNISING THE ROLE ISS PLAY IN THE WIDER SEND OFFER.

With 722 ISS, providing education to 35,749 children and young people, the sector plays a key role in the wider SEND system. The number of placements has increased steadily over recent years, and the sector is unlikely to see significant changes in this pattern whilst demand for placements continues to outstrip supply.

ISS have supported LAs to provide education that supports the needs of some of the most vulnerable children and young people with the most complex of needs. They meet a level of need that, typically, could not be managed within LA provision. We believe that ISS should and will continue to provide that support to LAs to meet their statutory obligations, not least, since individual LAs do, and will continue to, struggle to provide specialist provision in their area which meets all need, especially to those children and young people with the most complex needs.

The 2023 DfE published annual statistics on EHC plans, noted that 25,000 children and young people with EHC plans are either ‘awaiting provision’, getting education other than at school (EOTAS), or classed as not in education, employment or training (NEET).¹³

Furthermore, the 2023 data also registered over 15,000 children and young people with an EHC plan whose placement is listed as ‘Unknown’.¹⁴ There is currently more demand for provision than supply.

The wider SEND system comprises a range of school types: LA maintained special schools, special academies and free schools, Non-Maintained Special Schools (NMSS) as well as the ISS sector. The common purpose for all special school is to support those children and young people whose needs cannot be met within the mainstream sector and ensure that they have access to suitable and timely specialist provision.

¹² Get information about schools data Ibid

¹³ DfE (2023) Data on children and young people with an education, health and care (EHC) plan in England <https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans>

¹⁴ DfE (2023) Ibid

We support the Government's aim to improve mainstream provision so that it is a real option for more children. However, we believe that ISS play a key role in enabling the state to meet its duty to provide sufficiency of placements.

In defining a role for ISS we have identified the following key elements:

- 01** ISS are Independent Special Schools that operate outside of the state-supported sector.
- 02** LAs recognise the role the sector can play for some children with SEND and make appropriate placements at the right time to secure best possible outcome.
- 03** ISS work with other parts of the sector to identify those that could 'step-down' from high level to lower level, where possible.
- 04** ISS work collaboratively with LAs to identify gaps in provision and to develop new provision to meet needs.
- 05** We value the agility of ISS to meet fluctuating demands in need.

01 ISS are Independent Special Schools that operate outside of the state-supported sector.

Our vision for ISS place in the system fundamentally focuses on the core value that ISS are independent providers. ISS are outside the state system, but since the state purchases their services, they work in partnership with the state to support the system to meet its statutory obligations to provide suitable education for children and young people with SEND.

However, in sitting outside the state system, ISS understand that they will be impacted by 'market forces'. Demand for places may fluctuate depending on national, regional and local policy as well as organically through demand based on the needs of the cohort. If demand falls below market expectations or is inconsistent and unpredictable, providers may exit the market and provision will be lost to the wider system.

- ▶ **ISS are independent providers.**
- ▶ **ISS work in partnership with the state to support the system to meet its statutory obligations to provide suitable education for children and young people with SEND.**

02 LAs recognise the role the sector can play for some children with SEND and make appropriate placements at the right time to secure best possible outcome.

Recent Government policy has focused on developing new special schools placements through the Free Schools programme. We discuss the programme further under our third principle on page 19. However, we believe that even if all Free Schools that have been proposed open in a timely manner, there would still be insufficient provision to meet current demand for places.

There are many pupils waiting for special school placements or going through the SEND Tribunal. In the absence of official statistics, an article from The Guardian reported that more than 2,000 students with SEND were awaiting school places at the start of 2018.¹⁵ The number is likely to be significantly higher by now.



We believe that ISS provisions can be most beneficial if seen as an integral part of the SEND system.

The sector wishes to be seen as a resource that can support the SEND system in a positive way. We believe that ISS provisions can be most beneficial if seen as an integral part of the SEND system.

NASS hears many stories of young people whose lives have been transformed by finally getting the right support. However, with over 70% of placements in the specialist sector being at least the third school a child has attended and at least the fifth placement for 10%, this is often only achieved after many missed opportunities to get the placement right.¹⁶

In 2023, NASS commissioned Sonnet Advisory and Impact C.I.C to research the value of special education provision. The research demonstrated that special educational provision that meets needs, whilst more expensive in the short term, in the longer term yields net benefits to children, young people and society.¹⁷ Furthermore, an outcome of pupils not accessing the right provision in a timely manner is elevated support needs, prolonged time in education and more limited positive outcomes. This has consequences for education, social care and health care budgets.

03 ISS work with other parts of the sector to identify those that could 'step-down' from high level support to lower level support, where possible.

At present, the system isn't conducive to enable informed 'step down' from high level to lower level support. There are limited opportunities for providers to consider student transitions to other provisions. We also lack a clear and transparent process that gives parents and carers confidence that pupils' best interests are the key driver, and not costs. We do not want to develop a 'revolving door' for students between mainstream and specialist provision, or

¹⁵ The Guardian (23 October 2018) Thousands of children with special needs excluded from schools (accessed 19/12/23) <https://www.theguardian.com/education/2018/oct/23/send-special-educational-needs-children-excluded-from-schools>

¹⁶ NASS (2017) *ibid*

¹⁷ Clifford, J., Hutchison, E., Kemp, J. and Cooke, C. (2023) *Ibid*

students finding themselves unsupported within alternative provision that may act to hinder rather than support progress going forward.

We want to work with DfE and local government representatives, independent providers and mainstream providers to identify the barriers to enabling better coordination and opportunities as well as ensuring confidence for parents and carers in any process. We would welcome the opportunity to discuss with LAs and ISS how the sector can learn from current good practice, whereby an informed step down process has worked well for a pupil and has had a positive impact in the medium to long term.

▶ **Through collaboration with others, we want to identify the barriers to enabling better coordination and opportunities as well as ensuring confidence for parents and carers in any process.**

04 ISS work collaboratively with LAs to identify gaps in capacity based on area or needs in order to develop new provision.

A criticism that has been levied at ISS is that new schools are opened without consideration of need within the locality. Although we challenge that premise, we do acknowledge that the whole system would benefit from better collaboration and transparency in terms of forward planning of new provision.

Recently, we have seen some innovative work between independent providers and LAs who have worked together to ensure that the right provision is available in the right place at the right time. We seek to share learning from existing examples of collaboration with LAs whereby a new provision has been provided quickly. We would welcome the opportunity to work with those innovative LAs and providers to develop a blueprint for collaboration that others may be able to adopt.¹⁸

▶ **The whole system would benefit from better collaboration and transparency in terms of forward planning and new provision.**

05 We value the agility of ISS to meet fluctuating demands in need.

Our members report that over the last two years the complexities and needs of their cohort of pupils had changed and increased.

Notwithstanding the greater role of mainstream provision, as the complexities and needs of children and young people with SEND changes, specialist provision will also have to be responsive to the changing cohort of pupils.

As we will discuss further under principle four, independent providers take on the financial risks of developing these new and changing services with the

¹⁸ Examples of innovative joint working between LAs and independent providers include new schools by Aurora Group and Outcomes First Group

agility to meet fluctuating demands by opening new placements at a much faster pace than the state can provide. If, and when, demand for placements reduces, independent providers would also bear the costs of unfilled places. As a sector we need to promote this agility. As ‘Reaching My Potential’¹⁹ notes, the earlier that pupils have access to the right support, the increased likelihood for successful placements and a positive impact on future pathways.



ISS have the agility to meet fluctuating demands by opening new placements at a much faster pace than the state can provide.



TO HAVE ISS EXPERTISE AND ROLE VALUED AND UTILISED MORE EFFECTIVELY.

ISS bring a wealth of knowledge and expertise to the SEND sector that although shared between NASS members, isn't always shared effectively more widely across the wider system.

We believe that a better process of sharing knowledge across all types of special schools would enable learning and improvement across the sector.

Our vision for ISS in relation to this is:

- 01** ISS further develop knowledge and skills that, through a properly funded Innovation Fund, can better support mainstream schools to support learners with SEND.
- 02** ISS will seek opportunities to share their knowledge with other parts of the system, either through collaboration or as a charged-for service.
- 03** ISS enable investment in the system to further SEND research and good practice.
- 04** ISS promote the role of holistic provision to SEND school provision and the impact of having Occupational Therapy, Speech and Language and Mental Health support provided in-house.

01 ISS further develop knowledge and skills that, through a properly funded Innovation Fund, can better support mainstream schools to support learners with SEND.

We believe that many of the answers for better practice are either already within the system, or best identified, developed, and tested by practitioners and providers. We ask DfE to create a properly funded Innovation Fund to enable the SEND sector to research and develop new processes or services, to test innovation and ideas and enable collaboration with other parts of the wider education sector.

Developing on the principles of previous programmes, such as the Social Care Innovation Fund (2014-2020) and the NASS Incubator Programme (2019-2020), a SEND Innovation Fund would, with adequate funding, provide opportunities for sector led projects to identify innovative ideas in order to:

- improve life chances for children and young people with SEND.
- encourage innovation by experimenting and replicating successful new approaches.
- create better incentives for innovation and ways of sharing ‘what works’, creating a strong evidence base.
- get better value across the SEND system.

Potential areas for investigation include transition pathways between key stages (especially post-16); longitudinal impact study of a quality-of-life approaches and enabling children to achieve better educational outcomes by increasing parent and carer engagement and re-building parent/provider trust. We also believe that there is a need for further research to determine how to identify the right provision in the right setting at the right time for learners and build a body of research to better understand the key factors behind successful placements.

▶ **We ask DfE to create a properly funded Innovation Fund to enable the SEND sector to research and develop new processes or services, to test innovation and ideas and enable collaboration with other parts of the wider education sector.**

▶ **There is a need to build a body of research to better understand the key factors behind successful placements.**

02 ISS seek opportunities to share their knowledge with other parts of the system, either through collaboration or as a charged-for service.

We believe that the present ‘silos’ that schools often work within do not always allow for effective knowledge transfer. Key to the success of the SEND and AP Improvement Plan is developing skills, knowledge and understanding of SEND within mainstream settings. We believe that the expertise within ISS is an

untapped resource. We would welcome the opportunity to work with DfE and providers to see how we can improve collaboration and models of delivery between special providers and mainstream schools that would be of benefit to all.

▶ **We want to help improve collaboration and models of delivery between special providers and mainstream schools.**

03 ISS enable investment in the system to further SEND research and good practice.

To ensure that ISS continue to offer cutting edge and effective provision, there needs to be assurances that there are opportunities for investment in research and good practice. The system needs to enable providers to develop programmes of research, either through seeking more investment through charitable donations or through the Innovation Fund mentioned above. Many of our schools already re-invest surplus into the system to identify good practice, share knowledge and build capacity for the system. Others have identified commercial opportunities to provide charged-for services to share knowledge and expertise to the wider SEND and education community. We would welcome the opportunity to investigate how we can build on this and enable investment to develop knowledge within the system.

▶ **We welcome the opportunity to enable investment that develops knowledge within the system.**

04 ISS promote the role of holistic provision to SEND school provision and the impact of having Occupational Therapy, Speech and Language and Mental Health support provided in-house.

Wright et al (2018)²⁰ found that the transfer of competencies between Teachers, Occupational Therapists and Speech and Language Therapists can lead to more creative solutions to shared problems, a more holistic approach to addressing children's needs, and an increased sense of personal and professional support. Our members recognise this within their schools and wish to see it more widely reflected across the wider system. Additionally, the 'Reaching My Potential'²¹ report demonstrated the particular value that good mental health support, offered by special schools, delivers.

NASS, like others across the SEND sector, is concerned that cost pressures will lead to fewer opportunities to provide vital holistic services. We also hope that the SEND Change Programme will seek to hold the Department for Health and Social Care (DHSC) accountable in terms of funding the health element of EHC plans.

As highlighted by the #SENDInTheSpecialists coalition,²⁰ of which NASS is a

20 Wright J, Stackhouse J, Wood J (2008) Promoting language and literacy skills in the early years: Lessons from interdisciplinary teaching and learning. *Child Language Teaching and Therapy* 24: 155–171

21 Clifford, J., Hutchison, E., Kemp, J. and Cooke, C. (2023) - Ibid

22 <https://www.rcslt.org/news/rcslt-leads-coalition-calling-for-investment-in-the-specialist-workforce/>

member, there is urgent need for improved workforce planning, matched by investment in the specialist workforce for children and young people. NASS members are keen to see how they can support a new specialist workforce and would wish to seek opportunities to investigate opportunities to enable modern apprenticeships, placements and knowledge sharing.



NASS members are keen to see how they can support a new specialist workforce and would wish to seek opportunities to investigate opportunities to enable modern apprenticeships, placements and knowledge sharing.



ISS SHOULD MAINTAIN THE FREEDOMS NEEDED TO INNOVATE AND RESPOND AT SPEED.

Our discussions and research with members highlighted a very strong desire to protect the freedom to be innovative and responsive to need which is afforded by being independent of the state system. We have already discussed elements under previous principles; however, we believe that there are some key components that warrant highlighting separately in this section.

Key components:

- 01** Schools need to retain freedom from the duty to admit.
- 02** The process for consulting schools on EHC plans prior to naming requires improvement.
- 03** Reviewing how the quality of ISS provision is best monitored.
- 04** LAs consider ISS as a cost-effective option when seeking to develop new provision.

01 Schools need to retain freedom from the duty to admit.

To be able to use ISS expertise to ensure that the service they provide is the best fit to the pupil's needs to maximise impact, schools must continue to have the freedom from the duty to admit and decide if they can meet the needs of

prospective pupils. The exodus of independent providers from the section 41 list is a symptom of the importance placed on maintaining that freedom. Anecdotal evidence suggests that new schools may join the Section 41 list but, once established, seek removal. We question the value of the Section 41 list in its current form.

▶ **Schools must continue to have the freedom from the duty to admit and decide if they can meet the needs of prospective pupils.**

02 The process for consulting schools on EHC plans prior to naming requires improvement.

We also do ask that the process for consulting with schools on prospective placements is made in a timely and informed way. We have heard examples whereby required documentation about a prospective pupil is delayed or incomplete and limited opportunities provided to schools to make a decision about suitability.

▶ **The process for consulting with schools on prospective placements needs to be made in a timely and informed way.**

We would welcome the opportunity to discuss further with providers, DfE and LAs the best process for ensuring that placements are suitable, timely and best for all.

03 Reviewing how the quality of ISS provision is best monitored.

We recognise that LAs who place children in ISS should be able to assure themselves that placements are achieving the desired outcomes. Increasingly, our members have noted the excessive burden of LA Quality Assurance (QA) visits and associated paperwork. Members are reporting being asked by ten to twenty LAs to complete and collate different quality assurance surveys and associated reports, as well as host individual QA visits by each LA. This is a poor use of time and resource.

▶ **We want to work with members and LA representatives to develop a practical solution that will meet the needs of LAs but reduce the bureaucratic burden of the Quality Assurance process on schools.**

We are setting up a task and finish group of members to consider how we can develop a proposal to streamline this process to remove the excessive burden on both schools and LAs. We would welcome the opportunity for LA representatives to work with us to develop a practical solution that will meet the needs of LAs but reduce the bureaucratic burden of the QA process on schools.

04 LAs consider ISS as a cost-effective option when seeking to develop new provision.

ISS offer low financial risk for the state. The risks of large investment in infrastructure costs and the unpredictability of future demand for places are taken by the provider. The cost of building new provision is high, and as the statistics from the new Free Schools programme suggest, setting up a new school can be a lengthy process. As of May 2023, 93 new special free schools have opened and are admitting pupils out of a proposed 179. Two schools have closed and another two proposed schools have either been cancelled or withdrawn. 48 are in the pre-opening stage, with 13 having been in ‘preopening’ for six years or more.²³

NASS recognises the positive role that established Free Schools play within the system. However, delays in developing new provision leads to more children and young people with SEND not having their needs met at the right place, at the right time.

A report by the DfE in 2021 put the cost of repairing or replacing “all defective elements in the school estate” at £11.4 billion with over £504 million proposed for special schools alone.²⁴ Furthermore, over a third (24,000) of English school buildings are past their estimated initial design life.²⁵ The recent Reinforced Autoclaved Aerated Concrete (RAAC) crisis further adds to the costs of maintaining the school estate.

We want to ensure that independent providers can continue to set up new provision relatively quickly when needs are identified. They also, take on the cost and risk of doing this. If demand in an area decreases or change providers risk making a loss on their investment.



Independent providers can continue to set up new provision relatively quickly when needs are identified. They also, take on the cost and risk of doing this.

23 DfE (2023) Free schools data: Transparency data (accessed May 2023)

24 DfE (2021) Condition of Schools Survey: Key Findings (May 2021)

25 Pubic Accounts Committee (2023) The condition of school buildings: A report by the Public Accounts Committee



ISS CONTINUE TO HAVE THE POWER TO SET THEIR OWN FEE LEVELS AND THAT THESE ALLOW FOR REASONABLE SURPLUS/PROFIT.



All businesses need to be financially sustainable. Where businesses are not in receipt of guaranteed funding from the state, and where income may be unpredictable, control over the charges made for providing services is vital.

Our proposal is:

- 01** Schools are able to set their own fee levels to adequately cover service costs and to generate a reasonable surplus.
- 02** Schools are able to transparently set out the costs of provision and to evidence the impact it has.
- 03** Schools and LAs work together to develop a clearer sense of which children benefit most from specialist intervention. In this way, better commissioning decisions are taken about when the independent sector provides the most appropriate placement for a child or young person and 'placement of last resort' situations are minimised.
- 04** ISS continue to take on the financial risk of developing new provision to continue to be the SEND system's 'rapid response' solution to high demand for special school placements.
- 05** The relative role of surplus and profit within the wider education system, including ISS, is better understood by policy makers and commissioners.



01 Schools are able to set their own fee levels to adequately cover service costs and to generate a reasonable surplus.

Section 63(2) of the 2014²⁶ Children and Families Act enables special schools to charge the fees necessary to provide the education and training set out in a child and young person's EHC plan. Section 63(4) sets out a similar ability to charge for boarding provision.²⁷ There is a duty on LAs to pay these fees. This is not a qualified duty – the act does not specify terms of payment such as 'reasonable fees'.

In practice, ISS face considerable practical difficulties in levying fees which fully cover costs. This has become more acute in recent years, where inflation, and subsequent wage increases, have driven up the cost of provision. At the same time, we have seen increased pressure on LAs' High Needs Funding budgets and interventions from Government, in the form of the Safety Valve and Delivering Better Value in SEND programmes, to curb spend. Whilst these programmes seek to address future demand for SEND services, they also alter the behaviour of LAs in respect of existing placements. Several LAs, either singly or as part of regional consortia, have refused to offer any inflationary uplift to ISS – despite funding from central government being available for this purpose for the 2023-24 financial year.

Despite the reputation the independent sector has for being 'money grabbing', our experience of most schools is that they go to great lengths to keep costs and requests for uplifts low, often risking them becoming financially unstable.



ISS must retain the ability to determine their own fees in order to maintain stability of provision.

Small schools are at particular risk from failure to cover costs and we have seen several creep close to insolvency this year. Whilst ISS are almost entirely funded by the public purse, through LA placements, there is no funding available to ISS in financial difficulties. When such schools close, the expertise and capacity are lost to the system and cannot easily be replaced. More importantly, children and young people with highly complex needs are left without suitable placements or having to travel long distances from home.

ISS must retain the ability to determine their own fees in order to maintain stability of provision. LAs that have made the decision to place a child at an ISS do so in the knowledge that they are not able to dictate the price paid for the service.

02 Schools are able to transparently set out the costs of provision and to evidence the impact it has.

We recognise that LAs sometimes struggle to understand what level of service is provided within a placement. We would like to reach a position where each ISS can provide an overview of what is included within its fees.

²⁶ Children and Families Act 2014 s63(2) available at www.legislation.gov.uk/ukpga/2014/6/contents

²⁷ Children and Families Act 2014 s63(4) available at www.legislation.gov.uk/ukpga/2014/6/contents

The 'Reaching my Potential'²⁸ report provided excellent evidence of the impact of meeting children and young people's needs. We had input from over 80 NASS member schools and were encouraged by the ability most had to be able to evidence outcomes and impact from school placements. However, we recognise that this is not yet universal and want to support our members in consistently demonstrating outcomes.

▶ We would like to reach a position where each ISS can provide an overview of what is included within its fees.

03 Schools and LAs work together to develop a clearer sense of which children benefit most from specialist intervention. In this way, better commissioning decisions are taken about when the independent sector provides the most appropriate placement for a child or young person and 'placement of last resort' situations are minimised.

A further finding from the 'Reaching my Potential'²⁹ report was that we don't currently have enough knowledge about which children benefit most from which placements to drive effective commissioning across the SEND system. Consequently, placements are too frequently made only when children and families are in crisis and/or when previous placements have failed.

Entrenched and unmet needs do have cost implications and generally result in young people requiring higher levels of specialist services and achieving poorer overall outcomes. More effective use could be made of scarce public funds by making better commissioning decisions and earlier specialist interventions for those children identified as benefitting most from them.

As LAs continue to improve data relating to children and young people in their area within the Change Programme, we call on LAs to work in partnership with the independent sector to develop more effective access to support for those with the most complex needs.

▶ We call on LAs to work in partnership with the independent sector to develop more effective access to support for those with the most complex needs.

04 ISS continue to take on the financial risk of developing new provision to continue to be the SEND system's 'rapid response' solution to high demand for special school placements.

As we explore in more detail in principle three, the independent sector currently provides the fastest route to establishing new specialist provision. It requires significant investment to open a new school. The average build cost

figures from the National School Delivery Cost Benchmarking/ EPOCG research³⁰ shows each SEND school build / refurbish cost now equates to an average cost per pupil place of £74,920 or an average gross cost per M² of £3,107. Actual figures are significantly higher. For example, a provider noted since 2022 they had spent £33m on opening new schools, that LAs told them that were need. This figure includes the purchase and conversion of suitable buildings that weren't originally schools.

This investment is made at a significant risk to schools. When the decision is taken to open a school, there are no guarantees of placements, and no financial support should plans be delayed or demand for the service is less than forecast. Similarly, once a school is open, there are no financial protections offered to ISS by the state. In comparison, in the 2020/2021 academic year, 70 academy trusts / multi-academy trusts were reported to be in cumulative deficit and therefore eligible to be financially supported by the state. Over £21 million was paid in total to academy trusts/multi-academy trusts in financial difficulty - £17 million of which does not have to be repaid.³¹

ISS can only take such risks where they have reasonable expectation of being able to cover costs and, if successful, be able to generate surplus or profit. A significant proportion of independent schools re-invest profit back into the business in the form of service improvements and developments.

▶ **A significant proportion of independent schools re-invest profit back into the business in the form of service improvements and developments.**

05 The relative role of surplus and profit within the wider education system, including ISS, is better understood by policy makers and commissioners.

The concept of 'excess' income over expenditure is built into the education system – academies and other charitably-run schools are actively encouraged by their registering bodies and The Charity Commission to operate at a level sufficient to generate reserves. This approach allows for re-investment back into the organisation and offers a financial buffer against times of financial hardship. When that excess is generated by a commercially run school and is termed 'profit', it is frequently problematised. In 2020/21 multi-academy trust net assets increased to £4.8 billion – an increase of £1 billion on the previous year. This increase is mainly attributable to cash held within the sector. There were 337 academy trusts/multi-academy trusts with a surplus greater than £3 million.³²

This paper does not seek to make a moral case for profit but does seek to draw attention to arguments against profit which focus on the final recipient of organisation-generated surplus. These are largely based on a moral, rather than purely financial, position. We call on Government to work with us to establish a

30 National School Delivery Cost Benchmarking/ EPOCG research

31 DfE (2023) Academies consolidated annual report and accounts: 2020 to 2021 (26 January 2023)

32 DfE (2023) Ibid

a national position on the role of surplus/profit within the education system which takes account of:

- Price differentials between commercial and charitable providers and the relative role of profit within these. To date, we have seen no evidence provided which indicates that commissioners pay a higher price for school places from commercially run independent schools as a direct result of their need to generate profit.
- The way in which public funds are managed across the education system and the efficiency of different types of schools. We hypothesise that some commercial groups may be more efficient in their operational use of funding than some other types of school.
- The outcomes achieved by different types of school.
- We understand that the state may seek to further invest in free special school provision and that the 'cost-benefit' will tip towards building new state provision if fees are set too high.
- We will continue to seek to provide value for money in our provision and provide effective placements.

We believe that the state can't 'afford' a large exodus of providers from the system. However, we would be naïve to think that the current demand on placements will continue indefinitely. The expected direction of travel is that fewer children and young people will be placed within our sector.

To this end, ISS need to be confident that their offer provides value for money but also, schools need to ensure that what they offer is flexible and timely and provides a demonstrable positive impact and outcomes.

▶ **We call on Government to work with us to establish a national position on the role of surplus/profit within the education system.**

▶ **ISS need to be confident that their offer provides value for money but also, schools need to ensure that what they offer is flexible and timely and provides a demonstrable positive impact and outcomes.**



RECOMMENDATIONS

NASS has worked with DfE in 2023, including some helpful meetings with our working group. We welcome further meetings with DfE during 2024 and the opportunity to further discuss this paper.

We recognise that all stakeholders play a role in achieving a well-defined, effectively used ISS sector. We have identified specific recommendations for different stakeholders:

For Independent Special Schools:

- ▶ **To work in partnership with LAs when developing a new provision to ensure that it will meet local needs and demand.**
- ▶ **To work with other parts of the sector to identify those students where ‘step-down’ from high to lower-level support might be possible.**
- ▶ **To work towards greater fee transparency so that LAs are clear what fees cover.**

For Department for Education:

- ▶ **To formally explore and define the future role of special schools, and the role of ISS within this.**
- ▶ **To formally explore and define the roles of surplus and profit within the SEND system and to create a position which sets clear expectations for all schools.**
- ▶ **To drive innovation in SEND by funding a dedicated SEND Innovation Fund, which enables effective interventions to be replicated and delivered at scale.**

For Local Authorities:

- ▶ **To make best use of their area needs assessments to forecast likely demand for specialist interventions.**
- ▶ **To work with providers as they develop proposals for new provision to enable ISS to be considered as an alternative to new state provision.**

NASS will continue to play a key role in gathering evidence, facilitating communication between stakeholders and offering thought leadership to support these recommendations.



NASS

**National Association
of Special Schools**

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