



Department  
for Education

# **Government response to the Education Select Committee's fifth report of Session 2017-19 on alternative provision**

**October 2018**

Cm 9709



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**Presented to Parliament by the Secretary of State for  
Education by Command of Her Majesty**

**October 2018**

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ISBN 978-1-5286-0833-6

CCS1018761008 10/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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## Introduction

The Education Select Committee published the report of its inquiry into alternative provision (AP) on 25 July 2018. This document sets out the Government's response to the Committee's report. In the case of some recommendations, the response reflects the Government's continued work to deliver plans set out in our vision for reforming AP '*Creating Opportunity for All: our vision for reform*'<sup>1</sup>, and the review of exclusions led by Edward Timpson CBE.

The Government welcomes the Committee's inquiry into AP. The Government is committed to ensuring that every child, regardless of their circumstances, receives an excellent education that provides them with the knowledge, skills and resilience to fulfil their potential.

Standards have been rising in our schools: the proportion of children in schools judged Good or Outstanding has risen from 66% in 2010 to 86% in March 2018; this translates as 1.9 million more children in Good or Outstanding schools than in 2010.<sup>2</sup> We have reformed accountability measures to enable greater recognition of schools doing well with a challenging intake and to hold to account those that are not doing enough with a high attaining intake, to ensure that the focus is on the achievements of all pupils.

The Committee rightly highlights that there are many examples of outstanding AP and teachers who work hard to equip children with the knowledge they need to prepare them for adult life. Good AP provides support for children at difficult moments in their lives and offers a more tailored, specialist approach to their education.

There is a clear place for this provision in our education system, but there is more to be done to ensure that all children in AP receive the high-quality education that they deserve and achieve the educational outcomes needed to succeed. In 2016/17, only 4.5% of children in AP achieved a 9-4 pass in English and mathematics GCSEs.<sup>3</sup> In 2015/16, 37% of children who completed Key Stage 4 in AP were recorded as not in sustained education, employment or training.<sup>4</sup>

Exclusion rates have risen since 2013/14, although they remain below the levels they were at a decade ago. We are clear that schools should use permanent exclusion only as a last resort but we do support teachers in taking proportionate and measured steps to ensure good behaviour in schools. We recognise, however, that some groups of pupils are more likely to be excluded than others.

We recognise we need to do more to ensure that such children, who are some of the most vulnerable, have the best chance to succeed in adult life. In March 2018, the

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<sup>1</sup> <https://www.gov.uk/government/publications/creating-opportunity-for-all-our-vision-for-alternative-provision>

<sup>2</sup> <https://www.gov.uk/government/publications/children-in-good-or-outstanding-schools-august-2018>

<sup>3</sup> <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2016-to-2017>

<sup>4</sup> <https://www.gov.uk/government/statistics/destinations-of-ks4-and-ks5-pupils-2015-revised>

Government published '*Creating Opportunity for All: our vision for alternative provision*'<sup>5</sup>, which sets out the steps we are taking to deliver sustained improvement to the AP system. Our ambitious programme of reform aims to ensure:

- the right children are placed in AP;
- every child in AP receives a good education;
- every child can make a successful transition out of AP, either back into mainstream or special school or onto a sustained destination in education employment or training;
- AP becomes, and is recognised as, an integral part of the education system; and
- the system is designed to achieve high quality outcomes for children and value for money for the taxpayer.

We have already made progress in achieving these ambitions. In August, we announced nine projects that have received a total of up to £4million in grant funding from the AP Innovation Fund. These projects will support children in making good academic progress in English and mathematics; support successful transitions from AP to education, training and employment at age 16 and beyond; support reintegration into mainstream or special settings where this is in the best interests of the child; and increase parental and carer engagement in AP. These are areas that we know can make a real difference to children in AP, and it is important we develop our evidence base of effective practice, which we can share across the sector. We have also recently launched the next wave of AP and special free schools, and have asked local authorities to submit bids for free schools in the places where new schools are most beneficial and needed. In early 2019, we will invite applications from within the successful local authorities to open approximately 30 AP and special free schools.

We have also announced £10million to support schools with expertise in managing behaviour to share their knowledge with other schools. It is essential for all schools to be disciplined environments, so that children can access the opportunities that education unlocks.

Today we have published two research reports that seek to understand:

- how schools identify and support pupils at risk of exclusion;
- how and why mainstream and special schools make referrals to AP;
- AP providers', children's and parents' experiences of AP settings, from the assessment of a child's need at the start of the referral process to their transition back into a mainstream or special placement or education, employment or training placement post-16; and
- local need for AP; the availability of AP placements; and the range and effectiveness of local AP commissioning arrangements.

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<sup>5</sup> <https://www.gov.uk/government/publications/creating-opportunity-for-all-our-vision-for-alternative-provision>

We have engaged representatives in 118 local authorities, 276 schools and over 200 AP providers, alongside children and their parents in 25 of these alternative providers. We will use the findings to inform future policy developments to improve outcomes for children who have been excluded or are placed in AP.

We have also launched a review of exclusions<sup>6</sup>, led by Edward Timpson CBE, to look at how schools are using exclusions, the impact on those who are excluded and why certain groups are disproportionately affected. We are engaging with parents, schools, local authorities and a wide range of organisations to understand their views on these issues.

These are positive steps, but we recognise that there remain significant challenges and that there is more to do to ensure all children have access to the support they need, regardless of the type of school they attend. The Government is committed to ensuring that no child is forgotten in any part of the education system, and that all children have access to a good school place and an excellent education.

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<sup>6</sup> <https://www.gov.uk/government/publications/school-exclusions-review-terms-of-reference>

# Responses to individual recommendations

## What's going wrong in mainstream schools?

**1. The Timpson Exclusions Review should ensure that it looks at the trends in exclusion by school type, location and pupil demographics. (Paragraph 18)**

**2. The Timpson Exclusions Review should examine whether financial pressures and accountability measures in schools are preventing schools from providing early intervention support and contributing to the exclusion crisis. (Paragraph 20)**

As the Committee notes, the Government has launched a review of exclusions practice, led by Edward Timpson CBE. The review will explore how head teachers use exclusion in practice, and why some groups of pupils, such as children with special educational needs (SEN) and looked after children, are more likely to be excluded. It will not seek to examine the powers head teachers have to exclude.

In particular, the review will consider why, when the powers schools have to exclude, and the framework in which they do so applies to all state funded schools across England, there are differences in the rates between areas, schools, and groups of pupils. In doing so, the review will examine a range of issues, data and evidence, such as the trends in exclusions for different groups of children, different areas and different schools, and what the drivers for these differences are. The review will explore and identify best practice, which will be shared across the system, and will aim to report by the end of the year.

Throughout the review, Edward Timpson is engaging with key stakeholders, including a range of schools of different types and phases, alongside exploring the data on exclusions. Edward Timpson is also supported by an expert reference group, who provide expertise on the school system and perspectives of children more likely to be excluded that are relevant to their area.

In March 2018, we also published a call for evidence as part of the exclusions review, seeking views and evidence on school exclusion practice. We received over 900 responses from parents, children, schools, local authorities and other organisations, and these have been analysed to inform the review.

**3. The evidence we have seen suggests that the rise in so called 'zero-tolerance' behaviour policies is creating school environments where pupils are punished and ultimately excluded for incidents that could and should be managed within the mainstream school environment. (Paragraph 25)**

**4. The Government should issue guidance to all schools reminding them of their responsibilities to children under treaty obligations and ensure that their behaviour policies are in line with these responsibilities. (Paragraph 26)**



We recognise that effective behaviour strategies across all schools, where children feel safe and stimulated in their education, are key to ensuring that all children are able to achieve their full potential.

Schools are free to develop their own behaviour policies and strategies for managing behaviour according to their own particular circumstances. We believe that head teachers and teachers know best how to improve behaviour in their own schools. To support schools in developing their behaviour policies, the Department has produced advice for schools on behaviour.

The Government has made great strides in helping schools develop effective behaviour strategies and empowering teachers to tackle poor pupil behaviour. This includes making clear teachers can use reasonable force to discipline, extending their searching powers and allowing teachers to impose same-day detentions. In addition, the Government commissioned the behaviour expert Tom Bennett to carry out a review into behaviour management in schools, and he published a report in March 2017 which highlighted strategies school leaders can employ to design, build and maintain a school culture that prevents classroom disruption, maintains good discipline and promotes pupils' education, focus and wellbeing.

The Department is clear that any behaviour policy must comply with the school's duties under the Equality Act 2010 to make reasonable adjustments, where it is unlawful to treat individuals less favourably because of their disability in comparison with people who are not disabled. Our statutory guidance on behaviour sets this out, and Tom Bennett's review details the need to recognise considerations for children with SEND.

We are also clear that exclusion can be used as a sanction for schools to deal with poor behaviour, but permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's behaviour policy and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. Decisions to exclude should be lawful, reasonable and fair.

We are continuing to take action to ensure that all schools have effective behaviour policies, such as funding a teacher-training programme on behaviour management strategies supported through the first round of the Teaching and Leadership Innovation Fund. We have announced £10million to support the best schools in sharing their knowledge to improve training on behaviour for teachers.

The review of exclusions led by Edward Timpson CBE will also build on the Bennett review of behaviour, as it is exploring the steps taken by schools to ensure that their behaviour and exclusion practices are compliant with duties under the Equality Act 2010.

***5. The Government and Ofsted should introduce an inclusion measure or criteria that sits within schools to incentivise schools to be more inclusive. (Paragraph 27)***

We agree with the Committee's recognition of the importance of schools being inclusive of all children, to create an environment in which every pupil has the opportunity to do well.

The introduction of progress 8 provides greater accountability on schools to ensure they are supporting all pupils to make as much progress as they can. Inclusive practice is rewarded through progress 8 as it encourages schools to focus equally on pupils across the range of attainment. The previous GCSE 5 A\*-C including English and mathematics headline measure incentivised schools to focus their efforts disproportionately on pupils on the grade D/C boundary. In contrast, progress 8 enables schools with lower attaining intakes to be recognised for the progress they make with those pupils.

In his speech to the Association of Directors of Children's Services on 5 July 2018, the Secretary of State outlined our commitment to both equip and incentivise schools to do better for children and young people with SEN, including working with Ofsted to make sure our accountability system sufficiently recognises schools for their work with pupils who need extra support, and to encourage schools to ensure all pupils achieve to the best of their abilities.

As part of our work to ensure performance measures provide the right incentives for schools, we are considering how to improve the way data about pupils with SEN attending mainstream schools are used as part of school accountability. We have set up a Task and Finish group with key stakeholders to consider how data is presented on the Compare Schools and College Performance (CSCP) website and in Analyse School Performance (ASP), and how this information is used by school leaders, governors, those working with schools, local authorities, Regional Schools Commissioners and parents.

The Department is also undertaking a review of the educational outcomes of Children in Need, as part of the Government's commitment to understand and recognise what works in schools to realise the educational potential of all children, including where they need additional help and protection. The Children in Need review is analysing responses to a recent call for evidence on how best to support the complex needs of this group and continues to consider how best to highlight practice that ensures these children have the opportunity to do well in school, regardless of their circumstances.

We will continue to work with Ofsted to ensure that schools are incentivised to create an inclusive environment for every child, no matter their needs and circumstances.

**6. We do not think that Ofsted should take sole responsibility for tackling off-rolling. Off-rolling is in part driven by school policies created by the Department for Education. The Department cannot wash its hands of the issue, just as schools cannot wash their hands of their pupils. (Paragraph 34)**

Unlawfully removing a child from the school admission register is not acceptable practice, and we take any allegation of schools unlawfully “off-rolling” pupils very seriously. Once a pupil has been admitted to a school, they can be removed from the admissions register only in limited circumstances prescribed under regulation 8 of the Education (Pupil Registration) (England) Regulations 2006, as amended.

In September 2017, the Department wrote to all schools to remind them of the rules surrounding exclusions and the removal of children from a school register.

Few things are more important than keeping children safe and in suitable education. That is why we strengthened the law on the information schools must share with their local authority when a pupil is removed from the admission register. Local authorities have a duty, under section 436A of the Education Act 1996, to make arrangements to identify children of compulsory school age in their area who are not registered pupils at a school and who are not otherwise receiving suitable education. It is vital that they have robust procedures and policies that enable them to do this; including appointing a named person to whom schools and other agencies can make referrals. The Department published statutory guidance<sup>7</sup>, which sets out the key principles to enable local authorities in England to implement this duty.

In April 2018, the Department published a call for evidence on elective home education (EHE)<sup>8</sup>. This asked for evidence on issues connected with EHE, including the practice of off-rolling pupils whereby schools allegedly pressure parents to remove children from school. The call for evidence also sought information and comments about the ways in which the risk of children being poorly educated at home could be reduced. We are analysing the responses received and we will publish a response to the call for evidence in due course, setting out our conclusions on elective home education and related issues.

**7. An unfortunate and unintended consequence of the Government’s strong focus on school standards has led to school environments and practices that have resulted in disadvantaged children being disproportionately excluded, which includes a curriculum with a lack of focus on developing pupils’ social and economic capital. There appears to be a lack of moral accountability on the part of many schools and no incentive to, or deterrent to not, retain pupils who could be classed as difficult or challenging. (Paragraph 36)**

***8. We recommend that the Government should change the weighting of Progress 8 and other accountability measures to take account of every pupil who had spent time at a school, in proportion to the amount of time they spent there. This should be done alongside reform of Progress 8 measures to take account of outliers and to incentivise inclusivity. (Paragraph 37)***

We have made significant progress in enabling all children to receive an excellent education and achieve their potential. Standards have been rising in our schools: the

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<sup>7</sup> <https://www.gov.uk/government/publications/children-missing-education>

<sup>8</sup> <https://www.gov.uk/government/consultations/home-education-call-for-evidence-and-revised-dfe-guidance>

proportion of children in schools judged Good or Outstanding has risen from 66% in 2010 to 86% in March 2018; this translates as 1.9 million more children in Good or Outstanding schools than in 2010.<sup>9</sup> The attainment gap between disadvantaged children and their more affluent peers at GCSE level has shrunk by 10% since 2011.<sup>10</sup> In the most recent PIRLS international survey of the reading ability of 9-year-olds in 2016, England achieved our highest score since the survey first began in 2001, where we were ranked at joint 8th.

We have also made changes to how performance in schools is recognised. Both the Department and Ofsted have shifted the emphasis from attainment to progress across primary and secondary phases. In 2016, the Department introduced Progress 8 as the headline measure of secondary school performance, replacing the former 5+A\*-C measure including English and mathematics. Progress 8 is one of six headline secondary performance measures. The others are: Attainment 8 (average attainment across the same 8 qualifications as Progress 8), English Baccalaureate (EBacc) Average Point Score, the percentage of pupils entering the EBacc, the percentage of pupils achieving an English and mathematics threshold measure and the percentage of students staying in education or employment after key stage 4.

Progress 8 is designed to reward schools for the progress made by all pupils across the ability range, compared to pupils nationally with similar starting points. It encourages schools to focus on lower attaining pupils as much as higher attaining pupils and means that schools with a challenging intake can demonstrate that their pupils are making positive progress. Schools making good progress with lower-attaining pupils will be recognised and conversely, those schools not making good progress with a high-performing intake will be identified. Through Progress 8, we have provided a greater incentive for schools to ensure they are supporting all children to make as much progress as they can, and to fulfil their potential.

The Government agrees with the Committee's comments which recognise that Progress 8 is a more nuanced and improved measure of school performance accountability than existed previously. Progress 8 is designed to encourage schools to teach a broad and balanced curriculum, with a strong focus on an academic core that will support pupils to progress to further study and employment. It reports progress across 8 qualifications, including English and mathematics (double-weighted to reflect their importance) and three EBacc subjects. Progress 8 also allows scope for schools to enable pupils to pursue other qualifications that might be in their best interests by counting up to three other "open" subjects, which can be from the range of EBacc subjects or any other approved, high-value qualifications.

We recognise, however, that no measure is perfect, and it can drive perverse incentives in the system in the absence of a counterbalance incentivising schools not to exclude pupils. This can be particularly true for schools with challenging intakes. This is why we are continuing to take action to improve school performance

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<sup>9</sup> <https://www.gov.uk/government/publications/children-in-good-or-outstanding-schools-august-2018>

<sup>10</sup> <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2016-to-2017>

measures. Following feedback received about the disproportionate effect that a small number of extremely negative scores can have on a school's average progress score, from 2018, we are introducing a limit on how negative a pupil's progress score can be when calculating the school average for Progress 8 and for primary progress measures.

This change will ensure that a school's overall progress score is not disproportionately affected by extremely negative progress scores of pupils whose attainment was affected by reasons beyond the schools control (e.g. health issues). This will apply to those pupils who were previously middle- or high-achievers but go on to achieve much worse at key stage 2 or key stage 4 than the national average for others with similar prior attainment.

Furthermore, we are considering issues around 'pupil-mobility' and exploring options to incentivise inclusivity in school performance measures. We already publish performance data in school performance tables for 'non-mobile' pupils registered at a school throughout the last two years of study i.e years 5 and 6 at primary and years 10 and 11 at secondary. This helps highlight the performance of the school, both attainment and progress, for pupils who had spent time at the school continuously for a period before the end of the phase.

In a speech on 4 May 2018, the Secretary of State recognised the pressures inherent in the accountability system and consequently he set out some principles for a clear and simple accountability system. He announced that there will be a public consultation in the autumn on proposals to replace the current floor and coasting standards with a single, transparent trigger to identify schools that would benefit from an offer of support. He also confirmed that where a school is below the floor or coasting standards, but is not judged inadequate by Ofsted, the RSC will not use the Secretary of State's powers to issue a warning notice. This should help with concerns around 'high stakes' accountability and more broadly reduce incentives for schools to exclude pupils.

## **The process of exclusion and referral**

**9. The exclusions process is weighted in favour of schools and often leaves parents and pupils navigating an adversarial system that should be supporting them. (Paragraph 44)**

***12. When a pupil is excluded from school for more than five non-consecutive days in a school year, the pupil and their parents or carers should be given access to an independent advocate. This should happen both where pupils are internally or externally excluded from school, or where the LA is arranging education due to illness. (Paragraph 47)***

The Government recognises the importance of engaging parents and carers with every aspect of a child's education, and has taken steps to ensure that they have access to information about the exclusions process.

In September 2017, we published new, non-statutory guides for parents to support their understanding of the exclusions process. This provides clarity on how parents and carers can be involved in the exclusions process where practicable, and was developed in a clear and accessible format.

To ensure that all parents and carers have access to the relevant information about the circumstances of the exclusion and the process, all head teachers are legally required to notify parents when their child has received an exclusion and the reasons for it, without delay. They must also provide the following information in writing:

- the reason(s) for the exclusion;
- the period of a fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing board and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting and to bring a friend.

The head teacher should also draw attention to relevant sources of free and impartial information and advice on exclusions that parents can access. These include the Department's statutory guidance on exclusions; the Coram Children's Legal Centre; and the Advisory Centre for Education. The National Autistic Society also provides information on exclusions for children with SEN and autism, in particular. We recognise that some parents find it harder to engage with schools, but we support the use of these independent resources and organisations to help parents to navigate the system and to provide independent advice separate from their school.

As set out in statutory guidance, when a child is referred to AP, it is for the school or local authority as the commissioner to determine the most appropriate provision for the child, but the Department is clear that they should take into account the views of the child, their parents and other professionals. The Department has set out the expectation in our vision for AP that, wherever possible, AP planning and decision-making should involve parents and children. We are also supporting three projects through the AP Innovation Fund, which have been developed to enable better educational outcomes for children in AP by increasing parental or carer engagement. These projects will run from September 2018 to July 2020, and will be evaluated to strengthen the evidence base on effective practice and build knowledge and insights into how to effectively engage parents and carers.

The Government welcomes the Committee's proposal for stronger parental engagement. The review of exclusions is exploring how the parent and pupil experience of exclusion varies and is looking for best practice in engaging parents and pupils effectively in the exclusions process. We have sought the views of parents through the Call for Evidence, which received over 900 responses of which

the majority were from parents. The Department will consider any necessary action following the publication of Edward Timpson's report.

**10. Legislation should be amended at the next opportunity so that where Independent Review Panels find in favour of the pupils, IRPs can direct a school to reinstate a pupil. (Paragraph 45)**

Parents have the right to make representations about exclusion to the governing board of the school. The governing board can, and in the case of longer or permanent exclusions must, review the head teacher's decision.<sup>11</sup> Where a governing board upholds a permanent exclusion, parents are also able to apply to the local authority or academy trust, requesting an Independent Review Panel to review the decision of a governing board not to reinstate a permanently excluded pupil. The role of the panel is to review the governing board's decision not to reinstate a permanently excluded pupil, and the panel can uphold the decision; recommend the governing board to reconsider reinstatement; or quash the decision and direct that the governing board reconsiders reinstatement. The panel cannot, however, direct the school to reinstate a pupil.

Independent review panels provide a fair and accessible process for considering exclusion decisions, in a way that takes account of the impact that poor behaviour can have on the education and welfare of other pupils.

We support the authority of teachers and head teachers, and in 2012, we implemented changes to the system for reviewing permanent exclusions so that schools can establish a culture of respect and safety, with zero tolerance of bullying, clear boundaries, good pastoral care and early intervention to address problems. We support head teachers in using exclusion where this is warranted.

The Government does not intend to implement the Committee's proposal, but our intention is to support schools to manage poor behaviour and intervene early to address any underlying causes. In addition, the Government is committed to improving the quality of the provision so that excluded pupils receive an excellent education.

***11. Where responsibility sits for excluded children in a local area has become very ambiguous. The Timpson Exclusions Review needs to clarify whose responsibility it is to ensure that excluded or off-rolled pupils are being properly educated. This could be the local authority or it could be local school partnerships, but at the moment too many pupils are falling through the net. (Paragraph 46)***

**17. Local authorities have statutory responsibilities to provide suitable education for pupils and yet can have little oversight or scrutiny over**

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<sup>11</sup> As set out in statutory guidance on exclusions, the governing board must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion if: the exclusion is permanent; it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or it would result in a pupil missing a public examination or national curriculum test.

**decisions about exclusions and placement decisions. This may be due to inadequate resourcing, which needs to be addressed. We are also concerned by the lack of transparency about exclusion rates that are available to parents about schools. (Paragraph 62)**

***18. We recommend that LAs are given appropriate powers to ensure that any child receive the education they need, regardless of school type. (Paragraph 63)***

Under Section 19 of the Education Act 1996 (as amended), local authorities have a duty to “make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.” The education provided must be full time, or as close to full time as is in the best interests of the child because of health needs. This duty applies regardless of whether a pupil is still registered at a school, if they are not receiving suitable education at that school.

Where a child has received a permanent exclusion, the local authority must put alternative provision in place from the 6th day of the exclusion. Where a child has received a fixed period exclusion, governing bodies and proprietors of maintained schools and academies are under a duty to arrange for the provision of suitable full-time education from the sixth day of fixed period exclusion under the Education and Inspections Act 2006.

The Committee rightly recognises that our guidance on exclusions suggests that there is a role for local authorities to play in the oversight and monitoring of exclusions. When a child is excluded, all schools including academies are required to notify the local authority. All local authorities are also required to have a Fair Access Protocol in place to ensure that outside the normal admissions round unplaced children, especially the most vulnerable, are offered a place as quickly as possible. These Protocols are often used to monitor vulnerable children in the area and ensure that they are effectively placed in other schools.

The exclusions review is looking at the factors driving differences in exclusion rates between schools, areas of the country and pupils with different characteristics, and it is focused on how exclusion is used in practice. The review is not looking at the legislative framework for exclusions.

However, the review is being conducted alongside the AP reforms we announced in March 2018, which recognise that exclusions should be considered as part of the end-to-end reform of AP. As set out in our vision for AP, we are also committed to clarifying the expectations for the roles and responsibilities of schools, alternative providers and local authorities in commissioning and delivering high quality AP.

We know that some of the most effective AP arrangements are those that have been developed by local authorities and groups of schools and education providers



working in partnership to shape local AP, and used as a resource to support them in helping children with additional needs.

Alongside our response to the Committee, we have published findings from a national research programme into local need for AP; the availability of AP placements; and the range and effectiveness of local AP commissioning and funding arrangements. We plan to build on this research and the conclusions of the exclusions review by updating statutory guidance, commissioning, funding, inspection arrangements and legislation as required.

**13. The Government should encourage the creation of more specialist alternative providers that are able to meet the diverse needs of pupils with medical needs, including mental health needs. (Paragraph 53)**

We agree that children with medical conditions should have access to the same opportunities as any other child. We recognise that for some children, their health needs require them to receive their education outside of mainstream schools.

Local authorities have a duty under Section 19 of the Education Act 1996 (as amended) to arrange education provision for a child with health needs who is unable to attend school. This could include children being taught in hospital whilst they are receiving treatment, receiving one-to-one tuition at home or attending an alternative provider established specifically for children with health needs.

The duty to arrange AP and responsibility for commissioning is devolved to a local level. It is right that local areas decide what provision is needed in their area as they know their population best – particularly the most vulnerable pupils who may be in touch with other local services. Some of the most effective local AP arrangements develop where local authorities and schools work in partnership to shape how AP is delivered in their area, to meet local need. Schools, local authorities, medical professionals and other agencies should work in partnership to deliver provision to meet the needs of each individual child. Typically, settings which cater for children with medical needs will be registered as pupil referral units (PRUs) or as special schools, and we encourage local authorities to ensure that their local provision is sufficient to meet the needs of children in the area.

Alternative providers also often have close links to wider mental health services. In December 2017, the Government published a Green Paper, '*Transforming children and young people's mental health provision*', which sets out an ambitious set of proposals to fill the gap in support for children and young people's mental health.<sup>12</sup> This outlined how Government will test, through the Mental Health Support Team trailblazers, how mainstream, special and AP settings, including PRUs, can enhance provision for the most vulnerable children. Following consultation, the Government published their response in July 2018, which reaffirmed our commitment to ensuring

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<sup>12</sup> <https://www.gov.uk/government/consultations/transforming-children-and-young-peoples-mental-health-provision-a-green-paper>

Mental Health Support Teams reach those most in need of support, including those in AP or special schools.

We have published research into the supply of and demand for AP, including for children with mental health needs, in order to inform future policy on how such provision is commissioned and funded. We are also working on the development of a new way of allocating funding for the education of children and young people in hospital, through the high needs national funding formula, which would better respond to the number of patients needing education. We will consult on options in the autumn and, subject to the outcome of the consultation, could introduce changes to local authorities' high needs allocations for 2019-20.

**14. There is an inexplicable lack of central accountability and direction. No one appears to be aware of all the provision that is available, which impacts on both schools, local authorities and parents. Unless all providers are required to notify the local authority of their presence, not all schools or LAs will be able to make informed decisions about placements. Without someone to take responsibility for co-ordinating and publishing information about the local provision that is available, parents and pupils will remain unable to fully participate in discussions about alternative provisions referrals. (Paragraph 56)**

***15. All organisations offering alternative provision should be required to inform the local authority in which they are based of their provision. The local authority should then make the list of alternative providers operating in their local authority available to schools and parents on their website. (Paragraph 57)***

In 2011/12, the Department commissioned Charlie Taylor to undertake an independent review of AP. As part of his review, he found that the central register of AP maintained by the Department contained only partial, invalidated information and felt that its presence could be used as a reason for local areas to abdicate responsibility for quality assurance of local provision. He therefore recommended the Department to cease maintaining the central register of AP, which the Department acted upon.

We agree that schools, alternative providers and local authorities should work in partnership to commission AP effectively, and that commissioners of AP should be aware of all AP available in their area. We know that, in practice, many local authorities do maintain registers of providers that have passed quality assurance.

We will consider the Committee's recommendation alongside the recently published findings from the AP research programme we have commissioned, as part of our programme of reforming AP.

***16. Pupil Referral Units, and other forms of alternative provision, should be renamed to remove the stigma and stop parents being reluctant to send their pupils there. We suggest that the Government seeks the advice of pupils who***

***currently attend alternative provision when developing this new terminology. Many have described AP as specialist provision, offering children a more tailored, more personal education that is more suited to their needs. (Paragraph 58)***

No child should be stigmatised by where they attend school. We recognise that for some children and parents, a referral to AP does not initially represent a positive choice. However, many children who attend AP recognise that it has given them more tailored support, a second chance and a fresh start to engage in their education.

We want AP to provide an ambitious education that meets children's needs and prepares them for success in the next phase of their education, and we recognise that many providers already do this, regardless of their name.

Schools are able to choose their names, both when they are established and at any point afterwards, and we know that many alternative providers adopt this approach. For example, The Limes College in Sutton chose their name in collaboration with their students, and chose to refer to it as a college rather than a pupil referral unit. We support local authorities and governing bodies in taking this approach.

In order to change the name of pupil referral units as a type of school setting, primary legislation would need to be amended. At this time the Department will not be pursuing this change however; we will consider it as part of the wider, long-term programme of reforming AP. Schools should continue to utilise the ability to determine their name.

***19. Schools should publish their permanent and fixed term exclusion rates by year group every term, including providing information about pupils with SEND and looked after children. Schools should also publish data on the number of pupils who have left the school. (Paragraph 64)***

The Department publishes a National Statistic release annually<sup>13</sup>, which reports on permanent and fixed-period exclusions from state-funded primary, state-funded secondary and special schools, based on exclusion data collected via the School Census. As well as school level exclusions, this publication includes information on the following:

- reasons schools report for excluding pupils;
- exclusions for different pupil groups, including SEN, ethnicity, free school meal eligibility and English as an Additional Language;
- independent exclusion review panels; and
- exclusions from PRUs.

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<sup>13</sup> <https://www.gov.uk/government/collections/statistics-exclusions>

Information on exclusions of looked after children and Children in Need is also published by the Department.<sup>14</sup>

Edward Timpson's review of exclusions is exploring the differences in exclusion rates between schools, areas of the country, and pupils with different characteristics, to examine the factors that drive these differences. The Government is working to better understand how this data is used, and the findings of the review will inform the Department whether changes are necessary to the publication of exclusions data.

**20. Schools do not always have the capacity and specialist knowledge to have full responsibility for the commissioning of long-term placements for pupils who will often have complex needs. If, as we discussed in paragraph 52, local authorities are unaware of provision in their area, they too do not always have enough knowledge to make appropriate commissioning decisions. A fragmented approach to commissioning responsibilities and a lack of oversight and scrutiny around decisions means that pupils are being left vulnerable to inappropriate placement decisions. (Paragraph 66)**

**21. The best Fair Access Protocols work well because they are local and understand the needs of their communities. However, this is not always the case, and it is not right that some schools can opt out of receiving pupils back to mainstream schools or following the Fair Access Protocol. (Paragraph 71)**

***22. Government should issue clearer guidance on Fair Access Protocols to ensure that schools understand and adhere to their responsibilities and encourage reintegration where appropriate. No school should be able to opt-out and if necessary either the local authority or the DfE should have the power to direct a school to adhere to their local Fair Access Protocol. (Paragraph 72)***

The Government implemented Fair Access Protocols through the School Admission Code, to ensure that, throughout the school year, unplaced children, especially the most vulnerable, are found and offered a place as quickly as possible, so that the amount of time any child is out of school is kept to the minimum.

All local authorities are required to have a Fair Access Protocol in place, developed in partnership with local schools, including academies, who are also required to comply with the Fair Access Protocol for their area. That means if a child is referred to a school via the protocol, they must be admitted. Only where a child's case is challenging and the school has a high proportion of challenging pupils already on roll, can a school refuse to admit a child even if it has places available.

Other than this, schools that refuse to admit a child referred by the Fair Access Protocol are in breach of the School Admissions Code. Where it appears a school is

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<sup>14</sup> <https://www.gov.uk/government/statistics/outcomes-for-children-looked-after-by-las-31-march-2017>

in breach of a statutory duty, the Secretary of State has the power to intervene and direct the school to comply with that duty.

It is important that local authorities and schools have the freedom to develop and agree Protocols, which best serve the needs of children in their area. In practice, many local authorities establish Fair Access Panels to facilitate the Fair Access Protocol, and we encourage the use of these where all schools and local authorities are working in partnership to make sure every child referred to the protocol is found a suitable school place as quickly as possible.

We are aware of concerns from a wide range of stakeholders around the use of and compliance with Fair Access Protocols. The Chief Schools Adjudicator, whose office investigates objections against school admission arrangements, commented in her latest annual report that 'local authorities generally report that fair access protocols work well and do much to find suitable places for children who are referred to them'. However, while the overall picture is positive, there can be issues such as schools not responding in a timely manner to a request to take on a pupil, or agreeing to take on a pupil but delaying their admission.

We are considering revising the guidance around Fair Access Protocols, to ensure roles and responsibilities are better understood.

**23. There should be greater oversight of exclusions and the commissioning of alternative provision for all pupils by the local authority. These children need a champion, and schools need both challenge and support. (Paragraph 76)**

***24. There should be a senior person in each local authority who is responsible for protecting the interests and promoting the educational achievement of pupils in alternative provision, which is adequately resourced. This role and post-holder should be different from that of the Virtual School Head for Looked-After Children. (Paragraph 77)***

The Government recognises the importance of ensuring that all children who are placed in AP have their interests protected and their educational outcomes promoted. Local authorities have a duty to arrange suitable education for these children who have been permanently excluded or have health needs, which includes commissioning AP, and local authorities have dedicated staff in order to comply with this duty. In practice, many local authorities will already have this staffing structure to ensure there is sufficient oversight of the commissioning process, including where a school is commissioning AP, and a champion to represent this group of children.

We are concerned that implementing this requirement at this time would impose additional burdens on local authorities, and we believe that local authorities should be able to allocate their resourcing and funding to meet their needs best.

Through our ambitious programme of reforming AP, we are committed to understanding the most effective arrangements for commissioning AP and clarifying the role of local authorities and schools in the commissioning process, and we will

consider carefully how this could affect the structure and resourcing in local authorities and whether any changes would be necessary.

## What does good alternative provision look like?

***25. Government should collect best practice and provide dedicated resources and guidance to schools to improve behaviour and reduce exclusion and develop appropriately resourced Learning Support Units. This guidance should include that all LSUs are staffed by at least one qualified teacher. The Government should also investigate the practice of placing students in isolation units. (Paragraph 87)***

We support the use of in-school alternatives where they are used to provide support to pupils, to keep a child engaged in their education and to prevent exclusion.

The Department is aware that many mainstream schools establish and maintain internal behaviour support units (referred to as Learning Support Units by the Committee) as a tool to effectively managing behaviour within school.

Tom Bennett's review of behaviour, which was commissioned by the Department, highlighted that removing a student from the classroom can be a positive solution, but that the response must be appropriate, fair and targeted at helping the student improve their behaviour.

With regard to isolation rooms, the Department's behaviour and discipline advice makes clear that schools can adopt a policy which allows disruptive pupils to be placed in isolation away from other pupils for a limited period. As with other disciplinary penalties, schools must act lawfully, reasonably and proportionately in all cases. If a school uses isolation rooms as a disciplinary penalty this should be made clear in their behaviour policy.

We are also clear that a separate isolation room should only be used when it is in the best interests of the child, and other pupils. Equally, the use of such an approach can provide positive interventions for a child, particularly at times of distress, but these situations need to be managed sensitively and used sparingly.

There is variation in the use of inclusion units and other forms of in-house alternatives. The Government does not currently prescribe how these should operate or be structured. However, any provision by a school must also continue to comply with their wider duties and legislation, and the funding agreement in the case of academies. For example, for academies it would continue to need to offer a broad and balanced curriculum to any students studying there, as set out in their funding agreement.

The Government is working to better understand how these units are used in mainstream schools and what should be recognised as effective practice. Through the review of exclusions, Edward Timpson is looking at practice in schools in relation

to behaviour management and exclusions, including identifying effective approaches that improve outcomes. He aims to report on his findings by the end of the year.

***26. Ofsted should carry out thematic inspections of in-school alternative provision. (Paragraph 88)***

We welcome the Committee's recommendation and we support Ofsted in looking at the use of in-house alternatives, as part of their ongoing wider work investigating behaviour management in schools.

***27. All trainee teachers, in order to achieve Qualified Teacher Status, should be required to undertake a placement outside of mainstream education, for example in a special school or in alternative provision. (Paragraph 96)***

We agree with the Committee that teaching in AP should be held in high regard, and attract the highest quality leaders and teachers, which in turn ensures there is sufficient high quality and specialist provision to meet the needs of these children. It is our vision that AP attracts the most talented teachers who can flourish working with the most vulnerable children, and that these teachers can share effective practice with their peers in mainstream. We also want to continue building an education system that provides a rewarding career pathway no matter what education setting teachers join.

We want all trainee teachers to be equipped for their career and have access to high quality professional development, and we recognise that the quality of the teacher is the single most important school-based factor determining how well children achieve. Initial Teaching Training (ITT) already allows AP academies, free schools and PRUs to train new teachers, and we now want to ensure that staff within AP providers can access other opportunities for continuous professional development.

ITT providers must have regard to the guidance 'ITT: criteria and supporting advice' produced by the department. The criteria, which are statutory, include the requirement for providers to ensure that each trainee teacher has taught in at least two schools and that the other schools are carefully selected to extend the trainees' knowledge, skills and understanding. ITT providers must ensure they meet these criteria to remain compliant. ITT providers who do not comply with these criteria may be subject to withdrawal of accreditation.

The Government does not prescribe the content of ITT courses. It is for ITT providers to use their professional judgement to determine the content and structure of courses, but they must prepare trainee teachers to demonstrate that they have met all of the Teachers' Standards at the appropriate level. In July 2016, the Department published a framework of core content for ITT. This guidance states that ITT providers "should equip trainees to analyse the strengths and needs of all pupils effectively, ensuring that they have an understanding of cognitive, social, emotional, physical and mental health factors that can inhibit or enhance pupils' education."

In order to be awarded Qualified Teacher Status, trainees must satisfy the Teachers' Standards, which includes a requirement that they "have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these; and demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development."

As part of ITT provider inspections, Ofsted has due regard to the Teachers' Standards and framework of core content for ITT. 99% of all ITT partnerships inspected by Ofsted were judged as either good or outstanding at their most recent inspection.

**28. We do not consider that there are sufficient checks on unregistered providers. If pupils are placed in unregistered provision, without sufficient oversight, their education and safety is put at risk. We are not convinced that the quality and consistency of oversight is enough not to require there to be registration and regulation across the sector. (Paragraph 109)**

***29. No pupil should be educated in unregistered provision for more than two days a week. The Government, Ofsted and independent school inspectorates should consider how this may affect different forms of alternative provision so that where providers want to accept pupils for more than two days a week, they are able to register and be subject to a suitable inspection and regulation regime. Schools that commission any alternative provision should be responsible for the quality of that provision. (Paragraph 110)***

We are clear that all schools, regardless of their type, are responsible for providing a safe environment to educate young people.

A setting must be registered as an independent school if it meets the criteria for registration. This means providing full-time education for five or more children of compulsory school age or one or more such pupils with an Education, Health and Care (EHC) plan or a statement of special educational needs or who is "looked after" by the local authority, where the setting is not a school maintained by a local authority or a non-maintained special school.

It is a criminal offence to operate an unregistered independent school. Where settings are illegal and unsafe, the Government has a duty to act and protect the children within those settings. That is why we have established a joint team with Ofsted and so far provided them with £2 million to increase their investigations. By working with Ofsted, the police and Crown Prosecution Service, we can make sure illegal activity is uncovered and prosecutions brought.

Ofsted has achieved success in ensuring that unregistered independent schools cease operating unlawfully. In the period from 1 January 2016 to 31 May 2018, Ofsted undertook 244 inspections found 57 unregistered schools to be operating, and was successful in getting 50 of those to cease operating unlawfully. As at the end of May, the remaining cases were still under active investigation.



The Department is aware that local authorities, schools and AP providers commission out-of-school AP settings for a variety of reasons, including to equip children with vocational skills working with field specialists or to offer work placements. We support the use of these settings where they provide an enriched and enhanced curriculum offer, within a safe environment. The Department is clear that, in all cases, the local authority or school acting as the commissioner should assure themselves that the setting is registered where appropriate and provision is delivered by high quality staff with suitable training, experience and safeguarding checks.

We have been encouraging local authorities to use their existing powers under safeguarding or health and safety legislation to disrupt and tackle both unsuitable out-of-school settings and unregistered independent schools.

In March 2018, we published guidance<sup>15</sup>, which sets out how the Government, Ofsted and local authorities can work collaboratively to help ensure children attending unregistered independent schools and out of school settings are safe and are receiving a suitable education.

We have also signalled our intention to change legislation, when parliamentary time allows, to strengthen the registration requirement in relation to independent education settings. It is the Department's intention to amend the registration requirement, so that all such settings which children attend full time during the school day have to register. We will consult in due course on detailed proposals. We will also review Ofsted's powers in relation to unregistered schools, specifically to consider strengthening their power to collect evidence to meet the stringent requirements for criminal prosecutions and also to ensure such schools close.

We have announced a package of activity aimed at enhancing local capacity to identify and intervene in out-of-school settings of concern (including those offering AP). As part of this, we are providing £3 million of targeted funding to selected authorities to test different approaches of multi-agency working between local authorities and relevant agencies, to inform and spread best practice across the country on how existing legal powers can best be used to address safeguarding and welfare concerns in these settings; and to inform any further action, including the need for further regulation.

Alongside this, we will also be consulting on a voluntary code of practice later this year to help out-of-school setting providers understand what they need to do in order to provide a safe environment; and will be developing guidance for parents to help them make more informed choices when choosing out-of-school education for their children.

***30. Mainstream schools should be more proactive in their engagement with alternative provision. All mainstream schools should be 'buddied' with an***

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<sup>15</sup> <https://www.gov.uk/government/publications/regulating-independent-schools>

***alternative provision school to share expertise and offer alternative provision teachers and pupils opportunities to access teaching and learning opportunities. (Paragraph 113)***

We know that many mainstream schools and alternative providers have developed strong working partnerships to collaborate and share expertise and practice. As highlighted by the Committee, many providers work collaboratively, looking for options that enable them to support pupils and provide them with a broad and balanced education.

It is the Government's vision that effective practice in AP is shared across the school system and with other services, because the sector has extensive expertise in working with vulnerable children that would benefit mainstream schools. We agree with the Committee and recognise that this expertise is not always sought by mainstream schools, and to encourage this practice we have now published two research reports on AP, which include examples of effective practice that the sector can build on. We intend to take further steps to share best practice across the AP sector and beyond through our ambitious programme of reform.

We have also been clear that one of the key aims of the AP Innovation Fund is to disseminate best practice across the education sector from the nine successful applications. As such, we have appointed an external evaluator who will evaluate the outcomes at both thematic and individual project level, and will also run events to share best practice.

## **Successful outcomes and destinations**

***31. This framework should take into account the fragmented educational journey that these pupils will have had, and enable schools to demonstrate all the achievements of their pupils. We urge the Government to ensure that it uses the very broadest of measures, including softer skills that pupils have developed as well as harder outcomes like apprenticeship take up. (Paragraph 119)***

We recognise that, beyond Ofsted judgements, there is no systematic way of identifying and celebrating effective practice in AP.

As set out in our vision for AP, we intend to develop a bespoke performance framework for the AP sector, to ensure that there is a suitable mechanism for measuring the activity in AP that enables pupils to make rapid personal, social and educational progress. The development of the performance framework will consider a number of metrics such as improved attendance, destinations and educational outcomes.

We are committed to developing a range of options for how this framework could be used in practice, and we will test these across the education sector before considering how to introduce them nationally.

**32. It is extraordinary that the increase in the participation age was not accompanied by statutory duties to provide post-16 alternative provision. Pupils neither stop being ill at 16, nor do they stop being in need of additional support that would enable them to access education. These pupils are being denied access to post-16 education because the system is not designed or funded to accommodate their additional needs. There is a clear will in the sector to provide post-16 education to pupils in alternative provision, and a clear need on the part of pupils. (Paragraph 123)**

**33. *Given the increase in participation age to 18, the Government must allocate resources to ensure that local authorities and providers can provide post-16 support to pupils, either in the form of outreach and support to colleges or by providing their own post-16 alternative provision. (Paragraph 124)***

The Government agrees it is important that children and young people in AP are able to access post-16 education and training provision that meets their needs, and we remain committed to ensuring that they are able to achieve successful and sustained outcomes in adult life.

The duty on local authorities to arrange AP applies only to children of compulsory school age (5 to 16). When the Government raised the participation age to 18, it did not raise the compulsory school age, but expected 16 and 17 year olds to engage in the wide range of education and training possibilities available to them.

We recognise that children in AP may need additional support when entering post-16 provision, and the post-16 sector caters for a wide range of different needs and types of study. This includes further education (FE) colleges, sixth form colleges, private training providers, work-place providers and school sixth forms.

Many of these post-16 providers already cater for students with a wide range of needs, including students from AP. Specialist post-16 specialist provision is also available for students with SEN, both in special school sixth forms or in independent post-16 specialist colleges. Students can choose from a variety of education or training options. Study programmes for 16-18 year olds can focus on academic or vocational qualifications, with work experience, or for those who need it preparation for independent living. Work-based training such as apprenticeships or traineeships are also available, as are supported internships for students with EHC plans.

As the Committee has recognised, many children in AP have SEN: as at January 2018, 79.6% had a diagnosed SEN; 11.2% of pupils had an EHC plan; and 68.4% had SEN without an EHC plan.<sup>16</sup> Our SEND reforms brought FE colleges into an integrated SEND system, and FE colleges now have a duty to use their best endeavours to meet the special educational needs of young people. This year we are providing £700,000 funding to the Education and Training Foundation to support the capacity of the FE sector to meet its SEND responsibilities.

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<sup>16</sup> <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2018>

When the Government raised the participation age to 18, it also placed a duty on local authorities to secure sufficient suitable education and training provision for all young people aged 16 to 19 and for those up to age 25 with an EHC plan in their area. We also gave local authorities a power to arrange new provision, including post-16 AP, where there is a local need, alongside a duty to support and track 16 and 17 year olds. Alternative providers themselves can choose to educate young people above compulsory school age, and a number do so.

It is our expectation that the majority of children in AP would benefit from one of the many types of post-16 provision on offer, and we do not believe at this time that there is a need for Government to impose a new duty on local authorities to establish new types of post-16 provision when the landscape is already so varied.

But we fully recognise that, for many children in AP, the transition to post-16 education or training can be challenging, and share the Committee's concern that many do not go onto a sustained, successful destination. In 2015/16, only 57% of children in AP went to a sustained education, training or employment destination after key stage 4, compared with 94% from all state-funded schools. That means that more than one in three children in AP either fail to progress to a sustained post-16 destination, or their destination is not recorded.

It is our vision that every child can make a successful transition out of AP, and we are committed to improving young people's transition to education, employment and training at 16, which we outlined in our vision for alternative provision published in March 2018.<sup>17</sup>

One of the key themes of the AP Innovation Fund, which we launched earlier this year, is to improve transitions from AP into further education, training and employment at age 16 and beyond. On 6 August, we announced nine innovative schemes across the country that will benefit from this funding, including three projects which will help young people into further education or employment. These three projects will be led by Cognus in Sutton; Futures Advice, Skills and Employment in Nottingham; and Salford City Council. They will deepen the evidence base on how to improve outcomes, and will be used to share effective practice across the wider AP sector. We have also published further research to explore children's, schools', AP and post-16 providers' recent experiences of this transition and what they consider to be the most effective approaches.

We welcome the Committee's views on post-16 provision for children in AP. We will continue to consider how we can further improve outcomes for these young people whilst engaging with alternative and post-16 providers to identify and share new and better ways of supporting children in AP to make the transition into post-16 settings and into adult life.

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<sup>17</sup> <https://www.gov.uk/government/publications/creating-opportunity-for-all-our-vision-for-alternative-provision>

## Conclusion

We would like to thank the Committee for its careful consideration of the range of issues affecting children who have been, or are at risk of, exclusion, and have spent time in AP, and for its subsequent report and recommendations.

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978-1-5286-0833-6