

## Education Committee

Oral evidence: [The Government's SEND Review](#), HC 235

Tuesday 24 May 2022

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Members present: Robert Halfon (Chair); Apsana Begum; Miriam Cates; Anna Firth; Tom Hunt; Kim Johnson; Ian Mearns.

Questions 1-40

### Witnesses

I: Ali Fiddy, Chief Executive, IPSEA, Michael King, Local Government and Social Care Ombudsman, Mrunal Sisodia, Co-chair, National Network of Parent Carer Forums, and Imogen Jolley, Head of Public Law, Simpson Millar.

Written evidence from witnesses:



## Examination of witnesses

Witnesses: Ali Fiddy, Michael King, Mrunal Sisodia and Imogen Jolley.

Q1 **Chair:** Good morning, everyone. Thank you for coming to our Committee today; it is much appreciated. Obviously, we have the SEND review coming. Did the SEND review reveal anything new that had not already been well documented? Who would like to come in first? Imogen?

**Imogen Jolley:** Could you just clarify exactly what you mean by the question? I wasn't quite sure what you were driving at.

**Chair:** Did the SEND review reveal anything new about the SEND system that was not already well documented?

**Imogen Jolley:** No, I don't think it revealed anything new about the difficulties that are inherent in the system, although I think some of the suggestions and recommendations that have been set out seem to go off on a slightly different tangent from those that we were talking about—possibly two years ago—when we were looking at these things some time ago. So the problems are not new, but some of the suggestions for dealing with them have gone off in a different direction.

Q2 **Chair:** Are there any other thoughts from any of the other witnesses? Mr King?

**Michael King:** I was slightly puzzled by one thing that wasn't in the review. As you know from the evidence I gave last time, we have had a long-standing role in dealing with complaints from parents about the development and delivery of support for children with special educational needs, but there is really no reference whatsoever in the review to our role, even though the review focuses a great deal on redress. I was very surprised by that and particularly by a particular section, which says that the Department intend to "set standards for how complaints related to SEND processes and provision should be dealt with and who is responsible for resolving concerns." That raised a real question for me about whether the Department intend to introduce changed or alternative complaint mechanisms. It's certainly not something they have spoken to us about.

I was partly reassured when I heard a Department official speaking to the Public Accounts Committee, where they said they didn't envisage a change to our role. But even that doesn't really address some of the key issues about jurisdiction, which I know this Committee has written to the Department about before and we have certainly spoken to the Department about. I think it also fails to understand the role we already have statutorily in setting complaint standards around this area and others. So I was left rather puzzled by the references in the review to complaint handling, because they don't seem to fit with the reality on the ground at the moment.



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**Ali Fiddy:** I agree with both the points that have been made. The Green Paper seems to be based on a misconception that local variation of the legal framework is permitted, when, in fact, it is not. There is a very clear national legal framework for meeting the needs of children and young people with SEND. The problem is that local authorities regularly disregard their legal duties. However, they do not actually have any local discretion. The suggestion that there are local systems operating and that that is the problem is misplaced. It is based on a fundamental misconception.

**Mrunal Sisodia:** To build on that, the legal framework is consistent nationally. However, we know that there is huge variation in how needs are assessed and met and in the services that are available. At the moment, it is overwhelmingly poor. The key things that we need to drive at are: why is there that variation at the minute, and why is the consistent legal framework that Ali refers to not consistently applied? What are the incentives and the motivations of system leaders that mean there is that variation? What, then, is the accountability we can bring to bear when we see that variation and we see that children's and families' needs aren't met? How do we fix that problem? These are the two key issues for me and for our members: first, what has gone wrong with the incentivisation and motivation in the system that means that needs are not being met consistently? Secondly, why has the redress system—the accountability system—failed to correct that? That is what we need to drive at.

Q3 **Chair:** The review acknowledges the fact that it is an incredibly difficult system for parents to navigate. It says that “for too many families their experience of the SEND system is bureaucratic and adversarial, rather than collaborative.” In your experience, what are the main reasons that it is bureaucratic and adversarial?

**Ali Fiddy:** Fundamentally, this picks up on what Mrunal was saying, because local authorities fail to comply with the law. That is to do with the fact that there is not a sufficiently robust accountability framework in place that incentivises or forces local authorities to change their behaviour. That fundamental problem needs to be tackled. Rather than looking at how you reduce routes of redress for parents, what needs to be tackled is how you improve decision making and ensure that that decision making is lawful. That is the root of the problem.

What the SEND review seems to have done is completely disregard the overwhelming evidence that the biggest problem within the SEND system is the lack of accountability and a failure, particularly on the part of local authorities, to comply with the law at the most basic level. No one should underestimate the significance of the proposals in this Green Paper and the extent to which they will entail a complete overhaul of the current SEND law framework to the detriment of children and young people with special educational needs and disabilities. I don't think that is fully grasped. You have to read between the lines. It is a wolf in sheep's clothing.

Q4 **Chair:** Before I bring in the other witnesses, what targeted support would you all propose to support the disadvantaged children with SEND who



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faced additional challenges during the pandemic? Do you think that the review went far enough to acknowledge the specific barriers faced by disadvantaged pupils?

**Ali Fiddy:** From our perspective, what we have seen since the start of the pandemic is the deepening of the crisis in SEND provision. The pandemic has not created new problems; it has exacerbated those that already existed. We at IPSEA have long been concerned about some particular groups of children who experience additional disadvantage, including those in the care system and in criminal detention, and migrant children. The one hope that I suppose I have is that if there is going to be legislative change—there very definitely is—there might be an opportunity perhaps to influence and improve the rights and entitlements of some of those more disadvantaged groups.

**Mrunal Sisodia:** Let us be clear: the SEND system was failing before the pandemic. The pandemic doubled down on those disadvantaged kids, so it is really clear that the lack of services—the disruption of services—during the pandemic exacerbated existing harms. We have lots and lots of evidence of children who have gone backwards in their learning and have ended up with significantly worse physical conditions—for example, through missing physiotherapy. We also have lots and lots of evidence of new harms that resulted from the pandemic itself. I am sure you are all across the anxiety, the mental health issues and the socialisation issues that many children face as a result of isolation.

The other thing that it is really important to say is that I am now biting people's heads off if they tell me that we are back to normal. We are categorically not back to normal when it comes to our families because services are under huge pressure again. You all read the newspapers. You are all aware of this. Particularly in community health services, to quote one of our members the other day, "We are facing a tsunami of unmet needs." We are seeing a backlog that services are not able to catch up with. On top of that, we have the exacerbated harms and the new cases that have come. A lot of our families are really, really struggling, so we are nowhere near back to normal after the pandemic when it comes to SEND families.

**Michael King:** In terms of the impact of covid, I would echo exactly what the two previous witnesses have said.

We produced a report earlier this year that looked at 500 investigations we have carried out of covid-related cases, including many in this sector. We found the problems that you'll be familiar with, where local authorities didn't properly record the way in which they tried to comply with the "reasonable endeavours" duty, which was introduced in that time. Local authorities sometimes failed to communicate well with parents about which parts of the plan would be sustained during that period and which wouldn't. We found evidence that sometimes local authorities failed to make a proper risk assessment of what they could and couldn't deliver during that period and failed to keep proper records of that.



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We found some specific problems to do with covid itself, but I would absolutely echo what my colleagues have said, which is that our experience of looking at covid investigations very much suggests that covid amplified problems and stresses that were already in the system. Existing delays were made worse. Administrative weaknesses were made worse. Covid did not introduce something new; it simply put a microscope on existing fractures and problems in the system.

Do you want me to comment on the issue of conflict and the adversarial nature—

Q5 **Chair:** Yes, just briefly, because we have a lot to get through. I ask you all very gently to be as concise as possible, but carry on.

**Michael King:** On the question of conflict, I agree very much with what Ali said. The focus on redress suggests that the problem is at the end of the system and there is too much conflict at the end. There is conflict at the end of the system only because it is not working upstream, and if there is any kind of impression here that the problem to be fixed is vexatious and litigious parents who are too quick to go law to try to resolve things, that is absolutely not what we see in our experience of investigating complaints. The people who come to us have spent months or years navigating the system. They come to us as a last resort, and they are absolutely exhausted. There is no sense at all that the redress system is an easy option for parents.

Also, the fact that we uphold 85% of the complaints that come to us—similarly, the tribunal upholds, I think, about nine out of 10 of the cases that come to it—suggests that people are not abusing the redress system. The redress system simply reflects significant real problems that exist upstream, so if we need to fix this, it isn't about fixing redress; it's about getting things right first time.

**Imogen Jolley:** I will be quite concise, because I totally agree with my three colleagues on the panel. One of the things we have seen as a result of the pandemic is an increase in delays, which is of course very frustrating for families, and there has been even less engagement with local authorities. From personally dealing with clients, I know it is far harder to get hold of anybody in a local authority to address an issue at an early stage in a case than it ever was before the pandemic. Parents have to fight that themselves daily. I agree with Michael: they don't turn to a tribunal or other forms of redress as anything other than a last resort. That is what we see. They don't want to have to be there. Equally, some of the engagement they have with local authorities at the early stage, including mediation, is not satisfactory because it is not engaged in appropriately or effectively.

Q6 **Chair:** Finally, before I pass over to my colleague, Tom Hunt, the SEND review says, "Local authorities...are uniquely placed to be a champion for the best interests of every child and young person in their area." As you know, when our predecessor Education Committee, of which I was Chair, did our report in 2019, we found that there was a tension in the role that



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local authorities are being asked to play, in that they are both assessor and commissioner. Professionals make decisions usually determined by budgetary constraints, which leads to distrust building up between parents and local authorities, which moves us “even further away from the concept of local authorities as allies” and champions.

We suggested that there should be some neutrality injected into the system, and we recommended that a neutral advocate role be created to help parents and pupils navigate the SEND system. Do you agree that it is sad that the neutral advocate role was not put in the SEND review? Would it help to reduce some of the bureaucracy and reverse the real tensions in the current system? Could this role support families with fewer resources more effectively than the proposed national standards and mandatory mediation?

**Michael King:** The problem you describe of the local authority being an assessor of need and then a commissioner of services is not unique to children’s services for children with special educational needs; it is something local authorities have to do across a number of services. We see the same issue in adult social care. My personal view is that there is not an inherent problem in a local authority performing both those roles. We see distortions of the standards we expect simply because local authorities do not have the resources to deliver properly.

Q7 **Chair:** Sorry to interject, but what I am trying to find out in a nutshell is whether you think there should be a neutral advocate for families to help them navigate through the treacle of unkind bureaucracy that they face when trying to get the right care for their child.

**Michael King:** My personal view, from the complaints I see, is that there is a fundamental problem with resources in the system, and I am not sure an advocate would necessarily address that underlying problem.

**Chair:** Okay, thank you.

**Imogen Jolley:** I would say that there could be some real benefit in a neutral advocate. If you look at the system of parent partnerships—and at the parent forums that were there previously—in local authorities where the parent partnership is more independent of the local authority, you find that they are really effective champions of support for parents and help them at a much earlier stage. In local authorities where your parent partnership is very much tied to the local authority regime, for want of a better word, the outcomes are less effective. I have seen that kind of neutral advocacy role at an early stage being really beneficial to parents.

**Mrunal Sisodia:** I completely support what Imogen said. That role already exists: we have the SENDIAS services. The issue, to build on what Michael was saying, is that SENDIAS services have been woefully funded across the country. Where we see strong SENDIAS services, we see better relationships between parents and local authorities. A really important point is that SENDIAS services should also be extended to cover health and social care requirements. In the best areas we see SENDIAS services



being funded by health services, CCGs and ICSs as well—that is very rare, but the best ones are.

**Q8 Chair:** Ali, if you support it, how do you see it working in practice?

**Ali Fiddy:** I have quite mixed feelings about this because I agree that we have got the SENDIAS service; strengthening SENDIAS by properly funding it and ensuring that they are able to offer a consistent service across the country and feel able to be truly impartial would satisfy the requirement for a neutral advocate. We have seen the emergence of people setting up as advocates for parents and carers, and charging people significant amounts of money but often not really helping—rather than being a benefit that can be a barrier to achieving what a child or young person needs. That is where my mixed feelings about this come from. I think strengthening the SENDIAS services, as my colleagues have suggested, is absolutely where change could be affected.

**Q9 Tom Hunt:** When we have failure in the system, and we need to hold those appropriate organisations and individuals to account, what does that look like in practice? For example, if you had a local education authority that had repeatedly let down young people with SEND, would that potentially mean the Government intervening and taking those powers of the LEA? That is to all panellists.

**Chair:** Michael, do you want to go first?

**Michael King:** Yes, certainly. People can make a complaint to us. Once they have exhausted the local authority's complaints process, they can come to us; we are entirely independent of both central Government and local government. We have the powers of the High Court to carry out an investigation into those individual cases—indeed, we do that a great deal.

The number of complaints that come to us have gone up every year since the new system was introduced, and we uphold between eight and nine out of every 10 complaints we look at. The difficulty with that—I don't suggest that what we do is a panacea for all ills—is that we can only look at the system prior to and during the development of the plan, and then in the delivery phase. The middle part, where you can go to the tribunal, is a separate system. I think it is confusing and difficult for parents to navigate that. We do not have any kind of budget to do outreach and awareness work. There are many parents who could and should bring complaints to us, who simply don't know about our existence.

As we have spoken about in this Committee previously, gaps in our jurisdiction mean that we are sometimes doing the job with our hands tied behind our back. We could do a great deal more to simplify the system for parents, and to strengthen it, with some relatively straightforward changes to our jurisdiction. The short answer is that people can come to us and, where we can, we provide an effective level of accountability. But far too few people know about our service, and our jurisdiction is too limited.

**Q10 Tom Hunt:** I have a specific question, which is to do with when you have



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a local education authority that is repeatedly been seen to be failing young people with special educational needs and their parents. Would there be a point where such a local educational authority could be stripped of its authority? Should that point come sooner than it does now?

**Chair:** Ali, why don't you start?

**Ali Fiddy:** Sure. If you look at what happened in Birmingham, for example, with the parachuting in of a commissioner to take over those services, it had actually been a long time coming. You have gone through the process of having a local area SEND inspection, performing very badly, then having a revisit where progress against those areas of weakness was dire, and then it has taken time for something to happen.

What we would like to see in an accountability framework is whatever will force change in local authorities. It is also, as Mick was saying, about seeing an extension of the remit of the Local Government and Social Care Ombudsman to cover schools as well. There is a broader issue around accountability. There has been an agenda to reduce opportunities for individuals to hold public bodies to account: changes to the availability of judicial review as a remedy and plans around the Human Rights Act. Those things are really important in the context of individuals who are much more reliant on public body decision making, as children and young people with SEND are.

I would like the accountability framework to be whatever will change local authority behaviour—as punitive as it needs to be. I would like to see an extension of the remit of the ombudsman, better funding of legal aid in this area, and judicial review remaining an available and effective remedy for families.

Q11 **Tom Hunt:** Do you think, as it stands, there are currently—I have a sense of what the answer will be to this—enough financial incentives and Ofsted assessment incentives for schools and education providers to provide first-class SEND provision?

**Mrunal Sisodia:** The short answer to that is no. That is one of the biggest issues that we have with the current SEND system. It is very important, and this Committee has got a very important role when it comes to the new schools White Paper and assessing how that is going to change things. Let us be really clear about this: what is it that really incentivises school leaders? Are they worried about attainment? Attendance? Behaviour? That is the mood music that comes from the regulators, the inspectors and the Department for Education, and that sets their priorities. SEND really does not feature that heavily.

If you look at the areas of attainment, attendance and behaviour, very often it is SEND children who are challenged in those areas—for reasons that we understand—often because they are not getting the right support. So there is a really clear incentive there for school leaders not to be inclusive. We can do whatever we want in the SEND system and the SEND reforms, but in the broader schools environment that SEND children live

in, the tide is pushing the other way—against inclusion and against the incentives to school leaders and other systems leaders to be really inclusive and intervene early.

- Q12 **Tom Hunt:** Many school leaders I talk to feel the same way. I genuinely think there should never be a conflict. Education professionals and school leaders should never feel there is a conflict between doing what they believe is the morally right thing to do and the right thing to do for the young people they are responsible for. Also, not unreasonably, they want to be professionally successful, so I guess taking that conflict away is important. Ali?

**Ali Fiddy:** I just want to say there is a need to incentivise inclusion in mainstream, but it is also about making sure there is an accountability framework in place as well. You can't have one without the other. Obligations already exist under the Equality Act in terms of the duty to make reasonable adjustments. There is a presumption of mainstream education in the Children and Families Act, where that is what is desired, and it would not be incompatible with the efficient education of others and there is nothing that could remove that incompatibility. Despite those legal obligations, mainstream schools frequently aren't inclusive, and many are not ready to take more children and young people with SEND without a fundamental shift in culture. Just saying that schools should be more inclusive will not make that happen.

On the proposals in the Green Paper about the majority of children and young people being in their local mainstream school in their local community, what they fail to address is anything about what it means for schools to be genuinely inclusive. Actually, forcing inclusion can lead to children being excluded from mainstream education—literally or indeed socially in that school environment.

- Q13 **Tom Hunt:** I have met the chief inspector of Ofsted about some of the changes that could be made to try and provide better incentives. Some feel that the new Ofsted framework is a step forward and may lead to improvement. How do you feel about that?

**Imogen Jolley:** Following on from what Ali said, which I completely agree with, on the accountability of schools for some of the behaviour around a lack of inclusion and disability discrimination, I know that parents feel real concern. The challenge for discrimination in schools is that it is an even more litigious procedure through the tribunal than a SEND appeal, and it quite often leads to a real relationship breakdown between schools and families, so the remedies that the tribunal can award are ineffective.

If the tribunal talks about additional provision or support, or changes in training or whatever it might be, the relationship has quite often broken down so much that the families have had to move away from those schools, so there is no incentive for schools to provide the right support as families have had to vote with their feet. Changes to the remedies that the tribunal can order to make schools accountable for that sort of behaviour would assist.



**Q14 Tom Hunt:** I have two more questions. First, the SEND Green Paper talks about a new SENCO qualification, about more specialists and about funding more education psychologists. Do you think this is also about ensuring that every teacher—not just the specialists—has a kind of base-level understanding of all different types of learning disability? It strikes me that, in a mainstream setting, that could be important. Do you think there needs to be more work in teacher training, for example, to ensure not just that we get more specialists, but that every regular teacher has a slightly higher level of understanding of all types of disability?

**Imogen Jolley:** I definitely think that would assist. The other body of people to consider is the learning support assistant and teaching assistant cohort. In the main, they are largely responsible in all settings for a great deal of the provision delivered to children, including some quite complex therapeutic provision. The skillset needed for that needs consideration, because that really important cohort of people work with SENCOs to deliver support.

**Q15 Tom Hunt:** Finally, on the diagnosis of different learning disabilities—particularly those that may be more hidden—there is talk at the moment of the possibility of a universal screening requirement for dyslexia. That is currently being discussed in Parliament by a number of colleagues, and I have had many discussions with local education professionals about how that could work and how to avoid any unintended consequences. Would you support a universal screening of all young people, not just for dyslexia, but of course for dyspraxia, autism and so on? That question is to anyone who wants to answer.

**Chair:** Why don't we start with you, Michael?

**Michael King:** That is probably one for my colleagues, to be honest.

**Chair:** Okay. Whoever would like to answer this, please put your hand up. Mrunal?

**Mrunal Sisodia:** The simple answer is yes. To go back to something Michael said earlier, there is too much focus on the issue at the back end when things have really broken down and end up in the tribunal or with the ombudsman. One of the key questions is, "Can we identify need early and"—this is the bit that we run into—"can we respond early?" That is the bit that is failing families at the minute. It takes too long to identify needs; too much is diagnosis-driven rather than needs-driven; and even when you do have a diagnosis, the services are not there to meet those needs. Hence, we end up with a very adversarial, conflict-ridden system. Early identification and early response are the way out of it. And by the way, that is cheaper as well.

**Chair:** Okay. I will bring in Kim, then Apsana, Ian and Anna.

**Q16 Kim Johnson:** Good morning, panel. How do you expect to deliver a first-class service when there has been significant underfunding of the sector for over 12 years? The National Association of Head Teachers conducted a survey and found that 90% of their schools said that funding was



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insufficient and that the recruitment and retention of teachers to work in the sector has been a major problem. Do you think these issues have been identified in this Green Paper? Maybe Ali could answer first.

**Ali Fiddy:** I think that the starting point must be to recognise that the proposals in the Green Paper are absolutely not about improving families' experience or improving children and young people's outcomes, and to pretend that they are is disingenuous. This is about saving money and masking what is really being proposed, in an effort to avoid what I think is the really undesirable position of the Government saying that they do not want to spend the necessary amount to meet the needs of children and young people with SEND.

In answer to the question, I do not think that it is going to be possible to deliver a first-class service, but nor do I think that that is the motivation behind the Green Paper proposals, and it is really important to acknowledge that.

Q17 **Apsana Begum:** I have a question, first, about the previous Committee's SEND report, which highlighted that supported internships are only available to young people with EHC plans. That excludes the vast majority of young people with SEND, who do not have EHC plans. What more do you think can be done by employers, education providers and the Government to support young people with SEND to develop their skills and transition into work? Perhaps I could come to Imogen first.

**Chair:** We will go to Mrunal first, because he has a time constraint, as I understand it.

**Mrunal Sisodia:** Thank you, and I completely agree. One of the big criticisms that we have of the Green Paper is that it does not say enough about broader outcomes for children and young people when they leave education. It does not say a lot about routes into work, about community inclusion and about independent living. We are preparing children to be successful young people and adults, and there is not enough around the outcomes there.

To your specific point about supported internships and routes into work, one of the things that we have always advocated for is that we have things such as education, health and care plans, so why do we not just change the "e" to an "employment" plan? The idea is that the kind of support that a young person will need to access education successfully will not be too dissimilar to the kind of support that a young person will need to access employment successfully, for example. There is a really strong case for some sort of work-based passport of the kinds of reasonable adjustments and the kind of support that a young person will need to access work and have a successful work career, which I think is a missed opportunity here.

Q18 **Apsana Begum:** You talk about an employment plan, but do you think that what is missing here is really that stronger guidance that is needed around employment, as well, specifically for people with SEND?



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**Mrunal Sisodia:** Sure. I will defer to others—there are a number of lawyers on this panel. The law around reasonable adjustments exists already and I think that many employers either do not understand the law or are immediately scared to take on somebody with an additional need, because they fear that it would incur additional costs.

There are schemes, such as the disability awareness schemes that the DWP runs, but there is more that we could do just to make it very clear that these are the sorts of reasonable adjustments and support that this particular young person may need to enter employment successfully, and that this is the support that the Government can offer employers to help them to make that transition, showing that it is not insurmountable.

Again, charities such as Mencap have done some fantastic research around employment for people with additional needs. They have found some really strong economic cases—particularly around loyalty, length of tenure and diligence—to suggest that it makes good economic sense to employ people with SEND. Also, of course, we all know that there is a labour shortage at the moment, so why wouldn't we want to push this is a strong agenda from Government?

**Apsana Begum:** Thank you. I will come to Imogen next.

**Imogen Jolley:** In post-19 provision generally, there is a real lack of engagement with some of the systems, particularly even in the levels of provision available at a local level in mainstream colleges. That then impacts on the individualised support being identified for each individual moving forward. In the paper, I was expecting to see a lot more focus, because it is one of the areas in which the provision in the further education sector falls far behind the school sector in many ways. That leaves young people quite disadvantaged. I would support a lot more training, support provision and individualised need, rather than—as you said at the start of your question—a focus on the need for an EHCP to access certain types of provision and internship. If it was identified more on an individualised basis, that would be of much greater assistance.

**Apsana Begum:** Thank you. Do any of the other panellists want to comment?

**Chair:** Tom has a quick point to make on this, on FE.

Q19 **Tom Hunt:** I'm back—it is quite soon after I finished last time, but it is about this. I really share the importance of FE supporting young people with inclusion needs between 16 and 18, getting them ready for the world of work. It is a crucial period. Imogen has just touched on some of the shortcomings of the status quo, and how it was not really mentioned as much as we might have liked in the Green Paper. First, my understanding—I wonder whether it is yours—is that it is not an explicit requirement for FE colleges to have an inclusion team. Secondly, how much of an issue do you think a lack of funding is at FE colleges to support individuals with inclusion needs?

**Chair:** Would one of you like to answer that? Ali.



**Ali Fiddy:** I don't think it is just about money; it is also about culture, understanding legal obligations and having the motivation to change and to be inclusive. That is something that spreads across both the compulsory education system and further education. When you were talking earlier about making sure that school staff have the skills and knowledge to meet the needs of a variety of special educational needs, actually they also need to understand the legal framework. That is often where things break down, particularly in that relationship between parents and schools. Schools will often repeat this kind of misunderstanding of what the law is, because they rely on what they are told by local authorities. We have recently started training SENCOs, and there have been quite a few lightbulb moments for attendees on those courses. So, it is more than just pushing money in, and I have always said that. You will not resolve the issues in the SEND system just by pumping more money in; there is a need for more money, potentially, but actually it is also about a shift in culture and in attitudes.

Q20 **Apsana Begum:** I have one more question. I want to ask about the workforce again. With the SEND review Green Paper, are you worried that there is a lack of focus on investing in and empowering specialist support teachers? I want to understand a little more about that. I work closely with the National Deaf Children's Society, and my nurseries that primarily cater for children who are deaf fear closure. They said to me that they are very concerned about the lack of focus in this paper on specialist workforces and on how to empower and invest in that workforce. I just want to get a sense of your thoughts on that.

**Chair:** Who would like to comment on that? Imogen?

**Imogen Jolley:** The Green Paper talks about looking at the standardisation of needs and provision, and it concerns me that we are moving away from a high-level individualised focus on individual need and support. I think that feeds into the question of the delivery of those highly specialist services for children with particular needs. The minute you block things, you put children in a pigeonhole, rather than an individualised bracket. That is really concerning. That also feeds into the idea in the Green Paper that funding bands, for example, could be utilised on a more standardised basis. We see them in use now. Effectively, what they mean is that provision is pushed down to the lowest common denominator, meaning that parents are having to fight to get out of funding bands and that funding bands aren't applied individually to their child's needs. It is a real concern. The idea of standardisation will significantly impact the highly specialist and complex interplay of needs that we see in a number of children.

Q21 **Ian Mearns:** I have been really interested in the answers we have heard this morning. From the answers given to several different questions, I can't help thinking that funding and rationing are big problems within the system. I know that Ali said that it wasn't just about bumping money, but the problem we have is that most local authorities are behaving the way that they are because they are trying to ration out the funding they have available. Whether that means parents ending up at tribunals or the



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ombudsman, it is all part of that rationing mentality. I think they have got into a situation where they cannot see the wood for the trees anymore. That is just the attitude they have come up with.

When you say that 95% of tribunal cases have successfully come down on the side of the appellant, that has got to be a false economy from the perspective of local authorities. From previous reviews, we have heard estimates from people in the sector of how much money we would need for the special needs block, and an additional £5 billion to £7 billion was mentioned by people in different contexts. If we could get that right, and get the systems right, we might get towards where we need to be to meet the needs of children within the system.

We now have this Green Paper and the proposed SEND reforms, which have been described this morning as “wolf in sheep’s clothing” by Ali, I think. They are going to take time to implement, whether we agree with them or not. The SEND review has identified serious issues with the current system. What more should the Government be doing now, while these reforms can be brought in, to support children and young people with SEND? Is there anything specific, any sort of magic bullet you can think of, that would help in the current situation? Michael, you look poised there.

**Michael King:** Certainly, I agree with your analysis of the situation. There is a fundamental problem with the resourcing of this system. When we investigate problems in local authorities, it is not that the people who are trying to deliver those services are acting with ill will. By and large, they are dedicated, hard-working people who are trying to make a system work that simply often does not have the resources to deliver. I completely agree with your analysis.

In terms of areas where we could improve now, what we sometimes see is that where we have found a problem, we try not to just focus on solving it for the individual. What we try to do is identify the root cause analysis of why a local authority is making upstream administrative mistakes, and we identify how it can learn and improve. We then feed that back. What we see in the best local authorities is that they will take that learning on board, using complaints and mistakes as a way to learn and improve for the future.

In some local authorities where we have identified systemic failures, we have also seen that the local authority has then been able to reinvest in children’s services where that has needed additional funding, so I think that a very simple way of improving the process at the moment is increasing accountability and transparency, because that drives learning and improvement. As other witnesses have said, sometimes that can mean saving money by doing things right first time, so it is about making sure people are aware of their rights to challenge the system where it is failing.

Also, in terms of my own service, making sure we have the power to look at those areas that are currently outside scope would be an easy one.



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Without taking up too much time, I will give an example of that: the previous question was about those children who do not have an education, health and care plan, but rely on more general SEN support in schools. If we got that right, probably fewer people would want a plan, because they would be confident that they were getting the support they needed early on. At the moment, if you have a plan, you can come to us or you can come to the tribunal to complain about what is happening. If you are receiving SEN support informally in a school, you have no rights of redress to an independent body at all.

A very simple way of increasing parental trust in that early part of the system where we might be able to get things right more quickly would be to give a body like ours the opportunity to hear parental concerns about the way SEN support is being given at those early stages, and what we perceive to be a level of rationing and underfunding of that. There are very simple mechanisms where we can increase transparency, openness and learning in the system without introducing huge additional costs.

**Ali Fiddy:** I absolutely agree with that point. It feels as though the Government's diagnosis of the problem with SEND provision in this country is that there is just too much of everything—too many education, health and care plans; too many children in special schools, particularly independent special schools; too many tribunal appeals; and too much money being spent. These proposals are really motivated by a desire to reduce all those things and improve statistics, but the attention needs to be on what you can do in order to improve decision making and hold local authorities to account.

The reality is that this issue of accountability is not going to go away. Even if the law is changed, many of the proposals will not work without robust accountability mechanisms, so, as Mick says, you can only strengthen SEN support if there is an accountability mechanism to enforce it. You can only make mainstream schools more inclusive if there is an accountability mechanism to challenge them for not being inclusive. That is where the problem lies, and the chapter in the Green Paper on accountability is shameful.

**Mrunal Sisodia:** I think you are exactly right: there is clearly not enough money in the SEND system. It is also true to say that the money that is in the SEND system is not being spent effectively at the moment, because too much of it is being spent when families get to crisis. We hear time and time again from parents who describe going along to the school gate, talking to the SENCO and saying, "I've got a concern." Six months later they are back, nothing has happened, and they are saying, "I've now got a problem." Six months later, they are back saying, "We are now a family in crisis", and that is when things happen. We all know that dealing with crises is much more expensive than dealing with concerns, so we need to shift where the money is spent.

Going back to your original question about how we can come out of this vicious spiral, the simple answer is, "Listen to families." We all, as parents, know our children better than anybody else, and when they are a little bit



off colour, we know earlier than anybody else. Listen to families' concerns and spend the money then, because you are going to spend the money. SEND does not go away by ignoring it; all that happens is that needs exacerbate, frustration grows, anger grows, and that is when families end up feeling that they need EHCPs and need to go to tribunal to secure the legal right to the services that they should just be able to get. In this area, clarity around what families can expect will be really important, and that is where the national standards proposed in the paper are very helpful.

**Q22 Ian Mearns:** Imogen, if we get this right, you'll be looking for another job—is that right?

**Imogen Jolley:** Yes, and I have always said that that would be the holy grail. I agree. Leading on from that, I will say something reasonably controversial on the accountability of local authorities. The tribunal at the present time is a no-costs jurisdiction. While I am not necessarily suggesting that costs are introduced in all cases, there is no deterrent to the local authority to run tribunal cases as a matter of standard. They quite often nowadays barely engage in the process. They do the bare minimum to comply with tribunal deadlines and then there is a big flurry two or three days before a hearing, where they are trying to settle things and sort things out, but they have dragged parents six months down the line and six months further away from provision. There is no detriment to them in terms of doing that. They might lose the tribunal case, but where is the stick to beat them? They would perhaps only have to be hit once or twice before it hit home that they need to be dealing with these things six or 12 months earlier, before you get into the spiral of the tribunal system.

**Q23 Ian Mearns:** We have many parents who do negotiate the system and manage to get to a tribunal or manage to see the ombudsman, but do any of you share my concern that there will be many parents who just can't negotiate all of that and will give up, and their children don't end up getting the services that they really need?

**Chair:** Which is why the neutral advocate idea is an important one.

**Imogen Jolley:** I think that is right. I always say that the local authorities wait to see the whites of a parent's eye at every stage in the process. At each stage, they will refuse to assess, and a number of parents will just drop off and give up. At the next stage, there will be another set of parents who drop off. By the time you are on the third tribunal, you are down to the die-hard people who either can afford it or have the gumption to go for it. At every stage, there will be a drop-off. Local authorities rely on that.

**Q24 Ian Mearns:** The proposed reforms in the review include things such as a national statutory SEND standard and standardised digital EHC plan templates, to address consistency or the postcode lottery. Do you see any of that working or is it just a smokescreen?

**Ali Fiddy:** Absolutely. I am not sure that people recognise that these proposed national standards just cannot be absorbed within the existing SEND law framework and that actually what they are going to do is to



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change thresholds and change processes for support. I think few people realise that.

When you look at what the Green Paper says about national standards, it says they are going to be setting out how need should be identified and assessed, including how and when an assessment should take place, who should be involved in the assessment process, how the information and evidence collected should be recorded and monitored, how processes will be reviewed and how support will be reviewed. All of these things are set out very clearly already in the Children and Families Act and in the SEND regulations. What this actually means is a change to those legal provisions—a change to the test for an EHC needs assessment. We suspect that that will mean the reduction of rights and entitlements and a raising of thresholds so that fewer children and young people will qualify for an EHC needs assessment.

Similarly, we have a test for an EHC plan. We have a very clear legal framework for the form any EHC plan has to take. We have a very clear legal framework for the annual review process to look at whether provision and support remains appropriate. The idea that these will be addressed through national standards means that all of that is going to be diluted. I think it is really important that families understand the implications of what is being proposed here, because it is very clearly about reducing rights and entitlements and raising thresholds.

**Q25 Ian Mearns:** I saw people nodding there, so I take it there is broad agreement with that.

Do you think there is anything in the review that tells you the Government are intending to do any significant workforce planning so that we have the right professionals in the right places and people's concerns can be addressed very quickly?

**Chair:** In a nutshell, if you can.

**Imogen Jolley:** I am not sure I see that in the document, to be honest.

**Ian Mearns:** You don't think it is addressed within the review.

**Imogen Jolley:** No.

**Ali Fiddy:** I would say that if we are to improve SEN support, which is one of the areas that we at IPSEA are very supportive of, we absolutely think that it is necessary to put that on a statutory footing. That is only going to be possible if you have sufficient input from educational psychologists and specialist teachers. When you think about the nature of the children and young people whose needs are generally met without an EHC plan and at that SEN support level, you are only going to make that better and improve SEN support if there is the capacity and the resource within educational psychology services and specialist services to provide input.

**Q26 Anna Firth:** We are going to move on to finance a bit later, but I want to focus on the numbers here. In particular, I am interested in the increase



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in SEN pre-pandemic. We can all understand very well why the pandemic will have been a disaster for SEN support. Indeed, I went around a very good junior school and infant school in West Leigh in my patch yesterday and they have very good SEN provision in school, which they could not possibly have done during lockdown. I am much more interested in the fact that we have had an increase in SEN numbers from 2017 to 2019 and, of course, that we have had an increase in children on EHC plans as well. What do you see as the main factors behind this increase in special educational needs? I am not interested in hearing about lack of money; I am interested in what the fundamental factors at play are. What would be the one thing that each of you would like to see happen to increase SEN support, putting aside the issue of funding, please, if we can at this point?

**Ali Fiddy:** In terms of the increase in the number of EHC plans, when these reforms were introduced in 2014, they extended the age range for the level of protection up to 25 and started it from birth. Inevitably, that was going to mean a greater number of children and young people with special educational needs protected by the legal framework and therefore qualifying for EHC plans and requiring that support. Also, we constantly see medical advances. We now see children surviving conditions that they perhaps would not have survived previously. They are living longer, actually. Those are the issues that are fundamentally going to have an impact on the number of children and young people who require EHC plans.

With regard to the one thing I would like to see, it is absolutely no dilution of legal rights and entitlements. Do not change the law; tackle the accountability and the failure to comply with the law as it stands.

**Anna Firth:** Thank you. Michael, or whoever wants to go next.

**Michael King:** I have nothing to add to what Ali has said about the underlying trends and numbers. In terms of the one thing, I think I would go back to what I said earlier: if we want to make the system work in terms of people who get SEN support, more informally in schools, and also if we want to look at things like children being out of school, being off-rolled and being excluded, give us the power to look at parental concerns about what is going on inside schools. That would be my one improvement.

**Anna Firth:** Thank you. Who wants to go next?

**Chair:** Maybe we do not need to ask every witness for every answer, but carry on.

Q27 **Anna Firth:** I am interested in the one thing that they consider to be the most important thing.

**Imogen Jolley:** Early intervention—as early as possible in the system—not dragging parents through delays, and also not delaying in getting to children. As Mrunal said earlier, parents know their children best, so when their parents are calling out issues, in pre-school and those early years



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settings, dealing with it at that point, before it becomes more entrenched, through early intervention creates a better outcome for young people.

**Anna Firth:** Thank you. Mrunal?

**Mrunal Sisodia:** The key thing is to remove the disincentives to be inclusive across the system, particularly in schools. There is one silver bullet and we have spoken to Ofsted about this. No school can be good or outstanding unless it is good or understanding for SEND.

Q28 **Anna Firth:** Thank you. I have a follow-up question. A number of you have mentioned that families and parents know their children best, which I, as a mother, would wholeheartedly agree with. But what about the children who are in the most disadvantaged settings of all, where perhaps, for whatever reason, the parents are just not able to fulfil the function of engaging with the school? Do you think that the review does enough, or indeed does anything, to tackle SEN in the most disadvantaged families?

**Chair:** Mrunal, why don't you go first this time?

**Mrunal Sisodia:** No, it doesn't, and I think we completely share your concerns. In the criminal justice system there is a huge overlap between SEND, looked-after children and children who receive free school meals. If you draw a Venn diagram, there is a huge intersection there, and I do not think that we are collectively doing enough around those children.

Again, my point is that this is not solely a SEND issue, but the key thing here is that by getting the right support for those children and addressing their SEND, you are not making a special case for SEND; you are actually looking after their needs when it comes to them being looked after, you are looking after their needs when it comes to their free school meals, and you are probably stopping them getting into the criminal justice system.

We have long advocated this idea of key working for the most vulnerable families and the most vulnerable children. There is something in the NHS long-term plan around key working for those with the most complex needs, but it is about those with the most complex medical needs. There is a strong case to be made for key working for those with the most complex SEND and social needs, which is where I think you are heading with your question.

**Anna Firth:** Thank you. Does anybody else want to add to that?

**Ali Fiddy:** I would just say that what is proposed in the Green Paper is to dilute rights and entitlements across the board. The groups of children and young people that I touched on earlier—those who are looked after and those who are in criminal detention—are disadvantaged in the current system. They will be more disadvantaged under the new system that is proposed. Particularly when you are thinking about children in the context of social care, very little has been said more generally in the independent review of children's social care, which was published yesterday, around disabled children. Disabled children always seem to be a poor relation in



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the context of children in need, and both the independent review of children's social care and the SEND review seem to have been relying on the other to address the issue of disabled children. In fact, neither says much about them, and it feels as though children with disabilities are the ball in a game of ping-pong between the SEND review and the independent review of children's social care.

**Q29 Anna Firth:** That is very interesting. Does anybody else want to add to this? Perhaps I will ask my final question. Obviously, funding is an issue, and you have all touched on the fact that the £70 million announced for these reforms is not enough, but the overall budget for children with high needs is now £9.1 billion—an increase of £1 billion on previous years. That is a huge proportion of the education budget for a start, so as well as arguing for the funding case, we also have to look for efficiencies. Do you have any thoughts on where money could be saved, to make sure that the money that is spent really does go to help the most disadvantaged children?

**Imogen Jolley:** I would go back to Ali's point about the legislation that we have under the Children and Families Act, which sets out quite clearly the roles of education, health and social care in the round. To me, it is about ensuring that all those services are properly engaged, and that the system operates in the way that the legislation envisaged it should. Making such efficiencies as suggested in the Green Paper—about funding bands and so on—is not going to be the answer.

We need to go back to the original legislation and operate that effectively, and have the right accountability in play, to ensure that those three organisations are effectively co-operating, because there is so much interlinked between them. Short-term efficiencies, such as those suggested, will not ultimately solve the problem. They are a sticking plaster over what really needs to be done.

**Anna Firth:** Thank you. Anybody else on funding?

**Michael King:** There is one common theme that we see. The complaints that come to us are those that have become intractable, going on for months, if not years. Sometimes at the heart of those issues is basic procedural failure right at the start of the process, where a local authority has perhaps not kept in touch with the family, hasn't communicated, listened to them or gathered the right evidence. We see particular problems with local authorities being able to get the right evidence from the health service. There are not the right kinds of partnerships.

Sometimes, huge amounts of time, money and effort are spent by local authorities in trying to fix problems that have their origin in basic administrative errors upstream. Ensuring that the system itself is administered in a simple, effective and positive way upstream could save a huge amount of angst and difficulty for everybody downstream.

**Anna Firth:** Thank you. Mrunal, have you contributed?



**Mrunal Sisodia:** I would go back to what I said earlier. It is about early intervention. To build on what Michael and Ali said, it is not just early intervention in education; it is a wrap around the child and the family from the education, health and care services. Again, that is where some form of the national standards could apply, so that families are aware of what they can expect from services but, critically, the services are aware of what they can expect from each other. It would be really important to provide that sort of clarity around what that early intervention looks like.

Q30 **Anna Firth:** This is my last, very short follow-up question. When I talk about SEN funding with my director of children's services at Southend City Council, one of the suggestions I hear is that funding should be ringfenced when it is going for SEN or the most disadvantaged children's programmes. Do you recognise that as an issue? If so, do you agree with funding being ringfenced?

**Michael King:** The problem with arguing for ringfencing in one area of local authority services is that, clearly, adult care services would make the same case, as would highways or planning. A fundamental part of local authorities is that elected members have the discretion to decide how they will spend their budget.

It is probably a matter for the Local Government Association rather than for me to comment on, but I think there is a long-standing tenet of local government that local democracy depends on members having the ability to choose how they spend their funding. I think it would be going against a fairly long-standing principle of local government to try to ringfence individual services. Many others would make the same case.

**Chair:** As we are pressed for time, I want to move on to Miriam, who has not yet had a chance.

Q31 **Miriam Cates:** Some of the questions I was going to ask have been answered. Listening to you, you paint a very bleak picture, not only of what the SEND environment is like now, and how it has got worse because of the pandemic and other things, but of the failure of the Green Paper to get to the bottom of those challenges.

I have two questions. First, are there any good bits of the Green Paper that you welcome? Secondly, how did the writer of the Green Paper get it so wrong? You have mentioned the fundamental misunderstanding of the need for accountability and early help, but what do you think is behind that? Why is there a big discrepancy between what you think is wrong and what the Green Paper outlines? Who would like to go first? Ali, you have been nodding along.

**Ali Fiddy:** On the good bits—let's say something positive—we would probably say the proposal for a national template for an EHC plan is positive. We would like to have seen that many years ago, but we think it is positive. Putting SEN support on a statutory footing we definitely see as a positive. Actually, we were concerned that the extended powers of the tribunal to make non-binding recommendations about health and social care needs and provision might also fall by the wayside as a result of the



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SEND review. It has been confirmed that those powers will continue. We would obviously like it to be able to make orders rather than non-binding recommendations, but it is positive that those powers are going to remain.

In terms of why they have got it so wrong, I come back to the point I made earlier, which is the sense that the Government see the problem as being too much of everything. Part of what they want to do is save money. It will not be possible to do that without diluting rights and entitlements but avoiding that very undesirable position of coming out and saying, "We do not want to put this much money into supporting children and people with SEND anymore. We can't; it is not sustainable. Therefore, the only way that we can make it sustainable, in our view, is to reduce rights and entitlements." That, fundamentally, is the problem.

On issues such as banding, we are really concerned, for the reasons that Imogen touched on earlier. The current position is to work out what an individual child's needs are and put in place the support that meets those needs. What the reforms appear to be saying is, "Work out what the standard provision is for this level of need and give the child that." That kind of one-size-fits-all approach means that support will be capped. The fact is that special educational provision is not standard—the clue is in the name. It is special. It is unique. It is different. It is individualized.

When you think about some of those rarer conditions, what will the standard type of support and placement for a child or young person with Rett syndrome or Ehlers-Danlos be? What does that look like? That is really problematic. Think about ASD: it is a spectrum, varying in different types of need. The level of support will be different. The needs of people with Down's syndrome will vary considerably. It is not workable and it will only mean that children and young people will lose out on the support that meets their individual needs.

**Miriam Cates:** Thank you. Who would like to go next?

**Chair:** You do not all have to answer. Let's go to Mrunal.

**Mrunal Sisodia:** The feedback we are getting from families is that they are very supportive of the national standards. The issue is that, in the absence of any national standard, there is no floor; there is no bottom. The feedback we are getting from families at the minute is that greater clarity around what they are entitled to will help. They are very supportive of the national standards, the idea being that if you know what you are entitled to, it removes a lot of the rub and disputes from the system. If you know what you are entitled to, it will help drive early intervention. If you know what you are entitled to, it will help services work together because they will all know what is expected of them and of each other.

There is quite a lot of support from families about the national standards, but Ali's points are very well made. Let us be clear that these should not be seen as a cap; they should not be seen as a maximum. What we are setting here is a floor where none exists at the moment. Sadly, too many people have ended up way below anything like reasonable provision, so



this is very positive. I also agree with the other points that Ali made, particularly around the SEN support. That is where the system really has broken down in the sense that people have not been getting the support they need early enough, leading to an escalation across all sorts of fronts.

- Q32 **Miriam Cates:** Okay. Moving on, SEND covers a huge spectrum of different needs, as you described, Ali. I am not an expert in this at all, but the way I see it is that you've got children with specific health needs that are mainly health driven but with a medical element. You've also got a kind of—I don't know—what you would call lower-level learning difficulties in schools, which still have a big impact on those children. It seems to me that you are saying that early intervention on those learning difficulties could make a huge difference, rather than things getting to the point of being a problem or a crisis.

I suppose the problem, from the Government's point of view, is that resources are limited. That is absolutely the case. If we are going to start ploughing money into early intervention, particularly into early years, which ought to pay dividends in the long term, there have to be either savings or at least cost limitations elsewhere. The Government can't do everything, so what should the priority be? Should the money be spent on making sure that all families can get to the end of the adversarial process, or should it be redirected to early support and early intervention, even in the early years? Can I go to Imogen, please?

**Imogen Jolley:** I don't think parents want to go down an adversarial route. I think that that is absolutely the last resort for them. There could be a significant cost saving in local authorities being accountable, following the legislation as it stands and by delivering the requirements early enough to prevent that from happening, but on the training and support for local authority officers, who sometimes don't understand, I genuinely think that a lot of officers learn the law from other officers, not from the law. That creates a real issue because it is the law according to a particular local authority. If we can get to that, and get people trained properly, we will ultimately avoid the cost of those tribunal cases and adversarial things that have to happen when things fall down.

- Q33 **Kim Johnson:** Good morning, panel. We have heard some of the failings of this Green Paper, particularly in terms of individual groups. In the 1970s, disproportionately higher numbers of black children were identified as "educationally sub-normal". At the moment, we are seeing higher levels of black pupils being diagnosed with SEND. I want to know whether you see any parallels. What does this paper need to do to make sure that the needs of disadvantaged and vulnerable children are met? I'll start with Imogen, please.

**Imogen Jolley:** I am not close enough to the figures in terms of diagnosis of black children, but I would say that the legislation is there. We can go back to the point that Ali has made quite eloquently several times. The legislation and regulations provide for individualised support as a child, or any individual, presents. It is about us being able to identify ways in which to enable and to ensure that all children are identified as



early as possible, and in the right way. An additional focus on identifying those particular groups of vulnerable children who are perhaps slipping through the net at the moment for that early intervention, and bringing them into the system sooner, is essential.

Q34 **Kim Johnson:** Thanks, Imogen. Ali, do you have anything to add?

**Ali Fiddy:** I guess the only thing I would add is that the Green Paper fails to address any of the issues around behaviour, exclusion and attendance. Actually, they are intrinsically linked with SEND. We know that a disproportionate number of black children and young people are excluded. What seems to happen is that the DFE continues to develop policy in these areas that will have a big impact on children with SEND, but there is no join-up within the Department. In the last few months, we have seen consultations around school attendance, consultations around behavioural exclusion. Then the SEND review comes out. It needs to join up if you're going to tackle some of the problems around groups that are particularly disadvantaged.

Q35 **Kim Johnson:** Thanks, Ali. Does anyone have anything to add?

**Mrunal Sisodia:** Can I come in and say that this goes back to what I said earlier around the incentives for school leaders and the mood music around attainment, attendance and behaviour? SEND children are disproportionately impacted by the tone that is set. I spoke a little earlier about intersectionality when it comes to looked-after children and free school meals, and you can make exactly the same comment around ethnic minorities as a disadvantaged group in that as well.

Q36 **Kim Johnson:** Thanks, Mrunal. Mike, did you want to come in?

**Michael King:** Only to agree with my colleague's points. There is a point I would add, and it goes to the question of people who are currently excluded from their rights of redress because they find it difficult to navigate the system. One of the challenges in my job is that we can only deal with the complaints that come to us. Inevitably, the people who come to us are the ones who have either been given some help to find us, or they are the most persistent people who know how to navigate the system. One of the real concerns is that there are lots of people who, for a variety of reasons of different disadvantage, can't get through to us. In most of Europe and the Commonwealth, an office such as mine would have a power called "own-initiative investigation." That means, where you feel that there are probably people whose voices are not being heard and who are being excluded from the system, or who are unlikely to make a complaint to you, an office like mine would be able to investigate the kind of concerns you have raised. We would be able to have our own initiative to look at the ways in which local authorities were dealing with groups through the special educational needs system. Currently, the ombudsman in Northern Ireland has that power and the ombudsman in Wales has that power, but we don't. Again, there is a tried and tested mechanism from elsewhere in the world that means you don't have to wait for complaints, but can anticipate problems and investigate what is going on behind the



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scenes. That is a power that we have called for before in relation to adult care, and it might well be one that is appropriate here.

**Chair:** Miriam, you wanted to come back?

Q37 **Miriam Cates:** Sorry, I missed a question earlier. One of the proposals in the SEND review is to provide a predetermined list of settings for pupils' complex needs—schools that can provide for that particular need. Do you think that will impact parental choice in a positive way? Is it fair on schools? I am wondering how it would affect areas where there are limited placements—I am thinking of rural areas, where there is not the same density of educational provision. Would anybody like to go first?

**Michael King:** I am happy to comment on that. We already look at complaints from people who come to us from very large, sparsely populated areas of the country, where the range of provision is perhaps relatively limited. In those cases, the local authority's vision of what provision is available and what provision they are willing to consider is actually far too constrained—we already see those problems. Any step that codified that approach is potentially hugely problematic. One of the tenets we give to local authorities, and a key principle when you are considering somebody's needs, is that you must consider the specific needs of that individual. You cannot just pigeonhole them in a particular category and say, "Well this is all that is available locally." Any step that reduced the local authority's discretion to think about the specific needs of an individual, and tied people to a very limited list of local provision, would potentially be a very retrograde step, I think.

**Mrunal Sisodia:** Can I come in on that as well? This area of the Green Paper has created the most concern among parents. Very simply, they are not convinced that the right school for their child will be on that list. What then happens if the right school is not on that list? Where do they go and what rights of redress do they have—will they have to go to tribunal? There is a little bit of softening from them if the list is created in co-production, even with local community groups such as parent carer forums or local charities, and there is a little bit of softening if the list is created in a bespoke way for that individual child, in consultation and co-production with that family. But the overarching message we are getting from families is that there is huge concern around this proposal.

Q38 **Chair:** I want to end with a couple of questions. Let us go back to what my colleague, Tom Hunt, said about the Ofsted inspection issue. As you know, in our report, we said that Ofsted should be toughened up. Ofsted suggests that "the effectiveness of SEND provision features prominently" in the 2019 education inspection framework. "The EIF makes it clear that schools should have an inclusive culture. Schools should identify and help pupils who have additional needs or have barriers to learning, drawing on specialist support where necessary, to make sure they have a positive experience of learning and achieve the best possible outcomes". Inspectors "take a rounded view of the quality of education that a school provides to...its pupils, including those with SEND, from the start of schooling to the point when pupils leave." Are you saying that this is



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words, in essence, and that it is not happening in practice? Just before you answer, my second point—if you could answer both together—is that in our 2019 report, we suggested that the Local Government and Social Care Ombudsman should have increased powers to investigate what goes on at the school gates, so that parents have more redress, and also that parents should be offered a helpline to contact the DFE if they felt that local councils weren't doing their job properly. What do you think about those things—both Ofsted and increasing the powers of the local ombudsman?

**Ali Fiddy:** One of the things I would absolutely like Ofsted to do is look at whether the law is being complied with. It is not just about the experience of the support that a child or young person is receiving. Are they getting what they are legally entitled to? Is their education, health and care plan being translated into actual provision? Is that what is being delivered? That is a really important element. IPSEA and I have on many occasions publicly supported the idea that the Local Government and Social Care Ombudsman should have extended powers to look at schools. That is absolutely necessary if there is going to be a focus on strengthening SEN support. However, we also need to make sure that the provision in EHC plans is being delivered on the ground.

**Imogen Jolley:** I don't think I have anything to add to what Ali has said. I agree entirely with what she has said on both fronts.

Q39 **Chair:** Do you think that what Ofsted has said is not happening in practice? Is that what you are saying?

**Imogen Jolley:** Yes, I think that is right. I would welcome extended powers for it to really get under the skin of what is going on with SEN in schools, because there are some significant deficiencies that we see and that are reported to us.

**Michael King:** I don't have any specific comments on Ofsted's work, other than to say that we share every decision we make about children's services with Ofsted to help inform its work. In terms of extending our powers, as I have said a few times this sitting, we absolutely think that that would be a simple and cost-effective way of increasing transparency and accountability within the system—of us being able to look at SEN support delivery in schools, and at things like off-rolling and exclusions, as well as parental concerns in schools more generally. The Northern Ireland ombudsman already does that, and it does so effectively. We trialled that as a pilot jurisdiction over 10 years ago, and it was successful. That would be a very simple thing to do.

Unfortunately, since your recommendations in 2019, we have only had two meetings with the Department about those proposals—both at our request—and there has been no progress at all in that direction. Certainly, we would be very willing to engage with the Department to talk about how we could extend our work to try to support greater accountability in the system—

**Chair:** Thank you. Mrunal, in a nutshell please.



**Mrunal Sisodia:** The 2019 education inspection framework was better than the old one, but it does not go far enough. Very simply, as I have already said, no school can be “good” or “outstanding” unless it is good or outstanding at SEND. We would like to put that forward very strongly. The other thing we hear a lot is that Ofsted itself tells us that it does not hear the stories from SEND when it is inspecting schools; it hears them when doing local area inspections. Clearly, we must ensure that parental voices are heard more loudly when Ofsted is inspecting schools.

Q40 **Chair:** All of you: marks out of 10 for the Green Paper? It is quite important, I think.

**Imogen Jolley:** I would give it a fairly low mark—two to three—in terms of things that it needs to address. A couple of things were welcome, such as standardisation of the actual EHCP format and additional training for SENCOs. Other than that, I think what will happen is the kind of fettering of choice and discretion for parents. Support that is not based on individualised needs, but on general standards or on what is available would be, as Ali said, a retrograde step.

**Michael King:** Mine would be a relatively low mark because—

**Chair:** What mark out of 10?

**Michael King:** Four, mainly because I think there are so many unanswered questions in relation to what some of these proposals would mean in practice. There are some significant areas that are just completely missing.

**Chair:** Thank you.

**Mrunal Sisodia:** I would echo Michael and go for a four or five, simply because there are so many unanswered questions at the moment.

**Ali Fiddy:** I would be pushing it to give it any more than a two, to be honest. We are really concerned about the fact that the focus is on trying to reduce routes of redress, rather than actually tackling unlawful decision making. I want to pick up on the point that Mrunal was making earlier about the national standards being welcomed. I can understand that parents would like it to be made clearer what their child might be entitled to, but I think that if they understood that the reality of these national standards is an absolute dilution of the current legal rights of entitlement around assessment, placement, provision and review, they would have a different view.

**Chair:** Thank you, all of you. It is really appreciated. Thank you for your time and expertise, and for the help you gave to our previous Committee inquiry on this. We are going to keep at it. Order.