HOUSE OF LORDS

Children and Families Act 2014 Committee

Corrected oral evidence: Children and Families Act 2014

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Members present: Baroness Tyler of Enfield (The Chair); Lord Bach; Baroness Bertin; Baroness Blower; Lord Brownlow of Shurlock Row; Lord Cruddas; Baroness Lawrence of Clarendon; Baroness Massey of Darwen; Lord Mawson; Baroness Prashar; Lord Storey; Baroness Wyld.

Evidence Session No. 12 Heard in Public Questions 113 - 122

Witnesses

I: Imogen Jolley, Director of Public Law, Simpson Millar Solicitors; Stephen Kingdom, Campaign Manager, Disabled Children's Partnership; Dame Christine Lenehan, Council for Disabled Children, and Director of the National Children's Bureau.

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Examination of witnesses

Imogen Jolley, Stephen Kingdom and Dame Christine Lenehan.

Q113 **The Chair:** Good afternoon, everyone. This is the Select Committee on the Children and Families Act 2014. I welcome everyone, particularly our witnesses, and note that this session is being broadcast online and a transcript will be taken.

I will kick off by asking our witnesses to briefly introduce themselves. Dame Christine.

Dame Christine Lenehan: Thank you, Claire—Baroness Tyler. I have known Claire for a long time.

The Chair: We have known each other for a long time.

Dame Christine Lenehan: I am director of the Council for Disabled Children. I qualified as a social worker in 1980 and since then my professional career has been about the lives of disabled children and their families. My organisation, the Council for Disabled Children, has a contract with the DfE as a strategic reform partner, and we have worked with government as a critical friend on the development of policy and practice in this area for about 25 years. We were involved in the run-up to the 2014 Act, the Green Paper and the legislation that preceded it, and the implementation of the 2014 Act, and we are now involved in the SEND Green Paper development and review.

Stephen Kingdom: I am the campaign manager of the Disabled Children's Partnership, which is a coalition of now more than 100 organisations that campaign for better support, particularly in health and social care for disabled children and their families. In my previous career, I was a civil servant in the Department for Education, including being the deputy director heading up the special educational needs and disability part of the department, from the Green Paper through to the beginning of the implementation of the 2014 Act.

Imogen Jolley: I am director of public law at Simpson Millar Solicitors. We have one of the largest teams dealing with legal aid work, covering education, social care, human rights and discrimination nationally, with a variety of offices in different places across the country.

Q114 **The Chair:** Thank you very much. This afternoon we are focusing very much on the SEND reforms. This is an opportunity for the committee to hear from experts in the field about the review, its findings and next steps. As a committee, we intend to send a letter

quite soon in response to the consultation, well in advance of the publication of our report, which will not be until November, and that is why we are having this very important session today.

The first question is a very general one, and a very obvious one in some ways. I am interested in your views on whether the 2014 reforms—the Act that we are scrutinising—were the right ones. Were they feasible and achievable? What main barriers, problems or issues have arisen since then that meant that there was a need for a new review of the SEND system not that long after the Act?

Stephen Kingdom: I think they were the right reforms and that the legislation is still broadly seen as the correct framework. There are issues with how well they bring in wider services, particularly health and social care, but more generally I think they are seen as the right framework. We hear again and again from parents that it is not really about needing reform now, it is about the current legislation needing to be enacted as it was written. In those terms, I think they were the right reforms.

Were they feasible? That is a difficult question. I would say yes. They have struggled in part because of the wider context of austerity in which the legislation landed, the hollowing out of local authority budgets, and wider reforms, particularly to schools and the health system. There is no doubt that they have not worked as they were supposed to; there is no doubt that the system is not delivering for children, young people and families as it should.

It is unclear to me what the counterfactual would be if the reforms had not happened. I fear it would be even worse, so I think they were the right reforms. I think they have made some difference, but they have not delivered what they promised.

The Chair: So probably they were the right reforms, the implementation was perhaps not as it might have been, and new things have come along to make life more complicated.

Stephen Kingdom: Yes. The implementation happened in the context of those things happening simultaneously.

Dame Christine Lenehan: I agree with Stephen. We worked closely with a range of people as the reforms were being developed. At their heart, the reforms were simple. The answer to the question that has been asked for ever—"How do you deliver a multiagency plan for children?"—is that you need multiagency services that are joined up, meet needs, are effective and everybody knows what is going on. It was trying to get to that on a whole pile of evidence.

A number of things were challenging. Implementation became very challenging very quickly, partly because government chose strange markers of success. The Act was a broad Act with a real challenge at its heart, which still exists, which is how you change culture by legislation. Legislation is a bit of hammer blow. How do you change culture with it? Section 19 of the Children and Families Act 2014 was the bit that was designed to change culture and to put co-production at the heart of what we were trying to achieve. It was designed for multiagency accountability and around voices. It was a very important part of a very big piece of legislation.

As the legislation got towards implementation, the panic became about the conversion of statements to education, health and care plans. All local authorities were told was about the markers of success, and that became the marker of success for the reforms at the same time as the health system was following the Lansley reforms and not quite sure what foot it was on.

It was a combination of things, as Stephen said, and a sort of collapse in early intervention services in local authorities made the ambitions of the reforms, which were the right ones, almost look like a pipe dream. That is where we are back to now, trying to work out with the Green Paper how you land those reforms. The two key things that drive change are the voices of children and families and how they are heard or not heard—we listened to Blue's story before we came here today—and the financial pressures on the system, if we are not careful, becoming the driver of the system rather than the outcomes that children and families need.

The Chair: That is very helpful. You said a bit earlier that you thought that the measures of success that the Government drew up were not the right ones or were skewing it, or something like that. Could you just explain that, please?

Dame Christine Lenehan: The implementation of the Children and Families Act had quite a broad base. There was meant to be a very strong local offer to meet the needs of children coming into the system. One of the challenges of a very complex system for families of children with SEND is that it is very hard to find out where support is, and often they do not find the right support until it is too late, so it was meant to start with a very broad-based local offer.

Then, as children's needs were identified, it was meant to have a series of graduated approaches, for example the change from what had been School Action and School Action Plus to SEND support, with the goal that the vast majority of families would have their needs met at that early stage and would not need to enter the

statutory system that was education, health and care plans. The idea was that those plans would be needed only by children who needed to secure a very high level of multiagency support.

Most children's needs should and still could be addressed by good early intervention: good quality teaching, differentiation and good conversations between parents and schools and everyone else. The reforms were also meant to bring in health and care at the time. There was a foundation layer that was very important, but the implementation of the reforms came just as the local authority financial crisis seemed to bite and as things started to change. As I said, the marker became, "How many statements have you converted?"

All that the public, parents and most professionals heard about for the first two years at least after the reforms was EHC plans—all that early stuff about them not really needing it. I get into terrible trouble with parents when I say things like that, but it was not that we did not want families to have support. For me, it was working so often with families who had gone through years and years of arguments and challenges to get what they needed and finding ways early on, but those messages disappeared in a system that became about EHC plans. It is not surprising, on the evidence, that since then EHC plans have gone through the roof.

The Chair: Imogen, could I have your views, please?

Imogen Jolley: I agree in the main with Christine and Stephen. I think the 2014 reforms were a move in the right direction, particularly in the joined-up thinking approach between education, health and social care and the extension of the plans from birth to 25, bringing in the cohort pre-school and the cohort moving towards employability. All those things were really positive, but we have seen that the implementation of what was envisaged in the Act has been fairly woeful, I think partly because of the lack of accountability on certain sectors to comply with the legislation and to work the system in the way the legislation has designed it. That has caused problems. There has been a lack of engagement with local authorities and schools in understanding what the legislation required of them and how they need to operate it.

A small example: many local authorities have devised their own methods for how children can access SEND support and how they will deal with approaches from parents in respect of particular kinds of support so that you have these little localised pockets of practice going on, which is not what the legislation says. That is a bit of a concern.

My concern about a wholescale review of some of the implementation suggestions in the Green Paper, when I read that in the main, is that it looks to me as if the argument is being made that there is too much of everything, that there are too many tribunals and too many EHCPs, and the overwhelming sense is that all that needs to be reduced. That is the wrong focus. The focus ought to be back on the legislation and how it is implemented, and how local authorities and schools can be held properly accountable for what they are required to do under that legislation to try to make sure that everything is properly engaged.

The Chair: Thank you very much. That is a very helpful way of setting the context for the rest of the discussions this afternoon.

Q115 **Baroness Lawrence of Clarendon:** Good afternoon. Part of my question has been answered, because we have been talking about education, health and social care. Following on from that, what do you propose needs to improve with SEND? What improvement in provision needs to happen for children without an education and health plan? Do the Government have the correct lever to enable this to happen?

Stephen Kingdom: There is a lot in that question. It is very important to look at the system as a continuum—Christine made the point about having better support for all disabled children with special educational needs, better support in mainstream education and a more inclusive system, through to children who have education, health and care plans. I agree with what Imogen said about focusing back on what the legislation says, but it is about focusing back on children's needs being met.

If children's needs can be met in the mainstream without an education, health and care plan, all well and good; that is as it should be. But we get to a situation where we have this horrible narrative about the golden ticket of an education, health and care plan. That is quite insulting to parents, because parents look to get education, health and care plans because it is the only way they see that they can get the support for their child. If the system was providing that support for all children, you could well see fewer education, health and care plans, but it would be because that naturally came out from the system working as it should, rather than artificial methods to constrain education, health and care plans. That is what I worry about, as Imogen said, when reading some bits of the Green Paper: that it is about artificially bearing down on numbers of plans and tribunals, and so on.

Can schools provide that right support, and can that happen? Yes, it must be able to happen. Part of it is about how accountability

works across the whole system, including how accountability works in schools. Are they properly held to account for how inclusive they are and whether they provide support for all the children in their school? I had a meeting with some parents and Minister Will Quince last week, and I was quite encouraged to hear him say, although he could not say how to do it, that that includes the children who ought to be in your school who have special educational needs but are not. We know that when parents visit some schools, they are quietly told, "We don't think we are the right school to meet your child's needs". They are uninclusive in that way. Then they see themselves getting benefits out of that in the way their accountability system judges how they are doing.

Tackling those issues so that all schools are genuinely inclusive and that the accountability system, behaviour policies, curriculum and assessment recognise that is very important if we are to drive a very inclusive school system. Although there are some very helpful hooks in the Green Paper about the inclusivity of school systems, there is not a lot of detail about how that will be delivered in reality.

Dame Christine Lenehan: I think Stephen is right. We are still at the point where education, health and care plans are not always education, health and care plans; they are education plans. We still have not come to the point—apart from in honourable exceptions, which there always are—where health and care are fully at the table. Interestingly, when the Government ran a pilot on tribunals to look at whether they could rule on education, health and care, the expectation at the start was that this would be about bringing health to account. But most of the disputes that hit a tribunal are in a local authority. They are between its SEN education team and its social care teams. For me, that smacks of not having a shared vision at a local level for how you want children to achieve and how children should achieve, and whatever.

We also still have a long way to go with health. The advent of the integrated children's boards and the statutory guidance for children will help. The pandemic put us a long way behind. The average waiting lists for children's assessments are very long. The average waiting list in most authorities now for an autism assessment is about three and a half years. That is a long time in a child's life in school. That health issue and the levers and challenges about health are key. It is also key that when we talk about implementing this, it is not just local authorities but local authorities and their CCG partners—or ICB partners, as they will be—the MATs and everyone else.

We lost out on SEN support when the Children and Families Act came in. I do not think it is as well developed as it needs to be. In conversations lately, I have been saying that we almost need to go back to the previous graduated approach to engagement—how we engage, and on what level—and to early recognition. Stephen is right that until that is strong and families see that their children's needs are being met, they will say, "We're not confident about this". They will seize on the thing that will make them confident, and that tends to be legislation.

Some of our biggest concerns on all this are about how we can make the different levels of accountability work across that whole system and the levers in the system so that they get pulled correctly. I do not think we know that yet.

Imogen Jolley: Again, I agree with everything that has been said. Clearly, it is important that special needs are supported at all different levels in schools with the right level of provision, and much of that is related to training in schools and local authorities. I know there is some mention in the Green Paper of training and special standards for SENCOs, but equally it should be about staff working with young people every day in schools—teachers and particularly teaching assistants, who have the responsibility for dealing with a lot of young people with additional needs, and taking on board, for example, some of the therapy techniques that are required. The TAs are the ones delivering, so wider training for them is essential.

Also essential is clearing up misunderstandings and misinformation in local authorities, schools and local authority officers around what should be delivered for young people, and what the legislation says about what should be delivered for young people, and where they need to go to be pulling in some of that other support, as Christine mentioned, particularly in relation the health and social care issues.

The culture is significant. I know that a lot of parents come up against the quiet words thing, as Stephen said: "I don't think this school is suitable for your child". In my view, quite a lot of that stems from the focus on the assessment put on schools in the Ofsted framework. A lot of it is around attainment, behaviour and attendance. Those things challenge young people with special needs if the right provision is not in play. Quite often, they get left behind on those metrics, and schools must be held to account to make sure that they are properly inclusive and are engaging everything they need to engage in the local community to make sure that children with all levels of SEN are supported.

Q116 **Lord Mawson:** I spend a lot of my life worrying away about how

you get different bits of government to work together. Of course, when you get into the health and care system in local authorities, they all speak English, but they mean completely different things by it, in my experience. The devil is in the detail of all this. They have different financial incentives, and it comes down to pensions and a range of other stuff. The aspiration for people to work together and integration is absolutely correct, in my view, but the devil in these details really matters. In a modern world, it is not about structures and processes; it is fundamentally about people and relationships over time so that trust is built, so that when parents and children appear in the system there is a sense of a joined-up response and people are dealt with properly.

When this Bill came into being, what sort of training do you think happened, if any, in health and local authorities? Were there any Pathfinder projects? Was there any attempt to get under the carpet of the detail of these very important matters to make the thing work? What went on?

Stephen Kingdom: There were Pathfinders from the Green Paper onwards, which modelled new approaches and tried to bring that together. A big issue was that there were then big reforms, so local authorities had massive staff turnover as they managed both a reduction in their responsibilities generally because of academisation and increasingly restricted budgets, and there was a major reorganisation in the health service. I agree with you entirely. A lot of this is about relationships and those relationships that might have been built up disappeared.

Imogen Jolley: It ends up in a strange place where the people who have the most knowledge are parents. It is parents who often have to take on a system that is not educated enough, and professionals find that very threatening because the parents often know the law much better than they do. That is often where we have seen conflict. I think Stephen is right: we have been training social workers in the 2014 legislation since it came in, and it is quite desperate, because we think we can move on—we have done this bit, now we do that bit, now we do that bit—and when you train you are for ever going back to the beginning because the churn is just so high.

You will know that one of the recommendations from the independent review of children and social care is a Law Commission review of legislation for disabled children. That is almost the baseline that we are at, because we are working with professionals who do not understand the legal basis on which they are intervening. You get elements of the system that are relatively well trained and stay put. SEND Information, Advice and Support

Service is pretty good and pretty well trained. Local authority SEN teams, the people who had to put the EHC plans together, received no formal training.

Another issue is the interagency stuff: Stephen is right that, as it came in, health was in change, as it is now, but that is why for example the information and data-sharing agreement under the health Bill—the 12-month piece of work that looks at data-sharing and common identifiers in children—although it sounds technical, is very important: because at the heart of that challenging conversation is getting everyone in a room and saying, "Who are the children? How many are there? What are their needs, and what is our joint responsibility as an organisation to deliver?"

Lord Mawson: The problem with that, and many of us are conscious of it—it happens in other parts of government—is that although politicians on all sides promise that lessons will be learned, in reality no lessons are being learned and there is no memory in the system. There are lots of research documents that no one ever reads, and fundamentally you have a seriously dysfunctional state infrastructure that misses helping the very children and families it absolutely should be set up to help. Is that not a very serious problem?

Dame Christine Lenehan: It is serious. The other side, though, and one of the joys of my life, apart from spending a lot of it looking at what has gone wrong with the system, is getting the opportunity to look at what is right with the system. There are areas that make it work, there are systems that make it work, and there are children who get very good services. Where I think you are right is that those children and services work in spite of the system sometimes, not because of it.

Imogen Jolley: Part of the problem that we see is to do with the ring-fencing of budgets between the different services. Education will consistently say, "That is purely a health need", and social care will say, "No, this is down to education". Everybody has their arms around their own budget and they are not thinking about the wider picture, which is the individual child who has myriad needs that need to be met in a different way, but everything needs to be joined up and linked. While we still have that system of people protecting their budgets, I am not sure that co-operation and collaboration can be as effective as possible.

Baroness Lawrence of Clarendon: I want to follow up on the point about children without the education, health and care plans. What improvement needs to happen there?

Dame Christine Lenehan: The best thing we have on that is the development in some areas of what is called "ordinarily available provision". You often see it written down now. Take somewhere like Portsmouth, which has pioneered it in schools, or Manchester, which has pioneered it in early years. It is about very early conversations with families about a child's needs and how they are met, and a very clear contract as children enter settings, whether those are early years settings, school settings or whatever, about how needs might be met. If you take the idea of reasonable adjustments from the Equality Act, which are very well founded, and take it in, you can see a system where children's needs are identified early.

Often fairly simple things are put in place. If children need to read in a certain way, if they need to be able to write in a certain way, if their communications are different or need to be looked at, if they need help in the classroom, or often, for some children, help at break times and lunchtimes, when school can be a very frightening place, those things early on can make a real difference, because they develop transparency in the system. Families know what to expect, they know it will happen and they will be confident. Schools know what to expect and where to find resources on what to do. We have taken quite a lot of that around the country, looking at how that works and how it brings people together.

On top of that, you need a layer that takes children up. At the moment, as a child's needs are identified, somebody says, "We don’t know how to deal with this", does not take the support that they need, which is often there in the system, and bounces the child up to the next level and the next level. You are trying all the time to reinforce the levels.

In Lincolnshire, they have developed a programme called Ask SALL. A SENCO in a school will ring up and say, "I am the only SENDCO in this school. People are saying that this child's behaviour is very difficult and he should go out of school, but I’m not sure”. You ring in and bring the expertise in, and somebody says, “Let’s talk this through for this child. Let’s work out what it is”, and then we work out that the child is struggling at lunchtimes or is playing up in class because he cannot see or cannot hear or because something has happened. When I looked at it, the child had had a recent bereavement and was really struggling to deal with it, but that had not been picked up. What had been picked up is, “This child is playing up in class”.

When you get those systems working, you get very sophisticated systems, often built on little resource. They are not expensive

systems, but they are a way of stopping the system bouncing, to say, "What does this child need? How do we keep them in? What do we do?" If you think about children who have specific learning difficulties such as dyslexia, for example, it is not that we do not know how to work with them; we do. It is about the process of embedding the ways of asking for support and help in a school and being clear with parents about what is happening, rather than parents feeling that their child has been left with no support and, at that point, things escalate.

Q117 **Baroness Massey of Darwen:** I want to pursue the issue of accountability, which has been talked about a lot. We have all heard over many years how important joined-up thinking is, including across government departments, and what has been raised today is how you change the culture, how you read the implementation and make things happen. Is there sufficient accountability in the SEN system, and what would better accountability of SEN decision-making look like in practice? Do the Green Paper proposals help to achieve this? Do you have any examples of very good practice in this joined-up thinking and accountability across the board?

Imogen Jolley: The issue of accountability is very significant for me. I see the Green Paper as in some senses eroding some of the rights that parents have, particularly with regard to the national banding situation and the listed schools situation; I am very concerned about that. In terms of looking at where accountability could be strengthened, the Local Government and Social Care Ombudsman, for example, does some great work looking at local authority issues that arise and is making some very good decisions about that. A request for that service to look at what is going on in schools has not been taken up as part of the Green Paper, so that would be one area of strengthening.

I have already mentioned Ofsted putting greater emphasis on inclusion and very good SEN support in schools being at the forefront of how Ofsted grades schools, and rather than looking at the Holy Grail of behaviour, attendance and attainment, focusing on what the school is doing internally to support those children.

Accountability has to be set in the context of what I perceive to be a government shift towards eroding the ability to hold public bodies to account. I know there are some reviews going on on things like judicial review, which is one major tool that individuals have, and on human rights challenges and the gradual erosion of those. The legal aid system, particularly in relation to education, is currently not in a great place when it comes to parents' access to getting some support if they need help.

It is not all about legal challenges either. We were asked about early intervention and good practice. There is some reasonable mention in the Green Paper of having independent, neutral supporters for parents at an early stage to help them through the process. Over the years I have seen that where there are very good parent partnership services, as they were called—SENDIASS services now—if you truly have a well-trained, independent and neutral person to engage with the family and all the services, you can get some great outcomes at an early stage without the need to progress to the adversarial and tribunal routes.

Another proposed change is mandatory mediation. I know that mediation is not particularly taken up, certainly by parents who come to us, with a view to progressing things through a more legal route. I think that is because when parents get to the stage where they are thinking about taking something to a tribunal or a court, they have gone through years and years of going backwards and forwards with the local authority, quite a lot of stress and no real engagement, and they do not want to take up that mediation route because it is the last resort. For me, it would be about putting that independent advocacy service, that support service, right at the start with properly independent, neutral people who can help a parent through the process, whether that is what gets delivered in school at the sort of stage that Christine was talking about or whether that is right through to the EHC process—somebody who really knows and can support those families.

Stephen Kingdom: I agree with Imogen. Inevitably when you talk about accountability, there are two sides to the coin in the sense that accountability and redress very much go together. In a system that involves lots of different agencies and working parts, those redress routes are very complicated for parents. If it is, "I don't have what I need in a plan", or, "I'm not getting a plan", it is the tribunal, but we hear from a lot of parents that they get the plan and what should be in it is not being delivered or the local authority has not met its timescales in developing it. Then it is about the local government ombudsman, but often it is about what is happening in school, and then it is about individual school's complaint procedures, and I have not even come on to local authority complaints procedures with respect to social care or health and CCG complaints procedures.

It is a very complicated system for parents to navigate to get redress and to feel that it is accountable, when the statutory services that should be providing their child with support are failing to provide it and to meet their legal duties and timescales. Going to a tribunal is a very stressful process for a parent, and it is often

very expensive. It is quite difficult to get there, and not all parents will manage to take their case all the way. Despite that, and despite some cases falling by the wayside, 97% of the time parents win, which suggests that there is something fundamentally not working in the system.

What I worry about in the Green Paper is that a lot of the Government's response to that is, "Let's make it harder to get to the tribunal". To take the mediation point that Imogen talked about, mediation can be very powerful, and the statistics on cases that go to mediation are quite encouraging. I think something like 75% find a solution, and that is the basis on which government is saying that mandatory mediation is a good thing, but of course those are the parents who still feel there is some point in going to mediation. If you rolled it out to everyone, notwithstanding the fact that there are real doubts about the capacity of the mediation system to do that, I cannot see how you could keep that rate. If you are looking at mediation, the problem is that just before the tribunal is probably too late. Relationships have broken down too much by then.

What worries me even more in the Green Paper are the unspecified bits in there that say, "If reducing mandatory mediation doesn't reduce the number of tribunals, we'll do other things". Maybe you should do things to make local authorities and their partners do what they are supposed to do, so that parents do not feel they have to go to the tribunal in the first place. Sorry, that is all a bit negative.

Dame Christine Lenehan: I am going to take up Baroness Massey's challenge of finding something good. We are doing a piece of work in some depth with Rochdale. Rochdale is a difficult authority with a difficult past, but it asked us about two years ago to do some work with it, which we have been working through, partly because the health lead in Rochdale is also doing some work across Greater Manchester. We wanted to understand what would happen on a bigger footprint. Rochdale has done a huge amount of cultural work—I think it is the best cultural work I have seen—bringing together a diverse, challenged and divided community and a divided set of professionals into developing a vision for where that local area wants to get to.

Its parent carers and children have been involved at every stage of the way, although not all of them—not all of them are happy, and they never will be—but there is a very strong community basis to what they are doing and what they are trying to do. They brought their schools together under the banner "Raising Rochdale". This is

an authority with challenges, so it is not easy, but I have been very impressed by the fact that they have put their badges and their employers to one side and said, "The most important thing to do in this piece of work is to deliver for Rochdale and the children and families who live there". They have a long way to go, but when people want to work together, they can.

However, there is also something about how that is modelled at government level. I do not think government has a single vision and strategy for this group of children. When government is stronger on that, we can support local areas to be stronger on that, but we see it work. Accountability is very confusing, and it needs more work.

Baroness Massey of Darwen: Thank you, Christine. As someone who comes not very far from Rochdale, I am glad to hear you speaking so highly of it. I think highly of it too in many ways.

The Chair: Christine, it is very helpful for the committee to have concrete examples of where things are working, particularly in challenging circumstances. If you were able to provide us with any more detail on Rochdale, that would be very helpful.

Dame Christine Lenehan: I would be happy to do that.

Q118 **Baroness Wyld:** I want to talk about parental preference. Stephen, you have already touched on this area. I know that we have kind of skirted around it, but if we could delve a bit further, you can see the intention behind it and the upside of trying to get away from the "quiet word" culture, as I think you called it. Do you think there are potentially scenarios that make it difficult for schools to say in good faith to parents, "Your child potentially will not be here for very long, so another option would be better"? That is the first part of my question to all of you.

Secondly, you have already expressed some concerns about the Green Paper and the specifics in it, Stephen, but all your views on the potential changes to parental preference would be very helpful.

Stephen Kingdom: It is clearly right for schools to have honest conversations with parents about whether their child's needs can be met in that institution. What particularly worries me, as I mentioned earlier, is one mainstream school saying, "We are not the mainstream school for your child. Maybe another school is". The vast majority of children should be able to be educated in a mainstream school and there should not be a mainstream school saying, "We can't", unless there is another school with a unit or a particular specialism. In general, I do not think it should be acceptable for a mainstream school to say, "We're not the

mainstream school for your child. Down the road is the school in the area that's good with SEN". But, yes, we need an honest conversation.

In terms of the Green Paper's proposals, we are very worried about the list of schools proposal, which is limiting the access that parents will have to schools. So many parents go to tribunal because the schools that local authorities choose for their children cannot meet their children's needs. A parent I talked to last week talked about mediocrity and that ambitions for this group of children are lower and therefore the school can look after the child, but there is no ambition for that child to achieve academically and otherwise.

Working with local inclusion plans to work through your provision and the investments in more specialist places, all that stuff, are perfectly reasonable in helping parents to make that choice, but limiting that choice by saying, "You have to choose from this list"—is, in many cases, a lack of faith that it will meet parents' needs, because the experience of parents so often is that the schools the local authority wants their child to go to are not the best schools for their child and do not meet their needs.

Baroness Wyld: Just so I am clear, are you placing that in the context of there also being a requirement for more specialist education, if that makes sense? You are saying that everybody should have the right to go mainstream, if possible, but there is still a lack of specialist provision.

Stephen Kingdom: Yes, there probably is. There is an increasing number of children with multiple diagnoses and more complex needs. In some of those cases, specialist provision will be the right thing for them but specialist provision has not grown at the rate it has needed to and which demand is there for, which means that we see, for example, children travelling very long distances in some instances to go to school. That cannot be right. That means more provision so that there can be a range of options locally for parents to choose from, and more options to meet their child's needs must be the right thing.

Dame Christine Lenehan: I have two thoughts. First, there is no doubt that in most areas there is a magnet school, as they get called. Magnet schools work because they are good for children with SEN and because parents talk to one another and say, "My child has needs like yours. Don't go there, go here". You visit magnet schools and they are often very good schools, which then say, "We really like having these kids. They're a valued part of our school community. It's a pity that Ofsted doesn't reward us".

It goes back to what Imogen said about making sure that Ofsted inspections reward attainment and inclusion. I do not think that they are opposed; you can get very good highly attaining inclusive schools, and no school should ever be outstanding if it cannot meet the needs of children with SEND. We need to look at how we reward schools effectively for being good at it. Interestingly, our work with MATs about five years ago as part of Edward Timpson's exclusions review looked at the difference. I do not know how you can legislate for moral compass, to be honest, but some schools had it and some schools did not. That is what made the difference.

I have a very mixed view about the tailored list of schools. One of my particular interests, which I have had for a long time—I am doing a big piece of work on it at the moment—is children who live in residential special schools. They are a very small number of our population, about 6,000 children at the moment, but I have been looking at the case of a 10 year-old who went to school 236 miles away from home. If I had my way, if I was Prime Minister—maybe not; you know what I mean—no child would ever go more than 50 miles away from home. I think you deprive children of family life. For me, the tailored list of schools is not about depriving parents; it is partly about culture, co-production, how this comes about and what you do, but it is also about saying, "Why doesn't this area have provision for this group of children?"

If you take the group of children who are least lobbied about—a lot of children with SEN have very good advocates in parents—it is children who have social, emotional and mental health needs. These are often children from very troubled families where attachment is massive. Yet, again and again, I see local areas with very poor provision for SEMH. I would far rather we looked at a tailored list, but one that is built on a real understanding of how you meet the needs of a community rather than arguing about distance or anything else. For me, it is a more complicated argument than it has been made out to be so far.

Imogen Jolley: The idea of having a tailored list fits in with the rhetoric about the national standards and national banding, narrowing everything down to a generic one size fits all. That is my real concern, because where we see pockets of local authorities perhaps drawing up lists of conditions that fit in certain banding structures, we always end up seeing parents who are upset that their child is being pigeonholed and that the individualised nature of their needs is not being properly considered.

It is similar to the thing about having a list of schools. It is just an extension of that. It narrows down the opportunities for parents,

particularly in the current situation where we do not have enough different types of support, whether mainstream or right through to residential special settings. There are not the number of settings in each area to allow children to get the right level of individualised support. Very few parents I talk to who send their 10 year-old child 230 miles across the country want to do that, but they are doing it because they feel that that is the best setting to meet their child's needs—only setting to meet their child's needs, because there is nothing locally. Being restricted on that will be a retrograde step. It might lead to more appeals, because parents will not want their children to be pigeonholed in that way. They will want to make sure that individualised needs are properly focused on.

Baroness Wyld: That is very clear, thank you.

Q119 **Lord Mawson:** I thought that was an interesting reflection. What would Government need to do to stimulate more of a market so that there is more choice out there? We do learn things from the market; it has things to show us. How do you create more variety of choices?

Dame Christine Lenehan: I think the current market for children's placement is out of control rather than anything else. I do not think that the Government have a clear enough position on sufficiency and quality in the market. Any market can run, but you have to understand sufficiency and quality. At the moment, we do not have those things. We need a national strategy on commissioning placements, particularly high-end expensive ones. When I did my review of this four or five years ago—I was reading it again today—at that stage we were spending £500 million in that market, and that was just on residential special schools.

If you look at that amount of money in the system, what you want is quality and choice and you want to be clear about sufficiency. You want to be able to say to parents, "You don't have to go 200 miles for a school. We have a market that means that within a radius of 50 miles"—or whatever it is—"there is a school that will meet your child's very specific communication needs, very specific behaviour needs or very specific support needs". You can start to do that, but only if you know as a Government what the picture is nationally. What does it look like? At the moment, we have a problem with very little placement planning. One of the things I will send you, Baroness Tyler, if it is helpful, is the latest prevalence data.

The Chair: Yes, please.

Dame Christine Lenehan: That shows the changing nature of this group of children and what is going on. That has come from some of the research that we have been doing. If you are at a local level, you should at this stage be starting to think, as you would be in any market, "What is out there? Do we have what is needed? What is changing? What do we need to develop? What sort of service spec will it be? What sort of costs will there be?" At the moment, we do not operate in that framing. That is the challenge that I wish we would rise to.

Q120 **Baroness Bertin:** My question is about funding, which is a big issue. What are your views on the proposals on a banding tariff? Do you think it is a good thing, or will it complicate the system? Some people have thought that perhaps it could lead to a rationing of funding.

Stephen Kingdom: We are concerned about it. It is the point Imogen made a moment ago: how can a national system be responsive enough to meet the individual needs of individual children? Will we get a system that says, "You have this diagnosis, so you fit in that band", and will that give a rounded view of the provision that the child needs? We are worried about shoehorning real children into artificial categories to fit bands. We are worried that the aim will be just to save money rather than to improve provision.

Dame Christine Lenehan: I have a number of views on this. It is not straightforward. For example, under the system as it works at the moment, as you know it is £4,000 per pupil, and up to £6,000 in a school, to meet additional needs. We have no idea how that money is spent. Unlike with the pupil premium, for example, where you can track that money, there is no tracking and no budget line, so we do not know how that is spent. At a very basic level, I do not know what that buys, so I do not know what to expect out of it. The Public Accounts Committee and all sorts of people have been very clear that we ought to understand whether we are getting value for money with the money we are putting into the system. That is not about children's rights or anything else; it is about a huge amount of money going into a system where, quite frankly, the outcomes are not good enough.

As you go up the system and look at more complex things, it becomes challenging, as Stephen said. When I looked at schools, at its worst I went into a region that had decided it was going to take this on. All right, very good. It had decided costs per groups of children and put them into lots, so there was literally a procurement site that said, "Lot 1 is a 12 year-old with autism. Who will offer us £70,000 for this placement?" I had to say to

them, “D’you know what, I think you’ve got this the wrong way around?” I could see what they were trying to do, which was to control costs and to get things right, but they had turned children into lots. Do not worry; we stopped it.

On the other hand, I have just been looking at a system at the expensive end where there are no cost controls at all. I went to see a school, which is a relatively good school in some ways, and said, “How much do you charge local authorities for your school?” He wrote a figure on a bit of paper on the desk in front of me. I think it was £96,000. I said, “What do local authorities get for that?”, and he said, “Well, they take it or leave it”. I think that behaviour is atrocious, quite frankly. I would be totally against the banding of children into worthwhile lots—X disability equals X amount, or whatever. On the other side, it is not against the fundamental rights of children and families to apply an approach that says, “What are we getting for our money?” The process of getting there is incredibly complex, but it is worth looking at.

Baroness Bertin: We are looking at post-legislative scrutiny, so is there anything we could recommend in our report that you think could tweak the legislation in order to achieve or somehow step a bit closer to what you are describing?

Dame Christine Lenehan: Moving it away from the narrow language of "bands" and "tariffs" would probably be helpful, because I think that does exactly what Stephen said. Is a diagnosis of autism worth this much? What if you add ADHD? What if you could not? That language does not help, and I think it instinctively turns people against it. Approaches that understand value for money in the system and a consistent approach to how money is used in the system would make sense to me. Interestingly, if you work with the system in local authorities for some of the more expensive placements—the most expensive placement in the country costs about £350,000 a year, last time I looked—local authorities sign a cheque and hand it over, and that cheque goes on for ever.

When you say to people, “If this was your money, if you were buying an expensive holiday, car or education for your child, you’d be saying, ‘Hold on, what I am getting for that?’ and you would be making demands on it”. Those demands should be the best-quality education, health and care for those children. At the moment, it feels like there is just a handover and we do not do that. I want a system where I would say, "If I’m paying this money to your school, to your service, I expect these children to get to see a speech and language therapist three times a week, I expect that

there will be progress and that we are kept in touch about progress. I expect that alternative approaches to teaching and therapy are available for this amount of money". In the system, we almost relinquish all that power and do not use it. I know that is a very long answer.

Baroness Bertin: I think a lot of people hearing that would be very surprised that that is not in place already. It is absolutely shocking. Imogen, do you have anything to add?

Imogen Jolley: Not too much. I take everything Christine says about the high-end placements and how those are being funded. Even in my experience of assisting parents, there is a big discrepancy in what looks on paper to be relatively similar placements and the cost banding. There is no real control over that. Some placements are significantly more expensive than others, despite providing relatively similar provision.

Taking it right back to the start, it is important to look at the idea that the needs of the vast majority of children with SEN can be met in a mainstream setting and to look at how mainstream schools are funded for those children, because it is very complicated. I have looked at it a little, but I do not profess to understand all the ins and outs of it, because it is very complicated. Looking at it with a school-governor hat on, it is not the case that if you have five children with EHCPs in the school, or 10 children with a particular form of SEN who do not have EHCPs, you get a set amount of money to spend on their needs. It is not that easy.

The funding formula is worked out on other things that are not necessarily related to children's direct needs. It is very difficult, as Christine said, to work out where that funding is going in the school setting. More clarity is needed on how particularly mainstream schools are funded in the first place to make sure that that money is spent effectively on what needs to be done at that early stage and when children are in those mainstream settings. I think Christine covered the points about the independent settings and the more expensive settings.

Baroness Bertin: Thank you for those very full answers. Would it help if there was more of a financial incentive whereby if you are good school you should definitely get a good Ofsted rating, but there are also more obvious financial incentives—not wishing to make the system too cynical?

Stephen Kingdom: I think there are financial disincentives at the moment, which comes back to the point Imogen just made and the point about magnet schools. As I understand it—I used to do it in a

previous life—you do not get extra money because you have five children with a particular special educational need, because a lot of that identification is done by the school, so you put perverse incentives in place for overidentification just to draw money. The £6,000 was put in because, from the school's point of view, getting an EHCP did not give you loads of extra money, it just gave you extra. The school funding system uses proxy measures to give funding for SEN, such as deprivation. That can work fine to a degree, but only if all schools are properly engaged and properly taking—I do not like the term—their share of children with SEN.

If some schools are saying to parents, "Don't send your child here. Another school is the one doing it", they are still getting their funding based on the proxy measure. Even though there are good correlations, if you look at the national level between these proxy measures and levels of SEN, if you get to the individual school level, that relationship will break down and the school that is taking the most children with SEN will not be getting enough money to fund all its £6,000s, while the school down the road that is dissuading children with SEN from going there will be getting more than its share of £6,000s. That oversimplifies it a bit, but that is broadly where the financial incentives work in the wrong direction at the moment.

Q121 **Baroness Prashar:** Thank you so much, all three of you, for your very helpful and comprehensive answers. Are there any further areas in the Green Paper that are of concern to you? We have covered quite a lot, but is there anything that we have not covered?

Dame Christine Lenehan: There are two things, one that is in and one that is implied. It is very important to get the balance right between national and local. There are a couple of things that worry me. The engagement of health still worries me, because unless we have health at the heart of this, we will struggle with a lot of children, and that is not just physical health but mental health. The levels of mental health needs we see in our schools and the crossover between mental health and SEND is key. Unless we get mental health and general health involved, we will not succeed. That worries me.

The other thing that worries me is the national and the local. I have spent my life working with local authorities and in systems and whatever. National standards have to be strong enough to make a difference, so they cannot just be good practice or they will go down to the lowest common denominator, but they have to be flexible enough to allow ownership at a local level. In all the work we have been doing on things like ordinarily available provision,

building visions and strategies locally or helping people to progress, it has had to be owned locally at every level—parents, children and officers—but it has to be owned by members. This is a political system, so people have to believe in it at a local level.

Sometimes when people are having a bad time, they say, "So and so has a good policy. Why can't you just give it to us, cross out their name and put ours on it? We don't have to do the work then", and you say, "No, it's not like that". Unless you have learned it, believe in it and are committed to it, it will not change. For me, that balance between national and local is key. Local authorities do not like being told what to do by Westminster. Maybe they should, but they do not. How do you get that right?

My other big worry, which is not in the Green Paper as such, is implementation.

Stephen Kingdom: I will do the same as Christine and start with something that is not there or is not there enough, and that is social care. There is just not enough about social care support for families with disabled children. We worried the whole way through. We had a SEND review and then we had Josh MacAlister's independent review of children's social care. We worried that the SEND review would come at the world very much from a special education side of the prism, and that the social care review would come at the world very much from a safeguarding, child protection, looked-after children end of the prism and would say, "Oh well, disabled children, that's all part of the SEND", and it would fall in between.

It has not yet fallen in between, because they both recognised this. The SEND Green Paper does not say it in these terms, but it feels like it says, "We're not saying much on social care, because there's Josh's review". Then Josh's review comes out and does not say much on disabled children and social care, but says, "This is all about implementation and the SEND review". It feels like rather than dropping the ball, they are just passing it between them. We will have two national implementation boards—I cannot remember the exact term—one for the SEND review and one for changes to children's social care. Where will disabled children's social care and support for families with disabled children fit? That is a concern.

Another thing, which again echoes what Christine said, is that a lot of areas are potentially helpful, but there is not enough detail to know whether they will. Partly for the reasons Christine gave, but I think more widely, national standards could be very powerful and very helpful, particularly if they give more clarity on the division in responsibilities between education, health and social care and how

they should work together. It feels like there is quite a thin landing strip generally in national standards that are detailed enough to be worth something rather than just high-level aspirations that do not mean anything and trying to get to a level of defining every need and saying what is provided in every case. That is a very hard strip. I worry that national standards could be used as a way of restraining the current rights and protections that exist for families by saying, "No, you can't have what you are legally entitled to now, because it does not fit in the national standards". It could be very strong, but it could also be a risk.

Imogen Jolley: There is not enough on the pre-school early intervention side of things, because the earlier you can get to a problem and tackle it, the less likely you are to have to deal with it at the end of the day when everybody is in crisis mode and things are entrenched. There should be much more focus on earlier intervention to avoid those crisis situations, particularly for the most vulnerable children, as Stephen has touched on, who are those in the care system, those with mental health issues—mental health provision is woeful and needs to come in at a much earlier point—migrant children and those in the criminal justice system.

At the other end of the scale, there is not enough on the further education sector. There is a lot on compulsory education, but on further education and employability it is deficient. My experience of young people leaving compulsory school age at 16 or 19 is that the provision they can expect in further education is well behind the expectation of what they receive in most mainstream schools now. There needs to be focus on provision and engaging services across the board for young people going into adulthood and looking at their employability. That is a sector that needs massive focus, and I am not sure it is in the Green Paper.

Lord Mawson: On your point about deeper working relationships with health, I was with a senior nurse this morning who has been caring for a friend of ours who is dying. She described to me in detail the amount of equipment the NHS has left in her living room, with no control at all. If you were a business, you would be bankrupt very quickly if you multiplied this millions of times across the country. Earlier in the week I also spoke to a very senior person about the ICS system. He told me that 82% of the budget is spent on assurance documents and 18% on the front end.

My point is that it might seem a blessing, but it might be a curse in terms of that culture coming in on the culture you are telling me is already challenged. Have you thought about the implications of that? Both these cultures, if we are not careful, seem to be

extremely wasteful of money and resource and have no control over large parts of it.

Dame Christine Lenehan: That is why we would like to see them focused on the needs of the child rather than anything else. You are right. We see the waste in equipment. I have spent 20 years trying to work out how to sort out children's wheelchair services and failed miserably. However, if those systems do not come together, the energy of the families goes to fighting the system all the time. All you want is an honest conversation between the different systems about what can be provided and what cannot. What is the point of having an education, health and care plan that says, "This will be completed within 20 weeks" if you cannot have a conversation with health because the CAMHS waiting list is three years long?

There is something for me about an honest conversation between the systems and a join-up between the systems. The four words I would like you to write in your report to Government that I cannot get through are integrated, workforce, strategy and children—in the same sentence. These children are so complex in lots of ways. I need health, education and care professionals to work towards their needs, but for some reason that seems impossible in the way the Government have set it up. That is one example where you could bring them together.

The Chair: Thank you very much. You have talked quite a lot about national and local and often not having the right provision available locally. When the Act was going through, there was a lot of emphasis on the local offer. I now hear nothing about it. I do not think it has been raised this afternoon; forgive me if I have that wrong. Could you tell me what has happened to the local offer?

Dame Christine Lenehan: The local offer is one of those things that was neglected in the first few years and became a website that nobody used. Then a lot of areas decided that they wanted to do something positive. Two areas of the country—London in the south-east, and the north-west—came together to look at how they could make it better. For example, Manchester did some work about making the local offer an active tool for social workers to use, so when they were working with families they could say, "Do you know about this?" In London, they came together to look at minimum standards.

Imogen talked earlier about SENDIASS, which I was delighted about because it is one of the services that we support. It is so much better than it was, because there was a minimum standard attached. One of the things we are pressing Government on in

these reforms is a strong local offer with minimum standards attached as part of the local inclusion plan. We are currently working with about 62 local authorities on how to make their local offer better.

Stephen Kingdom: I do not think that the Green Paper says enough about the relationship between the local offer and the local inclusion plan. If I am reading the Green Paper on a good mood day, the local inclusion plan is a potentially positive thing and could deliver a lot of what the local offer was supposed to deliver—being more than just a directory, but being a driver, based on an understanding of the needs of an area and a driver for better provision. Those two need to come together.

Q122 **The Chair:** To round up, if you could have a wish and there was just one change, one new thing, that you think must be included in what comes out of the Green Paper reforms, what would it be?

Dame Christine Lenehan: For me, it would have to be about the workforce. It sounds very technical, but unless we get the right people with the right training in the right place, we will not deliver.

Stephen Kingdom: We have talked about it a lot, but it is accountability. There is quite a bit about accountability in the Green Paper, but it is very systems-based and very top-down and very much about how the systems work. It is very difficult to understand what it means in practice. I would wish for a clear description of what accountability looks like from a parent or a child looking at the system from their end, rather than what it looks like from the DfE.

Imogen Jolley: Stephen stole my thunder with accountability. I completely agree with him.

Going back to what I said about early intervention, getting proper independent neutral support to help families right at a very early point in time when they first start identifying issues and working with those families to get them on the right track so that we do not reach a crisis point would be my key change.

The Chair: We have covered a lot of territory. It has been an extremely helpful session and it has been very good to hear from your many years of experience and getting down to the granular level about what works, what does not and what could make a difference. On behalf of the committee, I thank you very much indeed. I can see you are getting a thumbs-up as well from other colleagues. You have been three very helpful witnesses.