

Education Committee

Oral evidence: [Solving the SEND Crisis](#), HC 492

Tuesday 13 May 2025

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Members present: Helen Hayes (Chair); Jess Asato; Mrs Sureena Brackenridge; Dr Caroline Johnson; Amanda Martin; Darren Paffey; Manuela Perteghella; Mark Sowards; Patrick Spencer; Dr Marie Tidball; Caroline Voaden.

Questions 151 - 193

Witnesses

I: Georgina Downard, Senior Solicitor, Independent Provider of Special Education Advice (IPSEA); Sharon Chappell, Assistant Ombudsman, Local Government and Social Care Ombudsman (LGSCO); Adam Sproston, Senior Inspector for SEND and Alternative Provision, Ofsted; and Lucy Harte, Deputy Director of Multi-agency Operations, Care Quality Commission (CQC).

Examination of witnesses

Witnesses: Georgina Downard, Sharon Chappell, Adam Sproston and Lucy Harte.

Chair: We begin our public proceedings of the Education Select Committee this morning. I welcome members of the Committee and witnesses to our session today. This is the fifth of our evidence sessions on our major inquiry on solving the SEND crisis and this morning we are considering accountability across the SEND system.

Can I invite our witnesses to introduce themselves to us, please, starting with Georgina?

Georgina Downard: I am Georgina Downard, Senior Solicitor at IPSEA, which is the Independent Provider of Special Education Advice. We are a charity that provides free and independent advice to parents and carers of children and young people with special educational needs across England. We do that through our free helplines, information service and tribunal support service, and we also provide training to parents and various professionals in SEN law and challenge unlawful policy.

Sharon Chappell: I am Sharon Chappell, Assistant Ombudsman with the Local Government and Social Care Ombudsman. We investigate complaints about councils and private care providers.



Lucy Harte: I am Lucy Harte, Deputy Director for Multi-agency Operations at the Care Quality Commission. The Care Quality Commission is the independent regulator of health and social care, but the teams that sit in my function are the teams that do inspections with other inspectorates, including the team that delivers the joint area SEND inspections with Ofsted.

Adam Sproston: Good morning. My name is Adam Sproston. I am a Senior His Majesty's Inspector at Ofsted for SEND and alternative provision.

Q151 **Chair:** Thank you very much. We know from our own experience as constituency MPs and also from the evidence that we have received on this inquiry that accountability is key to ensuring high quality SEND provision across local authorities, health and education services.

In brief, how would you evaluate the effectiveness of the current accountability system for SEND? I might start with you, Sharon, if that is okay.

Sharon Chappell: Absolutely. We are extremely robust in holding councils and local authorities to account for SEND failings. We remedy injustice for the individual alongside making service improvement recommendations to try to drive performance on a wider basis, but we consider there are significant gaps in the lack of jurisdiction over schools, academies, free schools. We see the gaps and lack of effectiveness for individual complaints in those settings.

Chair: Thank you. You did not mention health at all in your response.

Sharon Chappell: We have a joint working team. It looks at some SEND complaints where health is intrinsically linked to the social care and education provision, but it is a small team and relatively small numbers. We have heard back from our colleagues in NHS England that the small number of cases that we have investigated and issued decisions involving health and councils have had a significant impact. It is good to know.

Georgina Downard: At IPSEA, our view is that the system and the legal framework could be effective if it were fully implemented, but it is widely not implemented. As a result, children and young people do not get the support that they need when they need it. This is in part because accountability needs strengthening. I can comment more on that perhaps as we go through.

Lucy Harte: We started our current area SEND framework inspection in 2023. It is the only independent inspection activity that holds the local partnership to account, the local partnership being the bodies that are responsible for commissioning the SEND services in that local area.

When we started the inspections in 2023, it was not too long after the Health and Care Act made significant structural changes to the way that services are commissioned. We have seen through our inspection activity



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that that has significantly impacted on some of those partnerships that provide care and services to children and young people with SEND. We are mindful of the recent announcements as well that have been made about those NHSE restructures and ICB cuts. I know that has been mentioned in previous evidence as well.

We have attempted, and we have done well through our area SEND inspection framework, to hold local partners to account for activity and actions that require the most pressing action. After our inspection activity, where there are significant weaknesses, NHSE and DfE work together to support that local area but there are some gaps in how the accountability system that goes beyond that works. For example, NHS services have a performance oversight framework that has gone out for consultation. There are differences in how the partnership is held to account. But we have made significant changes through our SEND inspection framework in an attempt to do that.

Adam Sproston: I support Lucy's answers about the area SEND framework and I clarify the point that we are the only inspection framework that looks at a partnership. The partnership, of course, is local authority partners, social care, education and the teams that sit within those services and the health providers, and how effectively they work together to support children and young people with SEND.

In our other activity at Ofsted, we have always had a focus on children with SEND throughout our work in early years, schools and further education and skills. We have recently received a consultation response that we will respond to the Committee with in due course that has a focus on inclusion. I am aware that we will possibly discuss that later today.

I also wanted to talk about the wider work of Ofsted, for example, in our initial teacher education inspections and how we hold those providers to account for upskilling the teachers of the future to prepare them to meet the needs that they will face in the classroom.

Q152 **Chair:** We will come on to some of that detail. Can I ask you again, briefly, what changes you believe are needed to strengthen the accountability system for SEND, perhaps starting this time with Lucy?

Lucy Harte: Through our area SEND inspection activity, under this current framework, we have identified the relevant partners that would need to act when we have identified significant concerns. We have also strengthened accountability through inspection activity so that after every full area SEND inspection, regardless of the outcome, local area partnerships—the people that Adam has described—would be responsible for updating their strategic action plan.

At this point in time, we have taken some time to do a review of our area SEND inspection framework and we will publish that in due course. But that currently means that, as an inspectorate, we have not gone back out and done monitoring visits yet. That, for the inspectorates, will be part of



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what will give us some of that information about the effectiveness of our SEND inspections in holding those local area partnerships to account with both the monitoring visits and also the cycle of inspections that is commissioned under this current area SEND framework. We will be going back out and doing full inspections as well to those areas after we focus on those risk areas.

It is probably fair to say from an inspectorate perspective that we will have more evidence and a view once we have gone out and done our monitoring visits and our subsequent full inspections about how the current inspection is contributing to that accountability in the system.

Sharon Chappell: As I have already alluded to, we feel accountability needs to be strengthened by giving us jurisdiction over SEND issues in schools. When I say schools, I mean maintained schools, academies and free schools. We have asked for this several times. Our current triennial review repeats the request. Our previous triennial review also asked for that.

We also have asked for jurisdiction for admissions and exclusions. In doing so, we are very conscious that children and young people with SEN are disproportionately affected in admission arrangements and exclusions.

We can look holistically to a certain extent. We can look at social care and we can look at education, but only through the lens of the local authority. On some occasions, we can look at health, as I have already referred to, in our joint working team, but we have to stop at the school gates.

In the course of our investigations, we often see evidence of things going wrong in schools, which will not come as a surprise. The sorts of things we see are part-time timetables for extended periods, off-rolling, unofficial exclusions, and failure to provide what is detailed in an EHC plan. But we cannot look at those and we cannot hold schools to account.

That leaves a significant gap in the accountability framework. We feel that that drives parents to go down the route of requesting EHC needs assessments and fighting for plans as a form of added extra protection. If there was robust accountability for schools, we feel that might reduce the numbers who feel they have to go down that route.

We also share all our learning. We issue focus reports to councils that share the learning and what we see from complaints. We could do the same with school jurisdiction to help drive performance and improve performance on a wider basis.

Q153 **Jess Asato:** I want to comment quickly. Given that you have requested this oversight a number of times, what have been the reasons for not giving you this oversight? It sounds like it would be helpful.



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Sharon Chappell: We are not entirely sure. We did not get a formal response to our last triennial review. We are told that we will get a formal response in several months to the current triennial review.

We did have jurisdiction over schools for a short period back in 2012 and proved to be successful. But when the coalition Government came in, that legislation was rescinded. The academisation programme did not necessarily fit with what we were doing at the time.

Adam Sproston: We would seek anything that could support partnership working. In areas that typically support children with SEND more effectively through our area SEND framework, it is because the partnerships are cohesive and they communicate effectively with each other, for example, through effective information-sharing systems work and also joint commissioning, including children, young people and families as well. Anything that could support a partnership approach we welcome.

Chair: Through the accountability framework?

Adam Sproston: Through the accountability framework, yes, anything that could aid, I suppose, the efficiency of information sharing. We find different teams on different systems, for example, and quite regularly highlight that as challenges in areas that do not do as well for children and young people.

Georgina Downard: The key to resolving the current situation lies in ensuring local authorities comply with their duties to children and young people with special educational needs, which, to be clear, do not entitle them to anything more than what they need.

At IPSEA, we have identified some key changes that we think would support this. First, local authorities should be expected to make lawful decisions about assessment and provision for children and young people with SEND and face consequences when they do not.

Secondly, it is our view that the Department for Education should consult with local authorities about any barriers and what they might need to comply with those duties and to review local policy to ensure that it is in line with the law.

Thirdly, it would strengthen accountability if Ofsted inspections incorporated the extent to which schools comply with their duties to be fully inclusive of those with special educational needs and, additionally, for area SEND inspections to prioritise monitoring that compliance with the legal duties to these children.

We fully support the Ombudsman's request for the extension of their jurisdiction to cover schools, and we certainly think that would strengthen our accountability in the way that Sharon has explained. We also believe that making SEND support for those children and young people who do



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not have EHC plans statutory would significantly improve accountability. That would need to be accompanied by adequate funding, of course, and training for school staff.

I am happy to talk more about why we feel that is important and how we envisage that being introduced either now or later on, if you will have a separate question on it.

Q154 Chair: We will come to that a little bit later on. I did want to ask you specifically, Georgina, now about the tribunal system. It is clear that increasing numbers of families turn to the tribunal as a way to secure the commitment that they need within the EHCP process, although it is also always important to say when we talk about the tribunal that tribunal cases still represent only 2% of the total number of applications, and it is inherently a process that is unfair to families that do not have the resources to go to the tribunal.

What action do you believe is needed to prevent this increasing escalation—and some things you have said already—to ensure more satisfaction in the system and more children whose needs are met without the need for that formal type of challenge?

Georgina Downard: The onus should not be on parents to fight for what their child needs and what they are entitled to and go through the lengthy appeals referred to. It would not be if local authorities were adequately resourced and if they made decisions in line with the law the first time around. It should not be accepted that they do not.

We need a zero-tolerance approach to authorities not complying with their legal duties to children and young people with special educational needs and disabilities, and by that I mean not complying with the existing legal framework. Local authorities should be expected to make lawful decisions about these children, and they should be sanctioned if they don't. At the moment we see the same authorities making the same unlawful decisions on repeat and they can effectively put off revisiting that until a tribunal hearing many months down the line.

As you said, that is if the parent is able to appeal. Not everyone can or will, and some will face challenges that will make that much more difficult. Imagine, for example, if your housing situation is unstable or your child is in youth custody or perhaps you don't have access to a computer or, as a parent, you have your own special educational needs or disability. We cannot forget about these families that don't make it to the tribunal.

IPSEA frequently sees local policies that don't comply with the law and they in turn lead to unlawful decisions that are successfully challenged. If local policy consistently and accurately reflected the legal position, we believe that this would lead to lawful decisions and less need to appeal.

At IPSEA, we engage with local authorities on securing corrections to their policies when we have the capacity to, but we should not be in a



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situation where members of the public and charitable organisations police public bodies' misinterpretation or disregard for the law. An alternative would be the Department for Education proactively reviewing local policies to ensure that they are legally accurate and taking action when they are not. If the Department were to systematically do some form of initial review, we would then see that it could be monitored in joint area inspections moving forward.

I will summarise. Local authorities need to be adequately resourced. The Department for Education should consult with authorities about what they need to comply with these duties and should be looking at their local policies. Unlawful decisions should not be acceptable and there should be negative consequences when they are made. Whether they are financial or reputational or consequences in both areas I believe is for policymakers to bottom out but, as I said, we see joint area inspections playing a role in that.

Q155 Chair: I want to ask you briefly about the interaction between the funding landscape and the accountability that we talked about. It is not controversial to say that public bodies should comply with the law; there is no disagreement about that. However, the funding landscape is absolutely dire. The £3 billion national deficit in the SEND budget is increasing every single year and we have the inadequate fix of the statutory override.

In that context, what solution gets to better compliance? It seems also that sanctioning local authorities for not complying with the law, if the reason for that is that they don't have the resources, further penalises exactly the children whose needs are already not being met.

Georgina Downard: A decision needs to be made about priorities. The decision that needs to be made is whether children and young people with special educational needs and disabilities are important enough to prioritise and to fund. It is our view that any decision that they are not amounts to the public endorsement of devaluing children and young people with special educational needs in this country. They deserve as much right to fulfil their potential as those who don't have SEN, and so should be prioritised in these funding discussions as well.

Q156 Manuela Perteghella: My question is for Georgina. I have become familiar with the mediation process because I now sit on mediation meetings in support of families in my constituency. What improvements could be made to mediation and other dispute resolution processes at local authority level to help prevent issues from escalating to the SEND tribunal or even judicial review?

Georgina Downard: In some cases when a parent is fully informed and perhaps when you are there to support them, mediation can be effective in resolving issues without the need for an appeal and quicker, but only if the local authority, and where relevant the integrated care board, complies with the governing law.



We frequently hear that that does not happen. For example, we often hear of local authorities sending a member of staff to mediation who does not have the authority to settle the issues that are in dispute, even though it is a legal requirement for them to send someone with that decision-making power. Instead, authorities often send somebody else who effectively says, "I will have to take that back to a decision maker or to a panel that might not be due to meet for some time in the future." For some parents, that might mean they inadvertently miss their opportunity to appeal. That is a breach of the SEND regulations. That not happening could make mediation a lot more effective.

In some other cases, we hear local authorities telling parents not to bother with mediation and to take it to the tribunal. Even though they have a requirement to attend if a parent requests mediation, some authorities tell parents that they will not. That is an obvious barrier there.

Other barriers in terms of mediation that we frequently hear of are things like local authorities not arranging the mediation session in time, in breach of regulation 36, and then subsequently refusing to mediate at all or refusing to mediate about the placement in the EHC plan, section I. A parent does not need to have a mediation certificate if they are to appeal only section I, but they still have a right to engage in that process. While we have been doing a lot to try to raise awareness of that, some local authorities still seem to misunderstand that and say no to mediating.

Others offer informal meetings. We would generally suggest any opportunity to discuss things with your authority is an opportunity. But to offer some informal meeting and then, as happens, refuse to formally mediate is another problem that we see.

Your question was more specifically at local authority level, but this is an opportunity to draw attention to a process that happens in the tribunal called judicial alternative dispute resolution. The tribunal has been trialling this for some time, only in relation to appeals around placement. We heard at tribunal user group meetings at the end of last month that around 70% of the cases where they employ this method settle earlier without the need for a hearing. This is different from mediation. A specially trained judge in this process can speak with each party—the local authority and the parent or their representative—separately and confidentially comment on the strengths and weaknesses of their case with reference to the law. That does not happen in mediation. They will then go on and facilitate discussion between them.

As I said, the tribunal is reporting that this is a successful approach. While it has only been used in appeals that are only about the placement, they have said that they are planning to trial extending it to different types of appeals in the summer. Of course, if lawful decisions were made in the first instance, then parents would not need to consider taking any of these actions.



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Financially Sustainable Approach to SEND in England”, commissioned by the County Councils Network and the LGA, highlights that SEND tribunal rulings do not take into account the financial or resource constraints faced by local area partnerships. What steps could be taken to address this issue?

Georgina Downard: First, it is wrong to say that the tribunal does not take into account financial constraints and resources. I know the report you referred to took that line, but that is not accurate. That report misrepresents how the tribunal makes decisions, especially around placements that are named in EHC plans.

The tribunal’s role and the role of EHC plans is not to give anyone more than they need. Children and young people are rightly entitled to provision that is reasonably required to meet their SEN and to a placement that is suitable and appropriate for them, which would not mean that the other children there did not get an efficient education and, importantly for this question, would not mean that it would be inefficient use of resources or unreasonable public expenditure. Therefore, the law and the tribunal that applies it does take into account financial resources.

In fact, the tribunal requires local authorities to provide evidence on costs, especially costs of placements, including from the schools or the settings themselves to ensure accuracy. Local authorities have the opportunity throughout the appeal process to demonstrate it if they believe that a lawful exception around public expenditure or the use of their resources applies and, equally, if they believe that the provision that is being sought in the appeal would be more than is reasonably required.

We are fully aware, of course, and we have already talked about the significant financial pressures that local authorities are under, but we refute any suggestion that an appropriate solution to this is for the tribunal to base its decisions on anything other than the evidence and the existing law.

Q158 **Jess Asato:** This is a question for Sharon. A significant proportion of your complaints relate to SEND. Is the accountability system for local area partnerships in relation to SEND working well? How could it be strengthened across education, health and local authorities?

Sharon Chappell: I have already touched on the schools issue, so I will not repeat myself unless you require further clarification.

From our perspective, it works well in that we can hold local authorities to account and we robustly do. We are transparent in our work. We publish all our decisions. We have an interactive map on our website where you can benchmark councils against each other, look at service improvements we have made and so on. Lots of information is available to councils that struggle to look at how others achieve what they set out to do.

We try not to replicate work that is undertaken elsewhere. If we investigate a SEND case and we find fault causing injustice, we will look



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to see if a local action plan or an Ofsted action plan is in place and whether those plans address issues that we have identified. We may ask for an update on progress against those plans instead of recommending specific action. But when we see cases with no action plan in place—we have issued two reports this year, for example, when annual reviews were significantly delayed. Parents were not getting the decision that engaged the appeal or, if there was a decision to amend the plan, there was lengthy delay before the final plan with the updated provision was in place, meaning children missed out. In both of those reports, there was no local action plan in place. We have recommended that they draw up an action plan, and that the action plan is overseen by the relevant committee and reports are put on the website for parents who are affected to see it. We are creative in how we hold councils to account.

We flagged the EP shortage back in early 2024. We issued a report highlighting the educational psychology issues. At the time, our press release said that this was 10 years in the making and this could have been anticipated with the ever-increasing rise in EHCP needs requests and plans. It should have been foreseen that this would be an issue.

We are robust about requiring evidence of compliance. We don't have binding powers. Our compliance rate is high, but we will take further action if we do see failures to comply and that is usually registering a new case and considering reporting on it, which ensures that extra oversight and scrutiny. As I have said—I will bang the drum one more time—it could be strengthened by giving us schools as well.

Although we monitor and require evidence of compliance with our service improvement recommendations, we cannot do that in the long term. We are simply not resourced. We would like to see Ofsted in its conversations with local authorities discussing the impact of these service improvement recommendations. If there has not been an impact, why not? What is the issue? If we could tighten that up, it would be good as well. We could replicate all of that in schools.

Q159 Jess Asato: I have a follow-up question. The Local Government and Social Care Ombudsman can require local authorities to provide financial remedies in cases of failure. In your view, how effective are such financial penalties, and would expanding their use across the SEND accountability system help to strengthen it?

Sharon Chappell: We operate our recommendations, including financial recommendations, to not be punitive. I know that is not popular with some parents. We have been accused of letting councils off lightly, but our aim is to try to improve systems more widely for all. We aim to get people back in the position they would have been in, had the fault not occurred. We simply cannot do that for a child or young person who either has been out of school for an extended period or has not had the provision that they are entitled to for an extended period. In those circumstances, we make symbolic financial recommendations, but our focus is, as I say, on the service improvements. We are not about



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penalising; we are about working to make things right and improving things for a wider set of people.

We are really keen to better understand the impact of those recommendations in SEND and we are currently working with Manchester University on that specific point. It is research funded by the Nuffield Institute. Early signs are that the councils take our findings seriously and particularly acknowledge and welcome our increasing focus on systemic failings. Even in the context of a system under significant challenge, we are told that it can give extra leverage when additional resources are needed in a particular area.

Given this, our view is that increasing the use of financial penalties would not necessarily drive improvements and could result in perverse behaviours to try to avoid those penalties. Recommendations around service change, we feel are more effective. We will hopefully be in a position to give further evidence on that once the research has been completed by Manchester University.

Q160 Darren Paffey: My questions are for the representatives from Ofsted and CQC. Can you say a bit about what your area SEND inspections tell us about the performance of local authorities in this area?

Adam Sproston: I will start. Thank you for the question. We find a varied picture on the framework that we started in January 2023. So far, we have completed 64 inspections out of 153 local area partnerships. Around a third received an outcome of widespread and systemic failings, around half or 48% inconsistent experiences, and 23 percent typically positive experiences and outcomes.

It is important that I clarify that our focus is on how well the partnership in its entirety supports and meets the needs of children and young people with SEND through their outcomes and experiences. That is all children with SEND—those who have an education health and care plan and those who are supported and are receiving SEN support as well.

I can talk to you about a few of the common issues that we find. They are workforce pressures, sufficiency in the recruitment and retention of colleagues at work with children with special educational needs, a lack of co-ordination between health, social care and education partners, rising requests for both SEN support and then education and health and care plans, and also a variability in access to services either due to a lack of sufficiency in services, possibly long waiting times or other aspects such as differences across the partnership geographically to where children, young people and families can access those services.

We have also found strong examples out there as well and every inspection reports areas that do need further attention and at times specific areas of priority action that the Department for Education and NHS England will support and challenge once we leave. We identify good practice in all areas as well to drive further improvement.



Q161 **Darren Paffey:** Before Lucy comes in, to clarify, you are saying that 23% or one in four local authorities satisfactorily meet the needs of children in their SEND provision?

Adam Sproston: According to our evidence, those children and young people have typically positive experiences and outcomes. When the team weighs up the evidence across the piece, we look at health colleagues and their input. We also look at the partnership, how well parents and carers are communicated with and their opinions of the area. Once all that evidence is weighed up, the team of highly professional and expert inspectors weighs that evidence up and forms that outcome for the area, which is, typically, positive experiences and outcomes for those children and young people.

Lucy Harte: The other point to clarify on that is that under this inspection framework we have not been to all local area partnerships yet on a full SEND inspection. That is only from the ones that we have been to so far. It is not the full 153.

The key points to highlight from our area SEND inspections where we have identified some typically positive experiences are some of that joint working. I know that you have heard evidence in previous Committees about the difference that well co-produced strategic plans and good joint commissioning arrangements make. We have seen that through the evidence in our area SEND inspection reports and we try to highlight that. They are key features of those typically positive reports.

To reiterate, strategic co-production can have an impact on lots of the services and on understanding unintended consequences, but that involves the local area partnership truly and meaningfully engaging with children and families and SEN interest groups.

I can read out one of the areas from a report that identifies some of that or we can write to you with that. It is in a published report.

Chair: Writing to us with something that is already published would be helpful.

Lucy Harte: Yes, that is fine. We can do that.

Q162 **Darren Paffey:** Why was the revised framework that you have both mentioned, which came in in 2023, necessary? What led to the revision of the framework?

Lucy Harte: Our previous framework that we operated from 2016 to 2023 had a focus on compliance. The Children and Families Act was relatively recently introduced.

That inspection framework between 2016 and 2022 was commissioned as a one-off inspection programme. Ofsted and CQC at the start of that programme were going in and doing an inspection and, at that point, we did not have the revisits even written into the framework. As we



progressed through that framework, it became quite apparent that there were significant weaknesses in a number of areas. Under that framework, we asked local area partnerships to write a written statement of action. We identified the significant weaknesses. We asked them to write a written statement of action. We then went back and inspected, as Ofsted and CQC, to assess only those points that were identified as significant weaknesses to evaluate whether sufficient progress was made. That was commissioned as only a one-off cycle of inspections.

Our current inspection framework is a cycle of full area SEND inspections, all of which result in an outcome. That outcome judgment predicts the level of engagement from DfE and NHSE and it also predicts Ofsted and CQC's subsequent inspection activity.

An important point to note about this framework as well is that we have introduced a social care inspector into the inspection team. Under our 2016 to 2022 framework, Ofsted, Education and CQC did those inspections. The inspection teams have been valuable. You can see in the published reports the evidence that we can report on to have a social care inspector in those inspections.

Another thing to point to and make people aware of under the current area SEND framework is that we also have thematic SEND inspections that focus on one part of the SEND system. So far, we have published the alternative provision thematic, the preparation for adulthood thematic, and we are currently delivering a thematic for children who are educated outside of school.

We have also introduced engagement meetings and those engagement meetings are used in between inspection activity. They are delivered by Ofsted and CQC. Those engagement meetings are designed to try to keep a spotlight on SEND. Those SEND engagement meetings are conducted with the local area partnership around the table.

To summarise your question, a number of features of this current framework make the accountability processes more continuous. In our previous framework, it was a one-off independent inspection.

Q163 Darren Paffey: Taking as a whole all those measures, have those changes proven effective in improving the assessment process?

Lucy Harte: We will have more information about that once we start our monitoring visits, in due course. We are currently completing a review of the current area SEND inspection framework. When we start our monitoring visits, we will have more information and more evidence to answer that question.

The full inspections that follow on from the monitoring visit will give us more information. If an area is identified that has significant or systemic weaknesses, we will do a monitoring visit after around 18 months and



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then we will also do a full inspection at three years. A full inspection is done at three years of the areas with inconsistent findings.

As inspectorates under that joint inspection framework we are yet to do that to deliver that activity and so I anticipate that that will give us more information about the impact of inspection and the impact of the intervention from the local governance routes and the routes from DfE and NHSE.

Darren Paffey: Adam, is there anything you wanted to add?

Adam Sproston: I will build on Lucy's point. In the latest framework, we include a social care inspector as well. Because we inspect as a partnership, that naturally brings together the partners that we are inspecting so that we have a lens on how well those different services are working together to support the children and young people with SEND in their area. As Lucy says, we will start the monitoring visits in the summer term and then we will build a clearer sense of the impact our work has had, especially on those areas that we have left with areas for priority action.

Q164 **Darren Paffey:** Is it fair to say that any further improvements or changes to the framework will happen after you have started monitoring visits, or are you planning to make any tweaks or changes at this stage?

Adam Sproston: We are currently reviewing the area SEND framework, which was a commitment by Ofsted following our Big Listen. We have been working with the Department for Education, NHS England and stakeholders in the sector as well. We will publish that in due course and I will write to the Committee.

That will clarify our approach to monitoring inspections so that what they will entail is clearer for the sector. We have also focused, for example, on how we will strengthen the voices of parents and carers and clarified our approach to engagement meetings as well to make that inspection package more robust.

Q165 **Dr Caroline Johnson:** My question is for Adam. In Lincolnshire, where my constituency is, the SEND services have been rated "outstanding", which from what you have said is quite an unusually good rating for across the country. What are you doing to ensure that other counties and other areas can learn from where Lincolnshire is doing things well?

Lincolnshire was also commended for the strong leadership and commitment to improve outcomes for children and families. Leadership has changed as a result of recent elections. What does Ofsted do to its inspection regime when leadership changes? Having an "outstanding" rating may mean you get inspected less frequently. If the leadership has changed in that county since then, will you go more frequently after that?

Adam Sproston: In area SEND, we don't have the same judgments that are made on, for example, our ILACS inspection, which currently mirrors



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schools—"outstanding", "good", "requires improvement" and "inadequate".

To promote positive outcomes and experiences, those reports are published to the sector. We also summarise findings—and we will do so in our area SEND review—and some typical positive strengths that we identify that other areas can use. Of course, they cannot pick those up and drop them into their locality. They need to think about how that will work for their context in detail.

We also drive change through the thematic visits that Lucy has touched on. For example, in alternative provision, we found areas that needed to be strengthened but also areas that were better able to commission those alternative provision placements for children. There is a natural ability for areas to use our work in the widest sense to drive change.

The second part of the question was about changing leadership. On this cycle, we will return after five years. Where the leadership changes, first, we always recognise and discuss it when the notification takes place, and that is reported on for the public to see on the front page of the report. We might clarify the newness of a team or stability in a team. We would not naturally draw conclusions from that but, wherever perhaps an increase in a number of complaints or other regional intelligence came to either Ofsted or CQC, we could act and call an engagement meeting of leaders to discuss with us what is happening in their area or, if there were significant concerns, we have the right to inspect a provider.

Q166 Dr Marie Tidball: My questions will be to Lucy Harte and Adam Sproston. It is good to see you today.

We know that ombudsmen find fault in their investigations in 92% of cases and that tribunals find in favour of parents in 95% of cases. IPSEA suggests that your area inspections have failed to take a rigorous approach to monitoring local area compliance with the law. They have suggested, therefore, that area SEND inspections should consider including metrics such as tribunal outcomes, upheld ombudsman complaints or judicial reviews. What is your response to these proposals?

Adam Sproston: As set out in our framework, we consider a wide range of data at the start of the inspection process and that includes tribunal data. That is used as a starting point on inspection. We do not check compliance with every legal duty on our inspections but we evaluate the experiences and outcomes of children and young people with SEND. Through our training, we discuss with inspectors that that must be discussed on inspection and it may mean that they find more significant concerns in the area.

On the ground in local area partnership inspections, we focus on what leaders and the partnership might know about increases in complaints or tribunals, for example, but more importantly what they are doing about



it, who they are bringing in and—vitally important—how are they involving parents and carers in that process.

A typical example, I suppose, is the timeliness of education, health and care plans. We routinely identify that as an area for priority action or an area for improvement, but we always seek to explore what leaders are doing about it, whether there is a particular blocker in the system such as a shortage of particular specialists and, importantly, whether parents and carers are informed about what will be in place while they wait. We are not excusing anything there, but we consider the whole area and also the outcomes on children and young people, how people feel about the process and how well they are used in co-production to come up with solutions jointly. Anything to add, Lucy?

Lucy Harte: That data is important and an important starting point for the inspection team. We ask for information from the local area and it includes the data on tribunals. It is an important starting point for the inspection team, who start to develop their lines of inquiry from that, but this inspection framework is looking at the experience and outcomes.

Through our reports, we try to bring to life more than the data points, so the experiences before they get to that mediation or tribunal point. Also, some of the data that we have spoken about here in the Committee highlights the importance of that aspect, as not all children in the current accountability system with SEND have access to that mediation because they have not met the threshold for an EHCP assessment. Georgina mentioned at the start the importance of thinking about statutory responsibilities for children and young people who access SEN support. Our current inspection framework attempts to evaluate the experiences of all children and young people with SEND, not just those with EHCPs, even though, as Adam has already said, we identify significant local area partnership challenges with EHCPs. It is important that we use the data. We triangulate the data through our inspection activity and report on the evaluation criteria set out in the handbook and framework. The data is important but, for the purposes of this inspection framework, it is one part of the person's lived experience.

Q167 **Dr Marie Tidball:** Building on that more broadly—you have touched on this a bit but it would be helpful if you could be more explicit—is legal compliance currently factored in to the area inspections?

Adam Sproston: Inspectors consider complaints that have come through upheld cases as part of the pre-inspection information that is gathered. It is considered typically through themes. Timeliness might be a theme. There might be a theme that certain services are not provided. That draws key lines of inquiry that are then tested through other inspection activity; for example, gathering firsthand evidence from parents and carers, children and young people, speaking to a range of staff and leaders who are working on the front line to support children and young people with SEND. Legal compliance data is considered. As I



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said earlier, we don't check each legal compliance but it is factored into our inspection information.

It is also important to say that as data is only the starting point, there is no data as such, which is why we need well-skilled inspectors on the ground, to look at quality.

Q168 Dr Marie Tidball: I want to push you on this. I am not talking about the data. You have helpfully set out your methodology and how you triangulate the information and are, essentially, listening to children, young people and their parents who do not get access to the legal system, but they therefore will nevertheless give you a reflection of the extent to which compliance is happening in practice. For those groups that you have eloquently set out, as well as data, for those individuals where you are not seeing compliance, we need to get at how you reflect that in your findings.

Lucy Harte: Adam touched on it earlier in talking about when we identify that through our inspection activity. Part of our inspection activity and the evaluation criteria are the leadership and governance processes. How that is borne out on inspection is how the inspection team can be assured through the evidence base that the leadership has taken account of the evidence that is reflected through the area SEND inspection. There might be significant concerns about some area of compliance. Like Adam said, we would not go through every single area of compliance, but where compliance comes up as a theme, as an issue, it would be further explored by the inspection team with the leaders in the local area so that the inspection team can understand the lived experience. That is how it would be reported in that final and full inspection report. That information would go through that process on inspection and would land in the final inspection report.

Q169 Dr Marie Tidball: I have one final follow-up. What factors, in your view, would close the compliance gap? Given that we know £59 million is spent on legal proceedings, with £46 million spent by local authorities and £13 million spent by the DfE, how could that money be moved further upstream to be distributed differently?

Adam Sproston: I think it comes back to the focus on ensuring that partners are around the table so that when children, young people and families face early signs of difficulties or challenges, there are quick systems to discuss challenges face-to-face, to mitigate them and to stop an escalation.

The point about money would not be a matter for us to comment on. However, in our preparation for the adulthood thematic, we found that when intervention is put in place earlier and resources in areas are focusing on children and young people who may need different accommodation when they are older or other support, it typically has a better focus on how everybody feels about the system and also on improving their outcomes and experiences



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Lucy Harte: We can probably include some good examples in some follow-up written evidence. We can share that from some published reports.

We have seen some good examples of significant weaknesses in education, health and care plans on inspection. Thinking about the compliance elements for that is about the timeliness, but on inspection I see significant concerns about not only the timeliness but also the quality—how those education, health and care plans are co-produced and the quality of annual reviews. More in the inspection reports might help to illustrate some of that and we can pick that out from our inspection reports if you like.

Georgina Downard: I want to chip in on your question around legal compliance, which was based on our written evidence from IPSEA. I want to elaborate slightly.

While it is positive to hear what you have been saying about the data and things that you do consider, our view is that it is not just about leadership but local authority leaders, ICB leaders and school leaders, yes, absolutely, need to understand and apply the law, but so does everyone who works for them. The data that I am sure you are seeing but that is also publicly available, the ombudsman decisions and so on, all show that we cannot assume understanding and compliance with the legal framework of the Children and Families Act.

In our view, breaches of those duties should form a more significant part of these inspections and should count as significant weaknesses that require oversight and action. Data from complaints, tribunal appeals, ombudsman complaints and so on is important, but that does rely on families having the knowledge, the ability and the time and making the effort, on top of everything else that they are dealing with, to initiate those processes. We see an opportunity in the area of the SEND inspection framework for it to cover compliance that does not rely or put the onus on parents to take those actions in the first place.

Q170 **Manuela Perteghella:** My question is to Adam. You have mentioned that you want to incorporate the voice of parents and carers and of children and young people into area SEND inspections and Ofsted school inspections. How do you ensure that these voices are heard rather than its being a tick-box exercise?

Adam Sproston: We are completely committed to ensuring that children, young people and families' voices are part of all our inspection work. To answer your question, I will start first area SEND and then I will move on to schools, if that is okay.

In area SEND, we speak face-to-face with parents and carers, we engage with the parent carer forum. Each local area partnership has one. We always send a survey to parents and we have had a huge response rate since January 2023 of around 81,000 responses to our survey. I can send



you the exact figures. That also brings through key findings that the inspection team can test out further, threads that they may want to unpick a little bit further and reflect what parents are saying to us on inspection.

As part of the framework, it is vitally important that we see parents and carers as part of the partnership. In all that we do, when we speak about individual children's education, health and care plans, we triangulate the work that we do on the ground with parents and carers. For example, "Did you know about this package of support that has gone in? How did you get to this point?" We talk closely with families as well.

I will hand over to Lucy and then I promise I will come back to you about the question about schools. Do you have anything to add there, Lucy, about area SEND?

Lucy Harte: The voices of children and families under this current framework on the area SEND inspection are frontloaded at the start of the inspection. The inspection survey goes live on the day of the announcement and is shared the day after the announcement. The survey is live for a week. Analysis from that survey is shared with the inspection team. The inspection team will have access to the raw data, but they also can have an analysis to pick out those themes.

Adam shared the overall numbers. When we drill down to the individual inspections, we have had a good response rate on the inspections. Having one element of the children and family voice at that point in the inspection allows the inspection team to develop lines of inquiry based not only on the data but also on children and families' voices in a way that we would not be able to. It would be difficult to replicate those numbers and achieve that reach and coverage. There is a separate questionnaire for children and young people to complete as well as parents and carers.

The other element of the survey is that it is anonymous, but it allows the inspection team to look at particular geographical hotspots because people are asked to submit their postcode. We can see that in some of the larger shire counties, there might be some challenges in different geographical pockets. That means inspection activity and lines of inquiry can perhaps be focused on some unanswered questions that the survey poses.

We also have a case-tracking methodology on the area SEND inspection that means that we understand a smaller number of children and young people's experiences in depth. That involves speaking to the children and families when they would like to speak with us. We don't force anybody to do that. As we move through the inspection activity, we have other points of engagement with children and families. We cannot share the details yet, but part of the area SEND review is Ofsted and CQC considering how we use parents' voices. It is an important part of these inspections.



When we launched the inspection framework, we were clear that this was about children and families' voices being at the heart from the start of the inspection activity. The inspection methodology reflects that approach.

Adam Sproston: You have reminded me of something else, if I can build on that a little bit more. I will turn to schools following that.

The survey was developed with the parent carer forum as well. We have an easy-read version so that the survey is accessible. We have worked with parents and carers during the current area SEND review.

Schools', parents' and carers' opinions are at the heart of what we do. We use a tool, an online survey, which parents and carers can fill out at any time of the year. That is also announced to parents at the point of notification. It is called the Ofsted parent view tool. That information goes to the lead inspector, who will draw from it as one piece of evidence against anything that they may want to test out alongside leaders and work with their inspection team on the ground.

We also consider any complaints that are received and they get saved as part of pre-inspection information. Again, I will write to you with specific details, but around a fifth of our complaints to Ofsted contain some element of SEND in its entirety or SEND is mentioned as part of the complaint. That is all considered at the point of inspection.

When there are particularly low rates of response, inspectors will seek to gather first-hand experience of parents and carers. For example, at the start of the school day, they will attempt to meet with parents and carers at the school gate.

Q171 **Mrs Sureena Brackenridge:** I will now ask a similar question to Georgina. From IPSEA experience and expertise, is parental engagement adequately embedded across SEND accountability processes? What further steps could be taken to strengthen parental voices and carers' voices and involvement so that their feedback is valued and acted upon?

Georgina Downard: Despite some of the things we have in place, which are certainly positive, we hear from parents that they are dissatisfied with their opportunity to contribute to inspections and can feel that their views get overlooked. It is absolutely excellent to start with their views but I don't know if anything beyond surveys and those on-the-spot attempts to meet with people at the school gates could be employed to improve that. Certainly parents' and carers' views need to be properly listened to.

I will not apologise for mentioning the law again, but parents do expect the law to be followed. When it is not and that does not feature as being thoroughly scrutinised in these inspections, it can contribute to them not feeling heard or their voices not being valued as well.

Q172 **Darren Paffey:** I am interested in how Ofsted's proposed inspection



framework strengthens schools' accountability for including pupils with SEND. You have set out a definition of what inclusion looks like, but there is concern of course. Some unimpeachable values are in there and some stuff that we all agree with, but will the traditional metrics that form those decisions change? Could you say something about how that will improve the accountability for inclusion and take it seriously?

Adam Sproston: We have recently ended a 12-week consultation period on our proposed new education frameworks and they will run from early years schools through to further education and skills providers. We are pleased to have had over 6,500 responses and we will analyse those in detail. I am unable to share the details. I don't want to pre-empt the result of that today, but I can share conclusions in due course.

I will discuss how we have reformed that definition of inclusion and we will consider that alongside the responses from the consultation. Importantly, when our Chief Inspector, Sir Martin Oliver, came to the Committee in January, he talked about how, if you get it right for the most disadvantaged children, you get it right for all. That is thoroughly what we believe at Ofsted. Our proposals going forward will have a laser-like focus on children with SEND. Importantly, children and young people in the Big Listen ranked the support for their friends and their peers with SEND as a top priority. We have listened to and heard that and will put it forward in what we will announce.

We will have an inclusion evaluation area. The definition that we formed around that as a way of considering inclusion in our work was formed with stakeholder engagement. We have established an external reference group that has colleagues from multi-academy trusts, special school leaders and colleagues from the charitable sector on it, who have given us support and challenge on forming that definition. As part of our consultation, we have asked for opinions on the definition and we will take all those responses into account when we produce our response.

Q173 **Darren Paffey:** From here on, will you ensure that that definition is reconsidered to make sure it is robust and, importantly, that it is capable of being meaningfully measured in inspections? Do you have a plan for that?

Adam Sproston: Yes. We will announce in due course our response following our proposals. I can assure you that children with SEND will be at the heart of what we are looking at in the accountability system for the purposes of this Committee. The definition as a way of working is also being considered and our response will be made following our analysis of those stakeholder views.

Q174 **Darren Paffey:** Can I come to Georgina and Sharon on this, to get your view on whether the new inspection framework reflects a comprehensive approach to SEND or whether it could be strengthened further?

Sharon Chappell: I will come back to my point again. It could be strengthened by having proper accountability and pinning it. As you say,



it reads well and we have no objections to the definition, but if a parent is saying, "The school has not removed the barriers. My child is not achieving and thriving," they have nowhere to go with that. To make it stronger, make sure the complaint route for parents is easy, accessible and independent.

Georgina Downard: To touch on that particular point before talking about the definition of inclusion, our experience at IPSEA is that when parents complain to the Department for Education about a school, the Department has a wide discretion over what it will and will not investigate. It does not have the powers that the ombudsman has. It does not publish complaints results or issue recommendations for financial remedies. Again, IPSEA supports the extension of the ombudsman's jurisdiction to cover schools. There are a couple of reasons in addition to what has been mentioned about that.

To have the introduction of inclusion as an evaluation criterion in the inspection framework is certainly a positive step. In our view, the definition is quite top-level and it includes some subjective terms like "high expectations", which might be open to interpretation between a school and an inspector. We do think that some of those things need to be pinned down as far as possible to avoid confusion. Key factors need to include training and support for school staff on inclusive practices, expecting school leaders to implement inclusive policies, and having strong systems for collecting and analysing data and looking at flexibility in the delivery of the curriculum, and things along those lines.

Unsurprisingly, we consider the inspection framework and the inclusion of inclusion within it as an opportunity to assess the extent to which settings and schools comply with their existing legal duties to be inclusive in the Children Families Act and the Equality Act of course as well. We think the inspection toolkit should refer to that. The version that has been consulted on does not. It refers to the SEND code of practice, but that is not the same as the primary legal duties.

A couple of those duties, in our experience, are frequently breached. This could be an accountability mechanism to help avoid that. For example, the duty on mainstream schools to include children with special educational needs in the activities of the school with children who don't have those needs is a legal duty in section 35 of the Children and Families Act, subject to some limited exceptions, but we know from calls to our helplines that it is not happening, and that children with SEND are frequently excluded from the activities of the school—things like clubs, school trips, PE and even from the classroom itself—for reasons that are not covered by those exceptions. Remember, people come to IPSEA when things are not going right, but the reasons that seem to be given seem to relate more to the school's convenience, or maybe an excessively cautious approach to risk.



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People not being able to mix with children who don't have SEN is not inclusion, nor is being directed off-site or excluded for behaviour that has arisen due to unmet needs or disability, or even being full-time in a specially resourced provision or an SEN unit, which there has been quite a bit of interest in recently. The provision made in those units can certainly be really valuable, but someone spending more time than they want, and more time than is required to meet their needs, in there and being prevented from mixing with other children at school, is not inclusion.

The framework could be strengthened if legal duties were looked at, and familiarity and compliance with the Equality Act, schools' understanding and not treating pupils unfavourably because of their disability or something arising from a disability, and having a willingness to make reasonable adjustments—that is all vital. If inspections were looking at that, it would be valuable, especially the anticipatory duty to make adjustments to avoid disabled children being disadvantaged. As we have talked about already, disability discrimination claims complaints could be helpful information for informing an inspection view.

We think the definition of inclusion and the toolkit should incorporate some of these legal duties. That would strengthen the accountability for schools to be truly inclusive and would be a significant improvement to the way that the framework is currently written.

Darren Paffey: If I have heard you right, it does strengthen some of the school accountability, but you have talked about a number of further measures.

Georgina Downard: Yes, which would help be specific around some of the legal duties. While it is certainly crucial to have inclusion as an evaluation criterion in its own right, it should underpin other areas of evaluation as well.

In the area of attendance, for example, a key measure of inclusivity would be how many children, and which children, are missing from school not through choice, not through parents choosing to home-educate, who are not receiving an education and who have been excluded from school. Data could be gathered on that and could be published alongside school report cards by schools, in addition to the children who are missing from education, those who are on a part-time timetable or who have been excluded whether formally, permanently or temporarily. We think the description for what is seen as causing concern should make explicit reference to pupils who are persistently absent and to whether their needs are met and, if someone is not attending regularly, whether any needs that they might have that might related to that have been investigated or assessed. That is one example. Attendance and inclusion go hand in hand.

We often hear of a child's needs being unmet or misunderstood as the reason that they are not in school. We see an opportunity for this



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framework to look at that through the lens of inclusion, not treating attendance, behaviour and things like that as separate issues.

- Q175 **Caroline Voaden:** My first question is also to Georgina. The National Association for Special Educational Needs has said that school inspections should take account of exclusion rates of SEND children, attendance patterns of SEND children, levels of co-production and outcomes beyond the classroom that prepare SEND children for adulthood. Do you agree with this?

Georgina Downard: Yes. Hopefully, what I just said effectively answers that. Certainly, yes. I do not have anything to add.

- Q176 **Caroline Voaden:** Okay. We have been through that quite thoroughly, so we will move on. My next question is to Sharon and then anyone else who wants to contribute.

Concerns have been raised here with the Committee during this inquiry about a lack of robust scrutiny of SEND provision in academies and free schools. Do you agree with these concerns, and what action would you recommend? You did reference that at the beginning but maybe you would like to elaborate a little bit.

Sharon Chappell: Absolutely, for academies and free schools but also maintained schools as well, enable us to look at the SEND support for those children who fall below that threshold, enable us to look at the admissions and the exclusions, and accountability will follow. We see regularly councils struggling to find alternative placements for children who have been excluded maybe for behavioural issues and so on and not being able to direct into academies, even when the fair access protocols apply.

There is probably a lot of good practice. We don't see it; we only see where things have gone wrong, but yes, we fully support additional scrutiny for free schools, academies and maintained schools as well.

- Q177 **Caroline Voaden:** Maybe I could ask you, Adam. Is that coming down the pipeline? Is it likely to happen?

Adam Sproston: In the King's Speech the Government announced about us having powers to look at and inspect directly multi-academy trusts. We welcome that. We do have responsibilities for children with SEND and other aspects of a school's work but we don't directly inspect at trust level currently. We would welcome that.

Caroline Voaden: Have you had any indication that you might be given it?

Adam Sproston: I haven't, no, but I will check and will write back if it is different.

- Q178 **Manuela Perteghella:** My first question is to Sharon. Your call last year for expanded powers to investigate the implementation of education,



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health and care plans and the provision of SEN support in schools reflects growing concerns that we heard about accountability within schools. Could you explain the rationale behind this request and why it is considered urgent?

Sharon Chappell: I will not repeat what I have already said because I have gone into it in quite a lot of detail but I will provide any clarification needed.

We do feel it is an urgent issue. We think there is a lack of accountability. Situations drift. Children and young people are left without the provision they are entitled to, as you have heard from Georgina. That is an escalating issue, which costs the country more in the end because the children and young people need additional support further down the line. It creates all sorts of issues in myriad ways when children and young people are not supported correctly.

We feel there have been lots of opportunities to fill this gap. We have asked for it several times. This Committee has recommended it previously. Back in 2014 we were saying there is a gap, but it did not get filled. We would like to see, as I say, true accountability across the education spectrum.

Q179 **Manuela Perteghella:** My next question is to Georgina. You already mentioned that one of your recommendations is to make SEND support statutory. Perspectives differ on whether it should be made statutory. In your view, would it improve accountability in schools? Also, what would be required to implement it effectively?

Georgina Downard: We hear of schools and local authorities interpreting existing duties to children and young people with SEN who do not have EHC plans. That is, for those who don't know, those for whom SEN support is relevant. They interpret those duties differently and quite often a child falls through the gap.

When I say duties, I mean the duties of mainstream schools, colleges and maintained nursery schools to use "their best endeavours" to secure the special educational provision that a pupil or student on their role needs. In other words, that means to do what they reasonably can to meet their SEN. Also, they have a duty to have regard to what the SEND code of practice says about SEN support, which, as statutory guidance, settings could depart from as long as they had a good reason.

These different interpretations that we see reflect how current duties around SEN support lack clarity and, if necessary, are difficult to enforce. They are not as strong and clear-cut as if the law required settings to take particular steps to identify and meet and support children and young people who don't have EHC plans but do have SEN, so far as they are able to. That is important because we need to ensure that we don't expect schools to do things that they don't have the resources or the expertise available for.



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I can speak a bit more about the why. In February IPSEA and the organisation Contact surveyed 2,000 families of children and young people who have SEN but don't have education, health and care plans. The results of that survey indicate that lacking SEN support resulted in absence, part-time timetables and exclusions. Of the families who completed the survey, a fifth of children with SEN were not getting any SEN support from their school. I would have to check the exclusion rates for children who are on SEN support, but they are around four times more likely to be excluded from school than those who don't have SEN. Also, what we hear from people using IPSEA's services indicates that some schools are not following the code, and probably not following the law and the statutory guidance on exclusions, either. If SEN support was statutory, it would make duties to support rather than exclude these children stronger and clearer.

You asked how this could be done. Since IPSEA submitted our written evidence, we have worked on a draft proposed provision, which we propose replaces the best endeavours duty and introduces clear requirements for supporting those who don't have EHC plans. I can provide a copy of that to the Committee after the session.

In summary, we propose that a mainstream setting, always in consultation with parents, is required to identify a child and young person's special educational needs and the special educational provision that they require, so far as they are able to from within their resources and expertise, and then to set this out in a prescribed SEN support plan, which would also specify any special educational needs that the child or young person might have but the school has been unable to fully identify, and make clear the provisions required for them that the school can and cannot make from within their own resources. We propose that those settings are required to secure the special educational provision that they have identified as being able to secure, and to notify the local authority of any provision that it cannot secure, as well as any needs or provision that it could not fully identify and why. We suggest that this would be included within section 66 of the Children and Families Act so that it would be a statutory duty. The details of timescales and review—because, if you are familiar with the SEND code of practice, it talks about assess, plan, do and review—would be for regulations to cover, but the duties that we propose would support early intervention, which can make a long-term difference, of course, and also inclusive practice.

Settings would need ringfenced adequate funding if they are to be expected to put the provision in place, rather than the notional per pupil SEN budget, which in reality is not, and often cannot be, applied to a particular individual; and also adequate ongoing and initial training. On the funding point, 35% of the respondents to our survey with Contact said that the reason schools gave for not providing SEN support or adequate SEN support was funding. We could share some more information from that survey as well, if it would be helpful.



To be clear, IPSEA's view is that SEN support should be made statutory. That would mean clear steps being set out in law that make it easier for schools, parents and others to understand what is expected for those who don't have education, health and care plans. But making SEN support statutory must not mean, or involve in any way, expecting educational settings to do more than their funding or their expertise allows. When that is the case the threshold for an education, health and care needs assessment would be met and the threshold for issuing an EHC plan should not change.

Linking it back to accountability, breach of a clear and specific statutory or legal duty is much easier to notice, to understand and if necessary to enforce than a duty to use your best endeavours and do what you can to comply with statutory guidance. Again, we would support the extension of the ombudsman's remit because putting that together with the introduction of statutory SEN support would strengthen accountability for those children and young people who don't have EHC plans. The ombudsman would be a more accessible and less adversarial route than the alternative of a possible judicial review against the public body for not complying with the legal duty when there is no other way of resolving that dispute quickly and effectively enough.

Q180 Caroline Voaden: This question is to Adam. The Committee has heard that accountability pressures can lead to exclusionary practice. What improvements and safeguards will be implemented through the new inspection framework to ensure that accountability measures instead promote inclusive approaches that support the needs of students with SEND?

Adam Sproston: Ofsted has long been committed to tackling off-rolling and any other exclusionary practices such as gaming, for example, where something is done not in the best interests of the child. That might be them not taking certain curriculum pathways or sitting certain exams. Although data does form a starting point and we do have colleagues in our data and insights team who identify any possible patterns in pupils' attendance that may alert inspectors to possible off-rolling or concerns with attendance at the school, we will always explore those with leaders on the ground. In the handbook, we are ultimately committed that if we find exclusionary practices, off-rolling or gaming for whatever reason, there will be consequences to the school. Exclusionary practices might be the inappropriate use of part-time timetables or the inappropriate use of alternative provision, which we recognise affects children and young people with SEND more than their non-SEND peers.

Another aspect to consider is the first-hand inspection activity that takes place and how we would find out about this. Pupils would tell us or parents would talk to us during the inspection. I also want to recognise that we do look at a system level—area SEND inspections, how children's placements have been commissioned, for example alternative provision and the oversight that the local area has on schools' use of perhaps



something that may be from off-rolling or not done quite in the best interests of children, and what oversight they have of what is going on in particular schools in their area.

Something to link to an earlier point of Georgina's—we are concerned about the number of children who are on part-time timetables or have different ways of being educated; and we have launched, with CQC, a thematic inspection looking at children with SEND who are not in school. It is exploring in detail—it is ongoing at the moment—across a range of six local area partnerships of different contexts, what are the push and pull factors that have led to children not being educated in a school. That will link to—

Q181 Caroline Voaden: Why are you concerned about part-time timetables?

Adam Sproston: There is an increase in part-time timetables and we want to hear from parents and carers and about why they are being used more. We also want to find out about their experiences of them and, linking to your earlier question, whether this is being done in the best interests of a child or whether they are being used to plug gaps in the system. The same can be said about alternative provision.

Q182 Caroline Voaden: Presumably, if a part-time timetable was being used to encourage a child to come into school for a few hours rather than not coming in at all, surely that is not something that Ofsted would—

Adam Sproston: If that was the case, we would be pleased. Information about part-time timetables is still being gathered and we will pull together a report, but in some cases—we found this on area SEND inspections—they are not always used in that way and children can stay on them for too long. We believe that what you have just described, where they are used best, is to increase pupils' attendance at school over time in a well-managed way, working with parents and carers.

Georgina Downard: We hear of part-time timetables being used unlawfully. Potentially a school might consider that it is a way of managing a situation, but it might mean that a child is being prevented from accessing their education because they have needs that the school does not feel able to meet or has not understood. Every child of compulsory school age has a right to a suitable full-time education, and when they are on the roll of the school and you tell the local authority that they are not getting that, while being off the roll of a school does not prevent the local authority from having an obligation to fill that gap when a child is not otherwise receiving their education, quite often a bit of a dispute arises around whose responsibility it is to make sure that that child who is not in school still gets education. When we look at that in detail, in a lot of cases we see that the child could be in school, and that they don't need to be on a part-time timetable if the right resources and expertise had been put in place and their needs had been identified. The right to a full-time education is subject to the exception of when it is in their best interests, as you say. Sometimes part-time timetables might



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be in place with agreement of the parents to help with the situation you described, but more commonly we hear of them being used in a way that is not supportive of meeting children's needs.

Sharon Chappell: Can I come in on that as well? It is great to hear that schools are held to account when they are using inappropriate part-time timetables or off-rolling or unofficially excluding, but that does not mean that there is any redress for those individuals who have been affected, so they are left without any form of redress in those circumstances.

Q183 **Caroline Voaden:** Lastly, Georgina, you have touched on this previously, but maybe you could summarise what changes you think are needed to ensure that accountability measures discourage exclusionary practice and instead promote inclusive approaches.

Georgina Downard: We believe that the ombudsman's jurisdiction should be extended, and its ability to strengthen accountability would be further strengthened by SEN support being made statutory. I say that from the perspective of steps within the accountability system needing to have been taken, but we hope that these things would mean that schools would have a clearer understanding, not taking action that leads to a complaint that ends up at the ombudsman. Ultimately, schools have a duty to be inclusive and should not require encouragement to comply. I would question in what other area it would be considered acceptable to be talking about persuading or encouraging someone to comply with their legal duties.

Q184 **Dr Caroline Johnson:** You talked about exclusions, part-time timetables, alternative provision of resources being used. Could those things be considered a reflection of inadequate resources? I met some head teachers recently who talked about the behaviour challenges for the whole class. They have a duty to the child with special needs but they also have a duty to the rest of the class. They talked about how, if they had a two-to-one arrangement with support for children and a child was not regulating their behaviour well, they would be forced to take that child out of the classroom, leaving the rest of the class short of staff. Are teachers doing the best for a whole cohort? What can the inspection regime do to give leverage to the head teachers to get more resources for children where the resources that are provided are not enough for them to manage the whole cohort of children in their class?

Adam Sproston: We would not discuss resources with leaders, necessarily. On inspection we consider local area inspection outcomes. If they are working in an area—for example, we may highlight lengthy wait times for certain health services—we will seek to explore that on the inspection and what is in place.

Dr Caroline Johnson: Looking at the effect on the other children is part of the question.



Adam Sproston: We always consider all children, but do you mean the effect of an individual child on a wider cohort? Is that what you are referring to?

Q185 **Dr Caroline Johnson:** Yes. Head teachers are telling me that if they do not have adequate resources to manage a particular child within the classroom as they required to, they are caught in a Catch-22 situation. If they bring the child into the classroom and try to manage them with inadequate resources, the whole class potentially does not achieve the best outcomes. If they bring the child into alternative provision, they may be able to better manage that. It may not be a very good situation either—neither is a good situation—but that may be done with the best intention for the wider cohort. Do you look at that?

Adam Sproston: We look across the whole school and the effect on all learners but we are focused on the children with SEND receiving the support that they need to thrive. That is both in learning and in their wellbeing. We find that alternative provision is used too often as a place that children stay in for too long, as opposed to being a fixed-term intervention. How effectively that is used by schools is variable.

Q186 **Mrs Sureena Brackenridge:** This question is for Adam and Georgina. The Committee has received quite a lot of evidence from teachers, school leaders and SENCOs that Ofsted should consider excluding the achievement data of pupils with SEND and scrutinising data on the exclusions and admissions of children with SEND. Are these metrics being considered by Ofsted? If not, why not?

Adam Sproston: The metrics are considered by Ofsted. I will take the exclusions in attendance first. Inspectors have robust evidence, pre-inspection information that comes through, that can lead to some lines of inquiry that will be unpicked further with leaders. That will, if it is a significant group, highlight individual cohorts, such as children and young people with SEND, and the inspection team will seek to explore further and see what leaders are doing about that. Inspections always focus on improving attendance. That has particularly been our focus since the pandemic. We do find that children with SEND—we have reported on this—are more likely, as I discussed earlier, to be on flexible timetables or not attend school, which is why we are exploring children not in school.

Your first point was about data and how that is used on inspection. It is important that we have data as a starting point to see how well children achieve. That is only part of the picture and is why we have established the Ofsted Academy to improve inspector training, recruitment and retention, because some children with SEND will not sit formal qualification pathways and it is important that we work with leaders to think about children's starting points and how they are developing, for example in preparation for adulthood or life skills, through the curriculum that is offered. I acknowledge the point about data. We believe that data is an important starting point that we will test further on inspection,



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because leaders and schools need to have high ambitions for children and young people with SEND.

Q187 Mrs Sureena Brackenridge: I believe that there was a similar sentiment in the Ofsted Big Listen. How can you assure schools that they will not be penalised for pupils with SEND in their academic outcomes, but focus more on the support and the progress that the child is making that is individual to them?

Adam Sproston: The current inspection handbook clarifies our approach to that, working closely with leaders, mostly the special educational needs co-ordinator, to think about individual pupils' starting points. Here, just to be clear, we are talking about children who might follow a different curriculum pathway or not sit GCSE exams, or they might be on pathways that we don't have data on until we talk to the school, such as some modular qualifications that children can build up over time. We work to find out about children's starting points, talk to leaders about that and what is being put in place for the support and guidance for the child. Again, if there is something that is different from mainstream peers, our inspectors will seek to explore why that decision has been made and what the end point proposed for the child is.

Of course, we are always thinking about how parents and other professionals have been involved in those decisions. There is something in our recent recruitment of inspectors that will make that more robust.

I think that the predecessor Committee, if that is the right terminology, asked us to think carefully about that, so we have asked for colleagues from the sector that have SEND and alternative provision backgrounds to bolster that in our workforce as well.

Georgina Downard: Looking at the data on exclusions will be important. We don't support the suggestion to not include children with SEND in the performance data. Our view is that that would not be helpful or inclusive. We need data on children and young people with special educational needs and disabilities. As the Public Accounts Committee said in its recent report, SEN performance data should incorporate factors other than academic attainment. Of course, not all children on SEN support will continue to need that level of support if they get the right support soon enough. Therefore, it should be possible to manage data so that a school average is considered alongside the number of children at the school who have special educational needs or disabilities. I would be seriously concerned, if we were going to go down any sort of track of removing children with SEND from data on performance, as to what would be coming next—removing them from attendance figures? Removing them from sight in data that is supposed to be and should be improving and driving inclusion for all, including those children?

Q188 Mrs Sureena Brackenridge: My next question is to Sharon and Georgina. The Children's Wellbeing and Schools Bill proposes extending local authority powers over school admissions. Does this sufficiently



address concerns about exclusionary admissions practices?

Sharon Chappell: We think anything that will help level the playing field will be helpful and increase fairness and transparency, but the Bill does not address our concerns about lack of accountability on SEN admission and exclusions more generally. If an academy needs to be directed to take a child, there is an indication about the culture within that environment. If, once admitted, there are issues, there is nowhere for that parent to go to take those concerns other than the academy trust, and from there to the Secretary of State. That is a very big leap for a parent to take. Again we would say, to make it effective, underpin it by a fair and simple and independent accountability structure.

Georgina Downard: I agree with that. I think that the question refers to the Bill proposing that local authorities would have the power to direct an academy to admit a pupil in the way that they do for maintained schools. Broadly speaking, the extension of that power would be a positive step. Remember, in SEN law, under the Children and Families Act and also under the Equality Act, academies have the same duties to children and young people as maintained schools do.

But it would only be positive if that power were properly exercised. If it is properly exercised, it could prevent a child with SEN from missing education. By properly, I mean complying with the requirement in this provision for the school that is being directed to admit to be able to make suitable provision for that child, to provide a suitable education. "Suitable education" is the language of the Bill. The definition of what that means includes being suitable to their SEN. Therefore, they would need to be directing the right school to admit in the first place. For that power to be properly exercised it requires lawful consultation with the parent of the child and with the school before issuing any direction for the school to admit.

As Sharon said, extending this power is not likely, on its own, to remove and take away exclusionary practices. Being admitted doesn't necessarily mean being included and adequately supported. Inspection criteria, SEN support being statutory and the ombudsman's jurisdiction being extended to cover schools would all strengthen that, and could work together with the fact that this power may be extended to cover academies.

Q189 **Dr Caroline Johnson:** Independent schools are inspected against the independent schools standards, which are different because they have related entries for flexibility of governance, selection admissions and other things, so the standards are necessarily different. However, it has been suggested that in some areas of SEND metrics for assessment there could be some uniformity across the independent and state school inspection metrics. Would that be helpful?

Georgina Downard: What is really important is that everyone is focused on genuine inclusion and meeting the needs of those with SEN and protecting them from discrimination. That applies whatever the type of



school and whoever the inspectors are. Alignment in that regard would certainly be positive. The Equality Act, of course, applies to all educational settings. Compliance with it could easily be aligned across the different types of setting that we are talking about and form part of any metrics that were included in inspections across the board. While the legal position is different for independent or wholly private schools compared with state schools, under the Children and Families Act and exclusions law, information on children taking part in the activities of the school with those who don't have SEN, and exclusionary practices that have been mentioned already—off-rolling and so on—will always be relevant, regardless of the type of school. That could be aligned across different inspection regimes.

Q190 Dr Caroline Johnson: Would that help children with special needs or could it lead to some schools changing admission criteria?

Georgina Downard: I would suggest that if that sort of thing led to a school changing its admission criteria, it would be risking being discriminatory in the criteria that it is setting. I would hope that there would be a safeguard in the Equality Act from schools making decisions that would effectively implement a policy that would disadvantage those who might be disabled.

Q191 Jess Asato: Lucy and Adam, we have heard that health services need to be subject to stronger scrutiny to improve accountability for their role in SEND provision. Are there any plans to enhance the focus on health services within area SEND inspections? Beyond that, are there any additional ways to hold health services accountable for their role in delivering SEND provision?

Lucy Harte: We set out in this inspection framework to make sure that where significant weaknesses are identified in the partnership, we are clear about the responsible body that needs to respond to that significant weakness. More often than not it is a partnership responsibility. We can think about some of the challenges that we have spoken about during the Committee today, and about EHCPs—I know we said that we would supply some examples of that—and also think about the inspection outcomes that do typically achieve positive outcomes and show strong joint working. We have to be cautious, in our accountability measures, that we are not divisive to local area partnerships.

We have taken steps during this inspection framework to attribute areas of priority action just to ICBs. That is in the minority because of those factors that we have been aware of, and also because of the partnership working. There is currently no proposal to change that within our inspection activity, but the inspection activity that we complete as part of our monitoring visits and subsequent full SEND inspections when we go back will give us some more information about the response to inspection.



NHS England has launched a consultation on its performance oversight framework, which are the metrics that the ICBs are held to. This talks to a point that I raised at the start, that the area SEND inspections are the only independent tool that holds the partnership to account. DfE and NHSE work together to support the local area's strategic plans post-inspection, providing scrutiny and challenge. Beyond that is where some of the accountability changes. In NHS, we have the oversight framework. If, after a full area SEND inspection, the Minister for Children, Families and Wellbeing decides that the threshold for issuing an improvement notice has been reached, that improvement notice is currently only issued to the local authority; it is not assigned to the ICB partners. There is a definite difference in terms of accountability and the accountability that falls out of inspection, but we believe that we have worked hard, and it has been effective, to try to name those partnerships responsible for the actions as we identify them on inspection.

In this inspection framework there are two CQC inspectors on the team. In the old inspection framework, there was one health inspector. Their primary role is to cover the health services. The great opportunity that we have through joint inspection and being on site together is the triangulation that we can make, trying to understand the experiences of children accessing the health services through their school or through the different services that you have heard about before. Schools might trade services and trade an educational psychologist. We can understand what the lived experience is for children and young people in accessing those services, which is some of the benefit of the joint inspection activity, while acknowledging some of the limitations.

Q192 Jess Asato: Georgina, some stakeholders have proposed extending the powers of the SEND tribunal to make legally binding recommendations to health bodies. Do you support this proposal? How might it be implemented in practice? Do you anticipate any challenges, particularly in the resource-constrained environment that we are in?

Georgina Downard: Yes, IPSEA would certainly support the proposal to extend the tribunal's powers in respect of health and social care. At the moment the ability of an ICB—albeit if it only has strong and cogent reasons—to depart from the recommendations of the tribunal, and also what we see as a very minimum involvement of health bodies in SEND tribunal appeals when health issues are still at play, can lead to the health-related content of an EHC plan being vague or inadequate, making the health provision in those plans then more difficult to understand and, where necessary, to enforce. We are, of course, talking about education, health and social care assessments and plans. At IPSEA we often see the health and social care aspects being overlooked, so strengthening of the tribunal's powers could help to overcome that.

If the powers were extended, and perhaps consequently a health body was made a party to a SEND tribunal appeal, we would expect to see ICBs being more proactive in providing relevant evidence—something



that does not tend to happen, in our experience. If a health body were a party to an appeal, they might be directed to provide relevant health evidence as standard, and we would also potentially see health bodies being more actively involved in resolving the health issues that are in dispute sooner, as in without a hearing or, even better, perhaps at mediation. We hear from mediation providers that mediation is most commonly about education issues. Even better than that, perhaps the powers would be a deterrent and get health to the table even earlier on so that no mediation or appeal about health issues was required at all.

IPSEA would support the extension of the tribunal's powers to make binding orders on social care for similar reasons. We have responded to the Law Committee's review of the children's social care framework, which I am sure this Committee will be considering as well. With the right panel composition at the SEND tribunal, we don't see why health and social care should be treated any differently from education. If the tribunal were able to make orders in relation to all three areas, it would truly be the single route of redress that it was intended to be. So, yes, we would support such a proposal.

Q193 Jess Asato: There has been a recent model blueprint for ICBs, given the cuts that they face. There are some suggestions that ICBs might walk away from SEND provision in general. I just wondered whether any of you might have any comments or reflections on that.

Lucy Harte: We are very aware of the significant structural changes that have been proposed in regard to ICBs. I currently don't know, and as a wider representative don't know, what the impact will be for children and young people with SEND. Today we have outlined the critical role that ICBs play currently, but that we think they could go further, and that it would be critical to the success of any reforms or recommendations that the ICBs have a really clear role in contributing to children and young people with SEND.

Georgina Downard: Regardless of what you have just mentioned, the Children and Families Act requires health bodies to secure the health provision that is specified in an education, health and care plan. We don't want that legal provision to change at all. The way to improve accountability is not by overhauling the legal framework. That is the opposite of holding authorities to account, whether ICBs or local authorities. We need lawful decisions to be made the first time, and for parents to have an adequate route of redress if they are not. If decisions were made lawfully the first time, routes of redress such the tribunal would not be overloaded in the way that they are now.

We should acknowledge and be proud that England's legal framework is based on children and young people with special educational needs having a right to an education that meets those needs. Any approach to or suggestion of diluting that framework would be cause for significant national shame. Children with SEN should have just the same rights to fulfil their potential as children who don't have special educational needs



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or disabilities. I hope that that will be the main point that the Committee and Members keep at the forefront of your minds in the decisions that you are making as a result of this.

Chair: Thank you very much. I thank all of you for coming to give your evidence to us this morning. It has been extremely helpful for the Committee. If there are any points that you felt you were not able to get across in sufficient detail because of the constraints of time this morning, please write to the Committee after this evidence session. We would certainly welcome that. Thank you once again.