HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Equality Act 2010 and Disability

Inquiry on

EQUALITY ACT 2010 AND DISABILITY

Evidence Session No. 13 *Heard in Public* *Questions 113 - 122*

TUESDAY 17 NOVEMBER 2015

3.30 pm

Witnesses: Ann Gross, Kate Copley, Lesley Cox and Claire Jackson

Members present

Baroness Deech (Chairman)
Baroness Brinton
Baroness Campbell of Surbiton
Lord Faulkner of Worcester
Lord Foster of Bishop Auckland
Lord Harrison
Baroness Jenkin of Kennington
Lord McColl of Dulwich
Lord Northbrook
Baroness Pitkeathley

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Examination of Witnesses

Ann Gross, Director responsible for policy on special needs, children in care, adoption and children's mental health, Department for Education, **Kate Copley**, Deputy Director, Academy Operations team, Education Funding Agency, Department for Education, **Lesley Cox**, National Lead for Special Educational Needs, Ofsted, and **Claire Jackson**, Legal team member, Independent Parental Special Educational Advice

Q113 The Chairman: Good afternoon and welcome. Thank you very much for coming. I should tell you that, as you probably know, the session is open to the public and a webcast of the session goes out live and is subsequently accessible via the parliamentary website. Indeed, one of our number is in hospital but she is able to watch on the webcast. A verbatim transcript will be taken of the evidence and that too will go on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy, and it would be helpful if you could advise us of any corrections as soon as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence or you have any additional points to make, please feel free to submit supplementary evidence to us. We know and you know that time is fairly short and you have to be fairly concise. It may be that you leave feeling that there were more things that you wanted to explain to us. If so, do please write in afterwards.

We welcome this afternoon, starting on the left, Ann Gross, who is a director responsible for policy on special needs, children in care, adoption and children's mental health at the Department for Education; Kate Copley, who is Deputy Director in the Education Funding Agency's Academy Operations team, Department for Education; Lesley Cox, who is the Ofsted National Lead for Special Educational Needs; and Claire Jackson from the Independent Parental Special Educational Advice organisation. Between you, you cover nearly all aspects of education that are relevant to this inquiry, so thank you very much.

The first question is coming from me and it is a fairly broad one. How confident are you that schools of all types are meeting their obligations under the Equality Act, including towards those with hidden disabilities such as mental problems? Is your answer the same for pupils who are classed as having special educational needs and those who are disabled but not SEN? Should academy chains have the same obligation to produce an accessibility strategy as local authorities do? Please do not feel you all have to answer, but if it is your special field please do, or add to whoever takes that one first.

Ann Gross: The first thing I should say is that as part of my director role, the team in the Department for Education responsible for policy on special educational needs and disability policy reports to me. The issue of equality and promoting equality in educational settings for disabled children and young people is something that we take really seriously. We led work on the Children and Families Act 2014, which incorporates and builds on the equality principles in the 2010 Act, and we have done a lot to communicate those responsibilities and duties to schools. The duties in both Acts apply equally to all types of schools, whether academies or mainstream schools. It is important to say that to start with.

In terms of communicating responsibilities to schools, we have issued guidance on the Equality Act. We have published a statutory code of practice on special educational needs and disability, which covers, for the first time, both SEN and disability policy in one integrated code. That went out last year. We have also published statutory guidance on supporting pupils with medical conditions, and we fund a lot of activity by voluntary and community sector organisations to work with schools, to train schools and to provide advice and guidance. For example, the National Association for Special Educational Needs is very active in training schools, and we fund the Autism Education Trust, which is particularly focused on supporting schools working with autistic pupils. They have trained over the last three years over 80,000 members of school staff. We have been doing a lot.

Clearly, we are monitoring very carefully how our policy framework is working in practice in schools. We draw together a lot of information to do that. We regularly survey local authorities and parents' forums. We have statistical data collections through the school census and through other data collections, and we also really work actively with voluntary organisations and hear the feedback that they are giving us about what is happening on a day-to-day basis. Clearly, Ofsted is also a really important source of information from its inspection regime. I know Lesley will say more about that.

Taking all of that evidence together, there is a strong commitment in schools of all types to doing a good job for disabled pupils and meeting the needs of disabled pupils, and the changes that we made to the policy framework last year are now settling in well. There is more to do, and there will always be more to do in this area in terms of sharing good practice, supporting schools and building up the confidence and skills of teachers and other professionals. We have some really good examples of schools with good practice and we are very willing to keep sharing that, but when we hear that things are not going well, we will pick up on that too and we will challenge examples of poor practice. We look at complaints and we take action in response to those complaints. I will stop there; perhaps we will come back to some other parts of the question.

The Chairman: What about the academy chains?

Kate Copley: The Equality Act applies equally to schools of all types, whether maintained or academy. In the case of pupils with disabilities and those who are SEN, the Equality Act requires all schools to produce an accessibility plan. The point of the plan really is about ensuring that all aspects of school life are fully accessible to disabled pupils. That same Act also requires local authorities to produce accessibility strategies. These really have the same aims as the school-level plans but have a different coverage. The provisions that I have just described were designed to replicate the effect of provisions that were previously in the Disability Discrimination Act.

I also want to pick up, as Ann did, on the Children and Families Act in this context, because that requires local authorities as well to produce to a local offer. This sets out in one place the provision that they expect to be available across all of education, health and social care

for children and young people in their area who have disabilities or special educational needs, including those who do not have either an EHC plan or a statement. That local offer must include the local authority accessibility strategy. It is also the case that all schools, whether maintained by the local authority or academies, are required to publish information about their policies for pupils with special educational needs, to make anticipatory reasonable adjustments for children with disabilities, to prevent discrimination and to promote equality of opportunity.

You are absolutely right; there is no legal requirement for multi-academy trusts to produce trust-level information, and we do not think such a requirement is necessary, because of the things that I have just said. One can see why some trusts might choose to do it. For example, it could help to ensure a consistency of approach across a whole trust where that was meaningful, but it would not always be the case.

Lord Harrison: Ann Gross, can you give a practical example of a school that was failing and what you did about it?

Ann Gross: Can I give you a specific example of intervening in a school? We can give you some statistics in relation to admissions—

Lord Harrison: No, give me an example.

Ann Gross: Are you asking me to name a particular school?

Lord Harrison: Not to name a school; you can leave it as the generic.

Ann Gross: There will be examples where the Education Funding Agency receives complaints in relation to admissions to academies and then the department will step in and address those. Kate can say a bit more about that.

Kate Copley: Yes, and we will direct an academy to admit a child if it has been named in a—

Lord Harrison: You have still not drawn a picture for me of a problem arising and you moving in to do something about it.

Kate Copley: In relation to admissions, we might be contacted either by a local authority or by an academy where a child had been named in a statement and where an admission had not followed. In those cases, we would investigate, we would determine whether or not the local authority had acted reasonably in naming the academy and, if we felt that it had, then—

Lord Harrison: That is what you have to do. What I am trying to get from you is a practical example of where you moved in and solved a problem.

Kate Copley: We have been asked to make such investigations into academies in 70 different instances since January 2013. In the vast majority of those admissions cases, the child has been admitted as a result, and in only one instance have we had to direct the academy to admit the child, but we have done so.

Q114 The Chairman: You have told me a lot about the input, but what about the outcome? There has been a lot in the newspapers recently about children with mental health problems and about young people with special educational needs. How do you make sure that at the end they do not all take jobs, if they can get jobs, which are below their capacities, but they are prepared for higher-level management jobs? Do you follow the outcome? How do you know that all the strategy that you are putting in is going to produce people at the end who will be able to work to their full capacity?

Ann Gross: That is a good question. The first step is making sure that all pupils, whether they have disabilities, special educational needs or any other form of need for additional support, are able to make good progress and attain well in school. Clearly, we expect schools to be providing individualised support and then assessing and tracking progress of all

children and young people so that they can perform as well as they can in terms of attainment in GCSE and at higher levels.

We do recognise that some of the hidden disabilities, as you have called them, like mental health needs, can be more difficult for schools to understand and address. That is an area where we have been doing quite a lot of work recently. Nicky Morgan has a strong interest in mental health policy, and we have been working closely with the Department of Health to produce some new guidance on how schools should address and recognise mental health needs in children and young people. We have also just set up some pilots in schools, where we are looking at how we can establish a system of better contact between schools and child and adolescent mental health services to get join-up going better and sharing of expertise improved. Those are some of the key things that we are doing.

What we are trying to promote in schools is an ethos where schools try to look for the underlying cause of any difficulty that a child presents. Rather than focusing on the presenting problem, which, for example, is often a behavioural problem, we want schools to understand what it is that lies beneath that—whether it is a mental health need or whether there is some form of disability there—and to put in place the right strategies to address that.

Baroness Brinton: You raised the point about working closely with the Department of Health and local CAMHS. I know that during the process of the Children and Families Bill there was a lot of discussion with the Department of Health about how they could work better with you. What tangible evidence is there now that that has worked? It was very frustrating to get to the end of that Bill and discover that there were still barriers because it was not possible to streamline the service for children with mental health problems.

Ann Gross: A lot has happened since the Children and Families Act last year. The Department of Health published *Future in Mind*, which is the Government's strategy for improving and transforming children's mental health services. That was done jointly with our two departments. Since the election, there has been confirmed additional funding for child and adolescent mental health services and the Department of Health has put in place a structure for implementing the reforms. I know you have Flora Goldhill coming to give evidence after me. Flora and I work together very closely on these areas. I am a member of the oversight board for the children's mental health reforms and we are very closely joined up. There is a lot to do. We are starting from a low base. It is a Cinderella area, but we are working hard at the moment to try to turn it around.

Q115 The Chairman: Echoing Lord Harrison, and having read the recent EHRC report *Is Britain Fairer?,* I would be very interested in hearing something about the outcomes. Do we know how many children with special needs, mental health problems or disabilities go to university or get A-levels? What happens to them as a result of the work that you are doing? Are there statistics on that?

Ann Gross: Through the national pupil database, we have really quite a strong evidence base for looking at the attainment of individual children. We know that much will depend on the type of disability or special need that the child has. There will be children who have mental health problems, dyslexia, or specific impairments like hearing impairments, who can attain really well and perform at the highest levels academically. Other children with different types of special need will not find it easy to make as good progress academically. It is something that we look at and monitor. We know that there is more to do to make sure that young people with learning difficulties and learning disabilities, for example, can find their way into the labour market and into the workforce—that they can be successful in

getting jobs. One of the things that my team has been doing is developing a programme of supported internships that are particularly for young people with learning disabilities, which enables them, when they are following programmes of study and further education, to spend periods of time working with employers so that they get real practical experience of the workplace. While it is a small programme at the moment, we have secured a little money this year to expand it and it has been getting some encouraging results.

The Chairman: Thank you. If there are any readily accessible statistics that you can send us, we would be very interested.

Ann Gross: We would be happy to write to you with further information on that point.

The Chairman: Thank you. The next question is coming from Baroness Campbell. I should say that when asking a question, any one of us who has an interest relevant to this inquiry will declare it. To save time, I am going to read out the interests of Baroness Campbell. She is a patron of Just Fair, a patron of the National Disability Arts Collection and Archive, founder and member of Not Dead Yet UK, and recipient of a social care personal budget, Disability Living Allowance and Access to Work. She was a disability rights commissioner throughout the life of the Disability Rights Commission and was a commissioner at the Equality and Human Rights Commission for three years.

Q116 Baroness Campbell of Surbiton: You have painted a pretty glossy picture in terms of good practice, lots of support, et cetera. I would like to go into that a little more deeply in terms of special school education. The Alliance for Inclusive Education has told us that numbers of pupils in special schools in England are rising at a worrying rate, and that they believe that segregation in mainstream schools should be prohibited—that we should be making more endeavours to mainstream children with special needs. Are mainstream schools able to meet the needs of disabled children who wish to attend them? Should the Equality Act prohibit segregation? You can really go to town on this one.

I am particularly interested in this because last year I supported a family of a very bright disabled child who had gained entry into a mainstream school that would be able to meet his academic needs, but the local authority felt it was better for him to go to a special school because he was—quote—"highly dependent" and needed special care. There was quite a fight to get him in. I want to get a feel for how the mainstream segregated system is working. The numbers are going up. Why is this? Are these children getting the same academic qualifications in the special school sector as they are in the mainstream sector?

Lesley Cox: It is important to stress that Ofsted is an inspectorate and we do not impose the rules on schools, but we check their performance against the rules and the laws. We are not particularly compliance-focused, but we look at the outcomes. That relates very much to your question, in the sense that we would look at the practice against the individual needs of pupils. We would want to have confidence, and, indeed, we would unpick through our inspection remit how the school had identified what those needs were and their rationale for any segregation, if you want to use that term, in the sense of how they were meeting the needs. That would form the basis of a dialogue with the school leaders. It may be that those practices that we have seen in front of us, because we are on the school site at that point, are able to be explained, but, if they were not, we would then follow that up through a leadership and management dialogue, and that would impact on the judgments that we made for the school.

My answer is that it would depend on the context of the school, the needs of the individual and, indeed, making sure that school had identified those particular needs and was able to meet them appropriately, whether that was in a specialist setting or a mainstream context.

The Chairman: Is that not your field your field, Ms Jackson? I thought mainstream education or not was your particular interest.
Claire Jackson: No. While you have said that, is it possible, after this question, to go back to question one? IPSEA has some important evidence to give about that particular area.
The Chairman: Sure, yes.
Baroness Campbell of Surbiton: You still have not answered my question. Can disabled children access the same academic curriculum in a special school as they can in a mainstream school? There is evidence to suggest that many special schools feel that they do not have the resources or the capability to offer academic curricula-based teaching with the children that they have, because the children require physiotherapy, et cetera. I am interested in whether or not these kids are coming out with qualifications when they have the perfect capability to get them. Can you give me a feel for academic success in the special school sector?
Lesley Cox: Absolutely. We apply a common inspection framework across both mainstream and specialist providers. We would look at the quality of the curriculum and make sure that that was appropriate to the identified needs and expectations of particular students that that context was serving. We would ask them how they had established those targets—for example, academic targets, and personal, social and emotional targets—and we would look at how they were making sure that the expectations were high enough and, therefore, were leading to an appropriate destination, an appropriate life choice, or a job or a career opportunity that was linking very much to the needs of that individual group or individual child. That would not be different; that would be consistent across all of the providers that we inspect.
Baroness Campbell of Surbiton: Is the mainstream sector able to give places to disabled children of significant support needs? These kids are not getting into mainstream schools and the excuse is that their care needs are too substantive, which is not what a reasonable adjustment should be doing.
Lesley Cox: We would look specifically at the group that we would define as disabled or special educational needs children, and we would expect schools to be able to evidence how they have identified and supported those needs. If they were on roll at the school, then we would hold them to account for meeting those needs and achieving the outcomes that those individuals could be expected to obtain.
Baroness Campbell of Surbiton: Can you account for the fact that the gap in academic attainment between those who are going to mainstream and those who are not is getting wider? Do you have figures?
Ann Gross: You are raising an important set of issues about how we ensure that disabled children who have high academic potential are able to achieve high standards in terms of educational outcomes. The way I would answer that is that policy is quite clear in terms of a general presumption in law of mainstream education. That is enshrined in the Children and Families Act and it is also enshrined in the statutory SEN and disability code of practice. The circumstances in which children can be refused a place in mainstream education, where their parents want that, are very few and very specific. The code sets out in a lot of detail the steps that schools and local authorities are meant to go through in order to make adjustments to meet the needs of disabled children. I do not know enough about the circumstances to comment on the individual case, but the policy framework here is clearly set out.

Baroness Campbell of Surbiton: I understand that, but the policy is not working and the gap is getting wider. What is the reason for this?

Ann Gross: Is the gap getting wider? I am not sure. I have read the Alliance for Inclusive Education's statement, which points out an increase in numbers of children in special schools. In broad terms, the proportion of children in special schools has remained very stable over the last five years. It is about 1.2% of the whole pupil population. There has been a general increase in the pupil population, and there has been some increase in the numbers of children in special schools too. I do not think it is a big trend, but it is in the context of an overall rising population. What we do see—and this is another important principle in the Children and Families Act—is that parents have a right to express a preference and to make a choice of school for their child, and many parents do want to choose a special school or a specialist environment, where their child has a special need or a disability. That is because they feel it best meets their child's needs. We try to have a policy framework that respects both positions and that recognises the point you are making that academically able disabled children should be supported to have a place in mainstream schools, but there will be some children who have severe and complex cognitive impairment, where a special school environment may meet their needs and where that is what their parents want.

Q117 Baroness Brinton: My question may be to Claire Jackson as well as Ann Gross, rather than Kate at the DfE. If the numbers of children in special schools are increasing and the emphasis on mainstream has meant a lot of children either with SEN or with disabilities, or both, are often the only child with that disability or SEN in a school, what is happening to the overall number of units in schools? I used to be the chair of governors of a hearing impaired unit primary school. My real worry about that is that the money to support them is dispersed much more. My question is: do parents feel, having chosen their local mainstream school, that their child is then getting the appropriate support for them? For example, a hearing impaired teacher can only provide two or three hours a week instead of being around the whole time.

Ann Gross: You are raising an important issue about the support that mainstream schools receive so that they can really meet the needs of all children with SEN and disabilities. The resourced-unit model of units in mainstream schools can be really effective. It does not have to mean segregation, but it can be a good way of enabling children to be in a mainstream environment and also to receive extra specialist attention. That can be a very good model. There can be other really good models of specialist advisory services working closely with schools, and schools sharing expertise across clusters of schools or academy chains.

Baroness Brinton: Have the numbers of those units decreased?

Ann Gross: I was going to say we need to write to you with that information. I am not sure that we still collect it or whether we have collected it, but we ought to write to you and let you know what the position is.

Claire Jackson: I just want to pick up on the point of a child being denied mainstream education. It is right that the threshold in law for a child to be denied mainstream education, whether that is through a statement of special educational needs or an education health and care plan, is incredibly high. It is a high threshold for the local authority to dislodge the parents' preference for mainstream education. However, what IPSEA finds is that the test is often misapplied, so parents are put off at the first hurdle. People say, as you

said there, “Your child would be better off in a special school place”, but that is not the test in law. It is not about whether a child would be better off in a particular placement.

Baroness Campbell of Surbiton: Absolutely, but it is happening again and again. The parents will come to us and say, “I cannot get my child into the appropriate mainstream school. It is such a battle”. Yes, you are right; either they give up or they have to fight. What are you doing about this particular barrier? It is enormous.

Claire Jackson: I agree that some parents really have to battle for mainstream education. Although IPSEA does not advocate for one or the other, we very much support parental choice. If a parent is, say, going to a tribunal, which they would have to do if a local authority refused to name mainstream education on the child’s statement or education health and care plan, we would very much support that. We have been involved in some case law where a local authority has tried to restrict children’s rights to mainstream education, and have challenged that successfully. I agree that if a parent is put off at that first hurdle by someone saying, “All the professionals think it would be better for your child to go to a special school”—this is another common phrase we hear—then the parent has fallen at the first hurdle, and quite often they will not go through the appeal process.

The Chairman: Is the test not the welfare of the child?

Claire Jackson: No. As was said earlier, the test is that, when it comes down to mainstream education, a child must be educated in mainstream education unless it is against the wishes of the parent or young person—that is under the new law—or it is incompatible with the efficient education of other children and there are no reasonable steps that the local authority or the school can take to remedy that incompatibility. Suitability drops out of the picture by the time you get to that test. People often say, “It is bizarre that you do not have to take into account suitability”, but that test is not concerned with suitability. The rationale behind that is if you put enough support and enough structure in the child’s statement or their education, health and care plan, you can make any environment suitable, so you can ensure that the child’s physiotherapy or their occupational therapy takes place in the mainstream environment.

Q118 Lord McColl of Dulwich: Some witnesses have suggested that the interpretation of a “tendency towards physical abuse” in the excluded conditions to the Act has deprived many children of protection. Do you agree that this is a gap in the legislation? If so, could you give us some examples?

Claire Jackson: Based on what parents tell us about their children’s special educational needs and disabilities, we would estimate that a significant proportion of those children also have some challenging behaviours, but as a direct result of those disabilities. Common examples include children on the autistic spectrum, children with attention deficit hyperactivity disorder, and children with various types of mental health difficulties. Parents also tell us—and our experience tells us—that if it does get to a point of physical aggression or physical challenge in school, their children do not erupt for no reason. Quite often they present as challenging because reasonable adjustments have not been made for them—for example, a school has not made an adjustment to a behaviour policy or a school has intervened in a situation that has made the situation much worse. As a result of that, if the child is then excluded for that physical aggression and that interaction, we have seen an increase in governing bodies relying on that to rebut a claim of disability discrimination. They say, “Yes, we accept the child is disabled, but they have a tendency to physical abuse”, so that last incident, which has perhaps resulted in the child being excluded, is not protected for the purpose of the parents making a claim of disability discrimination.

Lord McColl of Dulwich: With children with attention deficit disorder, presumably, when you are looking into these problems, you look into whether they are on medication like Ritalin. If they are not, that is a different picture, is it not?

Claire Jackson: Potentially, but you would still look at their difficulties against the description in the Equality Act regardless of whether they are on medication or not. Certainly, medication may relieve some of their symptoms.

Lord McColl of Dulwich: It should do, if they are on Ritalin.

Claire Jackson: It should do, but we often find that children do not just have one particular type of difficulty in isolation from another.

The Chairman: Do governing bodies have to balance the need to take care of the child whose vulnerabilities result in physical abuse against the effects of that violence, if it is violence, on the other children and the teacher, or must they take as their starting point the need to include the child?

Claire Jackson: As a starting point, they would always need to be seen to include a child, but if you know, for example, that you have a child on the autistic spectrum and you are employing certain behaviour strategies and one of those strategies that you may use for another child is perhaps to step in front of them to stop them physically leaving the classroom, and you know, based on evidence and professional reports, that that is really inappropriate for a child who is on the autistic spectrum, then you should be making a reasonable adjustment and not taking that course of action.

The Chairman: What would the reasonable adjustment be?

Claire Jackson: It could be identifying and tackling that particular difficulty in a different way—again, what has been recommended by another professional—rather than this whole idea that we treat everybody the same, which we hear schools say time and time again. They say, "If we make an adjustment to our behaviour policy, that undermines good behaviour".

The Chairman: While you have the floor, I remember you said there was something else you wanted to add to question one.

Claire Jackson: Yes, if you do not mind. I will be as brief as possible. I know others on the panel have been able to give some good examples, and I feel a little like "bad cop" coming in here and giving some quite negative examples where we feel that the Equality Act is not being applied consistently in all schools that we come across. Parents do not come to our services and tell us that everything is wonderful. By the very nature of our charity, they come to us when they have a problem. It may appear obvious, but I should point out that not all children with a special educational need have a disability, and vice versa, because there are different legal thresholds for each different type of one under different legislation. Through the information that we take from parents when they contact our services—we take certain monitoring information about their child's learning difficulties or disabilities—we estimate that in excess of 85% of the children that we advise on have both a special educational need and a disability. If I use the term "SEN" I am also including disabled children.

We have seen a consistent rise in the number of parents calling us about children with mental health problems, so we agree that that is a real problem across the country at the moment. It is a vicious cycle, because we also know that waiting lists for child and adolescent mental health services are ever increasing and children are waiting a long time to have those needs addressed. What figures do tell us, which is reflected in our casework, is that children with SEN—I say "SEN" because this is how the statistics are collected by us and

by the Department for Education—are disproportionately excluded. We know that from our figures and from the department's figures. They are far more likely to be excluded than children who do not have SEN. What those figures do not tell us is the amount of children—it is one of the most commonly called-about issues on our helpline—who are informally excluded.

Informal exclusion is unlawful, because essentially it is punishment without law, and schools do not collect figures on informal exclusion because, quite frankly, it is unlawful. We would find it difficult to see any circumstance where the informal exclusion of a disabled child could not be viewed as discriminatory as well. We know that some disabled children are missing out on large chunks of education because they are informally excluded. We know that in 2013 the Children's Commissioner carried out an investigation around the use of informal exclusion and found that it was a significant problem, particularly for children with SEN, across a significant amount of schools that they looked at.

We would say, with that in mind, that things are not all well. We would say that schools, we find in some circumstances, are not fully aware of their duties under the Equality Act and do not seem to appreciate that that type of practice alone is incredibly discriminatory.

The Chairman: That leads directly into Lord Northbrook's question, which is about what to do about it.

Q119 Lord Northbrook: What sanctions can be brought against schools that are found to be failing in their obligation to disabled pupils and parents? How is the Equality Act reflected in government education policy and the Ofsted inspection framework? That is a question for Lesley Cox first.

Lesley Cox: We would follow up on the circumstances that we found in any particular context, and that would vary. We would hold all schools to account for the judgments that we make under the common inspection framework. That would include personal development and welfare, academic outcomes, progress against measured targets, leadership and management, as well as the quality of teaching. As far as sanctions go, we would probably be talking about consequences, in the sense that we inspect and report on a school and it is for others then to take the action as a result of our findings, but if we found any discrimination or concerns against individuals, or particularly groups of students, in the sense of special educational needs, we would then reflect that in our judgments on leadership and management and, indeed, the other judgments that we make, and the school would be placed into a category of concern. That, for us, would invoke further monitoring and follow-up, and an account of the actions that the school was intending to take to address those failings. We would then continue to monitor that in our process.

Lord Northbrook: Do you have any figures for the number of schools that have caused problems? That would be useful for us.

Lesley Cox: I do not have those here today, but we know how many are in a category of concern and we can certainly get that information to you.

Lord Foster of Bishop Auckland: I wondered whether Ofsted is picking up this evidence of informal exclusion that Claire has told us about.

Lesley Cox: I would hope so, in the sense that we have a very clear remit for checking attendance against particular groups. We would expect the school to have information about where every student was at any part of the term. We ask for that information and we would interrogate that quite clearly, in terms of any unaccounted absences. We would look at case studies. We would ask, for example, on the day of an inspection how many pupils were not attending on that day and we would look at that in the context of their educational

outcomes against their progress targets. We moderate quite closely across our judgments to, hopefully, identify any instances of what we are terming illegal exclusions here. It should be possible to identify that.

The Chairman: What is the department's view on sanctions?

Ann Gross: In addition to the approach that Lesley has described and the role that Ofsted plays, parents and young people now can make a claim to the Special Educational Needs and Disability Tribunal. It has been established for over a decade that they can bring that claim in relation to disability as well as issues relating to special educational needs provision. It is a system that the tribunal tries very hard to make as accessible as possible. You do not need to have legal representation and the rates of success without legal representation are quite high. The tribunal has powers to make rulings. It tries to make its rulings on disability issues as practical as possible. For example, it can order training of staff, or extra tuition for pupils, or a written apology, where that is appropriate. Perhaps the most relevant ruling it can make in this context is in cases of permanent exclusion, where, if the tribunal finds that that is a result of discriminatory behaviour on the grounds of disability, it can make an order to reinstate the child who has been excluded on those grounds. That is quite an important set of sanctions that are available to parents.

More generally on exclusions issues, we do take the higher rate of exclusion of pupils with special needs and disabilities very seriously. We also take the issues around informal exclusion as a serious concern. We make it very clear in the guidance that the department publishes on exclusion that what is important is that schools seek to understand the issue that underlies problem behaviour by a child. Is there a mental health issue? Is there an underlying special need or disability that has not been identified? The guidance encourages schools to use multiagency assessments in those contexts and, in the case of exclusions, parents also have the right to bring an SEN expert to the independent reviewing panel. There are a number of steps that we are taking and we do recognise that it is something that we need to be vigilant on and continue to monitor.

Q120 Lord Faulkner of Worcester: I should declare in interest in that I am patron of New College Worcester, which is the former Worcester College for the Blind. I also have a Private Member's Bill before this House on disabled access to sports grounds. I have interests in public transport too, where access to public transport is the issue.

My question follows on exactly from the last answer. How well do parents and children know their rights under the Equality Act and how easy is it for them to access and enforce those rights? Claire Jackson might like to comment on the evidence that IPSEA has given us saying that jurisdiction should extend to colleges as well as to schools. Maybe I can give you the opportunity to go first.

Claire Jackson: We are not convinced that parents are aware of their rights under the Equality Act. They seem to be more aware of their rights under the SEN framework rather than the Equality Act. For example, it does not seem to cross many parents' minds that formal or informal exclusion is potentially an equality issue, as well as a failing, perhaps, under the SEN framework. In terms of enforcement, I will just go back, because it ties in with this, to one of the options if a child is permanently excluded—that they can go to the First-tier Tribunal and ask for that child to be reinstated. That is significantly underused. Since that has been available to parents, in nearly five years there have been 20 cases heard where a parent has been actively asking for that. We know that in general, compared to the SEN appeals that the tribunal hears, claims of disability discrimination are very low and have been consistently low over the years.

One of the problems we see in terms of enforcement is that if a parent wants to make a claim of discrimination or wants a remedy, there is only that one statutory route, which is making a claim of disability discrimination to a tribunal. From having a claim registered to it being heard is roughly a 20-week—or five-month—process. If the problem, for example, is that a child is not being permitted to go on a school trip the same as their non-disabled peers, often the trip has been and gone by the time the claim is heard. Sometimes the claim in itself, although the parent may get an apology at the end of that process, does not really remedy what the child has missed out on. We believe there needs to be not just that route but alternative statutory routes for parents that can deal with a problem like that a lot quicker or in another form.

I have to say as well that, by the very nature of litigation, one of the parties is going to lose. If the parent loses on a claim of disability discrimination, quite often they say to us, "The school has got away with it". That is how they feel afterwards. If, on the other hand, the school loses the case, then they are often—again, we have found this in practice in case examples—very mistrustful of the parents after that. The relationship is often soured completely, beyond repair. We do believe, based on that, there should be more than one route.

Q121 Baroness Brinton: Can I declare two interests in relation to my question? I am co-chair of the APPG on bullying and I am a patron of the Red Balloon Learner Centres, which provide support for severely bullied children who have often self-excluded. Research has shown that severely bullied children have clinical depression and other mental health problems. We are talking about 70% to 80% of these children who have got so far that they cannot face school. What recourse do they have when, in an academy that had an internal pupil referral unit (PRU), the self-excluded bullied child was put into the PRU with the bullies, or had to leave the school but, because the school had provided an alternative, the money could not follow the child to alternative provision elsewhere?

Ann Gross: Shall I say some things generally about bullying and disabled children's experience of bullying? This is, obviously, an awful thing and we want to be really clear that—

Lord Faulkner of Worcester: Could you also comment on what Claire Jackson was saying in response to my question a moment ago?

Ann Gross: Yes, I am very happy to do that. We are really clear that bullying, for whatever reason, is completely unacceptable. We recognise that there is a higher incidence of bullying of children and young people with special educational needs and disability. That is not a situation that any of us feels comfortable about. The department has been taking lots of steps to tackle bullying. One of the specific things that we have been doing is funding the National Children's Bureau to work with schools and to train school staff on issues specifically relating to disability and special needs. They have worked with over 1,500 schools on those issues. It is not an enormous piece of work, but it is a significant piece of work. It is something that we take seriously.

Baroness Brinton: That is fine and it is important for good practice. I am talking about that small group of children with mental health problems because they have been so severely bullied they are therefore disabled. They have clinical depression. They are mostly getting help from elsewhere. What recourse do their parents have for them to get access to education when the choice is either to stay in their own school because the school says, "We can manage it" or, even worse, to be put in a PRU?

Ann Gross: In those situations, the special educational needs framework and all the protections that sit under that would apply to those children. You may tell me that in practice it is not working. We have been working hard to make improvements and reforms in this area, but, as I recognised at the beginning, there is much more to do to embed and support this. I understand that you have some children who are in really difficult situations.

Kate Copley: On the back of that, may I write to the Committee after this meeting to follow up on your particular question about the movement of funding when pupils are referred from mainstream into a PRU or alternative provision? I will include that in our follow-up response.

Ann Gross: May I go back to the question about how far and how well parents know their rights in relation to the Equality Act and disability issues? Claire made some good and important points. This is a complicated system and the department takes very seriously the need to make sure that we do as much as we can so that parents know about their rights and they know about how the special educational needs and disability system works. We have taken quite a lot of action, both nationally and locally, to address that. It is not perfect, but the 2014 Act, for example, placed a new duty on local authorities to provide information, advice and support for parents, which covers both disability and special educational needs, and there are requirements to make that accessible. We have also required local authorities to publish local offers of their local services and provision, which cover both special educational needs and provision for disabled children. There are now parent-carer forums in every local area. They have existed since 2008. The department provides them with funding and they are really important in enabling parents to have their voices heard locally in terms of how the local system is working. They do play a role in working with local authorities and health partners in raising issues and concerns. Nationally, we have also published a very well received parents' guide to the special needs code and to the law. We are providing training for local authority staff on how the legal framework works. We also fund various helplines. Contact a Family offers a national helpline for parents and we also fund some work that IPSEA does in terms of legal helplines, I believe.

Claire Jackson: I must make it clear that the department does not fund any of our services. It currently funds a project that makes sure information is going to areas of deprivation. Our advice services are completely separately funded from the department.

Baroness Campbell of Surbiton: Are you monitoring whether parents are receiving this information or have any idea it exists?

Lord Harrison: If I may say so, you have just given us a list of things that you have done. What is the follow-up? How do you compare what was true two years ago with the information that now needs to be imparted to parents?

Ann Gross: We carry out termly surveys of parent-carer forums across the country and they feed back to us on how well things are going locally, in their perception.

Lord Harrison: What are the results? Where are these results?

Ann Gross: We publish the results. They will tell you how well the various elements of the special educational needs and disability reforms are going. That is published. There are some positives there and there are some areas where they want to see improvement. Ofsted is also going to be introducing a new system of inspecting local area performance on special educational needs and disability. That is something you have been piloting and will be starting in the spring. That will be an important source of evidence about how things are going. All I can say is it is not perfect, but we have been working really hard to address this.

Lesley Cox: Can I just add to some of the information Ann has just shared? We follow up in our inspection framework particularly around the views of parents. We would check complaints histories before we even began to inspect, and we would give opportunities to parents, such as the very dissatisfied parent who was mentioned in the sense of the pupil referral unit. They would have the opportunity to and explain the situation to an Ofsted inspector, who would then follow up that line of inquiry and develop that into a leadership and management conversation. We would expect schools to be engaging with parents and raising their awareness of their rights but also making sure that there were high satisfaction levels with the service that was being provided, in the sense of the education that that child was getting.

To add a little more about the local area inspection framework, we have conducted three pilots this term and we conducted two last term. A big aspect of that has been engaging with parent forums. We have had some incredible feedback. We are doing road shows around the country that have been very well attended and there are more we are doing, which suggests that parents are certainly engaging with the new code of practice. They are providing really positive feedback, and some negative feedback, that we can then feed in to our inspection framework and the further inspection activities that we do. It has been very well received and the uptake from parents has been very high so far.

The Chairman: If you have that information, Ms Gross and Ms Cox, please send it to us. I know you said it was published, but it would be very helpful if you would send it to us. As you will see, we are interested in the actual outcomes.

Q122 Baroness Pitkeathley: This question is specifically for Ofsted. What is your relationship with the Equality and Human Rights Commission? Are you a member of its Regulators, Inspectorates and Ombudsmen Forum? Does the commission, in your view, have the right balance between enforcement and collaboration?

Lesley Cox: Our relationship with the Equality and Human Rights Commission is an informal one, in a sense that the information and guidance provided by them play an integral role in informing us about our own compliance with the Equality Act. Our lawyers meet regularly with the government working parties on equality issues. That is done quarterly to identify key issues that we can then align to our inspection approach. We are not a member of the Regulators, Inspectorates and Ombudsmen Forum, but we make sure the work it does is reflected in our own practice and that is reflected in our common inspection framework and the handbook we produce.

Baroness Pitkeathley: Do you have any plans to join that forum?

Lesley Cox: To the best of my knowledge, no, not at the moment.

Baroness Campbell of Surbiton: Do you think that is really working? In what ways are you able to have a relationship with the Disability Committee within the Equality and Human Rights Commission? The Disability Committee has done a whole raft of work on bullying and hate crime. Are you in connection with this committee? Do you have any even informal discussions or do you leave it to your lawyers to talk to lawyers?

Lesley Cox: That would all feed back into our inspection principles. It is a joined-up process. We are using our legal teams to interact with that commission, but that does feed back and would be reflected in the inspection guidance.

Baroness Campbell of Surbiton: But at the moment it is just the lawyers.

Lesley Cox: At the moment, my understanding is that the lawyers are the people who meet on a regular basis, but the further discussions that that would generate take place in Ofsted.

Baroness Pitkeathley: Could you answer the last part of my question, which was about the balance between enforcement and collaboration?

Lesley Cox: We think their enforcement record is impressive, particularly in terms of the number of court interventions. We find this encouraging, as a regulatory body, as it adds greater weight and support to our own work when we are carrying out our own enforcement activities, in the sense of inspection judgments. We think there is room for improvement and we would like to work closer with their teams, but we feel that the commission has gone some way to identify and issue non-statutory guidance and statutory codes of practice.

The Chairman: Thank you all very much for enlightening us on this extremely difficult and emotional field that you work in. We have learned a lot, and we hope you can continue to work your way through all of the problems you have so clearly outlined for us. Thank you all very much.