



Education Committee

Oral evidence: [Special Educational Needs and Disabilities](#), HC 968

Tuesday 23 October 2018

Ordered by the House of Commons to be published on 23 October 2018.

[Watch the meeting](#)

Members present: Robert Halfon (Chair); Lucy Allan; Ben Bradley; Marion Fellows; James Frith; Emma Hardy; Ian Mearns; Lucy Powell; Thelma Walker; Mr William Wragg.

Questions 43 - 140

Witnesses

I: Justin Cooke, Policy and Public Affairs Manager, Ambitious about Autism; Matt Keer, Parent and contributor to the Special Needs Jungle website; and Julie Cordiner, Education Funding Specialist, School Financial Success.

II: Alyson Shield, Head of Education and Supported Learning, New College Durham; Helen Wallace, Headteacher, Thameside Primary School; David Clarke, Deputy Director for Education, Oxfordshire City Council; and Dr Jackie Lown, Head of Children and Young People, Specialist Services, East Riding of Yorkshire Council.

Written evidence from witnesses:

- To be published at a later date.



Examination of Witnesses

Justin Cooke, Policy and Public Affairs Manager, Ambitious about Autism; Matt Keer, Parent and contributor to the Special Needs Jungle website; and Julie Cordiner, Education Funding Specialist, School Financial Success.

Q43 **Chair:** Good morning. Thank you very much for coming today. For the benefit of the tape and for those watching on Parliament TV, could you introduce yourselves from our left to right? Please note the acoustics in this room are not fantastic as well.

Justin Cooke: I am the Policy and Public Affairs Manager at Ambitious about Autism.

Matt Keer: I am a parent to two deaf children. I write occasionally for the Special Needs Jungle website.

Julie Cordiner: I am an accountant. I have been assistant director in a local authority and am currently an education funding specialist, helping local authorities and schools in financial difficulty.

Q44 **James Frith:** I refer members to my register of interests.

Good morning, thank you for coming in. A fairly broad question to start off with, perhaps to you, Julie. What has been the impact of the SEND reforms on funding for pupils with special educational needs or disability?

Julie Cordiner: Yes, that is a broad question. In some ways you could ask it the other way around: the funding reforms started the year before the SEND reforms, so we were not quite sure how they were going to align.

One of the important points is that the concept of what is normally available in schools has not been defined in terms of the provision—the financial definition is £6,000 of support above what is universally provided in classrooms—so it is open to interpretation. Certainly the actual funding has not kept pace with the demands that have been generated by the SEN reforms because of that interaction between the definitions and the reality on the ground.

I can give you some figures if you will find those helpful. I looked at the period of 2014-15 to 2016-17, the very first year of the SEND reforms through to the last available year when actual spend was available. If you want to know the impact, I would say look at the top-up expenditure—what local authorities had to pay above that £6,000. It increased by 12.7% over those two years. Statements and education, health and care plans went up by 19.6% over those two years, but the funding only changed by 2.2%.

Q45 **James Frith:** It is a really interesting point when you talk about there being no standard of provision—it is financially defined and the SEND reforms were always playing catch-up to the financial reforms.



HOUSE OF COMMONS

Matt, you are a parent. The single biggest load of casework I get—away from the industrial types of campaigns where mass emails are sent—is from SEND parents, whose experiences are framed through the struggle to get what they are entitled to. They do not get it and so come to us as Members of Parliament. I am sure that is the case around the table. As a parent, can you give me an insight of that struggle? What is your advice to those parents setting out on that journey, and what did you find along the way that has helped get access to your entitlements?

Matt Keer: To frame it in a broader context, my kids are both teenagers so they are hopefully not watching this with too much of a cringe. They have been in the SEND system since about 2003. It is fair to say that pretty much from the get go it was a struggle in terms of working out what your child was entitled to against what may have been on offer. It is also working out that, even with the best of intentions, professionals have a responsibility to the public purse as well as a responsibility to meet your child's needs. There is sometimes an in-built tension, and the responsibility to the public purse is felt to be dominant throughout.

The Special Needs Jungle website was set up by Tania Tirraoro in 2008. Its primary goal was to cut through some of that "jungle"—that is why it is called the Special Needs Jungle—and to give parents the information they need to make sensible decisions about how to work with others to have their needs met, and how, where necessary, to push with knowledge available on the site when incorrect or misleading information is given.

The advice I would give would be to check what you are told, check your own expectations—as any parent would do, whether you have a child with SEND or not—and that the law trumps all. There are obvious tensions since the Children and Families Act has come into place with local authorities' legal obligations and their financial capability to meet those obligations. However, those tensions were there well before 2014.

Justin Cooke: First off, there is not enough money in the system. I think we all can agree on that. The reforms in 2014 brought in extended provision—up to 25—for children with SEN and EHC plans and that was never funded. We have never looked at the post-16 formula again and it has not been changed, where the school formulas have. That is the first bit of the school system that was never funded for the reforms.

The numbers of children requiring EHC plans is above what people expected. A lot of those—28%—are children whose primary need is autism. It is the fastest growing category of any SEN. A lot of those children need quite careful consideration because their needs are sometimes unique. The whole needs-based assessment for an EHC plan should mean they get funding to support their needs, which obviously then puts a big strain on the high-needs funding block. The interactions between the school block and the high-needs block almost work against local authorities because schools, when a child needs extra help, know they can get that in top-up funding so they often seek it quite early.



HOUSE OF COMMONS

Parents are telling Special Needs Jungle and us that they do not get much help until they get an EHC plan, which basically means that that lower level of SEN support is not working for a lot of children, which then drives more pressure onto the high-needs budget.

Matt Keer: To expand on Justin's point with figures, there has been more or less a 35% rise in the number of children and young people who are on some form of statutory support—from January 2014 to January 2018, there were 82,700 more young people on support. The vast majority of those—61,000—are in the post-16 category according to the DfE's figures based on the school census. That is purely for young people with statements and EHCPs, but it gives you some idea of where the bulk of the rise in statutory demand has come from.

If you look very narrowly at secondary schools, you see that the rise is just 3% against a 2.4% rise in the population. It is greatest in FE and special schools. The number of young people in mainstream schools with EHCPs is up by 2,000. The number who are educated elsewhere, either because there is no provision available or their parents have chosen—or in many cases have been compelled—to remove their children from school, is higher. The net increase in mainstream is 2,300 and in educated elsewhere is nearly 3,500. Numerically, the post-16 area is the largest source of rise.

Q46 **James Frith:** What do you say to the rise in excluded pupils, where 70% of those who are excluded are SEND?

Justin Cooke: There is, sadly, a financial incentive for schools to off-roll children with SEN, particularly when they get to the point of needing extra help that they do not get via an EHC plan or SEN support. They know those children will then be the local authority's responsibility. If they are placed in a special school, it comes out of the high-needs block, whereas if they aided inclusion and kept them in the school, it would come out of their school block. If you have a resourced unit where you get place funding at £10,000, you get that funding no matter what. If you off-roll a pupil halfway through the year you carry on getting that £10,000. If you have a school budget that is so tight you simply cannot pay teachers, there is an incentive to off-roll or exclude.

Q47 **James Frith:** Is that why you often have delay with young people awaiting confirmation of what provision there is for them, being available to attend a college or school, but without confirmation of the subjects or the support they can receive?

Justin Cooke: If you look at the numbers—there is a weird statistic at the end of the school rolls of SEN pupils who do not have a place—that number has been steadily rising every year. That is not children who have gone into home schooling or who have places, it is just children with SEN who do not have a school place and want one. That number has been growing steadily.



Q48 **Ian Mearns:** I am really interested in that idea, Justin. It is something I am not unaware of. If there is a financial incentive for some schools to off-roll certain pupils, surely that incentive exists for all schools. However, it obviously depends upon the individual circumstances of each school and whether there is an inclusive ethos within the school.

Justin Cooke: It can come down to the ethos of the school and to whether they really want to keep those children, but it can also come down to the desperation of the school leaders. Lots of schools are running at a deficit. Lots of them cannot pay their teachers or repair their buildings. They may think it is the final straw and they have to make cuts somewhere. If they can save money by off-rolling some children for whom the local authority can provide, they might do it. I think it is a desperation measure by some schools.

For other schools, extreme behaviour policies that do not help inclusion are an ethos, and there is often off-rolling and exclusion via them.

Q49 **Ben Bradley:** Obviously there is a big challenge in terms of overall funding and also in terms of delivery on a local level in some of the things you have touched upon. Matt, in your written evidence you talked about some of those challenges in terms of local authorities. You said, “the SEND system is still incapable of channelling this funding in ways that meet needs lawfully. They had money to change their ways of working. They blew it”. I wonder if you could explain that in a bit more detail.

Matt Keer: That evidence was an analysis I did for Special Needs Jungle on the sums of money that were allocated not for the frontline, but for the process of implementing the reforms. It is hard to get an overall figure for that, but we estimated a minimum of £550 million and more like £600 million in reality. Through a process of FOI requests and checking council payments data, we managed to track 70% of that spending. Some local authorities were unable to account for it. For a grant that was delivered to enable system change, it appeared that a surprisingly small percentage was spent on training. Out of £140 million of spending over four years, we were able to track 1.5%—£2.3 million was spent on training. That was for a system that required one part of a new Act of Parliament, two Statutory Instruments, a 300-page code of practice and various different ways in which the administration of SEND and the understanding of new statutory responsibilities had to be delivered.

One of the things I do in my spare time is help parents—principally parents of deaf children—who are in, or have been in, my situation. Exactly the same difficulties in acquiring the support our children need happened for exactly the same reasons that they happened under the 1996 Education Act set-up. At ground and operational level there appears to be very little change in the way special educational needs administration works. It seems surprising to me that much money had been provided with no ring-fencing and no meaningful effort to ascertain impact—



HOUSE OF COMMONS

Q50 **Chair:** Are you basically saying this £500 million to £600 million was wasted?

Matt Keer: If its initial ambition was to enable the process of change from one legal system to another and also—as I remember Edward Timpson saying at the time—to enable a process of culture change that puts the child or young person with special educational needs at the heart of process then, yes, I would say that money has probably been wasted.

Some interesting and innovative things have been done with that money. Cornwall, for example, used several thousand pounds to set up a young people SEN board to help hold local decision-makers to account. However, by and large I would say it has not been spent as well as it could have been. Certainly the same training issues seem to come up again and again.

Q51 **Thelma Walker:** I had a delegation of parents with special needs children come to see me in my advice surgery some time ago. Each of them said they decided to home school because they had waited so long to have education and health care plans put in place. One parent spoke about her child being so vulnerable, so stressed and distressed that he started self-harming. She said she could not face what he was going through because the wait was so long. What impact do delays in local authorities undertaking the EHCP assessments or producing the plans have on families and children and on funding for schools?

Justin Cooke: It has a huge effect. We did some survey work of parents this year and 40% of them said they had waited over 18 months for an EHC plan. It should be 20 weeks. It is partly because local authorities do not have the expertise anymore to do their job because they do not have the staff.

The other point is that they are using the EHC process as a gatekeeper to that money. If you do not get an EHC plan, you do not get funding from high-needs funding—the top-up funding. Therefore if you make parents wait as long as possible, you are keeping your budget together. Most local authorities know that if they give a new EHC plan, they do not have any money to fund it. That is because it is needs-based and the parents will know how much money they should be getting. Parents can ask for personal budgets, and if they do that they will know how much the local authority should be providing for their child. Therefore they push parents a lot of the time to go to appeals and tribunals. They push them all the time. They say, “You need a diagnosis first” when you do not. When you have a diagnosis they will say, “You need an assessment”. They will string it out as long as possible sometimes. That is not all local authorities. Some of them do it within the 20 weeks very well.

The Ministry of Justice has a statistic for how many decisions a local authority has made on SEN and how many were appealed. There are a lot of different rates between local authorities and some of them have a very



high rate of appeals per decision. That basically means they are misusing the system, which does happen.

Q52 **Thelma Walker:** There is the cost implication.

Justin Cooke: There is the cost implication.

Q53 **Lucy Powell:** For the benefit of the tape, there is no correlation between the need—the number of children in an area who have a plan—and the amount of money a local authority gets?

Justin Cooke: No. I am looking over at Julie, who knows the funding formula better than I do. The new funding formula is supposed to take into account a range of factors and part of that is historic. However, if you have a large amount of children who come into a local authority halfway through the year they will not have been taken into consideration in that formula. Some of them could have very high needs that require a lot of money and the local authority probably will not have that money. Most of the time they will try to put off giving that EHC plan, or even in some cases allowing the EHC plan the child already has from another local authority to stand. That is so they can push them into the next financial year so they can try to find the money.

Q54 **James Frith:** There is freedom, is there not, in the current system for a local authority to determine what they give back to the school and how they fund the school, particularly if they compare the alternative cost of education elsewhere? In Bury, £6.5 million is spent out of borough on what is tantamount to privately educating kids that have been off-rolled. That is being changed, but it is coming out of local authorities' budgets. Does freedom exist in the system to fund that in a better way?

Thelma Walker: Matt, I would like to hear what you have to say.

Matt Keer: The initial question was on the impact on families. As Justin has indicated, it can often push families towards what in the statistics is elective home education, but quite often is a devil-and-the-deep-blue-sea choice. Some of the support for deafness, which is the area I am most familiar with, comes down to trying to get somebody—anybody—to pay for a £300 radio aid so that even a moderately deaf child can have access to what the teacher is saying. I have had my kids come home, having worked their socks off, being too tired to do anything afterwards. It is exhausting being in that situation.

Q55 **Thelma Walker:** It is about the head teachers' role as well. When speaking at a head teachers' roundtable, one head said to me, "We feel like we are letting the most vulnerable children down". As a former head, I can really empathise with that. They are often the ones at the frontline facing the questions from parents. If vulnerable children are being let down, who would you say is responsible for that?

Matt Keer: I would like to add one thing that may not be necessarily clear. There is often a transmission belt of misinformation. Often that transmission belt will start within the local authority and will then go



HOUSE OF COMMONS

down to school leadership level. One of the things we looked at last year at Special Needs Jungle was some of the information around high-needs funding that some local authorities were giving out to head teachers. Some of it is blatantly misleading. I can quote information from Somerset, which started its high-needs funding document by saying, "It is recognised that decision-making in SEND is difficult. We are charged, however, by Ofsted in the task of necessary discrimination". Ofsted says no such thing—nothing at all.

A lot of information is passed down from the local authority to head teachers. It would be useful if there could be some pushback to question the legal basis.

Julie Cordiner: I would like to give some context. The introduction of the SEN reforms occurred at a time of austerity. The cuts to local authorities are definitely affecting the ability to provide SEN assessment, planning teams and educational psychology because they are funded from the local authority's money and not from the high-needs budget. When you mix that with what we have already talked about in terms of the huge rise in the numbers of requests for assessments, and then education, health and care plans, clearly you cannot expect business as usual and you cannot get expect improvement in response times. That is the reason for the delays.

In terms of the funding, it is all very well having freedoms, but if you do not have the money with which to exercise those freedoms then you are stuck. The fact of the matter is that the national funding formula is absolutely not responsive to changes in need.

If I can take you very briefly through it, the first item is an amount of £4,000 per pupil in a special school or college. The local authority has to pay £10,000 per place. It is £4,000 per pupil versus £10,000 per place—that immediate shortfall has to be met from the rest of the formula.

The second item is huge—the historic spend factor. That takes 50% of what every local authority was spending in 2017-18 and locks it in, in cash terms, for the next four years. That represents 45% of the whole formula before you start applying transition. That is a massive brake on any change in funding in relation to needs.

Then the formulaic section of that 50% is on pure population numbers. Special needs incidence does not mirror population. There are very good reasons why some authorities have historic provision. For example, they might have specialist hospitals for children such as Newcastle or Middlesbrough—I have worked in both—Leeds and London. There are certain areas of high specialism, particularly neonatal, which affect the trends. It is not a good measure and does not reflect the high-cost and high-complexity areas.

The rest are around 3% to 4% each on things like deprivation, prior attainment and disability living allowance, which does not include post-



16. Therefore it is all very slow. The pace at which local authorities can make savings is incredibly slow as well because you cannot withdraw provision on financial grounds.

Q56 **Thelma Walker:** The common thread is related to funding?

Julie Cordiner: Absolutely. That is the No. 1 message. The distribution of it is flawed as well, which affects the way in which individual authorities have to manage this.

Q57 **Chair:** In terms of the £6,000 schools have to pay, clearly if in one year a school has a disproportionate number of children with special educational needs, that has a massive impact on their budget and they only get paid, as I understand it, after they have paid the £6,000. What is your view about that? How do you solve this problem? That must be one possible reason for the exclusions my colleague mentioned earlier and also a huge burden on schools in terms of finances.

Julie Cordiner: The crux of that is this idea of the notional SEN budget, which is the proportion of each individual school's budget share, or general academy grant, which is supposed to be for that lower level SEND. However, the reality is that any local authority can choose whatever factors it wants and whatever percentage of those factors to count as the notional SEN budget. It is very confusing.

Q58 **Chair:** How do you solve that issue if a school has a disproportionate number of children with special educational needs and is having to pay £6,000 upfront?

Julie Cordiner: There is a mechanism, but many local authorities do not publicise it to schools. The burden of proof is on the school. If you can prove your costs are above the level of your notional SEN budget then you can ask the local authority for more funding. However, it is very difficult and very time intensive to prove that.

Q59 **Lucy Powell:** Even if you are an academy?

Julie Cordiner: Yes, local authorities have to treat all types of schools equally.

Justin Cooke: It is fair to say that schools do not get enough money sometimes. Some mainstream schools have proportionately more SEN pupils than they probably should if all schools are inclusive. Those schools face greater pressures because parents know they take SEN children so they look for them to take their children. Therefore they have increasing pressure every year because they get more and more SEN children through the door, whereas parents feel the other schools down the road are not as inclusive so they do not go for them. Some schools have greater pressure because of that.

The other problem is that we do not track that SEN notional budget. It is not audited in any way. Therefore it is quite difficult for the school and the local authority to come to an agreement on how it has been spent.



HOUSE OF COMMONS

Q60 **Chair:** To clarify, you said the local authority has a special fund if the school identifies a need. Are they compelled to give that money or not?

Julie Cordiner: They do not have a special fund—it has to be found from the high-needs budget.

Q61 **Chair:** Is the local authority compelled to do it if a school does apply and demonstrates it has a significant number of students with special educational needs?

Julie Cordiner: They should. It is not written into the regulations, as far as I am aware. It is in the operational guidance rather than regulation, so I believe it is a “should”.

Q62 **Ian Mearns:** For the record, the tension and disparity between levels of resource-led provision and needs-led provision did not just happen on the advent of the education, health and care plan. It happened before that with the statement process. Am I correct in saying that?

Matt Keer: Yes.

Q63 **Ian Mearns:** I am afraid to say the impression was being given that the education, health and care plan was something that had caused this, but really it has existed for a long time.

Justin Cooke: Yes, the same pressures are in the system that have always been there.

Q64 **Ian Mearns:** In terms of this top-up funding, we have a situation where banding systems for special needs top-up funding over £6,000 has been established in the vast majority of education authority areas. Can you give us some examples of how, in the real world, banding works and what the positives and negatives of banding are? I understand one thing straight away: banding is a limiting factor.

Matt Keer: Yes. One of the things we are often asked at Special Needs Jungle or on other parent sites is, “I have an EHCP. It says it is banding F. That is the provision I have. What does that mean?” Strictly speaking, banding does not have to be in an EHCP at all. What you want is detailed, specified and quantified provision. The arrangements via banding will support that, although not always.

Q65 **Ian Mearns:** To put it bluntly, would you say that banding is a system for managing resources rather than for necessarily meeting needs?

Matt Keer: Absolutely, yes.

Julie Cordiner: In banding, there is a balance to strike between efficiency and accuracy. Banding is a method of trying to make it administratively simple, relatively. It is not simple at all.

With the high-needs reviews all local authorities have been asked to undertake—I have led a high-needs review for the last 18 months or so—part of that is considering whether the banding system is fit for purpose



or not, and whether we should change it and move more to the resource allocation system you have in social care. There are some quite difficult decisions around that. If you become more individualised in the allocation of funding, it can take quite a lot more work and you would end up with schools having to produce lengthy descriptions against banding descriptors or whatever to create the end result. It is a balancing act.

Q66 Ian Mearns: I imagine that the directors of children's services within local authorities are under extreme pressure from their own directors of finance about managing resources.

Matt Keer: Increasingly, if you look at school forums' documents, you see proposals to either completely rejig banding arrangements or to lower banding levels. It is almost a longstanding problem that has become more acute.

We looked into how many local authorities use banding: 140 came back to us and 130 or so said they did. The number of local authorities that had allowed the band values to creep up in line with costs—for example, I am guessing superannuation of staff—was four. Four out of those 130 local authorities had increased their banding levels in line with the real costs of providing provision. The rest of them had mostly kept levels static and increasingly are now looking to reduce those.

As a parent, if you have an EHCP that does not have specified provision and you are just relying on a banding, it is a mug's game. Your school will be starved of funding.

Q67 Ian Mearns: If 130 out of roughly 150 educational authorities have funding, what do the other 20 have?

Matt Keer: They claim they simply use the high-needs operational guidance provided by the DfE. One local authority refused to provide details of theirs because the algorithm behind it was commercially sensitive.

Julie Cordiner: Can I make a very quick point about banding and the relationship between what is in the EHCP and what the parent is told or believes? The funding goes to the provider—the school, unit or whatever it is—and it is up to the school to manage that. You will not necessarily have direct equivalence. There could be all sorts of reasons why the school may top that up. As it is, banding and needs are individualised, and it is a risk to try to present it as that amount would definitely go to that child. The operational guidance says the providers are free to manage that as they wish.

Q68 Ian Mearns: This is a subjective question, but do you think banding is consistent with the spirit of the Children and Families Act?

Justin Cooke: No. If you have an EHC plan, the provision should be needs-based—it should be on the needs of the child. If the needs of the child are individual, I do not see how you can have a banding system for



HOUSE OF COMMONS

all children. It does not take into account their individuality that the needs-based assessment should do. However, local authorities know they do not have the money so they create banding to try to manage the money as best they feel they can to be as fair to as many children as they can. If we had a system that had enough money to be needs-based we would not need banding.

Q69 **Ian Mearns:** The dilemma is you might end up inadequately catering for the needs of a lot of children rather than adequately catering for the needs of a few children.

Justin Cooke: Yes.

Q70 **Ben Bradley:** Given what you have just said, do you think local authorities go out of their way to put children in lower bands to save money? Do you think that happens?

Chair: Short answers, if you can.

Matt Keer: I am aware of cases, yes. It will vary hugely according to the local authority's operational policy, but yes, I know of cases.

Julie Cordiner: I do not think you can generalise. It is very individualistic.

Q71 **James Frith:** This is not so much on banding as on money. Julie, you work with local authorities. There are freedoms within the system at the moment, are there not, to assess where they are spending money out of borough and to bring that in? Are you working with local authorities that are having to re-evaluate that as a set piece?

Julie Cordiner: Yes, I think so. That really comes down to therapies. That seems to be the major difference as to why children are placed in the independent sector.

James Frith: Therapies?

Julie Cordiner: Therapies, yes, which tend to be the biggest difference. If we can put more health-based therapies into our special schools within the area then you should not need to use independent schools as much. Again, obviously you cannot generalise. It is complex.

Q72 **Chair:** Going back to the £6,000 and whether or not councils give a little bit of help to the schools, have you done any analysis in terms of how many councils help schools in terms of the £6,000 funding?

Julie Cordiner: I do not have those today, but I can certainly get them. It is a separate line on the section 251.

Q73 **Chair:** Would it be most councils that do it or is it a small amount?

Julie Cordiner: I do not know off the top of my head, I am afraid. Sorry.

Q74 **Lucy Powell:** One of the things I was going to ask has been covered, so I will change it slightly. It is around early intervention and early



identification. Do you think more could be done—I am sure you are going to say yes—to do that early? Do you think there are potentially incentives in the system or that there is not enough oil in the wheels to enable it? We now have many, many more children in statutory education aged three and four, so more could be done to assess children then for plans and so on, which might save schools time and money later and obviously save parents a lot of hassle.

Julie Cordiner: That has started to happen. In the early years of the national funding formula there was the introduction of inclusion funds. Authorities that did not already have inclusion funds—many did—have been developing those and that is helping get more support to nursery-aged children. That is with the hope we can then maintain them in mainstream provision in primary rather than them going into special school, because there has been this big rise in the number of pupils in special schools.

Heads themselves have told me some of their children could thrive in mainstream schools with the right support, which is the important bit. It is how we can generate the extra support for schools and the training. There is a big issue around confidence in mainstream schools, for professionals as well as parents, which definitely needs to be cracked.

Justin Cooke: It also comes down to spending well the notional budget and SEN support. Most children who are coming through the system at an early stage who need help will fit that category of SEN support. That is where they first get help. If that money is not being spent on them and is not being spent on SEN support, they take longer to get help, usually via a more expensive route with an EHC plan or special school. If we had SEN support right and spent that SEN notional budget in the right place on children early, we would save money in the system.

Q75 **Lucy Powell:** Absolutely. We have heard that in other areas—child mental health, children’s services and so on. It is a very common thread.

Do you have any ideas about how we can flip the system in that way? It takes a brave system, with maybe a bit more money in the mix, to flip it around.

Justin Cooke: It is not just the amount of money—we also need to track that money better. There is no audit of the SEN notional budget. There is no audit or tracking of how schools spend SEN support.

Q76 **Lucy Powell:** These two budgets are given directly to schools and do not relate to anyone on plans to do that early intervention work?

Justin Cooke: Yes, and they spend it how they see fit. There is no tracking. Pupil premium is another one that goes out where there is some form of tracking and they have to make some form of assessment on how to spend that. There is not that for the notional budget or SEN support.

Q77 **Lucy Powell:** If you could track it, what would you like to see? Basically



give us some ideas for our report.

Justin Cooke: I would personally like to know how many pupils the school thinks it is supporting, how it is supporting them, what kind of intervention policy it is using, whether it is tracking the long-term outcomes for those children and whether it believes it is doing the intervention that will keep them within the school.

Q78 **Lucy Powell:** Finally, give me some examples of children who would be below the threshold or, if you like, should ideally stay below the threshold. What would that look like in terms of some of the flags that might arise that may not get them a plan, or possibly would get them a plan, but where they could operate there if they were being supported properly?

Justin Cooke: As Matt was saying earlier, simple interventions for deaf children so they can hear what is going on and take part in a lesson. That should not take an EHC plan to get.

Lucy Powell: Absolutely.

Justin Cooke: Another example is if you have an autistic child who just needs to be managed in the classroom in a different way—maybe the odd movement break so they can get rid of their nervous energy—and where they could be allowed in school slightly earlier so they are not pressured when they first get there. They are very simple interventions that mean they can stay in the classroom. Those types of things do not take lot of money, but do take an ethos of inclusion in the school and a little bit of support, which the SEN notional budget is supposed to provide for.

Q79 **Lucy Powell:** There is not even sharing of best practice of that either, presumably, is there?

Justin Cooke: No. A lot of these things are not very complicated if you have the ability to do them. Sometimes all it takes is a specialist TA who is well-trained in SEN.

Thelma Walker: I was going to say staff.

Q80 **Lucy Powell:** We have a lot of these What Works Centres through the Educational Endowment Foundation, which are about sharing best practice. Maybe there could be a SEND What Works Centre. Is that something you have already thought of?

Matt Keer: One of the things funded as part of the DfE series of grants was that sort of body—I think it is known as Whole School SEND—which shares best practice. There is an awful lot of really good practice there—for example Dixons Trinity Academy, Priestnall School in Stockport and Horringer Court. People get this right without breaking the bank financially.

Lucy Powell: That might be a good recommendation for us, thank you.

Julie Cordiner: I think the EEF has just announced one on SEN.



Lucy Powell: Good.

Julie Cordiner: The onus really needs to be a focus on teacher training. I can remember when the teacher used to take the group of SEN children and the teaching assistant used to do an activity with the rest of the class. Somehow it became switched around so that the first response is a teaching assistant. Yes, they are very skilled in many cases, but we need to think more imaginatively about the balance.

Q81 **Mr William Wragg:** I am conscious of time, but you mentioned the unaccountability of different aspects of funding. Was the case the same for the SEND transition funding within local authorities? Did it go elsewhere rather than for the purpose it was meant for? Do you have any insight into that at all?

Matt Keer: As part of tracking it, at least for the local authority grant side, most of the money went in the general direction of SEND, but that is quite a broad scope. We tracked 19 local authorities, a minority of whom would put parts—sometimes large parts—of their grant money on paying legal fees, barristers, solicitors and somewhat over-lavish catering. I would say most of the money we tracked did go in the general direction of implementation. It arguably was not spent effectively in some areas.

Julie Cordiner: It could be worth having a look to see if there is any correlation between the number of authorities that transferred money out of their high-needs budget and into schools' budgets. To me that indicates they were getting more in the high-needs budget than they actually needed to spend, so it would be interesting to see.

In terms of transfers, there is a big issue. The limitations on that now—you can only move 0.5% from your school's block into your high-needs block—penalise the more inclusive schools and the schools with provision. If you allow the flexibility to transfer more from the school's block into the high-needs block then every school is sharing the pain in an area and most of that money does go back into schools. I worry about the lack of flexibility.

Q82 **Emma Hardy:** Good morning, everyone. I am very tempted to explore the comments you made about behaviour policies, off-rolling and exclusion of SEND children, but for the first time ever I am going to be disciplined. However, I completely agree with you.

I want to talk about the "H" bit in the EHC plans and whether you feel that schools are getting support in terms of health provision. A report from the NAHT said that 83% of the people they asked said they did not get any funding from the health and social care budget. Of that 83% who said they did not get any funding, 77% said they had never received anything even though it was needed. I would like to have a look into this. Do you think health and social care provides adequate funding and services for local authorities and schools for pupils with both SEN support and the health bit of EHC plans?



Julie Cordiner: The worry is the funding system assumes a level playing field in relation to health contributions and it absolutely is not. There are huge differences between the level of willingness and ability to contribute. Health send people without the authority to make decisions on spending to meetings. It can be extremely difficult. I am sure there are authorities where it does work, but I have not personally experienced that. It is extremely difficult.

You may hear from some of the head teachers later on. Head teachers do feel very vulnerable in this respect because staff are being asked to do medical care procedures for children that could involve an element of risk. They feel they are not being given the money to do it. Local authorities will quite often give the schools the money and then try to recover it from health. In my experience, that is almost never successful.

Matt Keer: I do not have a lot to add other than anecdotes. With deaf children, some of the difficulty is more around trying to get speech and language therapy established as an educational need rather than a health need, even though the NHS often provides it. That point was settled legally 20 years ago but is still an ongoing issue. In my personal experience, it has not been an issue because commissioning of services has been effective, but my experience is fairly limited.

Justin Cooke: If you look at the Ofsted joint inspections of local authorities' SEN, one of the things that comes out a lot in the statement letters is that there is not any joining up of services. Health and social care do not have a designated lead that education is aware of. It is very unusual for someone from health and social care to come to an annual review of an EHC plan or an assessment of it. Sometimes it is difficult to get the local authority to turn up and the school does it itself, which is part of the problem. Therefore you do not get much health or social care input into EHC plans, which means you do not get the funding. I would be very surprised when an EHC plan had a high level of health or social care funding if they were not health pre-existing commitments that health and social care had already signed up to before the EHC plan was put in place.

Q83 **Emma Hardy:** Do you think schools and local authorities can provide the services and support children need without having this money and support from health and social care?

Justin Cooke: Most of the time probably not.

Julie Cordiner: It would be very difficult and very risky. It is about meeting the basic needs of the child to enable them to access education. For children in some of our special schools who have very complex needs, it is the fundamental and biggest part of their day. When you have children who can be fitting regularly or stopping breathing, the level of care they need is enormous. You cannot even start to try to have them make little steps until that is sorted.



HOUSE OF COMMONS

Q84 **Emma Hardy:** If you feel schools and local authorities cannot overcome the problem of the lack of funding from health and social care, would you therefore say our children are not getting the support they need because they are not getting financial support from health and social care?

Julie Cordiner: I think it is happening because the local authorities and schools are working together to make sure it does. However, it is just another pressure to add to the overall mix of what they have to handle.

Matt Keer: Again, anecdotally I would support that. One useful line of inquiry that hopefully will emerge soon will be the joint special educational needs and disability tribunal pilot, which will cover health and social care. That pilot started in April and by now there should be decisions coming out of it. It may shed some light into the individual issues you mention.

Q85 **Ben Bradley:** We have talked a lot about challenging decisions for local authorities in terms of inclusivity, in particular keeping children in schools. There is also the challenge of when to move children to probably more expensive specialist schools, and why. Can you talk us through how those decisions are made, what the priorities are and the challenges in terms of putting children in specialist schools?

Justin Cooke: I will go first as we run two special schools. Most of the children who are in our schools need to be in those schools to learn. They have a level of need that can only be met in a special school, usually because they need such high staffing numbers or they need specialist support. However, we are increasingly seeing quite a lot of children who could have stayed in mainstream if they had not been off-rolled, excluded or missed a large amount of education for other reasons. That is becoming increasingly common.

If you look at children with autism, the proportion who are in mainstream is 70%. It is 70% now and was 70% in 2010. What has happened is that more and more children are coming through the system. We are seeing more and more children in special schools simply because there are more and more children who need this help. That is part of the problem—funding has not followed the rise in the numbers—and therefore more children are going into special provision because it is the only way of getting help.

Q86 **Ben Bradley:** I do not know if this carries in my constituency. Do you think more children with learning and behavioural difficulties are put in those provisions, and that they are almost used as an alternative provision?

Justin Cooke: We are seeing pressures on alternative provision as well as part of this. More and more children are falling out of the mainstream system and need a place in a school somewhere, whether that is alternative provision or a specialist school. We should not lose sight of the fact that special schools are there to provide an education for children



HOUSE OF COMMONS

who cannot be in mainstream. There are always going to be some of those children so you have to get that balance right.

Matt Keer: My family's experience, and that of families who attend our non-maintained special school, is that anywhere between 60% to sometimes 80% of those decisions are contested and go to a special educational needs and disability tribunal. Last year, 100% of those decisions went in favour of the parents. It seems, to me at least, to be very much a resource-driven decision due to the obvious pressures everyone has discussed today, and much less a needs-driven one.

One of the main tensions in the system is that the same public body that assesses need also has a duty to meet that need. Within specialist provision, particularly the more complex end of it, those decisions end up more in a tribunal decision than most.

Q87 **Ben Bradley:** You mentioned non-maintained schools. For example, in my constituency I have REAL Education, which is an independent school. They have told me they consider themselves lumped in with schools like Eton and Harrow in terms of the funding and support they get when obviously it is a totally different scenario. Do you think there is more of a challenge for an independent school in that sector to access funding or to convince local authorities to put children into that provision, given the probable additional cost?

Matt Keer: To some extent those challenges are deserved because local authorities have to use resources efficiently. The Lenehan Review, which took place last year, asked quite pointed questions about why some of those annual fees were so high. I have no idea what they would be for REAL Education.

The longer-term issue for us would be that I have two teenaged lads who, having been told they would never get GCSEs, are now on a path to university. They will pay that money back financially and socially in spades if you look at that investment.

Q88 **Lucy Powell:** A quick question on the spending on tribunals. I think you said £70 million was spent since September 2014 on tribunals by local authorities. Is that not the most disgraceful waste of money in a sector that is so squeezed? What could we do to prevent that method of rationing and assessing need?

Matt Keer: Those figures go up to August 2017. We will get more data in December. The projection we have is that it is just over £100 million now. I agree that it is disgraceful. It is a colossal waste of resource and, if you like, human potential. There are a number of times when I have wished the tribunal system would conduct more vigorous case management early on rather than let cases drag on and on. Even with some of the cost figures we have had, there is still almost an inherent incentive, in the absence of beefy accountability, to let the process drag on. Financially,



HOUSE OF COMMONS

the LA loses very little by doing that, particularly if it is a more complex specialist case. I think it is an accountability issue.

Q89 Chair: You are mentioning cuts and the difficulties in terms of resources. However, if you are saying £500 million to £600 million has potentially been wasted and £75 million has been spent legal costs, a lot of money in the system is not being spent on the frontline in the way it should be. Would you accept that?

Matt Keer: As a parent, it is pretty hard to hear, “We have no money” when you see this going on. Looked at over a long period of time as a proportion of the high-needs block and the schools block, it is a smaller amount.

From a personal view, it seems we had a golden opportunity with the legislation in 2014 that has not been realised for a number of reasons, funding being one of them and imaginative working being another.

Q90 Ian Mearns: I will declare an interest in that I used to be deputy leader of a local authority and before that I was chair of the education committee in Gateshead. To a certain extent, I have an understanding of the rationale taken by local authorities, in that there are test cases. If they lose, it opens a financial floodgate. Apart from that, can you think of any other rationale local authorities would use in contesting these cases?

Justin Cooke: It comes down to how and why the local authority is using the appeals process. If a local authority has large amounts of appeals that it concedes two or three days before a hearing, it obviously is not using it in the way you are describing. If it loses—the vast majority of cases are lost by local authorities—it means they are not using it first.

The system is there for when the experts the local authority employs to look at a need disagree completely with what the parents want. You do not want a child going into provision that is not going to meet their needs and is wrong for them, so sometimes they have to.

Q91 Chair: Do we have figures on—you are saying the vast majority—how many cases are lost or how many cases are conceded on appeal or whatever?

Matt Keer: Currently 89% of decisions are found in favour of the appellant. Appeals have risen by approximately 40%. In that time, the rate of parental success has also increased.

Chair: It appears huge amounts of money are being wasted on this.

Q92 Ian Mearns: Do you have any information, Matt, of how many parents just accept the position or do not take it to that extent of formally going to appeal? That is probably a significant hidden cost. If only those parents were advised and properly advocated for.

Matt Keer: Absolutely. The number of decisions that could be appealed each year—whether that is, “No, you are not having an EHCP” or, “No,



HOUSE OF COMMONS

you are not having this school”—is very small at roughly 1.5%. I strongly disagree that that is a guide to how reliable local authority decision-making is. The geographic spread of appeal rates tends to favour the more populous areas. Doing an appeal like that is the most emotionally and financially draining thing I think I have ever done.

Q93 Chair: Thank you. To conclude, we know the pupil premium is being used for all sorts of things. It is not always spent on disadvantaged students, but often spent generally on supporting the school budget. Is the same true of the SEN transition funding, with local authorities propping up day-to-day spending?

Julie Cordiner: It is probably unlikely that, given what we have said about the pressures and the need to transfer money, local authorities have had to transfer it from the schools' budget into the high-needs budget. I would say that is unlikely.

Matt Keer: I agree. Most of the money I tracked went in the general direction of SEN, but you can argue whether it is used effectively. In the last year, where we got nearly 100% of the data, the vast majority of it went on the process of converting statements of special educational need into EHCPs. The quality of the end product—the 150 I have seen in the last year—unfortunately has been pretty poor. However, I have not seen evidence of vast sums being channelled off for other purposes.

Justin Cooke: The pupil premium is tracked more than the SEN notional budget for schools. You have to think that if a school is running at a deficit and no one is checking how it is spending its SEN notional budget, it is probably not spending it on SEN.

Q94 Chair: The NAO is doing outcome studies. I hate this term “value for money” when it concerns children with special educational needs, but they have called it that. Do you think a lot more work needs to be done on outcomes for children with special educational needs?

Julie Cordiner: Yes, absolutely. In the work I do with School Financial Success, we try to support schools with information and advice. We talk about financial leadership, which is a notion of school leadership that is not given enough focus. As part of financial leadership, you absolutely should know how you are using the money you are getting and what impact it is having. The trouble is that when you get into specialist provision it is extremely hard to find benchmarking comparators because every special school is unique.

If a school is fully occupied and the local authority wants to place additional children, the local authority can then negotiate a reduced top-up to recognise that the fixed costs are covered. I do not think we have given enough attention to helping special schools and SEN units understand the difference between fixed costs, marginal costs and stepped costs, because when you have enough for another class then



HOUSE OF COMMONS

obviously you need another teacher. Therefore quite a lot of work is needed.

A lot of the Department's work on financial health and efficiency is very good and very laudable—with a few exceptions in some of the tools—but it is not always transferable to the specialist sector.

Chair: Thank you very much indeed. It is really appreciated, thank you.



Examination of Witnesses

Alyson Shield, Head of Education and Supported Learning, New College Durham; Helen Wallace, Headteacher, Thameside Primary School; David Clarke, Deputy Director for Education, Oxfordshire City Council; and Dr Jackie Lown, Head of Children and Young People, Specialist Services, East Riding of Yorkshire Council.

Q95 **Chair:** Thank you very much for coming today. We are going to finish this session at 12 o'clock, so for the benefit of the tape and those watching, could you kindly introduce yourselves from our left to right?

Dr Lown: Hello. I am Head of Children and Young People Specialist Services, East Riding of Yorkshire Council.

Alyson Shields: I am Head of Education and Supported Learning at New College Durham.

Helen Wallace: I am head teacher of a primary school in Reading that is a very inclusive school.

David Clarke: Good morning, I am Deputy Director of Education, Oxfordshire County Council.

Chair: Thank you. If I could ask you please to speak as loudly as possible because the microphones are not brilliant in this room. Thank you.

Q96 **James Frith:** Good morning, everybody. Thanks for coming in. A broad question to kick off with. Those of you who were in for the first session will have heard this. What has been the impact of the SEND reforms on funding for pupils with special educational needs and disability?

Dr Lown: The reforms themselves have brought much to be pleased with in terms of the identification and assessment of special educational needs for children and young people. There has been a tremendous increase, certainly in my local authority and I know in many others, of those children who are identified as having SEND.

Alongside, there has been increased demand on schools for meeting the needs of children at SEN support level. The increase in demand because of increased identification has been felt across school levels and across local authority levels. Certainly there are huge concerns across the country, certainly in Yorkshire and Humberside, about the financial pressures that that is placing on schools and local authorities.

Alyson Shields: The impact for students in colleges is a little bit different to what it is in schools. Prior to the reforms, the code of practice only went up to age 16, so there were a lot of things that colleges did not have to do in the same way they are now legally bound to do. That has



HOUSE OF COMMONS

had a big impact in terms of training for staff and the administrative burden it puts upon the college.

As was mentioned in the previous panel, funding for colleges is different to what it is for schools. The funding for colleges has not been reformed. We get £4,000 per student plus the disadvantaged uplift if they are 16 to 17. Once they turn 18, that is reduced by 25% per student. Colleges do not get the SEN notional budget that schools get. We are funded at £6,000 for any high-need student, plus a top-up element that we get from the local authority.

However, we have 160 students with EHCPs in our college and we only have 30 high-needs places. Therefore we get a SEN notional budget, if you like, of £180,000. On top of that, a further 500 students have SEN support that need to be funded. We therefore have 630 students that need to be funded from the disadvantaged uplift. In that respect, it has had a huge impact on colleges.

In addition to that, we see more and more students coming to college with special educational needs and our college being named by the local authority as the place for them, particularly those who have come from alternative provision. When they are at school with alternative provision they get £18,000 per learner, I believe. Coming to college, we do not get anything different for them.

The trend over the last four years has seen that more and more young people with EHCPs are those from alternative provision. We have less for those with special educational needs that are learning difficulties, they are more SEMH.

James Frith: Another pressure on FE funding as well.

Q97 **Chair:** To clarify that, you get no extra funding?

Alyson Shields: Not if they are not high needs, no. You get the £4,000 and then your additional disadvantaged uplift. You do not get anything specific for those young people. We have 160 EHCPs, of which 30 are high needs.

Helen Wallace: For us in school, the advantage of the new reforms is that we can use the funding as creatively as we like. However, the amount of top-up you can get is less than it used to be. In reality, for a school like ours, which has 5% of children with EHCs, the funding gap between what we get in and what we spend is £180,000. That includes our notional funding, which is £114,000. We therefore have another £66,000 to find.

In reality, the children we have cost a lot more than the £6,000 plus the banding. For example, for one of my children with very high needs, with the £6,000 we get £14,000 in and we spend £31,000 on that child. The impact is therefore on the other children. It is not the notional funding we



cannot account for; we are spending our notional funding and more, which has to come from the general resource budget.

David Clarke: The impact of the reforms, echoing some of the points made, is that demand has gone up and so has what we have to provide. An example of that is that it is going out to nought to 25 and—echoing a colleague’s point—the high-needs block in the funding does not reflect that. Since 2014 we have had 450 more EHC plans for that age group. That has not been funded so we have had to find funding to support that.

We are also finding that children, when they reach the 19 to 25 group, are not coming off EHC plans because they want to stay in college. Parents want them to stay in college. We are therefore needing more annual reviews and are doing those things. The impact is created at both ends.

Q98 **Thelma Walker:** What impact do delays in local authority EHCP assessments or plans have on SEND funding for schools?

Dr Lown: There are different dynamics going on here. Sometimes it can be perceived as delay by parents towards an EHCP, but what might be going on is that there is a request to look at the graduated response to meeting those needs and that is happening prior to a request for an EHCP. There can be a misunderstanding sometimes that the delay is much greater than it is, because there is an expectation that the school or college would meet that child’s needs at a SEN support level.

Q99 **Thelma Walker:** Do you think that is due to a shortage of staff with the right skills in terms of educational psychologists and a shortage there?

Dr Lown: One of the things I was going to say was that the pressure to move towards an EHCP requires an input of time and commitment from educational psychologists, other professionals and parents themselves, as well as school staff. That means resources are taken out of the system at the SEN support level because those professionals who could be providing SEN support are engaged in looking at EHCP assessments. It is tipping the resource towards the EHCP end, making greater demand on the resource there. It is causing more of a set of needs at the SEN support end because the children in those schools and colleges are not able to get as much advantage from having professionals support them at the SEN support level.

The graduated response requires a school or college to demonstrate that they are going through ways of responding to a child’s special educational needs at the earlier levels, to meet those needs as early as possible without recourse to an EHCP. What is actually happening is that the pressure on schools and colleges to move towards an EHCP to get more funding means the request for an EHCP is drawing further upon the resource that might otherwise have been used to support those children at SEN support level. It is a vicious circle. It means the resource is moved one way. It means parents might be feeling everybody is delaying getting



HOUSE OF COMMONS

to an EHCP, but in fact there is pressure to try to move towards a graduated response instead of going to an EHCP.

I do have to say one of the concerns I have is that the children who do need to go to an EHCP, because their needs are at the highest level, can sometimes be delayed in reaching that point because the time of professionals, schools and colleges is being so taken up with the much larger group of children going towards EHCPs that perhaps would not have needed it.

In my own authority we have a 68% increase in EHCPs since 2014. That is a huge increase. It means all resources are shifting towards the EHCP end. Educational psychology time is a good example of that. We are seeing it deployed much more at the EHCP end and much less at the preventative point, where we could help intervene with schools and colleges to prevent the need for an EHCP.

Q100 Chair: Both the last panel and this panel have mentioned the huge increase in the number of applications for children with special educational needs. Why is that?

Dr Lown: There is a multiplicity of factors, in my view, about that. One aspect is that there is much better identification and assessment. That is a positive that has come out of the Children and Families Act. People are much more aware of both identifying and meeting needs. Far more children are surviving from birth and are moving into school with a greater level of need. Several different syndromes and conditions—such as, for instance, foetal alcohol syndrome—have increased in number to such an extent that a generation of children going through our system are simply more likely to have a special educational need.

There are then the contextual factors such as a lack of resource to schools and colleges. That means they want to identify more children as needing an EHCP, which brings in finance that will help resolve some of the pressures they are feeling more generally, in a context of schools and colleges feeling their funding is more pressured to start with.

Q101 Chair: For this amount of £6,000 extra?

Dr Lown: As has already been mentioned in the previous panel, the £6,000 is not directly audited. Helen has already made the point schools would often be spending at least that, and more, to fund the number of children.

Q102 Chair: It is additional money and is not the same money they would spend on children without special educational needs?

Dr Lown: It is the same money.

Helen Wallace: Schools that only have two pupils with EHCs nominally spend £12,000 out of their own budget. I spend £114,000. It is the same funding formula, it is not extra money.



Q103 **Chair:** It is not extra money schools have to pay because they are paying anyway, is that right?

Helen Wallace: It is extra money we have to pay. It is not extra money that we get in.

Chair: Yes, that is my point.

Dr Lown: When there is an EHC plan, the top-up that comes from the local authority is meant to be in addition to the original £6,000 the school would be paying.

Q104 **Chair:** Anyone else? You mentioned increased demand.

David Clarke: Likewise, we have gone up 77% since 2013. One of the areas we have gone up is around SEMH—social, emotional, mental health and the autistic spectrum. Sorry, I do not normally get criticised for that.

A lot of the need being presented is around quite high-level behaviours. Since being with Oxfordshire, we get a lot of emails and I have had emails in the last few weeks around the pressure head teachers—I am an ex-head teacher myself—are under due to the behaviours children are presenting. As my colleague was just saying, the money, time, resources and most crucially the expertise we have is being pushed down the EHCP end and not into the local-first approach. These children present quite high-demand behaviours. Our head teachers want to be inclusive and want to be able to keep children in school. However, there are pressures from the parents, pressures around their accountability in terms of outcomes, and pressure on their expertise.

The previous panel mentioned ITT—initial teacher training. We need to look at initial teacher training and how we can support our new teachers coming in to be better trained for special educational needs. In some cases they get half a day training and that is it, yet it is the most demanding thing they will face. There are a lot of factors. The demand is in and around that aspect.

Q105 **James Frith:** That was a really good idea from the last session and I am pleased you picked up on it. The premise needs to shift in terms of coping with a system that is under pressure and being an inclusive school. It is also how we empower our teachers—both those in the system now and new teachers—through teaching strategies to deal with the classroom picture rather than being, “This is too complicated” and the school, as an unintended consequence of the pressure, off-rolls or excludes.

David Clarke: That is where the vent comes, doesn't it? I absolutely agree. I am not wanting to speak for Helen, but picking up on what Helen was saying, an inclusive school is about the skills and experience the teachers have—

Helen Wallace: And the will.



HOUSE OF COMMONS

David Clarke: —and the will, absolutely, in dealing with this. One head teacher said to me, “We just do not have the support staff, it is just me”. If she went, as a single point of failure, the school would really struggle.

Helen Wallace: Can I just go back to the previous question? The parents’ wishes have also increased the number of children with really high needs in mainstream schools. If they want their child to go to a mainstream school then they go to a mainstream school. We do not off-roll and never have done.

You have to weigh up the pressure of what we are doing. The culture of the school is inclusive, but we are also accountable with Ofsted. Are our standards going to be affected by these children? Yes, of course they are. Will Ofsted take that into account? I do not know.

Q106 **Ian Mearns:** Out there in the real world—I hear very much what both of you are saying, Helen and David—we have had evidence in previous sessions that the number of youngsters who are being euphemistically home educated has grown like Topsy. Resources and skills are an issue. The will of the school leadership is fundamentally important to how they want to run things. We cannot get away from that.

David Clarke: Without a doubt. It is easy to say to try to bring about a culture of inclusion, which is an absolute must, but it has to be seen right across the piece. I was speaking with Ofsted recently about off-rolling and identifying schools that are off-rolling. I think we also have to say we need to identify schools that are inclusive and celebrate that, rather than looking at a small group of children—I totally agree they are a vulnerable group of children and we want them to make as much and as good progress as the others—and for the whole school then to be judged on that group if the working around the group has been inclusive. We need to reflect that in the full width of how we assess.

Q107 **Ian Mearns:** I could not agree more, David. The problem is that while this is happening, the potential educational and societal costs of this off-rolling could be significant down the line for us all.

Alyson Shields: In terms of off-rolling, as you call it, colleges have the opposite issue. What happens with us is that we get these young people who have been off-rolled from alternative provision and we are named on their EHCP and have to take them. We do not necessarily have the provision or the trained staff to take them, but that is not a reason to refuse them. There is also the fact colleges are inclusive and we want to make a difference. We take these young people and then have to train our staff to deal with them. It does not always have a positive outcome.

Q108 **Ian Mearns:** Going back to resources within schools themselves, the fundamental question is whether the amount schools must fund from their own budgets before they can apply for higher-needs funding needs to be reviewed?



HOUSE OF COMMONS

Helen Wallace: You could review it and say it is £10,000, but the schools will still have to find it. We do not have recourse to extra funds from the local authority, particularly in terms of monetary resources.

Q109 **Ian Mearns:** You could also knock it down and say it should be less.

Helen Wallace: You could, but you are still going to spend more. If you are a truly inclusive school and you are providing what the children need, it does not matter what the notional figure is—you are going to be spending more.

Q110 **Ian Mearns:** Does anyone else want to add to that or does everyone concur?

David Clarke: I totally concur with that, but there also needs to be a look into the high-needs block funding. You heard from the lady before about the finances. Particularly from our perspective, we need to look into line J in the high-needs funding and ask how fair it is—we get absolutely zero in that. We can then link that into the school delegated budget and ask for the extra 0.5% for schools. It does not place local authorities in a fair position to ask for that from schools because they are under pressure themselves.

Alyson Shields: One of the concerns we have in the college sector is that we get advised of the number of places we will have. We have 30 high-needs places, which has never changed since we got EHCPs in 2014. We have 40 EHCPs and 30 high-needs places. The local authorities say, “These are the numbers of placements you have”. As a college, we then have to determine which of those young people have high needs. Really it should be based on what the young person’s needs are, not on the nominal figure the local authority has given us.

Q111 **Ian Mearns:** Going back to the top-up funding over the £6,000, do you have anything to add in terms of how the banding systems work? From any of your perspectives, what are the positives and negatives of banding systems?

Helen Wallace: From my point of view there is more flexibility in how we spend it. Banding can change from year to year, whereas before, with the statement, it just went through. Therefore there is flexibility in the system to change from year to year. In reality, it does not. It has the potential to be consistent across the local authority and region to region. It is not necessarily that it is, but it has the potential. Those are the positives. For me, the banding bears no relation to the actual costs.

Q112 **Ian Mearns:** Are local authorities cloning each other’s banding system criteria?

Dr Lown: It is quite likely that local authorities see one another’s banding systems and look at their own in relation to that.

For me, there are two sets of competing needs. Banding is a way for a local authority to plan ahead and to project what sort of demand there is



HOUSE OF COMMONS

going to be at what sort of bandings in the years to come. There has to be a way of planning finances for the local authority. The counter-argument to that was mentioned in the earlier panel: individual children's needs cannot be blanket responded to by way of a banding level. The individual education, health and care needs need to be identified and resourced accordingly. However, there has to be some way for an authority to manage its funds.

Certainly in my own authority, we have not been able to increase banding levels since the reforms. We would dearly like to be able to do that because we recognise that schools have borne the extra costs of, for instance, teaching assistants' costs, as the cost for TAs has gone up. We have not recognised that and our banding levels have not gone up. If we did put the banding levels up in order to take account of that, it would mean we would have to take more money out of the schools' budgets. Those two budgets are interdependent and we would be taking the money back from the schools' block in order to fund it in the high-needs block, so it would not really achieve any great benefit.

Q113 Ian Mearns: Jackie, to a certain extent you have already answered my supplementary question, which was whether banding is consistent with the spirit of the Children and Families Act. You seem to be implying it is not.

Dr Lown: In theory it is, but in reality it is not. In theory, bands ought to enable the identification of the individual's needs and give you a rough figure of what that is going to be. In reality, that is not how it can happen. Therefore, no, it is not.

Alyson Shields: Our local authority does not band. However, because colleges have a wider catchment area—some colleges have to work across five, six or seven different local authorities—some band and some do not, which makes it very difficult to manage.

Q114 Ian Mearns: We heard in evidence from the previous panel that only about 20 out of 150 authorities are not using some sort of banding system.

Alyson Shields: They use different systems.

Q115 Ian Mearns: I have a funny feeling that the 20 that say they do not actually do, but do not broadcast the fact. Would I be wrong in assuming that, do you think?

David Clarke: It would be really hard to say.

Q116 Ian Mearns: Emma Hardy apologises—she is one of your near neighbours from Hull and Hessle—but has asked me to ask a question about the health part of health and social care plans. Does health and social care provide adequate funding and services to local authorities and schools for both SEN support and educational health plans?



HOUSE OF COMMONS

Dr Lown: From my perspective, the health contribution is dependent upon very good joint commissioning arrangements at the strategic level. Certainly in my authority we work together very well with health at a joint strategic level for joint commissioning.

There are certainly pressures at the individual child level, which is different. Things like speech and language therapy, which is an education cost and comes from high needs, feels slightly uncomfortable even though that is what the EHC process suggests should happen. It leaves a dilemma.

Q117 **Chair:** Do you think the interaction between health and social care for children with special educational needs is adequate or are the resources just not there to make it work properly?

Helen Wallace: I do not think that resource is there. For example, we have a child who has cerebral palsy, is in a wheelchair and has many medical needs. We have support from the occupational therapist and physio commissioned by the local authority. The National Health Service supply the catheters, but does not supply any of the other equipment he needs for us to catheterise. Therefore, as a school, we are funding the cost of people to do it and the cost of medical malpractice insurance because it is a really intimate intervention. That is borne by the school.

Q118 **Chair:** Alyson, in terms of further education, do you get enough support from health and social care?

Alyson Shields: It would be fair to say the local authority is working really hard to bring them to the table, but they are not there yet.

Q119 **Ian Mearns:** The other aspect is that the on-the-ground delivery and commissioning is done by the CCGs. Do you think CCGs at a strategic level have an understanding that they have this responsibility?

Helen Wallace: I do not think they attend enough annual reviews in schools to give them the understanding.

Q120 **Chair:** For your pupils or students or even with the councils, do the health and social care authorities attend the meetings in terms of looking at the individual needs of that student or pupil?

Alyson Shields: Not at the college itself, no. They do attend panel meetings when there is a discussion about whether that young person should be granted an EHCP. However, that is at a commissioning level, not further down.

Dr Lown: I would reflect the same point. At the point of deciding whether an EHCP should be processed and moved into an assessment for a plan, then yes, we would have representation on those panels. At an individual child level, it would happen but would be rare.

Q121 **Ian Mearns:** Do you think it would be useful for directors of children's services to have a conversation with the chief executives of the CCGs on



HOUSE OF COMMONS

an annual basis to say, “What are you going to do about your responsibility with regards to this particular aspect of special educational needs”?

Dr Lown: There is a very simple level of answer that would come from a CCG on that, which is about the level of funding they have and the resource they could deploy into undertaking those sorts of responsibilities.

Q122 **Ian Mearns:** This is underpinned by the Children and Families Act, and therefore they have responsibility.

Helen Wallace: Sometimes it is their expertise that we need, not just the funding. We need their expertise and we do not always have access to it.

Q123 **Chair:** I think what you are saying is that it is not very forthcoming. Is that right, David?

David Clarke: Yes, I echo the comments that have been made in terms of health coming into decision-making. We have heard speech and language a couple of times already today in and around whether that is an educational provision and therefore paid by education, or is it health and therefore paid by health. Our special schools heads are telling us they are not getting the physical resources they need for their very complex children, who are very expensive.

Q124 **Chair:** To conclude that line of questioning, would it be fair to say that, despite the Act, there is no joined-up thinking in terms of the health and the care side of the education plan? Is that a fair summary?

Dr Lown: Yes.

David Clarke: Building on your point about social care, I think that is part of the way forward because that will help with early intervention.

Q125 **Chair:** You all agree there is not enough joined-up thinking?

Alyson Shields: Yes.

Q126 **Ben Bradley:** You have obviously heard about the challenges, particularly in terms of inclusivity within schools. At some point local authorities make a decision to move children out into specialist provision. We heard from a specialist provider in the previous panel. I wondered, from a local authority point of view, what the triggers are for that and what priorities you take into account when you make those decisions.

Dr Lown: It is generally a very joint decision between the parents and the local authority. Often a request for a special school placement is from a parent and it would be their preferred option that would drive that decision anyway.

The local authority’s decision through the EHCP would always be done in conjunction with the parents. The numbers in our special schools—it is



reflected throughout the country—are increasing rapidly. Local authorities have undertaken a review of their high-needs provision and I think it is a general finding across the local authorities in the country that there is much more demand on special school placements.

Q127 Ben Bradley: Have you found that those placements have shifted from the most complex needs to being a much broader range of student?

Dr Lown: There is increasing pressure on special schools to take not only those with complex needs, whose numbers have gone up, but also those who may not have quite so complex needs, where two factors might occur. First, the child is not so well-catered for in a mainstream and could, with more resource, manage in a mainstream. Secondly, parents can be more cautious about their child being successful in a mainstream school—particularly at points of transition, year 6 and maybe year 9 into GCSE years and so on—and parents feeling their child will be safer and more likely to be successful if they are in the more protected environment of a special school. Both those factors are increasing the pressure on special school places and, as I mentioned earlier, the increase in children with higher-level needs.

Q128 Ben Bradley: Can I add an additional question? An independent school in my constituency feels they do not get a fair look in the local authority because they are an independent school. They feel they should be separated from other private schools because it is for specialist SEN provision. Do you think that is a challenge in terms of funding or where you would choose to send people?

David Clarke: It depends on the need of that independent school, what they are providing and what the needs for the children are. We work quite closely with a number of our independent non-maintained special schools. One of them is a teaching school and one of them we utilise as part of our teaching school practice.

One of the things we are wanting to develop and expand further is the notion of outreach and in-reach. We can therefore utilise the expertise and specialities these independent schools have, along with our own special schools, to provide that point of contact and support and particularly expertise and skills into our mainstream.

Echoing the earlier point about an increase in demand, demand is such that we are having to utilise more independent non-maintained special schools, which therefore increases the cost and increases transport. The child is often then being educated away from their community and that puts great pressure on our high-needs block for a few—spending is significant. It is almost having to get that double-funded approach where to remove that need—if you like, the vicious circle—into INMS is to get inclusion into our mainstream. We have heard about the pressures on the budget there, so how can we get that turned around so we do not have to spend our high-needs block down that end?



Q129 **Chair:** To turn to the cost of tribunal cases, we heard in the first session about £500 million to £600 million possibly being money that was not used in the way that was intended. Do you think a lot of money is wasted by councils in terms of tribunals and legal action?

David Clarke: It is not just money, it is time. Each time we are at tribunal—often that is because of parental preference when they do not want the school we have named or whatever—individuals who we would want to be writing EHC plans are being pulled off them. It is time as well cost.

Q130 **Chair:** It was suggested that 89% of cases were lost. Surely something is going deeply wrong in the amount of cases that councils are challenging and the waste of money that they could put on the frontline.

Dr Lown: I think there is a very strong feeling about floodgates there.

Q131 **Chair:** If they are losing all the cases and losing money, what is the point?

Dr Lown: In my own authority we had nine tribunals last year. We have 1,800 EHCPs, so nine is a very low number. We would try to always find a way to agree with a parent before we reach that point.

The times when we would go to a tribunal would be particularly when we might not agree with the decision the parent wants. We might not believe it is in the child's interests, for instance, or the placement the parents want—which might well be an independent specialist provider—would cost a great deal of money out of our system when there is provision within the authority. Therefore the floodgates argument becomes a strong one. If we did not go to tribunal and we agreed to that parent's requested place in an independent school, which would cost us a great deal more than our own provision, we would follow our inefficient use of resources argument through to tribunal.

Out of the nine tribunals we had last year we used a barrister for four of them. We chose to use a barrister largely when the parent was also bringing a barrister. The expense then becomes very high.

Q132 **Chair:** Presumably most parents would not have barristers. Is that the case?

David Clarke: Increasingly so, coming back to your point of the success rate.

Q133 **Chair:** Do they get costs if they win the case?

David Clarke: It depends how they have arranged it.

Ian Mearns: I think there is an element of legal aid for this.

Q134 **Chair:** Finally, in terms of—again, this awful phrase—value for money, a question I posed to the previous panel related to the way pupil premium money has often been spent on different purposes, particularly



HOUSE OF COMMONS

supporting school budgets, and whether the same is true of SEN transitional funding, with local authorities propping up day-to-day spending.

Dr Lown: Value for money is a difficult question because it depends how you want to define the value for money. If you were determining that in the sense of outcomes for children and young people meeting outcomes specified on a plan, it is a very different argument than the one that asks whether local authorities are making the best use of every pound they spend and keeping resources internal to the local authority rather than spending on expensive external placements. It is virtually impossible to answer that question. I would always want to see the value placed on the outcomes for the child being met, the outcomes that are specified.

Q135 **Chair:** Is enough work being done on looking at the outcomes of children with special educational needs?

Dr Lown: Ideally you want to be doing that all the time as you are going through. However, the shortage of resources—places in schools and local authority support services—means that is often low down on the list.

Q136 **Chair:** Should the DfE be doing this—

Dr Lown: Yes.

Chair: —or should it be left to the local authorities?

Alyson Shields: It should be a combination.

Helen Wallace: It has to be a wider strategic level because we are all measured on our outcomes in the same way.

Q137 **Chair:** I think it was pointed out in the previous panel that it is difficult to decide what those outcomes should be. How would you measure the outcomes? What would you regard as a successful outcome, for example?

Helen Wallace: It depends on that individual child. We have a child where progress would be to stop screaming when we change a nappy. That is not commensurate with somebody getting “expected” level at year 6; how can you compare the two? If you are going to measure outcomes, you have to measure the right outcomes.

Q138 **Chair:** How should that be done? How should that be decided?

Helen Wallace: That is a really hard question.

Dr Lown: Importance has to be placed on the child’s individual EHCP, identifying outcomes that are then measured as to whether or not they are met. To an extent the SEND Ofsted inspection framework addresses that question.

Q139 **Chair:** That would not help the millions of children who do not have an EHCP, but have special needs?



HOUSE OF COMMONS

Dr Lown: The inspection framework does include SEN support too. Most schools and colleges would have plans in place for children with SEN—not an EHCP, but at a lower level—a My Plan or some other defined plan that recognises the outcomes that child or young person will be working towards. At the individual level that has to be the most powerful way of measuring outcomes.

Q140 **Chair:** What you are saying is the benchmarks should be what the EHCP or the framework says it should be and whether or not they are met. That is the best benchmark you could do?

Dr Lown: That would be my view, yes.

Chair: That is very sensible. Thank you very much indeed for not just giving us evidence, but also for your service and all the remarkable work you do in this area. We really appreciate it, thank you.