

Education Committee

Oral evidence: [Special educational needs and disabilities, HC 968](#)

Wednesday 24 April 2019

Ordered by the House of Commons to be published on 24 April 2019.

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

Questions 499 - 625

Witnesses

I: Gill Jones, Deputy Director of Early Education, Ofsted; Jonathan Jones, HMI, Specialist Adviser, SEND, Ofsted; Professor Ursula Gallagher, Deputy Chief Inspector for Primary Medical Services and Integrated Care, CQC; Nigel Thompson, Head of Children's Health and Justice, CQC.

II: Alison Fiddy, Chief Executive, Ipsea; Imogen Jolley, Head of Public Law, Simpson Millar; Michael King, Local Government and Social Care Ombudsman.

Written evidence from witnesses:

[Local Government and Social Care Ombudsman \(SCN0163\)](#)

[Simpson Millar Solicitors \(SCN0320\)](#)

[Ofsted \(SCN0598\)](#)



Examination of Witnesses

Witnesses: Gill Jones, Jonathan Jones, Professor Ursula Gallagher and Nigel Thompson.

Q499 **Chair:** Good morning, everybody. Thank you very much for coming and giving up your time today. For the benefit of the tape and those watching on the internet, could you kindly introduce yourselves and your organisation?

Jonathan Jones: I am Jonathan Jones, one of Her Majesty's inspectors from Ofsted and specialist adviser for SEND.

Chair: The microphones are not brilliant in here, so could you all speak up when you answer questions? Thank you.

Gill Jones: I am Gill Jones. I am deputy director for early education policy in Ofsted.

Professor Gallagher: I am Professor Ursula Gallagher, and I am deputy chief inspector at the Care Quality Commission, with particular responsibility for children's services and safeguarding.

Nigel Thompson: Good morning. I am Nigel Thompson. I am head of inspections at the Care Quality Commission and I am responsible for our joint inspections with Ofsted.

Q500 **Emma Hardy:** Good morning, everybody. I have been reading about the reports and the investigations that have been done. They seem to be showing that the inspection outcomes are getting much worse, with 60% of areas inspected in 2018 having to have a written statement of action. To start with, I wondered whether you thought we currently had a functioning special educational needs and disabilities system.

Jonathan Jones: One of the things we have to look at, at the very beginning, is what the reforms were intending to achieve. Initially, it was because SEN support was complicated. The issues were being picked up too late. There was too much duplication and focus on input rather than output, a cliff edge of support for children and adult services, and parents finding the system adversarial. At this stage, our inspection findings find that there is still a disjointed and inconsistent picture.

Gill Jones: It is important to say that, although our inspection outcomes at the moment are highlighting weaknesses, which result in areas getting a written statement of action, we have also been to some areas where we have seen the reforms introduced really well, and children and young people getting a really good deal. The inspection work we are doing, this framework, is ground-breaking because it is the first time we have had a focus, a joint focus with CQC, on the experiences that children and young people with SEND have in the local community. We are highlighting



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through our reports what is working well and what needs to improve further.

For us, perhaps, the disappointing part is that, as we are going to new local areas, the learning from other local areas does not seem to be picked up quickly or effectively enough. There is perhaps a sense of some local areas waiting for us to go in, as the inspectorate, to help them work out how to make it better. But we must not forget that it has had a very positive impact on some children.

Q501 Emma Hardy: With respect, in 2016, you had 25% of local areas having to have a written statement of action, in 2017, 51%, and in 2018, 60%. The impression given from the inspections you are doing is that it is not currently working well.

Gill Jones: That is related to the introduction of the new legislation. Initially, it was about giving local areas time to implement the new way of working and the educational healthcare plans. As we have gone further down the line, three years into these reforms, the expectation is that the local area would not be on the way to introducing the reforms, but that they would be in place. Jonathan, you know the detail better than I.

Emma Hardy: Can I just hear from Professor Gallagher?

Professor Gallagher: I would echo that. In the early days of the inspections, we were looking at the written intent of local areas in terms of what they said they were intending to do. The difference now with the later inspections is being able to assess what is actually happening and what has changed on the ground. As Gill has said, while we have found some very good practice, with these inspections we can highlight some of the areas where local authorities and their partners, particularly the NHS, are struggling. That enables us to help with what some of those interventions might be, but also register our concern about the pace of change and what difference this is making to parents and young people on the ground, but also to frontline practitioners, who are always at the sharp end of managing these cases and situations when children and young people's needs are not being properly met by the system.

Nigel Thompson: I would echo that. The issue is about our expectations in relation to what we see has increased. We are expecting a more robust response, three years down the line, than we originally expected. Our findings generally have reflected the way in which local agencies have worked together and the way the system has worked together locally. Some of that requires quite significant change. It takes time to change, which has been another issue.

Q502 Emma Hardy: If we accept that, at the moment, it is not working in the vast majority of areas, what would be a more realistic and fair way to say it should be working? You mentioned sharing best practice. You mentioned expectations. We heard evidence before that the Act raised expectations. What more could be done? It seems a bit like you are going



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in there saying that some of these areas need a written statement of action, and then it seems to be a bit hazy as to what happens next and how they are supported to improve. There does not seem to be that clarity there. What should be done? What should the system do?

Jonathan Jones: I can speak about what happens when an area has been given a written statement of action. The local area then has 70 days following publication of the report to produce an action plan on how they are going to address the weaknesses found. The action plan is then declared fit for purpose by Ofsted and CQC, and then what happens next is that advisers from the Department for Education and NHS England go in to support and challenge the local area.

Q503 **Emma Hardy:** Okay. The evidence we have had back here says there seem to be concerns about the accountability process being hidden and that local people, including parents and professionals, become shut out. People here have said that, in Suffolk, the SEN leaders have been summoned into a meeting with the DfE and NHS England, and Suffolk parents were asked not to attend the meeting.

Jonathan Jones: That is something for the DfE and NHS England.

Q504 **Emma Hardy:** You are not part of that process.

Jonathan Jones: No, we do not have a part in that process at all.

Q505 **Emma Hardy:** After you have gone in and checked the written statement of action, you withdraw from that.

Jonathan Jones: If I can speak about Suffolk, in November 2018, following the Secretary of State's request in July 2018, we revisited those local areas that had been issued with a written statement of action. That was the situation that happened in Suffolk. We went into Suffolk to look at whether the local area had made sufficient progress in addressing the weaknesses found in the local area at the time of the initial inspection. We went into Suffolk and found it had not made sufficient progress. The meeting you are referring to was following on from that.

Gill Jones: When this inspection framework was set up, it was set up as a one-off inspection framework to give a picture of the experiences of children, young people and their families, and how the new reforms were being implemented. It was seen as a one-off inspection framework. There was no follow-up to it. The areas are not graded and the written statement of action was seen as something that would be implemented and lead to improvement. Perhaps one of the difficulties with a framework of this nature is that, if it is seen as a one-off, you have your inspection and then breathe a sigh of relief if you are on the receiving end of it, potentially. That can happen, so the follow-up to a written statement of action came as a bit of a surprise to local areas.

There has been a flurry of panic now that we have introduced the follow-up because, of course, it was unexpected. The question for us in writing



frameworks and trying to drive improvement for young people and their families is whether a one-off framework is a good idea in itself. Should it be part of a rolling programme where there is always the thought that there will be some check on it further down the line? Part of the results we are seeing and potentially, although I have no real evidence to say this, the reason we have been seeing more written statements of action is because it does not have the same weight as an inspection cycle where you are going back over a period of time.

Professor Gallagher: The other thing we might want to add, as people have commented on, is really beginning to understand what needs to happen underneath. The early statements of action that we would say we did sign off and approve were often quite transactional. They were about the mechanics of how systems and processes operated. We have come to understand, and we understand it right across the partnership system around health, education and social care, that it is about how leaders work together. It is about how leaders prioritise. It is about how people make difficult decisions and, really importantly, how they involve children, parents, young people and frontline staff in these processes.

Therefore, what we would now accept as a written statement of action is very different, in terms of understanding the transformational nature of what needs to happen, not just how quickly the forms are being processed and the assessments are being done. That is why the programme of follow-up inspections becomes so important. For us, some of the continuity issues, like organisational churn and the length of time people are staying in post, then become really important to being able to embed these changes in local partnership communities for the benefit of children and young people.

Nigel Thompson: The added experience we have had since the beginning of the programme has also been working quite closely with NHS England. We have shared platforms with them. We have joined them in regional events to raise the profile of the SEND programme, of the inspection programme. We have shared our inspection findings with NHSE colleagues. There has been quite a programme of work underneath that to provide support to local areas from a health perspective.

Q506 **Chair:** We know that 40 out of the 82 local areas have received Ofsted and CQC inspections. They have been found to have poor performance. In 2016, 25% of inspections found inadequate results. This has risen to 60% in 2018. Why is there so much poor performance and why is it getting worse?

Gill Jones: One of the main reasons is that there is no national consistency for the EHC plans. Children and young people's experiences can look very different across different local areas. Where we are highlighting weaknesses in particular is where children and young people's experiences are very variable within a local area. Where there is that inconsistency of particularly the most vulnerable children and their



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families, where that inconsistency exists, that is when we are giving a written statement of action.

The local areas that are doing best are where leaders are really listening to the voice of children, young people and their families, and are engaging, with the families being part of the whole process of coming together with health, social care and education, to ensure the plan for the child is the best it can possibly be. That really comes down to leadership and leaders' focus on the most vulnerable within their local area. We find that, where we have strong leadership in areas with a really sharp eye and spotlight on those most vulnerable children and their families, they are pulling together success.

Chair: Because of time and because we have a lot of you, can you be concise?

Gill Jones: Apologies, you will have to stop me.

Chair: No, thank you. Does anyone else want to briefly comment on that?

Professor Gallagher: We had a comment a few minutes ago about the changing expectations, from the theoretical action plans we were assessing at the beginning to what is happening on the ground. That is improving our ability to assess, because we are seeing what is happening with children and young people.

Q507 **Chair:** London and the east Midlands performed relatively well in their inspections, whereas Yorkshire and the north-east did comparably worse. From what I understand, you had your most experienced professionals in the north, the most experienced SEND specialists. Is this regional imbalance caused by more experienced SEND specialists carrying out these inspections? How can we be confident that there is consistency?

Jonathan Jones: I would not agree with that. We have strong SEND teams. My CQC colleagues will speak from their perspective. All the inspections are rigorously quality assured by senior personnel and SEND experts. The following inspections are not just on site but off site, in that the evidence bases and reports are all quality assured at two or three different levels. It would not be accurate to say that it is about the experience of inspection teams in a particular part of the country.

Q508 **Chair:** How are the parents involved in the inspection process?

Jonathan Jones: They are involved in a number of ways. As soon as we notify a local area of an inspection, the local area and the local authority have the responsibility to inform all parents of children living with SEN in that local authority. The responsibility is upon the local authority, not upon the inspectorate. The way we then gather information and evidence from parents is that there is an open survey that parents can respond to, which is open from notification and including the time of inspection. Parents are invited to respond in written form. We provide an email



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correspondence for parents. We go out to settings and we meet parents within settings as well. We also have an open meeting for parents. One of the things we make very clear to local authorities in the notification is that that meeting for parents is open. We also have a meeting with parent carer forums.

Q509 **Chair:** Just to understand, if you say it is the responsibility of the local authorities, as part of your inspections, do you make sure that the local authorities are involving the parents?

Jonathan Jones: Yes.

Q510 **Ian Mearns:** I am trying to pin down this reason for the inconsistency around the country. Gill, in your response you mentioned leadership, but surely there must be much more than just leadership. Leadership is vitally important, but is it also down to the interpretation of national guidelines at a local level? Is it about the use of resources? Is it about the availability of resources? All those things must be part of the mix.

Jonathan Jones: It is multifaceted in its form, but one of the important things, to follow on from Gill's point, is that what really marks and stands out the best local areas is that leadership is joint. It is weakest where usually one arm of education and health has tried to lead and deliver all on its own. The reality is that the SEND reforms will only be truly implemented if it is a joint leadership approach. That is where we see the fragmentation.

Professor Gallagher: There is a variation and a complexity of the number of players in a local system. If you are a big county with, say, seven, eight or nine CCGs, that is very different from being a unitary authority with one local authority and one CCG. We have committed to doing some more work to try to get underneath which structural factors might be making leadership more challenging, and what we can learn and share about those places that are able to overcome some of those issues better.

Some of the early signs we have, for example, are thinking about greater devolution, more local work and all these things. The closer decisions are being able to be taken to children and their families, the better. We would agree there are lots of conversations about rural, urban and metropolitan. There are issues about where there are different workforce challenges across the country, because access to assessments will be linked to the ability to get access to clinicians. There is a web but, despite that web, there are places that seem to have a number of those structural weaknesses that do better than other places. That common theme is the extent to which they are able to work jointly together on a shared agenda that puts children, young people and families at the heart of what they are trying to do.

Q511 **Ian Mearns:** Again, there are structural reasons for the fragmentation of that landscape.



Professor Gallagher: Yes.

Q512 **Thelma Walker:** Thinking about the overarching inspection, any inspection is really stressful for those involved. For me and everybody involved, an inspection has to be purposeful, productive and have positive outcomes. You mentioned, Gill, best practice and sharing best practice. What would you say so far have been the positive outcomes of what is a stressful experience of inspection? What is positive that should be better shared, in view of collaborative working in different areas?

Jonathan Jones: The key thing there is this joint working that puts children and families at the heart. The best areas do that whereby coproduction is a lived reality. Coproduction, which is exactly what the SEND reforms were about, is about a system designed around children and their families. That is what we see in the best areas.

Q513 **Thelma Walker:** I am having a bit of a challenge with how that is being shared.

Gill Jones: It is being shared through SEND forums from parents. From my experience of it, having worked for Ofsted for a number of years and occasionally been on the receiving end of very unpopular press, it is not the case in this framework. Parents are hugely supportive of it and through their networks, like Special Needs Jungle et cetera, are sharing the positive outcomes that they are having as a result of our shining the spotlight on this group of children and young people. They feel more listened to and they feel there is some potential for getting greater change and making children and their families more part of what happens to them and more involved. The sharing of good practice is not necessarily through our reporting, because we are not grading; it is one framework where we do not grade at all. It is through what happens on the ground and those very important networks of support for parents.

Professor Gallagher: I wonder if I might add a couple of other points. First, particularly in the first year of the inspection, the existence of the inspection changes circumstances in its own right. A number of times, we heard that the group of leaders had got together in a room for the first time as a result of needing to prepare for our inspection, and they fed back in writing, as well as verbally, that it was an amazingly positive experience and they are going to continue to work together. Sometimes inspection, in and of itself, changes the dynamics of what is going on locally. We should find that less and less because, three or four years down the line, if you are not in a room together, you have a big problem, but we find it in the first year or so.

Q514 **Thelma Walker:** Who would be responsible for prompting that if it was not happening?

Professor Gallagher: In theory, the guidelines should do that themselves, but there is nothing like a deadline and a letter coming through the post to help some of those conversations take place, and cause people to look back and say, "Are we really doing what we need to



do in relation to this?" As Nigel has mentioned, as well as the reports themselves—and we know in those best places they have read other people's reports and sought to learn from them—we take every opportunity to speak and share, both through parent's organisations, to help parents with expectations and what to expect from a good system, but also with professionals. We think one of the great strengths of the follow-up programme is being able to say, as we have done elsewhere in CQC, "This is where a trust was inadequate. It is now good or outstanding, and this is what happened in that organisation as part of sharing best practice".

We think the follow-ups, particularly from places that were in difficulties, will really help to share with other people the sorts of steps that have been proven to make a difference that they might wish to consider in their local area.

Q515 Ben Bradley: We have heard a lot this morning and in previous sessions about various challenges in terms of collaboration. Particularly we have heard a lot from people giving evidence before about this challenge of joint leadership across health and the local authority. It has consistently been raised, along with managing parents' expectations and lots of other challenges, and funding. I wondered what you felt the balance was between those issues. Do you find, when you go to do inspections, that there are issues that are purely funding-related, or do you consistently find these other factors of leadership and management that are more impactful? What do you feel is the balance of that?

Gill Jones: We obviously hear a lot about funding when we are on inspection. You would have to be deaf not to hear that, but it is not funding that makes the difference between areas getting a written statement of action or not. Funding is not one of the aspects that Ofsted looks at. We do not have the remit to look at funding in any of our inspection work, but some local areas manage the constraints they are under better than other local areas.

Jonathan Jones: An important aspect within that is that it is about the culture of leadership. I know we keep on repeating this, but that is the most consistent finding. We go into areas that we know have funding challenges and yet deliver the best they possibly can. The feature there is the thing we find on all our inspections, which is that the best allies of local areas are parents. Parents understand the constraints that are on local authorities and health services. They understand that. That is why they are a critical partner in this, because the areas that work with parents as their allies, and have shifted away from this adversarial relationship between parents and local authorities, understand the constraints and they still work around provision. In some of the best areas, parent have involvement in deciding what services need to be withdrawn or scaled back. Parents are involved in that. It is really about culture, which is where we see the best and the worst of areas.

Q516 Ben Bradley: We have heard a lot about that adversarial element, but



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you have seen examples of where councils have been able to overcome it and manage it well.

Jonathan Jones: Absolutely.

Ben Bradley: Would you add anything from a health perspective?

Professor Gallagher: I would agree. In CQC, in other parts of the sector, we do some assessments of what we call use of resources. In a sense, absolute funding is one of those elements. There is no point in having funding for six OTs if five of those posts are vacant and you cannot recruit to them. It is about how you think about the resources we need and how those resources best work together. There are two ways in which the adversarial relationships can operate: one is between the system and the children, parents and young people; the other is within the system, where places are still having arguments about whether this is an education need or a health need, whether there is a label to go alongside the needs this child is expressing and who is responsible for assigning that label.

There is a big issue in relation to waiting lists. The Committee may know that we did a previous thematic review around child and adolescent mental health services. Again, that is a big tension in this system, sitting slightly off to the side sometimes but often at the heart of what people need. When systems are able to come together to say, "How do we bring all our resources together to best meet this need?", not, "How do we fight about whose argument that is?", it enables parents, children and young people to feel those players are on their side and that, never mind a tussle between them and the system, the system is not tussling about them either.

We have seen some amazing examples where that happens and where the maturity of relationships with parents means that, while leaders are sometimes anxious about being presented with undeliverable wish lists, that does not happen. Parents are very realistic. The earlier they are able to see that you are meeting their children's needs, and the less they need to get into the legal and adversarial processes to fight for what their child needs, the more constructive that whole environment is, and the more constructive it is for new parents coming forward who are not hearing those conversations at the kindergarten gates about how difficult it is if their child starts to present with needs that they want to understand.

Nigel Thompson: I would emphasise the same point. The child and adolescent mental health thematic review that we completed last year highlighted the complexity of the system and the lack of co-ordination in local areas for services. Where we saw it work the best was where they gave a focus on children and young people. That is how people delivered the right service. To Ursula's comment about parental wish lists, my experience and the experience we have had of inspections is that parents are quite happy with a Morris Minor. They are not looking for a Rolls-Royce service. They have a clear level of what they expect. The



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complexity of the system is really difficult for parents to navigate. If you talk to any parent, they will continually say they are pushed into an adversarial position because they cannot find their way round the system. That particularly applies to the transition points through the system. That is a key issue as well here.

Q517 Ben Bradley: Communication is one of those factors that have come up regularly. Feel free to answer this in a sentence if it suits. Do you find there is a correlation between areas that are better or worse funded and performance, or is that irrelevant? We have seen, with the funding formulas, some authorities have more funding per head than others. Is that something you see as a factor in the outcomes of your inspections? Have you ever been to an authority where you felt that these guys are doing everything they possibly can, but there is just not enough money, or are there always those mitigating factors?

Gill Jones: As I said before, we do not look at the money, but we do look at the impact on those authorities where everyone is doing everything they can to work together. They would be highly unlikely to get a written statement of action. The written statement of action is given where we find weaknesses in the system, inconsistencies and all the points that Ursula was making. That is what leads to a written statement of action.

Q518 Ben Bradley: When you go through an inspection, I know you do not assess funding needs or anything like that, but do you look and go, "Where do these guys sit in terms of the amount they get?" Does that feed into anything you look at, at all?

Gill Jones: That is not in the framework.

Jonathan Jones: We are going in to evaluate the local area's implementation of the reforms.

Q519 Ben Bradley: Through that, you do not look at the money per se. The use of resources we have talked about. You would, I assume, assess things like where those resources were deployed, numbers of staff, whether they have enough staff and things like that.

Gill Jones: Correct me if I am wrong, but we do look at some aspects such as the number of parents who have had to go to tribunal to get through to the EHC plans. There is a variability when you go to different local areas in the proportions. In some local areas, there will be very few parents who have to take the local area to tribunal. In other local areas, there will be huge proportions of parents who have to take that action. We do not look at the finances of that but, big picture, we know that is a very expensive way of spending limited resources.

Q520 Chair: We have been told that parents believe the staff in schools and local authorities do not know the law; they give misleading, illegal advice and in some cases publish illegal information on their websites. We have had anonymous evidence suggesting there are a number of local authorities where policies and practices are illegal, with a huge lack of



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knowledge of the law from either the professionals in the schools or the local authorities themselves. What is your view about this and what do you do about it?

Jonathan Jones: We report where we find non-compliance. We need to be very careful, as an inspectorate, that we are not there to be making judgments about the legalities or illegalities, but we are there to report where, for example, we find non-compliance with the code of practice.

Q521 **Chair:** How can you ensure all relevant bodies are made aware of the law and their obligations under it?

Jonathan Jones: Responsibility, which is one of the key points that we keep making about the code, is about knowing the law and applying it. We have found in some areas that local areas have produced policy or guidance that has been an interpretation or the law, which has led to—

Q522 **Chair:** Do you agree with the principle that has been suggested to us, that there is lack of understanding of the law, the law is often not applied and there are illegal practices? In your inspections across the board, would you say this is widespread or is it rare?

Jonathan Jones: We find examples of non-compliance. Not trying to shirk the question, we cannot call illegality out because we are not legal professionals, but we report where we find non-compliance.

Q523 **Chair:** I am trying to understand whether you find it often or whether it is a rarity. If anyone else wants to answer as well, I would be very happy.

Professor Gallagher: I do not think we find it often. There is complete compliance, complete non-compliance and a grey zone of interpretation in the middle. I am not a lawyer, but I am sure there are some lawyers in the room who appreciate that. Sometimes that is about local authorities that are, of their best, trying to say, "This is how we have interpreted and designed our local system". In my understanding, we do not find complete illegality very often, but we call it out. We do find issues about interpretation and confusion around interpretation at the heart of some of the tensions in relationships both between bodies and, most importantly, between bodies, parents, children and young people. Those would be part of what we would feed back and look to organisations to address through their written statements of action.

Q524 **Mr Wragg:** Good morning. You are both inspectorates, are you not, Ofsted and the CQC? That is fair to say. Do you think the SEND sector requires a regulator rather than oversight by two different inspectorates, Jonathan?

Jonathan Jones: We fulfil our role, which is to evaluate and report. That is the role, certainly, of Ofsted within the evaluation of the SEND programme.

Professor Gallagher: We are a regulator.



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Gill Jones: So are we.

Q525 **Mr Wragg:** I thought that was the case but, Jonathan, you said you were an inspectorate in your previous answer.

Jonathan Jones: In the SEND arena.

Gill Jones: In the SEND world, but we are a regulator for early years.

Q526 **Mr Wragg:** Within the SEND sector, you are inspectors, not regulators.

Gill Jones: That is part of regulation.

Q527 **Mr Wragg:** They are different, though, are they not?

Professor Gallagher: I would answer the question in two ways. First, one thing we have spent quite a lot of time talking about is the complexity of the system and the need for it to be able to work in the widest sorts of partnerships. One of the discussions is that, wherever you drew the boundary round this thing called SEND, even if you thought it needed a separate regulator, it would still interface with other bits of the system. Secondly, certainly on our part, where we find issues, particularly within provision, that need to feed back into our regulatory systems and powers, we have the ability to do that, as do our Ofsted colleagues.

Q528 **Mr Wragg:** Do you have any examples of that?

Professor Gallagher: For example, if we were to find issues, as we have done on a couple of occasions, about clinical practice or clinical definitions around diagnosis, we would take that back to our considerations within those community trust and community paediatric services. Although these are done under our joint inspectorate powers under those regulations, we would not underestimate that, where regulation is necessary, we have the ability to feed those messages through.

Q529 **Mr Wragg:** Excellent. Is there a comparable example from Ofsted, perhaps, where that has been the case?

Gill Jones: There certainly is in the identification of young children. One of the aspects the framework looks at is how early children's needs are identified and dealt with. That feeds very much into our regulatory work under the EYFS and the two-year-old check, and how that is working at a local level. Yes, we have worked very closely with the DfE over that. Given the fact that we are two inspectorates or regulators, however you like to call us, that have worked together on this framework, you cannot underestimate the impact that has had, because we have learnt so much that we share when we go on inspection.

Professor Gallagher: With a deal of humility, we would like to say that part of what we have tried to do with this is to model some of the partnership working that we would like to see.

Q530 **Mr Wragg:** Absolutely, I recognise that fully. Do not take my rather



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assertive questions as criticism. I am trying to, in a short amount of time, find the difference.

Professor Gallagher: Cut to the chase.

Q531 **Mr Wragg:** Exactly, there is no point in faffing around. You mentioned, though, in terms of your inspectorate and what you are doing, the follow-up programme. Does the follow-up programme serve, therefore, as the system that a regulator would use, be it a continuous assessment or examination, if you want to be harsh about it? Does that follow-up programme fit more into a regulator's role?

Gill Jones: The follow-up programme has not been determined yet. We have been asked to look at it together, as joint bodies, to look at what we think may be helpful to do in future. The issue is about the way the reforms are being implemented. For parents and young people, the clarity of the pathways they need to take to get support for their children is the most important thing. Changing regulations, changing who looks at things and putting a lot of change into a system creates confusion rather than clarity. The thing we need to create in this space is more clarity and more equity for families and children.

Q532 **Mr Wragg:** Absolutely. You are both regulators, as you have said. If we look in other areas of public policy, and I am not comparing SEND with utility companies, you have Ofwat for the water companies, and Ofgem. Those people with a grievance against a certain sector can go to them.

Gill Jones: As a user, it can be very confusing, I can tell you. We are regulators as inspectorates. The reforms themselves are very clear. The education healthcare plans are very clear on what is needed. The difficulty we have is that, when reforms are introduced, people do not always understand them as quickly as they need to. By us working together to shine a spotlight on that through our framework, we have made a difference. Perhaps the greatest difference we could make is to repeat what we are already doing with minimal change.

Professor Gallagher: I would echo that. It is a conflict of interest, but I would say regulation has a role and has demonstrated itself in both of our organisations to be effective. We mentioned earlier that one of the changes from having a follow-up programme is that this will not be seen as a one-off visit, and it will put in place an accountability system. The challenge for us always is to get the right balance between encouraging improvement, holding organisations to account and enabling others to learn before we get there because we have found effective ways of sharing best practice.

Q533 **Ian Mearns:** There was not a consensus when we asked local authority representatives if Ofsted needs to have more power to look at how schools spend and allocate resources for pupils with special educational needs. Should Ofsted take a more robust role? You have mentioned earlier that Ofsted, within its framework, does not concentrate on resources. I am asking you two, as professionals, whether you think



Ofsted should have a more robust role.

Gill Jones: In terms of school inspections, the amount of time that we have had in schools has been very limited. That means the spotlight on the most vulnerable children has not always been there as much as it should have been. In our new proposals for our education inspection framework, there will be a far greater focus on children with special educational needs. As I have said before, in terms of funding, it is a very difficult area. We do not look at funding. Amanda, HMCI, has said herself that we do not have the evidence to comment on the difference that funding will make because it is not in our remit.

Q534 **Ian Mearns:** Surely, if you are inspecting a school and one of the judgments you have to make is about whether the school is well led and has good management, surely within that good leadership and management in the school includes good use and management of resources. How can you make a judgment about leadership and management without looking at management of resources?

Gill Jones: We do look at how resources are allocated as part of the leadership and management judgment. As I said, the majority of our schools, 80% or a bit more, are already judged as good. Currently, inspectors will spend one day in that school. To get to the heart of children and children's experience with SEND is very difficult. That is one of the reasons that our proposals suggested we spent more time in schools.

Q535 **Ian Mearns:** As another aspect of this, given your focus on special educational needs within Ofsted, is it of concern to you as an expert in special educational needs that mainstream schools are still being rated as good or outstanding when they have quite clearly off-rolled children with special educational needs?

Gill Jones: That is why off-rolling is a key part in our new proposals, yes.

Q536 **Ian Mearns:** There is clear evidence that schools that have off-rolled pupils in the mainstream are still getting good ratings by Ofsted. How can that be right? How can that be right?

Gill Jones: It is not right, if that is the case.

Q537 **Ian Mearns:** It is the case. We have evidence that that has actually occurred. That is something that Ofsted really needs to refocus on, surely.

Gill Jones: Off-rolling is a key part of our new inspection framework proposals. We also look at that now. We have evidence before we go into inspection and, where we see it, we inspect. Unfortunately, some of the evidence that we hear on the ground we cannot corroborate when we go in to inspect. We have tried. Where parents have told us, "This is going on", we have sent inspectors in to look at it and even to look for it. If it is not there, we cannot work on parents' hearsay.



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What is really important for us is that we join up our evidence so that, where we are gathering evidence from local area SEND inspections, that evidence is fed through into our other inspection risk analysis before we go in to inspect schools, and that we have that information. Where we find evidence on the ground that that is the case, it is one of the things that would take a school down into a lower judgment and sometimes to be made inadequate. We agree that off-rolling, particularly of children who are vulnerable, with mental health difficulties, autism, et cetera, is appalling. Ofsted does not stand by it.

Q538 **Ian Mearns:** Would Ofsted in that case consider retrospectively altering a judgment on a school if evidence should come to light in the way you have talked about?

Gill Jones: We cannot alter evidence on an inspection we have already done.

Q539 **Ian Mearns:** No, not altering evidence. I am talking about evidence coming to light and therefore retrospectively altering a judgment because evidence has subsequently come to light.

Gill Jones: Yes, we can declare an inspection as incomplete and we will take that evidence into account. We have done so on several occasions.

Professor Gallagher: It is potentially one of the strengths of our joint work. One of the areas Nigel and I are responsible for within CQC is the health and justice area, which includes the range of youth justice services. We know that young people in particular, if off-rolled, are unfortunately more likely to become vulnerable to a whole range of issues, which I am sure the Committee are aware of, as the country is, in terms of knife crime, gangs and all those sorts of things. It is an area for us to share intelligence on. Inspectorates and regulators are increasingly seeing the whole system, not a school in isolation, but what is going on in that whole system, and how we share our intelligence in order to enable both bodies independently and jointly to make better judgments of what is happening in a system.

Q540 **Chair:** To confirm, you are investigating 300 schools for off-rolling at the moment, as I understand it. Of those schools you are investigating for off-rolling, are you also looking at how many children with special educational needs have been off-rolled, as such?

Gill Jones: Yes, that is part of it.

Q541 **Chair:** Do you have any figures or any evidence to present on that?

Gill Jones: I do not have those figures at the moment. We would be quite happy for you to write to us to ask for those.

Chair: You could write to us.

Gill Jones: We will write to you.

Q542 **Chair:** Are you able to say whether a very high proportion of the children



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who are being off-rolled are children with special educational needs?

Gill Jones: I cannot answer that without the actual information in front of me. I can say that, with our regional directors, one of the reasons we have gone to a regional structure in Ofsted is in order that we share information from all the specialisms within our inspectorate.

Q543 **James Frith:** Could you say if it is higher or lower than the 70% excluded from mainstream schools at the moment who present as having SEND in the 300 schools that you are currently inspecting for off-rolling?

Gill Jones: I do not have that information at the tip of my fingers, but I am quite happy to share it.

Jonathan Jones: We are aware that it is most prevalent among disadvantaged pupils, pupils with low prior attainment and pupils with special educational needs.

Q544 **Chair:** When you do these inspections, do you look at the exclusions of children with special educational needs?

Gill Jones: Yes, we do. We have a strong focus on it. The reason that we have made off-rolling so big in our new framework and we are changing our framework is because of our concern about that very area. It is at the front of our minds.

Q545 **Ian Mearns:** At a previous panel, I asked a supplementary question of a range of people giving evidence, mainly from schools. I asked them if, given that SEND can often lead to youngsters getting an education, health and care plan, health is often or too often missing from the table. I am afraid to say that all the people giving evidence just said yes. My question to the CQC is from that perspective. We have seen evidence and had it corroborated that health services are not and do not regard themselves as equal participants or partners in special educational needs and disabilities provision. Given that we are hearing that all the time, what more needs to be done to get health to the table?

Nigel Thompson: That is a comment we have heard throughout the inspection programme. I have no doubt that that was very true at the beginning. The Committee will have seen the one year on report we published last year. That indicated that health's contribution is getting better.

Q546 **Ian Mearns:** When I asked that question, though, it was not very long ago. It was only a few months ago.

Nigel Thompson: That is our experience. Health has been slow to come to the table. That is improving. We are continuing that focus, by the fact that we joined Ofsted on these inspections. The fact that we are engaged in those inspections is raising the profile of health. I referred the Committee earlier on to the work that NHS England has been doing. We have been working with them very closely, again to try to raise the profile of health engagement. It relates to the issue of joint leadership.



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There has been a focus on educational outcomes and people not seeing SEND as being the whole lifecycle for somebody, and health, social care and education as being the components of this work. We have been working very closely to try to raise the profile.

Q547 Ian Mearns: From the perspective of the health service, early intervention and prevention stuff has long-term benefits, both for the individual and for the services, in that they are no longer or less called on in terms of the resource aspect.

Professor Gallagher: As somebody who has worked as a nurse, including in paediatrics, for more than 30 years in the service, if you were to have a group of health colleagues here, paediatric and children's specialists, they would also say that paediatric and children's services have been low profile in the NHS. The focus has, rightly, been on older people's services, four-hour targets in A&E and cancer pathways. Part of what all this work needs to do is to speak exactly to your comments that we need to use all the opportunities to raise the profile and opportunities of the needs of children and young people in the health system altogether, and raise the profile of health leaders and experts within that system within the NHS. As Nigel has said, the work we have been doing with NHS England is beginning that programme. It works right across the board, particularly in terms of addressing the workforce challenges in paediatrics.

Q548 Ian Mearns: Is there anything in particular you think the CQC could be doing to move on the improvement Nigel was talking about at more pace?

Professor Gallagher: The work we are doing on revisiting our "think child" strategy to raise the profile right across our inspection programme in our hospital and community services is about a pincer movement, so it is not all put in a little narrow bucket called SEND. It is about what you are doing for children and young people with or without needs in your community.

Q549 Ian Mearns: As an inspectorate and a regulator, is there more you could do to share good practice or best practice?

Professor Gallagher: Yes, there is always more we can do, but we are having some particular conversations this year about what might be in our state of care reports. I hope we will be able to use that, which is often something that gets a lot of profile on the national stage, as an opportunity to raise some of these issues of concern.

Q550 Ian Mearns: What is Ofsted's perspective on sharing good and best practice?

Jonathan Jones: There is a lot that goes on at a regional level, in terms of regions sharing good practice. This comment was made earlier but, particularly in the published reports we do, it is very clearly set out in every single area what the strengths of each area are. In terms of



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sharing good practice, it is out there in the public domain. It is very, very clear for anybody to see what an area does well.

Chair: This needs to be a very quick one, Emma, please.

Q551 **Emma Hardy:** Yes, super quick. You mentioned some of the workforce challenges. I wondered whether you would all make a quick comment on how the workforce challenges, the lack of therapy services and the lack of professionals in areas are impacting on how good the SEND support children get is.

Chair: Can we have quick answers please, because we have to finish soon?

Professor Gallagher: Clearly, it does. From the NHS ten-year plan, it is very clear that an understanding of how the NHS is going to meet the workforce challenges generally and working in partnership with local authorities is really important. We will be looking to the work that comes through the particular workforce strategy in the NHS plan. We are contributing to that as CQC, using some of our findings to make sure it is very aware particularly of some of the critical paediatric shortages.

Gill Jones: In terms of our inspection work, taking into account the context that providers, schools and local areas are having to deal with, in terms of the speed at which they can get support for young people, is really important. There is more of a focus on that in all our new inspection framework development than there has been previously. That is quite important.

Q552 **James Frith:** I refer members to my register of interest. Good morning. Thank you for your evidence. I want to ask a quick question on tribunals before moving to inclusive measures. Do you put a value judgment on the proportionate number of cases at tribunal for each area you inspect?

Jonathan Jones: We certainly take it into account. It is part of our evidence, but we also need to be very conscious of, for whatever reason, the number of parents who cannot or do not pursue the tribunal cases, be it for financial reasons or whatever. There is a lot sitting underneath tribunals. We will also look at mediation cases, the proportion of cases that go to mediation and the proportion of cases that are resolved prior to going to tribunal. All that information is what we consider under parents' experiences of the system.

Q553 **James Frith:** Is something going to tribunal ultimately a failure of SEND provision in mainstream schools and the local authority area you are inspecting?

Jonathan Jones: Not automatically, because one of the things we are finding across the piece is the variability in families' experiences. One family may have a particularly negative experience, which has then gone on to tribunal, but there are also families who have had very positive experiences in the system.



Q554 **James Frith:** A tribunal is not a measure of success, is it?

Jonathan Jones: No, but where, for example, a tribunal would identify certain issues or concerns, the inspectors would have that in mind while carrying out the inspection. It is not that, for example, if a tribunal case is found for the parents of families, that would automatically lead to an area being given a written statement of action.

Q555 **James Frith:** We have heard that 90% of tribunals in certain areas that have given evidence are found in favour of the parent. Your colleague said at the beginning of the evidence today that very often local authority areas awaited the judgment of your inspection before really doing anything. Local authorities have sat in front of us and said pretty much the same, in that an extortionate amount being spent on legal fees in legal departments is more palatable to digest among the community and political leadership than funding better provision in school. We have seen an explosion in tribunal cases. What are your comments as the inspectorate on that trend?

Gill Jones: It is a trend that we do not want to see and a trend that, through this inspection work and our inspection work in schools, we would not want to see. One of the reasons that a follow-on programme is a sensible way forward, in my view, is that we can still get that message through. When we write our frameworks, as we have written the education inspection framework, we have done that for several reasons so that we can drive change within a system. When we come to work with the CQC on the next iteration of whatever this may be, we will want to write it in such a way that will promote good behaviour towards children and young people who are struggling. If a huge proportion of cases are going to tribunal, that is an indicator that something is wrong. At the moment, our inspectors will look to see what is going wrong.

Q556 **James Frith:** Nigel, you said parents do not expect a Rolls-Royce service and would be happy with a Morris Minor if they are perhaps handled better. There is quite a lot that I would like to go at in that comment, but in the interests of time I would suggest that it is costing a Rolls-Royce amount to deal with the tribunal end, and we need a system that rewards upstream spending and inclusivity. As a body, you have welcomed our Committee's recommendations of an inclusive measure. What progress are you making on implementing a progressive measure of inclusion for schools, so schools are incentivised, acknowledged and rewarded for being inclusive, rather than this trend of pushing downstream to tribunal, excluding, off-rolling and penalising SEND kids?

Nigel Thompson: On the issue of schools, I will pass that question to Ofsted. To clarify my comment about a Morris Minor as opposed to a Rolls-Royce, the point I am making is that you often hear leaders in local areas suggesting that, if they engage and listen to parents too much, they end up paying for a very expensive service. My point is that parents actually are not looking for a very expensive service; they are looking for something that will meet the needs of their children and young people. If



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you engage and involve parents and young people in the development of the service, you will end up with a much more effective and probably a better-value and cheaper service. That is the point I am making.

James Frith: It would be a better-value service.

Nigel Thompson: Yes. I do not think parents are asking for the world. If you engage and involve parents, you will get a better service. That is the point I am trying to make.

Q557 **James Frith:** We might want to ask what the Act itself expected parents to be in receipt of, because I think too often we are seeing that expectations have risen but resources, requirements and outcomes are not there. The money and the infrastructure are not there. I appreciate your comment. What progress is being made or has been made on an indicative measure of inclusion within schools?

Gill Jones: Our new education inspection framework is predicated on inclusion. The quality of education judgment is the quality of education for all children, particularly those with SEND. The fact that we are going to a quality of education judgment rather than an outcomes judgment is most helpful for children with SEND.

Q558 **Chair:** Given that there are just over 4,000 children with special educational needs having either fixed or permanent exclusions every school week, do you not think this should be a No. 1 priority? There is something deeply wrong if that number of children are being excluded from our schools.

Gill Jones: Yes. Exclusion forms part of our risk assessment to identify the schools that we want to go to inspect sooner than others.

Q559 **James Frith:** Finally on that, do you support the removal of the term "other" from a long list of otherwise fairly agreeable reasons that a school can cite for an exclusion of any kind?

Gill Jones: Would you repeat that, please?

Q560 **James Frith:** Currently, a fifth of all exclusions are cited as "other" as the reason for exclusion. Do you support the removal of that category from an otherwise agreeable list: sexually aggressive behaviour, knife crime, physical abuse? "Other" is one of the other categories. Do you support the removal of that?

Gill Jones: The more information we have about why children are excluded from school, the better.

Q561 **James Frith:** Do you think "other" is an acceptable term for a reason to exclude a child?

Gill Jones: I do not think I can answer that question on behalf of Ofsted, because I have not been sighted on the conversation about it. I have a personal view, which probably would agree with those around the Committee table.



Q562 **James Frith:** Which is?

Gill Jones: The more detail we have about why children are excluded, the greater the level of detail, the more insightful we can be as an inspectorate.

Q563 **James Frith:** The Timpson review is currently considering that judgment. Do you think that would be a welcome removal from the list of reasons?

Gill Jones: Ofsted would welcome as much information as we can be given.

Q564 **Chair:** Our Committee, in our report on alternative provision and exclusions, has suggested that schools publish regularly on their websites the number of excluded pupils they have each term. Would you agree with that?

Gill Jones: The more information we have, the better. I worry, in terms of publication, about a negative impact. I am sorry; I have lost my thread. Would you ask me again?

Q565 **Chair:** Our report recommended that schools should publish the number of children they exclude, either temporary or fixed, on their websites termly for everybody to see very easily. Do you agree with that?

Gill Jones: I do agree in principle. Where I might disagree is where actual children themselves would be identified, if the numbers were small. I just want to come back on the "other" point. HMCI has said that she does not think "other" sounds like a particularly helpful reason. I am very relieved she thought that because I would share that view.

Professor Gallagher: The leadership is at one at the top of Ofsted.

Chair: First of all, can I thank you for your very valuable evidence? You have had some tough questions and you have taken them very well. We also want to thank you for your service, because what you are doing is incredibly important. I wish you well.

Examination of Witnesses

Witnesses: Alison Fiddy, Imogen Jolley and Michael King.

Q566 **Chair:** Good morning. Thank you very much for coming today. It is much appreciated. We are going to finish, hopefully, at exactly 11.30, give or take. Could you introduce yourselves for the benefit of the tape and those watching on the internet or Parliament TV?

Alison Fiddy: My name is Alison Fiddy. I am the chief executive of Ipsea, which stands for Independent Parental Special Education Advice.



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Michael King: I am Michael King. I am the Local Government and Social Care Ombudsman for England.

Chair: Thank you. Could you speak loudly because of the acoustics?

Imogen Jolley: I am Imogen Jolley, head of public law at Simpson Millar.

Q567 **Thelma Walker:** Morning. The aim is clarity and equity for families with SEND children. Do we currently have a functioning SEND system that delivers this, Alison?

Alison Fiddy: We have a system that is in crisis. That is indicated by the increasing number of appeals to tribunal. It is indicated by the various reports from the Local Government and Social Care Ombudsman, from Ofsted and from the local area SEND inspections. Underlying this, it is a failure to comply with the law at the most basic level. That is the fundamental problem.

Q568 **Thelma Walker:** On complying with the law, is this about inadequate training to equip people?

Alison Fiddy: It is a combination of different elements. There are certainly issues of funding. As an organisation, Ipsea is not concerned with funding; it is about the needs of children and young people, and their needs being met. This is not a system that is dependent on funding and there being an equal pot of money for each child. It is about individual children's needs and the provision required to meet those needs. There is an issue of training. That is an issue of training at every level. There is a need for the training of local authorities, which Ipsea is involved in, but also at a school level. We often see unlawful criteria and unlawful policies being applied and developed within local authorities, and that becomes part of the everyday vocabulary of schools, which is then passed on to patients.

Schools and school staff genuinely believe that the guidance they are given by local authorities is the law and, in fact, very often it is not. There is also a real problem around those who contribute to the advice and information as part of EHC needs assessment, so educational psychologists, speech and language therapists, occupational therapists and, again, school staff, and understanding the need for their advice and information to be framed in the terms required by the legislation, which is very much focused on children's needs, the provision required to meet every identified need and the outcomes that must flow.

Chair: This is important, but be as concise as you can. I know there is a lot to say but we have to get other people in.

Michael King: I would echo a lot of what Alison said. In 2014, when the new system was proposed, we produced a report looking at the faults with the old statement process. We highlighted the delays and lack of communication there was under that process. In 2017, we produced a



report based on our first 100 investigations and we found that pretty much the same problems persisted, particularly around delays.

Q569 **Thelma Walker:** The previous process had a graduated system about having that cause for concern in terms of school action. We mentioned this before in a previous session. There were pluses to that system, were there not?

Michael King: I would not comment on the relative merits of the legislation. What we see is the public experience of that. The public experience is very similar, in that parents who come to us often tell a story of not being involved in the process, not being consulted, basic administrative errors where they are not being sent copies of the draft plan or the plan, and where evidence is not gathered properly. Some of the problems that persisted in the old system carry on in the new. Since we did our report in 2017, there would be an argument to ask whether that was just the new system bedding in at that point. The problems we saw then have continued since. We now uphold 87% of the investigations we carry out. That is an unprecedented amount in our work. Our average across the whole of local government is 58%, so 87% is probably the highest category of fault we find in any area of our jurisdiction.

Imogen Jolley: I would also agree with what Alison says about the system. I echo everything she says, in terms of our experiences in working with local authorities and schools and their lack of understanding, quite often, of the legislation and what is required of them, which leads to a huge amount of misinformation out there in the community among parents who are being given this information and relying on it.

Q570 **Thelma Walker:** Do you think it is symptomatic of the system just being overwhelmed? Putting my old hat on as a teacher and headteacher, I was there and trained to teach. Suddenly, you have professionals in schools who have to deliver education and healthcare plans. Are we asking too much?

Imogen Jolley: That is right. Putting my other hat on, I also sit as a governor at a primary school in my local area and work quite closely with the headteacher. As a governor and working with the headteacher, the experience we have on a day-to-day level in school is very symptomatic of what I see reflected in my work and the casework we deal with for clients, both for the schools working with the local authorities and vice versa. It is almost a mirror of what is going on in the wider sector.

Q571 **Chair:** We know that, as the Local Government Ombudsman, you have seen an increase of 150% between 2015-2016 and 2017-18 in the volume of complaints about EHCPs. I mean, 150% is extraordinary. We have heard from parents who have taken out thousands of pounds in loans and had to remortgage their homes to take EHCP cases to a tribunal. That is wrong. What should be done about that, because the burden is on the parents? They are winning the tribunals but at huge



personal, social and economic cost to those families. Surely the system should be fairer and there should be legal aid, perhaps, or some sort of support for those parents who are having to go to tribunals.

Imogen Jolley: Our firm is one of only two providers. We are the only law firm and there is a charity, Coram Legal Centre, that holds the other contract as a legal aid agency for delivery of education law advice. The vast majority, 90%, of our work is dealing with people who are eligible for legal aid and dealing with education issues. Legal aid is available but it is only available on a telephone advice system. From our base in the north-west, we service the entire country. Clients who come to us do not have the privilege of face-to-face. They also do not get support for representation at tribunals. Even if we can help them prepare their case, nearly all attend tribunal on their own as prepared as they can be.

Q572 **Chair:** You seem to be saying that, if you are rich or you are prepared to remortgage your home, if you have a home—and many do not own their own homes—you go to tribunal, where 90%, a huge amount, win. Yet the system seems to be incredibly imbalanced against the parent every step of the way.

Alison Fiddy: As an organisation, we provide support to parents who qualify for legal aid, but that does not cover representation at hearings. We also support families who do not qualify for legal aid and fall within the middle group who cannot afford to pay a solicitor privately and cannot access legal aid. What I would say about the tribunal and the necessity for instructing lawyers is that the vast majority of the volunteers who provide casework support at Ipsea are not lawyers; they are trained and supervised by a legal team.

Q573 **Chair:** You cannot help every parent. It is impossible.

Alison Fiddy: We cannot help every parent. That is absolutely right. The tribunal can only make decisions based on the law and on the evidence before it. Very often, the local authority does not have good evidence. That is why parents succeed. They do not succeed because they have expensive lawyers who argue a very good case; they succeed because local authorities do not comply with the law and do not have evidence to support their decision-making.

Q574 **Chair:** In a nutshell, would you agree that there is a huge failure in implementation of the Act?

Alison Fiddy: Yes. The SEND reforms are the right ones. Implementation is the problem.

Imogen Jolley: That is exactly right.

Q575 **Chair:** What can be done to help the patients in terms of their rights, if they feel their children have been unjustly treated or looked after?

Imogen Jolley: One of the things a lot of parents report to us when they first come to us, as they are in a crisis situation where they have done



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everything they can locally and are coming to take a case to tribunal, is an increase in what I describe as faceless panels within local authorities who are making decisions. They will have a good relationship with an SEN caseworker, a social worker or even a specialist nurse assessor for continuing healthcare. They will build those relationships. Those people will do reasonably decent assessments most of the time. That information will all be fed to a faceless panel. Parents have no involvement in those panels. They do not even get minutes of the panels because quite often they are not minuted. Decisions are made. That information is not being filtered back other than a blank, "No, you are not getting funding".

That has definitely increased from the previous system where you would quite often have a good relationship with your SEN caseworker. They would be involved in making the decisions, perhaps in a conversation with their manager, and you could get something out of them. Now, there is not that kind of frontline engagement.

Michael King: On the point of what can people do, people can come to the ombudsman free of charge. We will investigate. People do not need to be legally represented. However, there are some significant barriers to how far we can go in investigating cases. That is a huge frustration for us and for parents. You were talking about school exclusions in the last session. We are not allowed to look at what goes on inside a school in relation to exclusions or special educational needs provision. People will come to us and ask us to investigate why their child is out of school, why their child is not getting alternative education or why the EHC plan has not been implemented. We can look at everything up to the school gate, but we cannot then look inside the school gate.

Q576 **Chair:** Would you like that role?

Michael King: Absolutely.

Q577 **Chair:** Would you need legislation to change that?

Michael King: We would.

Q578 **Chair:** Would it be primary legislation?

Michael King: Primary legislation, yes. There was draft legislation in 2010-11, which introduced a pilot jurisdiction, which was hugely successful.

Q579 **Chair:** If this happened, would it make the tribunal a last resort? Would it negate the need for the tribunals in the way they are operating at the moment?

Michael King: It would not necessarily. We and the tribunal have different roles to play, but we both should be a last resort. We should be the tip of the iceberg when everything else has failed. Again, it was a point made in the last session that the emphasis has to be on getting things right first time upstream. If I never saw another SEN case in the



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rest of my career, I would be very happy, because that would mean they had been dealt with properly upstream.

Q580 **Chair:** If the primary legislation was changed as you are requesting, would you have the resources to be able to deal with this?

Michael King: No, we would need more resources to look at what goes on inside schools, but there is a huge gap in public redress and parental rights to look at what goes on inside schools. To mention one of the other restrictions, where somebody goes to a tribunal and gets a judgment in their favour, case law prevents us from providing a remedy to the person. They might have spent huge amounts of their own money, as you say, in providing private services for their child. We can provide a remedy for that up to them applying to the tribunal but, bizarrely, case law says we cannot provide a remedy for the period since they have appealed to the tribunal. There are some huge gaps in the sector that do not make any sense.

Q581 **Chair:** Would a system work whereby you did not have the right to go inside the school but you could direct Ofsted to go in?

Michael King: Ofsted has a very different role. It is looking at the overview of systems. We are looking at an individual case and the family's individual experience. We have a very different lens that we look at it from.

Alison Fiddy: Those sorts of extended powers and an extension of the jurisdiction of the ombudsman would enhance what the tribunal is there to do. It would certainly be an enhancement. There is a sense that there is scope for potentially reducing the number of appeals, in the sense that one of the problems in the system is the inadequacy of SEND support. The reality is that there is no one with any jurisdiction over that, because the tribunal does not have jurisdiction over SEND support; the tribunal only has jurisdiction over the decision-making of local authorities around assessments. There is a bit of a misconception that parents apply for an EHC plan. They do not; they apply for an EHC needs assessment with a view to securing a plan. If SEN support was far better, it would mean that there may be fewer parents who would feel the need to go down the route of requesting an assessment as the only way of getting a proper understanding of their child's needs and the provision required to meet those needs.

Q582 **James Frith:** That is a description we have heard and it is absolutely on point. Essentially, the pursuit of the EHC becomes magnetic because they are not being dealt with and satisfied within mainstream SEN provision. You would agree, would you, that the costs of tribunal would be better spent providing better support in mainstream, upstream and earlier on? Would you go as far as to conclude that?

Alison Fiddy: One of the issues with the current system is the inadequacy of SEN support, leading to perhaps more requests for EHC needs assessments. That has an impact on the number of appeals to



tribunal. Actually, if local authorities complied with the law and were able to justify their decision not to carry out an assessment of a child's needs when a request is made because they are making a decision within the parameters of the law, that would also result in fewer appeals and fewer appeals being successful. The reality is that local authorities are gatekeeping. We must not forget that at the heart of this are children and young people with needs not being met in a school or college setting.

Q583 Mr Wragg: Good morning. Is it the consensus of the panel that the law is fine, from what I hear: yes or no?

Michael King: Broadly, yes. There are some areas that require clarification.

Q584 Mr Wragg: Could I ask what they might be?

Michael King: Alison just mentioned issues of gatekeeping. We are seeing some local authorities introducing requirements that parents must meet before they will accept their duty to carry out a needs assessment. It is probably something for guidance rather than legislation. Does that request have to be in writing, for example? We have had a number of conversations with local authorities about that. The guidance is silent on it. Do people have to fill in particular forms? If there is a referral made by an education psychologist, should the local authority then act on that? We see a number of hurdles being put in place and local authorities putting in place systems that are not based in the legislation. Possibly, the guidance needs to be clearer on what triggers an assessment.

Mr Wragg: We have certainly had examples of that given to us.

Imogen Jolley: One of our particular issues at the moment is with ancillary matters, things like transport to education, particularly in a post-16 or post-19 arena where the legislation has not been changed. We have situations where people have placements secured, such as a 21-year-old who has a placement secured in a specialist college, but cannot get there because the local authority refused transport and those sorts of anomalies.

Mr Wragg: The legislation is not matching.

Imogen Jolley: We have touched on exclusions. One of the key issues for me in relation to exclusions was the change in the code of practice for how exclusions were dealt with in 2012, which moved from a system where you had an independent appeal panel who could rigorously look at a headteacher's decision and take into account all the factors in making that decision around special educational needs. Now there is a system where you have a review panel that has very little teeth and a governing body that is meant to review its own headteacher, which in reality very rarely happens. Changes like that have meant there is a huge increase in exclusions, with no proper accountability for that.



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Alison Fiddy: One thing that concerns us at Ipsea is this talk about the code of practice being the law. The code of practice is the statutory code of practice, but you have to go back to the law. There are some issues around the code where it could be a bit clearer, but also on the narrative around the code. The other area where I would like to see a change is around the national trial, so the extended powers of the tribunal to make, at the moment, non-binding recommendations about the health and social care aspects of needs and plans. I would hope that will continue following the two-year trial. Also, I see no reason that binding orders could not be made, certainly against social care, because they are one authority.

Q585 **Mr Wragg:** Is there a question at the moment that we are still seeing teething problems with the Act? That might be a rhetorical question. Should this now have been well and truly embedded?

Michael King: In terms of our statistics, the number of complaints we are receiving and the amount of fault we are finding has gone up rather than lessened. In 2018, I wrote to the Minister for Children and Families to express concern about the amount of fault we were finding and the unprecedented number of complaints we were upholding. From the lens of complaints and the view that that gives of public experience, it is not settling down. In some cases, perhaps new problems are emerging.

Q586 **Mr Wragg:** As a comment, this might be an inane question, but is there any comparable tribunal system that has such a high rate of finding in favour of the applicant to that system?

Michael King: In terms of complaints, we look at everything from local authority planning in national parks right the way through to other areas. In adult social care, for example, which is an area under considerable pressure, our average uphold rate there is 62%, so 87% in this area is really exceptional. There is nothing in our remit that comes close.

Alison Fiddy: My area of expertise does not fall outside this area, in terms of other tribunals.

Imogen Jolley: A court decision is the only other decision I would deal with, and you are nowhere near the same levels of success.

Mr Wragg: There is no comparison. Thank you very much.

Q587 **Chair:** Just to double confirm, if the law was changed as we were describing before in terms of the ombudsman, would you have the resources to be able to do what you are suggesting?

Michael King: No.

Q588 **Chair:** There is no point in changing the law if there are no resources added.

Michael King: Absolutely, yes. We were cut by 43% previously. We struggle to deliver the service that we do at the moment.



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Q589 **Chair:** If the law was changed in the way you requested, how much extra resource would you need?

Michael King: I could not give you the figures now, but we modelled all of this. In 2010, we set up a pilot jurisdiction with 14 local authorities looking at the entirety of special educational needs and school complaints as a whole in 14 local authorities. All the evidence is still there around how much that costs.

Q590 **Chair:** Is there a rough figure?

Michael King: I could not give you a figure but it was a few million pounds. It was not a huge amount of money.

Q591 **Chair:** Out of the £300 million that the Government announced for special educational needs over Christmas, some of that money could have gone, let us say, to you to do your work.

Michael King: A tiny proportion of that would enable us to look at parents' complaints about schools as a whole, not just special educational needs.

Q592 **Chair:** If you could send us what you think the figure should be, that would be helpful.

Michael King: We can certainly dig out the work we did to model that.

Q593 **Chair:** And specifically the primary legislation that would need to be changed.

Michael King: Absolutely, we can do that.

Q594 **James Frith:** You were talking to us about a successful pilot, as well. That would be really interesting to see.

Michael King: There was an independent review of the pilot. I can send you a copy of that report.

Q595 **Chair:** I want to ask you about post-16 provision. We know the SEND code of practice extended the role of local authorities to support young people with SEND to the age of 25. In reality, there is very little support post-19. Would you agree that it is another case of a very good recommendation but not properly implemented? What changes are needed to ensure this provision is implemented properly?

Imogen Jolley: Part of the experience our clients have is that, even though we have local authorities that acknowledge they have needs and there is work to be done to assist these people possibly with living more independently or gaining employability in the longer term, there is just not the provision out there. I have said before that nobody told further education colleges this was actually happening to them. That is our experience. Local further education colleges have suddenly been landed with this problem, with no additional training, resource and knowledge of the sector. This has led to a real issue. This then develops into a tribunal battle.



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Q596 **Chair:** What is the answer? What is the solution? We know the problem. What is the solution?

Imogen Jolley: There needs to be some consideration in each and every area with regard to specialist further education colleges being set up. At the moment, the independent sector is monopolising. That has a huge cost. Quite often, why things end up in tribunal is because it is the only available option.

Q597 **Chair:** You would recommend separate specialist colleges rather than existing colleges having specialist areas.

Imogen Jolley: If you look at the way the school system is set up, you have mainstream schools, mainstream schools with units and specialist provision. You go into the further education sector and you lose that differentiation. There is an argument for all levels in the same way as there is in school-age provision, but it just is not there.

Q598 **Chair:** What is the solution?

Alison Fiddy: A solution would be better guidance from the Department for Education. The non-statutory guidance that has been published to date is being relied upon by local authorities as creating a presumption that EHC plans for those aged 19 to 25 are the exception rather than the rule. Of course, that is not what the law requires, so there should be greater clarity on that.

There is a lack of provision. Part of what has been proposed very frequently in these situations is a part-time provision of three days a week. When you have an independent specialist college that has a five-day programme on offer and the local authority is not able to offer anything for the other two days a week, the tribunal will make a decision based on the evidence before it. Clearly, the provision that is better suited to meet that young person's needs may well be in an independent specialist college but, if better local provision could be built up, that may not be so necessary. There will be young people who will require settings within the independent sector or the specialist sector. Equally, there are very many young people whose needs can be met within the mainstream sector of further education.

Q599 **Ian Mearns:** We have sat and listened to evidence from both Ofsted and the CQC this morning. Both of them described themselves as not only inspectors but regulators, which I thought was interesting. They are almost celebrating, to a large extent, their regulatory function. I am wondering whether, from your experience, because of the distinctly different roles of CQC and Ofsted in this field, SEND as a sector needs a body that is more cross-cutting as a regulator and inspector, as opposed to the two separate institutions that currently exist.

Alison Fiddy: I would suggest that a fundamental issue that needs addressing is around accountability. There are a number of ways in which that needs to be addressed. I find it very interesting that I often hear



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people use terminology that is not accurate. People do not talk about education, health and care plans; they talk about educational healthcare plans. That is a very different thing. These are not educational healthcare plans. They are three separate things. At the moment, the E is uppercase and the H and the C are lowercase. That is not how it should be.

Q600 **Ian Mearns:** There used to be education, health and social care plans at one time.

Alison Fiddy: Absolutely. I am very interested in what you said and I heard this morning about the fact that health is not coming to the table because, in our experience, it is social care that is not coming to the table.

Imogen Jolley: I would slightly disagree with that, in the sense that it is health that is nearly always absent and there are pockets of reasonable social care input. It is health that is nearly always away from the table.

Alison Fiddy: In terms of the broader system, there are issues around the way in which those three bodies work together: education, health and social care. We need to make sure that, in terms of accountability, regulation and inspection, there is the same level of joined-up working that encourages that.

Q601 **Ian Mearns:** To be slightly tangential for a moment, from what you just said, Imogen, would you disagree, therefore, with Nigel Thompson this morning, who said the health side of things is getting better at this?

Imogen Jolley: The health input, in my experience, is patchy at best. We can barely get a letter out of a consultant, or not even a consultant but just a doctor of some description, to factor into an EHCP. We very rarely see that.

Chair: What you have said is pretty damning about how the system is working.

Imogen Jolley: Yes.

Michael King: This issue of a lack of joined-up evidence gathering is at the heart of many of the complaints we look at. Sometimes that is failure to take evidence from health. Sometimes that is failure to join up with social care or whoever. What we should not lose sight of is that the primary role and the statutory duty sits with the local authority to sit at the heart of that process and pull that evidence together. We sometimes see local authorities abdicating that duty and saying to the parents or the school, "You gather the evidence" or expecting this just to appear by magic. We have to put the emphasis back on the local authority to say, "If you are not getting the evidence from health, it is up to you to put in place those partnership arrangements and make sure they work". That is certainly part of the good practice advice we have given back to local authorities.

Q602 **Ian Mearns:** Back to the original question, do you think the SEND sector



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needs a distinctive regulator or inspector that is more cross-cutting than the two separate bodies we have at the moment?

Michael King: I would hesitate to comment on the regulatory sector. We do a very different job. The only observation I would have, going back to a point Imogen made earlier on, is that it is very hard to put a fence around the issues in this area. Imogen mentioned the interplay with school transport. That is an issue that comes up time and time again in our investigations. It would be quite hard to delineate special educational needs as a very clear separate topic. It cuts across so many different areas.

Alison Fiddy: I would like to see the Local Government and Social Care Ombudsman having jurisdiction over schools. That is part of an accountability system. I would like to see greater public funding available for judicial review, were that the only route available. I would like to see more robust accountability from Government, I suppose, where local authorities are not complying with the law. I often think that the only way to make local authorities accountable is to really hit them where it hurts. Often, that means it is about tackling those who hold the purse strings, unfortunately.

Q603 **Ian Mearns:** Coming on to purse strings, this has been a particular hobby horse of mine for many, many years. We had statements of special educational need and now we have education, health and care plans. Quite often, the people drafting those plans in the first instance are doing it from a perspective of what resources are available, rather than the needs of the individual child. I wonder if you have any comments about that.

Imogen Jolley: Absolutely. We hear that on a daily basis. I will speak to an SEN case worker who will say, "This is what we offer locally. This is all the provision that is available locally". You say, "Well, this is a system around the needs of an individual child". "This is all we have available. In SLT, we only do blocks of treatment". What happens if, after a six-week block, this child needs more? There is a rigid system in place.

Alison Fiddy: We would say at Ipsea that there needs to be a definite focus on those who provide the advice and information because, remember, SEN teams are often extracting that from the advice and information, quite rightly, to formulate a plan. If the quality of the advice and information coming from educational psychologists, speech and language therapists, occupational therapists, health and social care is not good, that will translate into a poorly drafted plan that lacks the necessary level of specificity, which is absolutely crucial in ensuring that children and young people's needs are met.

Q604 **Ian Mearns:** Do you think that, within local authorities themselves, we need to completely separate the provider and commissioner role?

Alison Fiddy: I do not think that is the solution.



Q605 **Ian Mearns:** I am not suggesting it is the solution, but there is quite often a conflict there.

Imogen Jolley: In my experience, the people who have the training, the background and the understanding—the social workers, the specialist nurses—are making decisions and putting forward suggestions that are then being overridden by somebody who controls a budget and a purse. That is the issue. If those people could make their own professional judgments on the basis of their training and be allowed to follow through with them, we might see less of an issue.

Q606 **Thelma Walker:** Thinking about local authorities, as we have just been discussing local authorities and their responsibility, would you say that local authority staff and school staff have adequate training? I mentioned training before.

Alison Fiddy: They do not have adequate training on the legal framework, and the legal framework is the way in which children and young people's needs should be assessed and met. It derives from the law. My dream and our dream at Ipsea is that part of initial teacher training includes a module that covers the SEND legal framework. The NASENCo qualification should include an element relating to the SEND legal framework. We have, over the past few years, undertaken joint training with the DfE, training all local authorities at regional events. Unfortunately, we continue to see poor decision-making made outside of the law.

Q607 **Thelma Walker:** On that training, we have talked about multiagency working. It should provide the support, should it not, for effective multiagency working if there was the appropriate training?

Alison Fiddy: I would suggest that there is a lack of ownership of this legislation among health and social care professionals. They do not consider the Children and Families Act to be the legislation within which they make decisions. Until that is tackled, and the understanding of their responsibilities and duty to work alongside their colleagues within education, we will continue to have a problem.

Q608 **Thelma Walker:** On the responsibility for delivery of the education and healthcare plans at the school level, rolling it right the way back to initial teacher training, I know that most teachers go into the profession to deliver the best for every single child and believe in inclusion. They do not go out there every day to say, "I am not going to help that special educational needs child". Looking at training, could that be better improved? What are your thoughts on initial teacher training?

Imogen Jolley: I agree with Ali that having some oversight initially, particularly for SENCOs, of the legal framework so that they understand the decisions they are making based on how a child is presenting, would give them greater clarity. We have gone and trained schools, and in schools you work with after that there is a significant improvement in how they are delivering their support and the advice they are giving.



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Michael King: At a local authority level, that is mirrored. We see basic administrative errors and misunderstandings of the law when we investigate. As well as trying to put things right for the individual, we always make recommendations to see how you can improve the system. Frequently, that involves recommendations to retrain staff in the way the legislation and guidance works.

Q609 **Thelma Walker:** That short-term investment in early intervention could prevent, long term, getting to the stage where we need that.

Alison Fiddy: That is right. I know you have heard from lots of professionals within schools who have talked about the raft of paperwork that has to be completed if they are applying for an EHC needs assessment. That paperwork does not need to be completed. That is not what the law requires. If you skill school staff, leaders and SENCOs in schools with that knowledge and understanding of the law, their ability to push back to local authorities that are promoting unlawful criteria will be greatly improved.

Q610 **Thelma Walker:** It would cut that bureaucracy as well. This is what I hear from professionals who have experienced it: just cut the bureaucracy.

Alison Fiddy: Yes. The law is the strongest tool for doing that.

Q611 **Ian Mearns:** Some people in their evidence have been concerned that tribunals often find in favour of parents without giving thought to a more graduated approach or the resources available to the public purse. Do you think this is true and, if so, do you think it creates unrealistic expectations for parents?

Imogen Jolley: It depends what decision the tribunal is having to make. If you are talking about when an EHCP is already in existence and the tribunal is determining whether there should be greater or lesser provision in that document, I am not sure that is necessarily a valid observation.

Alison Fiddy: I find it quite disappointing when I often hear people talk about the fact that this legislation raised parental expectations to an unreasonable level. This is the law. These are the rights of children, young people and families. The tribunal, as I said earlier, makes decisions based on the evidence. The fact is that there are very stringent rules around, for example, placements and considerations of whether it is an efficient use of resources, looking at the suitability of what is being put on the table by the local authority. If local authorities were better engaged in that process and able to demonstrate the offer they were putting forward was suitable to meet that individual child or young person's needs, there would be less of that kind of talk.

Q612 **Ian Mearns:** In a previous existence of this Committee we did pre-legislative scrutiny of the Bill before it became an Act. Back then, we probably thought it would necessarily raise expectations of parents, quite



rightly. We were wondering then how it would all be resourced.

Imogen Jolley: Essentially, the law has not changed, whether we are dealing with the Education Act or the Children and Families Act, in terms of families' expectations. We always say to parents, "The tribunal will not be in a position to order gold standard or gold star provision. All it is ordering is provision that is suitable to meet your child's needs". The case law has been very clear on that right the way through. That has not changed, and that is the advice given to parents. Nigel was right earlier, in that sense. People are managing expectations; it is just around how it is being delivered.

Q613 **James Frith:** Alison, you talked about promoting unlawful criteria. It is quite an interesting topic of discussion. I do not doubt there are plenty, but what examples could you give of local authorities promoting unlawful criteria?

Alison Fiddy: It might be, "We will not consider an EHC needs assessment unless there have been three terms of 'assess, plan, do, review' under SEN support"; "We will not consider undertaking an EHC needs assessments unless £6,000 has been spent supporting this child under SEN support"; "We will not consider an assessment unless there is a recommendation from an educational psychologist that an assessment is needed". Those are the types of very common criteria that set a higher bar, a higher threshold for assessment, than the law provides, which is merely that an assessment has to be undertaken where a child has or may have special educational needs, which may call for provision under an EHC plan. That is the test.

Q614 **James Frith:** That sort of behaviour is going to contribute significantly to the angst, frustration and frame of struggle that parents are experiencing and come to our surgeries to very often break down in tears and describe.

Alison Fiddy: Absolutely. The vast majority of appeals are against refusal to assess. The vast majority of those do not make it to a final hearing. That is not because parents pay expensive lawyers to challenge those local authority decisions. It is because local authorities are making poor decisions outside of the law. They realise they are not going to succeed all the way to tribunal. They will often settle those cases prior to that.

Q615 **James Frith:** We have often reflected as a Committee that you could easily describe those who make tribunal as the canaries in the mine, perhaps because they will be well able to afford the time and possible expense of tribunal proceedings. Have you any indication as to, for each one that gets through the gate to tribunal, how many behind it go unnoticed or unobserved? Is there any suggestion of what the figure would be for those suffering in silence?

Alison Fiddy: The statistics I would like the DfE to capture are around the number of requests that are made for an assessment, not just the



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number of requests that are made and end up resulting in an EHC plan, because that fails to capture where there are refusals by local authorities and parents and young people walk away and do not appeal. There will be very many families who do that. Those are the families that concern Ipsea the most.

Michael King: The same is true of people's right to come to the ombudsman. We did a survey a few years ago to see how many local authorities were signposting people to us as their statutory right. We found that, in 43% of cases that came to us, the local authority had not told people about their right to come to us. There is a significant number of people who could come to a tribunal or come to us who are not told about their rights to do so.

Q616 **James Frith:** Do you observe any trends in the parents in the cases you are engaged with: social, economic, need or level of education disability?

Imogen Jolley: As I said at the beginning, probably 90% of our client base are eligible for legal aid, so they are the most socially vulnerable people generally. In terms of trends, we do not see any particular difference in levels of need but we have seen a huge increase in the number of people wanting a service from us since the implementation.

Q617 **James Frith:** That is typically a higher proportion of those from poorer backgrounds. Anecdotally, one of the testimonies we took in evidence was from the *Guardian* writer John Harris who talked about not all parents being middle-class *Guardian* writers. There is this idea, and perhaps an unhelpful narrative emerging, that the expectations—although I prefer the term “entitlements”—that the 2014 Act awoke are those of a lobbying group of parents, the middle classes, arming themselves with information and spending their time, with their elbows, getting what they think Jonny needs to get in class. Your experience is far from that; it comes from a higher proportion of poorer families.

Imogen Jolley: Our base has always been legal aid work. It is not that we have seen an increase in the legal aid work per se, percentage-wise. We are seeing a huge increase in the numbers of people coming to us, so much so that the other service provider is struggling.

Q618 **Chair:** Relevant to James's question, how do you reach out to those parents who do not necessarily know to go to lawyers, even with legal aid, or lobby their MP, and yet struggle? I am trying to understand how much proactive work you do to reach those kinds of parents. What should be done about that? I suspect that would be a huge number of parents.

Imogen Jolley: In terms of legal aid, we are not allowed under the terms of our contract to promote the fact that legal aid is still available for special educational needs. There is a huge proportion of people out there who, when you say they can get legal aid for looking at special educational needs when they are in a desperate situation, have no idea.



Alison Fiddy: We are seeking, as part of our ongoing strategy, to reach more marginalised groups, people who do not necessarily access our services. The reality is that we need to be in a position to meet demand. If we go out there and promote our services, we do not do that. Our services tend to be for people who have used our services before. Families within this arena do not need help once.

Q619 **Chair:** How do you fund yourself to do all your work?

Alison Fiddy: We have a training aspect. We also receive funding from grants and trusts, and we receive donations from individual givers and major donors as well.

Q620 **Chair:** Where a parent contacts you, how does it work?

Alison Fiddy: We operate a helpline service where we give next-step advice on general issues relating to SEND law, but also to those in a tribunal situation. We will give next-step advice to those people who are able to get an appointment with one of our volunteers. We will provide ongoing casework support to a number of families, around 300 a year. Those will be cases that are particularly complex or where the parent is going to really struggle.

Q621 **Chair:** That is across the country.

Alison Fiddy: That is across England, yes.

Q622 **Emma Hardy:** Thank you, all three of you, for your fantastic contributions this morning. I would like to end with some hope, because that is a nice way to end the morning. The system we have seems to be an angry system, it seems to be a disappointing system and it seems to be letting everyone down, but we can, if nothing else, hope for something better. How are we going to resolve the problems we have now? What hope can you give to parents watching this that things can only get better?

Ian Mearns: There is a song there, I am sure.

Chair: To simplify this, if you had a magic wand, what would you change overnight?

Alison Fiddy: I would put in place greater accountability. I would ensure that all professionals within this arena receive training on the SEND law framework. I would improve SEN support to ensure that children and young people's needs are met at that level and there is proper accountability when their needs are not being met.

Michael King: There are two areas. We do not investigate the finances of local authorities when we look at these kinds of complaints but, when we ask local authorities why these situations are arising, many of them point to resource issues. I do not take a personal view on that, but that has to be looked at as part of the situation. Looking more closely at what you can learn from complaints, over and over again, we see basic administrative failures, records not being kept, the law not being followed



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and copies of plans not being shared with parents. We have issued good practice back to local authorities a number of times, which basically says: do the boring stuff right. Get those basic administrative processes right, embed them, train people in them, make sure you are following the law and just get the processes right. Then a lot of the other stuff will follow, and you will save an awful lot of money, because complaints will not be coming to us and they will not be going to the tribunal.

Imogen Jolley: I would echo everything both my colleagues have said. More fundamental than all these things but underpinning everything is that, if everybody working within this system read chapter 1 of the code of practice around best interest, that is pretty much all they would need to do. It is around working for an individualised young person's needs and looking at that individual young person. It is very clear, if you read that chapter 1, what the aims are. If everybody understood that and worked within that context in everything they did to support young children, we would be in a different place.

Q623 **James Frith:** May I ask my hobby horse question? Related to that, do you support the removal of "other" as a description for exclusion?

Imogen Jolley: Absolutely. It is a can of worms.

Q624 **Chair:** Do you do a lot of work on exclusions?

Imogen Jolley: We do far less work than we used to, because exclusions were taken out of the legal aid arena under LASPO and, therefore, parents do not get any assistance.

Michael King: We used to be able to look at exclusions and admissions in maintained schools. Since the rollout of academies, we are excluded from looking at exclusions there. Again, it is one of the huge gaps in the legislation in this field. We would love to look at those complaints.

Q625 **Chair:** Would that need primary legislation to change?

Michael King: I am afraid so.

Alison Fiddy: We advise parents on exclusions and we will consider exclusions in the context of supporting parents with appeals to tribunal. There will often be exclusion issues as part of those cases. We will also undertake policy work where we become aware of particular issues around the law on exclusion.

Chair: Thank you. This has been a really, really brilliant session. To pick up one thing you said, it is not an educational healthcare plan; it is education and health.

Alison Fiddy: Health and care.

Chair: It is incredibly important. I have not thought about it in that way.

James Frith: And a plan.



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Chair: I do not think we thought about it in the way you described. Thank you so much for what you do. I have no doubt that a lot of what you have said today will be in our report in some way or the other. It is really impressive. Thank you.