



Education Committee

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

Wednesday 8 May 2019

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[Watch the meeting](#)

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

Questions 626 - 750

Witnesses

I: Terry Reynolds, Director for Education and Skills, London Borough of Newham, and Stuart Gallimore, Director of Children's Services, East Sussex County Council.

Written evidence from witnesses:

[London Borough of Newham](#)

[East Sussex County Council \(1\)](#)

[East Sussex County Council \(2\)](#)



Examination of Witnesses

Terry Reynolds and Stuart Gallimore.

Q626 **Chair:** Good morning. Thank you very much for coming today. Just for the benefit of the tape, could you kindly introduce yourselves and your titles, from our left to right? Maybe we can start with you, sir.

Terry Reynolds: My name is Terry Reynolds and I am Director for Education and Skills in the London Borough of Newham.

Stuart Gallimore: My name is Stuart Gallimore. I am the Director of Children's Services in East Sussex County Council.

Q627 **Chair:** Thank you very much both for coming. It is very good to see you here today. We did have trouble getting you here—not you two individually but your chief executives. We tried to get your chief executives to come along and they were very reluctant to do so. That is very surprising as this has been a long-standing inquiry, and we have had chief executives from other councils who have been very pleased to come to our Committee to help us with our inquiry on the Children's Act and children with special educational needs. Can I ask you why your chief executives were reluctant to attend and give evidence to our Committee?

Stuart Gallimore: In terms of my chief executive, Becky Shaw, it was a diary issue, Chairman.

Q628 **Chair:** We offered many dates. We tried to be as accommodating as possible.

Stuart Gallimore: As I say, that is the only answer that I can give, that it was a diary issue.

Terry Reynolds: I could not speculate. The only thing I could say is that Newham at the time had an interim chief executive and was in the process of appointing a substantive chief executive, who took up post two weeks ago. That is just a guess because I do not know.

Q629 **Chair:** It just seems a little unusual that we were stonewalled by your councils; by the way, the only councils that we have contacted who did not want to send chief executives along. This is quite an important inquiry and we wanted to speak to the chief executives. It is strange, particularly given that we were quite open with the dates on offer, that both of your chief executives did not want to attend our Committee.

Stuart Gallimore: Chairman, there is nothing I can add to the statement I have already made.

Q630 **Lucy Allan:** Good morning, gentlemen. I would like to start by talking



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about the implementation grant and the extent to which it has been used for the purpose intended. Could I ask, first of all, Mr Reynolds, how have you spent your implementation grant and do you think it was spent for the purpose intended?

Terry Reynolds: I could not give you the details of how it was spent. I have been in post since April 2018. I took over the post subsequent to that.

On the evidence of what I have seen of the then performance in SEND, I would have to say that it could not have been spent effectively. Newham very successfully converted statements of special educational needs to EHCPs because it had a very low number, but there was a substantial backlog of referrals for assessment for EHCPs when I took up post last April. I would have to say the implementation grant was not spent effectively but I could not tell you how it was spent.

Q631 **Lucy Allan:** Is it fair to say you had the money available to change the ways of working but it was not used to do that?

Terry Reynolds: I could not give you evidence to disagree with that conclusion.

Q632 **Lucy Allan:** You have been there a year. You must have formed an impression. What is your impression?

Terry Reynolds: My impression is that Newham has a unique history around SEND. It had a history of having the lowest percentage of pupils with statements of educational need.

Q633 **Ian Mearns:** What percentage was that?

Terry Reynolds: I think it was 0.3% of the children and young people, but I would need to check that and get back to you in case I have misrepresented it. It was a very low percentage because Newham had an approach of agreeing that children needed additional support because of their additional needs, through a process of area SENCOs and SEND staff, and then providing top-up funding without the need for statements of educational need. It had very few statements. When the legislation came in to establish EHCPs it had very few statements to transfer across, but it was also not appropriately staffed and ready for the process of assessing for EHCPs.

Q634 **Lucy Allan:** Mr Gallimore, can I ask you how East Sussex County Council spent its implementation grant?

Stuart Gallimore: Yes, certainly. I was there over that period of time and we worked not just as a council but with our schools, our colleges, and with our colleagues in health and social care in terms of trying to prepare for its implementation. We were one of the authorities with the highest number of old statements. We have always been at that top end, higher than our neighbours, and we were able to achieve a conversion rate of 99%.



We were also one of the first authorities—I think we were in the first 10—to be subjected to what was then the new Ofsted inspection of SEND services. They crawled all over how we had prepared and our implementation. They were satisfied with that. There were no statements of action. They felt that we had responded appropriately but, as I say, from the position of having a lot of statements to convert.

Q635 **Lucy Allan:** In your view, could it have been spent more effectively?

Stuart Gallimore: With the benefit of hindsight you can always point to things that you could have done differently but I had been in post about 12 months at the point that Ofsted came in. Certainly, I was pleased with the external validation that I believe we received in terms of how we had done it, armed with the knowledge that we and all local authorities had at that moment in time. Clearly there were high levels of parental expectation at the time these things came in and we were implementing them. We tried hard to work with a range of parents organisations in terms of being satisfied that we were doing all that we could.

Q636 **Lucy Allan:** Do you feel that ways of working were transformed as a consequence of the implementation?

Stuart Gallimore: To be frank, it is still a work-in-progress.

Q637 **Lucy Allan:** Is that a no?

Stuart Gallimore: No. With such an area as this, it is hard to ever say that you have reached the end and it is finished. I do not think our parents would want that either, because they would want to see authorities trying to continually improve in terms of what we are doing.

Q638 **Lucy Allan:** Can I just add on to that line of questioning to both of you—maybe back to Mr Reynolds—do you think parents would be satisfied with how your implementation grant has been spent?

Terry Reynolds: No, I do not think they would be satisfied. They have had a number of concerns, which I share, about how the operation has worked. What I do think is that in the last seven or eight months we have come a long way with parents in rebuilding trust, in developing a better relationship with our co-production group, for example, such that they recognise that we have—belatedly—a SEND improvement transformation plan, which is starting to deliver results and which we have co-produced with them. I do not think they would be happy with how it went and there are still a lot of things to do, but I do think they would agree that we are starting to put the right things in place.

Q639 **Lucy Allan:** Do you think senior management were complacent?

Terry Reynolds: I do not know. I cannot say that. I was not around our senior managers.

Q640 **Lucy Allan:** In fairness, as we said earlier, you have had a year to form an impression and I am asking for your opinion.



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Terry Reynolds: My impression is that SEND did not get sufficient attention, airtime or notice at senior levels within the council. That is both at the officer level and the administration level. I think that has changed. In fact, I know it has changed because of the amount of scrutiny I am under internally on how things are changing. That is my impression. I was not there but that is what I think.

Q641 **Lucy Allan:** You believe that parents will now see a difference?

Terry Reynolds: I am certain that parents will see a difference. I am also certain that they will not say it is perfectly fixed and better yet. I am certain that they will see a difference, a change of approach, more engagement with parents and young people and more of a desire to put the right things in place that we have co-designed with them.

Q642 **Lucy Allan:** Mr Gallimore, the parents in your authority?

Stuart Gallimore: The parents in our authority? I would say that it is mixed. We work with some parents groups—particularly in the work that we have done over the further development of our local offer—who would point to some progress and some real positives within that. We also have some parents who would still point to a belief that it is too hard for children to get their EHCP and, for those children who do, that we are not quick to offer the solution they have identified in the light of us offering alternative solutions to meet their child's needs.

Q643 **Chair:** Just to clarify, what do you use as your guide in terms of spending and making judgments about how best to spend the implementation grant?

Stuart Gallimore: Shall I go first, Terry? In my case, as I have said, we were very early into being inspected. That was an external review of what we were doing and how we were doing it. I certainly look to the conversations I had with senior managers in partner organisations but, also, what our parents group are telling us and, equally importantly, what our young people's groups are telling us as well.

Terry Reynolds: I am sorry, were you referring specifically to the implementation grant, not spending decisions?

Q644 **Chair:** What do you use to guide your spending and make judgments about how best to spend the implementation grant? What criteria?

Terry Reynolds: I was not making those decisions.

On the criteria we have around how best to spend the money now, we are looking at implementing the requirements of the legislation. How do we best spend money in order to do that? What are the gaps in what we have done previously that we need to improve on? As I say, we have rehearsed with the Newham parents co-production group. We have been through what we think are the areas of weakness around this and this is where we are directing spending.



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What I would say is that this administration has put a further £1.3 million into children's services, specifically around bringing about improvements in SEN performance, because there is a recognition that previously the budget has not been spent effectively—although it was spent—and we need to spend more in order to deliver the service that parents and children need and are entitled to.

Q645 Emma Hardy: Good morning. As you know, the aspirations of the Children and Families Act were that the views, wishes and feelings of children and young people would be listened to; that children would be part of creating their EHCP plans and have more power in what happens to them; that it would be a quality and inclusive provision; and that it would include education, health and care. Do you think that you are delivering a special educational needs and disability service that is in line with the aspirations of the SEND reforms?

Stuart Gallimore: Yes, I think we are. We have a good level of work between colleagues in the social care part of the council, alongside those in the special educational needs part of the council, and also with our health colleagues. Those three organisations come together at senior level around a board that I chair to look at how we provide integrated services, which, as you say, was the aim that lay behind the Act.

There is always going to be room for improvement, particularly with the level of demand that is currently placed on the system. Any failures are not for the want of trying. It is a reflection of the resources that are available with the demands that are being placed on the system at the moment.

Terry Reynolds: I would say we are not fully meeting the aspirations in the Act, for a number of reasons. For example, one of the things that have been a consequence of the Act is a much increased demand for specialist places and special school places. Newham has very, very few special school places. Therefore, having a local special school for parents who want it is very difficult to achieve. That is why we bid to open a new special school under the last bidding round, and we were successful and we are moving in that way. We are looking at other options for expansion in order to meet those aspirations. That is one area where we are not meeting aspirations.

Certainly post-19 has been a difficult area for us to meet the aspirations of young people and families because of the amount of provision in the area. The level of demand for EHCPs post-19 has increased significantly. We have worked with Newham FE College for resource provision for young people with autism, but the level of demand for local places far outstrips what we are able to source and so we are having to look further and further afield. Those are two specific areas where we are not doing that.

Definitely, in the process of assessing for EHCPs, we are putting families' wishes at the centre of that and we are attempting to give greater



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emphasis to that. There is a gap between the aspirations of parents and local provision and that is the difficulty for us.

Q646 **Emma Hardy:** You said originally that there was a small number of children with SEND—I think you mentioned 0.3%—and you recognised in your response to my colleague that children and parents were not feeling very happy and that many have reported a poor service. You are talking about what you are doing now to go forward, but what is being done to address the fact that there are parents out there who feel that their children have been failed by what has happened in Newham?

Terry Reynolds: In terms of what we have done, as I said, there was a substantial backlog of requests for assessment for EHCPs. We have recruited staff and established a team to process the backlog and also to work on the continuing level of requests. In the whole of 2018 there were 394 requests for assessment in the London Borough of Newham and 210 EHCPs issued. So far this year—from January to the end of April—we have issued 169 EHCPs having completed the process. We are starting to clear the backlog. Our timeliness is poor but, by the time we get to October this year, we expect our timeliness to be around the 85% mark. We have put resources in there to do that and to engage parents in the process. Of course, that does not remedy the failings that went before but that is what we are attempting to do in the backlog.

We are also—as I say, through negotiations with Newham parents co-production—working on the transformation plan to put a number of things in place. We are working on better commissioning of short breaks, for example, and joining up with the local CCG for more effective commissioning of therapies. We are trying to do things. I do not have the ability to go back and put it right in the past but we are trying to put it right for now.

Q647 **Emma Hardy:** I realise you cannot turn back time and I recognise that, but those parents who have been failed or feel like they have been failed, are you actively contacting them? Are you contacting parents who had this poor experience last year to see what needs to be done to address that? Are the council going back to some of these people who had experienced this to find out if their child is being supported adequately now?

Terry Reynolds: I take a step back about the assertion of failure. What I would say is that children with high-level needs in Newham schools receive very generous levels of top-up funding without having an EHCP. There are two levels of top-up funding, level 3 and level 4. Level 3 is a little over £11,000. Level 4 is a little over £22,000. Schools are given the resources in order to meet the needs of children who are there.

Q648 **Emma Hardy:** Sorry, it is just because you said that some parents were not happy and had not had a good-quality service.

Terry Reynolds: Yes.



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Q649 **Emma Hardy:** They are the parents I am talking about, those parents who have not had a good-quality service and who are not satisfied. Are you actively going back and contacting those parents to see what can be done to redress the problems that they had, even if they were 12 or 18 months ago?

Terry Reynolds: We do not have a programme of actively going back. We have been contacted by parents through Newham parents groups, who are the people who have been letting us know very forcefully that things are inadequate and they need to improve. That is what we are trying to do, to work with those parents about bringing about those improvements.

Q650 **Emma Hardy:** I might make a gentle suggestion that you go back because I often find—in the experience of the Committee—that you will have some parents who will make that stand and argue forcibly but I am quite sure there will be lots of other parents out there who, for whatever reason, do not feel able to argue forcibly. I would gently make the suggestion that you contact all the parents who had an experience of this 12 or 18 months ago to ask them if their child's needs are being met now.

Terry Reynolds: Thank you for the suggestion.

Q651 **Ian Mearns:** You mentioned, Terry, top-up funding being available to meet the needs of children, but if the children have not been through an assessment process how do we know that that money is being spent effectively to meet the needs of each and every individual child?

Terry Reynolds: I agree with you, which is why we are placing much greater emphasis now on completing EHCPs. What I would say is that, in order to receive top-up funding at those levels, there are criteria to identify what the additional needs are and what children and young people need in order to meet those needs. We have criteria across the various additional needs. There is a discussion at area SENCO level between SENCOs to agree what the presentation is of this child and what the needs are. That is signed off by a SEND officer. We have had a process for identifying what those needs are and meeting them.

Where I think there has been a deficiency in that system is, first of all, it has primarily emphasised educational needs without sufficient attention to health needs. They are meant to be education, health and care plans and we have not sufficiently joined that up. Also, parents and children and young people have not had the statutory rights that an EHCP confers on them. I do think schools in Newham have had a really good history of being inclusive and supporting the needs of children and young people with the highest percentage of children in mainstream schools. However, that has not been sufficient for the requirements of the legislation, which is why we are putting the things in place what we are doing now.

Q652 **Ian Mearns:** Within local authorities around the country, how common is the system that had been established before you arrived in Newham?



Terry Reynolds: As far as I am aware, it is unique.

Q653 **Ian Mearns:** All the other local authorities around the country are wrong then?

Terry Reynolds: I did not say that. I do not think so.

Ian Mearns: All right. Thank you very much.

Q654 **Ben Bradley:** A couple of questions for yourself, Mr Gallimore. Throughout the evidence we have had in the Committee and some of the written evidence, you seem to be in a minority in terms of feeling that the assessment thresholds for EHCP plans are too low. We have asked a number of authorities that question and Newham, for example, in their written evidence came back and said that, no, they believe the threshold is appropriate for children with high needs. Why do you feel that way?

Stuart Gallimore: The phrase in there, the threshold test, is in terms that the children or young person “has or may have”. It is that “may have” bit that I struggle with because I think we have schools—they are no different in East Sussex from around the country—who are very adept and very good at identifying and responding to the needs of their children and putting support services in place. There is the notional £6,000 within their school budget in terms of enabling them to do that. They can get on and do that.

I think we are in danger of bringing far too many children and young people into a system that they do not need to be in and then tying up resource in terms of assessing that need. If you use that threshold you could probably apply it to about 11% of the school population, which seems to me to be misdirecting those much-needed services and turning it into a quest to get the assessment, to get the EHCP, rather than a quest to respond to and meet the needs of that young person.

It feels to me that there should be an additional step that is not solely about whether that young person has a special educational need or disability but whether that young person’s educational outcomes are not being met or we are failing to meet them. There should be that additional threshold that sees EHCPs used for that group of young people. In any other area of work I am involved in, in children’s services, we do not start immediately at the top end. There is an expectation that we triage and that we try a range of services before moving into that specialist service provision, and it seems strange to me and to my authority that we start at that end rather than working through a process.

Q655 **Ben Bradley:** There is an expectation within schools in terms of the support that they put in place and a graduated response to those needs. Obviously, in order to turn “may have” into a definitive answer, there needs to be some kind of assessment of that child’s need. Therefore, would you not feel that through that assessment process you might assess those children and say, “No, they do not need an EHCP plan but this is the intervention that we are going to put in place instead”?



Stuart Gallimore: It is a blunt and costly way to get to that point and, as I say, we could do it in other ways. Putting that link into outcome and attainments feels to me the right way to go in terms of that additional test before you embark on an EHCP, because I do think the minute you start going down that path it all becomes about pushing for and getting that EHCP. It is quite hard to get back off that track once you are on it, even in those instances where it would be appropriate to do that and still be able to meet the needs of that child or young person.

Q656 **Ben Bradley:** To clarify the threshold, do you feel it is a threshold that is too low in a system of finite resource or is it altogether just too low?

Stuart Gallimore: It is very hard to take out the finite resources that we are operating with, but I would still lean towards that approach even if we were suddenly seeing the DfE throwing money at us in terms of increasing the level of spend in this area. Frankly, that is just not going to happen.

Q657 **Ben Bradley:** I am going to move on slightly to policies and the lawfulness of policies. We have seen evidence in various authorities about additional paperwork and barriers to assessment. We have seen a letter from your inclusion service to schools suggesting that schools might want to avoid putting people forward for plans or might want to cease people's plans earlier. Given that that seems to create more difficulty than is required by the Children and Families Act in terms of getting an assessment, do you feel that is a lawful policy?

Stuart Gallimore: In terms of the letter that you are referring to, I think that has been misconstrued. If I start in the reverse order to which you asked the question, it seems odd to me that we operate in a world where we would not see or we could not see the cessation of a plan as success. Again, looking at other aspects of children's social care, there are other planning fora where we see the need for children to remain subject to the plan, and we see coming off that plan as a sign of success. Again, it seems odd to me.

We were not saying, "Come hell or high water get children and young people off these plans". What we were saying was, "You need to keep this process under review to ascertain whether or not a child still needs to be the subject of a plan". That was our starting point.

The earlier point does go back to: there is a finite pot of money and it is important that the right children are accessing that money quickly, speedily, to ensure that they get great outcomes. That is important. It is a reminder to people to be thinking about it and not just kneejerk to an assumption that all children need an EHCP plan to achieve their aims. In part that goes back to my views about where the threshold is currently set.

Q658 **Ben Bradley:** You accept that there are additional paperwork and evidence barriers to assessment in your authority?



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Stuart Gallimore: No, I would not say there are additional barriers. I would say that we try to work with all the partners in the process to ascertain if the right children are receiving the right education in the right place.

Q659 **Ben Bradley:** It has been suggested to us that you require more paperwork and more evidence to be submitted than the Act lays out.

Stuart Gallimore: I am certainly not aware of that. I think it is right and proper that we seek appropriate assessments. I am aware that we do not simply accept what is being said and some of the assessments that we are provided with, and that we will seek an alternative—I would now stress this to the Committee—if we believe it is in the best interests of that child or young person to do that. We are a service that tries to be focused on the needs of that child or young person.

Q660 **Chair:** Again, to provide clarity, which legal test is the ESCC using when deciding whether to accept or reject an assessment request?

Stuart Gallimore: We do not operate to an East Sussex set of legal requirements that put us outside of the law.

Q661 **Chair:** You suggest there is a low threshold for accepting EHC plan requests and that it would also entail a low proportion of requests being refused, but the DfE shows that East Sussex refused over 40% of all initial EHC needs assessment requests in 2017. How do you account for this on the basis of a low threshold?

Stuart Gallimore: If I understand correctly what you have just asked me, Chairman, you are citing that we have a high incidence of us rejecting requests for assessments.

Q662 **Chair:** Yes.

Stuart Gallimore: Yes, that is absolutely right. That is our position. What we are doing is pushing back in those instances where we do not believe an EHCP plan is necessary to meet the needs of that child or young person. I do not see that as an illegal act.

Q663 **Chair:** Over 40% of all initial EHC needs assessment requests in 2017 is quite a high number, isn't it?

Stuart Gallimore: Yes, it is a high number, but I do not think you can extrapolate from that that we are acting in any way illegally.

Q664 **Chair:** We will come on to this a little bit later, but the Ministry of Justice statistics suggest that East Sussex County Council has the greatest prevalence of SENDIST appeals of any English county. What is your comment on that?

Stuart Gallimore: Again, we find ourselves in a position—

Q665 **Chair:** Why are you so different to every other county in the country? You have the greatest prevalence of SENDIST appeals of any English



county. What is so different about your county?

Stuart Gallimore: What is so different is that we believe that we can meet the needs of children and young people using a range of resources that are within our authority and it does not require us always needing to go into the independent sector, which sometimes sees children and young people being placed some distance from their family home.

We work very hard to try to work within a system that sees children kept local and children's needs met within a mainstream setting with support where we believe that is appropriate. Clearly we are working with parents who do not see that as appropriate and want to pursue placements in independent schools, which we think in some instances are of a lower quality, achieving lower outcomes for that child and at considerable additional cost.

Q666 **Chair:** What percentage of your appeals is overturned? In what percentage of the appeals are you overruled?

Stuart Gallimore: In terms of ours, the tribunals have found in the main in line with parental wishes.

Q667 **Chair:** That is pretty telling, isn't it—that your policy is not necessarily working? You have refused over 40% of all initial EHC needs assessment requests. You have the greatest prevalence of SENDIST appeals of any English county and your decisions are being overturned. Does that not suggest that the policy you have is not the right one?

Stuart Gallimore: No, I do not believe that our policy is the wrong one. I think it is in keeping with where the thresholds sit and the responsibility that the tribunal operate under.

Q668 **James Frith:** Good morning, gentlemen. Mr Reynolds, I will come to you first, please, but I think the line of questions does apply to both experiences. I think we have a problem here in the distinction between what is an assessment for EHC and what the plan is. First, Mr Reynolds, how many applications do you receive for an EHC needs assessment?

Terry Reynolds: So far this year, we have had 128 requests for assessment. In the whole of last year, we had 394. If I go back to 2017—

Q669 **James Frith:** That is okay; let's just stick with those two figures. Let us go for a full year. Of the 394 applications for EHC needs assessments, how many actually got the assessment? Not the plan. How many got the assessment?

Terry Reynolds: The number of requests that were agreed out of that was 309. The number of requests that we agreed not to assess was 38. The rest were withdrawn after discussion. We refused 38 out of 394.

Q670 **James Frith:** How are you determining somebody's successful application without assessing them?



Terry Reynolds: Newham is in a different position from other authorities. Overwhelmingly, the requests for assessment are of children who are already receiving level 3 or level 4 top-up funding in schools. They have already been through a process of identifying if they have additional needs and they require additional assessment. What they have not had is a proper EHCP. The vast majority—

Q671 **James Frith:** My original point—which I am going to be onto like a dog with a bone—is the conflation of what is an EHCP or an EHC plan, and an EHC assessment. We saw yesterday in the Timpson stuff that we probably need to revisit some of the labels here, because they are unhelpful, but the assessment level is the thing.

The guidance talks about gatekeeping being unlawful and I put it to you that you should be assessing everybody; you might be determining different solutions and different conclusions, but that everybody who applies is worthy of an assessment—not a plan but an assessment. Yet in the most recent complete year, 38 were declined and the remainder—I have not done the maths—were advised against it, thought better of it or were told not to bother. How are you assessing that without a fair assessment panel?

Terry Reynolds: What is happening is that the experienced SEND officers are looking at the evidence that is presented of a need to assess. If there is no evidence of a need to assess, that is not refusal. That is seeking if there is any further information from the school and so on. Where the evidence provided does not meet what we think is the appropriate threshold, we would say that we are not going to assess.

Q672 **James Frith:** Thank you. I am envisaging a fork in the road moment where a number of young people have had their assessment application considered. You move some on to the EHC assessment work—as is your requirement—and you then ordain a different direction for those children. As I see from your website, you call that “the support plan”.

Terry Reynolds: Yes.

Q673 **James Frith:** How are the needs for the child’s support plan, at application stage only, determined to support their needs?

Terry Reynolds: Do you mean the referral for assessment, that decision-making process and how the need for a support plan is determined then?

Q674 **James Frith:** At application stage, how do you determine what the content of that support plan is without the assessment?

Terry Reynolds: If there is insufficient evidence that the child needs an EHCP but nevertheless the child would have some level of additional needs, that would be where officers would talk with the school about what the support plan is, which should be through the ordinarily available processes within the school that their devolved level of SEN funding should underwrite anyway. It is not about the additional top-up funding



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and the additional EHCP but, as I say, the ordinarily available additional support that the school has through their SEND departments.

Q675 **James Frith:** You would determine the requirements of each unique child based on a format of funding that goes to that school?

Terry Reynolds: No, we do not determine the requirements. What we expect is schools to meet the needs of children who do not reach the threshold for an EHCP. It is part of their responsibility.

Q676 **James Frith:** You are ignoring the distinction that is made clearly and which I have made now between assessment and plan. The point is that your requirement is not to determine at reception stage. I want to come on to Mr Gallimore's comments about triage. The point is that you are essentially determining an assessment based on application; not on assessment, at the stage of application. You are determining a support plan for children based on—your only answer has been about funding to the school—not the unique requirements of that child.

A simple question, because it may well be that the guidance is wrong or misleading and that is a perfectly fine conclusion for us to draw. At the moment, you are determining at application who to assess. What I am saying is that your responsibility is to assess, not to give everybody a plan but an EHC assessment. That is your requirement.

How do you determine what you call on your website "a support plan"? It says, "A support plan sets out your child's needs, what support is needed to meet those needs, [and] what progress the nursery or school expects your child to make once the plan is in place".

I am one of those children or a parent of one of those children. How have you assessed my needs based on my application?

Terry Reynolds: I have not. My service has not. The support plan is the responsibility of the school.

Q677 **James Frith:** But it is a local authority's requirement. The local authority, in the guidance, must determine, must make a decision. How is the local authority making that decision?

Terry Reynolds: What we are doing is: we have a referral for assessment and we are determining whether or not that referral for assessment meets the threshold to proceed to an assessment.

Q678 **James Frith:** Is that not what the guidance calls "gatekeeping" and is technically an unlawful practice?

Terry Reynolds: I do not conceive it as that. There has to be a process. I am assuming there has to be a process of determination because otherwise why is there a process for whether or not to agree to assess? Otherwise the application would move to assessment, but there is a process. In six weeks—

Q679 **James Frith:** No. Respectfully, that is demonstrably wrong in its



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interpretation of the guidance. The problem should not be to stem the application numbers. It should be to assess correctly, full stop. Anything else, any move left or right of that, is an unlawful practice according to the guidance. When you talk about a support plan—which is essentially where you are parking the 38 children who you have declined at application stage—how are you determining as a local authority that your duty of care has been done?

Terry Reynolds: What we are doing is determining they do not meet the threshold for an assessment and, therefore, our expectation is that the school will provide a support plan.

Q680 **James Frith:** Okay. That support plan is then in place based on an assessment done by the school that previously felt the child was qualified to apply for an EHC assessment?

Terry Reynolds: The school may have done, but the bulk of the applications for an EHC plan in our authority do not come from schools, they come from parents.

Q681 **James Frith:** Of the 38—we will just stick to that, as the ones who you have declined at application last year—how many of them have gone to tribunal?

Terry Reynolds: Last year, I think the figure was either two or three. Two or three cases went to tribunal.

Q682 **James Frith:** Okay. What success did those three cases have? What was the result?

Terry Reynolds: I am very averse to using the word “success” in terms of the tribunal because—

Q683 **James Frith:** What was the conclusion? That is a fair point.

Terry Reynolds: Of the two cases that I recall, one was found in favour of the authority and one was found in favour of the parent.

Q684 **James Frith:** In discharging the local authority’s responsibilities, of those 35, say, who did not perhaps have the money to go to tribunal, what follow-up is there of those children and your assessment of that requirement?

Terry Reynolds: I would like to take issue with “not perhaps having the money”. We work really hard to avoid tribunals because we think they are a failure. We have an officer within the SEND team who is our tribunals officer, who always works through mediation with parents to get a satisfactory conclusion, which is why we have very few that go to tribunal. For example, we do not use any legal representation at tribunals. We do not put financial obstacles in the way of parents taking us to tribunal. I do want to make that point.

Q685 **James Frith:** Sure. I was simply referring to the decision of a parent to pursue it. It is going to be largely based on the financial ability to do it.



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Do you think the guidance is clear enough? I still feel that that is a gatekeeping practice that is underway.

Terry Reynolds: In my experience working in different authorities, there are clearly different practices in determining what the threshold is, what meets the threshold and what individual services regard as sufficient evidence of a move there. I do think there is variability in the system. We try to be consistent within the authority. I agree there are differences between authorities and I do think having to have a decision whether or not to proceed to assess is necessarily a form of gate keeping.

Q686 **James Frith:** Thank you. Mr Gallimore, you talked about triage. It is a good word, "triage"—a really good word. If I present at A&E I am assessed by triage but, in your model of triage, you appear to be giving authority to the receptionist, not the triage consultant doctor or nurse. Could you just elaborate? It is fair enough to try to stem the number but I would far sooner hear you are priming SEND support in schools with better funding, better support and so on, than simply by model, saying, "Sorry mate, your name is not down and you are not coming in", which you alluded to doing in—in your description—"triage". Can we perhaps just revisit that comment?

Stuart Gallimore: Yes, certainly. I do not recognise that parallel in terms of triaging using the receptionist because in the process I was describing, which is not dissimilar to the one that Terry was talking about in this way, you are triaging with a skilled set of staff who are using the information that they have available to arrive at a view of whether they have enough or whether it is insufficient, and what to do next.

Q687 **Chair:** Just for the benefit of those listening outside, can we explain what "triage" is or how you mean it?

Stuart Gallimore: Certainly, Chairman. I am using "triage" to say that there does need to be a thoughtful process that identifies—based on the information that is available—what the next appropriate step is, and that that is a process to be gone through rather than leaping from point A to point C. Triage is a process at point B that does that in a thoughtful way.

I would agree again with Terry in that there is national difference. That might point to your original question about whether the guidance is tight enough or not, but I would be surprised if you are finding examples where there is no thought being given to whether or not it is necessary to move to an EHCP assessment in all cases or whether that young person's needs can be met at an earlier stage using the school support plan that Terry is describing or alternative forms of provision.

Q688 **James Frith:** The same question to you then: how do you determine what requirement a child has in their support plan if you have declined their application for assessment?

Stuart Gallimore: Declining the application for an assessment for EHCP is not the same thing as saying that we are not working with schools,



with health colleagues and with families to identify how the needs of that child can be met and whether they can be met in different ways that do not require going through the EHC plan.

Q689 **James Frith:** Talk me through that then. If I have been sent down the support plan route, what local authority engagement is there?

Stuart Gallimore: You are looking through our SEND team at what the identified needs are. It would normally have been generated around a concern or an inability of that school to meet that child's needs. Then it is a discussion with that school, with that parent, and—let's not forget—in some instances also with the child or young person about what else could be done that would mean that that child's need could be met in that setting. That may be in terms of a world where you are topping up the school's funding for additional support, one-to-one support or whatever it may be, in terms of trying to identify that.

That is not always going to be appropriate and, in some instances, it is absolutely clear that that child or young person needs the full ambit that comes through the EHCP, through that assessment process and through the resources that follow.

Q690 **James Frith:** There is a distinction between plans, though, isn't there? EHCPs are not a homogenised set of resources or supports. On both responses I would counsel against this judgment about a proportion of children who determine themselves, or have determined for them, an application for EHCP. It is a valuable exercise in a local authority discharging the requirements that are on you, which are perhaps not as clear as they need to be. Perhaps the language needs tightening up.

I just put it to you that you are ignoring, at application stage, a proportion of the students who come to you. You yourself, Mr Gallimore, said that an average of 11% of all children might come to you. In the first Select Committee hearings with the former Secretary of State, she said that between 13% and 14% of schools have SEN children. I put it to you: what is wrong with presuming that, from within that 11% cohort, you as a local authority will assess their requirement and put them on a range of EHCPs, or not, but that all or up to all do get assessed?

Chair: A brief answer if we can because we have to move on to the next colleague.

Stuart Gallimore: I suppose my proposition is still that there are other ways of responding to the needs of that group of young people than the current process allows.

Q691 **Thelma Walker:** Thinking about training for staff, quality training seems to be inconsistent across local authorities. Would you like to describe to the Committee the kind of training your staff that are going to be carrying out assessments and providing these education, health and care plans receive?



Terry Reynolds: I would agree with you that experience and knowledge among staff was variable. For example, Newham had been relying on a lot of agency staff who were frequently refreshed as they got permanent jobs elsewhere and so on, so that there was not the consistency. We were concerned about that and concerned about some of the decision-making and some of the quality of the work that was being put into the development of EHCPs.

Therefore, what we did was to bring in three very experienced managers of SEND services: one overall manager of the whole nought to 25 SEND service, one responsible for the disabled children and young people's service, and one responsible for the assessment team within the service. Their knowledge, experience and skill in other authorities have been recognised.

As well as leading the teams, they have been responsible for a CPD programme with what the requirements are, what the legislation says, how you work on these and the sharing of effective practice of what people have done within the teams. What we are seeing is an improvement in the quality of what is offered. We have recruited additional permanent staff and we need to build on that. It is a constant need to keep refreshing and updating people's expertise.

Q692 **Thelma Walker:** Would you say that legal training is generally adequate?

Terry Reynolds: I am not sure. We have—

Q693 **Thelma Walker:** You say you are not sure. You have responsibility for that. How would you be sure?

Terry Reynolds: I am going through it in my mind. As I said, we have an experienced specific tribunals officer whose legal knowledge is excellent. That is around the whole tribunals process, meeting needs and so on. With SEND caseworkers, the legality of what is required within EHCPs and how to meet needs could be improved. We are in the process of doing that.

Q694 **Thelma Walker:** Would you agree that adequate training, though, can lead to early intervention and prevent all the problems later on? Would more of an emphasis on knowing whether legal training was adequate be a good thing?

Terry Reynolds: Yes. I am not sure adequate early intervention is solely a question of legal training. There is a broad—

Q695 **Thelma Walker:** Training to spot where there are issues and to be able to relate and communicate with parents, surely.

Terry Reynolds: Yes, I agree, but there is a broader issue in terms of early intervention of noticing, from the youngest age, children's additional needs in order—it refers back to something Stuart was talking about before—to put the right package of support in place, so that you



can have support plans or EHCPs that you discontinue because they meet the need.

Q696 **Thelma Walker:** This links to my colleague's point earlier about being able to assess appropriately. You need the training to be able to do it.

Terry Reynolds: Yes.

Thelma Walker: Stuart?

Stuart Gallimore: For all the staff in our assessment and planning team, when they start there is a comprehensive induction programme overseen by senior staff. Each of those members of staff has a mentor and access to weekly case management oversight and monthly supervision. There is a monthly CPD—continued professional development—programme in place for them, which includes the team, admin staff and managers as well. That leads on to people doing their level 4 Casework Award.

Specifically to the question that you addressed, middle and senior managers also attend training. Three members of the team are members of the Education Law Association, which has the acronym ELAS, and they share their knowledge gained in that network as well. That is disseminated from the team. Then the senior managers come together as a region. East Sussex sits in the south-east region and we have a regional network that brings together all of the regional leads and a Director of Children's Services. Again, we are looking to share and disseminate best practice around the region back into the individual local authorities.

That is replicated in my own authority through a SENCO network, so that the staff in the assessment and planning team are working with those who have leadership responsibilities within schools in terms of sharing that knowledge. You are absolutely right; staff perform at their best when they feel that they are well trained and they feel that they are well supported.

Q697 **Thelma Walker:** That seems fairly comprehensive and laudable, but when those members of staff are trained they make recommendations and then they are not listened to. Imogen Jolley, Head of Public Law, told our Committee, "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". Would you agree with that? Do you think that is fair comment and is indeed money the master here or lack of it?

Stuart Gallimore: It is fair comment, in terms of saying that in any system and this system is no different: you have staff who are involved that make recommendations, those recommendations are considered



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within a management setting or in a panel setting—whatever the process is—and in some instances that they will be endorsed and in some instances alternative strategies will be suggested.

We cannot get away from the fact that county councils have a finite budget, which is half of what it was back in 2010, and that high needs block funding is under immense strain with a projected overspend of approaching £500 million. We know money is an issue that we have to manage.

Q698 Thelma Walker: If you were honest, would you say some of your children in your local authorities are not receiving the support they should because of a lack of money, a lack of funding, even though your staff are trained, even though they are making those recommendations?

Stuart Gallimore: It is inevitable that, when you do not have a bottomless pit of money, you have to make some difficult decisions because money spent on one child is money you do not have to spend on another child.

Terry Reynolds: To take a step back, I do not think that we have experienced officers taking decisions on what is best for children that are second-guessed by somebody holding a budget. That is not happening. One of the outcomes of that, however, is that our high needs block is significantly under strain with projected overspend significantly increasing year on year. There is a dilemma that we face.

To give you an example, we have a child with very significant levels of autism needing a special school place that we cannot provide within the borough. We consulted on mainstream special schools within travelling distance. We have consulted with independent schools. We cannot meet the need. We can find residential placement at a cost of £170,000 a year for one child. We have 20 of those coming up towards the end of primary school and secondary school that are in those categories. We do not make decisions based on funding, but we are facing an impending funding crisis.

Q699 Chair: On the high needs you mentioned, Mr Gallimore, you say about the pressure on resources—which we all recognise—but according to a report that your council produced, *The East Sussex Schools Forum*, in 2018, “the current rejected high needs block spend for 2018-19 is within the agreed budget and no additional resources is anticipated at this stage. The picture for 2018-19 appears at this stage to be relatively secure in East Sussex”. Can you just explain what you mean by that paragraph, given what you just said about the pressures on the high needs block funding?

Stuart Gallimore: Yes. We took the decision with our Schools Forum some 18 months ago to transfer £4 million from the schools block into the high needs block. Although we have seen an increase in demand, we have not seen us go over budget because of the transfer of that money.



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Had we not taken that step in agreement with our Schools Forum we would have been overspending in the year that you are referring to.

Q700 Chair: Thank you. We will move to post-19 provision. Again, East Sussex sent in evidence to us and you say, “The lack of clarity in what constitutes appropriate educational provision post-19, however, can make it difficult to enable children to move into adult services. The Act has prompted a large number of providers to expand provision to 25, which is seen as a safety-net by parents, but does not facilitate progression into employment, independence or semi-independence”. Given what you have said, do you think there is need for more clarity for local authorities about—I can address this to both of you—post-19 support and what it looks like?

Stuart Gallimore: That is one of the things that we want to get this Committee to reflect on, as we know that that post-16 has seen the steepest rise in terms of EHCP plans and children who have gone through their secondary education with support. We then find ourselves going through an assessment process in terms of an EHCP plan in that post-16. The Committee will be aware that there was no funding post-19 that came with the Act, although those expectations were there.

For me, there is an issue in terms of how we sometimes see further education colleges or the development of an offer from the independent sector, that feel much more to be simply repeating a year rather than working with that young person in terms of preparing them for independence, which would inevitably come. That said, I absolutely can understand why a parent would perceive that they are better off arguing to keep their young person in that school setting, which they are familiar with and that they are used to, as an alternative to beginning to work on preparation for the world of independence for work, whatever it might mean for that particular individual or young person.

It would also help if there was clear advice in terms of the funding regime, again, in terms of how those packages are paid for and are considered particularly with regard to the FE sector.

Terry Reynolds: I would agree with a lot of what of Stuart has said. In a relatively small London borough there is insufficient local provision to provide support to 19 to 25 year-olds. We have worked with the FE college, we work with other providers to try to develop additional provision, but it is not sufficient to meet the level of demand, because that is an additional six years’ worth of people coming through who are not leaving at the end of a two-year course or whatever potentially. We are trying to develop that local provision, which would reduce reliance on out-of-borough placements, which are expensive and often in the independent sector.

Again, it is a difficult conversation with parents about what educational progress a young person between 19 and 25 is making that merits a spending of £60,000 to £70,000, which is not necessarily showing any



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educational provision or fitting them for independence locally. We discontinued very few EHCPs for 19-to-25-year-olds, but it is a pressure on the high needs block that was unfunded and there is a tension between meeting the aspirations of families, meeting the needs of children and having adequate provision locally to do that. It is a difficult circle to square.

Q701 Chair: The chief executive of IPSEA, Alison Fiddy, came to our Committee and she said, “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”. What is your view? Obviously there is a resource question that is unanswerable. Clearly, it needs to be properly resourced but do you agree that there needs to be much clearer guidance on this from the DfE in terms of post-19 provision?

Terry Reynolds: It is likely to be helpful to local authorities. It is also likely to be unwelcome to families and to promote perhaps more tension and more tribunal appeals around the issue.

Stuart Gallimore: Greater clarity can only help, and I would extend that across to the Education Funding Service as well.

Q702 Chair: In answer to what you have said, would parents welcome—because at the moment it is completely confused as to what the post-19 provision should be and how it should be resourced—that at least there would be absolute guidelines of what should be there and what should be provided to parents of children with special educational needs?

Terry Reynolds: Yes, they would welcome the clarity, but I think our experience is when we have the difficult cases that go to tribunals—which parents are unsuccessful at—it is not the normal reaction to think, “Well, that was a fair result”.

Q703 Chair: I am not saying you are wrong. I am just trying to understand it. Why would there be more tribunals? Wouldn't there be less because at the moment the guidance is very fuzzy and the resources are not there? If there was proper guidance there would be something to measure against?

Terry Reynolds: Certainly in Newham we seem to be in the position of issuing lots more of EHCPs post-19 because of the level of demand. If we start to scale back, I think that will be unwelcome to people who have an expectation that they will get one.

Q704 Chair: Do you want to comment at all?

Stuart Gallimore: I have nothing to add beyond what I have said in terms of I think clarity in this area would be helpful. I can see the point that Terry is making.



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Q705 **Chair:** Just to understand, you mentioned a moment ago that you have taken £4 million from your schools budget to fund the high needs special. How are both of your councils funding the post-19 provision?

Stuart Gallimore: Essentially, the money following the child. Again, that is a call on the high needs block.

Q706 **Chair:** Does that £4 million that you talked about just apply to schools or does it apply to post-19 as well?

Stuart Gallimore: No. It extends across and we have representation—

Q707 **Chair:** Do you use it for everything?

Stuart Gallimore: Yes, we have representation from our FE sector on our schools for it.

Q708 **Chair:** That £4 million has gone to post-19 as well. That is what I am trying to understand.

Stuart Gallimore: Yes. It has gone into that block, so it meets the full range of needs that the high needs block has called.

Q709 **Chair:** How you are funding it?

Terry Reynolds: It is funded from the high needs block. There is not a separate compartment within the high needs block. There is pupil-led funding.

Q710 **Chair:** Have you had to dip into your schools budget as well? He has taken £4 million from it. Have you?

Terry Reynolds: We have had the agreement from the Schools Forum for the transfer of the 0.5%.

Q711 **Chair:** How much is that?

Terry Reynolds: That is £1.7 million.

Q712 **Chair:** You are taking £1.7 million out of your schools budget to fund the high needs funding, is that right?

Terry Reynolds: Yes. It is a process. We can agree with schools up to 0.5% to transfer across and, of course, the argument about that with schools is that that funding gets recycled into support for children within schools whereas, if it is distributed through the schools formula, it is not necessarily targeted at those schools that have more children with additional needs.

Q713 **Ian Mearns:** We have heard that parents succeed at tribunal because local authorities do not comply with the law and do not have evidence to support their decision-making processes. To what extent do you think that is true? We have been told that by people who have given evidence to this Committee and people who are involved in the legalities of taking cases to tribunal.



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Terry Reynolds: All I can say, from the point of view of Newham, is there were three that went to tribunal; one was withdrawn, one was found in favour of the authority, one found in favour of the parents, so I don't know what kind of scorecard that is. It is a very small number in Newham that go to a tribunal.

Q714 **Ian Mearns:** You have a much greater number, Stuart?

Stuart Gallimore: We have a much greater number and, in terms of ours, I think there will be some—where the tribunal is identifying something in the process—that have not met the statutory requirement. I think the majority will be in situations where plan A has been presented, plan B has been presented and the tribunal rules in favour of plan B as being better able in their view to meet the needs of that child or young person.

Q715 **Ian Mearns:** Is that because plan A is resource-led as opposed to needs-led?

Stuart Gallimore: Certainly the plans that the local authority has put forward are plans that it believes can meet the needs of that child or young person.

Q716 **Ian Mearns:** Can I ask how much has your authority spent on legal fees defending these cases?

Stuart Gallimore: I can subsequently provide evidence to the Committee in written form but I do not have that with me.

Q717 **Chair:** We have had a submission from Matthew Keer, who gave evidence to our inquiry. We know you have spent £38,395.60 on external solicitors and barristers defending appeals between June 2017 and June 2018, but that does not include the overall cost to the local authority, the managerial administrative specialist professional resources and the like. Other LAs have spent in the region of £840,000, if you combine the two. It would be very interesting to know—given that you have said the majority of appeals are lost, the vast majority—what amount you have been spending over the last few years just on this. You do not have those figures?

Stuart Gallimore: No, I don't.

Chair: If you could write to the Committee with those, please. Thank you.

Q718 **Ian Mearns:** There is a tension, and we have had people here from parental groups and lobbying organisations and I have posed the question to them on how often is an EHCP resource-led as opposed to being needs-led. Obviously, the lobby groups think that that happens quite regularly. We get resource-led EHCPs that do not reflect the needs of the individual child but they reflect the resources that the local authority has available in order to try to meet those needs. Would you both accept that that is the case?



Stuart Gallimore: There is a responsibility on custodians of the public purse to provide the services that are required at the most efficient cost. If you can achieve the same outcome more cheaply going down one route compared to another route, as a custodian of the public purse that seems an appropriate thing to do.

Q719 **Ian Mearns:** From your own local authority's perspective in Sussex, would you have pause for thought over the number of cases that are going to tribunal from your local authority's perspective?

Stuart Gallimore: Funnily enough, it is absolutely something we reflect on. I was having a conversation with my assistant director only yesterday in our one-to-one, so, yes, it is something that we reflect on.

Q720 **Ian Mearns:** Can I slightly change the tone now because of something that I am particularly interested in? Have you done an audit within your own local authorities about how much unregistered provision exists within your own local authority areas?

Terry Reynolds: I am sorry, unregistered provision in terms of?

Ian Mearns: It is places other than maintained schools, academies—all the rest of it—for youngsters to be placed in but unregistered, sometimes not legal even but it does exist.

Terry Reynolds: Newham has been part of a pilot project funded by the DfE for looking at support identification and safeguarding concerns for out-of-school settings, so we have been doing quite a lot of work on those and those run the gamut: there could be tutor places to various bits of alternative provision to religious based out-of-school settings. We have been doing a lot of work on gathering the information about that, trying to support them to make sure they follow effective safeguarding practices.

We also have a local authority officer who is responsible for the quality assurance of alternative provision used by schools or otherwise, so again making sure that those are properly registered and so on. There are a number of bits of work we do. That is not specifically about SEND. It is across the board, so we do have that piece of work. Although, of course, it is a tricky area to gather the information and be reliably informed within what your legal powers are of what the quality is and the effectiveness of those provisions.

Q721 **Ian Mearns:** That sort of then begs the question and I will come on to that in a moment. Stuart, could you tell us what is happening in your—

Stuart Gallimore: We have not undertaken a review. We work with the DfE and with Ofsted when they or we identify a provision that would fall into your category, but I think, as you intimated in that comment, you kind of know what you know. It is incumbent on us to work with all our partner agencies, in terms of them being aware of when they should be flagging something.



Q722 **Ian Mearns:** Is it enough to know what you know? As a children's service, is it not more important to go and find out?

Stuart Gallimore: Absolutely. There is a safeguarding responsibility, but I think it is important to highlight that the levers are levers that the DfE and Ofsted have in their hands, when it comes to the regulation, and the ability to close the very provision that you are identifying concerns about.

Q723 **Ian Mearns:** I am not talking necessarily about closing it. I want to make sure that, as a safeguarding body, the local authority with children in their area has, first, the understanding of what exists; and, secondly, an understanding that it is safe for children to attend. It isn't just knowing what you know; it is an incumbent duty upon you to find out.

Stuart Gallimore: Yes. However, as the law currently stands, in terms of the ability to close or to effectively prevent children being able to go to that provision, the duty lies outside of the local authority.

Q724 **Ian Mearns:** I accept that but you see the thing is, if the local authority, which has the feet on the ground in any locality, is not aware how then do we start the process of making referrals if we believe something to be unsafe?

Stuart Gallimore: As I say, we can only be aware by dint of making sure that all the members of the safeguarding partnership are aware of the issue. They are those eyes and ears on the ground and can flag up when there are issues or concerns.

Q725 **Ian Mearns:** As the Director of Children's Services, do you feel it is a kind of duty upon you for the safeguarding of all of the children in your area to find out and to map what is on the ground?

Stuart Gallimore: That duty exists and I discharge it through our safeguarding partnership.

Q726 **Ian Mearns:** When it comes to a legal duty to close down you don't believe you have those powers?

Stuart Gallimore: I know I don't have those powers.

Q727 **Ian Mearns:** Great. Terry, you would accept that?

Terry Reynolds: I do. Because of this pilot I think our position is slightly different, in that we have been working for the last year to construct a register of local out-of-school settings. We have publicised the fact that we are constructing this register. We use information from schools because children will talk to teachers about what is happening. We put together the intelligence of what is happening. The various religious organisations tell us what is happening. We have people on our staff who, when they are travelling around the borough, will notice a sign that says so and so tutors, and they come back and say, "Is that on the register?"

Therefore, we have been working to do that, but it is absolutely the case that, when we have done that, we offer support to those organisations for



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safeguarding training to make sure they are compliant. We cannot make them take it and the suggestions that we have had about, for example, using the powers of charity commissioners to close down some of these are quite short of what is required. These places do not meet the Ofsted criteria. They are not providing 25 hours. They are not a school.

Q728 **Ian Mearns:** Do you or people working for you or schools—maintained schools, academies and so on in your area—ever refer children to these other alternative settings?

Terry Reynolds: Our schools use alternative provision, but it is alternative provision that is quality assured, properly registered. It is not, “Can we find somewhere to park a difficult kid?” It is not that approach.

Q729 **Ian Mearns:** Would you accept that around the country youngsters are ending up from schools in unregistered educational provisions?

Terry Reynolds: The EPI report of last week, the numbers of children, we absolutely accept that, yes.

Q730 **Chair:** In a nutshell, when you have parents who home educate their children how do you supervise that?

Terry Reynolds: We have a process of referral to our Elective Home Education Service. They will make contact with the parents and ask for the reasons why they have decided to electively home educate. If there is any suggestion from the parent that it has been suggested to them by their child’s school that it was better to do that we will refer back to the school and let them know that this is illegal. We will tell the parents about that. I think we have had three cases in the last year where it was all a misunderstanding but that the child subsequently—

Q731 **Chair:** Do you check whether or not the children are getting a good education at home?

Terry Reynolds: Yes.

Q732 **Chair:** How often, and what do you do?

Terry Reynolds: From the referral, initially, we would schedule a visit to check that the education being provided is suitable and there is a member of staff employed to do that. Of course, parents do not have to let you see the child and we park all that because you have done all that but that is what we do; we visit—

Q733 **Chair:** How often?

Terry Reynolds: Initial visit, then it depends on our judgment—

Q734 **Chair:** Once a year, twice a year?

Terry Reynolds: If we think it is entirely suitable it will be a visit within a year. If there are concerns there will be recommendations and back within one to two months.



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- Q735 **Chair:** If the parents do not let you come in can you supervise at all?
Terry Reynolds: We make a judgment that, if they are refusing to let us see the child, it is not suitable and we take attendance enforcement.
- Q736 **Chair:** What does that mean in practice?
Terry Reynolds: We would take court action for the parent to send their child to school.
- Q737 **Chair:** Okay—and yourself, sir?
Stuart Gallimore: It would be a very similar approach. Where there are not concerns then it is subject to an annual contact in terms of that. Where there are concerns it is then identifying whether those are safeguarding concerns, and that might take us down a safeguarding route.
- Q738 **Chair:** How often would you check on a child who is being educated at home?
Stuart Gallimore: We would only check annually in the absence of a concern.
- Q739 **Chair:** Just once a year?
Stuart Gallimore: Yes.
- Q740 **Chair:** What do you do to check; you turn up or you are giving the parents a ring or what?
Stuart Gallimore: We would make contact with them and we would go back to see them and see their arrangements to—
- Q741 **Chair:** But “contact” means what, a phone or turning up?
Stuart Gallimore: No, it means arranging to attend and going to visit them.
- Q742 **Chair:** Right. Just a once a year visit is the way you check they are having a decent education?
Stuart Gallimore: Where there are no safeguarding concerns.
- Q743 **Chair:** You are not checking to see whether they are getting the right level in maths and English or whatever it may be?
Stuart Gallimore: No.
- Q744 **Chair:** None of that. You are just checking that they are being looked after properly?
Stuart Gallimore: Yes, and we would certainly welcome increased powers in that particular area.
- Q745 **Chair:** Do you know how many home-educated children you have in your respective councils?



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Terry Reynolds: Yes. I do not have the number with me but we review it monthly. We have a strategic panel that looks at children missing and elective home education, review the number: numbers coming in, numbers going out, numbers visited and so on.

Q746 **Chair:** Do you always know how many or are there some that slip through the net?

Stuart Gallimore: There inevitably will be some children that you may be unaware of if they have moved into the authority. It is easy to track those where parents have come to us. It is easy to track those where schools have told you but, hand on heart, there will be some children I am sure that move into the area that are being home educated and, until they come on to the radar in relation to a health issue or request for concern, you cannot put your hand on your heart and say the list is complete.

Q747 **James Frith:** Mr Reynolds, I am just reading your website in more detail. I would ask that you review it yourself to check whether it is consistent with what is expected of you. Twenty per cent. of the children who apply to Newham for an EHC assessment are being declined in two categories that you described to me earlier. One is where you were advised against it or discouraged and withdrawn, and the other was a flat decline or refusal, and yet your own website talks about an EHC plan, "For some children with complex needs even the wide range of services available, if your child is still not making progress even with support from your school you can ask us to assess him or her for an EHC plan". Before then saying, "When you ask for an assessment we will need to decide whether or not your child needs one".

There is an inconsistency here because what you are saying is, if the school support isn't enough, the parent and the child can ask for an EHC plan. That feels consistent with what is expected of you, but then that cohort that come to you with the application you are sending a fifth of them away, even though they are the same group of children for whom you are telling them they are entitled to it if their current provision is not up to it. So I think there is some real work to do in being consistent with the approach there.

By the way, one is unlawful and the other is inconsistent. Could I ask that you review that with your team and your chief executive, which I think is a real shame—and I think you have both batted well for your chief executives—but at a time of reducing budgets, leadership is crucial and how people are being handled is crucial. I think it is a failure of leadership that both the chief executives have not turned up today—and diaries is a complete load of tosh. The idea that a Secretary of State can find time for the Education Select Committee but a chief executive of a local authority cannot is tosh. I would ask that you take that back and thank you for the diligence in your answering earlier.

Terry Reynolds: Could I just say my chief executive has only been in post two weeks.



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James Frith: An interim chief executive is still a chief executive, so either way they are culpable. We have heard from local authorities. Kent, who had come from Essex—or it may have been the other way round, but the point is he came as a new person—was fully availed with the information and a determination to do it differently. New in post is not an acceptable position in defence of this but, please, will you commit to reviewing that and report back?

Q748 **Chair:** I do find it amazing that Rupert Murdoch is prepared to come to Parliament to speak to the Select Committee and yet the chief executives of your two councils refused to do so. I realise it is not your fault and you have been very helpful—and we have one final question—but it is not a great look, if I might say.

I am sorry to end with a tough question to East Sussex. Again Matthew Keer, a specialist for Special Needs Jungle, has sent in a paper to us and he says that, in the course of the 70 paragraphs and 3,700 words of the submission that you sent to the Committee, you find fault with every single one of its stakeholders: central Government is at fault, Ofsted is at fault, mainstream schools are at fault, maintained schools are at fault, academies are at fault, special schools are at fault, parents are at fault, the legal system is at fault, the Education Schools Funding Agency is at fault, health services are at fault. In a couple of paragraphs the dimensional constraints of time are at fault and, most appallingly, in paragraph 67 of your evidence you find young people with SEN at fault.

In your councils' eyes, it would seem that the only one organisation that is not at fault is yourself, but a three-minute search of the decisions made by the local government and social care ombudsman says otherwise. Since the SEND reforms became law, the LGO has upheld every single complaint made about the East Sussex County Council SEND services; every single complaint that they had jurisdiction to investigate—every single one. Can I ask you to comment on what Mr Keer has said? As I say, he is a much respected expert in this field and writes regularly for the Special Needs Jungle website.

Stuart Gallimore: I do not recognise the view that we look to blame others universally, and do not accept that there is always room for improvement within our own service. I do not believe East Sussex is an arrogant service. I do not believe the people who work for East Sussex provide an arrogant service.

I think we have endeavoured to help this Committee by highlighting areas that are worthy of consideration, in the same way that you and your Committee have raised areas that are worthy of consideration within East Sussex. There is always room for improvement.

Q749 **Chair:** Why is it that the ombudsman has upheld every single complaint made by your council's SEND service that they have the jurisdiction to investigate? Does that not show that something is deeply wrong? Every single complaint.



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Stuart Gallimore: What it has shown is that, in those instances that they have investigated, they have found against the local authority. They consider each individual circumstance. I do not think you can extrapolate from the ombudsman to a local authority.

Q750 **Chair:** I think you can extrapolate quite a lot, given that you lose tribunals and you are condemned by the ombudsman time and time again. What we have not heard today is what you are trying to do to make these situations better in your council.

Stuart Gallimore: As I said at the beginning of my evidence, we are an authority that has been subject to the inspectorate. It has been in and looked at our services and did not find the need to issue a statement of requirement. That sits within a broader set of children's services that last July was judged to be outstanding by Ofsted, so I think it is important that the issues that you rightly identify are put in that broader context.

In terms of what we are doing to put it right, we continue to work with partners, we continue to work with our parents, carers and our young people to try to deliver a service that meets the needs of those children and young people.

Chair: Thank you very much. I appreciate there have been some very tough questions but we have to do our job—just as you have to do yours—and I think we all appreciate your public service and efforts on this issue. Thank you very much indeed.