



Permanent Secretary

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Sir Geoffrey Clifton-Brown MP
Chair - Public Accounts Committee
House of Commons
Westminster
London
SW1 0AA
[sent via email]

2 December 2024

Dear Sir Geoffrey,

Support for children and young people with special educational needs

Thank you for inviting us to appear before the Committee on 18th November. Juliet Chua, Alison Ismail and I greatly valued the opportunity to discuss the findings of the National Audit Office (NAO) report with you and the committee members. I am writing to follow up on points raised in the hearing and to provide further clarity where needed.

Question 7: (Chair) Could you please send us a note on what data you are collecting so we know which baselines you have?

We collect pupil level data on the number of Education, Health and Care (EHC) plans, requests for assessment, assessments by outcome and ceased plans in the annual collection commonly known as SEN2. The department holds this information which is categorised by characteristics such as age, sex, ethnicity and establishment type. Full information on data collected is available [here](#). Information is published annually in the [EHC plans official statistics](#). Furthermore, the Ministry of Justice holds [data on tribunals](#) related to EHC plans.

The department also collects pupil level data for children with special educational needs (SEN) support and EHC plans as part of the spring School Census. This includes type of SEN provision and type of need, plus characteristics. Full information on data collected is available [here](#). Information is published annually in the [SEN in England official statistics](#).

Question 45: (Chair) Can you provide examples of good practice that are being pushed out to local authorities so they could learn?

We fund a What Works in SEND programme, which is delivered by the RISE (Research and Improvement for SEND Excellence) Partnership, including the Council for Disabled Children, the University of Warwick and ISOS Partnership. This programme produces both academic primary research and local area case studies that harness best practice from practitioners and partner organisations on local area SEND service delivery. The research and digestible resources and effective practice models are included on the What

Works in SEND website and disseminated through newsletters and seminars, to build an evidence base for exemplary practice.

We are actively linking up local authorities (LA) within the Safety Valve programme to learn from each other, for instance on areas such as negotiating with independent special schools and more widely delivering their agreements successfully. To further disseminate best practice, we have contracted with ISOS Partnership to conduct a qualitative evaluation of Safety Valve with a view to identifying lessons learned and sharing these with other LAs. We expect the evaluation report to be published in summer 2025.

We have published an insights report with learnings and evidence from the Delivering Better Value (DBV) programme so other local authorities can engage effectively with their local partners to change the way they deliver their services. We have also developed and published an accessible, self-service toolkit which systematically structures learning and case studies from the programme in such a way that allows other authorities to apply the models of practice. Both the report and toolkit were developed with input from the National Network of Parents Carer Forums (NNPCF) and Association of Directors of Children's Services (ADCS) we also engage with all local authorities prior to publication to provide useful tips on how to use the toolkit as well as including a short webinar on the website to guide authorities through the toolkit.

We are currently developing Insight Guides that will share learning from the Change Programme. Early learning from the programme will also inform our plans for wider sharing to LAs that are not on the programme. A monthly Change Programme newsletter - available to anyone who signs up to it - shares headlines on the progress we are making, and what we are learning. Some of the larger elements of the programme such as the alternative provision (AP) 3 Tier service (covering outreach, reintegration into mainstream and/or support for pupils who remain in AP for longer periods of time) and the early language support for every child (ELSEC) pilot, only recently become operational (summer 2024), and as such we will share learning and good practice as it becomes available.

Question 59: (Anna Dixon MP) Is there any data on refusals to admit by school type and local authority and data on number of appeals going to Secretary of State and how many of those have been upheld?

DfE does not hold any information on the number of refusals to admit at a school or local authority level. As a point of clarification, the Office of the Schools Adjudicator does not have a role in the consideration of appeals made to the Secretary of State in relation to schools being named in an EHC plan, however, they do provide advice on Looked after Children and Fair Access Protocol admission cases. Special educational needs determination cases are considered by the DfE's School Complaints Compliance Unit (SCCU) on behalf of the Secretary of State.

The table in the **annex** provides data held by the SCCU on appeals made to the Secretary of State in relation to schools being named in an EHC plan during the last three academic years and the outcome of these cases.

Question 77: (Lloyd Hatton MP) How are we working with local councils to make sure special schools are opening and making sure small barriers don't get in the way of delivery?

As part of the response to this question, we wanted to clarify that there are 50,000 high needs places being built since 2022-23 and some of these are in mainstream settings. This is derived from our annual assurance data from 2023-24.

The department has multi-disciplinary project teams, which include construction, planning and property experts. Where DfE is delivering projects, we work closely with local authorities to ensure that projects have suitable sites, secure planning approval and open in appropriate accommodation that is providing value for money. We regularly review how we are operating so that any programme level barriers are addressed. Officials would be happy to discuss the project specific issues that were raised with Lloyd Hatton MP.

I hope the information provided in this letter is useful to the Committee. We look forward to your report and stand ready to assist further – please do not hesitate to reach out with any additional questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S Acland-Hood', with a stylized, cursive script.

**SUSAN ACLAND-HOOD
PERMANENT SECRETARY**

Annex 1: DfE SEN Determination Case Data 2021/22 AY – 2023/24 AY

Under sections 496 and 497 of the Education Act 1996 ('the 1996 Act') the Secretary of State can consider a complaint that a local authority has acted or proposes to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under the 1996 Act¹ or, has failed to discharge a duty imposed on it under the 1996 Act. Acting 'unreasonably' in this context means acting in a manner in which no other reasonable governing body or local authority would do, having regard to its statutory responsibilities and the facts and circumstances.

If she is satisfied that the legal tests referenced above have been established the Secretary of State has a discretionary power to issue directions to the local authority under section 496 or 497. In addition, under section 497 she can also issue an order declaring the local authority to be in default in respect of its duties.

In deciding whether to exercise these powers, the Secretary of State considers the circumstances of each complaint on a case-by-case basis, considering whether any action she might take is expedient (which means there must be something she could direct the local authority to do which would put matters right).

Cases can be lodged by both the school and/or the local authority with the SCCU. Regardless of who raises the appeal, the SCCU considers whether the local authority has acted reasonably when naming the school in the young person's Education Health and Care (EHC) plan.

The law is clear in that until an EHC plan is set aside by a court, or amended by the local authority pursuant to statute, that plan stands and where, a school is named in a plan, it has a duty to admit the child for whom the plan is maintained under section 43(2) of the 2014 Act. The SCCU seeks assurances from the school and that the child has been admitted to the school whilst the appeal is being considered. The most common appeal grounds that are raised with the SCCU are:

- The school is unsuitable for the age, ability, aptitude or special educational needs of [young person] (section 39(4)(a) of the 2014 Act),
- Incompatibility with the provision of efficient education for others (section 39(4)(b)(i) of the 2014 Act) or the efficient use of resources (section 39(4)(b)(ii) of the 2014 Act).
- The local authority has failed to discharge its duty to conduct a lawful consultation with the school under section 39(2)(b) of the 2014 Act.
- The EHC plan lacks specificity and quantification (section 37 of the 2014 Act).

Where an appeal against a local authority is upheld, the local authority is required to take further action, for example, carry out the consultation process again or update an EHC plan to meet the necessary requirements.

¹ The powers of the local authority or governing body in question extends to powers and duties conferred by both the Education Act 1996 (EA 1996) and Part 3 Children and Family Act 2014 (CFA 2014), as the provisions in CFA 2014 are read into the EA 1996 by virtue of section 83(7) CFA 2014.

DfE SEN Determination Case Data 2021/22 AY – 2023/24 AY

Academic Year	Type	Active Case	Case Withdrawn	Minded to Direct	Not Minded to Direct	No SCCU Response Required	Total
2021/22	Academies	0	6	10	22	0	38
2022/23	Academies	0	12	8	18	1	39
2023/24	Academies	8	10	15	18	6	57
	Maintained Schools*	1	1	0	9	0	11
Total		9	29	33	67	7	145

Notes:

- The above data is held by the School Complaints Compliance Unit (SCCU) and is based on actual cases/requests which have been made to the Secretary of State by either a local authority or a school.
- *Responsibility for maintained school SEN determination requests transferred to SCCU from 1 April 2024.
- The 'Minded to Direct' outcome occurs where the Secretary of State's view is that the local authority has followed the correct procedure in naming a school within an Education Health and Care plan and that the naming of the school is not unreasonable.
- The 'Not Minded to Direct' outcome is where the local authority has not adhered to the Children and Families Act 2014 or has acted unreasonably.
- The 'Case Withdrawn' outcome is when either the local authority or the school withdraws from the process. This can occur where a parent decides they no longer want to pursue a place at a school or when a school takes the child on roll prior to a Secretary of State direction.

The 'No SCCU Response Required' is for a variety of reasons that SCCU need no longer act, for example, when the complaint is subject to a tribunal hearing.

Annex 2 - Proportion of children with SEND in alternative provision

In relation to your question around the proportion of children with SEND in alternative provision, we mentioned that the proportion of children with EHCPs “has stayed relatively level at about 1% of the total cohort” since 2015. We wanted to provide some additional information about this.

Of all children in schools with an EHCP, 1% are in state funded alternative provision and this number has been stable in recent years ([Special educational needs in England, Department for Education, Academic year 2023/24](#)).

Similarly, out of all children and young people with an EHCP (up to age 25) regardless of if they are registered in a school, 1% are in state funded alternative provision. A further 1.5% are in EOTAS. However, this data collection has undergone a lot of changes and quality improvements in recent years so comparisons over time are not advised. ([Education, health and care plans, Department for Education, Reporting year 2024](#))

82% of children in state-funded alternative provision have some form of SEND, compared with 18% in all state-funded schools. Alternative provision schools are experts in dealing with children with additional needs or behaviour that present barriers to learning to have the support, skills, and confidence needed to thrive. They deliver high quality interventions and targeted support with the aim of ensuring children can reintegrate back into mainstream education or move onto a sustained post-16 destination.

Children and young people in AP may be dual registered as in they attend multiple educational settings so published statistics cannot give a completely accurate picture.