

Written evidence from Brian Lamb OBE

Brian Lamb OBE (Chair of the Lamb Inquiry into Parental Confidence in SEND 2008-10)

1. I Chaired the Lamb Inquiry into Parental Confidence in Special Educational Needs which reported in 2009, and which then informed the approach taken in the Children and Families Act 2014, and subsequent Code of Practice in 2015, especially in relation to improving parental engagement in the SEND system. I am also Visiting Professor at Derby University on SEND and have practical experience through providing consultancy support to Local Authorities, parents groups and school leaders on the implementation of the reforms. I am also Chair of the education charity Achievement for All, an organisation which developed from my Inquiry. In this submission to the Select Committee I write in a personal capacity.

Overall Summary.

2. The principles and aspirations of the reforms to ensure greater parental and children and young peoples' (CYP) engagement, as envisaged in the Lamb Inquiry and subsequent legislation, have widespread support with parents and professionals working in the system. There has been significant, and in some areas profound, change in how parents and CYP are engaged strategically and at the individual level in the system.
3. A significant majority of parents are positive about the Education Health and Care Plans (EHCP) process and strategic engagement through the Local Offer. However, the high rate of exclusions of CYP with SEND, Tribunal appeals and continuing lack of confidence in the mainstream offer in a number of schools raise serious questions about how well the system has secured the confidence of many families and how well it is delivering improved outcomes.
4. The current framework of statutory requirements may need strengthening in some areas along with improved accountability measures. There also needs to be continuing investment in Local Authority (LA) and school capacity to ensure that positive changes are more secure across the whole of SEND system. Whilst there may be a danger in relying on compliance mechanisms for driving cultural change in the system, with so few legislative levers available, there is a need for tighter accountability measures related to the reforms.
5. The overall educational context for the reforms is extremely challenging due to changes in schools funding, changes to way the High Needs block is administered, changes to the accountability and examination framework and the way in which SEND is supported at School level. These can have a damaging effect to the aspirations of the legislation and especially for parental engagement and confidence in the system.

Assessment of and support for children and young people with SEND

6. **Parent's engagement and improved outcomes need to be a cornerstone of judgements about how the system is working.** A major strategic aim of the Children and Families Act (2014) was to enhance parental confidence in the special educational needs system (Lamb 2013). The statutory requirements to consult with parents at every stage of the educational process is a genuine innovation in legislation and designed to fundamentally alter the culture of provision in LAs and schools by putting parents and young people's views at the centre of the system. My Inquiry found that *"In the most successful schools the effective engagement of parents has had a profound impact on children's progress and the confidence between the school and parent. Parents need to be listened to more and brought into a partnership with statutory bodies in a more meaningful way."* (Lamb 2009).

Individual Assessment-Education Health and Care Plans (EHP)

7. **Parents are positive about the new EHCPs but there are still major gaps in the quality of many EHPs and a need for a national template to ensure consistency.** The new EHC Plan has been relatively well received by parents. A very large-scale survey of over 13,000 families by DfE/Derby University (DfE 2017a) found that;
- 7.1. 66% of parents and young people expressed satisfaction with the overall process of getting an EHC plan;
 - 7.2. 62% agreed that the help/support described in the EHC plan will achieve the agreed outcomes for the child/young person;
 - 7.3. 75% of parents and young people said the process was family-centred some of the time and 58% felt they had been listened to and 51% were included in meetings.
 - 7.4. 80% of parents agreed that their own wishes and opinions were included in the EHC plan.
 - 7.4.1. This is a positive result given that the survey was conducted in 2015 and the hope must be that the quality of the process has improved further since, with higher levels of satisfaction.
8. However other parental surveys (Autistic Society 2017) and my work with individual groups of parents indicates differing levels of confidence in EHC plans to secure good engagement in the process and outcomes. Further recent evidence suggests that in the rush to meet the April 2018 transfer deadlines quality may have been sacrificed. There are reports of many EHCPs being done by simply transferring existing information and sections being left blank relating to health and social care.
9. Inconsistencies in the way EHPs are carried out are frustrating to parents and hamper transfers between authorities and are routinely complained

about by parent groups and by LAs. SENDIST Tribunal panels have also commented on the difficulty of working with so many different formats and variable content. A more nationally consistent EHCP template would help with this.

10. The perception from many parents that a plan secures better provision may in part be justified as OFSTED (2017) found more “compelling evidence of improved outcomes for children and young people with an EHC plan compared to those identified as needing SEND support but who did not have a plan.”

11. **There is still conflict in the system despite greater parental engagement in EHCP plans.** An explicit aim of the reforms was to take some of the conflict out of the system for parents and CYP over statutory entitlements through greater transparency over decision making at the level of individual assessment by involving parents more. This has been very popular with many parents. However the number of Tribunal appeals is a key measure for the level of conflict in the system and there has been a substantial rise in academic year 2016/17. HMCTS Tribunals recorded 4,725 registered appeals in relation to SEN, an increase of 27% when compared to the prior year. In the same period, 4,387 SEN appeals were disposed, an increase of 39% on 2015/16. With 89% of those heard (1,418) in favour of the appellant (MoJ 2017).

11.1. **Recommendation:** DfE needs to continue to fund large scale research to monitor the impact and quality of the new ECHP process as the system settles down, post the statement transfer period, and against the baselines established in the research.

11.2. **Recommendation:** The DfE should produce a national template for the EHCP to reduce variation in practice based on an analysis of the best practice so far.

The Local Offer

12. **The Local Offer is crucial for the strategic engagement of parents and LAs must be held accountable for ensuring their engagement and the quality of the Offer.** The Local Offer is, crucially, the means of developing an understanding of local needs. It was developed to ensure parents had a voice in strategic planning of services as well as information about them. (Lamb 2009/2013) There are concerns about how enforceable the consultation and planning duties are for parents, especially around areas such as joint commissioning and the Local Offer and this has been reflected in early assessments of the functioning of the legislation (Lamb 2016). OFSTED/CQC area reviews also routinely comment on failures to produce an adequate local offer (OFSTED 2017) and this damaging to parental confidence and the ability to develop and identify appropriate services.

13. The 10th Survey of parent carer forums (Carers Forum 2017) showed that 69% of forums agree that parents are either largely or fully engaged in strategic planning with their local authority. This is a 5% increase on the 9th

survey. Overall confidence has been growing steadily since implementation of the reforms in the Survey. In respect of decision making around the provision that follows, 56% of parents are largely, or fully, involved in decision making for their child or young person's provision, which is a 2% increase from survey 9. Whilst these results are positive there is clearly further focus needed at LA level to secure higher levels of parental engagement.

14. More specifically in relation to the Local Offer, Forums report that 65% of local authorities have published an online summary of the comments received about their Local Offer; this is a 3% decrease from 68% in survey 9. (Carers Forum 2017) This suggests that the Local Offer is providing a conduit to strategic engagement with formal parent carer groups but that more needs to be done in evaluating the information gathered and how it is used in strategic decision making.

14.1. **Recommendation:** Local authorities need to be held to account for ensuring that the Local Offer is fully consulted on and that strategic planning reflects the views and wishes of parents and CYP.

Schools Provision and the Schools Information.

15. **Parental engagement and good home school working is instrumental to ensuring good progression and outcomes in SEN (Lamb 2017). There needs to be a greater focus on the quality of provision and engagement of parents in schools through a focus on the SEN support category.** Parent Carer Forums have recorded a dip in confidence in school settings for SEN support with only 2% of forums very confident and 35% moderately confident with confidence falling from the previous survey (Contact 2017). This is also confirmed by the DfE Schools Survey (Panayiotou 2017) which found that fewer pupils with SEND (59%) and their parents/carers (66%) were 'happy' or 'very happy' with the quality of teaching (64% and 76% of those without SEND respectively). Further parents of children with SEND were less likely to 'feel confident that the right level of support is being put in place for my child' (35%), compared with parents/carers who did not consider their child to have a special educational need or disability (47%). OFSTED also noted that "*A large proportion of parents in the local areas inspected lacked confidence in the ability of mainstream schools to meet their child's needs.*" (OFTSED 2017)

16. The Schools Information Report is a key tool for parents to know what is available at school level and potentially to influence the development of schools' policy, while ensuring that CYP with SEND have their needs met. 61% of parent carer forums said that local authorities do monitor the availability and quality of School Information Reports from maintained Schools, whilst the figure for Academies was 50%. (Contact 2017) This suggests accountability is lacking in many schools, with the quality of planning and provision going unchecked, especially in the Academy sector.

17. The legislation requires the LA to set out what special educational provision and special training provision it expects schools and early years and post-16 providers to make available in the Local Offer (DfE 2015a). Importantly, a

number of authorities have taken this approach with Barnet (2016) and Portsmouth (2016) having an ordinarily available document on their website which specifies what can be expected from schools. This should be more widely taken up.

18. The OFSTED/CQC area reviews have been very helpful in refocusing the system at a point where focus on the reforms in LAs was starting to drift and, crucially, the views of parents and CYP are at the centre of reviews. There is still a big gap between aspiration and achievement of the reforms in respect of parental engagement in many LAs with a high number of reviewed LAs being required to produce a Written Statement of Action by OFSTED. (OFSTED 2017)

18.1.1. **Recommendation:** The Schools Information Report should be more vigorously promoted and monitored by LAs as a means of ensuring school accountability for their part of the Local Offer as envisaged by the legislation.

18.1.2. **Recommendation:** Local Authorities should require schools to make completely clear what is ordinarily available as part of their core provision within the school.

18.1.3. **Recommendation:** The DfE should report annually on progress towards implementation against a set of key accountability measures, using existing statistics collected by the department, and that this is presented to Parliament.

18.1.4. **Recommendation:** OFSTED/CQC should be asked to revisit LAs who were required to produce a Written Statement of Action as a result of the are review to assess progress and be funded to repeat the whole inspection cycle of LAs on a rolling four-year cycle.

Exclusions and SEND support.

19. **The failure to address the high level of exclusion, informal exclusions and 'off rolling' destroys parental confidence in system.** While there is excellent practice in many schools, others continue to manage their SEND cohort through official and, even more typically, unofficial or temporary exclusions or 'off-rolling'. This was raised in my Inquiry and has still not been addressed. The figures for 2017 show that;

20. Pupils with identified special educational needs (SEN) accounted for almost half of all permanent exclusions and fixed period exclusions

21. Pupils with SEN support had the highest permanent exclusion rate and were almost 7 times more likely to receive a permanent exclusion than pupils with no SEN

22. Pupils with an Education, Health and Care (EHC) plan or with a statement of SEN had the highest fixed period exclusion rate and were almost 6 times more likely to receive a fixed period exclusion than pupils with no SEN (DfE 2017c)

22.1. Between 2012/13 and 2015/16, the number of children permanently excluded rose by 44% Between 2012/13 and 2015/16, the

number of children permanently excluded from primary schools rose by 72%. (DfE 2017c). Informal exclusions and 'off rolling' of children is likely to make this figure much higher and unjustified exclusions is a constant complaint of parents groups I work with.

22.2. This level of discrepancy between CYP with SEND and the rest of the school population, and the steep rise in 'managed moves' and exclusions for the SEND group, illustrates how schools are managing difficult SEND cases through exclusion rather than addressing need.

22.3. **Recommendation:** The Government should accept the recommendation of the Lords' Human Rights Committee; "*we recommend that the Regulations are amended so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of 'disability'*". (Paragraph 503) (Select Committee 2016)

22.4. **Recommendation:** OFSTED, as part of schools inspection should report on the exclusion rate and 'off rolling' in each school and publish an annual analysis of the overall rate of exclusions of children with SEND from the reports as part of its annual review.

The roles of and co-operation between education, health and social care sectors

23. **Joint Commissioning arrangements are not meeting parental expectations for a more co-ordinated approach, as envisaged in the reforms.** Just over half of Parent Carer forums 52% think that the local authority is meeting their joint commissioning expectations with education fully or to some extent with only 32% feeling that they are fully or partially meeting their expectation with health, a continued decline (35% last survey) and down from 60% in survey 8. Confidence in social care is also low on this measure (Contact 2017). This is reflected too in the OFSTED area reviews, where they concluded that "*There had not been enough progress in implementing a coordinated 0-25 service for children and young people who have SEND. In particular, the commissioning of health services for up to 25 was inconsistent.*" (OFSTED 2017)

24. Children and young people with high-need, low-incidence special educational needs and disabilities (LISEND) are some of the most vulnerable children within the education and care system. Commissioning is often undertaken in isolation, and at the point of crisis. This can lead to poor outcomes, a lack of long term strategic planning and an inefficient use of resources. (Lamb, Allison 2018). Ideally for EHCP planning for LISEND should be done not just on a joint commissioning basis but also regionally to secure the most appropriate provision and in the most resource effective way (Lamb, Allison 2018).

25. Parents have had very mixed experiences in the transition period. The transition from statements of special educational needs and Learning Disability Assessments to Education, Health and Care Plans There were 285,722 children and young people with statutory Education, Health and Care

(EHC) plans and 34,097 children and young people with statements of special educational needs (SEN) maintained by local authorities as at January 2018. This gives a total of 319,819, an increase of 32,529 (11.3%) from 287,290 as at January 2017. (DfE 2018)

25.1. This is driven by large increases in the 16-19 and 20-25 age groups. The combined number of children and young people with statements and EHC plans has increased each year since 2010.

26. The driver behind these figures may not just be demography and the extension to age 25 years as getting an EHCP is also influenced by different assessment criteria, funding and provision in LAs. We also need to take into account a greater awareness of the new system by parents who welcome a more comprehensive plan and experience a continuing lack of confidence in the non-statutory offer. There are also an increasing number of additional children with more challenging and complex needs and continuing perverse incentives driving towards seeking an EHCP related to schools' lack of funding.

27. One of the main blockages in completing the new transfers has been the absence of up to date information, from the old statements to complete assessment, and continuing difficulty in implementing joint assessments (OFTSED/CQC 2017, Parent Carers Survey 2016, Lamb 2016).

The level and distribution of funding for SEND provision

28. Parents have remained concerned that there are not enough resources in the system and this is reflected in high Tribunal rates, concerns about how well EHCPs are resourced and access to specialist services. There are a number of pressures within the system that mean that although the Government has invested more resources they are not adequate for the level of rising need. This is exemplified by;

28.1. The latest evidence suggesting that the number of children with the most complex needs has risen from 49,300 in 2004 to 73,000 in 2016. A rise of nearly 50% in just over a decade (Pinney 2017)

28.2. Rising numbers of children needing support with over 30,000 more children in 2017 with statements or EHC plans than in the previous year and over 50,000 since 2010

28.3. The expanded range of CYP covered by the with significant increases in the number of 16-26 year olds with a statement of SEN or an EHC plan since 2014

28.4. A trend towards many more children being placed in special schools, which rose by 12.5% between 2014 and 2017. DfE (2017b) This has led to greater pressure on the NHB to fund these places

- 28.5. Reduction in Social Care expenditure on Children in Need leading to further stress on Education Budgets, as quoted by the National Audit Office (National Audit Office 2018).
29. There is considerable evidence that the ring-fencing of HNB is causing significant problems for LAs to fund provision, given the continued rise in the numbers of children receiving EHCPs. This is then reflected in number of refusals to assess for EHCP's and a lack of support services in some areas especially for high cost provision (OFSTED 2017/Lamb 2018).
30. In order to create a national funding formula for schools, the Department has ring-fenced the schools budget. 99.5% of the schools block is ring-fenced, and the remaining 0.5% can only be transferred to the high needs block (which funds local authority specialist SEND services) with agreement from the schools forum. A large number of local authorities have been forced to apply to the Secretary of State for Education to request that more than 0.5% of the schools block be transferred to the high needs block and/or to override a decision made by the schools forum not to allow funding to be transferred.
31. Conflict over the HNB is creating significant tension between schools, local authorities and parents. It may also create a perverse incentive for schools to try and move pupils with SEND out of mainstream settings towards special schools or other settings, regardless of the views and wishes of families, knowing that the cost of this will be met by the local authority.
32. School heads consistently raise the fact they are not routinely allocated additional SEN funding if they have a higher than average number of pupils with SEN. Therefore, schools that develop a good reputation for doing well on SEN attract more pupils, without generally getting more financial support. The danger is that this deters schools from promoting their inclusive provision as the additional pupils are unlikely to attract funding without an EHCP.
- 32.1. **Recommendation:** That the ring-fence should either be removed or relaxed so that local authorities have greater flexibility to move more than 0.5% of the schools block as needed. More money should be allocated to the HNB to deal with current additional pressures on the system and carried forward into new funding arrangements.
- 32.2. **Recommendation:** The Department should also consider allowing more flexibility in schools' budgets so that individual schools notional SEND budgets rises and falls depending on the numbers of children with SEND, to ensure provision better matches needs.
- 32.3. **Recommendation:** The DfE could look at further developing the principle of specific funding through a mechanism similar to the pupil premium for schools that have more than the average number of SEN pupils on role or through enhancing the pupil premium. There is an interrelationship between pupil premium funding and SEN, where there is already a crossover of 27% between those eligible for pupil premium funding between SEND and the pupil premium cohort. (DfE 2016)

Sources

- Autistic Society (2017). Autism and education in England 2017. A report by the All Party Parliamentary Group on Autism on how the education system in England works for children and young people on the autism spectrum.
- Barnet (2016) <https://www.barnet.gov.uk/citizen-home/children-young-people-and-families/the-local-offer-and-special-educational-needs/education-in-the-local-offer.html>
- Children and Families Act 2014.
- Contact, National Parent Carer Forums, DfE. (2017) Tenth special educational needs and disability (send) reforms implementation survey for parent carer forums (autumn 2017)
- Council for Disabled Children. (2016) The Local Offer. Provision the local authority expects to be made available by schools, early years and post-16 providers.
- DfE. (2016) Special educational needs: an analysis and summary of data sources.
- DfE (2017 a) Adams, L. Tindle, A. Basran, S. Dobie, S. and Thomson, D. IFF Research; Dr Robinson, D. and Shepherd, C. University of Derby Experiences of Education, Health and Care Plans: A survey of parents and young people Research report March 2017.
- DfE (2017b) Statement of SEN and EHC plans: England, 2017.
- DfE (2017c) Department for Education, Statistical First Release 35/2017, 20 July 2017
- DfE (2018) Statements of SEN and EHC plans: England, May 2018.
- Lamb, B. (2009) Lamb Inquiry, Special Educational Needs and Parental Confidence. DCFS.
- Lamb, B. (2013) How will accountability work in the new SEND legislative system? Journal of Research in Special Educational Needs 15(1), August 2013.
- Lamb, B. (2017) □Achieving best value from your Pupil Premium allocations. Every Child Journal. Vol 6.1
- Lamb, B. (2018) The SEND Reforms and Parental Confidence: are the reforms achieving greater parental confidence in the SEND system? JORSEN 2018.
- Lamb, B. Allison, M. (2018) Regional commissioning for low-incidence, high-need children with SEND. DfE/NatSIP.
- Lenahan, C. Geraghty, M. (2017) Good intentions, good enough? A review of the experiences and outcomes of children and young people in residential special schools and colleges.
- Ministry of Justice. (2017) Tribunal and gender recognition certificate statistics quarterly – July to September 2017: SEND Tribunal tables 2016 to 2017.
- National Audit Office (2018) Financial sustainability of local authorities 2018.
- Panayiotou, S. et al. (2017), Omnibus survey of pupils and their parents/carers Research report Wave 1 January 2017. DfE.
- Parent Carer Forum. June (2016) Seventh special educational needs and disability (SEND) implementation survey for parent carer forums.
- Portsmouth (2016) <http://www.portsmouthlocaloffer.org/local-offer-search/item/296>
- OFSTED (2017) Local Area Inspections One Year On.
- Pinney, A, (2017) Understanding the needs of disabled children with complex needs or life-limiting conditions: What can we learn from national data? Council for Disabled Children 2017
- SEND Direct. State of the Nation (2016)

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