

# **Special Educational Needs: separation of assessment of need from funding of provision**

**Education and Skills Committee**

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# Memorandum submitted by the Audit Commission

## Executive Summary

- 1 The Audit Commission welcomes the Select Committee's focus on the assessment and funding of special educational needs (SEN) and is pleased to submit evidence for the Committee's consideration.
- 2 This submission addresses the questions posed in the Committee's call for evidence about the separation of assessment from the funding of SEN provision. In considering them, it takes into account:
  - the nature of SEN assessment;
  - the fact that aspects of the SEN framework are interdependent; and
  - the reality that councils need to balance local interests.
- 3 It is the Commission's view that local authorities do not have an inherent conflict of interest when assessing and funding SEN. Rather, it is more accurate to describe the role of the council and its partners in terms of balancing local interests, which is at the heart of all public sector decision-making.
- 4 In particular, our submission refers to the current development of Children's Trusts within all areas, whose role is to represent the interests of local children and young people and to commission integrated services that meet their needs holistically. The proposal to assess SEN separately from other needs would not be consistent with this integrated approach. Establishing separate systems of needs assessment in parallel to the Children's Trust would involve duplication of effort and additional complexity.
- 5 We suggest that Children's Trusts should ultimately take responsibility for both assessing the additional needs - including SEN - of children and young people and for commissioning suitable provision to meet those needs.
- 6 We also propose a number of changes and developments to current arrangements that would help support parents and reassure them about local assessment and decision making processes.

## Recommendations

***The Commission recommends that the government, in partnership with local government, should***

- R1 Provide national advice on what works in SEN based on the model adopted by the National Institute of Clinical Excellence (NICE).*
- R2 Update guidance on statutory assessment advice to all agencies to ensure that professional advice is outcome-based in line with the Every Child Matters framework and that advice is underpinned by the evidence base derived from established research wherever possible. Where advice is based only on professional opinion this should be stated.*
- R3 Update the Educational Needs and Disability Tribunal (SENDIST) with similar guidance and ensure that the Tribunal sets its decisions within the context of the duty on local areas to make the best use of their resources.*
- R4 Ensure a sufficient supply of parent partnership support and educational psychology support at an early stage to help parents understand the needs of their child and to support these needs effectively.*
- R5 At the earliest opportunity, develop Children's Trusts in all areas to include arrangements for the holistic assessment of special educational and other needs.*
- R6 Ensure that all Children's Trusts establish pooled budgets for SEN and additional needs, including all local resources for therapies; Child and Adolescent Mental Health Services (CAMHS); and respite provision to support flexible commissioning.*
- R7 Ensure that all Children's Trusts include effective parental representation, including those parents who are users of SEN services.*

## Introduction

### **The Commission's interest in SEN**

- 7 Educational outcomes underpin the economic well-being and quality of life of individuals and the communities in which they live. Children with SEN have learning difficulties or disabilities that require special arrangements to be made for them. Some children's learning difficulties can be overcome. For other children, special arrangements need to be made throughout and beyond their schooling. Pupils with SEN are not a homogeneous group and assessment helps to determine both the extent of the local authority's responsibilities to the child and a proportionate response to identified need by way of SEN provision.
- 8 SEN is of particular interest to the Commission because we have a responsibility to ensure that public money is spent economically, efficiently and effectively to

achieve high quality local services for the public. The topic under discussion is highly relevant to our five current strategic objectives, which are:

- to raise standards of financial management and financial reporting;
- to challenge public bodies to deliver better value for money;
- to encourage continual improvement in public services so they meet the changing needs of diverse communities and provide fair access for all;
- to promote high standards of governance and accountability; and
- to stimulate significant improvement in the quality of data and the use of information by decision makers.

- 9 In particular, as part of our Comprehensive Performance Assessment, the Commission has a statutory responsibility to undertake annual use of resources assessments of councils, which include assessments of financial standing, financial management, value for money, financial reporting and internal control. We also work alongside other inspectorates and commissions on joint area review inspections of children's services. In these we are most heavily involved in the service management focus of the inspection and consequently look at value for money and areas of high spend such as SEN.
- 10 Spending on SEN is high and rising. Local authority expenditure on SEN has increased from £2.8 billion to £4.5 billion over the last 5 years (Ref 1). Funding for SEN in mainstream schools has risen by 43 per cent from 2003/04 to 2006/07. (Ref 2). What is not clear is the extent to which this additional funding has delivered improvements in services and, in particular, improved educational outcomes for children and young people. Currently, value added data on SEN outcomes is not comprehensively available for local or national cohorts and there is limited evidence about the effectiveness of provision linked to expenditure in the literature.
- 11 The Commission's annual auditor briefings identify significant business risks in councils for the purposes of audit planning. As long ago as 2002/03, SEN was identified as an area of particular risk for local government and recent inspection and performance work suggests that little has changed:
- SEN is a frequent area of overspending for LEAs. It is the biggest area of expenditure on education under LEAs' direct control but it is an area in which there are often significant overspends'*
- (Audit Commission 2002) (Ref 3)*
- 12 Our interest in SEN and the problems faced by local councils in managing SEN prompted our national studies *Statutory assessment and statements of SEN: In need of review* (2002) (Ref 4) and *Special educational needs - a mainstream issue* (2002) (Ref 5).
- 13 The Select Committee may be aware of the content of these reports. However, we believe that it is worth reiterating those conclusions that are most relevant to the issues under discussion and we do so in our detailed response below.

- 14 More recently, the Commission reported in its study *Out of authority placements for pupils with special educational needs* (2007) (Ref 6) that English councils spend around £500 million on out of authority placements annually, an increase of 79 per cent since 2001/02.
- 15 The Commission is currently developing a toolkit to support value for money in school provision for pupils with SEN and additional needs. This is planned to be available by spring 2008.

## Detailed response

### SEN assessment

- 16 The original intention of the 1978 Warnock Report (Ref 7) and the 1981 Education Act was that local authorities would be responsible for supporting the SEN of around 2 per cent of children and young people. However, in 2005 the proportion of children with statements of SEN was about 3 per cent nationally, which suggests that local authorities were accepting responsibility for a larger proportion of children and young people than had originally been anticipated. In 2005/06 this one percentage point difference equated to approximately 77,000 pupils. If a conflict of interest exists between the local authority's duty both to assess and meet the needs of children with SEN, it has not resulted in fewer children being assessed and statemented than was originally intended.
- 17 About half of all appeals made to the Special Educational Needs and Disability Tribunal (SENDIST) involve local authorities' refusal to assess. Thresholds for statutory assessment are not clearly defined within the SEN framework and so the appeal process is helpful in testing and determining eligibility in those cases where this is in dispute.
- 18 In our 2002 report *Statutory assessment and statements of SEN: in need of review?* (Ref 4) we concluded that statutory assessment was a costly, bureaucratic and unresponsive process that may add little value in helping to meet a child's needs. We noted that children who receive a statutory assessment are usually already well known to services and that the information garnered through the assessment often adds little to what is known already. We recommended that advice on children's needs should be provided at an early stage without having to go through a bureaucratic process. We also made the point that if schools held most SEN resources in their own budgets, they would have every incentive to take action to address a child's needs at the earliest opportunity, without seeking a statutory assessment, with the benefit that early intervention may pre-empt the need for later, more costly intervention. We are aware that the government has responded to many of our recommendations through its current policy 'Removing barriers to achievement' (Ref 8) and that the impact of this policy has not yet been demonstrated fully.
- 19 A wide variation in rates of statementing across councils has been reported by the Select Committee, reflecting different strategic approaches to management. However, we believe that it would be inaccurate to equate this with variation in access to suitable provision. Indeed, lower rates of statementing may be

associated with earlier intervention and higher levels of confidence on the part of parents and schools in the provision made available to pupils. Lower rates of statementing may also reflect good practice.

- 20 The statutory assessments undertaken by local authorities are multi-agency assessments that draw on the expertise and knowledge of people outside the local authority including, where reasonable, those whom the parents have named. This means that the majority of the advice provided to the local authority may be entirely independent of it.
- 21 Assessments of children are most appropriately undertaken by people who are known to the child in familiar settings and who have a knowledge of the context in which the child learns and the child's history of learning and need. Currently, the child's teachers; the educational psychologist involved with the child's learning; therapists who have been directly involved with the child and their family; all provide advice and identify need based on their experience with the child at that time. Children's needs are not fixed but can change quite quickly. Separating the assessment of children from the day to day interventions made by support services would tend to undermine the flexibility of staff to respond appropriately to need.
- 22 If the responsibility for assessment was to be held by a separate agency, it is not clear which professionals would undertake the assessments – those who have been working closely with the child or a different, more independent group. Many of the professionals currently involved are in short supply; if they were to be diverted into purely assessment roles, this would reduce further the amount of time for therapeutic intervention that may be key to children's progress.
- 23 The advice provided through statutory assessments is required to focus on the identification of need rather than on provision, with the local authority determining provision in consultation with parents. What these assessments are not delivering reliably at the current time is robust, evidence-based information about what is likely to work, in terms of types and amounts of provision, to achieve targeted outcomes with reference to reported research.
- 24 Within the field of SEN itself there is a lack of evidence about effective, and cost-effective, practice. For example, there is no equivalent of the National Institute for Clinical Excellence (NICE), through which service users or providers are able to identify best practice, although NICE does advise on some aspects of children's mental health, including depression and attention deficit hyperactivity disorder (ADHD). This means that significant decisions rely on the judgement of the local authority's SEN officers.

***Recommendation 1: The government should provide national advice on what works in SEN based on the model adopted by the National Institute of Clinical Excellence (NICE).***

- 25 Local authorities are required to meet all of the child's SEN but there is a lack of clarity in guidance about whether provision is required to meet the needs adequately, moderately well or to the highest standards. This means that there is too much scope for debate about how needs might be met, with the greater

likelihood— perhaps especially on the part of parents – of assuming that more costly provisions are more likely to achieve the best outcomes.

- 26 Therefore, it is the translation of assessment advice into provision that is likely to bring the local authority into conflict with parents, particularly where the authority believes that the child's level of identified need does not warrant the level of provision that parents are seeking. However, in the vast majority of cases, parents agree with the local authority's offer. Numbers of appeals to SENDIST have been levelling off and our 2007 report, *Out of authority placements for pupils with special educational needs (Ref 6)*, found that there is no obvious relationship between the number of appeals within a local authority and the relative socio-economic status of its pupils. We believe that the evidence does not support the view that only better off parents make use of the appeal system or that more parents would appeal if they could.
- 27 Since the publication of the current SEN Code of Practice and the government's key SEN policy, Every Child Matters, and the Children Act 2004, there has been an outcome focused agenda for children with significant implications for the management of SEN. In particular, the new integrated approach to service delivery requires holistic assessments of need in relation to the outcomes framework: being healthy; being safe; enjoying and achieving; making a personal contribution; and achieving economic well-being. These developments reflect the observation from our 2002 report *Statutory assessment and statements of SEN: in need of review? (Ref 4)* that unified children's services, with a shared budget, would create the potential for more joined-up planning. Much of the evidence offered to the Select Committee on SEN in September 2005 reflected the experience of parents and others during a period before the full implementation of the Every Child Matters agenda.
- 28 A way forward for SEN assessment is to ensure that it is integrated fully in a holistic assessment of need based on the five outcomes and requiring those who provide advice to base it on established evidence about what works. National guidance about what works in SEN and additional needs would assist professionals, parents, commissioners and the SENDIST in forming more reliably evidence-based judgements about how best to meet identified need.

**Recommendation 2:** *The government should update guidance on statutory assessment advice to all agencies to ensure that professional advice is outcome based in line with the Every Child Matters framework and that advice is underpinned by the evidence base derived from established research wherever possible. Where advice is based only on professional opinion this should be stated.*

**Recommendation 3:** *The government should update the Educational Needs and Disability Tribunal (SENDIST) with similar guidance and ensure that the Tribunal sets its decisions within the context of the duty on local areas to make the best use of their resources.*

- 29 We noted in our 2002 report *Statutory assessment and statements of SEN: in need of review? (Ref 4)* that most parents valued the support they received from

parent partnership services. However, most parents had not found out about them until their child was undergoing statutory assessment, by which time their relationship with the school and the local authority had often broken down.

- 30 It is also worth noting that educational psychologists (EPs), who have a statutory role in assessing the SEN of children and young people, are directly employed by the local authority and in many areas have the majority of their time allocated to - and to some extent controlled by - schools. Evidence suggests that they are seen as less than fully independent in the key advice they give to the local authority on the needs of individual children.
- 31 In a recent review of their role by DfES (Ref 9), it was recommended that EPs should continue to have a key role in the statutory assessment of children with the most complex needs. However, the amount of time traditionally spent on SEN statutory assessments was not viewed as a good use of resources. The importance of community based work, including work with parents, was highlighted in the report.
- 32 In the case of both the parent partnership service and EPs, direct employment of these groups by the Children's Trust would help to increase the trust of parents in the integrity of the advice and support provided locally. In the case of EPs, parents as well as schools could be provided with a proper focus of attention and support at an early stage. However, this direct employment of staff would only be possible if the Trust were set up as an entity and currently most, if not all, are partnerships of organisations that will continue to employ their own staff.

***Recommendation 4:*** *The government, in partnership with local government, should ensure a sufficient supply of parent partnership support and educational psychology support at an early stage to help parents understand the needs of their child and to support these needs effectively.*

### **Aspects of the SEN framework are interdependent**

- 33 The SEN framework is a complex system of interconnected responsibilities and processes. Adjusting a single aspect of the framework risks predictable and less predictable negative consequences and fails to address all of the difficult issues.
- 34 For example, in order to achieve earlier intervention, some local authorities, in consultation with schools, have delegated high levels of funding for SEN to schools and school clusters. There tend to be fewer statutory assessments in these areas as statements do not generate additional funding for schools. The establishment of an agency that is independent of the authority and other local arrangements to undertake assessment at these local authorities might be expected to generate higher proportions of statements and could result in the double funding of SEN by the local authority.
- 35 What really matters in meeting SEN is the educational experience of the child in school. For this reason, it is important that schools have sufficient resources and motivation to respond early and flexibly to individual need.

- 36 Formula funding for SEN within school budgets has risen significantly over the years. In 2005/06, mainstream schools received about £2 billion. All local authorities are expected to issue guidelines on the additional support schools should provide for pupils under the SEN Code of Practice. However, as we pointed out in our 2002 report *Statutory assessment and statements of SEN: in need of review?* (Ref 4) monitoring and challenging schools' work with children who have SEN has been in urgent need of development to ensure that schools are properly held to account for the use of resources they receive. There is little evidence of significant change in this position and a perverse incentive continues to operate. If schools provide little support and pupils with SEN fall further behind, their level of need will eventually meet the threshold for a statement and additional funding from the local authority. It is not clear whether the proposed assessment agency would be in a position to challenge schools' use of SEN resources or their history of support for individual pupils.
- 37 Multi-agency assessments enable children's needs to be identified in the round. Some of these needs – for example, speech and language needs – might be considered medical in origin rather than educational. However, case law has tended to interpret SEN in relatively broad terms and local authorities have found themselves responsible for providing therapy for some pupils.
- 38 Our 2002 report *Statutory assessment and statements of SEN: in need of review?* (Ref 4) recommended that government departments should consider how all relevant agencies may be held to account for their part in meeting children's SEN. This was based on our finding that gaps and shortfalls in health and social service provision that had been specified in statements were resulting in children not getting the support they needed. Our 2007 report, *Out of authority placements for pupils with special educational needs* (Ref 6), found that while strategic planning for the education of children with SEN had improved, a lack of integrated support for children and families had led to demand for costly residential provision in many areas:

*Non-educational support for children and their families may make the difference between keeping a child at home and making a residential placement. There were long-standing shortages of speech and language therapy, occupational therapy, mental health support and respite care in all the authorities visited. There is a widespread lack of respite care for families with children and young people with aggressive or hard-to-manage behaviour, which often leads to a residential out of authority placement. Cross-agency support for mental health needs is weak. There are no common criteria to establish health and social care liability for mental health support and provision of Child and Adolescent Mental Health Services (CAMHS) is insufficient to meet the needs of the children on which our study focused.*

- 39 Setting up an independent assessment agency is unlikely to result in the greater availability of local provision across agencies. Indeed, there is a danger that it would work against the commissioning role of the Children's Trust. We therefore would wish to see both the assessment and funding of SEN as part of the work of the Trust. Indeed, withdrawing the SEN assessment function from the local

authority and establishing a comprehensive assessment function for children within the Trust, with an associated pooled budget for provision, would encourage inter-agency collaboration, promote consistency of approach and provide the existing, accountable body the Select Committee seeks to carry out the assessment function. The local Children's Trust draws together, in partnership, all of the local agencies, including the area's maintained schools, to provide a coordinated vision and strategy for local children. Indeed, key shortcomings of the SEN framework, which we identified in *Statutory assessment and statements of SEN: in need of review?* (Ref 4) can be addressed by Children's Trust arrangements. Moreover, the Trust is not only expected to consult widely with local children and young people, parents and carers and other stakeholders, it is expected to have proper representation of children and young people, parents and carers and service users within its governance arrangements.

- 40 The Children's Trust is, therefore, the obvious location for an assessment function that focuses on meeting the needs of the child within the local context of provision, making best use of all available resources with accountability to local people through the established democratic system.

**Recommendation 5:** *Local government should, at the earliest opportunity, develop Children's Trusts in all areas to include arrangements for the holistic assessment of special educational and other needs.*

**Recommendation 6:** *Local government should ensure that all Children's Trusts establish pooled budgets for SEN and additional needs quickly, including all local resources for therapies, CAMHS and respite provision to support flexible commissioning.*

**Recommendation 7:** *Local government should ensure that all Children's Trusts include effective parental representation, including those parents who are users of SEN services.*

## **Councils have to balance local interests**

- 41 The Select Committee's recommendation implies that children are not getting the level of support that they should have and that by separating assessment of need from the funding of provision, a higher level of support will be achieved.
- 42 The consequence of this is likely to be that more resources will be spent on SEN than is currently the case. However, there is no evidence that local or national taxpayers have an appetite to fund SEN more generously than at present.
- 43 One of the concerns highlighted by *Statutory assessment and statements of SEN: in need of review?* (Ref 4) was that children with similar needs sometimes receive different levels and types of provision for dubious reasons - including pressure from some parents supported by Independent Parental Supporters and other advocates. These are often members of special interest groups whose agenda includes raising the profile of particular types of need, such as autism.

- 44 Our report highlighted the stressful experience of parents whose children were undergoing statutory assessment and the sense they had of needing to fight to have their child's needs recognised and supported. Parents complained about poor communication between professionals in different services as well as insensitive dealings with professionals during assessment. Many parents also said that they learnt nothing new at the end of the assessment process and some said that little changed as a result of it.
- 45 Many parents remain optimistic about the likely potential of some provision to transform their child's learning difficulties. As a consequence, expectations of what the local authority should provide may be very high indeed. Many parents will be well-informed about alternative provision, its costs and its claims. In the absence of reliable evidence about what works, they may have little objective information on which to base their preference. It is easy to understand how high cost may be equated with best practice and how the local authority may be seen as the barrier to accessing support.
- 46 The findings of our 2007 report, *Out of authority placements for pupils with special educational needs (Ref 6)*, suggest that appeals to SENDIST by parents do influence decisions on out of authority placements. The cost of this provision tends to be relatively high. In 2006, the average cost of placing a pupil in an out of authority school was estimated to be £57,150 per annum. However, the additional cost to the council, together with the delay of fighting an appeal through the Tribunal, often leads to early decisions made in the parents' favour. Sixty five per cent of tribunal cases nationally are withdrawn or conceded before a hearing.
- 47 In 2005/06, 60 per cent of the appeals involving school placement resulted in parents obtaining an order for the school of their choice. In the mainstream area, 51 per cent were independent schools or academies. In the special school choices, 65 per cent of appeals seeking independent schools and 65 per cent of appeals seeking non-maintained placements were successful. It is not clear from the report why in such a high proportion of cases, non-special independent school choices were preferred for children with severe and complex special educational needs. A lack of follow-up data means that it is not possible to judge how successful these placements have been.
- 48 Fifty five per cent of appeals about school placements in 2004/05 were for places in out of authority special schools and 59 per cent were successful. Responses to our 2007 survey of local authorities, for the out of authority placements report, suggest that appeals are quite influential in determining out of authority placements. Evidence indicates that 14 per cent of new out of authority placements in 2004/05 were made as a result of an appeal.

**Table 1** **Contrasting perspectives**

Parents have to negotiate contrasting perspectives and sometimes conflicting conceptual frameworks in coming to their decisions about how best to meet their child's needs

<b>Contrasting perspectives</b>	
Medical model: difficulties lie within the child to the extent that they are disabled in comparison with able children	Social model: non-inclusive settings present barriers to some children whose diverse needs are not adequately catered for - it is the setting that disables the child
Diagnostic assessment: identifies a range of difficulties and labels these to provide a means of grouping children with similar problems - for example ADHD. It then follows that such groups should be prescribed specific provision to reduce or overcome their symptomatic difficulties	Functional assessment: identifies what an individual child can do well or less well in relation to important and meaningful activity in their everyday lives. Provision is then designed to help them take next steps.
Maximum intervention: providing as much help as practicable, or the most intensive help, with the idea of overcoming a difficulty as quickly as possible	Proportionate intervention: identifying the minimum support necessary to enable children to function independently or to take the next step
Specialist provision: children with SEN have significantly different needs from their peers that require highly specialised settings and interventions	Inclusive provision: children with SEN have many features and needs in common with others and are disadvantaged by exclusion from mainstream settings

- 49 In one London borough that we visited, there was an active campaigning group that encouraged parents to go straight to the SENDIST and this was linked with a high level of appeals – but this was unusual. The councils with lower levels of tribunal appeals tended to be those where good communication with parents was a priority. However, there was little indication from the case files of children with Autistic Spectrum Disorder or Behaviour Emotional and Social Difficulties that tribunals were particularly influential in determining the majority of these out of authority placements. It seems that local authorities are prepared to make relatively expensive provision available to young people without parental pressure where this is deemed to be necessary.
- 50 Unforeseen SEN expenditure creates potentially unmanageable financial pressures. Just a small number of high value placements can result in severe budget pressures. The need to achieve overall balance may impact on service plans in other areas of council activity, and this can undermine local democratic

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planning processes through which resources are directed at priorities agreed with local residents.

- 51 Councils are held to account for their performance in achieving and improving value for money, including through the annual use of resources assessment, which forms part of the Commission's Comprehensive Performance Assessment. Councils are expected to commission services, including SEN provision, strategically, basing procurement decisions on market knowledge and supporting the development of cost-effective provision to meet projected need.
- 52 The establishment of a separate assessment agency might undermine this strategic approach; encourage less economic, individual spot purchasing of provision; and restrict the council's, and the local partnership's, capacity to deliver value for money.
- 53 It is the Commission's view that there is no conflict of interest inherent in the local authority's duties. Rather, it is more accurate to describe the role of the council and its partners in terms of balancing local interests. This is at the heart of all public sector decision making. Across service areas, councils routinely both assess against eligibility criteria and make provision, in every case deploying finite resources to this end. For example, councils have a duty both to identify children who need to be protected through a care order and to make suitable provision for these children. In health, decisions about which treatments can be afforded are a necessary part of good management. The decisions made by local government managers and elected members need to take account not only of the needs and preferences of individual service users, but also of the likely effectiveness of provision and therefore the value for money it represents. They need to take account of other actual and potential service users as well as the wishes of the public at large, to whom they are accountable, and over whose money they exercise stewardship.

## References

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- 2 Jim Knight MP; (Minister of State, DfES); House of Commons adjournment debate on speech and language difficulties; 28 November 2006;
- 3 Audit Commission - National Risk Assessment Tool; 2002
- 4 Audit Commission - Statutory assessment and statements of SEN: In need of review; November 2002
- 5 Audit Commission - Special Educational Needs: a mainstream issue; November 2002
- 6 Audit Commission - Out of Area Placements for Special Educational Needs; February 2007
- 7 Committee of Enquiry into the Education of Handicapped Children and Young People Special educational needs: report, March 1978
- 8 Department for Education and Skills, Removing Barriers to Achievement: The Government's Strategy for SEN, February 2004
- 9 Department for Education and Skills - A review of the functions and contribution of educational psychologists in England and Wales in light of Every Child Matters: Change for Children, research report RR792; 2006