

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## EDUCATION BILL

*Ninth Sitting*

*Tuesday 15 March 2011*

*(Morning)*

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Written evidence reported to the House.

CLAUSE 4 under consideration when the Committee adjourned till this day at Four o'clock.

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**The Committee consisted of the following Members:**

*Chairs:* †MR CHARLES WALKER, HYWEL WILLIAMS

- |  |  |
|--|--|
| † Boles, Nick ( <i>Grantham and Stamford</i> ) (Con)                                     | † Hendrick, Mark ( <i>Preston</i> ) (Lab/Co-op)              |
| † Brennan, Kevin ( <i>Cardiff West</i> ) (Lab)   | † Hilling, Julie ( <i>Bolton West</i> ) (Lab)                |
| † Creasy, Stella ( <i>Walthamstow</i> ) (Lab/Co-op)                                      | † McPartland, Stephen ( <i>Stevenage</i> ) (Con)             |
| † Duddridge, James ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                | † Munn, Meg ( <i>Sheffield, Heeley</i> ) (Lab/Co-op)         |
| † Durkan, Mark ( <i>Foyle</i> ) (SDLP)   | † Munt, Tessa ( <i>Wells</i> ) (LD)                          |
| † Fuller, Richard ( <i>Bedford</i> ) (Con)   | † Rogerson, Dan ( <i>North Cornwall</i> ) (LD)               |
| † Gibb, Mr Nick ( <i>Minister of State, Department for Education</i> )                   | † Stuart, Mr Graham ( <i>Beverley and Holderness</i> ) (Con) |
| † Glass, Pat ( <i>North West Durham</i> ) (Lab)  | † Wright, Mr Iain ( <i>Hartlepool</i> ) (Lab)                |
| † Gyimah, Mr Sam ( <i>East Surrey</i> ) (Con)  |  |
| † Hayes, Mr John ( <i>Minister for Further Education, Skills and Lifelong Learning</i> ) |  |
- Sarah Thatcher, Richard Ward, *Committee Clerks*
- † **attended the Committee**

## Public Bill Committee

Tuesday 15 March 2011

(Morning)

[MR CHARLES WALKER *in the Chair*]

### Education Bill

#### Written evidence to be reported to the House

E 54 Catcote School  
E 55 Pinderfields Hospital School  
E 56 British Heart Foundation  
E 57 Brownlow School  
E 58 Cathedral School

#### Clause 4

EXCLUSION OF PUPILS FROM SCHOOLS IN ENGLAND:  
REVIEW

10.30 am

**Stella Creasy** (Walthamstow) (Lab/Co-op): I beg to move amendment 2, in clause 4, page 8, line 18, at end insert

‘The Secretary of State must lay before parliament an annual report on the numbers of students at all schools in England and Wales subject to these powers including details as to whether these pupils have special educational needs, the numbers of times these powers have been exercised and the current status of their schooling provision.’.

**The Chair:** With this it will be convenient to discuss the following: amendment 28, in clause 4, page 9, line 24, at end insert—

‘(9A) Once every school year, the responsible body for each school, and the local authority on behalf of review panels established by them, must publish information on the number of exclusions, whether they were fixed term or permanent, and confirm that the decisions are consistent with their duties under the Equality Act 2010.’.

New clause 2—*Collection of data on serious incidents in schools*—

‘The Secretary of State must annually collect and publish data from a representative sample of schools on the number of serious incidents of misbehaviour in schools, including those which do not result in fixed-term or permanent exclusion.’.

**Stella Creasy:** I am delighted to start the debate with amendment 2. I tabled it before we had sight of the Green Paper on special educational needs. Having now read the Green Paper, I am even more convinced of the importance of outlining the concerns addressed by the amendment and asking the Committee to consider the issues that will occur as a consequence of the Bill and the paper’s stated intention. I want to speak about the worries that the amendment was originally designed to deal with and how I now see the combination of the Green Paper and the Bill exacerbating those worries.

Above all, the amendment reflects something that many hon. Members share an interest in, which is the future of young people not in education, employment or training. Last month showed the highest number of unemployed young people in this country since 1992. Clearly, a good education and training system is critical to overcoming the problems that they will face and ensuring that future generations will not face such problems in attainment.

**Richard Fuller** (Bedford) (Con): The hon. Lady mentioned the number of young people not in education, employment or training. Is she aware of the study that came forward at the weekend saying that comparisons with the early ’90s were a little skewed in relation to the proportion of those out of work, given the increase in the number of those in education and higher education over the past 10 years?

**Stella Creasy:** I have also read that study. It notes the dramatic increase in the number of young people going into education and training, and the fact that the number of young people not in education, training or employment remains fairly stable. That is an interesting phenomenon and is exactly why I am worried about the consequences of the combination of the Bill and the special educational needs Green Paper.

It is important that we talk about NEETs. We understand that there is a variation within that 10% of young people. There are three different categories of young people: first, those on gap years or who are volunteering. It is important for us to differentiate between those in terms of their future opportunities, and other young people whom we have concerns about. Secondly, there are those young people who have a serious identifiable barrier to participation, such as the severely disabled. They need help to overcome those barriers, which is entirely possible with the right help.

I am particularly worried about the third category of young people whom the Bill could create more problems for in the future. Those who have no identifiable barrier to participation make up two thirds of NEETs. Of that group, 85,000 are young men. A generation of young people are not connecting with available education, employment or training offers. We all recognise that getting that right has huge social benefits for us all. For me, that group mirrors the number and nature of young people who are excluded from the school system.

**Richard Fuller:** I had the opportunity on Friday to visit one of the training organisations in my constituency that deals with young people beyond school age aged 17 and 18 who are not in employment or training. We discussed issues to do with family structure and the impact of being in households where no parent had ever worked. Does the hon. Lady accept that that also is an issue to bear in mind as we debate this part of the Bill?

**Stella Creasy:** It is clear that the young people whom we are talking about this morning and who are at most risk of exclusion are often those with a multiple range of needs and concerns. That is precisely why I am so worried about the implications of the combination of the special educational needs Green Paper and the Bill. I hope that the hon. Gentleman will let me progress, and I shall explain why I am so concerned.

Exclusion is a tool that schools do not use lightly, but it is a tool that is being used. We know that 6,500 pupils have been permanently excluded and more than 300,000 young people have faced fixed-term exclusions from secondary schools, 39,000 from primary schools and 15,000 from special schools in the past year alone. It is important to unpick precisely who those young people are. As I have already said, young men feature more than young girls, although that is changing. The peak age is around 13 or 14, so we are dealing with young people who are making the transition to adulthood. By that age, they are facing a number of challenges, which may come from their home life, but may also come from their schooling.

I am particularly concerned about the huge overlap between the group of young people who are excluded and the group who have special educational needs. Pupils with special educational needs are eight times more likely to be excluded than children without special educational needs. In the broader category of special educational needs, not only those with statements but those with a school action plus are 20 times more likely to receive a permanent exclusion from school than those with no statement or no school action plus. It is a very large group of young people. Their behaviour and experience in school may have serious ramifications not only for their schooling but for their future life chances as well.

**Kevin Brennan** (Cardiff West) (Lab): My hon. Friend mentioned suspensions, or temporary exclusions. Is she worried that the provisions might lead to even more permanent exclusions? In February 2009, the Schools Minister told the *News of the World*:

“Suspending children instead of expelling them means they don’t get specialist help to get back on the straight and narrow.”  
Is she worried that that might indicate a preference for permanent exclusion over temporary suspension, where that might be appropriate, with the right support?

**Stella Creasy:** My hon. Friend prefigures my argument about the Bill and combining the proposals in the special educational needs Green Paper. That is why I tabled the amendment, in which I hope Government Members might see some merit. As I have said, there is an overlap between the children who are excluded from school and the young people with special educational needs. Indeed, the Department for Education’s statistics confirm that the primary need of most excluded children with special educational needs are of an emotional, social and behavioural nature. They are the young people who are on the school action plus programmes and who may not have a statement.

**The Minister for Further Education, Skills and Lifelong Learning (Mr John Hayes):** There has been a steady growth in the number of children with emotional and behavioural difficulties who are both statemented and excluded. Has the hon. Lady drawn any parallel between that and autism?

**Stella Creasy:** That is an interesting point.

**Pat Glass** (North West Durham) (Lab): I did some significant work in that area some years ago. In the authority that I worked in, I found that 70% of the children who were permanently excluded were on the SEN register, and they were all diagnosed with either

attention deficit hyperactivity disorder, emotional and behavioural difficulties or autistic spectrum disorders. I subsequently did some work on clinical guidance for ADHD with the health authority. We found that a child’s diagnosis of ADHD, ASD or dyslexia very much depends on the clinician that they see, and there are hot spots around certain clinicians. This is a very variable picture.

**Stella Creasy:** It is always fantastic to serve on a Committee with people who have a huge wealth of experience of the practical realities of trying to work with young people. I am grateful to my hon. Friend for setting out the point that I was about to make about the interplay between ADHD, autism and mental health issues in young people who are excluded as well as statemented and having school action plus programmes. There are challenges in getting the support right. I do not think anyone can argue that there is one programme that would work with every single one of those young people. It is important to have the ability to work with them in a number of different ways.

There are variations in the ways that young people are supported and in the level of support that they get: whether the intervention is early enough to help head off some of the challenges, or when it come to a point where they need a substantial amount of intervention, whether that is done in the right way. For example, we know that many children wait more than a year to access mental health services such as counselling, which can have severe consequences on some of the challenges that we are dealing with. Parents play a critical role in trying to help such young people. As the Green Paper recognises, many parents find it extremely difficult to find their way through the system and to find the right support for their children. The Green Paper admits that it can be inherently frustrating and confrontational. It also states:

“We know that there is a group of children with SEN who are currently excluded on multiple occasions on a fixed-term basis, and there may be other excluded pupils whose SEN have not yet been identified. Incidents which prompt multiple exclusions will often be an indication that a pupil has underlying difficulties that may not have been correctly identified or met.”

We are dealing with a group of young people who need support to remain in education, which, we know, makes a massive difference. Between half and three quarters of children between the ages of four and 18 who are excluded from schools have significant literacy and numeracy difficulties. When they are excluded, such problems are compounded, so their life chances are worsened as a result.

I have experience of the matter at a local level. I work closely in Walthamstow with a number of groups who work with young people who are statemented or are in school action programmes. When I told one support worker about the Bill and some of its measures, he said:

“I see teenage boys, diagnosed ASD teenagers, being excluded on a monthly basis for inappropriate behaviour at school. In most of the cases I fully support the school as it is essential to follow boundaries in schools and not let students get away with appalling behaviour. However, it’s very important to have a clear structured procedure of what happens to these teenagers after they have been excluded, and in my opinion this is where we fail them and our community as some of them will, as you put it, fall through the gaps.”

**Mr Hayes:** The hon. Lady makes an interesting argument with some passion. We share her sentiments and, certainly, her spirit. I want to get to the bottom of the issue about exclusion, special needs and the character of the particular need. I visited Gosberton House school in my constituency, which I know you will be familiar with, Mr Walker. I mention it because it particularly specialises in children with autism. Are children with complex needs best educated in such a special school? If so, are they less likely to be excluded?

**Stella Creasy:** The Minister asks me to prejudge a group of young people whom I have not met, so I could not make such an assessment. We need a range of provision for young people, and in some instances mainstream schooling can support those with special educational needs; in others, we need specialist provision. The point is to provide services that meet the needs of the young person and to have a process by which such needs are identified early enough to make an appropriate difference.

We must also have the opportunity for a range of provision. One of my concerns about the Bill, and its combination with some of the proposals in the Green Paper, is that the range of options will be reduced. The opportunity of working with a young person to identify the support that they need will be reduced rather than strengthened. I hope that Ministers will reflect on some of the problems that they may inadvertently be creating through the Bill for meeting the aspiration of having a system that identifies early enough the appropriate intervention for young people with complex needs, and emotional and behavioural difficulties.

**Richard Fuller:** I want to go a bit further on the point that my hon. Friend the Minister made. In special schools in my constituency, such as St John's school and others, there is a view that there has been a presumption about including children in mainstream schools and not allowing parents the choice freely to say where their child will go, with all the consequential impacts of that on local financing. On the particular issue of exclusion, does the hon. Lady think that such a presumption in favour of mainstreaming has partly caused the increase in exclusions of children with special educational needs?

10.45 am

**Stella Creasy:** I reject that correlation entirely, because the issue is much more complex. One of the reasons why I tabled the amendment, which is even more pertinent in the light of the Green Paper, is that our ability to track such young people and understand what is happening to them will be reduced by the lack of evidence that we will gather and the lack of focus.

New clause 2, tabled by the hon. Member for Beverley and Holderness, speaks to the same concern about how we identify such young people and ensure that we support them appropriately. I reject, however, the idea that there is a correlation between the increase in the use of exclusion and the increase in identifying special educational needs. We have to have a more informed debate about the nature of special educational needs, and how they will be affected by the Bill. I drafted the amendment precisely to put those issues on the table. I am concerned that a number of factors will create a

perfect storm of challenges for parents of children with special educational needs, whether stated or identified, as a result of the Bill and the Green Paper.

The Green Paper mentions the idea of reducing the number of young people who have their special educational needs identified and are placed on the register. That is an interesting proposal, but it raises several questions about how we track young people who face being educated in challenging circumstances, be that in the home environment or in the school that they live in, and how we untangle such issues. We know that the earlier intervention occurs and the earlier that a focus is made on behaviour, the more cost-effective the support is for the public purse and the more effective it is for the young person, which are two honourable aims.

We also know that the support secured outside the school environment, as much as the support inside it, often makes the difference. That is why I am extremely concerned—I will come on to this later—by clause 30, which will unhook the relationship between the local authority and schools at the point at which schools might wish to draw on a wide range of support networks to deal with challenging behaviour or issues about home life, which I know the hon. Gentleman is concerned about, before they have to consider excluding a child. Although there is an admirable ambition that every young person should receive the support that they need at the appropriate point, the ability of schools to plan for that will be reduced by the core proposals in the Bill.

More specifically, the provisions in the clause on exclusions create an incentive to exclude young people and to look at excluding them earlier in the process. The fear that we might see an increase in exclusions is founded on those provisions, because the Bill will create a financial disincentive for schools to deal with complex needs, for which it can be expensive to provide the desired care and support, and make them more likely to exclude a child and give someone else that challenge.

**Mr Graham Stuart (Beverley and Holderness) (Con):** The hon. Lady is giving a powerful and thoughtful speech. I do not want to take her too far off track, but does she have any thoughts on the relevance of the Government's proposed pilots, in which schools will continue to have responsibility for an excluded child? Will they have any particular impact on those with special educational needs?

**Stella Creasy:** It is an interesting idea, but I am conscious that if the relationship between a child and their school is turned into one about finance alone, a series of perverse incentives is created. For example, educating an excluded child at a pupil referral unit typically costs an extra £15,000, and transfer to a specialist residential units costs upwards of £50,000. For a school that manages its budget, those considerations may well come into play, but all of us would want the best provision for a young person to be the focus of that child's education.

One reason for tabling the amendment is that we currently have no national data to help us understand the educational outcomes of children who go through the process, and what happens to them next. All of us fear what will happen to children who are pushed from pillar to post as a consequence of those financial incentives.

**Mr Stuart:** I have not examined the question or thought it through as much as I would like to, and I hope we will have time to do that in future. To pick up on an earlier point made by the hon. Lady, creating a financial incentive on the school to look at and to manage the cost of the excluded child puts a pressure, which does not exist now, on the school to ensure that it has the most inclusive policies possible and makes the necessary adjustments to reduce the number of children who will ever need to be excluded. I accept the hon. Lady's argument that there are cases in which schools do not do everything that they should, and children are excluded when they should not be.

**Stella Creasy:** The hon. Gentleman attempts to give a generous interpretation of what might happen. The other scenario is that that situation creates an incentive for schools not to take such young people at all, and to operate a back-door selective policy about not taking children coming from challenging backgrounds, who may have behavioural problems that were identified at primary school level, because of fears about the cost implications for its budget or about future scenarios. The situation might be played in either way, which is one of my concerns.

I have tabled the amendment to ask how, if we all recognise that those young people require our support and that there are benefits to society about getting that support right early on, we as parliamentarians will track the consequences of the changes and what happens to these young people without a regular report and a regular focus on them?

**Stephen McPartland (Stevenage) (Con):** The hon. Lady is making a powerful and well-informed argument, but listening to her, I get the impression that the current education system seems to have failed children with SEN. She suggests that they are eight times more likely to be excluded under the current system. Is the focus of the Bill not to improve numeracy and literacy and provide such schools with the behavioural strategies and abilities to work with those children? In my experience, the many special schools in my constituency want children to be able to go into mainstream education. We have a pre-school nursery that tackles autism. I am trying to suggest that the current system has failed children. The Green Paper and the Bill seem to have recognised that and are trying to move on.

**Stella Creasy:** Yet again, Government Members are confusing correlations with causations. I do not accept that the current system is failing young people with SEN, not least because it identifies those young people. It can be argued that the way we support those children and where those support mechanisms are put in place is too patchy. My concern is that the Bill—if the hon. Gentleman shares a concern about SEN, he might see these problems too—will make it harder to get this stuff right, rather than making it easier for professionals or parents. For example, the cuts to local authority services that we are already seeing are putting at risk educational psychologists. Those are key people who work with these young people. Making schools islands will make it harder for each school to access the support networks that will help young people make those transitions.

I tabled an amendment on the relationships with behaviour and attendance partnerships, although it appears not to have been selected. We have to understand that it

is easier for schools to get those relationships right and for local authorities to help support a behaviour strategy across schools if it is possible to move pupils around and to look at where support networks can be best accessed. All that work is put at risk by the Bill, because it takes out the structures that help make that happen.

I also fear what will happen to children in free schools and academies. I know that these are new models, but there are already concerns about academies. It is clear that, where schools are one step removed from that responsibility of dealing with the more difficult children who need that extra support, in certain cases such schools have absented themselves from that responsibility—be that in discouraging children from applying to those schools in the first place, or in challenging their ability to deal with the SEN of those children. I have direct experience of that in my constituency.

**Richard Fuller:** I do not want to contradict the hon. Lady's own evidence, but will she accept that the evidence provided by the representatives of the academies to this Committee did not state that that was the case?

**Stella Creasy:** It was interesting that in the evidence, the representatives said that they had not gone through any tribunals. As I said, I have a different experience. More fundamentally, people in the SEN sector say that such parents are discouraged from applying to academies on their children's behalf. I was struck by what the heads of academies said about the importance of schools being able to join up their work. There is no incentive in the Bill to do that. If anything, because of the way the budgets could work, as the hon. Member for Beverley and Holderness said, there will be a disincentive, because it will be about individual school budgets, rather than the care package that may be put in place to support that young person.

Barnardo's and the NASUWT have expressed concern about the inability to scrutinise the panels that will take on exclusions and examine SEN. Surely, if exclusion is the only option available to a school, it is all the more necessary to ask, "Is this the right action for this young person? What else can we do to support them?" We must not simply pass children from pillar to post, or risk their falling through the cracks and ending up outside of mainstream school provision. There would be a cost in terms of their immediate education, but it would also mean less opportunity for them.

The amendment would allow Parliament to deal directly with three issues, the first of which is the huge overlap between exclusions and SEN, which I have set out. The second is the lack of accountability regarding children who have been excluded. Having recognised the relationship between SEN, challenging behaviour and exclusions, we need more ways of dealing with that early on, rather than leaving it to schools or suggesting that it will be okay because the money will follow the pupil, when in fact, what needs to follow the pupil is care.

The third issue is the variable quality of alternative provision. We all know that more work needs to be done to make the right alternative provision available to deal with these young people. Without such a report or focus, the danger is that we ask local authorities to take such responsibility—they will not have that authority under the Bill—or we ask parents to do so. There is merit in saying that we parliamentarians should support parents in using the report to scrutinise and provide accountability.

[Stella Creasy]

I am concerned that the Green Paper refers to reducing the number of children identified as having special education needs, without specifying whether the number of young people with emotional and behavioural difficulties will decline. The Minister may suggest that Ofsted look at that problem, and I take the point that it could do so on a one-off basis, but because it has been around for a generation it requires more persistent attention. The amendment seeks to find out what persistent attention the Government will pay to young people who have emotional and behavioural difficulties. Wishing that young people with emotional and behavioural difficulties did not exist by not categorising them will not make the problem go away or make their needs disappear.

**Mr Stuart:** The point, which I do not think the hon. Lady is wilfully misunderstanding, is that many children in school action or school action plus are in those categories only because they have not had their needs met at an earlier point. Had they been given appropriate teaching and support, they would not have had to be put in those categories. Many children are stigmatised by SEN and then struggle because teachers have lower aspirations for them. They do not need to be in those categories. What we must do is intervene early and get it right first time. That is the Government's aim in the Green Paper, which is only a Green Paper. The aim is not artificially to classify children in need into a category they do not need to be in, and the hon. Lady should accept that. Whether we can deliver on this is a different matter.

**Stella Creasy:** Again, I think the hon. Gentleman has come up with a series of non sequiturs. It is absolutely right that we intervene early and give support as soon as possible to help young people thrive in education. That, however, does not mean that they will not need support at a later stage in their educational process, or that we should be blind to that problem and to the fact that under the proposals, schools will be more likely—not less—to use exclusion to deal with children with emotional and behavioural difficulties. The Green Paper may inadvertently encourage that and fail to provide identified support to young people by ignoring the fact that there is a series of behavioural difficulties that we need to deal with.

There is also the question of whether schools will be able to access the support they need to deal with those children in the way the hon. Member for Beverley and Holderness intends. If they do not have a relationship with their local authority or local health care services, and they are then expected to manage the problem on their own, they may not have the experience or relationships to access support. At the moment, those support networks are coming together, but all too often they are doing so around local authorities, rather than as a national programme. My amendment tries to get to the bottom of how we might secure that, and of how, in this world of breaking up such relationships, that is likely to happen. The biggest non sequitur involves the ambition set out in the Green Paper—the joined-up service that parents will be able to access—and an Education Bill that seeks to centralise decision-making power in the hands of the Secretary of State or head teachers, rather than building the partnerships to make that ambition happen.

The amendment takes into account those factors and reveals the complicated debate that lies beneath the tip of this iceberg. I know that many Government Members are concerned about provision, but I hope they will accept that Opposition Members have grave concerns about the Bill and the Green Paper's implications for a group of young people who—without our care and concern, without that national focus—may fall through the cracks of the system that is being created.

11 am

**Mr Stuart:** It is a great pleasure to serve under your chairmanship again, Mr Walker, and a pleasure to follow the passionate and well-informed speech of the hon. Member for Walthamstow, despite the fact that she attributed non sequiturs to me and then enunciated none. I do not think there were any non sequiturs in my comments. It is certainly not a non sequitur to say that if we intervene early and address a child's needs early on, we can eliminate the need to categorise them as having special educational needs. The Select Committee evidence shows that we can do that. There is no need to categorise 21% of children as having special educational needs, and that is not normally disputed. It is about getting it right first time, so that SEN categorisation does not have to be sought in order to get the teaching, support and curriculum provision we would expect in the first place.

I hope I was not guilty of a non sequitur. I respect many of the hon. Lady's points. She is right to talk about the potential impact of the Education Bill and the Green Paper's implications for the most vulnerable children in our system. With greater autonomy must come greater transparency. My amendments seek to ensure that we have the best possible visibility of what is going on in the system. If people are given autonomy and trust, let us ensure that we can see clearly what is happening. Let us see which children are being excluded. Such information is important so that we can hold the system and individual institutions to account.

I will address most of my remarks to new clause 2, which requires the Secretary of State annually to collect and publish data from a representative sample of schools on the number of serious incidents of misbehaviour in schools, including those which do not result in fixed-term or permanent exclusion. The new clause is not asking for a comprehensive collection of data from every single institution in the land: it is saying that, in the light of the findings of the Select Committee's behaviour and discipline inquiry, a sample should be taken. The Committee had a difficult time in forming a view of standards of behaviour in our schools, both currently and over time. It was hard to judge whether behaviour had got worse or better—whether there is more or less low-level antisocial behaviour now than there was, say, 10 or 20 years ago. It is important to have some idea of standards of behaviour across the school system as a whole—perhaps all the more so when we recover greater autonomy and trust at the front line, rely more on the frameworks we set up and hope that we have understood and thought through any perverse incentives they may provide. We need to ensure that we monitor what happens thereafter to check that it works.

**Kevin Brennan:** Does the hon. Gentleman agree that one thing that might be helpful in keeping track of that, at least in part, would be for schools to record any incidents where teachers had to restrain pupils?

**Mr Stuart:** The hon. Gentleman makes a fair point. My own feeling is that where such intervention takes place, we need to ensure that we record it. The Government are rightly cautious, going one step at a time, as one does with all regulation. Such regulations—be they on health and safety or anything else—add up to an oppressive burden on organisations, even though individually, they always sound quite reasonable. I would be nervous about prescribing precisely what each school must record about every incident, but I take the hon. Gentleman's point. As greater autonomy is enabled and we try to stop the over-regulation—there has indeed been too much prescription—we do not want to reach the point where there is no transparency of performance. The balance must be right, and it is that balance which we are considering.

**Tessa Munt (Wells) (LD):** Every school has an incident book, which would surely be the right place to record any occasion when the use of restraint was needed. That is already in place and there seems no point in introducing anything else.

**Mr Stuart:** The hon. Lady is correct. The point of my new clause is to collect data. I would like the Government to consider this issue, and to ensure that we have the picture of the state of behaviour in our schools which we are currently unable to get. Whether we could rely on schools' existing records—whether they are sufficiently consistent, and sufficiently available, to allow that sampling exercise to provide the true picture—I am not sure. That needs to be looked into.

**Mr Iain Wright (Hartlepool) (Lab):** What does a “representative sample” of schools look like?

**Mr Stuart:** It is a mix of schools that reflects the overall provision of schools throughout the country. That is what a sample usually means—unless the hon. Gentleman has particular statistical advice to give to the Committee.

**Mr Wright:** I am not a statistician; I am much sexier than that—I am a chartered accountant. Is the hon. Gentleman suggesting that, under new clause 2, such a sample could be 10% or 20% of schools?

**Mr Stuart:** All too often, we stray from saying what needs to happen to prescribing precisely how it should happen. If we laid down in law how such a result needed to be delivered and then the expert statisticians—even the sexy hon. Gentleman is not an expert statistician—decided that we had inadvertently laid down the wrong guidelines, we would regret it. There is no point in doing that. We must urge the Government to take a representative sample across the country, and I am sure that they are perfectly capable of doing that.

**Tessa Munt:** It strikes me that, yet again, there is a process already in action. As I understand it, when people across the civil service are checking any sort of accountability, they carry out what they call a 5% check. It seems perfectly logical to undertake a 5% check on every type of school; that would cure the problem.

**Mr Stuart:** We should not dwell too much on this point. The hon. Member for Hartlepool is a fine shadow Minister, but a sample is a sample. The most important thing is having a standardised approach that is maintained over time, so that we get some sense of standards of behaviour in our schools over time. I have been refreshed; I am informed that from September, schools will have to record significant incidents of force used by staff against a pupil and report them to parents. That would give some protection, and I assume that the Minister will tell us later whether that includes all incidents of restraint, however they are best defined.

**Stella Creasy:** At the risk of being a non-sexy statistician myself, does the hon. Gentleman accept that there may be a challenge, with regard to the relative number of free schools and academies, and gaining an accurate picture of what is happening with them, especially given the autonomy that he so craves? We might want to weight the sample to reflect concerns about what might be happening in those schools, which may apply different policies as a result.

**Mr Stuart:** Like the hon. Member for Hartlepool, the hon. Member for Walthamstow is delving into the role of technicians, whose job it is to do such work. I would be quite happy to leave them to do it. It is entirely possible that she feels that the new clause is flawed, but its meaning is clear and we can trust the specialists in the area to bring about what it says.

**Mark Hendrick (Preston) (Lab/Co-op):** On recording and consistency, I was worried about the degree of bullying in schools in my constituency. When I approached the local education authority about that, it made it clear that not all schools recorded incidents of bullying. Those that did record incidents did not necessarily report them to the education authority, so the statistics and the picture that it showed were limited. While it might be assumed that recording takes place automatically, in many schools incidents are not recorded.

**Mr Stuart:** The Select Committee found it hard to gain an accurate picture, and what the hon. Gentleman has said is not out of kilter with that. A sampling exercise might rely on existing data or it might, in fact, ask participating schools to start recording incidents in a different way to provide a reliable and consistent data set; that is, I think, in line with what he is saying.

We have heard mixed evidence. Sir Alan Steer, the behaviour tsar under the previous Government, said that in his opinion standards had risen over the past 30 years. Ofsted inspection reports were reasonable positive, too. The 2009-10 annual report of Her Majesty's chief inspector found that pupils' behaviour was “good or outstanding in 89% of primary schools and 70% of secondary schools inspected in 2009/10.”

Of course, that means that behaviour in 30%—almost a third—of secondary schools was not good or outstanding, which is significant for the young people who are educated in those schools.

The Department for Education's written memorandum to the Education Committee summarised the findings of a range of surveys on pupil behaviour that were undertaken by teaching unions:

[Mr Graham Stuart]

“NASUWT have estimated that there is one assault (verbal or physical) every seven minutes. A recent poll by the Association of Teachers and Lecturers (ATL) found that 38.6% of respondents had dealt with physical aggression that academic year. Most reported incidents (87%) involved violence towards another pupil, more than a quarter involved violence against the respondent, with 44% of incidents involving another teacher or a member of support staff.”

The Teacher Support Network’s 2010 behaviour survey, which was undertaken in conjunction with Parentline Plus,

“showed that 92% of respondents said pupil behaviour had worsened during their career.”

The view from the professionals on the front line is rather different from that of those who are further up the system. The report noted the remarks of John Bangs, the former assistant secretary of the National Union of Teachers, who suggested that

“violent behaviour, although perhaps less frequent, was becoming more severe in nature. Mr Bangs also cited a study by Maurice Galton and John MacBeath, published in 2008, which concluded that primary schools were experiencing particularly confrontational behaviour.”

The Government are right to focus so much on discipline, which is a central part of the Bill. They have said that they will support teachers and children on the front line and ensure that we have more orderly schools. If they are to fulfil that, however, and are to be seen to do so, we must have a better idea of the state of behaviour in our schools. That is the purpose of the new clause.

The impact that I have described is not the only concern. A 2008 poll of undergraduates found that feeling unsafe in the classroom was the greatest deterrent to entering the teaching profession. We have cross-party understanding that teaching is the most important single issue in our education system, as the White Paper puts it. We know that if we raise the quality of teaching, we reduce the level of bad behaviour. When that happens, children who are at risk of becoming categorised as having SEN will not need to be so categorised. Their skills will be raised to a sufficient level to enable them to engage with their learning, so they will not display some of the behaviour that they otherwise might.

**Stella Creasy:** I appreciate the hon. Gentleman’s point. Some of the challenges that create a difficult learning environment for young people are not in school. Some of the support that they need and the difficulties that they face may beset their entire childhood and early adulthood. Does he accept that we must be able to recognise such difficulties and that there must be consistent support? That support may need to be outside the school, whether it is provided through social workers or through youth voluntary organisations. We must not preclude the idea that we can fix a problem early on, but to get things right, we might need to support the young person throughout their early childhood and adulthood.

**Mr Stuart:** The hon. Lady feels that there is a contradiction there, but there is not. Many children would not need to be categorised as having SEN if only their needs were met; others need support throughout their careers. We must ensure that, by intervening early, we use resources better and are better able to support

those children who need continuous support. It is not a sign of failure if a child continues to receive special educational needs support; it is possibly a recognition of their condition. It can be a sign of failure if that child would not have needed to have been so categorised if only we had intervened and given them the skills and ability to engage with the curriculum. The hon. Lady and I are not necessarily at odds, because the two issues are separate.

It is important to keep getting a picture of behaviour in the system, not least because we are told time and again that many children who behave badly do so because of the quality of teaching. Teaching that fails to engage young people can lead to disengagement. If someone is already struggling and is exposed to poor teaching over a sustained period, often by secondary school they disengage entirely. When all the teaching goes over a young person’s head and every day in school is a reminder of failure and misery, it is hardly surprising that they disengage, kick off and find themselves excluded. Early intervention is the key, as is visibility within the system, which is the aim of my new clause.

Data will be collected from September, but I hope to hear whether Ministers will consider adopting the new clause, too. If they will not, what steps will they take to change the situation? At the end of a long and serious inquiry by the Education Committee, which heard evidence from all the experts in the land, we were unable to give an accurate overview of the state of behaviour in our country, not only currently but comparatively over time.

11.15

**Kevin Brennan:** I shall speak to amendment 28, which was tabled by my hon. Friend the Member for Hartlepool and me. I pay tribute to my hon. Friend the Member for Walthamstow and the hon. Member for Beverley and Holderness for their very balanced and informed contributions. I agree with a number of points made by the Chair of the Education Committee. Good discipline and behaviour in school starts with consistency, fairness and the application of clear rules. Good teaching is an essential component of maintaining good behaviour and discipline in schools. I would add supportive leadership to that, as would many of the teachers’ representatives whom the hon. Gentleman quoted. Clear, supportive instructional leadership in schools is a key component, as is a relevant curriculum. The Education Committee’s report noted the importance not only of good teaching but of having a curriculum that is relevant and stimulating to pupils. That is the recipe for getting the vast majority of pupils to behave well in school.

My philosophy has always been that the vast majority of school students are professional pupils. They come along with quite a professional attitude to school. As long as the expectations are clear and fairly and consistently enforced, the majority of pupils will respond in a positive way. Their behaviour will be good and they will be able to learn in the best possible environment, provided the components we have talked about are present.

However, there will always be pupils with special needs and special problems, coming to school carrying not only their rucksacks or satchels but many other things. The school cannot solve all the world’s problems, but being aware of what pupils bring to school with them is a further essential component of achieving a

quiet, calm, orderly environment in school, from which learning can be built for all pupils. That is the essence of our debate. It is about how the system impacts on the pupils who very often bring other problems with them to school. The general issue of naughtiness can usually be resolved by the measures that I have just talked about, but other issues can be more complex and difficult. We need to understand those issues very clearly when trying to deal with the students.

My amendment would require the decisions of responsible bodies and review panels to be quality reviewed. As the Bill stands, it is not clear whether there will be any such monitoring. With the removal in the Bill of an appeals panel that has the right to reinstate a pupil, it is crucial that parents, pupils and the Secretary of State can gain the assurance that the decisions taken on exclusions are of good quality and adhere to the Equality Act 2010. The NASUWT stated:

“The absence of any provisions to monitor or scrutinise the outcomes of the review panels means there is no oversight and equality proofing of exclusion arrangements. The impact assessment accompanying the Bill fails to address what is a key issue of educational inequality.”

I hope that the Minister will be able to reassure us regarding the Equality Act. The National Children’s Bureau also said:

“We urge close monitoring of the proposed power of the review panel to direct reconsideration of the exclusion to make sure that it proves robust enough to challenge schools that may be behaving precipitately or unfairly”.

The NCB is not alone in having concerns about how some schools occasionally deal with such matters. The Minister of State, Department for Education, the hon. Member for Brent Central (Sarah Teather), said in June 2007 that there were

“indications that some academies use excessive exclusions and suspensions as a form of back-door selection.”

The concerns are therefore shared by the Minister with responsibility for children, right at the heart of the Department.

The amendment is intended to prevent that problem and seeks to ensure that equality in exclusions is monitored. We will hear in a few minutes, when we debate the next group of amendments, including amendments 27 and 39 tabled by my hon. Friend the Member for Hartlepool and me, that the clause could disproportionately affect children with special educational needs, who, as we have already heard, are several times more likely to be permanently excluded than others.

**Mr Sam Gyimah (East Surrey) (Con):** I am listening to the hon. Gentleman’s speech carefully. He says that he wants teachers to bear in mind the Equality Act. Will that not change the incentive structure when a teacher or head teacher is about to discipline a child? They would make the priority whether the action was consistent with the Equality Act, rather than maintaining good discipline in the school. Is that not a perverse incentive for teachers?

**Kevin Brennan:** That is the first time I have heard a Conservative MP describe obeying the law of the land as a perverse incentive. I would have thought that as a law-abiding citizen himself, he would expect all citizens to obey the law, particularly those who hold a position of responsibility, such as teachers. Through the amendment,

I am seeking to clarify exactly how that interaction will work and how we do not create a perverse incentive to not regard fully what is needed under equality legislation—the opposite of what the hon. Gentleman said. By drawing attention to the importance of equality legislation, the amendment is trying to ensure that we are clear that the Equality Act should be followed, as it is the law of the land.

**Mr Stuart:** I made a similar request to the Minister regarding amendment 28, about making schools publish data. His reply was that there are already protocols in place to protect individuals, and that producing and publishing data at an institutional level would not be appropriate as it could reveal the names of individuals. Does the hon. Member for Cardiff West have any thoughts on the line taken by the Government?

**Kevin Brennan:** I have some sympathy with the Government on that point. There is an issue about data being published at a level that makes it possible to identify individuals. I would want the Government to ensure that that did not happen, but I have sympathy with the hon. Gentleman’s aim of trying to drill down into the detail of what is happening for his Committee. I would be happy to work with the Government to try to find a solution to that problem, but I have some empathy with the Minister on that point.

**Mr Stuart:** Amendment 28 is a probing amendment, so the shadow Minister would be horrified if the Committee adopted it, because there could be those risks if the Minister was right. As I understand it, that was the policy of the previous Government, so I assume that they too had reflected on the issue.

**Kevin Brennan:** Yes, it certainly was, although I do not think it impossible to devise a publication scheme that protects individual information in going down to the levels we have described to the Government. The hon. Gentleman will find out at the end of my remarks whether it is a probing amendment.

**Mr Stuart:** Perhaps the Minister will spell this out, but in case he does not, I want a debate on how the process will happen. I do not know what the average number of permanent exclusions is in schools—it is not very high—so if that is published, people in a community might talk and say, “Oh, it’s Tom Smith.” The question is whether that just cannot be allowed, or is a price worth paying for transparency in the system. Exclusions are mostly from secondaries. I assume that the community will generally know if someone is excluded from such a school. Will the hon. Gentleman engage a little with the question of why the last Government took that view, why the current Government take it and why it is not possible to publish the information at institution level, even if there is the possibility that excluded people might be identified?

**Kevin Brennan:** I am trying to remember exactly what the number is; I am sure the Minister will tell us at the end of the debate. If the number falls below five—I think the level is as low as five, but if I am wrong the Minister will correct me—the information is published as “five or below,” so that the individuals involved cannot be identified. That problem merits further thought

[Kevin Brennan]

and investigation, but the convention has been held within Government for some time. It was not changed under the last Government, as the hon. Gentleman correctly said, and I understand the Minister's reluctance to change it without giving considerable thought to the implications of revealing who such people are. I accept that the hon. Gentleman has made a very appropriate point on the amendment.

When the Minister responds, will he confirm that the provision will impact not on the SEN tribunal but on students who may have special educational needs but are not statemented? Will the SEN tribunal remain in place and still be able to overturn the exclusion of someone with a statemented special educational need who is subject to the SEN tribunal? Does the Green Paper mean that fewer pupils will eventually be subject to the SEN tribunal, and therefore that fewer people will be protected than currently? If I am wrong about those points, I would be grateful if the Minister provided clarification, because they are pertinent to the clause and to the procedure that will be followed on exclusions of pupils who have special educational needs but are not statemented.

In its evidence, Barnardo's told us that primary children on free school meals are five times more likely to be excluded from school, adding to their experience of social exclusion and removing them from the place where they are most likely to receive support and early intervention to improve their social skills, language and behaviour. The other major issue is the disproportionate exclusion of pupils from particular ethnic minorities. For example, the Children's Rights Alliance for England stated that

"Black Caribbean students...are three times more likely to be permanently excluded."

I recall an Adjournment debate on the subject when I was a Minister in the Department, before the last general election, and it is a particular concern. With that in mind, it is vital that there be a mechanism to examine both the quality of the provisions and the equality of their implementation, which is what the amendment seeks to do.

Following our previous sitting, the Minister kindly wrote a letter to me, which presumably he has copied to other members of the Committee, clarifying some points about consultation with review panels. He confirmed that, although there had not been a formal, separate consultation on independent review panels with head teachers, there had been responses to the White Paper on such matters. He and his officials had consulted directly groups such as the Association of School and College Leaders, the Independent Academies Association and the Department's secondary heads reference group. Rather than a formal, separate consultation, there was a discussion with those organisations about the provisions.

11.30 am

Was there any such consultation with representatives of parents, children and young people; or, in formally trying to gain the views of people about the independent review panel proposals, were the only people specifically consulted representatives of head teachers? It is important that a broad representation of views be taken into

account in consulting about such matters, because they affect not only head teachers but governors, young people, children and parents.

Turning to new clause 2, the hon. Member for Beverley and Holderness said that the Select Committee had found it difficult to form a reliable picture of behaviour when it was undertaking its inquiry. I intervened on him about the recording of restraining incidents because, unfortunately, I know from experience that, despite what the hon. Member for Wells said in her intervention, such matters are often not recorded systematically within schools.

Moreover, the Government have revoked the previous Government's commencement order that would have brought sections 246 and 247 of the Apprenticeship, Skills, Children and Learning Act 2009, on recording and reporting the use of force in schools and colleges, into force on 1 September. I think that that was in 2010, but I shall correct myself if I am wrong. Clearly, force would not be used unless a serious incident occurred, but by not commencing the provision, the Government are not requiring that such incidents be recorded. I am sure the hon. Gentleman wants to have a good idea of what behaviour is like in our schools. If schools recorded properly incidents where force is used—by their nature, they are fairly serious—as well as their frequency and intensity, we would have a better grip on behaviour in our schools.

**Mr Stuart:** My information is that the use of force will be recorded from September; however, no doubt the Minister will elaborate on that. The Select Committee did not have a picture on sampling, but said that it needed to sample schools and carry out surveys on parents and teachers to complete the picture. Does the hon. Gentleman agree?

**Kevin Brennan:** That might be useful additional information. I am sure the Minister will clarify whether recording the use of force will be required from September. Such guidelines will actually be helpful to schools, because it is likely that parents will lodge malicious complaints about the misuse of the power to use force. It is good practice for schools to record such action, and it will not be burdensome. When the legislation went through Parliament, it was amended to take into account teachers' concerns that parents might react in such a way to the report that force had been used against that child that they might be in danger of significant harm from their parents. We all know through experience that that is possible in some circumstances. Some discretion will therefore be required in the reporting of such incidents. Still, a record should be kept.

With that, I commend the amendment to the Committee—while confirming to the hon. Gentleman that it is a probing amendment.

**Dan Rogerson (North Cornwall) (LD):** I wish you a good morning, Mr Walker. I am sure that you are enjoying our deliberations on this clause. I am grateful to the hon. Members for Walthamstow and for Beverley and Holderness for the debate that they have stimulated, which is an important one.

There is a tendency to characterise the position on exclusions and pupils with SEN at two extremes. At the one extreme, no head teacher would ever dream of

having any motive on the difficulties of dealing with a particular pupil that would inform a decision to move to permanent exclusion. At the other extreme, every head teacher in the country is desperate to get pupils who are costly or difficult to support and deal with out of their school as quickly as possible. We are actually somewhere well towards the former. The vast majority of head teachers care deeply about every pupil in their school and want to support them and ensure that they are given every opportunity to develop and learn in a safe environment. We have to accept that problems occur, which is why we have a route to exclusion and a process.

The evidence that we had from head teachers suggested that some decisions have been overturned, which has had a hugely detrimental effect on staff who have been involved, perhaps in incidents with other pupils in the school, such as bullying. That has informed this decision to do something in the Bill, to move the balance back towards the head teacher and the governors, so that they can take a decision in the best interest of that school community.

It is clear, however, that there is great concern outside this place—as well as from hon. Members both in this Committee and in the House—that there is the potential for, in some circumstances, the wrong decision to be taken and that the safeguards may not be entirely in place. It is important that we have the information to inform the decision on any change, as well as being able to look at how it is performing. It is reasonable to ask how this will be monitored and what information will be available on any rise in particular groups of students, however they are identified, in being more vulnerable to permanent exclusion.

I accept that that is a valid debate to be had, but the hon. Member for Walthamstow, in initiating this debate and particularly in her comments on the Green Paper, seemed to be ascribing a certain motive and desire, both to schools and the Government, to scramble to get as many pupils with identified and valid special educational needs away from that categorisation, to break down links between the local authority and educational institutions, and effectively to set up a fortress school that can take any decision that it wants and have no regard to other factors. I do not accept that at all. It is important to place on record my objections to that characterisation of the debate. In the Green Paper, I see a determination to bring organisations together—the hon. Lady identified this as its stated intent—to overcome problems where organisations are not working together. For example, in the past the health sector has not been part of the process of putting together an overall package. What the Green Paper seeks to do in that regard is helpful and goes in the right direction.

The hon. Lady referred to a later clause on the duty of co-operation, which we will debate in due course. That is a much wider duty than the issue we are talking about here with regard to special educational needs. So I am looking forward to the Green Paper, leading ultimately to legislative change and guidance, which will ensure that with this particular group of pupils there is that safeguard, and co-operation between children's services, health, schools and any other organisations and agencies working on behalf of children.

**Stella Creasy:** When the hon. Gentleman talks about “this particular group” of young people, is he talking only about children with a statement, or about the wider group of young people who might have behavioural difficulties arising from a variety of experiences that may be addressed early on, but may also continue throughout their life?

**Dan Rogerson:** The Green Paper focuses particularly on those where there are needs that are easily identified for support and funding. That is important. But as other hon. Members have said, there are other groups of young people—whether they are those with caring responsibilities, or who have other issues, for example bereavement—all sorts of things which might not mean a special educational need. We would need to be conscious of what was affecting their lives as well. Her hon. Friend the Member for Cardiff West referred to what a young person brings to school with them, and it is important to have reference to that. In the vast majority of cases the safeguards will be in place, and if a real problem is identified, we have the review process which will challenge governors to look at the situation again. However, I accept that there is a need to have information. I think the Chair of the Select Committee was right to set out the difficulties the Committee has had before in getting access to the information to help its consideration of these issues. I hope the Minister can explain how information will be captured, so that we will be able to see whether there is any trend that is potentially dangerous to particular young people and deal with that situation.

**Stella Creasy:** Does the hon. Gentleman agree that if schools are responsible for the future educational provision of children with special educational needs, it will be important to understand what options they are choosing, and the cost implications of that. For example, at the moment if children need out of borough provision, that can be disproportionately expensive to a local PRU. If schools are left to make those decisions rather than local authorities, they may choose the cheaper option. We need to track what is happening to those children who have been excluded and what happens next.

**Dan Rogerson:** That is an interesting question. I would welcome the proposal that schools maintain an element of responsibility for what happens to a young person following a decision that relationships are breaking down—or whatever—in the school and that there is a need to exclude. It is not clear to me whether it would only be up to the school to make that decision. It is my understanding that others would be deciding where that young person went. I do not think it would be up to the governors of that school to say, “We are excluding you, and you must go to that place as an alternative provision.” There is an element of funding, and we have talked about not a fine, but a potential financial burden on that school if the review panel felt that it had acted precipitately.

I am seeking a response from the Minister to the valid issues we have raised about how information can be captured, so that we can ensure in a structured way that particular groups of young people are not losing out, given the changes the Government are proposing.

**Pat Glass:** I had not intended to speak to this particular group of amendments, but I was forced to my feet by the comments made earlier by the Minister and which I

[Pat Glass]

think were reflected on the other side, which I worry underpin much of the Green Paper and the direction of travel around SEN. It is difficult to separate exclusion from SEN. The vast majority of excluded children are children with SEN, but I was very surprised by the Minister's suggestion—and I know he was referring to autism—that these children be taught in special schools. What I am picking up is the underpinning principle that would it not be easier if these children went to special schools—that they are the right place for these children and that there would be less exclusion. I hope that that is incorrect, as that would be a mistake. Clearly, SEN is a continuum, from a child who experiences mild problems at one particular time in their life right through to one with severe difficulties.

11.45 am

**Richard Fuller:** I look forward to the hon. Lady elaborating on her point. Regarding special schools and special educational needs, the sentiment that I get from what I have heard on this side of the Committee is that it would be better not for children to be placed in one type of school or the other, but for parents to be empowered to make that decision without a strong presumption one way or the other. I am interested in the hon. Lady's thoughts about that, because that was what I thought the sentiment was, not, as she was suggesting, that there was a blind push in one direction or another.

**Pat Glass:** There is reference to the current presumption in the legislation that talks about mainstream education. Although there is a presumption in the legislation regarding statemented children, it says later—this might cover the points that the hon. Gentleman is talking about—that while there is a presumption to mainstream, if a parent prefers a special school, that is where the child should go. That is incredibly important. It is the combination of expert advice and the parent. Too often, the balance has been in favour of specialist advice rather than parents, which hopefully we will see redressed. If we are looking down the route of exclusions, there would be fewer exclusions if more of the children were educated in more specialist provision.

I welcome the thrust of the Green Paper and what the Minister said about the percentage of children who are identified with SEN. There is a huge issue around the quality of teaching. Children are being labelled as having SEN because of the quality of teaching. If we look at the figures—I hope the Minister will correct me if I am wrong—something like one third of children who are identified as having SEN are summer-born, and what they need is a little more sand and water, and some time.

**Mr Stuart:** I have found the quote that I would liked to have used when I intervened earlier, from the Ofsted special needs and disability review. It said in its executive summary:

“We also recognise that as many as half of all pupils identified for school action would not be identified as having special educational needs if schools focused on improving teaching and learning for all, with individual goals for improvement.”

**Pat Glass:** I absolutely agree. However, what is missing and what we have not heard much about is the issue of curriculum. Many children are labelled as having SEN

because the curriculum, particularly at key stage 2, is far too formal far too soon. They need a more flexible curriculum, and I hope the Minister will look at that as well. However, I welcome the direction of travel.

Autism is a continuum. At one end, it is sometimes referred to as the extension of maleness—I apologise, but it is, for example the inflexibilities. At the other end, it is about severe and profound needs. I think I have said this before: I have made mistakes on the matter. On occasion, I have had parents who have insisted on mainstream when I looked at the profound difficulties of a child and thought, “This is simply not an efficient use of resources. It is not the right place,” and I have been wrong. Although the pressure on the Minister at the moment is for more special school provision, my experience has been that most parents want mainstream. Going down the direction of a presumption in favour of special schools would be wrong for the child and the parent.

**The Minister of State, Department for Education (Mr Nick Gibb):** Welcome back to the Committee, Mr Walker. This has been an interesting and wide-ranging debate, kicked off by the hon. Member for Walthamstow on what I thought was quite a narrow amendment. However, she cleverly used it to expand the debate to cover some of the content of the Green Paper published last week, “Support and aspiration”. She focused on the end results of not tackling problems early, such as people ending up not in education, employment or training. The Green Paper put forward a range of proposals to improve identification of causes of poor behaviour so that appropriate help can be provided. We will be recommending in exclusion guidance a new multi-agency assessment of NEET for children with special educational needs.

Paragraph 3.55 of the Green Paper states:

“We know that there is a group of children with SEN who are currently excluded on multiple occasions on a fixed-term basis, and there may be other excluded pupils whose SEN have not yet been identified. Incidents which prompt multiple exclusions will often be an indication that a pupil has underlying difficulties that may not have been correctly identified or met. There could be a range of causal factors for behavioural problems including underlying mental health or family problems. Exploring wider family circumstances is often crucial to identifying the root causes of behavioural problems. A whole-family approach to the assessment of needs and delivery of services can ensure that the children from families facing multiple problems, which may be the underlying reason for their behaviour difficulties, are effectively supported. In order to offer routinely more effective early support”—

this is the key point—

“we will recommend in exclusion guidance that children are assessed through an effective multi-agency assessment for any underlying causal factors. We will suggest that schools trigger”— a matter that I address to my hon. Friend the Member for North Cornwall—

this assessment in instances in which a pupil displays poor behaviour that does not improve despite effective behaviour management by the school. We will also use the trial of the new exclusions system to test out the effects of this type of early assessment of need.

It is in that trial that we hope to gain the data sought by my hon. Friend to assess whether we are taking the correct measures.

**Stella Creasy:** Can the Minister clarify whether the decision to trigger the assessment will be made by the school or in partnership? I am concerned about asking teachers to become both psychologists and teachers.

Some teachers might see behaviour as challenging behaviour rather than understanding that there might be complex factors behind it, and one of the things about working with local authorities and working with educational psychologists is that others who have a different approach and different experience of such issues can be brought in early on in the process.

**Mr Gibb:** The hon. Lady has made a good point. The Green Paper states that schools trigger the assessment, but they do so in instances when a pupil displays poor behaviour that does not improve despite effective behaviour management by the school. That is one instance that will lead to a trigger because the behaviour is at the school. There may be other instances, and the hon. Lady should meet my hon. Friend the Minister with responsibility for children to discuss her informed views, which I am sure will provide much help with the consultation on the Green Paper.

We are trialling changes to the exclusion system from September. That might create a stronger incentive for schools to intervene early to support pupils and reduce exclusions. We will look at the impact of that on disabled children and those with special educational needs throughout the trial. The hon. Member for Walthamstow raised other issues during the debate and said that the whole approach might lead to an incentive to exclude, an issue raised by others, too. It is not about that. It is about trusting professionals to make such decisions and to remove impediments to the exercising of their professional judgment.

The hon. Lady also referred to her concern about the Government's intention to address over-identification of special educational needs, something that is highlighted in Ofsted's important report. It is not good for children if they are identified as having learning difficulties, in a special educational needs sense, when they do not actually have learning difficulties. Too often, as has been hinted during our discussions, that can lead to lower expectations of what the children can achieve and the wrong approach to addressing their needs.

Head teachers should try every practical means to maintain the pupil in school, seeking external and professional advice as appropriate. The hon. Lady referred to the head teacher's role in the arrangement. The current exclusions guidance makes this clear and we intend to continue to emphasise this when the guidance is revised. She also hinted that she thought the Green Paper would undermine the appropriate support for children with special educational needs. The Green Paper makes proposals about improving teacher training.

**Stella Creasy:** On a point of clarification, it was the other way round. I fear that the Bill will undermine the Green Paper's aspirations concerning joined-up services and being able to access experts early in the intervention process, before we get to the stage of considering exclusion. I am sorry the Minister misunderstood. My concern was the other way round. It was not about the aspirations in the Green Paper but the fact that the Bill will separate and segregate schools from the support services.

**Mr Gibb:** The clear direction of travel in the Bill is towards early intervention. That is what we and the Green Paper are trying to achieve. It is very consistent, and it is about trusting professionals. The Green Paper also proposes improving teacher training to identify

and address specific special educational needs. The Green Paper should also improve and expand the range of provision that parents can choose for their child. It puts a strong emphasis on the appropriate identification of special educational needs and of other underlying causal factors, such as mental health problems that can sometimes be labelled as SEN without appropriate support.

We are consulting on the Green Paper both on replacing the school action and school action plus categories with a single school-based category of SEN, and on how the category of behavioural, emotional and social difficulties is currently used. I invite the hon. Member for Walthamstow to discuss the matter with my hon. Friend the Minister with responsibility for children. Opposition Members expressed a range of views on the points that she has made about identification rates.

**Stella Creasy:** Can the Minister explain, because I am not clear about what he is saying? Is he suggesting that children with mental health difficulties may not have special educational needs as a result of their mental health difficulties, or is it about how support is built into the system? There seems to be a suggestion that if a child has mental health difficulties, they would not necessarily require special education. Often, the mental health difficulties may appear later in life, in adolescence rather than in early years, so it seems a slightly confused approach to have a connection between emotional and behavioural difficulties and learning embodied in the process.

**Mr Gibb:** The point is that it is easy to label a child as school action or school action plus and, once the labelling is done, not to then obtain the proper support from professionals, child and adolescent mental health services and elsewhere to help address the problems facing the child. Simply labelling them as special needs can often be the end of the task that the school has undertaken. Sometimes it is a lazy way of tackling problems, and those problems can then go undiagnosed and unsupported, and the child is not helped with the problems that he or she is facing. That is the danger of this too easy approach to labelling children with special needs.

**Julie Hilling (Bolton West) (Lab):** Contrary to the views that the Minister has expressed, I and people who come to my surgeries have concerns about children who have not been given a statement or have not been recognised as having special educational needs. They have continued up until adulthood without the necessary support throughout their education. I question that concern about statementing children. Surely the whole point of identifying children's needs is about saying what processes, procedures and support need to be put in place for them.

**Mr Gibb:** I am talking about the children who are not statemented and nor are they in the 80% of children that the hon. Lady is talking about. They are in the 20%, minus the statemented children, who are categorised as school action or school action plus—special needs but without a statement—for whom no proper diagnosis is being carried out to assess their underlying problems, whether they are family or mental health issues or whatever the causes. Simply labelling them in such a way somehow obviates the need to deal properly with them. In some circumstances, the school can feel that its

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responsibility has been fulfilled by the label. There is a danger with such over-categorisation of children with special needs that their genuine need, which may not be a learning difficulty, is overlooked and goes undiagnosed and without support. Those same principles might apply to the young people whom the hon. Lady has mentioned, who are in none of those three categories of special need.

12 pm

**Stella Creasy:** I am genuinely perplexed. I understand and share the concern about the use of school action plus without follow-up, but I am not sure that such follow-up will occur under the Bill and the Green Paper. If anything, not identifying those needs—not even starting the process—risks more and more young people not getting the necessary support to enable them to come in and learn, particularly if such support is external to the school.

**Mr Gibb:** In many ways, the measure is about trusting professionals. The system is no longer as easy as simply categorising someone as having special needs—we are making it more difficult to do so. The extra hurdles to making such an identification will require a school to obtain the correct diagnosis, and from that, obtain the correct support from the agencies and professionals who ought to be involved in helping that child. The provision is about avoiding lazy identification and ensuring that professionals obtain expert advice.

**Mark Hendrick:** On the one hand, the Minister is saying that we should trust the teachers or the head; on the other, he is accusing teachers of being prone to lazy identification. Surely he cannot have it both ways.

**Mr Gibb:** We are trying to make the system accountable and rigorous, so that we can trust professionals. That is the essence of the direction of travel in the Bill and by the Government. We will have strong, robust accountability systems and, as a consequence, we will be able to trust professionals more without having the continual initiatives and top-down prescriptive approaches to professionals in our education system, which were a symptom of the previous Government. We want to remove all that. We are removing some of it through the Bill and trusting professionals, but the quid pro quo is that the systems that we are introducing—and the proposals in the Green Paper—require a rigorous approach to assessing an early intervention of children with special educational needs and other issues.

**Stella Creasy:** Can the Minister talk us through how that will happen in practice? If a young person has emotional and behavioural difficulties that manifest in school, they will struggle in learning without the support networks. Yet there will be a financial disincentive to schools to support such networks because of the cost of doing so under the new system. It will be easier, therefore, to exclude them to trigger the process of getting the assessment, which he has explained. Without an in-between process, when will the funding come into the system to bring in the educational psychologist, the youth worker, or the social worker to work intensively with that person?

Professionals must be trusted to make decisions, but they will not be given the resources to support the young person earlier on in the process.

**Mr Gibb:** Well, there is nothing in the Bill to change that situation. We are faced with the financial crisis that the Labour party left the country, which we are tackling in many different areas. The Green Paper mentions increasing training so that teachers can identify special educational needs early. We are introducing the pupil premium, which is a significant sum of extra money for schools with high proportions of children from poorer backgrounds, among whom is a higher proportion of children with special educational needs. We are therefore providing the funding for such children and we are doing everything that ought to be done, in the current financial climate, to help and support schools to tackle effectively and early the challenging problems that they face.

**Mr Stuart:** I enjoyed reading the Education and Skills Committee's special educational needs report of 2006, which said:

“We believe early diagnosis of children with autism and particularly Asperger's syndrome is likely to be a preferential route, as witnesses have suggested, rather than statementing.”

We must recognise that the current system is not adequate, was not reformed when it should have been, and needs urgently to be made better. A critique does not necessarily mean that our proposals are right, of course—it simply means that the critique is right. We urgently need change and we need to ensure that we intervene early for the protection of the most vulnerable children in our society.

**Mr Gibb:** I am grateful for the intervention of my hon. Friend. He is right. The previous system was adversarial. If one talks to parents, they say how difficult it is to get an assessment for a statement, let alone a statement. The drive behind the Green Paper is to try to change that adversarial approach to a multi-agency approach on assessing the wider needs of children. I believe that that will lead to early intervention. Hopefully we will not get to the position where five or seven years into school these children's behavioural problems are so bad that they end up having to be excluded.

**Mr Stuart:** If I may, I will share one other recommendation from that 2006 report. It stated:

“Despite the Audit Commission specifically calling for a review of the statementing process in 2002, four years on the Government still says it has no plans to review the statementing process. This is unacceptable.”

The truth is that here we are in 2011, and we have a statementing process that is unacceptable and which needs urgent reform.

**Mr Gibb:** That is now happening with the new Administration, thanks to the rigour and the hard work of my hon. Friend the Minister with responsibility for children. The hon. Member for Walthamstow would require us to provide certain information to Parliament each year on the number of exclusions, the number of excluded pupils with SEN, and the education provision that they were receiving after their exclusion.

It is, of course, important to know what is happening in schools on an important issue such as this. I therefore wanted to explain what happens with such data currently. Schools must send full details of all exclusions to the local authority and to the governing body and, in the case of a pupil referral unit, to the management committee. That applies to maintained schools and academies, for which it is written into their funding agreements. In each case, they have to report the pupil's name, the length of the exclusion, the reason for the exclusion, the pupil's age, gender and ethnicity, whether the pupil has a statement of special educational needs, whether they are being assessed for such a statement or are on school action or school action plus and whether they are looked after, as defined by the section 22 of the Children Act 1989. For fixed period exclusions of pupils of compulsory school age—where the exclusion is for more than five school days—the school has to report what alternative provision has been put in place for the pupil.

The Department already publishes annual statistics on permanent exclusions. We intend to continue to provide those statistics on the number of permanent and fixed-term exclusions by local authority. At the national level, we currently collect information on the proportion of excluded pupils with SEN, and on the appeal panels—the total number of cases, the number of appeals upheld and the number of reinstatements. That will be replaced by equivalent collections of information on review panels, assuming that the Bill goes on to the statute book. All permanently excluded pupils should receive full-time provision, whether in another school or in alternative provision. Through annual censuses, we gather data on children in alternative provision. The information that is and will be available is sufficient to inform future policy developments and for us to monitor what is happening. I do not think that this requirement is needed in the Bill. With those reassurances, I hope that the hon. Lady will be able to withdraw her amendment.

**Stella Creasy:** I just wondered whether the Minister would agree, given the concerns that a number of Members have raised—from all parts of the Committee—that tracking data and understanding what happens next, which is what the amendment seeks to do, would be beneficial to the Department for Education, if it is serious about this join-up between early intervention and the education system. Just looking at the numbers does not tell us whether it is the same young people or different groups of young people, or what has happened to resolve some of these difficult, intractable problems.

**Mr Gibb:** We will come on to more requests for different types of data in later amendments. One has to balance those needs with the burden on institutions of collecting and supplying those data. We have the balance right at the moment. The amount of data that we are collecting on exclusions is substantial and should be sufficient. In addition, we will have the data that come out of the trials starting in September.

On amendment 28, which was tabled by the hon. Member for Cardiff West, I will discuss reporting the number of exclusions and confirming compliance with the Equality Act 2010. Both of those matters are important, and I hope that I can offer reassurance on both the questions raised by the hon. Gentleman.

The Department already publishes statistics on the number of permanent and fixed-term exclusions, including for each local authority and ethnic group, as I have said. We intend to provide national information on review panels, the number of cases heard and decisions, which will be similar to those currently gathered about appeal panels. That should be an adequate level of detail, and I am reluctant to impose a new duty on schools to report the number of exclusions each year, as they already have to provide full details of each exclusion to the local authority. That includes academies, for which the requirement is written into their funding agreement. Governing bodies also receive details of all exclusions, and I expect all those bodies to pay attention to that important information when considering the management of behaviour in their schools.

**Kevin Brennan:** Will the Minister confirm that, in continuing to collect those data, it will still be possible to make comparisons with data previously collected, and that no significant change in methodology will make those comparisons difficult?

**Mr Gibb:** The hon. Gentleman has raised a good point. There were frequent occasions in the past 13 years when that happened in relation to education and Home Office statistics. I am always conscious of that point when officials suggest a revised and better form of recording matters, so I take his comment on board. It will not always be possible to avoid that when a policy changes fundamentally, but I will bear his point in mind when confronted by such issues.

**Pat Glass:** We know that when the Government shine a light on certain children, such as looked-after children, and their attainment, things improve. Given the very real concerns expressed—we can argue about which children have SEN or have additional needs; they clearly have significant needs—and the impact that a permanent exclusion has on a young person's life, does not the Minister think that it is worth supporting the amendment, so that a small amount of bureaucracy can change the number of children in that category in future?

**Mr Gibb:** Every request for a new requirement is always small on an individual basis, but the cumulative effect causes a problem. We have a lot of data on exclusions coming into the Department, and that is sufficient for the purposes of the hon. Lady and other members of the Committee.

**Mr Stuart:** I would be grateful if the Minister said more about the statistical issue about fewer than five exclusions meaning that the number should not be published, and what the thinking behind that is, if he has that to hand.

My other point is that if, for reasons that the Minister may give, information will not be published, I assume that it will be at least be visible by the local authority on a school-by-school basis. Is there a role for the local authority as the champion of parents in challenging schools, even in the new, more autonomous system and, if so, how would that play out, so that we can be reassured that no schools are excluding pupils when they should be focusing on meeting their needs?

**Mr Gibb:** My hon. Friend has raised a good point about the future role of local authorities. Their future role should be to challenge schools on a whole range of data coming from the schools in their local authority area, and that would be a good one for them to focus on, because it might indicate wider concerns about particular local schools.

On my hon. Friend's comment about the lowest number of pupils excluded that can be revealed in school data, and whether that is always five, there is no fixed figure. The principle is that there must be no risk of revealing the identities of individual children in what is such a sensitive area. In some statistics the figure is five, but in others it may be 10. Hon. Members appear to want a breakdown by SEN or ethnic origin at school level, but the numbers are likely to be far too low to be able to deliver that. That is an issue in addition to the one about burdens on schools.

**Pat Glass:** I am grateful to the Minister for his answer to my earlier intervention. First, the Minister has shown that that information is already collected. The bureaucracy is done: it is only a question of publishing the information, and if we shine a light on that, it will make a difference. Secondly, I agree with what the Select Committee Chairman is saying—that there is a role for the local authority—but given the cuts, people have received their redundancy notices now, and they are leaving on 31 March. There will be no one to do this in future.

12.15 pm

**Mr Gibb:** I say again that we are trying to reduce administrative burdens on schools, but I do not believe that the additional burden of reporting on this issue is necessary. Even more importantly, because the number of exclusions in any school is likely to be small, there would be a risk, as I have just said to my hon. Friend the Member for Beverley and Holderness, that individual pupils could be identified from a report that includes the number of exclusions in a particular school. I do not believe that it would be helpful for local authorities to publish information at school level for all schools in their area. They would have the information but, leaving aside the additional burden on local authorities, I am not convinced that publication of such data would be helpful. As with schools publishing data, there could be concerns about possible identification of individual pupils.

On consistency with the Equality Act 2010, I agree that it is important that schools and local authorities comply with their duties under the Act, which prohibits discrimination against pupils on the grounds of a protected characteristic, whether gender, ethnicity, disability, sexual orientation, gender reassignment, religion or belief, pregnancy or maternity, and expressly covers excluding a pupil as being a potential act of discrimination. Schools must have the Act in mind when making decisions relating to exclusions. In addition, the Act obliges public bodies to comply with the general duty to have regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between groups with different protected characteristics.

Certain public authorities, including schools and local authorities, must also comply with the specific duties. Currently, that involves publishing annual equality schemes, but in due course will require annual publication of

sufficient evidence to demonstrate compliance with a general duty. Adequate information will already be published, both on the overall number of exclusions and on the compliance by the governing body or local authority with the 2010 Act. I do not think it would be appropriate to make them report separately on compliance with the Act with respect to the one activity of exclusion.

**Mr Stuart:** Will the Minister spell out any role that Ofsted will have? The focus of Ofsted's inspections has been reduced to four headings. Will it inspect schools when it carries out an inspection on their compliance with their duties under the Equality Act 2010?

**Mr Gibb:** It will focus on behaviour, as my hon. Friend hinted. It will focus on the four new areas, one of which will be behaviour and safety.

The hon. Member for Cardiff West spoke about monitoring the review panel's quality. Panel members will be trained. Most panels are established by local authorities, and I would expect them to take quality seriously. Their general duties under the Equality Act will also apply to those functions.

The hon. Gentleman asked whether academies have excessive exclusions and suspensions, and statistics prove that they do not. I shall try to explain the stats. In 2008-09, 0.68% of pupils with special educational needs, with and without statements, were permanently excluded from academies, compared with 0.16% of children with no SEN. The equivalent figures for local authority-maintained schools were 0.57% compared with 0.07%. That shows that the exclusion rate for pupils with SEN in academies was approximately four times higher than that for pupils with no SEN. That compares with the rate for SEN pupils being eight times higher than for pupils with no SEN in local authority-maintained schools. On the basis of those figures, it seems that there is no discrimination in academies against children with SEN.

**Mr Stuart:** We were trying to obtain access to that data. Will the Minister tell the Committee where they can be found?

**Mr Gibb:** Well, they are to be found on this piece of paper. I have come across such things on many occasions, so if inspiration does not occur to me during the course of my comments, I will write to my hon. Friend, setting out precisely where those figures come from.

**Kevin Brennan:** I am grateful that the Minister said that he would write, and I am sure that he will copy that to members of the Committee, as is the usual form. Will he also copy it to the Minister of State, Department for Education, the hon. Member for Brent Central (Sarah Teather)? I was quoting her, rather than myself, in making that point. She said that that was a concern in 2007.

**Mr Gibb:** I am sure that my hon. Friend the Member for Brent Central is aware of the figures now, and they will have informed her views since 14 May. I believe that the duties on public bodies from the Equality Act offer sufficient safeguards. I therefore urge hon. Members to not press their amendments to a Division.

Finally, I would like to speak to new clause 2, tabled by my hon. Friend the Member for Beverley and Holderness. While it does not refer exclusively to exclusion, it raises the issue of incidences of serious misbehaviour, some of which may lead to exclusions. It is therefore appropriate to discuss it in the context of clause 4. Regarding recording incidences of the use of force, section 93 of the Education and Inspections Act 2006 will be commenced in September 2011. I reassure hon. Members that although the duty was not commenced in September 2010—this relates to the hon. Member for Cardiff West—it will be commenced in September 2011. The governing body of a school in England must ensure that a procedure is in place for recording each significant incident in which a member of staff uses force on a pupil and reporting each use-of-force incident to each parent of the pupil as soon as practicable after the incident—although I take on board the flexibility that we need, which another hon. Member raised, about whether it is appropriate to report it to some parents, who may take an inappropriate response to that news. Use of force may, in some circumstances, include restraint, in answer to a point made by my hon. Friend the Member for Beverley and Holderness.

The new clause would require the Secretary of State to collect and publish annually data

“from a representative sample of schools on the number of serious incidents of misbehaviour in schools, including those which do not result in a fixed-term or permanent exclusion.”

It mirrors the first recommendation of the Education Committee, which is too ably chaired by my hon. Friend the Member for Beverley and Holderness, following its inquiry into behaviour and discipline in schools. I welcome the Committee’s inquiry and its report. I believe that its recommendation was largely prompted by the concerns of some witnesses about the efficacy of the Ofsted inspection capturing a true picture of behaviour in our schools. Those concerns centred on how some teachers felt that they were fighting against a tide of low-level disruption without acknowledgement or support of senior managers in the school, and how such incidents in particular are sometimes kept hidden from inspectors when they come to the schools, for example by suggesting that certain children do not come to school that day.

I certainly do not agree with Tom Trust’s statement to my hon. Friend’s inquiry. He said:

“Ofsted’s views on behaviour are not worth the paper they are written on”.

While I agree with Sir Alan Steer’s statement that one has to have very strong grounds to disregard Ofsted evidence, I accept that there is a need for change. That is why I have set out in our White Paper and in the Bill that behaviour and safety will be key elements of the new streamlined school inspection system that will be trialled this year. That focus will give Ofsted more time during the inspection to explore what is going on in individual schools and hold them to account.

Furthermore, we should remember that the problems in our schools are not all caused by serious incidents, such as violence against other pupils or staff. Around 30% of permanent exclusions from secondary schools are for persistent disruptive behaviour, a proportion that has remained constant since data collection began. Focusing on serious incidents alone will not give us the whole story. I am conscious of the pernicious effect of poor behaviour, particularly the so-called low-level

disruption, on the ability of teachers to teach and of pupils to learn. We have made a commitment, which was set out in the White Paper, to reform initial teacher training to focus on key teaching skills, such as managing behaviour, because we expect that all teachers will be trained to manage such disruption and improve children’s behaviour from the start of their careers.

Our independent review of all levels of standards for teachers, which was also announced in the White Paper, will consider how the standards might provide a strong focus on how best to manage poor behaviour. That review is chaired by Sally Coates, the excellent principal of Burlington Danes academy. We also expect senior school leaders to support their staff in tackling poor behaviour, whether through better continuing professional development or simply by establishing and applying consistent behaviour policies, the terms of which are clear to staff, parents and pupils.

I agree that it is important we gain a full understanding of the impact of poor behaviour on schools, pupils and teachers and of how we can spread best practice in improving behaviour. However, that cannot be done by focusing on serious incidents alone. As I have said, we do not want to impose extra burdens of data collection on teachers in schools. Our aim is to keep those to a minimum. We will consider new collections of data only where the need for new information is absolutely critical. We do not have a critical need for a new data collection, given that we have detailed statistics and other information on exclusions and school attendance from the Ofsted judgment. As I said, we hope to strengthen those. Although I understand the concerns of my hon. Friend the Member for Beverley and Holderness, it is not appropriate to legislate in the way he suggests. I therefore hope that he will not press his new clause, when we come to that point.

**Kevin Brennan:** Can the Minister refer to two points I raised? One relates to the SEN tribunal and whether the provisions around that are affected in any way by the groups of amendments or the clause. On SEN tribunals, will there still be a power of reinstatement—I am treading water just to give the Minister a chance—if an exclusion is forwarded to them? The situation will probably be that fewer people are afforded that protection, given the Government’s intention in the Green Paper to reduce the number of students who are statemented. Is my assumption on that correct? The second point relates to my question whether there were any specifics in addition to the points he mentioned in his letter to me about consultation on the matter with children, parent’s groups and young people.

**Mr Gibb:** Any parent or pupil who believes that their exclusion is due to disability discrimination will be able to take their case to the first-tier tribunal, which is the existing case for pupils who are being excluded on a fixed-term basis. That will also now apply to permanent exclusions. They have the power to reinstate a pupil to the school. The hon. Gentleman also raised the issue of parents and pupils. Although there was no direct prior consultation, I have met representatives of both children’s rights and SEN organisations. These provisions were discussed. I remind him that the new system has additional provisions; for example, access to an SEN expert if the case for disability discrimination is to go to the first tribunal. There are plenty of measures in the Bill to

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protect those children. There was no direct prior consultation with the people to whom he is referring, but we talked to representatives of children's rights and special education bodies. On that note, I shall finish my remarks by saying that I hope the hon. Member for Walthamstow will withdraw her amendment.

**Stella Creasy:** We have had a very interesting debate that has started to untangle some of the issues about which a number of people across the House are concerned when it comes to our young people and how we ensure that they are equipped for the modern world and the role that education will play in that. We know that young people are facing an extremely difficult jobs market and that there is a fall in the number of unskilled positions in our economy as we move towards a knowledge economy. Therefore, it is absolutely critical to help young people to get the qualifications and training they need to get on. The group of young people we have been talking about this morning, who may well be affected by the proposals and by the main clause, are of great concern to a number of us.

12.30 pm

One of the worries that I have taken note of this morning is how much more work needs to be done to join up the support given to children at any point during their educational career. I hope that members of the Committee will take on board my concern that emotional behavioural difficulties can manifest themselves not only in early years, but during adolescence and in later years. It is important that the system can respond to that. Not identifying such difficulties and additional needs is no substitute for giving young people the necessary support.

My hon. Friend the Member for North West Durham ably made the point about the importance of shining a spotlight on such a group of young people and asking how we should best support them. That is mixed with a fear that the proposals in the Bill as a whole will make such action harder for head teachers to take, even with the best will in the world. At the risk of repeating myself about non sequiturs and the idea that we trust professionals but do not think that they are making good judgment calls on identifying young people, I am worried about how that might be done under the new system. We must understand what happens to young children next.

I urge the Minister to look closely at the data sets that the Department has already collected on exclusions. The amendment simply asks the Department to go one stage further in its manipulation of the data and track young people to see whether they come up repeatedly. That would give us the opportunity see whether we were getting the support for those young people right. I hope that the hon. Gentleman, in creating financial incentives for schools to pick the easier option for young people with such needs and excluding them rather than using the options that could work for them, realises the worry among many of us who work with young people and want to see that their needs are met; we want to track what happens.

Tracking exclusion seems the only proxy that we have under the Bill, especially if we will not identify additional needs through school action plus, reform the process or reduce it. I shall be seeking the Committee's leave to

withdraw the amendment, but I hope that, especially when we come to later clauses that could underpin such a support network at both early years and in adolescence, there will be agreement throughout the Committee about the need to look at how support services can be accessed. When we trust professionals, we need to trust more than one set of professionals to help a young person. We must be able to bring in educational psychologists, youth workers and social care workers to give those young people the best start in life, which is what we all want to happen.

**Mr Stuart:** The Minister made several reasonable points. Ofsted and its narrow focus and ability to look at behaviour is important, but we should remember that it will be focusing in future on fewer schools. Hopefully, as the number of outstanding schools increases, Ofsted will reduce its scope. Therefore, we will not have through its inspection activity the overview for which I was calling, so I hope that my hon. Friend will consider that matter further. Although no mention is made of it in new clause 2, the Select Committee recommended that consistent surveys be taken so that we know what perception teachers, parents and pupils have of behaviour in schools, which will give us an overview. I hope that my hon. Friend will consider that, too. I am happy not to press the new clause, having had such a full debate.

**Mr Gibb:** I thank my hon. Friend for information about Ofsted withdrawing from outstanding schools. It will, of course, continue to carry out thematic surveys of schools and, with his influence, I am sure that some of those thematic reports will be on the issues that he has raised. I remind the hon. Member for Walthamstow that, under the new system, we have a Green Paper that places an increased emphasis on early intervention. We have the ability of a parent to require an SEN expert to be on the review panel, and we have direct access to the first tribunal if there is evidence of discrimination on the grounds of disability for permanent exclusion that did not exist before. With those additional protections, I urge members of the Committee to resist the amendment.

**Stella Creasy:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Kevin Brennan:** I beg to move amendment 27, in clause 4, page 8, line 33, at end insert—

'(3A) The responsible body must consider a report from the Special Educational Needs Coordinator when considering whether a pupil should be reinstated under subsection (3)(b).

**The Chair:** With this it will be convenient to discuss the following:

Amendment 67, in clause 4, page 8, line 33, at end insert—

- '(f) requiring the relevant head teacher to ensure that, if a pupil has been excluded from school for a fixed period on more than once occasion in a 12 month period or is at risk of permanent exclusion—
- (i) an assessment is carried out to identify whether a pupil has unidentified special educational needs or a disability requiring specialist provision;
  - (ii) there is a review of the effectiveness of the specialist provision being made if such provision is required under sub-paragraph (i).'

Amendment 68, in clause 4, page 8, line 33, at end insert—

- (f) about the training members of the review panel must undertake, including training in the law and practice relating to children with special educational needs and in disability awareness.’

Amendment 1, in clause 4, page 8, line 42, at end insert—

- (d) reinstate the pupil and require the responsible body to carry out an assessment and make reasonable adjustments and provision for those with special educational needs, if it considers that the pupil may have special educational needs and that the responsible body has failed to identify those special educational needs and make reasonable adjustments and provisions for those with special educational needs;
- (e) reinstate the pupil and require the responsible body to carry out an assessment and make reasonable adjustments and provision for those with additional needs, if in the last eighteen months the pupil is or has been in receipt of free school meals and/or for which the school has received a pupil premium payment and considers that the responsible body has failed to identify those additional needs and make reasonable adjustments and provisions for those additional needs;
- (f) reinstate the pupil and require the responsible body to carry out an assessment and make reasonable adjustments and provision for those with additional needs, if in the last eighteen months the pupil is or has been looked after by the local authority, in public care or on the local authority ‘at risk’ register, and it considers that the responsible body has failed to make reasonable adjustments and provisions for those additional needs;
- (g) reinstate the pupil and require the responsible body to carry out an assessment and make reasonable adjustments and provision for those additional needs, if the pupil is or has in the last eighteen months been a young carer, with or without the knowledge of the responsible body, and it considers that the responsible body has failed to identify any additional needs that the pupil has, and failed to make reasonable adjustments and provision for those additional needs.’

Amendment 39, in clause 4, page 9, line 20, at end insert—

‘, including where an assessment of the child under Part 4 of EA 1996 or otherwise must be undertaken’.

We are making glacial progress, so I shall be rigorous from here on out.

**Kevin Brennan:** Thank you, Mr Walker. Our progress may be slow at the moment, but I am sure that we will get through the Bill with the co-operation of all concerned. It is extremely important to scrutinise in detail those parts of the Bill in which there is a great deal of interest, not just in the Committee but outside.

Amendments 27 and 39 in my name and that of my hon. Friend the Member for Hartlepool relate again to the exclusion provisions. It makes sense in some ways to take them in reverse order, so I shall refer first to amendment 39 and then to amendment 27.

Amendment 39 specifies that regulations may make provision for the circumstances in which a child at risk of exclusion must be assessed under part 4 of the Education Act 1996 for a statement of special educational needs. The Education Committee’s report, “Behaviour and Discipline in Schools” which has been referred to throughout our proceedings made a similar recommendation and said:

“We recommend that there should be a ‘trigger’ for an assessment of need, which may include special educational need, based on exclusion, for example a number of fixed period exclusions or a permanent exclusion. Not only would this ensure that children with undiagnosed special educational needs do not ‘fall through the net’: it would provide information of use to a future provider in meeting the needs of the excluded child.”

That comes from the report of the Committee of the hon. Member for Beverley and Holderness.

We met the Alliance for Inclusive Education, which said that it is worried that a high percentage of children with SEN are being excluded from mainstream schools. It said:

“Too often local authorities and schools have failed to arrange SEN provision early enough. Eighty-seven per cent of primary and 60 per cent of secondary school children who are excluded from school have special educational needs. A significant number of these children have attention deficit hyperactivity disorder (ADHD), autism and mental health issues. Many of these children do not receive the specialist SEN provision which would provide the relevant expertise that teachers need in order to support pupils to remain in mainstream education. For example children having to wait over a year to access mental health services such as a counsellor.”

We also heard from Ambitious about Autism, which used to be known as the TreeHouse charity to one or two hon. Members here. It said:

“Exclusions are a major concern for parents of children with autism. Our research showed that 43% of children with autism were officially excluded from school in a 12 month period. Exclusion can often be the result of an underlying special educational need, which has not been identified and has manifested as challenging behaviour...Our primary concern is for young people facing exclusion who may have unmet special educational needs that impact upon their behaviour. For example, we see many cases where young people with high-functioning autism, but without a diagnosis, struggle to understand instructions given to them at school, or fail to effectively communicate their innocence, and end up in a cycle of exclusion.”

That is an extremely common concern from those who represent children with autism.

The Children’s Society is also worried, and said that it would like no pupil to be permanently excluded unless a review has been undertaken by the school of the sufficiency and effectiveness of reasonable adjustments being made for a disabled pupil or special educational provision for a pupil with SEN. It says that assessment “should have an independent element and should be undertaken before a decision is made to permanently exclude the child. We know that many behavioural difficulties observed in pupils stem from a disability or SEN and therefore the most effective way to address this is to meet the SEN need.”

The amendment seeks to safeguard children with special educational needs from inappropriate exclusions.

Amendment 27 aims to ensure that a pupil’s SEN are taken into account when the responsible body—such as the governing body—considers whether a pupil should be reinstated, which may follow an independent review recommendation for the decision to be reconsidered. As we have heard many times this morning, children with SEN are far more likely to be excluded than others. We have referred to the Education Committee’s report on behaviour and discipline in schools, which states:

“Pupils with SEN (both with and without statements) are more than eight times more likely to be permanently excluded than those pupils with no SEN. In 2008–09, 24 in every 10,000 pupils with statements of SEN and 30 in every 10,000 pupils with SEN but without statements were permanently excluded from school, compared to three in every 10,000 pupils with no identified

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SEN. For fixed period exclusions, the rate for pupils with statements was 19.1%, 14.2% for pupils with SEN without statements, and 2.2% for pupils with no SEN.”

In evidence for that report, Professor Pam Maras, who is honorary general secretary of the British Psychological Society, told the Education Committee that schools find it difficult to interpret SEN policies in relation to behaviour, because behaviour is also dealt with through disciplinary action. Amendment 27 seeks to ensure that children with SEN are not excluded if their needs have not been adequately addressed by their schools.

In addition, Ambitious about Autism told us that the removal of the right to reinstatement through the independent review panel might have the unintended consequence of increasing exclusions among those groups that are already vulnerable to exclusions, including children with autism and other SEN. The Bill removes appeals panels and replaces them with review panels that do not have the power to reinstate, so we are concerned that children with SEN may be disproportionately excluded.

The amendment would place a duty on the responsible body—the governing body of a school—to consider a report from the SEN co-ordinator when deciding whether a pupil should be reinstated. Such a duty would ensure that responsible bodies have all the necessary evidence to make an informed decision about reinstating, and it would protect children with autism and other SEN from discriminatory exclusions. I would be interested to hear the Minister’s reaction to the amendment in light of the additional information that he is provided to the Committee.

I refer briefly to amendments 67 and 68, which were tabled by the Chair of the Education Committee, the hon. Member for Beverley and Holderness. Again, I suspect that the hon. Gentleman has drawn heavily on his Committee’s report—particularly recommendation 25—which is understandable. The recommendation followed a discussion of school collaboration on the necessity of carrying out an assessment for a child on school action plus, for example, to see whether a statement is required. Amendment 67 has some merit, although the Minister will want to tell us whether its proposals would involve additional costs in the short term; it might result in considerable savings in the long term. I know that the hon. Member for Beverley and Holderness will speak about his amendments in a minute, but it is important that the Minister identifies whether consideration has been given to the long-term savings that the amendment might produce.

12.45 pm

Amendment 68, tabled by the hon. Gentleman, would require review panel members to be trained in the law and practice of children with special educational needs and with disabilities. On the surface, it seems a sensible proposal. We sought to address that matter in government, and there is a comprehensive set of training materials, which was prepared for the previous Government by the Information for School and College Governors service, already available on the teachernet website. That guidance could do with being updated, once the new arrangements come into force. We would be interested to know what the Government’s plans are for training arrangements for review panel members, which was

probably partly the purpose of the hon. Gentleman’s amendment. He made some reference to that, but we would welcome more detail from the Minister, as the matter was not mentioned in the evidence note, E 45.

**Mr Stuart:** We will see whether we can up our pace from the glacial one that we have so far maintained. I will speak to amendments 67 and 68. Amendment 67, as has been said, is based on a recommendation from the Education Committee’s recent report, “Behaviour and Discipline in Schools”. It would require a trigger for an assessment of need that may include special educational needs if a pupil has been excluded more than once in a 12-month period or is at risk of permanent exclusion.

Children with special needs, and their parents with them, suffer the most astonishing frustration within our system. Only days ago, I heard from a constituent who talked about a child with Asperger’s, who has been on school action plus for the whole of his school life. He has met educational psychologists and had various support, but his experience has been woeful. He has been suicidal and self-harming, and has failed to get a statement. Over five years, the system has resisted efforts by the parent to have that child given the help that he needs. Yet, if we looked at the services provided, we would be able to tick many boxes showing that efforts had been made to meet those needs; however, his needs have not actually been met.

I therefore welcome the Green Paper’s section on accountability, where it states that it is not enough to show that services are being provided; whether the needs of the child have been met needs to be looked at, and that is far more important than whether, institutionally, there has been a response within a certain number of days or certain steps that the system requires have been taken. Of course, it is easier to talk about that in a Green Paper than it is to implement it on the ground, but that aspiration is well worth pursuing.

I will be mindful of that little boy, who is having such a miserable time at such a young age. His mother said that she does not believe that he is truly suicidal, but that he is so desperate and so disappointed that he expresses his frustration in that way. It is for the benefit of children such as him that we are trying, in our inadequate fashion, to improve the Bill. I do not think that any member of the Select Committee would suggest that the trigger is the be-all-and-end-all answer to the needs of such children, but we want to have processes put in place to ensure that a child’s needs are met.

When we took oral evidence, I asked witnesses about that issue. Mike Gibbons replied:

“I have on occasion been told by a local authority that the only way to get help for child X is to exclude them permanently, because that will trigger other types of interventions. I would rather that it was the other way round.”

I think that he is right, and we were given an interesting series of succinct answers. David Wootton said:

“The idea of ensuring that we reduce exclusions and try to find out what is behind those children’s behaviour is a very positive one”—

to get in there before they have to be excluded, and try to meet their needs before they are thrown out. He continued:

“It is quite an interesting idea to explore, whether or not a child has needs identified as they move through that exclusion pattern. It might help to break that pattern.”

Dr Moynihan, on the other hand, said:

“I think that it is too late if the assessment is made when someone is about to be excluded. The answer is not to introduce more regulation but to see what we can do to improve statementing and treatment of special needs in the country.”

That, of course, is what the Green Paper sets out to do. Patricia Sowter said:

“There are many situations where children slip through the net, not because the school has not picked up on their special needs but because it is very difficult to access specialist services through local authorities.”—[*Official Report, Education Public Bill Committee*, 1 March 2011; c. 20, Q37.]

That is also true. It is not necessarily a failure of responsibility or care, let alone malice, on the part of schools, but an inability within the existing systems for people of good will to do the right thing by the most vulnerable children.

It is an extremely difficult area, but I hope that the amendment might be considered and accepted. If not, I hope that it at least triggers a serious debate about how we change the system. Many speakers have spoken about the increased likelihood of children with special educational needs being excluded from school. What happens to those who are excluded is well known. Of the people in special units, only 1% get five good GCSEs. The chances of ending up in jail or on drugs and—however we measure it—leading a miserable life are massively increased if a child is excluded. While accepting the need for the school to maintain proper discipline, anything that we can do to make that less likely and to ensure that a child’s needs can be met and they can be kept in school is a good thing.

Recognition of the current appalling outcomes for excluded children is the reason I welcome the pilots that the Government are suggesting on schools maintaining responsibility. I entirely accept that there are all sorts of issues, which is why they are piloting it. There are conflicts of interest. If schools have an automatic right to additional money, they might have a perverse incentive to exclude. If they have to pay for it out of their existing budget, do they have a perverse incentive not to find specialist additional support, external to the school, when they could? Those are things that we need to tease out. Getting it right could not be more important to the future of some of our most vulnerable children.

**Stella Creasy:** Does the hon. Gentleman also share my concern that there might be a perverse incentive for the children who remain in the school? Schools might end up sacrificing the cost of teaching assistants or extra support to fund special education places. Without the support that perhaps local authorities are currently providing, there could be all sorts of perverse incentives in the system that could damage educational opportunities for a range of young people.

**Mr Stuart:** The hon. Lady makes a reasonable point. I do not know whether Governments should brainstorm, but when they try to tackle something as intractable and difficult as this, I do not want to pour too much cold water on it, especially when they are not announcing it as a *fait accompli* because they are so certain that it is right. They are actually piloting it. I want to give it a chance, because what we have now is not good enough. There are conflicts of interest in any system, but it is worth pursuing. When a child is excluded and drops out of the school’s picture, we know what their outcomes

are. If the school, which probably knows them better than anyone else in the system at that point, has a continuing link and some sense of ownership over that child’s future, perhaps that could offer real benefits. What happens to children now can be pretty catastrophic, so changing the system and supporting the pilot is worth while. It is worth raising the issues so that we get the framework as appropriately drawn up as we can to minimise any negative impacts, which there are bound to be in any system. I think it could offer some benefits.

Amendment 67 would ensure that children with undiagnosed special needs, deficient literacy skills or other unmet educational needs did not fall through the cracks by requiring a closer investigation of the root causes of poor behaviour prior to the permanent exclusion of the pupil. The equality statement for the Bill indicates that pupils with SEN account for 72% of all exclusions. More must be done to ensure that fixed-term exclusions do not become permanent exclusions owing to unmet SEN.

According to the Social Market Foundation and the Disability Rights Commission, at the age of 16 young people with SEN and disabilities are twice as likely to be NEET as those without. That figure rises to three times as likely by the age of 19. High levels of permanent exclusion for such pupils will only increase those numbers. That is the reason for suggesting this trigger today.

Amendment 68 would require members of review panels to be trained in SEN law and practice and disability awareness. Such a requirement is particularly important when there is an unidentified need because children may be labelled as having behavioural difficulties when it is the system that has failed to meet their educational needs. I refer back to the quote that I gave from the Ofsted report, which suggested that up to half the children on school action would not need to be so designated if they had had their needs met appropriately in the first place. If a child is permanently excluded, it is vital that review panels have the expertise to recognise that and advise the school accordingly if they fail to meet SEN needs or make reasonable adjustments.

I cannot claim to have mastered every clause and subsection that we will discuss in this Bill, but this may be the opportunity to discuss the Government’s proposals to give parents the right to have an SEN specialist advise them when they go to the panel.

**The Chair:** Order. No, it is not.

**Mr Stuart:** Your clarity, as ever, Mr Walker, is welcome. In that case, I will leave it aside for another time.

**Pat Glass:** Amendment 1 is a substantial amendment that refers to failure. Where a school has significantly failed, there should be an opportunity for review panels to reinstate pupils. I am looking in particular at four groups of children: those with special educational needs; those who live in poverty and who would have attracted a pupil premium in the previous 18 months; those who are looked after or who are on the local authority at risk register; and those who are young carers. Under amendment 1, the review panel may reinstate the pupil “and require the responsible body”—  
the school—  
“to carry out an assessment and make reasonable adjustments and provision”

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for those children, if it considers that the pupil may fall into one of these categories and

“that the responsible body has failed to identify those educational needs and make reasonable adjustments and provisions.”

We are talking about when a school has significantly failed.

I was a little concerned by the hon. Member for Grantham and Stamford who said, on Thursday, that Members on the Government Benches trust head teachers more. I am not sure whether that is true. I literally love head teachers; my immediate family is littered with them. Someone said earlier today that this is a continuum; we have head teachers who will go to the nth degree to meet the needs of all their pupils. We have teachers at the other end of the continuum whose focus is on standards, and the needs of individual children are secondary to that. We are, I think, at the end where most head teachers will go to great lengths to

meet the needs of all children. Nevertheless, there should be somebody between the head teacher and God in these things.

The common denominator in all four proposed subsections is where the school has failed to recognise, assess and make reasonable adjustments. We are talking about very vulnerable young people. Where they have been failed—and they have been failed in the past—there should be a right to reinstatement. When I first became head of the service, Achievement and Inclusion, I came across the case of a boy called Peter. The phone rang, I picked it up and it was my pupil referral unit saying, “There was a permanent exclusion governors meeting last night. The exclusion was upheld. We are starting to get all kinds of alarm bells ringing. We have never heard of this child before. The behaviour support people and the SENCO have never heard of him and yet he has been permanently excluded.”

1 pm

*The Chairman adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Four o'clock.*