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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Second Sitting

Tuesday 5 March 2013

(Afternoon)

CONTENTS

Written evidence reported to the House.
Examination of witnesses.
Adjourned till Thursday 7 March at half-past Eleven o'clock.

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The Committee consisted of the following Members:

Chairs: † MR CHRISTOPHER CHOPE, MR DAI HAVARD

† Barwell, Gavin (<i>Croydon Central</i>) (Con)	† Nokes, Caroline (<i>Romsey and Southampton North</i>) (Con)
† Brooke, Annette (<i>Mid Dorset and North Poole</i>) (LD)	Powell, Lucy (<i>Manchester Central</i>) (Lab/Co-op)
Buckland, Mr Robert (<i>South Swindon</i>) (Con)	† Reed, Steve (<i>Croydon North</i>) (Lab)
Elphicke, Charlie (<i>Dover</i>) (Con)	† Sawford, Andy (<i>Corby</i>) (Lab/Co-op)
† Esterson, Bill (<i>Sefton Central</i>) (Lab)	† Simpson, David (<i>Upper Bann</i>) (DUP)
† Glass, Pat (<i>North West Durham</i>) (Lab)	† Skidmore, Chris (<i>Kingswood</i>) (Con)
† Hodgson, Mrs Sharon (<i>Washington and Sunderland West</i>) (Lab)	† Swinson, Jo (<i>Parliamentary Under-Secretary of State for Business, Innovation and Skills</i>)
Jones, Graham (<i>Hyndburn</i>) (Lab)	† Timpson, Mr Edward (<i>Parliamentary Under-Secretary of State for Education</i>)
† Leadsom, Andrea (<i>South Northamptonshire</i>) (Con)	† Whittaker, Craig (<i>Calder Valley</i>) (Con)
† Lee, Jessica (<i>Erewash</i>) (Con)	Steven Mark, John-Paul Flaherty, <i>Committee Clerks</i>
† Milton, Anne (<i>Lord Commissioner of Her Majesty's Treasury</i>)	
† Nandy, Lisa (<i>Wigan</i>) (Lab)	† attended the Committee

Witnesses

Srabani Sen, Chief Executive and Board Member, Every Disabled Child Matters	Wendy Lee, Professional Director, The Communication Trust
Matthew Dodd, Co-ordinator, Special Education Consortium	Kate Fallon, General Secretary, Association of Educational Psychologists
Christine Lenehan, Chief Executive, Council for Disabled Children	Di Roberts, Principal of Brockenhurst College, Association of Colleges
Brian Lamb, author of Lamb Review, Achievement for All	Russell Hobby, General Secretary, National Association of Head Teachers
Jane McConnell, Chief Executive, Independent Parental Special Education Advice	David Bartram, Assistant Head Teacher, Lampton School, Hounslow, and SEN lead, London Leadership Strategy
Professor Julie Dockrell, Psychology and Special Needs, Institute of Education	Dr Maggie Atkinson, Children's Commissioner, Office of the Children's Commissioner
Jane Friswell, SEND Consultant, National Association for Special Educational Needs	

Public Bill Committee

Tuesday 5 March 2013

(Afternoon)

[MR CHRISTOPHER CHOPE *in the Chair*]

Children and Families Bill

Written evidence to be reported to the House

- CF 01 Public and Commercial Services Union
- CF 02 British Humanist Association
- CF 03 Children and Families Bill Public Reading: Final Summary
- CF 04 Every Disabled Child Matters
- CF 05 Association of Colleges
- CF 06 National Union of Teachers
- CF 07 Magistrates Association
- CF 08 Pete Bentley
- CF 09 Fatherhood Institute
- CF 10 British Association for Adoption and Fostering

2 pm

The Committee deliberated in private.

Examination of Witnesses

Srabani Sen, Matthew Dodd and Christine Lenehan gave evidence.

2.3 pm

Q85 The Chair: Good afternoon, and thank you for coming. Will you briefly introduce yourselves, and then we can have the first question?

Matthew Dodd: I am Matthew Dodd, co-ordinator for the Special Education Consortium, which is a consortium of more than 30 professional and voluntary sector bodies that work on a consensus basis and bring that consensus to Parliament during the passage of legislation.

Christine Lenehan: I am Christine Lenehan. I am director of the Council for Disabled Children, and I am also working as a strategic partner with the Department for Education.

Srabani Sen: Hello, I am Srabani Sen. I am chief executive of Contact a Family. We support families with disabled children. Today, I am here as a board member of the Every Disabled Child Matters campaign.

Q86 Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): Good afternoon. I am sure that you have heard the news and are as pleased as I am that the Minister has said that there will now be a duty on clinical commissioning groups to provide what is set out in education, health and care plans. Obviously, we are still waiting to see the detail of that and the actual

clauses. I imagine that that was going to be one of your biggest asks, so what is your next biggest priority, in terms of amendments?

Srabani Sen: There are two areas on which we would really like to see some clear amendments. The first is the scope of the Bill. We can see no rationale or logic as to why you would confine the special educational needs provisions in the Bill to children with special educational needs, and exclude those children who have disabilities but do not have special educational needs. We have previously raised that and have been told, “Don’t worry, because those kids will be covered by the equality legislation and other legislation, such as the Children Act.” However, one of the guiding principles of the Green Paper, which was published a couple of years ago with the “Next Steps” document, was how to make the system simpler for parents, and for the children and young people going through it. This is just adding to the complication, because if you are a parent, you will have to work out whether you are covered by one bit of legislation or another. That also complicates matters for the professionals trying to support them. One of the key things that we will be asking for is to extend the scope of the provisions to all disabled children.

The second area in which we think we need some strong amendments is the local offer. We are delighted with the concept of the local offer, and certainly, in our dialogue with Government, we have been talking very much about how we can ensure that we achieve the right outcomes for those children who are not covered by an education, health and care plan. However, if you look at the wording of the Bill, it could well be interpreted, and is set out, as simply a duty to publish information about local services. There is nothing about how you make sure that you have a needs-based assessment of what the population in your area needs, how you make sure that the local offer actually delivers on the outcomes defined, or how you hold local authorities to account for those. Those are probably the two areas on which we would want most amendments.

Q87 Mrs Hodgson: Christine and Matthew?

Christine Lenehan: We are interested in working with the Department to look at how the Bill delivers integration. One of the things that we will be working closely on is the role of health and social care in the planning and in the process. I do not think it is necessarily about major amendments at this stage; it is about really understanding how an incredibly complex planning system becomes a single planning system, because going back to what Srabani said, that is the basis. We have more work to do on how we bring the range of assessments together and how we end up with a single planning process and a single point of redress.

Matthew Dodd: To reiterate what Christine says, we will have a duty on clinical commissioning groups to deliver; the next thing we will be looking for is a duty on social care, linking in existing pieces of legislation—section 17, and Children Act assessments. We will want to get those into the education, health and care plans, and get a duty to deliver the services identified in those plans in relation to social care. Then, as Christine says, we will want a single point of redress, both for complaints—the local government ombudsman or the parliamentary and health service ombudsman has a role here—and in

terms of the tribunal being able to hear appeals about the content of education, health and care plans in relation to health, social care and education.

Q88 Mrs Hodgson: There are children who may or may not have a disability, but who do have a long-term medical condition; I am thinking especially of children with diabetes or epilepsy. Obviously, children with epilepsy can have other conditions that may or may not warrant them an education, health and care plan, but thinking more along the lines of medical conditions in and of themselves, if we are reforming this system in a once-in-every-30-years opportunity, what is the best way to account for and monitor those children, and to make sure that their needs are met?

Christine Lenehan: We have yet to understand fully the links between what the Bill proposes, the changes being made to the health system in the next couple of weeks, and how they will come together. We will want to look in more detail anyway at the commissioning of children's services in the new health system: where they are in what will be the eight different levels of commissioning in the new health system, what the joint commissioning duty in the Bill means and whom it extends to, and what supplements that. We are still looking at a new version of the medicines in schools guidance, for example—where that links to, what requirements we are putting on new schools, new ways, whatever. The issue regarding medical conditions is wider than the Bill. As the new health system comes in, we are almost having to take a step back from it and ask how all this change comes together.

We have significant concerns in relation to issues such as diabetes, where we are not seeing a join-up, whereas we had been doing better in some ways. We cannot understand yet whether that join-up around diabetes is not happening because people are confused about new health commissioning arrangements, or about new school arrangements and therefore what academies can and cannot do, or whether people are worried about school nursing arrangements. I think there is some stepping back, but you are right that we cannot create a new integrated Bill from any set of provisions that allows a group of children to keep falling down the gaps.

Q89 Mrs Hodgson: Do you have anything to add, or are you happy with that?

Srabani Sen: I think that covers it really well.

Matthew Dodd: If I may add to this, obviously the duty to provide health services for children with EHC plans is great, but children with diabetes are unlikely to be able to access education, health and care plans, because significant SEN will be the trigger. We still hope that the Government might consider triggering plans through different routes, but if we are to go down that route, there will be a need to look at issues such as health commissioning, how this links in with health and wellbeing boards, and so on, to improve commissioning locally.

Q90 Caroline Nokes (Romsey and Southampton North) (Con): Picking up on Sharon's point about children and young people with health issues, how do you feel that the EHC plans will work for young people who might have mental health conditions? As we try to move

towards parity between physical and mental health, do you have any concerns about those young people who might have, for example, eating disorders?

Srabani Sen: The difficulty with the way the legislation is currently framed and phrased is that everything about a child is viewed in relation to their educational needs. Children are more than the sum of their educational needs; they are actually often people with health needs and social care needs, and needs for leisure and so on. Part of the difficulty with the way the Bill is framed is that it suggests that your health needs—whether a mental health need or anything else—will only be considered in relation to whether or not tackling that health need will solve your educational need and help you achieve your educational outcomes. That is a very peculiar way of looking at children. We do not look at children without disabilities or without illnesses in that way, so why look at children with additional needs in that way?

Q91 Caroline Nokes: Thank you. On an unrelated point, most of us who have dealt with parents of children who have special educational needs are very conscious of those parents having to fight for their needs all the time. Do you feel that this Bill addresses those parents who perhaps are not as articulate or not as determined, or is there a danger that those children will still fall through the cracks?

Srabani Sen: From our perspective, there is huge potential for that fight to continue. It might be a different-looking fight, perhaps around trying to get an education, health and care plan for your child, because you think that is how you will get your child's needs met. I think there is a real danger that unless the whole system works, parents, or indeed professionals, will inflate the educational needs of a child in order to get the maximum support, which is clearly the wrong way round as a way of thinking of those children. This is why we are so keen to make sure the local offer is really strong. One of the difficulties is that it is much easier for very articulate middle-class parents to understand how to work the system in the best interests of their child. One of the reasons why we want the scope of the legislation to cover all disabled children is so that there is a simplified system that covers all children who have those additional needs. This would make it easier for parents and minimise the need for a fight. I do not know whether you would add to that.

Christine Lenehan: My view is that it has the potential to take the fight away. It is worth remembering that the Bill is part of a process of culture change. One of the really interesting things I have been doing as part of my job is going round the country talking to parent carer forums and parent partnership services. We have four different clauses in the Bill about information and support, and understanding how they work and come together and how we are doing that. In areas where parent carer forums have worked really hard in partnership with local authorities, we see a change in how that battle is joined. We see a change in how information is provided, how people are supported, and how they understand. There is a lot of wasted energy in the system, because people do not get accurate information about entitlements, support and a whole range of things. The potential in the Bill to take fight away is there. The issue is about seeing the Bill as part of a much wider cultural change programme.

One of the really interesting things we note as we go around is the work we must do with professionals. Many of the professionals we are working with still see empowered, knowledgeable parents as a threat, so they respond to the threat. If you try to understand how to work with professionals to see parents as partners and not a threat, and work with parents to understand how to get the best out of professionals, usually by understanding their limitations, that is when you start to change the dynamic. The Bill in itself cannot do that. What it can do is support the foundations for that activity.

Q92 Steve Reed (Croydon North) (Lab): I want to ask about personal budgets. What impact do you think the provisions will have? Are the pilots flagging up any concerns, and do you think the provisions go far enough?

Christine Lenehan: It is really interesting, and again, this goes back to some of the integration points: we have been involved, as a council, in working with the Department on direct payments for personal budgets for a number of years, and we have had some real wins for parents in relation to social care and personal budgets when those budgets are supported properly.

To take a really simple example, I have worked with families with more than one severely disabled child who have the indignity of all sorts of people appearing on their doorstep to provide intimate care for their child in packages that they cannot support and from people they do not know. I have seen that system replaced with a personal budget that puts a family in charge. In social care personal budgets, we have seen some really good examples of change when they are supported properly and when local authorities see that through a brokerage system and not an abdication system. We have also seen some really good moves forward, although much slower and much less well developed, in relation to the provision of personal health budgets for things such as equipment, support and so on.

The pathfinders have also been looking at personal budgets in education, and it is probably fair to say that the case is not yet proven. One thing I am interested in looking at as the Bill goes forward is how to join up the whole package of personal support for families across the piece, so that they can choose—I think this is what the Government intend—the level of choice and control they have over their own environment and how that works. That is where we are now. Pathfinders are still struggling and still trying to make it work, but they are beginning to see where the opportunities are to take the agenda forward.

Q93 Mr Reed: Do the provisions in the Bill allow enough scope for what you have just described to develop?

Christine Lenehan: I think the provisions in the Bill could. It partly depends on what comes out in regulations under the clause in the Bill. Certainly one of the things I would want to see is personal budgets in education as part of a wider frame that includes personal budgets in social care and health. Then I think the provisions do.

Q94 Chris Skidmore (Kingswood) (Con): It is estimated that about three quarters of disabled children have special educational needs, and so would be covered by the Bill. Do you all agree with that?

Christine Lenehan: We know where you have got the statistic from, yes.

Q95 Chris Skidmore: Do you agree with it?

Christine Lenehan: Yes.

Q96 Chris Skidmore: A moment ago, we mentioned covering children with specific needs, such as asthma and diabetes. Am I right in saying that they do not need specific educational provision, and that you are looking to widen out the terms of reference from special educational needs?

Matthew Dodd: That is precisely one of the groups that would have a disability but would not be covered by the special educational needs definition. The absence of that definition from the Bill means that the review functions, the joint commissioning functions and the local offer functions will not apply to that group of children. That is really what we are getting at with this point.

Q97 Chris Skidmore: I am sure we all recognise that we have one of the tightest funding settlements for decades. Where do you think it would be fair for the Government to place their priorities? I do not want to sound like I am favouring any one group in particular. Pupils with diabetes or asthma may come from a social background that is very different from that of children who have been abused or adults with special education needs who need social care services.

Matthew Dodd: These are already statutory duties. Under its constitution, the NHS has a duty to meet clinical need. We are not saying, “Go beyond that.” If there is an identified clinical need, that should be part of this process.

Srabani Sen: The issue is not that it would cost more, in our estimation. There is actually the potential for it to cost less if you have a more co-ordinated system. As Matthew said, there are already statutory duties; they just fall under different bits of the system. If the core objective, on which we thoroughly agree with the Government, is to simplify the system, we are saying, “Use that opportunity really to simplify the system, and you could save money.”

The other side of this, when we talk about things like how you develop the local offer and local service provision, is that working with parent carer forums can be hugely beneficial. There are some really strong data showing that where you involve parent carer forums at a strategic level in designing services in an area, not only do you get better quality services, but you often get far better value for money and much more targeted investment of the money you have, however limited it is, in the best place.

Q98 Chris Skidmore: So that the Committee can get a clearer picture of what you are talking about in terms of that structure, could you give specific examples of where you feel that extending education and health care plans would benefit particular children? Is there anything you have in mind, rather than just setting out the general picture?

Srabani Sen: Sure. We have given some examples already. We have talked about children with particular long-term conditions, like severe asthma or diabetes.

There will be other children who have, for example, conditions that affect their mobility, which has no impact on their ability to learn, but if they had a co-ordinated assessment of their needs and therefore a co-ordinated approach to meeting those needs, that would make the system simpler for the parents to understand, and it would make it simpler for the children to get the services they want. It would also make it simpler for the providers to know how to work together in the best possible way and to make the best use of the budgets. So it is about a whole range of people.

I am not a legal person, and I am sure somebody will correct me if I get this wrong, but, under the Education Act, there is a two-part definition of the children we are talking about. One group is children with special educational needs; the other is disabled children, and they are defined as anybody with a sensory or physical impairment that does not stop them accessing education. In some cases, they will still have quite intense needs, but the way the Children and Families Bill is framed, they would not be covered in terms of benefiting from a better, sleeker and more efficient system. Is that fair, would you say?

Christine Lenehan indicated assent.

Q99 Mrs Hodgson: Reading through the evidence from Every Disabled Child Matters, Matthew, you say you welcome the entitlements that young people will get in further education up to 25, and I think we all do. We will hear from the Association of Colleges, which has particular concerns about funding, but that is not for you. You go on to talk about young people who are not in education, employment or training, and you say a plan would be vital to get them back in. Can you expand on that point?

Matthew Dodd: Clause 45—the ceasing to maintain clause—is probably one of the clauses that need the closest scrutiny. The draft provisions said the plan would automatically end if a young person leaves education or training, or starts an apprenticeship. That has now been removed, but it is not clear whether the intention is that apprenticeships will be covered and that young people who are NEET and who are within the raising-participation age bracket will keep their plan. Quite how that will work in relation to the legislation is not really clear. I do not know whether it will be in regulations or the code of practice. We are arguing that the plan should go up to 25 regardless, because young people move in and out of education: they may do a period of supported employment or an apprenticeship; they may fall out temporarily, go into employment or want to return to education. We feel that there would be major benefit in maintaining the plans up to 25, to when they have established themselves in work, independent living or whatever. We feel strongly that the plan should continue.

This is the point to mention: we are very keen to look a bit further into continuing the plan into university. We think that that is an omission. You can do higher education courses at colleges, so it will apply in a college but not in a university. At the very least, we would like the Committee to explore why universities have been left out.

Q100 Mrs Hodgson: Are university students not well covered by the provisions already?

Matthew Dodd: There is disabled students' allowance, but care often breaks down when a young person goes to university, because they move out of their local authority. If they took the education, health and care plan with them, it would produce better co-ordination on care, for example. There would definitely be benefits that we think are, at the very least, worth exploring.

Q101 Mrs Hodgson: So you think it should be nought to 25, whatever their route through education is?

Matthew Dodd: We do.

Srabani Sen: We would agree. I think we understand the concept of linking it to education, and we agree with that. It is how you define education, particularly for these young people. There will be different routes for them to develop and different sorts of education that are right for them, whether it is an apprenticeship or higher education and so on. Again, it is part of simplification and making a clear route through as they transition into adulthood.

Q102 The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): Can I take us back to the health duty? We rather skated over it without too much discussion. Christine, how do you think the new health duty will help children and young people with SEN in practice?

Christine Lenehan: We have known from the outset of the process that one of the challenges about statements and to the statementing system is that quite often local authorities have ended up in tribunal because health has not fulfilled its part of a process. We have had real struggles trying to understand how to pull something together.

When I started out as a social worker 34 years ago, my first visit to a family was to ascertain whether a child in that family with a severe disability was having a health care bath or a social care bath. That argument about health and social care has continued to divide our system all the way through. If you work with parents of disabled children, as all of us do, and you go into a conference and within 10 minutes they have not mentioned speech therapy, it is because you are in the wrong conference. The endless hours that we have wasted on who provides what, at massive cost to the system, must change.

We were really pleased to get the joint commissioning duty as outlined in the Bill. At the top level, it at least felt like we were getting to the point of having a sensible look at the rational provision of speech therapy services, for example, or equipment provision, where we provide very poor services for a huge amount of money. Now having a duty on health cements that down from a general to an individual level. We now have something on the table that says, "These children have a range of needs. We have a corporate responsibility as a community to deliver to these sets of needs. How do we do it sensibly?" That is enormously helpful.

It will be challenging—there is no doubt about that—but to go back to what you said, it will start to end the battleground. That is also why it paves the way, as we have said, towards a single point of redress. We are not suggesting that in law you can necessarily create a single point of redress between three statutory systems simply, but we think this significantly helps us to look at a

single-door entry point for family into a redress system. That is hugely welcome. I was at an event this morning with a number of pathfinders, and they were struggling to believe it had been achieved. We also recognise that, in order to make the announcement that we are very happy you made, there has been a lot of difficult negotiation behind the scenes.

Q103 Mr Timpson: On redress through health, do you want to say a little bit more about where you think some of the new structures within the health service can be more closely integrated? I am thinking in particular of HealthWatch England and its potential to be a champion for patients and young people.

Christine Lenehan: It is a combination of things. I was at a local authority a while ago; it has an annual children's conference called "No Wrong Door", which has always struck me as a really good title: wherever parents go to, their needs will be sorted, whatever they are. I sit on the board for HealthWatch England which is looking at children and young people's interests. We have been looking at local healthwatch, which from 1 April, as part of its establishment, will include children's health and social care. It is still early days and we have been working with parent carer forums around the country to look at the link between parent carer forums and local healthwatch. We are looking at that new structure, with health and social care coming together, to look at what a single redress system looks like.

I think it will turn into a swan. I am hoping that from the outside it will look very graceful and parents will see something quite seamless, while behind the doors there will be some mad paddling to look at how the system comes together. One of the things we are really interested in exploring is whether you can create a triage system, to borrow another phrase from health. For example, where a plan is not delivering, we would look at having a very early meeting between education, health and social care so we understand redress. We know there are various ombudsmen, tribunals and people who know far more about what is going on behind the scenes, but the issue is whether we can use the construction of local healthwatch and a new system around localism to provide the first stage of a redress system.

Srabani Sen: To add to that, it was phenomenally good news to hear this morning about the duty on health to provide. One of the things that that helps with enormously is bringing people together to work together at a service delivery level, but it also gives parents something solid that they can use when they are having these discussions with their service providers about how they get the right services for their child. I do not think we can overestimate the potential of what you announced this morning. It is phenomenally useful.

One question is: how can we take that and also apply it to the local offer? The vast majority of children will not be covered by an education, health and care plan. They will be covered by the local offer. While we are thankful that there is a commitment to be transparent about what services a local authority may have available, there is something about adding some teeth to that which is a duty on local authorities to provide the services they say they will provide and on health to provide the services that they say they will provide, rather than just something that is expected to be provided. The vast majority of children will be covered by that

local offer and not the education, health and care plan. It is brilliant that it is there for education, health and care plans but how do we then transfer that set of commitments to the local offer, which most children will benefit from?

Mr Timpson: May I—

The Chair: Can I just bring in Bill, and then perhaps you can come back?

Q104 Bill Esterson (Sefton Central) (Lab): If it is just signposting for everybody and not on a plan, what happens if there is not a service in the immediate locality? What are your concerns about lack of co-ordination?

Srabani Sen: You have described our concerns really effectively. Part of the ambition behind the Bill is to make it easier for children to achieve their potential. If what we are then doing is saying, "Well, you might be able to get the service but you might not because it does not exist anymore and nobody is going to provide it," you end up in a different battle, which is trying to find somewhere that will give you the service that you need to help your child achieve their potential. You are wasting energy, and that energy should be devoted towards helping your child reach their potential. The way that you describe is the problem. It will be too difficult.

Q105 Bill Esterson: Given the Government's reluctance to do more than require signposting, is there anything that you can see within the framework they are proposing that could firm that up?

Christine Lenehan: Part of it is tying together the information provision bit of the local offer with the duty to keep education and care services, and now health, under review. We will be looking at what "sufficient" looks like. We are trying to understand how the education and care review process looks at sufficient services.

Q106 Bill Esterson: Is there a duty for sufficiency?

Matthew Dodd: Yes.

Christine Lenehan: Within the clause that requires education and care services to be reviewed, there is a sentence. Matthew is the geek, he is the clause man who knows all the numbers. It is clause 27.

Q107 Bill Esterson: Is that not after the event though?

Srabani Sen: I agree with Christine, but what I would add to what she is saying is that there are three elements to making sure that the local offer works. First, to make sure that it is devised on the basis of what the needs of the population are in terms of the improved outcomes you are trying to achieve for your families. In devising your local offer, it should be a population needs-based approach rather than just randomly publishing a list, which I do not think is the Government's intention, by the way. I really do not think that that is what they mean, but it is about how you then phrase the Bill.

It is then about saying, "Okay, if you are trying to achieve this set of outcomes, how are you going to monitor whether the local offer in a particular local area is delivering against the outcomes that you have

decided you want to achieve for the population in that area?" If, through your monitoring, you find that the services you have available are not achieving those outcomes for the child, you have actually a very helpful circular loop. If you are involving parents in defining those needs at a strategic help and you are involving those parents in monitoring and holding local service providers to account, you have a very neat system.

Such structures exist. Parent carer forums at that strategic level are contributors to how you shape those services. They are there. The Government have been fabulously supportive of helping to develop, shape and drive them forward, so let us use the resources that are out there and make the most of the opportunity we have through the legislation.

Q108 Bill Esterson: The only question that comes out of that is: if the services are not there and you discover that in your feedback loop, how do you discover that quickly and put them in?

Matthew Dodd: It is worth looking at clauses 25 to 30. It is supposed to go back into the review, basically. You review, you draw up the commission, you provide the services, then you provide the information, and then that feeds back into the review, where you have to say whether it is sufficient. There is probably not enough accountability built in at this moment to know what happens if services are not sufficient, but the Bill is clear that that consideration should be given. What does sufficient look like? How is it judged? How are you held to account if provision is not sufficient? What should you do, if you found that it is not sufficient? That probably needs more work, but the idea is there.

Srabani Sen: It is very clear that we are in a period of fiscal constraint. We are not sitting here with Utopian glasses on, thinking that absolutely everything should be provided for everybody. It is really clear that you will need to prioritise in an area what services you provide, but as long as that prioritisation is based on a proper, thorough analysis of local need and you have involved young people and parents in shaping it, that is a great outcome, even if it means that you do not get absolutely every service you would like in an ideal world.

Q109 Mrs Hodgson: Should the Bill include time scales for local authorities to respond to requests by parents for an assessment of education, health and care plans? What role should educational psychologists have in this new process?

Matthew Dodd: The Government committed right at the beginning of this process to maintain all the current entitlements relating to statements of special educational needs; the regulations are fairly prescriptive about how that should take place and ed psychs have a clear role in that. Our position is that we do not think that there should be any roll-back on current entitlements, so anything that was there for statements should be built on and not diluted.

Q110 Mrs Hodgson: Is that the same for you?

Christine Lenehan and Srabani Sen: Yes.

Q111 Mr Timpson: Very briefly, do you think that SENCOs should be qualified teachers?

Srabani Sen: Yes.

Christine Lenehan: Yes.

Matthew Dodd: Yes.

Q112 Mr Timpson: The other document we published today is the SEN pathfinder programme report. I do not know whether you have had an opportunity to familiarise yourself with it, but I encourage you to do so. One of the areas that Christine touched on earlier was that the Bill also has to help to create the framework for the culture change needed on the ground—to recalibrate the way that professionals work and their behaviour around each other, so it is much more co-ordinated and parents are much more involved in the process from the start. I accept that you may not have digested every element of this report, but the suggestion is that there has been good progress, with parents feeling that they are more involved and more valued as a consequence. With your knowledge of the pathfinders, do you see them as an important contribution to making that culture change? How do you see them working over the next 12 to 18 months to spread change more widely, beyond the current 31 local authorities where the pathfinders operate?

The Chair: Before you answer, I shall ask Craig to put his question so you can answer at the same time.

Q113 Craig Whittaker (Calder Valley) (Con): Mine is very quick and will take you back to adding disabled children to the Bill. Christine, you said that this Bill was part of a process of culture change. While I accept your points, particularly about those with disabilities but without special educational needs, is there not a danger that by putting disabled children into the same Bill, we will give them an extra label that will disadvantage them?

Srabani Sen: The simple answer is no. Currently they are labelled as disabled. "Label" is an awful word, but I know what you mean.

Q114 Craig Whittaker: But we do not label them as having special educational needs.

Srabani Sen: Exactly. Extending the scope of who the Bill will cover is not about labelling a child differently, but extending the benefits of the new system to a broader group of kids. That is what we are suggesting.

Christine Lenehan: I am happy to answer the pathfinder question. It has been really interesting working with the 31 local authorities that have been pathfinders. Some of the most effective have not necessarily been the ones with the most plans in place or the most bits of paper, but those who from the outset concentrated on building the climate and culture for the change to happen. That has been a real learning process. As the pathfinders move forward, it will be essential to ensure that those lessons come out much more clearly; otherwise people will see pathfinders as working with small groups of children and wondering how they scale that up. In general, where the pathfinders have been successful is in looking at how to make the system change and how to make the individuals at every point in the system understand their role.

Some of that is the challenge of working with empowered parents; some is the challenge of working with empowered young people; and some is about being able to bring

creativity into some systems that have struggled to be creative. We still have far too many professionals who operate the way in they do because they have always operated like that. I once worked with such a health professional—though thinking of previous Health Ministers it could happen anywhere. Professionals have happily said to me that their job would be so much easier if parents and families did not get in the way of it. There is something for us if pathfinders can turn that culture on its head, rather than people at this stage worrying about what the paperwork for a plan looks like.

Matthew Dodd: Can I pick up the point about disabled children and labelling them SEN and disabled? What we are saying is include them in the scope of the Bill in relation to the joint planning and commissioning duties, rather than on an individual level, so that social care services, who recognise disabled children, not children with SEN, know that they are part of that system. That is what we are getting at, rather than asking at individual level who has SEN and who has a disability. It is about making sure that all the services that work across both those groups—there is a huge crossover—know that we are talking about all the children, not just the educational needs side.

The Chair: Thank you very much, all three of you, for contributing to our deliberations. We now move on to the next panel, because time is pressing.

Examination of Witnesses

Brian Lamb, Jane McConnell and Professor Julie Dockrell gave evidence.

2.46 pm

Q115 The Chair: Good afternoon, and thank you for coming along. Could you briefly introduce yourselves?

Jane McConnell: Jane McConnell, chief executive of the charity Independent Parental Special Education Advice, a barrister by training and parent of a child who happens to have complex special education needs.

Brian Lamb: Brian Lamb, chair of Achievement for All, which is a charity founded as a result of my inquiry into SEN and parental confidence that now works across 1,500 schools.

Professor Dockrell: Julie Dockrell, professor of psychology and special needs at the Institute of Education. I am also qualified as a clinical and educational psychologist, and I recently led on the embedded communication research programme, which was recently published.

Q116 Mrs Hodgson: Good afternoon. I have specific questions for each of you, so I will direct each question rather than you answering each one, unless you want to add something to a question even though it was not directed to you. I will start with Brian Lamb. Do you think that the Bill will increase parental confidence—you did the Lamb review on parental confidence, so I thought that there would be nobody better to answer this question—in the SEN system? What more might be needed properly to achieve that goal?

Brian Lamb: Gosh, I am not sure I have got a crystal ball, but I will try to answer that question. If we look back at some of the key things that we know help to improve parental confidence, the first is the involvement

of parents in the education of their child and in the strategic framework in which that occurs. In doing the inquiry, nobody would be surprised to hear that I think it is really good to have parents involved, but people often do not realise the reasons why. In a nutshell, apart from the moral good that we might all think that is, essentially the more you involve parents both at the school level in the education of their children with SEN, and at the strategic level, the better the outcomes you get for children, the better the attainment you get and the more confidence you get in services if they are transparent and clear, so I would really welcome the concept of the local offer.

I very much welcome what the Government have painted as a picture around that, rather than the language that is currently in the Bill. I think it is absolutely crucial that in the code of practice, we see that fuller vision that Ministers have talked about of an offer where parents can get involved in the conversations about what that offer looks like and in reviewing whether that is being delivered to them and its outcomes. If we can reset the conversation with parents and get that cultural change in the system so parents are really being consulted, that really helps.

Secondly, what we need—this is underplayed a little bit still in the Bill—is what happens in schools, because schools are now absolutely fundamental to driving this whole process. In the Green Paper, “Support and aspiration”, there was a very full concept of the school offer and schools being very clear to parents about what they should provide in relation to SEN and SEN provision. I have to say that I am slightly disappointed that the Bill simply contains a repeat of the duty to explain what is there in terms of a school’s Equality Act duties. I hope that when we come to the code of practice, the Government will paint a richer picture of what schools are expected to deliver for parents within that.

Lastly, the Government are helping to fund the roll-out of Achievement for All. Within that, we have the concept of the parental conversation, where each parent gets an hour per term to work through issues with their child with the teacher, and then we build on that and we build on that focus. The more we can roll out Achievement for All, the greater parental confidence will be.

Q117 Mrs Hodgson: I have another question for Brian. How do we ensure that children who are not covered by an education, health and care plan achieve their best outcomes, with a view to closing the gap between children with SEN and children who do not have SEN?

Brian Lamb: Fundamentally, the local offer is crucial for that, which is why I wanted to see that richer vision of it and especially what schools are required to do as part of it. When we come to look at what is going to be called the single category—I am talking about the move away from School Action and School Action Plus—we have to be very careful. Whatever the problems with that kind of division and categories—I do not think that we should be relying particularly on categories, whether it is a single category or two different categories—what we really need to be looking at, within that concept of what happens within the school for those children who do not have a plan, is a very clear focus on, first, really good identification. If this child is falling behind and they have an SEN definition because of that, what

are the reasons why they are falling behind? Is it SEN or something else? There also needs to be a real focus on equipping teachers so that they have the skills to make more judgments about that, and then a real focus on outcomes. Whether the child has SEN or not, they need to make progress. That is point No. 1.

Point No. 2 is that if the child does have SEN, we need to make sure that there is a really good school offer, which is of course what Achievement for All tries to do in terms of school leadership focusing on children, the parental conversation, a real focus on Quality First teaching and outcomes and a real focus on what we call wider outcomes, which is preventing bullying and making sure that children with SEN are fully involved in the life of their school and have the chance to succeed. In a way, what we want to see mirrored in the guidance around the single category is that focus on the whole school offer and then a real focus on outcomes. Once you have identified that the child has SEN, what does that child need to have to achieve those outcomes? That may well be specialist support, and that needs to be triggered in. If School Action Plus is not going to be there to trigger that support, we are especially concerned to see that whatever the code of practice says about this, there is a very clear steer to schools about what else they need to trigger to make sure that that support is there, especially for low-incidence groups. That is one of the problems in the current system.

Q118 Mrs Hodgson: My next question is to Jane from Independent Parental Special Education Advice. I want us to look at this from a parental point of view. Do you think that, in general, the Bill will do what parents have been led to expect it will?

Jane McConnell: Put simply, no, not at the moment. The whole Bill was put to parents in the original Green Paper, "Support and aspiration", as bringing radical reform to the system. We are introducing a new plan called an education, health and care plan into the system to take over from statements. Looking at the Bill and analysing it from a legal point of view, we still have at the moment an education plan. It is very similar to a statement. Yes, it is extending up to the age of 25. It is bringing academies and those schools that come along with academies into the whole equation, but at the moment it is still an education plan.

I know that this morning the Minister talked about duties on health. When we get the details of that and we have looked at it, we may have an education and health plan, but I suspect that at the moment, if this Bill and this plan were put under the Trade Descriptions Act, for instance, the Government would be liable to a successful prosecution for calling it an education, health and care plan when it is not; it is an education plan at the moment. Our call to the Government is to be transparent about this. Is it a genuinely joined-up plan that goes across all three aspects of a child's life, or is it still an education plan, very similar to the system that we have at the moment? I think that until we address that properly, you will always have issues with parents thinking that they are going to get one thing and something different being delivered under the Bill.

Q119 Mrs Hodgson: Is the Bill as it stands assuming too much of parents and their ability to participate in the process?

Jane McConnell: Yes. I think that we need a Bill that works for children as opposed to parents. Yes, parents have a role to play in this, but there are many children out there with special educational needs and/or a disability who do not have parents who can engage at this moment in the system, for whatever reason. We must not forget, either, those children who are in care, a high percentage of whom have special educational needs. The local authority is not only the person who provides the education for them, but the person who is their corporate parent. I am very keen to develop a Bill and a new system that work for children independently of parents. Obviously, as a parent, I would love to have a say about what happens for my child, and the role of parent carer forums is important. However, that should not be at the expense of children. First and foremost, we want to develop a system that works for them without it having to be driven by parents.

Q120 Mrs Hodgson: I am sure people will want to explore further what you have both said. I have one last question for Professor Dockrell. You are from the Institute of Education, and early intervention is key to addressing lots of SEN: the sooner it is identified the better with regard to outcomes, specifically around speech and literacy issues. Do you think that the Bill puts enough emphasis on early intervention? What more might be done in this regard?

Professor Dockrell: I think the issue about early intervention is that you have to have identified the children, in a sense, in the way you might have done through School Action or School Action Plus or in pre-school provision. The local offer is not specific enough unless it actually articulates the factors that you would put in place so that children will be picked up, and appropriate services are put in place before they then go on to have further educational needs. We know that children with language difficulties and precursors to literacy difficulties will go on to struggle in the education system and not make the attainments that you would hope they would make.

Q121 Pat Glass (North West Durham) (Lab): I think I need to declare an interest. Brian and I worked together on the Lamb inquiry; I provided the professional support from the Department.

Brian, under the local plan in the Bill at the moment, the responsibility to monitor and to challenge rests with parents. What would you like to see in the Bill that assists parents with both the monitoring and the challenge role?

Brian Lamb: First, I noticed on Second Reading that the Government talked about providing more of a framework to guide people in terms of the local plan. I would hope that when looking at that framework, and the way they kind of nudge local authorities towards this, we start to see a much clearer sense—and it is there in the Bill—of parents being able to monitor the level of provision and also to be able to feed back against that. There is a fine line, as I think we have already started to explore in this discussion, between parents simply being responsible for policing the system and resting all the responsibility on them to actually fix it—something I was very critical of when I did my inquiry—and really good participation on behalf of parents and young people. To take up Jane's point, this is not just about

parents. Ensuring that they are involved enough in the planning stages of services—as Srabani was talking about earlier in terms of making sure that you capture the needs of the population—means you have to worry less about the monitoring downstream.

I would like to see some very strong direction in terms of the responsibility to involve parents early in the planning process, rather than having to police the system at the other end. It is really important to have a good back-stop, and when parents express dissatisfaction with what is in the plan, or the fact that it has not delivered, there needs to be some sense of obligation that the local authority, or even the school, has to justify itself and what it is doing. I would like to see some of that built in. However, since this is about cultural change, I would much rather focus on how we get parents and young people fully involved at the front end of this, rather than picking up the pieces in the local offer further down the line.

As you know, when we did the inquiry we did a whole set of pilots that were then evaluated by Warwick university. What was really interesting was that all the evaluations said that it did not matter what the actual content of the pilots was; what really made a fundamental difference to parental confidence was the level at which they were truly and properly involved by the local authority in planning the services. I could quote many of the Government studies that come to effectively the same conclusion.

Q122 Pat Glass: Thank you. Jane, we heard last night—you heard this morning—about the duty on health, which is very welcome and we have all campaigned for it for a long time. However, in my experience, most parents who are seeking often very expensive residential placements for their children do so because of the lack of social care and health support. Given this, would you be looking for the Bill to contain an equally statutory duty on social care? What do you think should be the role of the tribunal in this?

Jane McConnell: It is called an “education, health and care plan”, so we would expect legal duties for individual children in all three elements. The step for health care duties is really welcome. I suspect it has taken a lot of work behind the scenes from Government to get that. We need to recognise that and thank everybody for it, but we still need to look at social care. I suspect that that should not be such a big step, as social care and education within a local authority are within one children’s services team. To join them up in a more legalistic manner and make sure the duty is there should not be as big as the challenge of bringing health care to the table, which we had been told would not be possible.

It is essential to have equal duties on education, health and care, as the three different elements in the plan. For me, it needs to have a single entrance into the plan and ultimately a single redress. The SEND tribunal as it now stands has the expertise within it, I am told by them, to hear across all three elements: education, health and care. It seems the ideal specialist tribunal. It is very used to dealing with parents who have children with special educational needs and/or a disability. It deals with disability discrimination claims at the moment. It has experience within the chamber where it works to hear on health as well as social care issues. That seems an obvious place for me and everybody to go to if we need to challenge part of the plan.

The issue we have with different routes of challenge for different parts of the plan is that you are relying on parents to go to the SEND tribunal for education, perhaps the Government ombudsman for social care, and a different health complaints body for a different element of the plan. That just does not make sense if we are going to have a single assessment, a single plan that is singly enforceable and challengeable somewhere.

Q123 Bill Esterson: Coming back to what Jane and Brian have been saying about concerns about the local offer and the changes away from School Action Plus, what would you like to see added to deal with the access to services outside school?

Brian Lamb: Outside school? In terms of what is potentially changing in the movement away from School Action and School Action Plus, we first have to understand that there has already been a significant change in the way that school funding is currently being delegated to schools and the expectations around that. As a result of funding changes that came in in September last year, we already have a system where, once you have had the pupil allocation roughly around £4,000, varying a bit in different authorities, the next £6,000 is essentially the responsibility of the school. To some extent, where before something was triggered by School Action that had to be looked at outside the school, that is where it has gone to some extent in terms of the way that schools are operating now.

The real issue at the moment is schools beginning to understand their obligations now, that they have to deliver whole-school offer for most of their children in their classrooms. They will, as your question implies, more and more have to look not just at how they commission across the specialist support they need within the school just around the classic areas of SEN, but classically where does speech therapy and language support come from? Where do you get the other health bits coming in in relation to this? At the moment we need some stronger guidance when we see the code of practice about schools’ responsibility to start looking at how they start to knit together across a school offer with health, especially in terms of some of that equipment provision.

I welcome the fact that the Government accepted one of my recommendations to introduce—by the previous Government and then implemented by this one—requirements to provide auxiliary aids by schools. Now there is an individual right for children to have an auxiliary aid. Although that is essentially around education I think we also need to look at when the auxiliary aid is a speech therapist, where that comes in, and give clear guidance to schools about how they work that system, to ensure they make the right assessment so that children get the right support to achieve. That has to go wider than education.

Jane McConnell: For me, it comes back to the local offer. Coming from the Green Paper, it was originally going to be a document that set out what each local authority would expect their schools to be spending their designated school grant on and what provision they would put into place for those children who were on what we would now call School Action and School Action Plus. In their particular area, we would expect, for instance, five hours of one-on-one support to be

provided from designated school grant, or two visits from a speech and language therapist or one visit from behavioural support.

The idea was that it was a very clear statement of what a school would be expected to present for a child at School Action and School Action Plus. I am concerned that, first of all, at the moment we do not have much information from the pathfinders about what they are doing. Of what we have seen, the local offers have been very nice directories of information, which can be really helpful for parents, but they have failed completely to detail the expectation to schools in the area of what they should be doing with their money in that particular area. For us, ultimately, that local offer should be legally enforceable. It would therefore be useful for a tribunal to know what would happen in that particular school when it is presented with a case where the local authority says, "No, the child's needs can be met in the school," and the parents are saying, "No, they can't be," or if the school are not able to provide them at that time.

If a local authority was producing a clear, specific local offer that said what they expected to happen at School Action and School Action Plus stages with the money that schools get given to them, there would be a real shift in the process.

Q124 Bill Esterson: Is that similar to the point that has been put to me about schools in my borough, where the money goes into the budget at the start of the year, but if there are changes in need or if children transfer, as happens a lot with SEN children in particular, there is a big impact, particularly on smaller schools?

Jane McConnell: There is a real problem with the funding of SEN that the new system will not necessarily address positively—certainly not in the beginning—where the amount that a school is designated through the designated schools grant and the funding formula does not bear any relation to the number of children on the school roll with special educational needs or the complexity of those needs. That is always a mismatch: for instance, if you have a small, rural school that is in a quite affluent area, it will not tick any of the indexes of deprivation on which the funding formula is mainly based. Therefore, they will not trigger much funding under the DSG element even though they may happen to have three or four children in their school population who have complex SEN at that moment. There is always also the issue of pupils transferring, although under the new system it should be that SEN funding transfers much more quickly than it has done up to this point.

Brian Lamb: There is the opportunity, once you get beyond the £6,000, to trigger support from the high needs funding pot from the local authority. But that is what I was saying earlier: we really want to see a slightly richer version of the schools offer, because it would start to address some of the points that Jane has been making if there was a clearer sense of what the schools had to provide as part of that offer in the first place.

Jane McConnell: But ultimately, the legal duty stays with the local authority to make the right provision for a child; if the right provision cannot be made via the child's designated school grant, it is for the local authority to step in and that may be through statutory assessment.

Q125 Bill Esterson: You both mentioned the role of the local authority. What about the impact of the growing number of academies and free schools?

Jane McConnell: It is huge, and it is creating more and more problems within local authorities as more and more schools become academies, because that funding is going directly to the academies and it is not coming via the local authority. Up until now, there has been double funding by the Department for Education—they have been funding local authorities at the same level even though schools have been transferring to be academies—but this financial year, along with the new funding changes, it will be the first time that the money comes away from the local authorities and I think that many of them do not understand how little money they will get, and how that amount will decrease more and more as schools become academies.

That also has to be seen in the context of financial cuts because of the austerity measures that are going through in local authorities. IPSEA are usually the last people to make a plea on behalf of local authorities, but I really have to say that, in this respect, our sympathies are with local authorities; some of them are on their knees and begging for mercy.

Q126 Bill Esterson: Have you got any particular recommendations for changes to strengthen the legislation?

Jane McConnell: On the local offer?

Bill Esterson: Yes.

Jane McConnell: Yes. We have drafted some amendments that we would look for you to adopt.

Brian Lamb: For me, it would be going back to the concept that was outlined in "Support and aspiration" of schools having more than just a duty in relation to their equality duties as part of the local offer, but also having a duty to say exactly how they are going to deliver the SEN curriculum in their school and to have shown how they consulted parents around that. That might be what the Government are intending to be more specific about in relation to the code of practice, but it would get over your point about whether a school is an academy or not. The duty for that bit of the offer is then on the school itself. That is why I think it would be really important. It allows parents at the school level to have that conversation with the school about what is being offered and to be held more to account for the offer at that level.

Q127 Pat Glass: Jane, I probably should know this, but on the issue of academies, could you clarify what you just said? If the academy cannot provide, the duty as it is at the moment rests with the local authority?

Jane McConnell: Ultimately, their duty is to identify children with special educational needs. At the moment, it is not only identifying the children who have special educational needs, but the children who may or probably would need a statement. One of the issues with the new Bill is that that additional duty to identify children who may or probably may need a plan is not in there. At the moment, we have the general duty to identify the children who have special educational needs, for whom they are responsible, but the new Bill does not go that extra step and have a proactive duty on local authorities to identify the children who will probably need a plan. For us, that

is one of the things that goes back to the whole idea that we still have not quite yet got to the stage where existing duties are reflected in the new Bill.

Q128 Steve Reed: Are we in a position to move ahead with personal budgets for education provision, given delays to the pilots?

Jane McConnell: No. We have real issues about the fact that we have not managed to get much detail out of the pathfinder pilots about what is actually going on. A couple of parents have come to us with issues around personal budgets. One recently went into the tribunal. There are issues not only about how parents will use personal budgets and what will go on, but about funding the personal budgets and the provision. The issue for us is whether the local authority duty to make special education provision is met when the money is paid to the parent, or when the service is delivered.

The issue that came up in Gateshead—one of the smaller pathfinders—is that the parent and the local authority very successfully decided that they would go for a direct payment route for a particular provision, and they got as far as deciding exactly what the details were, but when it came down to the money, the money was about £20,000 short for the parent. The parent felt that they needed £45,000, for instance, and the local authority was offering them £20,000 less than that.

Because it was a pathfinder, the whole issue went to the tribunal. It looked at the detail in part 3 of the child's statement and actually put some more specification in, because the evidence was there that the child needed a certain type of specialist teacher and learning support assistant, which meant that the local authority then had to pay the additional £20,000. We think that that type of issue will become quite a regular one with personal budgets. We would like to see more evidence from the pathfinders on personal budgets, so that we can look to address those issues positively. For us, the key question at the moment is: when is the duty of the local authority discharged? Is it when the money is paid to the parent or when the service is delivered to the child?

Q129 Steve Reed: Are you looking for changes in the provisions of the Bill to deal with that?

Jane McConnell: At the moment, the issue is that the Bill does not go into that level of detail. We have been told that the pathfinder pilots will provide the evidence, and it will come in regulations and a code. As the Bill is at the moment, we are looking for a couple of amendments, but it is about the detail. Until we get the evidence, we cannot work out the detail.

Q130 Steve Reed: A final point, if I may. London Councils, a cross-party organisation, has expressed concern that free schools are able to avoid taking their fair share of students with challenging needs. Is that a concern that you share?

Jane McConnell: Certainly at the moment we share that concern. One of the things that we are particularly concerned about in the Bill is the clause that says that free schools and academies will be able to take pupils not having had an assessment and therefore not having had a plan to go on to roll permanently. That is obviously not the case for maintained special schools; children have to have had a statutory assessment of need and

have to have a plan or statement in place in order to access them. However, the proposal is that if it is written into the funding of the special academy or the special free school, that can happen under the new Bill. For us, that is a huge alarm bell. We are told that some parent groups want this because they want to set up their own free schools. If you are looking particularly at children who have, for example, a dyslexic profile or a high-functioning Asperger's profile, they will not need the level of provision that you would normally have funded above £10,000.

I completely see why they may want to do that, but this should be legislation that works for children. Our opposite concern is this: we have groups of academies looking to set up special free schools as part of their academy chain, and our fear is that if there is no regulation on whether children need to be assessed before they go to those schools, and if there is no clear path and provision that must be put in place for those children, we will end up with dumping grounds for children, where they are manoeuvred into schools where their needs are not being assessed and met. That is a real problem.

Q131 Steve Reed: Do other panel members agree with that view? It sounds very serious to me.

Brian Lamb: From Achievement for All's point of view, we would not get involved in those kind of issues in the same way, so we would not have the experience to comment either way.

In terms of the question on direct payments, our starting point would be that when we are working in schools, we need to know that there is a consistency of approach and a consistency of support. We are putting in the framework to support the whole school and the real focus on SEN and outcomes, so we need to know that specialist interventions are available, that they are there and flexible, and that the right kind of support is being delivered to the right child. We just haven't seen our personal budgets come through enough yet in terms of having enough examples to know whether they are being able to secure that or not. In principle, if parents want that and you could deliver that consistency of support, Achievement for All's view would be that we would work with what the parents and the school wanted to do. But there has to be that sense of consistency.

In terms of your second question about free schools, I am just not in a position to answer that.

Professor Dockrell: I think that's true, but I think that one of the important things is conceptualising what this local offer might look like. Within the school you would have a graduated approach to supporting children's learning needs. We have been talking a little bit as if special educational needs are within the child and stay within the child throughout their life, but their needs will change. They may move in and out in terms of the demands that the curriculum is placing on them. For example, in terms of speech, language and communication needs, we know that there is a decline over time in language needs that changes to literacy needs. So within the schools you need flexibility about the way that the curriculum is offered. We have talked about "quality first" teaching—we must then look at more targeted and specialist support, and schools ought to be equipped to do that within the local offer.

Q132 Jessica Lee (Erewash) (Con): Thank you all for coming. I have been reflecting on the fact that you all have great expertise and are coming from different angles. With that in mind, I wondered which single aspect of the Bill each of you welcomed the most—which bit stood out to you?

Jane McConnell: For us, it is definitely the extension to 25. To have one system that goes from birth to 25 has to be applauded. It is huge. The learning disability assessment process when children pop out of school-based education and go into college education is a nightmare. It is absolutely a pit for parents, children and young people. So the extension to 25 is massively welcomed.

Brian Lamb: If it can be made to work properly and there is this richer version, I think it would be the local offer—if we can invest that with a really genuine and culture-changing approach towards parents and with more focus on schools in the way I have talked about.

I would also like to welcome the fact that the Government have agreed to pilot children being able to take legal cases in their own right. That goes back to what Jane was saying: there are many children in the system who are disadvantaged, where there is a corporate parent, and where we need to have a more independent way in which children's rights can be advanced. It is not the biggest thing in the Bill by a long way, but it sets an important precedent in terms of how we think about children's rights and people's responsibilities to them within the Bill, so that is also very welcome.

Professor Dockrell: I would say the links between education, health and potentially social care, if they can be operationalised. For a long time, a link between education and health has been put forward as a very positive thing, but we know that for a wide range of reasons, that has not happened. If we can address those barriers, that would be really positive.

Q133 Mr Timpson: May I take you back to the discussion you had around the SEN school-based category? Brian, I know that your inquiry in 2009 found that SEN can sometimes be unhelpfully correlated with falling behind. One of the statistics that you came across was that "At the end of Key Stage 2, August-born pupils are 60% more likely to be identified as having SEN than September-born pupils", which is quite a stark statistic. Do you feel that the current two-category school-based system is the right one? If not, do you think that moving to a single category, and the greater emphasis on early identification and more rounded responsibility within the school across all teachers for raising the quality of provision within the school for children with identified special educational needs, is the way forward?

Brian Lamb: What is crucial in all of this, as I said earlier, is that categories are not the real issue. It goes back to what Professor Dockrell was just saying. I think that what we really need out of the system, whether it uses school-based categories or whatever, is, for precisely the reasons that I identified, really good "quality first" teaching and assessment to look at the reasons why children fall behind. I have no particular problem with the definition—it is the least worst one we have got, and I think we ought to stick with it—but we therefore need very skilled teachers delivering "quality first" teaching and assessing why children are falling behind, so that we can then address the needs of those children with SEN.

One of the known failings of the system—I am not sure whether it has much to do with whether we divide children between School Action and School Action Plus or something else—is simply that as children start to fall behind, there is far too much willingness simply to say, "Oh well, this must be an SEN. We'll put children in the SEN category." Then you start the whole process of putting them on the table with the teaching assistants, velcroing the TAs to the children and not getting the most experienced people in the classroom—the teachers—teaching those with the most needs.

Achievement for All was based on reversing that decision and making sure that "quality first" teaching was in place. Exactly as Julie was saying, if you have "quality first" teaching in place, the children may have SEN, but they start to perform at an age-appropriate level, and we do not need the category so much. What I really want to see out of this is, if it is to be a school-based category, the crucial thing is that the guidance focuses teachers on the right things. That has got to be "quality first" teaching with the right assessment and then the right intervention when children have got SEN. That is the crucial point, rather than killing ourselves over one set of categories or guidance or another.

You could do all that while keeping the categories, and you could do it without. The fundamental point is what you actually publish when you come out with the code of practice, and whether the guidance for teachers and schools around that is adequate to achieve that without placing children back into other categories. Certainly, on Achievement for All, by having the focus in that way, we have massively increased the outcomes for children with SEN such that in the pilot study, 37% of children in relation to expected progress in English and 42% in maths were achieving at or better than the national expected progress for all children nationally.

That is the situation that we have got to get to. By all means, let us discuss the guidance for how to get those outcomes rather than what categories we use. That is the fundamental point, but important within that is how we trigger that additional support. I do not think that anyone should conclude that we do not need to trigger it. We do, and the process needs to be in place to do so, and the confidence needs to be there that the additional support will be there, however it is delivered.

Q134 Mr Timpson: One of the elements that has come out of the pathfinders relates to the role of key workers. I imagine that you have not had an opportunity to see the report that has come out today, because you have probably had your minds on other things. You probably do not need encouragement to read it; I am sure that you have read all the other ones with great excitement. Although key workers, or navigators or assessment co-ordinators—they come with different names—may not be required in every single case, it is clear from the pathfinders that many parents who have had the opportunity to work with them at specific points, in particular at the assessment phase and also during transitional periods, have found them to provide an extremely helpful and comforting level of support, which helps bind together all the elements of support and makes it much clearer to them what they are

[Mr Timpson]

entitled to and how they access that support. This is for everybody on the panel. Would you care to say anything about the role of key workers and how you think they should form part of the reforms going forward?

The Chair: Before you answer that question, I am going back to Sharon to ask a question because we will run out of time.

Q135 Mrs Hodgson: This question is specifically for Professor Dockrell, because she has come along in a specific capacity, as an educator and trainer of teachers. It is around teacher training and with regard to work force development, initial teacher training and continuous professional development. Should we be addressing that more in the Bill? Have we missed an opportunity? It is the skills of the work force that help to identify the high incidence needs. I am talking about those children who will not get an education, health and care plan.

Jane McConnell: If I answer the question about key workers, yes. The evidence from the Lamb inquiry, which I was involved in as one of Brian's professional advisers, was very clear: key workers play a fundamental role in parental confidence and in understanding the system. What is needed, though, if those key workers are to be generally good and progressive, is training—training in the system and in the actual law that underpins the system, not just in the local authority policy or its interpretation of the law.

At the moment, local authority officers are not given access to good SEN legal training. It does not have to be long and arduous, but they need to know that what they are talking about is the legal position because that is ultimately what they face if they go into tribunal, as opposed to what the local authority policy is. That for me is the caveat. Key workers are great, but they need to be trained to do the job properly; otherwise we end up with misunderstanding, upset and then mistrust in the key worker if they say, "We don't do statements in blah, blah, blah," and the law says that they do do such statements. There are no principalities among local authorities as far as I understand it at the moment.

Professor Dockrell: I think the training of teachers is absolutely essential. We need to get "quality first" teaching right. If the teachers are not aware of the dimensions that are appropriate to developmental phases, it will not happen. There is insufficient inclusion in initial teacher training of the diversity of learners. Children differ, and they differ at different ages. It is not just the special needs category that you have to work with, so there is a role there. There is a role in CPD within schools, so working with staff and providing staff with evidence-based tools to help them develop their own teaching in those settings as well as external to that. It was one of the major recommendations of the ECRP—early childhood, research and practice—study as well.

Mrs Hodgson: And it is not on the face of the Bill. There is nothing about that.

The Chair: That brings us to the end of our time. We must go on to the next group of witnesses. Thank you very much for your help this afternoon.

Examination of Witnesses

Jane Friswell, Wendy Lee and Kate Fallon gave evidence.

3.30 pm

Q136 The Chair: Good afternoon. Thank you for coming along. May we have brief introductions, please, so people know who you are?

Jane Friswell: My name is Jane Friswell. I operate in a lead consultancy role for SEND at NASEN, the National Association for Special Educational Needs.

Kate Fallon: I am Kate Fallon. I am the general secretary of the Association of Educational Psychologists. In my time, I have been an educational psychologist in a local authority and managed SEN services.

Wendy Lee: I am Wendy Lee. I am professional director for the Communication Trust. We are a consortium organisation of 47 members. My background is as a speech and language therapist.

Q137 Mrs Hodgson: I will start with Wendy, if I may, from the Communication Trust. Speech and language delay is often one of the most under-identified SEN—I think we would all agree about that. Do you think that the duty in the Bill to identify children with SEN is strong enough?

Kate Fallon: We have concerns about the under-identification of children with speech, language and communication needs, in particular in terms of the local offer. We really want to ensure that that is tight enough and that local authorities have got that responsibility really to know how many children they should have with speech, language and communication needs and to have a really tight, robust system in place so that they can identify those children and be accountable for whether they slip through the net. That really passes through to the school-based offer as well, in terms of identification at school level. We have quite significant concerns about the identification of children with speech, language and communication needs. It is under-identified because it is not understood very well, in terms of high incidence, low support needs and the converse. For example, children with specific language impairments might present themselves as having reading or even behavioural difficulties, and it is the surface element that is identified but not what sits underneath that, which is quite often a speech and language difficulty.

Q138 Mrs Hodgson: As you know, in our young offenders institutions and unfortunately then in prisons, we find a very large number of young people and young adults who have speech, language and communication needs. Do you think that it is helpful, or the right thing, that the support plan is going to cease when a young person enters the criminal justice system? Do you have any ideas of how that support could continue or be picked up again?

Wendy Lee: It is not helpful at all, because obviously those young people will have communication needs. If the support ceases when they go into that system, they will therefore not be able to access some of the remediation or rehabilitation that they might have otherwise received, so it is contra-indicatory. They really need to have the right support while they are in that system, so that they do not reoffend. To stop such support is a bit confusing,

because it seems to be really important for those youngsters. We know that between 60% and 90% of those in the youth justice system have speech and language difficulties, many of which have not been identified at all or until they get into that support system, so it seems really important that the support carries on.

Q139 Mrs Hodgson: Is there a way that could work? From conversations with the Minister, I understand that such support comes under the Ministry of Justice once a child enters the criminal justice system. It is supposed to pick that up. Is there a way for that to happen, or would the Department for Education have to take control of the education of such youngsters?

Wendy Lee: If they have an education, health and care plan, it would seem to make the most sense for that system to remain; if youngsters have got needs across education, health and care, it would seem right for that system of support to continue through into the youth justice system, or for education to have responsibility for their continued education. Once those young people get into the youth justice system, and if for example they need speech and language therapy, it makes sense for their therapy to continue through in that system. For me, the plan should stay as it is and be carried by the system that is already in place.

Q140 Mrs Hodgson: What happens at the moment when a young person enters the youth justice system and when they come back out? If they had a statement or not, what happens at the moment? We want the new system to be better than what we have got; obviously we do not want it to be worse.

Wendy Lee: I think it sits under education at the moment. As I said, it seems to make sense that they carry a young person's education, health and care plan, because therefore their needs will be met in the same way outside the system as they are within it.

Q141 Mrs Hodgson: I have a question for Kate. Why do you feel that the Government need to prescribe centrally the specialist professionals who contribute to future statutory assessments? I read that in your evidence.

Kate Fallon: What we are concerned about is that it is still going to be a relatively small group of children with complex needs who are likely to have education, health and care plans. What we are concerned about is that those children get the best deal and the best specialist advice and assessment over time. Education, health and care plans are not just about getting provision, but about providing a formative plan for the day-to-day care, support and education for the child. We want to ensure that they get the best possible specialist advice.

Children with special educational needs who currently have a statement might move house. If there is central prescription, parents will know who is going to be involved in their assessment regardless of where they live, and that is important. That means that reports are transportable, if people move from one geographical area to another.

Q142 Mrs Hodgson: We know that pathfinders have been extended. There is a report today that the Minister mentioned; I have not had time to read it yet, but I am

sure I will read it over night. What has your impression been of the progress made by the pathfinders, specifically with regard to the role of educational psychologists?

Kate Fallon: Unfortunately, I have not read this morning's report—sorry about that—although I have had conversations with about half of the pathfinder projects, sometimes with the educational psychologists involved, and sometimes with other staff, who are non-educational psychologists.

What is challenging for all of them is carrying out assessments in different ways. My impression is that some of the projects are doing really well in conducting multi-professional assessments and meetings that involve parents, so that right at the beginning, everyone is involved in saying what their aspirations are for the children. It still allows for individual specialist professionals to do some assessments, but then they all come back together with the parents to determine, "Okay, now we have got all this information. What should be in the plan?" It seems that very good progress is being made in a number of them.

I am led to understand that, in all the education, health and care plans for children and young people that have been made, there has been educational psychologist involvement, even if it was for children who already had a statement. I believe that educational psychologists have played a role in the new plans that are coming through and have been found to play a supportive role because of the way they work generally, which is about gathering information from different sources, looking at different factors and trying to synthesise them into a day-to-day plan for the future. That is my impression. Progress is taking its time in places, but the right things are being done to help with the plans for children in the future.

Q143 Mrs Hodgson: Thank you, Kate.

Jane, what do you think the role should be for a SENCO in a school? Does the Bill give them enough clout with regard to driving improvements to provision? Should they continue to require the national award?

Jane Friswell: I often refer to the role of SENCOs as almost requiring some kind of additional appliance that they wear on their shoulders. As the academic year progresses, their shoulders often need to become much broader, as the demands on that particular role in schools grow.

The Bill has quite rightly identified the key role of SENCOs, but what I feel it lacks is clarity on the qualified teacher status required for that role. It also seems to lack clarity regarding the nature of the qualification. We know how successful the NASENCO award has been in improving the overall quality of SENCOs across England in our schools. That certainly follows along with the evidence that shows a decrease in the number of children identified on SEN registers in schools. There is a direct relationship between those.

We have also seen the impact that the NASENCO award has had on the development of the quality of whole-school provision. NASEN's approach is that we would want all schools to have high quality whole-school approaches to meeting the needs of all pupils; consequently, the demands on SENCOs are going to grow.

Within the role, we also need to reflect that we are educating 21st-century children, and consequently we need to reflect the diverse range of needs that children have, and the mix of need that there is. When we look at data describing the needs of children, quite often we are describing only the primary area of need. Often, there are many more areas or aspects of need for children. That suggests that we need a very diverse and sensitive approach to how we design the range of support on offer, which the SENCO ultimately manages and co-ordinates in school.

Q144 Mrs Hodgson: Do you think the SENCO needs to be a member of the senior management team or that it would be helpful if they were?

Jane Friswell: Absolutely. Without question, and that is something that NASEN has championed for many years now. We are coming to the end of a two-year project, funded by the Department, that is specifically geared to getting schools to design and bring forward a whole-school approach to access, participation and achievement, which has been wholly successful. We have now met and trained over 6,000 SENCOs across England. The quality of the training that has been delivered has been superb, and has met with great acclaim from the SENCOs who we have delivered to. It is really quite worrying that a significant proportion of SENCOs who attended the training are not members of the senior leadership team, or SLT. That is particularly worrying within the primary sector where, in addition to being a SENCO, often that person has a huge amount of responsibility at class teacher level as well as additional curriculum co-ordination responsibilities. At secondary level there is a slightly more business-like approach; however, there seems to be more of a SLT requirement for a SENCO role, although that is not necessarily the case for all SENCOs. So, absolutely; we would urge the Department to look very closely at the SLT requirements for the role.

Q145 Mrs Hodgson: A very quick follow up: is there a correlation between the outcomes for children who have special educational needs and whether or not the SENCO is a member of the senior leadership team?

Jane Friswell: That is a very interesting question. Yes, initially; the initial evidence seems to suggest that. What is also interesting is that SENCOs who go on to acquire the NASENCO award are often taking a leadership route in terms of their career pathway, which at this early stage—to date, four years of cohorts of SENCOs have gone through the national award—seems to suggest that we are preparing our future school leaders. They are acquiring the NASENCO award earlier on in their careers, which can only be a good thing in terms of future school leadership and the management of our schools.

Q146 Andrea Leadsom (South Northamptonshire) (Con): May I ask the panel about the very youngest children? Do you think the Bill deals with the needs of babies and infants, who may develop or be born with a disability that obviously predates the ability to put a statement together? Does the Bill deal with the protection of those children's needs, or should it do more?

Jane Friswell: I am happy to respond to that, having been an early educationist in a previous life. When a baby is first diagnosed with a diagnosis such as Down's

syndrome, the immediate concern has to be for the child and their family. The question of where the child is likely to go to school is not necessarily top of the priority list, although it may be for some parents. Co-ordinated multi-agency family support is particularly critical at that time, certainly for those children under the age of two: services at a local level throughout England seem to be decreasing, and consequently we often see families who are almost adrift at that very critical time in their child's life, when they need help and information, but do not want to be overwhelmed with information. It is particularly important to support the process of coming to terms with what their particular child's needs and diagnosis may mean for them as a family.

Kate Fallon: I do not know whether it needs to be prescribed in the Bill. It would have been helpful if we could have had the regs and the code of practice before we came into this session, because currently the way of supporting very young children in their early years is outlined and described quite well in the code of practice and the regulations. If we are going to see regulations and a code of practice that outline methods of working together that are similar to what we have done in the past, I am not sure they need to be absolutely prescribed in the Bill.

One of my concerns is that we need to make sure that we maintain the strategic commissioning of specialist professionals to be available within communities, so that specialist professionals are immediately available to support the families of young children whose needs are identified very early. I am speaking specifically about education psychologists, who often work with very young children and help with the interface between the health diagnosis and, later, the entry into nurseries or early years settings. Either in the Bill, the regs or the code of practice we should ensure that it is perhaps the local offer that should identify the specialist professionals in order to make sure those children and their families are supported.

Wendy Lee: I guess from our point of view it is about the importance of children's language and communication in the very early years. We have some concerns about non-maintained early years settings—this links back to the early identification piece—and how the local offer or the education, health and care plan could ensure that children in those settings are identified early. We know, for example, that SLCN is the most prevalent childhood disability. We know that in areas of social deprivation, the number rises massively to about 50% of children starting school with speech, language and communication needs. If those children are in non-maintained settings, how will the local offer ensure that they are identified earlier? We know that the work force in the early years are not confident about identifying children with communication difficulties, and are not confident about supporting children with language delay.

It is about ensuring that we identify children at the very earliest point. We know how to do that, and we know what works. If we are able to do that, it will possibly in the longer term prevent children from needing a plan. If children with high incidence and low support needs are identified early in early years settings, it can make a big difference. That will enable them to start school with the skills they need to access the curriculum. That is our take on this.

Q147 Pat Glass: For the record, I should say that Kate and I have worked together over many years in many places. Kate, we all recognise the unique and valuable contribution that educational psychologists make. Yet successive Governments—not just this Government, but the previous one—have failed to identify the funding for the training of educational psychologists. EPs are expensive, so local authorities have sought to reduce their numbers in comparison to some other groups. We have seen a real drop in numbers recently, which is extremely worrying. What would you like to see, either on the face of the Bill or in the statutory guidance, about the future funding and training of EPs?

Kate Fallon: First, I would like to see a prescription that educational psychologists are still required. At the moment, local authorities and central Government are contributing massively to the training of educational psychologists. There is some central Government funding, and clearly I would like to see that continue. Local authorities also play a large role by supporting the training—certainly in years 2 and 3—and including trainee educational psychologists in their services. They actually provide a supervised service. Local authorities either pay them a salary or provide a bursary, so that each year we see a new cohort of educational psychologists entering the profession, which is, of course, a small profession.

One of my concerns is that there is no prescription that will make local authorities feel that they have to provide or commission educational psychologists, and therefore there is no strategic commissioning procedure for ensuring that educational psychologists continue to exist. I want to see them enshrined in the statute or in the regs or in the code of practice. I accept that as cuts to local authorities continue, schools are able to afford fewer and fewer educational psychologists. However, schools actually very often buy in psychologists themselves to help support the whole range of special needs, so with that advice and support many children do not go on to need an education, health and care plan. Schools can continue to buy in a service if that service still exists. It would be more difficult for schools to buy in that support if there were no services available for them to purchase it from.

Q148 Pat Glass: Do you think it is important to have the central role acknowledged?

Kate Fallon: I would very much like to see that.

Q149 Pat Glass: Jane, I have worked with Lorraine Petersen over many years, looking at the role of SENCOs. I know we were concerned, first that SENCOs were not the head teacher, secondly that they were qualified teachers, and thirdly that they were part of the leadership team. Again, are you disappointed that that is not on the face of the Bill?

Jane Friswell: We are, yes.

Q150 Pat Glass: Does that need to be on the face of the Bill, or could it be in the statutory guidance?

Jane Friswell: I would certainly go for the Bill.

Q151 Steve Reed: Does the legislation need to define time scales for local authorities to respond to requests for assessments?

Kate Fallon: Yes. Whether that is specifically in the Bill, or in the regulations or the code of practice as it quite often is now, I think it is very helpful to parents. It ensures that parents feel confident about what is happening. I think having time limits prescribed is very helpful to them, and it also ensures that teachers know that they are going to get some additional support, and children know what is happening for them.

Q152 Steve Reed: Do you welcome the proposals in the legislation for personal budgets?

Kate Fallon: Is that to everybody, or just me?

Steve Reed: To you, and then everyone.

Kate Fallon: I think personal budgets have been shown to be quite effective for the care of some children with disabilities in the past, particularly in terms of helping them get child care or support in the home setting. I am less sure of how personal budgets would work in a school setting, because if parents were directly purchasing support which was then going to operate in a context that is within management structures, I can see that there would be some tensions there about how best to deliver it. But I certainly think that in some of the wrap-around services that support children with disabilities in their care, personal budgets have been seen to work very well.

Jane Friswell: I think that offering the option of a personal budget to parents can only be a good thing. I think it would be interesting to see what the outcomes are of the current pathfinder work in this area, and certainly Kate is right in mentioning this notion of potential tension for schools. I also think it is a reasonable test of the strength of the engagement that schools have with parents who may opt for a personal budget for the particular nature of their child's provision. At the moment it is unclear, both on the Bill and also regarding not knowing what the regulations are going to look like, so it is unclear for schools as to how that will happen. How does the interface happen between parents and school if they wish to purchase a particular type of provision from schools? Will a brokerage responsibility be brought to bear on schools, whereby parents could effectively shop around for different types of provision from a range of schools? Will that have implications for schools clustering together to develop new services? How does that relate and influence, and what implications does that have for the development of the local offer, for example? I think there are a number of questions still unanswered that certainly are on the tips of every school's tongue.

Q153 Steve Reed: If there were to be a brokerage of the kind you describe, would that fit best in the local authority or elsewhere?

Jane Friswell: I think it would sit better with the local authority. There would need to be some clear guidance around how the local authority interfaces with the schools. Given the changes to the nature of provision—free schools and academies, for example—there would certainly need to be much greater clarity about how the local authority and academies and free schools engage with each other on that brokerage notion.

Wendy Lee: I would agree on the principles around the advantages and the challenges for children with speech, language and communication needs. That includes

a whole range of youngsters. I am not just talking about those with specific needs, but children with disabilities who might have communication needs as well. Often parents feel there is a lack of speech and language therapy support. Again, if a number of children in one class all bought in therapists independently you could end up with quite a fragmented offer for the individual children.

At a school-based level we would want to see that graduated approach, with the “quality first” teaching, with expertise around supporting communication, targeted approaches for some children and that kind of specialist intervention for others, but all hanging together within one system. The challenge around personalised budgets, particularly if they bought in speech and language therapy, would be that you could end up with fragmentation, which would not be very cost effective and might not serve the individuals as well as they could be served.

Jane Friswell: May I add to that? There are also the practical implications of managing that fragmented approach to the development of services within schools. That is likely to fall to the SENCO. Consequently almost delivering a personalised level of service for one child who may have similar needs to a range of children within that school is not a sensible approach.

Q154 Steve Reed: Which direction would that push you towards: more or less personalisation given the risk of fragmentation?

Wendy Lee: You would need to think carefully about how parents chose to spend that and how some of those services were brokered. I can see real trouble with speech and language therapy in terms of that fragmentation. A broker who looked at the whole system and at personalised budgets and almost brought some of those together to think how it could support not just the individual, but the individual within the system, would be the way to go forward.

Q155 Steve Reed: So personalisation within parameters?

Wendy Lee: Yes, and differing elements for different things that people want to spend the money on.

Kate Fallon: There was a report out recently that you may well have seen: the MaSt project, the research from the Institute of Education. It suggested that the more additional personalised support that children have in classrooms does not necessarily lead to better outcomes. What matters is the quality of the teaching and the responsibility of the teacher for all the children. So if you were looking at using personal budgets, you have to make sure that that support which is purchased with those personal budgets goes to embedding and improving the whole school approach to working with the children so that you do not get that fragmentation within the classroom. It is about the quality of the whole class and the whole school that will make the most difference to the child.

Q156 Caroline Nokes: I am sorry, but this is again directed at Kate, who seems to have been on the spot all afternoon. This is question about mental health as well as physical health. Are you confident that the health and care plans will embrace equally the needs of those young people with SEN who also have a mental health need?

Kate Fallon: Am I confident that they will? Not as yet. I am not sure that many of the pathfinders that have been developing the new education, health and care plans have focused particularly on mental health needs. Perhaps that is something that we need to go back to the pathfinders to see if that will be in the next stage of the development of some of them. Again we come back to the education, health and care plan not being the only way of meeting children and young people’s needs. Many children’s emotional and mental health needs can be met at that wider level within a school setting if the teachers know what they are doing and have that almost team around a school approach of, dare I say, educational psychologists, counsellors and other staff who have developed their skills in supporting the emotional and mental health needs of children.

There have been some very good projects. The targeting approach to mental health services carried out in the past couple of years, looking at bringing mental health professionals into and supporting schools without the need for children to have education, health and care plans, was found to be very effective, so it is about learning from that. I do not know about the current education, health and care plans. I do not see why they should not be able to do it, but they would need to be depending on the wider services that ought to be available via the local offer.

Q157 Caroline Nokes: Thank you. Entirely unrelated to that, you mentioned that it is important that assessments be done in a timely manner, but are you confident that the provisions in the Bill will ensure that assessments are of the highest quality?

Kate Fallon: The current time frames for statements help towards there being good-quality assessment, if the professionals involved in the statutory assessment have known the child over a period of time before going into the statutory assessment. What is crucial is that assessments are not seen as a one-off—either/or—diagnosis, but that assessments are based on having seen the child, being able to know the context in which the child is operating and using the professionals working with the child and the parents on a day-by-day basis to try out different things. Therefore, the assessment report, if you like, that goes into the education, health and care plan would actually take into account different ways of working with the child, so that you find out what works best for that individual child.

I am conscious that the pathfinder projects that seem to be proving most successful with parents include meetings of all the professionals who are going to provide individual specialist assessments, talking together with the parents at the beginning of the process and talking together at the end. The time scales have got to ensure that you can build in that talking-together time, as well as individual professionals having the time to get to know the child. Sorry that was long-winded.

Caroline Nokes: No, that is fine.

Q158 Mrs Hodgson: I have a question for Wendy. As you will be aware, the majority of children with speech, language and communication needs do not have a statement, so they are probably not likely to have an education, health and care plan. How confident are you

that their needs will be met under the school-based category and the local offer, as they currently are in the Bill? Obviously, that is without having seen the new code of conduct.

Wendy Lee: We would like to see almost a minimum standard nationally for the common framework for the local offer. To go back to the identification piece, we know that such children are under-identified. We know that there are vast numbers, and that it is the most prevalent childhood disability. We are worried that, because so many children will fit into the local offer piece, the danger is that their needs will be missed or unmet.

For me, the local offer is almost a litmus test for SLCN. If we can get the local offer right for SLCN, I think that we can get it right for most children. It is about that robust framework and that standard set for local authorities, and dropping that down from the strategic level to the strategic level in schools—so that school leaders know what they need to look for and how to interrogate their data for children with SLCN; that the identification piece sits with them as well—and that real graduated approach into schools, with “quality first” teaching targeted on specialist interventions.

To go back to the assessment piece, what is really important for children with speech and language difficulties is the ability to profile those children carefully and to monitor their progress over time—they change over time—which can support really positive outcomes for those children. There are times when they will not need that much support, because of the nature of the context, and other times when they will need quite significant support, again because of the nature of the context.

To go back to the mental health issue, there are direct links between children with SLCN and mental health, and direct links between emotional and behavioural needs for those children. Again, it is just about having the local offer tight and robust—having that information available to local authorities and schools to ensure that those children’s needs are identified and met. Again, you have loads of evidence about what really works for those children. We have strong evidence from the Better Communication research programme and from work that we have done at the trust.

Q159 Mrs Hodgson: Once those needs are met with the children, there is always the issue at the moment about who pays. Does health or education pay for the speech therapy? Obviously, we have not seen the detail of the duty on health, but do you envisage that, hopefully, it would become clearer? Who do you think should pay for speech therapy?

Wendy Lee: That is a really good question. For children with an education, health and care plan, if it were the same as the statement of educational needs, it is the responsibility of education to ensure that those needs are paid for by education. What would be interesting is the joint commissioning piece and whether we look at pooled budgets to cost the needs for children’s speech and language therapy. Again, as Kate says, it is not just about the education, health and care plan, but about ensuring that children’s speech and language therapy is provided for through the local offer.

The universal staff need support from specialists to make sure that they know how to identify and support the children in the classroom. Without that specialist

support, you end up with a work force that do not know how to identify children who then go on to have longer term needs in literacy, poor attainment, behaviour issues and so on. Specialists are expensive but, in the long term, they save a lot of costs.

Q160 Jessica Lee: My question is for Kate as well. You said at the end of your notes about the Bill that you welcome the extension of the age of young people to those aged 19 to 25. You go on to say that that will require some adjustments within services and work force planning. That is a very good practical point, and I just wondered if you have any further thoughts on what those practical issues may be and, particularly with the work force point, how we would go about beginning to engage with it.

Kate Fallon: Forgive me, but I was looking at it particularly in the context of educational psychologists who currently work with children and young people up to 19 years old, if they are still in special schools. That does not mean to say that they do not have the skills and knowledge to be able to work with young people right through to adulthood.

To pick up Pat’s earlier point about the training, my profession is very small. We clearly have the skills and the knowledge to be able to support the work of 19 to 25 year-olds. If we are looking at some strategic approach to training in the future, we need to ask, “Do we actually need to be training more educational psychologists? Can the current local authority services be reframed so that they can sell services to colleges and even workplaces if apprenticeships are to cover the education, health and care plan as well? We must have a really good look and say, “How many more young people will be covered by education, health and care plans in the future? What service, which professionals do we need with the skills to support them, and do we have them in place?”

Wendy Lee: The whole issue of the universal work force is key. In further education, they may not have had opportunities to have training and support for working with children and young people with special educational needs. Particularly with children with speech, language and communication needs, do they know how they would support those children and young people, how they would scaffold the language of those young people and, if they have additional alternative and augmentative communication needs, how that would be supported in FE, as well?

Jane Friswell: That is the case. It has been reflected in the number of attendees at the SENCO training, delivered by NASEN and funded recently by the Department. We have had an influx of FE providers occupying that SENCO role, who were extremely grateful to have accessed just one day’s training, one day more than they have had in developing their knowledge and skill set in meeting the needs of young people, and accessing their institutions. It is a huge gap in work force development, post-16 provision. The staffing needs for training could be huge.

Q161 Pat Glass: I want to clarify something that Wendy said. Wendy, you said that if speech and language is identified on a statement, it is the responsibility of education. My understanding is that that is not correct, that the legal duty and the funding lie with health, and

[Pat Glass]

that case law has said, over years, if health fails to provide, which it so frequently does, the responsibility falls on education. Kate, now that it looks as though we will have the statutory duty on health—and that health will provide for what is a statutory health duty, for which it has the funding, arguably—do you think that that will have an impact on standards, given that in the past, so much education money has been spent on health provision?

Kate Fallon: Quite a lot of money has been spent on procuring speech and language therapy. I think that a lot of that money could be better spent in helping the interface between speech and language therapists, teachers and school staff, and on language development.

In a previous life, I did some work on commissioning speech and language therapy with an education budget, and it was quite interesting talking to them about what support children needed in a classroom. Very often, it came back to it depending on what skills and knowledge were already there in the classroom. If there are teachers and non-teaching staff who do not have a good level of knowledge of language development, more speech and language therapy time is required. We were actually paid for more and more speech and language therapy work. In fact, some of that money could have been diverted to supporting the ongoing training of teachers and non-teaching assistants to have a better understanding, so that speech and language therapy advice, when it comes, is being given on fallow ground that will bear better fruit than it sometimes has in the past.

Q162 Mr Timpson: One of the aims of the Bill is to try and tackle the transition periods through education—particularly moving into education, from primary to secondary, and beyond secondary, which would currently be into a different system of assessment. In order to ensure that there is the best consistency and co-ordination of assessment and support through transition periods, what do you think are the most important elements that should be put in place to have that transition as smooth as possible?

Jane Friswell: We talked earlier about the critical role of a key worker for some families. Certainly, that is an extremely anxious time, not only for children and young people, but equally, for their families, so additional support around key working would be critical for some families. In schools, it is usually the case that the SENCO tends to pick up the role of the key worker, and that is often a huge piece of work, supporting children from primary through to secondary, and from secondary, and so on. Therefore, I certainly think we need to look at the implications for SENCOs, particularly, and at the added work load that is often incurred as a result of wanting to tailor and personalise that passage through to the next provider.

The voice of the child and the young person also needs to be heard much more clearly at transition points. That can often be overlooked, and I would certainly like to see some strengthening around children and young persons' views being held central to the transition planning process, particularly post-school. I feel, at the moment, that that is often not heard particularly well at a local level, and that certainly would need to be reflected and embedded within the local offer.

Q163 Mrs Hodgson: I have a final quick question for NASEN. I know how you advocate that there should be better work-force development for the whole work force within the mainstream classroom, for obvious reasons, which we spoke about earlier. Do you think that there is a missed opportunity with the Bill?

Jane Friswell: I think the school offer is particularly critical. We talked earlier about having some form of national framework—national standards—around the local offer. From the school perspective, it is particularly important that schools are very clear about what is expected of them, in terms of the delivery of services that local parents are going to want for their children, and certainly, it is important to have the opportunity to tailor that—to personalise services more. Not only are there challenges here, but there are great opportunities. Personal budgets may have a key part to play in that, in terms of informing how schools can interface better with parents, raise levels of parental engagement, and develop future services that will look different, and rightly so. There is a basic offer here that needs to be on the table for every child in every school, and we need to be clear about that. I would certainly be looking for guidance from the revised code of practice for that.

The Chair: I am afraid we have to finish there, because it is a quarter past 4. Thank you very much for your assistance. It was a great contribution.

4.15 pm

Sitting suspended.

Examination of Witnesses

Di Roberts, Russell Hobby and David Bartram gave evidence.

4.30 pm

The Chair: Can I give our new panel a very warm welcome? Thank you for coming along. Can I ask you briefly to introduce yourselves?

Di Roberts: My name is Di Roberts. I am principal of Brockenhurst college and I am representing the Association of Colleges.

David Bartram: I am David Bartram, assistant head teacher of Lampton school in Hounslow and SEN lead for the London Leadership Strategy.

Russell Hobby: I am Russell Hobby, general secretary of the National Association of Head Teachers, which represents heads in most of the primary and special schools in this country.

Q164 Mrs Hodgson: I will start with David Bartram, if I may. Welcome. In your statement, you talk about the importance of good leadership when it comes to improving outcomes. How might that be achieved in policy terms? How would you translate that into policy?

David Bartram: My view is that it is really important that the Bill does not sit in a vacuum away from other educational changes. It is really important to make sure that there is not a divide between the legislation and how it is playing out on the ground at the moment. System leadership has a really critical role to play, in terms of both the engagement and the implementation of the Bill.

If you look at teaching schools, organisations such as the London Leadership Strategy and Challenge Partners are all practitioners looking to lead the school improvement agenda. System leadership is one of the biggest changes to school improvement that we have seen. It is in the White Paper when it talks about teaching schools and so on, and it is very different from the traditional top-down approach in terms of advisers and SIPs.

Teaching schools are not mentioned anywhere in the Bill itself, however. The role of school-to-school support, looking at how the knowledge in terms of outstanding SEN and inclusion already sits within the system, is about how we become more effective at moving that knowledge around the system.

Q165 Mrs Hodgson: I will come back to you on another topic in a moment. I will just move on to Russell Hobby, following on in the leadership theme. Clearly, the quality of the leadership is important in ensuring that schools provide well for children with SENs. Do you think that heads and leadership teams have enough expertise in that regard?

Russell Hobby: I think that they will need expertise in two separate areas. The success of the education, health and care plans depends fundamentally on collaboration between the different professional groups. There is nothing particularly in the Bill itself that will make that collaboration work; it depends on the effectiveness of leaders not only in schools but in all three of those professions.

We have been here several times before with several different attempts at this, and I am very worried about effective collaboration. The skills in collaboration and across professional working are going to be critical, but also, at a specific technical level, understanding the different sorts of special needs and how to diagnose and develop provision for them is going to be a critical part of the whole leadership team.

There, particularly when it comes to low incidence special needs, it is going to be particularly important to work with leaders in special schools and in other forms of specialist provision. The ability to get professionals in special schools involved early in mainstream schools to help diagnose the particular needs is a way of expanding the repertoire.

Teachers will come across some of the particular issues fairly rarely within their careers. Particularly when you are cutting down on School Action and School Action Plus, if you are also cutting down on early identification of need, you are going to run into some quite significant problems. We need to find ways to maximise the crossover between mainstream and special education.

Q166 Mrs Hodgson: To follow that up, do you think that identifying and catering for SEN is currently as prominent as it should be in initial teacher training and continuing professional development, especially with regard to the high incidence needs, as you highlighted?

Russell Hobby: I think more could be done, yes. You can certainly see elements of it, but very small amounts of time are devoted to this. It needs to be every teacher's responsibility to be able to spot the early warning signs. They may not have the full skill set to move into full diagnosis, but they will know when they can move on from that. I do think that we need to put more weight on that.

Q167 Mrs Hodgson: Coming back to David, do you think that overidentification is as big an issue as it is claimed to be, or at all? I know you sit on numerous organisations. Do your colleagues across the board welcome these reforms?

David Bartram: Yes, they certainly do. I think the intent of the Bill is excellent. I think there is and has been an issue with overidentification; people are nervous about talking about that sometimes, but it has been issue. From my point of view, it dilutes both provision and sometimes prevents the appropriate intervention getting through to the child. It sometimes depends on the type of overidentification. I would say, for example, that speech and language issues are sometimes underidentified and behavioural, emotional and social difficulties are overidentified.

Q168 Mrs Hodgson: BESD is overidentified?

David Bartram: I was in a school recently where over 60% of the children on the register were categorised as having an issue around behaviour and only 1% having an issue around speech and language. There is an issue around the quality of the identification, the expertise that sits within the school.

Q169 Mrs Hodgson: Sorry to interrupt, but is that the fault of the teachers who are identifying the children, in not being able to identify what is behind the behaviour or the issue that needs addressing?

David Bartram: I think it is a combination of things. I would link it back again in many ways to the leadership. It is about having a breadth of different types of interventions that you could put in place. If you do not have outstanding leadership, you will not necessarily know or recognise the different types of interventions that you need to put in place.

It comes back to the issue around teacher training; it is absolutely critical that that is enhanced and improved. I am hopeful. I know that Charlie Taylor has experience in the SEN world and that he will recognise that. I certainly think that there are a number of issues. It is also important not to lose sight of the role of the SENCO, and how critical that is in ensuring that their place within the school really is central to driving through many of the reforms.

Q170 Mrs Hodgson: Can you expand on some of the children who are being overidentified? You gave one indicator that it might be BESD. Is it anything else? Like you, I am concerned about the underidentification of all those needs such as dyslexia, speech and language. There has to be a scale and balance. Where is the overidentification?

David Bartram: I am not a huge fan of categorising children. It is about personalising learning and getting an absolutely appropriate package of support, rather than putting children in categories. Very often the overidentification occurs in categories that, put quite simply, are easier to put children into, because they require less expertise.

For example, if you see a school in terms of its SEN structure, with one SENCO and 60 teaching assistants underneath, that will lack the expertise to look at underlying issues such as specific language difficulties, dyslexia,

dyscalculia, ASD and so on. That requires a greater degree of expertise and knowledge. That is why I think linking health more closely into the Bill is very important.

Q171 Mrs Hodgson: Thank you. I have a question now for Di. Are there any new duties in the Bill that you think colleges will struggle with?

Di Roberts: Can I just mention the two duties we are very pleased about, so that we have the positive first? The removal of the pre-16/post-16 divide is something we welcome because it will allow us to do much more effective planning. Young people with SEN sometimes arrive on our doorstep and we have no information at all. That transition planning will be essential. Secondly, having a local offer will be very helpful for young people and parents to have a much clearer picture of what is available.

One of our real concerns is who will monitor implementation of the legislation. Currently, you may be aware that post-16 additional high-needs funding has gone to local authorities, and we are already seeing local authorities making local decisions that could have the impact of destabilising the provision before the legislation comes into effect.

Who will be our Ofcom? Who will ensure that the legislation operates so that a young person in Yorkshire has the same level of provision and the same rules applied to them as a young person on the Isle of Wight? My real concern is that if we do not have someone with that overview, everything will end up going through the tribunal system and it could be overloaded. Someone must make sure that local authorities are doing this coherently and in a way that is fair across the provision.

Q172 Mrs Hodgson: With regard to inclusion in terms of enrolment and course choices in further education, is that a bigger issue than for children aged five to 15, and could the Bill address that?

Di Roberts: In terms of there being a facility for young people to have a wider level of choice, which is important, this is where the local offer could be instrumental in allowing young people and parents to have an overview of what is available.

Again, one thing is to make sure they have independent advice and guidance that allows them to make the right decision for them, whether the young person does that or, if they have severe learning difficulties and disabilities, the parent. If a young person does not know what is available, they will not be able to make the best choices. That independent advice and guidance is important.

One concern is that it will all sit within the local authority, so the local authority will provide the information, advice and guidance, and provide the assessment, commissioning and funding. Again, where is the independent overview to make sure that it does not end up going through to a tribunal if it falls apart?

Q173 Mrs Hodgson: My last question: can you say something about the effect of raising the participation age that young people with SEN will have in the FE world? The thinking is that many young people who are currently not in education or training will probably opt for FE rather than A-levels. Many of those young people may have SEN. Do you have any evidence of that, or is it just a gut feeling?

Di Roberts: No, no. It is true that many young people who are not in education, employment or training have underlying SEN issues. One thing we were pleased to see is that young people who go in and out of education at that age are now included in terms of their EHC plan and the inclusion of something like apprenticeships. That might be a more effective route to get young people back into education and then take them through the apprenticeship route.

Q174 Mrs Hodgson: Is that reflected in the funding? When those young people are gathered up through the participation extension, is there a reflection in the added burden on SEN for FE?

Di Roberts: There is an added burden on FE, and local authorities now have the funding pot for that. Many of them are saying that they have not seen an increase, even though the DFE is saying there has been an increase of 9% to local authorities.

The concern is that we will have young people on our doorstep. The local authorities are saying that they do not have the funding available to make things happen and how can I make a local authority do anything? The same will be replicated throughout a lot of colleges. The DFE is saying one thing; the local authority is saying another. The problem will be that the young person will be in the middle of that.

Q175 Caroline Nokes: Following on directly from that, Di, who manages to educate a number of the 16-plus students from my constituency, I just want to clarify something. Once a student passes 19, is there a difference in the funding rate that you will receive?

Di Roberts: There is, and one of the concerns about the Bill is the clause that says that local authorities should pay “regard to age”. What exactly does that mean? We are concerned that for students between 18 and 25 there may actually be disadvantage compared with their younger counterparts. This is a Bill that is to go from 18 to 25 and if a local authority can make a decision and say, “We have paid regard to their age”, what does that actually mean? If it is not defined in the Bill, it actually gives local authorities carte blanche to make decisions that we will not be able to argue against, because they will say, “Well, we’ve made them with regard to age, as defined in the Bill”, but the Bill does not actually define what that means.

Q176 Caroline Nokes: I think you mentioned in response to Sharon something about the colleges now having to implement the legislation before it is enacted. Could you explain what additional pressures that is putting on the FE sector?

Di Roberts: Previously, the funding has come directly for high needs students—the sort of top-up funding that is above £6,000, so it could be anything from £6,500 through to £19,000 or £25,000. That would be in a general FE college; it might be more in a specialist college. Previously, that funding came directly from the Education Funding Agency.

From September this year, all that money has been redirected through to local authorities. For instance, our college deals with five local authorities. If you are a specialist college, you could be dealing with as many as 50 or 60 local authorities. They are all asking for

information in a different way and at a different time, and they are all making local decisions about your baseline allocation for September, which in our case is probably about 50% less than we anticipated.

The amount of work that we are having to put in to try to sort this out with the local authorities is considerable, and the legislation is not in place or there would at least be a framework that we could challenge the local authorities on.

If I could ask for one thing around that, and I know that it is probably not within the realms of the Bill, it is that in the transition between where we are now and when the Bill comes into effect there is a real potential for destabilisation of what is currently happening in post-16 education. There needs to be some work by the DFE and the Education Funding Agency to try to ensure that that destabilisation does not happen.

If, because of the first interaction with local authorities for about 20 years around this issue, you lose the good will of the colleges that really support the Bill and really want to make it happen, that could be very negative. It would be such a shame.

Q177 Andy Sawford (Corby) (Lab/Co-op): Are there any new duties in the Bill that you think schools will struggle with?

David Bartram: I can offer a view of where some of the anxieties of schools lie. At the moment, I think that those anxieties are probably largely around how the personalised budget will play out, because you are putting together an SEN team, staffing it and making decisions around appropriate types of provision. A lot of schools are moving towards, if you like, more of a multi-agency approach because of the reduction in local authority capacity at the moment, and are looking to bring in educational psychologists, speech and language therapists, and so on. The degree to which the personal budget will be taken up by parents is a question mark for schools.

Russell Hobby: If you build on that, there is also a potential conflict of interest between the school's judgment of what will raise standards of achievement for a student, and the holder of the personal budget's view on that. For example, if the two groups wish to spend the money in different ways, I am not entirely clear how that will be resolved. In principle, giving families more control over their own destiny in this field is a positive thing to do, but schools, as David has said, have to commit to skills and resources over a relatively long term. They need some stability in how this will be spent, and we need some way of arbitrating between those two.

Q178 Andy Sawford: Could you give an example of where you might see that conflict arising?

Russell Hobby: There are already people advising families on what they might be able to spend these personal budgets on, including travel arrangements, alleviating holidays and care and so on. Those may not, in the school's judgment, be the right ways to spend the money on these pupils. They may also have different views about the types of institutions they would like to draw the specialist expertise from and, for example, getting speech and language therapy and how much of that is needed.

In a similar vein, there will also be conflicts between the judgment of schools and health authorities in those regards, particularly as the emphasis is on the medical provisions having an educational value. The judgment of the school may be, "We need a day of speech therapy a week for this student." It may be the judgment of the relevant health authority, in very budget-strapped times, that they need an hour a week. I am not entirely clear how that would be resolved, and who would take that up.

David Bartram: That links to how a local offer will work practically, as well as to making sure that the local offer does not simply become a web page that tells people what is on offer generally. Actually, it is about, hopefully, signposting parents to the best types of provision. At the moment, the most popular way of trying to find a speech and language therapist, or the very top one for your child, is typing "speech and language therapist" into Google and hoping that something comes up in your general area. There is a role in making sure that parents get the very best type of support available. Hopefully, that sits within the school, but where it does not, parents need to know where they can go to find the appropriate support and intervention.

Q179 Andy Sawford: How might you be assured that the child is getting the best type of support available? What assessment or monitoring by the school might there be?

David Bartram: That is a really good point. I have seen many schools where there is a great deal of provision, but actually the outcomes are not what people would want. There is quite a lot of focus in the Bill on provision. It could perhaps be argued that there could be more focus on what the outcomes should be. It would certainly be about looking at the impact of the different types of interventions that are coming in and making sure that they are time-limited and that the co-ordination of those interventions is appropriate. If you have three, four or five different types of intervention taking place with the same child, it becomes very difficult to monitor what the impact is of that individual intervention.

Q180 Andy Sawford: I declare an interest in asking this question: my wife is a special needs co-ordinator in a primary school with a very high proportion of children with special needs, and where many children have statements. How important is the relationship between the professionals a SENCO would work with, including, for example, the educational psychologist, and how important is the relative stability of those relationships over time to delivering the quality of support for children with special needs that you and parents would hope for, and could that potentially be disrupted in this new arrangement?

David Bartram: Personally, I think the link between outside professionals is absolutely critical when it comes to the progress of children with SEN, whether we are talking about an educational psychologist or a speech and language therapist. Although there is a potential risk, there are also potential strengths. For example, at the moment, schools get the outside agencies that already exist in the authority; they do not necessarily have the choice of going elsewhere. You can talk to many schools across the country, and some will tell you that they have

a fantastic EP or speech and language therapist, and others will say that they have not, and they would like the flexibility to look elsewhere. What is really important is that the local authorities of the schools that I am going into are beginning to lack the capacity to support the volume of children. They are getting more involved in statutory assessment work and so on, and we must not lose that skill base and relationship.

Russell Hobby: I think instability is a significant risk in this regard, because once these skills have gone from the system, they will not be easy to obtain. When people conclude that they cannot get a reliable stream of work in a particular area, they will move on from that area, and it will be a struggle to get in the required specialist support. This is often mediated by personal relationships. If you can ring up to have a chat about a concern you have, rather than get a formal intervention, that can be a powerful way of doing it, and you will see these issues disappear.

That applies to health and medical support as well. How fast can you get an early medical diagnosis when almost nobody operating in the school environment is qualified to do it, particularly when it comes to children with mental health issues, for example? A speedy early identification is absolutely critical. We also have to bear in mind that the overlapping boundaries between health, social care and education can be complicated. There are schools that deal with 24 local health services. It is hard to sustain quality relationships across that boundary.

Q181 Annette Brooke (Mid Dorset and North Poole) (LD): It has long been the case that some parents have more fight in them than others to secure the best for their children. How do you think parents right across the spectrum will be served by this new system?

Russell Hobby: If the local offer works out as planned, it has a lot of potential to give them the information they need to act on. The potential to create local offers beyond local authority boundaries, and to have groups of local authorities, particularly in metropolitan areas, working together, will be quite important as well. There is low-incidence special needs provision for which people will have to go far afield. It is potentially a strong way of delivering on this.

David Bartram: Most importantly, the Bill offers a degree of transparency for parents around SEN that there has not been before. Transparency is incredibly important, and is part of what the local offer looks to provide. It could go further. Schools should advertise what their offer is and what they can offer students in terms of support and the different types of interventions. There is also perhaps a role for schools to show how they identify children with SEN and the different methods they use, because there are many different types across different schools. The role of personalised budgets is, in principle, absolutely correct; we will just have to see how it plays out. We are not so sure about that at the moment.

Di Roberts: I would certainly pick up on Russell's point about the local offer and making sure that it is wide enough, so that children and their parents are able to get an overview of what is available. It should be done in a coherent way, so that they understand what is available; there should not just be a list of provisions, with the families having to find out what it means. This is why having some sort of independent advice and

guidance is absolutely essential—somebody who will work in a child's best interests and say, "This is what is available. These options would really meet your needs."

An advocate for the child and the family is really essential, particularly as you are talking about bringing together health, care and education. That is one of the real strengths of this Bill. If parents are trying to find their way through that, it could become even more confusing, which would absolutely be against what the Bill is about. It is about making sure that the advice they are given is for the child's benefit, and is not given because of who the funders are, or what is available. It is about the child's best chance.

Q182 Annette Brooke: Can I add into that? How can we make it better? We have pupil-parent support and the so-called independent workers employed by the local education authority. I have never quite believed in their independence, because the cheaper option seems to be recommended as the right one. How will it all be better in the brave new world?

Di Roberts: By having the "Ofcom" that I described. You do not want to end up with a situation in which the only way to get resolution is to go to a tribunal; there should be some sort of overview, so that an eye is kept on it to ensure that it is not always the cheapest option that is used, and that what is done is for the benefit of the young person. It will be a little bit like the Ofcom world: never mind the local authority or the funding that is available; it will be about going in and finding out what is best for that young person and matching something to them. Someone saying, "This local authority always goes for the cheapest option" may raise some warning flags.

Russell Hobby: I also wonder whether there is a role, on the larger scale, for the Children's Commissioner in that one—someone with the potential rights to spot that. I think the Bill offers powers to take up individual cases, but I do not think that they will be able to operate on the scale that this might need, except where it is highly significant, but there is that option there.

Q183 Bill Esterson: Between you, you have expressed a lot of concerns about the impact of the loss of specialism, the need for good standards to be guaranteed, and rarely encountered needs, which Russell mentioned. Is there something that could be added to the Bill to shore up some of those points and ensure that the services are there, which would overcome the issue of reliance on the local offer?

Russell Hobby: Possibly, if it were made clear, and there were arrangements to build a local offer beyond the individual authority boundaries. The Bill certainly does not prevent that happening, but you could encourage it. There are small unitary authorities that simply will not be able to give a comprehensive local offer. Where that could be encouraged, that would be powerful. There may be something that can be done to ensure that the boundaries of the different authorities involved coincide more, but that stretches far beyond the Bill, in terms of the structure of our education and public services. Skills are built on stable conditions over time, so the stable deployment of personal budgets would be another area to help protect that. They are also built on the relationships between the professions, so to go back to the earlier point, making sure that the same people can work together over time is important.

Q184 Bill Esterson: So these are issues for implementation, rather than changes to the Bill.

Russell Hobby: Yes, to the extent that any provisions in the Bill may prevent the local offer from being a regional offer, but I did not see anything like that in there. It could, however, be explicitly encouraged.

Di Roberts: Is there going to be a minimum standard of local offer—not necessarily a gold standard, though we would all want it to be that, but something to make it clear that there will be a minimum standard? That could be in the legislation and defined more in the regulations.

David Bartram: My view is that we need to add an element of school support to the Bill that does not exist currently. In the schools that I have seen, there is some outstanding inclusion and SEN practice. We need to get a little bit better at unlocking some of that knowledge, because there is some practice out there that is not as good and is not providing the service that it should to children with SEN. We need to look at how we can match those scores up more effectively, share that knowledge, and ensure that we are working with those schools that are not performing as they should. For me, that is not necessarily about the role of Government as such; it is about the role of practitioners, leading that change.

Q185 Bill Esterson: So sharing good practice and collaboration, rather than legislation.

David Bartram: Absolutely. If you have a look at London's results, it was the lowest performing region in 2003, and by 2008 it was the highest performing region. That was a result of experienced, successful heads working with schools in difficulty in challenging circumstances. Actually, there is no reason why the children with SEN in this country could not benefit hugely from sharing the outstanding practices of many committed SENCOs, assistant heads of inclusion, and SEN practitioners out there at the moment.

Q186 Pat Glass: Russell, may I ask you about initial teacher training and CPD—would you have liked to have seen that in the Bill? In particular, I am thinking about the many times I asked head teachers what their biggest problem is, and they almost always said behaviour, but when I asked them what they are doing on CPD, they would say that it is somebody else's problem.

Russell Hobby: I am not entirely sure. That is a detailed level for the education training providers to get into, but we certainly need to be clear that initial teacher training should include—

Q187 Pat Glass: I am thinking more about CPD.

Russell Hobby: On CPD, rather than initial teacher training. There is a requirement for SENCOs to maintain a certain level of qualification, and I think that that is an important part of that. Again, I do not think that you can necessarily specify in detail what sorts of CPD a school should provide, but it is the case that good behaviour management will remove some of the overidentification of the BSED issues. Ofsted's approach that you need to check the quality of provision first before finding a special need is absolutely the right one to be taking. Schools are investing in that and they will

be held accountable for the quality of their discipline management, but I suspect that you have the levers that you need through the Ofsted inspection framework for achieving that, rather than through the Bill itself.

Q188 Pat Glass: I was thinking more about the local offer. When we look at the framework around that, should we look at CPD within that?

Russell Hobby: I understood the local offer to be expressed in terms of the services and provisions that will be accessible to parents, but I think that if you got to the extent where you were starting to define the quality of the local offer and imposing certain standards, being able to talk about the skills, services and specialisms available and holding the local offer to account for those, I think that you would find that CPD would become one of their key measures for achieving that. Perhaps that is your route into doing that.

Q189 Pat Glass: Thank you. David, I do think that there is overidentification of SEN in this country and really huge overidentification in certain categories, and we talked about that earlier. In my experience, if you look at School Action, you will see that there is a huge number of summer-born children in there and an awful lot of children from less well-off homes. Nevertheless, those children have needs, so what would you like to see in the Bill that does not overidentify SEN, but does not neglect the real needs of those children?

David Bartram: I would like to see an emphasis on quality first teaching. For children with SEN in mainstream schools, wherever they are on that stage, they will spend 90% to 95% of their time in the classroom. There needs to be a real focus on ensuring that they are receiving appropriately differentiated lessons, teachers are skilled up and aware enough of the different types of needs that children have, and schools are given the flexibility to create curricula that are appropriate.

If you look at the number of exclusions, for example, the jump is greatest between the transition point of year 6 and year 7. There are many reasons for that. I know that I am generalising here, but children with autistic spectrum disorder, for example, benefit from routine; children with issues around emotional difficulties benefit from having that secure relationship with the teacher and so on. A lot of children with SEN find that transition point difficult, which is why they are over-represented in those figures.

Looking at bespoke curricula for groups of children in year 7—I am not talking about sink groups that separate those children, but, actually, some of the schools that have been really successful in this area have looked at a 30% or 40% primary-type curriculum, with more project-based learning, delivered by a primary-trained teacher in year 7. That has had huge benefits in reducing exclusions, raising attainment and, very importantly, raising the attendance of children with SEN at school, which for me is one of the biggest indicators of whether a school's SEN policy is effective.

Q190 Mrs Hodgson: A quick-fire question. It might just be a yes-or-no question; I am hoping it is. Should special educational needs co-ordinators be part of the senior management team?

Russell Hobby: Yes, if the school is large enough to sustain that. Where it is not, you could have a shared SENCO role across a federation that would be on the senior team.

David Bartram: I would say yes, but I would also add that the SENCOs should be among your best teachers, if you like. They should be the people who are able to lead from the front, in terms of the quality of their teaching. Their teaching should be consistently outstanding, and that is an important addition.

Di Roberts: Not in colleges, because they are significantly larger in size and diversity of offer, but they should have a senior and high profile. They need a high profile.

Q191 Mrs Hodgson: So there should be somebody senior who leads SEN?

Di Roberts: Yes. You will find that in colleges, but it will not necessarily be the SENCO. For instance, one of my senior managers will have responsibility for foundation learning, which will include having responsibility for our SENCO.

Q192 Mrs Hodgson: Right. So that person will have responsibility for the SENCO?

Di Roberts: Yes.

Q193 Mrs Hodgson: Do any colleges have the person who is responsible for SEN in the senior management team, or is it never done that way?

Di Roberts: I do not know of any college that has a qualified SENCO on the senior management team. It tends to be that you have somebody who has responsibility for that area of provision, and then you have your specialist SENCO, who is directly responsible. It is quite a different structure in colleges.

Q194 Mrs Hodgson: A question about personal budgets. In your experience, with regard to parents' capacity, if they choose to take on responsibility for the personal budget, how do you feel they will cope with that? What impact could those parents' choice about how to spend that money have on capacity within the school? How will it affect shared services such as speech therapy or a joint teaching assistant who might have been paid for out of that funding?

Russell Hobby: Probably that could be best managed by creating some sort of service level agreement or contract for how the money will be spent over a reasonable period of time as well. It would not be at an arbitrary level; they would be entering into a long-term relationship with the institution and the level of services. That gives someone the opportunity to look over it and see whether it is suitable, it gives the school confidence that it will be able to commit to that provision for a reasonable period of time and, of course, it gives the parents or family something to hold the school accountable to. Perhaps we could develop that thought about what the budget will be spent on once it is there and what the contract is, in formal terms, for that. We could do some work with that.

David Bartram: Critical to the success of any SEN department or inclusion team is the relationship that it has with parents. It is possible that the personalised budget will not necessarily refocus that relationship but

focus it more closely. It will be absolutely crucial for parents to have trust in how the school develops the provision for the child. I suspect that for the most part, there will not be huge problems in the delivery of personalised budgets, because most parents trust the school's provision and have that relationship. It will be when that relationship starts to break down that we will need to look quite closely at how that particular situation is being managed.

Di Roberts: Some of our adults with learning difficulties and disabilities are already using their personal budgets in our college, and they are using them very effectively. I can see that that could easily be replicated for the younger age.

The Chair: Thank you very much. I am afraid that brings us to a quarter past 5, so we have run out of time. Thank you very much for coming along and letting us have the benefit of your expertise.

Examination of Witness

Dr Maggie Atkinson gave evidence

5.15 pm

Q195 The Chair: Last but not least in today's evidence session, Dr Atkinson. Would you like to introduce yourself?

Dr Atkinson: I am the Children's Commissioner for England. Many of you will, I hope, already have seen our child rights impact assessment on parts 1 to 3 of this very important Bill. We welcome the opportunity to engage in conversation. You will know that the reform of my office is also in there, and I could talk for ever about that. The CRIA does not talk for ever about that, so perhaps that would be the wrong starting point, but we are in your hands. We recognise how complex and multi-layered this piece of legislation is, but we see it as a fantastic opportunity for the country to step right into the middle of the rights of the child and deliver on those rights.

The Chair: I was not inviting you to make an introductory statement.

Dr Atkinson: Apologies. I had been led to believe that you would.

The Chair: What we are doing is asking questions. By asking questions, we will ensure that the Members who are looking after the legislation address the issues that they think are important. I am sure you will have plenty of opportunity to make your points.

Q196 Lisa Nandy (Wigan) (Lab): Thank you, Maggie, for coming and giving evidence to us today. Do you have any concerns about the Bill as it is currently drafted?

Dr Atkinson: We have some. If I start with special educational needs, which is the one about which we probably have fewest, our issues are about the very vulnerable children who end up in detention. We visit

children in detention all the time, as the Committee is no doubt aware. If I go into a secure forensic mental health setting, where people may have committed a crime and be incarcerated, but there is a mental health issue alongside it, their entitlement to education and, if they are statemented, the continuation of what that statement requires, is not an issue.

If we go into a young offenders setting—a secure training centre or a secure children’s home where there are youth justice beds—many of the youngsters in those settings are children with special educational needs, and the Bill proposes that they are not included in the provisions in the Bill for children with special educational needs. We consider that there could easily be a useful discussion, debate, amendments or whatever around that area. They should be reinstated. Many of the children concerned have speech and language and other difficulties.

We were delighted to be told earlier today that clinical commissioning groups are going to have a strong responsibility in the health part of the EHCPs, so our CRIA is out of date even as you start to read it, because we stressed very strongly that that should be the case. We agree with the teacher unions that you have just heard from that the local offer needs to be made far more robust, and really good practice needs to be out there and capable of being learned from quickly, because children cannot wait.

Our main concerns are in the other parts of the Bill, which we have analysed in terms of our CRIA. We recognise that there is a need to speed up processes and that fostering for adoption may be seen by many in the sector as a positive way of doing that. We want everybody to understand, however, that that is not the same as concurrent planning, which leaves the birth families still with the potential right to be reunited with their child after a period in care. We consider that the content of the Bill presumes that—quite quickly—fostering for adoption will lead to the birth family not having that presumption of the possibility of a reunion with their children. We consider that concurrent planning is extremely good practice and that fostering for adoption may not sustain it.

We do not agree with the need to change the due consideration for the ethnicity of the child as part of the considerations that are undertaken when a child is put up for adoption. We consider that what is in the legislation at the moment is not a hindrance to children from BME backgrounds being adopted. We consider that, at the very least, it should be in the welfare check and that its removal is not necessary.

Q197 Lisa Nandy: Can I interrupt for a moment? Have you sought children’s views on that change to the ethnicity requirement?

Dr Atkinson: Yes, I have met children and young people. Some members of my advisory group are looked-after children or have been in the system. Several weeks ago, I went to a very lively meeting of the all-party group on looked-after children and care leavers. I was taken to one side by a group of youngsters from BME backgrounds who are currently in long-term foster placements. One of them said, “You have to understand who I have been and who I am, as well as where I am going and who you want me to be.” That was one of the strongest things that has ever been said to me as

commissioner. He was a very proud young man who considered that his background, ethnicity and religion were not being taken into account where he was.

We think that the right recruitment of the right adopters is far more important than either slavishly looking for a match that is right for a child, or claiming that you cannot possibly place them because the match is not right. We do not think—from its recent reports Ofsted does not either—that that is happening on a wholesale basis. The law is a good safeguard as it currently stands.

On family justice, we think that the 26-week time limit is absolutely fine for most cases, but that the Bill needs to be very clear, and/or the technical papers that accompany implementation will need to be very clear, about exactly what exceptional circumstances may need, because there will always be exceptional circumstances that require far longer than 26 weeks because of their complexity.

We consider that the whole care plan should come under judicial scrutiny. If the Norgrove review’s aim to have judicial continuity is achieved, judicial scrutiny should be one of those things that is applied to the whole of the care plan. That should not create delays if it is done well. It is holistic.

On family justice and private law, we consider that the law is already robust enough to ensure the involvement of both parents where it is safe for the child for both parents to be involved in their life after separation. We know that the United Nations convention also guarantees that. We do not see any reason for further amending the law.

The principle of focusing on mediation as part of a couple’s separation is absolutely terrific. We would want a properly trained and regulated mediation service, not just somebody who thinks that they are a mediator. We feel that, as a result, there needs to be further development on that. We also consider that there ought to be more safeguards around that system—if it is only one meeting, who does the preparation and the debrief? More to the point, who is listening to the voice of the child in that mediation and where is the safeguard for them?

Those are our basic reservations in what I must stress is a broad welcome to the Bill. I hope that those of you who read or are about to read our child rights impact assessment will find that we broadly welcome much of what is in the Bill, but our reservations stand.

Q198 Lisa Nandy: That is really helpful—thank you. I wanted to ask you one more thing; I am sure that other Members have questions. I am becoming increasingly concerned that the Department for Education does not have the same remit across Government as the previous Department for Children, Schools and Families had. As a consequence, we are seeing laws and policies being developed, such as the bedroom tax, that have a profound impact on children that has not been taken into account when policies are conceived. I pay tribute to the Minister, who has taken that issue up with the Department for Work and Pensions.

One of the things that I think we would like to see is more account taken of the impact policies have on children when the policies are in their inception stage. I know that the Bill gives the Office of the Children’s Commissioner the power to conduct a child impact

[Lisa Nandy]

assessment on Government policies. Would it be right for the Children's Commissioner to take that on across the entirety of Government legislation? Do you think that the Children's Commissioner would be best placed to do that, or is it better for the Government to take on that responsibility and for the Children's Commissioner to retain the power but not necessarily the duty to do it in all instances?

Dr Atkinson: I think that the Children's Commissioner having the power is absolutely right. You will know that we rove across Government. When the United Nations committee questions the state party at some point after 2014, its expectation will be that the state party will judge policy against the UN convention on the rights of the child. The Children's Commissioner's remit is to monitor and to hold to account for whether the state party has done that. In the absence of the state party doing it, however, I would rather we did it than no one did.

To come to your question about cross-governmental remits, there is an issue in the Bill. For the most part, we strongly welcome the changes to special educational needs, as I said, but the removal of the special educational needs status of young people in incarceration in youth justice settings runs absolutely counter to the statement by the Secretary of State for Justice two weeks ago about creating an educational landscape and putting education at the heart of youth justice provision. Sometimes you need a me, who will go across Government and say: "Do you know that this contradicts that?" I know that there are cross-governmental working groups of Ministers and of very senior officials on all sorts of pieces of businesses which often happen without seeing the light of publicity and have led to very strong work between the Under-Secretary of State for Education who is here today, and his opposite number in the Department of Health with responsibility for children's health. Do not underestimate how much is still going on, but I would also say that child rights impact assessment should be a power on me, but a duty on Government.

Q199 Jessica Lee: To start with, I want to ask you a little about your remit. In clause 77, there is a list of activities—not exhaustive, of course—for the commissioner to undertake. I wondered whether you were content with that. Do you think it is sufficiently broad? Are there, for example, activities that are not covered by the list that you would expect to see in the Bill?

Dr Atkinson: There is a variety of issues with how specific you become when you try to describe a Children's Commissioner or, in some European nations, an ombudsman. Members may know that we have had issues about how broad and how long the list of specified groups of children is, for example. We recognise that there is a very important transfer of a specified list of children across from the children's rights director to the remit of a new and reformed Office of the Children's Commissioner. We felt, have always felt and have said so very openly, that the list ought to be somewhat longer, because children on remand are in care; most of the children I meet in mental hospitals have been in care; and children who declare for asylum are placed into care.

The issue is how long you should write the list and, if you write a long enough list, whether it will cover everything. There might still be something about which someone says: "We should have put that on the list as well, commissioner", or: "It's not on the list so you can't do it." As the Bill stands, there are lots and lots of permissive statements in it on the remit of the Office of the Children's Commissioner, which will enable the commissioner to do what a job description does. You know that bit at the bottom of your job description that says: "And any other things that your boss thinks you ought to be able to do"? There is a tremendous amount of that sort of language in the clauses of the Bill that are about the Office of the Children's Commissioner.

We welcome that broadly permissive notion in the legislation because the more you try to specify, the more, first, you will miss some children off and, secondly, you will get to the stage where someone will say: "You are not allowed into that piece of territory." It does not go as far as, for example, the general comment No. 2 from the United Nations or the Paris principles, but I am not sure that we could have got it to go a great deal further than it already goes. We will make of it what we already make of limited resources in the English office as it now stands. What will happen after the end of my term, who knows?

Q200 Jessica Lee: Moving to care proceedings, you were talking about a definition of exceptional circumstances to go beyond 26 weeks. Are you saying that there should be clear judicial training?

Dr Atkinson: I think it does lie in that part of the territory, but there is also an opportunity here to enable a proper discussion about what happens when, all of a sudden, a member of the extended family, at the 11th hour, steps in. If there had been proper family intervention and family group conferencing, and if that was on the face of the Bill as one of the steps in the process, there is a greater possibility of a member of the extended family stepping forward before the point at which it would delay the case and send it right the way back to the start. If that is on the face of the Bill and in the judicial instructions, then there is the possibility for kinship care to be taken more seriously and to be better built into a proper and formal process. We think that the Bill is such a moment of opportunity to get things right for these very vulnerable groups of children and young people, and there is no reason why it should not be looked at again.

Q201 Pat Glass: Can I ask you about young people going into custody, just so I am clear? I have had some experience of young people in school with a statement going into custody—youth training centres usually—and then, because of short sentences, coming back. Currently, the statement is suspended, but it does not make a great deal of difference because the youth training centres are more geared up for this. Are youth offender institutes geared up? What would be the real challenges if we continued the plan when they went into custody?

Dr Atkinson: I am going to come back to the young people who speak to us when we go in and out of these settings. Very often, they had embarked on the first stages of either a vocational or academic pathway, or a mixture of the two. I have met youngsters incarcerated

for crimes committed when they were in the middle of a psychotic episode who are doing 4 A-levels. They are not special needs kids, but the kids alongside them who were special needs youngsters had had continuity of their education provided by that mental health institution. If a mental health institution, with all its problems and all its difficulties, can do it, then the youth offending estate ought to be able to do it. That seems to me to be the impetus that is driving Chris Grayling's statements of only a fortnight ago that education absolutely ought to be at the centre of what they are doing.

Very often, a young person's extremely bad behaviour, including extremely antisocial behaviour that leads to crime and a sentence, is about his or her frustration with not being able to deal with the world as it is coming at them, and that is an educational need. Whether or not they have a diagnosed educational need, the requirement should be there on the system to have education and rehabilitation—particularly citizenship education, as well as literacy and mathematics—at its heart. To remove—even to suspend—the statement of special education needs for a child who has got those needs seems to me to be completely counter-evidential.

Q202 Craig Whittaker: Have you had time to look at the new powers for your office? What do you think about them? Are they sufficient? Have you had time to evaluate what extra resource will be needed to do that to its full?

Dr Atkinson: We have looked in great detail at the new powers, and we have said consistently that, broadly, we strongly welcome those new powers. To make the primary function of the English Children's Commissioner to promote and protect the rights of the child means, for example, that rather than being an associate member of the European network that does my work, we can be a full member at the table with 27 other nations. That may strike you as being a drop in the ocean, but what it means is that we can far better advise on things like the adoption of Council of Europe standards on child-friendly justice and child-friendly health. We welcome the clarification of many of our powers—that we can not only research and inquire, but properly investigate—and that it is on the face of the draft.

In terms of resources, the resource was set at £3 million a year under my predecessor—by just thinking up a number, we think. It was a flat cash sum that did not rise with inflation and therefore there was something like 8% to 10% savings a year for the first 5 years. When I arrived, my budget was £3 million; this financial year it has been £2.5 million. We consider that having 0.2 of a full-time equivalent for health, nobody for youth justice, 0.8 of a full-time equivalent for education and for children's rights, one full-time equivalent for asylum and nobody else and a tiny admin team is already pushing us to the limit. We have not had our 2013-14 budget confirmed, but we do expect a further reduction. We live in constrained financial times and we are very closely and strongly aware of that. My grave concern about the new office is that, even though resources will come across with the office of the children's rights director's team, you may create a stronger office that is weakened simply because of the level of resources that is assigned to it. That would be a negation of what you want.

Chair, I feel extremely uncomfortable talking about legislation that is about me. We have a briefing paper, and I am quite prepared to send it to Members if they want it.

Q203 Lisa Nandy: I am sorry to return to something that is sort of about you, but I just wanted to ask you a quick question about the situation of the Scottish, Welsh and Northern Ireland Children's Commissioners, and particularly their ability to speak out about matters that affect children in their jurisdiction, but are non-devolved matters that do not fall within the Children's Commissioner's jurisdiction. I know that after all of you expressed concerns to Ministers, the decision was taken not to amend the Bill, and I welcome that. My understanding is that that issue is still not yet resolved. Is that the case?

Dr Atkinson: It is not resolved and it is not likely to be resolved. We were very grateful, as a group of four, that the Joint Committee took so seriously what we said and that the Minister and the team at the Department made the choice not to amend the 2004 Act so that I was, in effect, giving people permission to do what they wanted to do. We were very grateful for that, and we will amend our very strong memorandum of understanding and publish it, probably, this year. We meet next week in Edinburgh to start that conversation.

I doubt that it is within the remit of a Department such as the Department for Education and its counterparts in the other three jurisdictions, because the issue is that you would have to reopen the devolution settlements in order to make something that is reserved not reserved any more. It is not reserved because of education legislation or children, schools and families legislation; it is reserved because of the settlement Acts for the three other jurisdictions. I doubt very much that reopening those would leave Parliament a great deal of time to talk about much else. Once you have opened the legislation fully, you have opened it and I guess it might be open season, therefore, on any other elements of the reserved and devolved issues that serve the other three nations.

We consider that the compromise that we now have is about as good as we will get it, and it will be down to us to make a robust case for a memorandum of understanding that requires people not to have to come to me to seek permission to go into youth offending institutes in Bristol when there are Welsh children in them, for example. It is not a comfortable place. The other three nations have come a long way since the Children Act 2004. I know that the drafters spent a great deal of patience and time trying to get a better solution than the one we have now, but it just was not possible. We do as we can.

Q204 Mr Timpson: Could you tell us a little bit about the experience you have had of an advisory board, albeit interim, and how that has added value to the role that the office of Children's Commissioner is carrying out?

Dr Atkinson: Thank you—that is a great question. When I first came into post, I recognised, having come from local government, that I was not accountable to anybody. I was really uncomfortable with that. We set up an interim advisory board, which has four terms of reference and a period of operation. Two members, Lord Victor Adebawale and Dame Jo Williams, have stood down, and we are therefore looking for other

members. We went for people who had a strong track record of being critical thinkers and critical speakers, not only about children's issues but about public service, the media and issues of societal relevance generally to families and citizens. Our current advisory board includes the producer of "Blue Peter"; a children's rights barrister, who can be very acerbic when he wants to be; somebody who has been a lifelong director and senior operator in local government, and so on. We are about to recruit a young person.

The board members have been absolutely invaluable. We meet only about four times a year. We take the big strategic issues to them: for example, how do we best position ourselves in a media landscape that does not always take very seriously the notion that children have rights? How do we best position ourselves so that the United Nations convention has more credence and weight attached to it when we speak in public? Are there ways in which we can better position ourselves so that people listen more closely to what children have to say?

Because most of the board members come from anything but children's services backgrounds, they are very good at saying, "That's a battle that's not worth fighting. This is a battle that is. Can we suggest that you talk to this person in the legal profession, because they have a lot of information and knowledge about that area?" We may not have known that person, but because they have those contacts, we can have those conversations. They are always available on the phone and by e-mail, and I consider them absolutely invaluable.

The Office of the Children's Commissioner is a corporation sole. There is no executive function and there will not be, because that is not part of the 2004 Act that you have chosen to write in amendments about. In the new realm of the new Office of the Children's Commissioner, the commissioner will still be a corporation

sole and there will not be an executive board. It will be advisory but, goodness me, the members are worth their weight in gold.

The formal structures of governance include a properly appointed—Cabinet Office rules-appointed—audit and risk committee, which is equally invaluable. I am the accounting officer for my organisation and therefore responsible for public money. That audit and risk committee holds, as it sees fit, both me and the entire organisation to account for everything we do. We are internally and externally audited by professionals as well. However, the board is about having a sounding board, professional advice and wisdom.

Q205 Mr Timpson: Will you briefly explain your views on the suggestion that the name of your office should include the phrase "young people" as well as "children"?

Dr Atkinson: We took advice from UNICEF and the United Nations committee when we responded to the consultation on the name. UNICEF's opinion is that, because the United Nations committee says that if you are under 18 you are a child—and how long would the website name and people's e-mails addresses have needed to be if we had become what some people wanted us to be, which was "The Office of the Children and Young People's Rights Commissioner for England"?—there is a point at which you have to use shorthand, and that is one of those points.

The Chair: Are there any other questions? No. Thank you very much for coming along, Dr Atkinson.

Ordered, That further consideration be now adjourned.—(Anne Milton.)

5.42 pm

Adjourned till Thursday 7 March at half-past Eleven o'clock.