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GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Fourteenth Sitting

Tuesday 16 April 2013

(Afternoon)

CONTENTS

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Saturday 20 April 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Mr Christopher Chope, Mr Dai Havard

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

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 April 2013

(Afternoon)

[Mr Christopher Chope *in the Chair*]

Children and Families Bill

Amendment proposed (this day): 137, in clause 44, page 32, line 29, at end insert 'and prior educational outcomes'.—*(Mrs Hodgson.)*

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 138, in clause 44, page 32, line 31, after 'child', insert

', the child themselves where appropriate,'.

Amendment 142, in clause 45, page 33, line 20, at end insert 'and prior educational outcomes'.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): To deal briefly with amendment 138, I wholeheartedly agree with the hon. Member for Washington and Sunderland West that it is hugely important to involve children appropriately in decisions regarding their lives. That is why clause 19 sets out the principle that the local authority should have regard to the views, wishes and feelings of children and to the importance of children participating as fully as possible in decisions. The legal responsibility for children under 16 rightly remains with parents, however. Clarity about whom the local authority formally consults during reviews and reassessments is important. I hope that the clear and proper importance we are placing on outcomes and the appropriate consideration of the views, wishes and feelings of children throughout the Bill and elsewhere comforts the hon. Lady. I urge her to withdraw the amendment.

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): With that reassurance from the Minister, I beg to ask leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Clause 44 ordered to stand part of the Bill.

Clause 45

Ceasing to maintain an EHC plan

Mr Robert Buckland (South Swindon) (Con): I beg to move amendment 46, in clause 45, page 33, line 5, leave out from 'authority' to end of line 6 and insert

'must maintain an EHC plan for a child or young person up to their 25th birthday unless'.

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

Amendment 38, in clause 45, page 33, line 18, leave out subsection (4) and insert—

'(4) A local authority may only cease to maintain an EHC Plan if—

(a) the authority has completed a transition review meeting with the child or young person and their family, at which there is agreement from all parties that the specified outcomes to the EHC plan have been achieved; and

(b) a transition plan has been completed in partnership with the child or young person and their family and other agencies, which supports their progression into the next phase, including higher education or employment.'.

Amendment 210, in clause 45, page 33, line 18, leave out subsection (4) and insert—

'(4) In determining whether it is no longer necessary of an EHC Plan to be maintained for a young person aged over 18, a local authority must have regard to the young person's right to the continuation of an EHC Plan up to the age of 25 and access education provision in an age-appropriate setting.'.

Amendment 39, in clause 45, page 33, line 35, at end insert—

'(d) the procedure to be followed for transition review meetings and transition plan development.'.

Mr Buckland: The clause relates to when an education, health and care plan is no longer maintained. The subject of amendment 46—the expectation of the extension of EHC plans for children and young people until the age of 25—at very least needs proper debate. The sector understands that the extension is not a blanket approach that will automatically cover everybody who is not covered at the moment, but it is important to send a clear message, not only to those responsible for provision but to the young people and families themselves, that there is an obligation on those authorities that have made plans to maintain them unless certain circumstances, outlined in clause 45(1)(a) and (b), apply.

The amendment is not an attempt to seal EHC plans as tablets of stone; local authorities will still have discretion to cease to maintain them if, for example, they are no longer responsible for that young person, or they determine that it is no longer necessary to maintain the plan. A greater degree of clarity in the wording would help to meet expectations and lead to greater understanding of the provisions.

Amendments 38 and 39 relate to the process of ceasing a plan. Current regulations require local authorities to use the annual review meeting when a young person is in year 9 to create a transition plan and to review it as part of future annual reviews. The indicative draft code and regulations remove that requirement. Does my hon. Friend the Minister agree that, although transition must be central to the planning and reviewing of support for young people, the current requirements provide a useful tool for families to prompt local authorities to plan in the way we have outlined, or to start working on the transition at the earlier stage, if they have failed to do so? Does he also agree that the focus of this part of the Bill is on securing improved outcomes for young people with special educational needs and that the step between leaving education and getting those outcomes is crucial? So that people do not fall at the final hurdle, the local

authority should be under a duty to support people in that phase; otherwise, the work done prior to that point will have been in vain.

I am trying to find a new phrase to replace cliff edges. Precipices? Voids? Gaps? We know what we are talking about.

Graham Jones (Hyndburn) (Lab): Crevasse?

Mr Buckland: I like it. I will adopt that. I said on Second Reading that we are all aware of the danger of moving the edge from 19 to 25. The importance of reviewing support before ceasing an EHC plan is self-evident: it is an opportunity for everyone maturely to consider the situation, and only after a review should a decision to cease a plan be made. Amendment 38 is all about ensuring that there is a proper meeting with the child or young person and their family and an agreement that the plan's specified outcomes have been achieved, so that there is a sense of completion and progression before the final decision to cease the plan is made.

To achieve that, the Bill would require only a small amendment, as I have outlined. It would not place an undue burden to the local authority but would entrench best practice in fulfilling the aim of ensuring that service users—the young people themselves—are involved in every step of the decision-making process.

Before I leave amendments 38 and 39, let me remind the Committee of a possible real-life scenario. A 24-year-old man with autism has limited cognitive ability but enjoys a quality of life in a placement some miles from his home. He perhaps does not understand why he cannot be with his parents, but he is clearly in a place where he gets support. Bearing in mind that anxiety and a lack of well-being can often be key symptoms of autism, surely it is important to ensure that the young man and his family are very much involved in the decision making and that the next steps are explained to them as clearly as possible. In the lives of people with autism, what happens next is often of overwhelming importance and can drown out any enjoyment of the present. Uncertainty about what happens next is something that people with autism live with every day.

Amendment 210 supplements the proposals I have already outlined. It exhorts local authorities to have regard to a young person's right to the continuation of a plan up to the age of 25, entrenching what I would regard as a best practice consideration for local authorities making such important decisions. Let us not forget that by the time a young person reaches the age of 24 or 25, they might well have been the subject of a plan for many years. It will have been part of the furniture of their life and the lives of their families and carers, so the decision to cease must be taken as carefully, transparently and fairly as possible. It is in that vein that I advance the amendments.

Mr Timpson: I share my hon. Friend's desire to ensure that local authorities do not cease an EHC plan simply because the person is aged over 18, or without ensuring that they have made a successful transition to adulthood. As I stated previously, I also completely agree that planning for transition is of paramount importance for young people approaching the end of their time in formal education or training. We all recognise that the current system does not do that well, and I want to ensure that our reforms improve significantly the longer-term outcomes for young people with special educational needs.

Regulation 18 of the draft regulations, along with section 6.15 of the indicative code of practice, makes it clear that when reviewing an EHC plan local authorities must, in consultation with the young person, consider carefully whether or not they have achieved their outcomes and successfully completed their time in formal education. As part of that review, local authorities should also consider whether the young person wants to remain in education, as they will no longer be subject to compulsory participation. If the young person has not achieved their outcomes, wants to remain in education and still requires special educational provision to be made for them, the local authority must maintain their EHC plan.

We are not adopting the blanket approach my hon. Friend described. We are not creating a statutory entitlement to education until the age of 25 for young people with SEN—the Select Committee on Education asked us to clarify that point—because doing so would not be in the best interests of many young people with SEN who, like their peers, want to complete their education and progress into adult life and work. That is why it is vital that EHC plans are outcome focused and set out clear plans for how children and young people are supported through education and into adulthood.

My hon. Friend will see that we have made that clear in the draft regulations. Regulation 19(5) will ensure that when the child or young person is expected to leave education within the following two years, the regular review of the EHC plan will consider what provision is required to assist in preparing them for adulthood and independent living. Local authorities will have to set that out in the plan, along with the related agreed outcomes, and consider whether those outcomes have been met before they can cease to maintain the plan. Transition planning is therefore already an integral part of the EHC plan process. That has the added advantage of ensuring that young people retain all their rights and protections as they access the provision and support that will help to prepare them for adulthood. Furthermore, the local authority will continue to have statutory responsibility for maintaining the plan and for securing the special educational provision specified in it.

I will, however, look at the wording in the code mentioned by my hon. Friend to ensure that transition is as strongly focused as it can be on achieving and building on the good outcomes that we all want for young people. I hope that he is reassured that the plans will provide a clear transition for young people who are coming to the end of their formal education and that those who need to remain in education over the age of can do so. I therefore urge him to withdraw his amendment.

Mr Buckland: I am grateful to my hon. Friend for his response to my probing amendments. As he has conceded in other respects, the indicative draft regulations are still a work in progress. The code of practice will be key to ensuring that all local authorities adopt a common approach to making such important decisions. I look forward to seeing further work done on that important document, and I will continue to work with him to

[Mr Buckland]

ensure that the best outcome is reached in relation to such decisions. On that basis, I beg to ask to leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Clause 45 ordered to stand part of the Bill.

Clause 46

Maintaining an EHC plan after young person's 25th birthday

Mrs Hodgson: I beg to move amendment 217, in clause 46, page 33, line 41, at end add—

'(3) Where a young person is completing a programme of study, supported internship or apprenticeship which does not conform to academic years, a local authority may continue to maintain an EHC plan for that young person until the end of that programme where this programme has been commenced by mutual consent of—

(a) the young person;

(b) the local authority; and

(c) any health bodies contributing to support delivered by virtue of the young person's EHC plan.'.

The Chair: With this it will be convenient to discuss new clause 24—*Inclusion: apprenticeships*—

'(1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows:

(2) After section 12(2) insert new subsection—

"(2A) The requirements specified should not adversely affect the participation of young people with special educational needs or disabilities in apprenticeship schemes, if they are able to perform at the prescribed occupational standard required by the apprenticeship framework.".'.

Mrs Hodgson: As the Minister will know, the Opposition welcome the increase in the age limit for education, health and care plans to 25. We believe that 25 is the right age at which local authorities should aim to have prepared a young person for the next stage of their life, whatever that may be.

I recognise that the clause does not state that that support will be guillotined on the young person's 25th birthday, which might be in the middle of an academic year in which they are still studying, and I welcome the fact that that is not in the Bill. I heard from one independent residential special college, where severely disabled pupils are placed, whose local authority tried to cut all funding as soon as pupils turned 18, with no regard to whether their goals had been achieved, they were ready to leave, or their family was ready to have them back full-time. Amendment 217 would simply provide a further caveat in that spirit. It would allow local authorities that extra bit of flexibility in determining the end point of the educational support that they provide to a young person. If it were accepted, it might be invoked only a handful of times a year, but it would allow greater emphasis on the needs of the young person, rather than a bureaucratic structure that may hold back some local authorities from going above and beyond to help a young person achieve their goals.

Not all programmes conform to academic years and not all supported internships may do so in the future. The point of the amendment is simply to say to local authorities, "We don't want to limit you to one arbitrary date or another. If, within reason, you think course x is going to be valuable to this young person, and you're happy to support them in that until its completion, then you are free to do that." I may be straying dangerously close to localism in saying that, but I hope the Minister will consider the amendment. If he does not feel he can adopt it at this point, I hope he will assure me that he will give some thought to how we can make the termination of plans better fit the circumstances and wishes of the young person in question and their local authority.

2.15 pm

New clause 24 would amend the Apprenticeships, Skills, Children and Learning Act 2009, which you will remember, Mr Chope, as we served together on the Bill Committee, which famously sat through the night in 2009. The new clause would ensure that apprenticeship frameworks do not adversely affect the ability of young people to access apprenticeship opportunities, provided that they have the capabilities required to do so. One of the Government's goals in this part of the Bill is to support the preparation of young people to live independently and to gain employment where possible. The Opposition share that goal. One excellent way of achieving that for many young people is through apprenticeships that are valued and recognised by employers.

Since 2009, the number of young people with SEN enrolling in apprenticeships has decreased substantially. The Little review found that the proportion of young people with learning difficulties and disabilities undertaking an apprenticeship fell from 11.1% to 8% between 2005-06 and 2010-11. Peter Little's report specifically recommended that the completion criteria for English and maths skills should not be made more stringent, lest the problem be exacerbated. The Government rejected that recommendation and others, such as that tests should conform to the requirements of the Equality Act 2010 and that one-to-one support should be available for those apprentices with learning difficulties or disabilities who require it. The Government committed to a raft of best practice sharing and guideline reviews with regard to other recommendations, but, to the best of my knowledge, they did not commit to any firm action off the back of the report to make apprenticeships more inclusive or to allow more young people with learning difficulties to access them.

If a young person with special educational needs can, at the end of their apprenticeship, complete all the practical elements that they are supposed to have learned and have mastered the paperwork involved to the degree that would be expected of them in the trade they wish to enter, surely they have successfully completed the apprenticeship and all the necessary certificates and payments can be given out? If they have to complete numeracy and literacy tests, should not reasonable adjustments be made to those tests? It is not about making it easier for those young people; they should be judged by the same standards as their peers in fitting a boiler or building a wall, but there must be some leeway on the written examinations to take account of the unique challenges they face.

As I mentioned, the Government committed to a number of measures as a result of the Little review, and I would be grateful if the Minister gave us a summary of what has been achieved. I also hope that he will give the amendment some thought, given that apprenticeships are such an important part of the post-16 mix and particularly given the goals expressed in this part of the Bill to ensure that young people with SEN are able to get the support and qualifications they need to strike out on their own as an adult in the workplace.

Mr Timpson: Over and above the hon. Lady's endorsement for localism, which I suspect was slightly tongue in cheek—it was none the less welcome—this debate has provided an opportunity for us to focus on the important issue of how we ensure that young people with a special educational need can benefit from the quality learning contained within apprenticeships and other work-based programmes.

In amendment 217, I understand that the hon. Lady's intention is similar to that behind clause 26. In cases where a young person with an education, health and care plan turns 25 and is still in education, it is helpful if local authorities have some flexibility to maintain their plan until the end of the academic year. I would be concerned about introducing an amendment that takes us much further beyond that point, but I appreciate that the hon. Lady is trying to be helpful, and I want to be helpful to her, too. The definition of "academic year" in clause 46(2) gives us some flexibility to adjust the matter by regulation. I am happy to assure the hon. Lady that, when we come to make those regulations, we will look at the range of programmes of study that a young person may undertake and consider whether we can define the academic year flexibly for different purposes to try to accommodate the scenarios that she has rightly highlighted.

New clause 24 would amend the Apprenticeships, Skills, Children and Learning Act 2009 to specify that the requirements of an apprenticeship framework should not adversely affect the participation of young people with special educational needs or disabilities, where they are able to perform to the required standard. That is, of course, already the case. Young people with SEN or disabilities can undertake an apprenticeship where they meet the required standard, and the apprenticeship "offer" in the Education Act 2011 ensures that their training will be funded as a priority when they have found a place. None the less, there are concerns about the levels of participation and success among this group of young people. We are working hard, and with some success, to widen access and remove barriers to entry. In the 2011-12 academic year, there were 40,130 apprenticeship starts by learners with a learning difficulty or disability, 12,630 of which went to learners aged between 19 to 24, which is up 10.4% on the previous year and by 23.8% on 2009-10 figures.

In 2010-11, the National Apprenticeship Service and the Skills Funding Agency funded 16 pilots across the country to test new methods for engaging individuals from under-represented groups in apprenticeships. Half of those pilots were focused on disability and led to some helpful new initiatives, including: tailored information, advice and guidance to map apprenticeships to jobs, which we all want to see; preparation training for young people who have been unsuccessful in their applications for apprenticeships to give them additional support to improve their prospects of success on future applications; and new guidance for providers to encourage recruitment policies in skills training and apprenticeships, which promotes equality and diversity, particularly for those with a disability.

We have also responded positively to a number of the recommendations contained in Peter Little's review "Creating an Inclusive Apprenticeship Offer" to which the hon. Lady referred. In particular, the redefined offer prioritising funding for disabled apprentices up to the age of 24 will come into effect in April 2013. The National Apprenticeship Service is exploring whether the two ticks scheme can be used within the apprenticeship vacancies online service, and we are improving how we record data for young people with special educational needs and disabilities. Of course we need to continue to look to see where we can do more.

For young people with SEN who are not able to secure a place on an apprenticeship, we are developing traineeships and supported internships. I hope that the range of activity and the increased options available to young people with special educational needs or disability, coupled with the approach that we have taken to apprenticeships within the EHC plan structure, reassure the hon. Lady that progress is being made and that we have an ongoing commitment to apprenticeships for young people with special educational needs. I take on board all the valid points that she has made and I urge her to withdraw her amendment.

Mrs Hodgson: I thank the Minister for the clarification he has given the Committee this afternoon. Hopefully, all young people with SEN who are looking to apply for an apprenticeship will be reassured as well. It is pleasing to hear that the numbers are on the increase, and I hope that trend will continue. With the reassurances that I have received, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 46 ordered to stand part of the Bill.

Clause 47 ordered to stand part of the Bill.

Clause 48

Personal budgets

Caroline Nokes (Romsey and Southampton North) (Con): I beg to move amendment 223, in clause 48, page 34, line 39, at end insert—

'(k) a local authority must offer the support of a dedicated key worker to a child or young person for whom it prepares a personal budget.'.

I confess, Mr Chope, that I was not expecting the amendment to come under this clause, and I do not have with me the piece of paper that tells me what the amendment is on. I wonder whether one of my colleagues would remind me. *[Interruption.]* Ah, yes. One of the problems for young people who have special educational needs is that they often feel as though they are pushed from pillar to post, and what they require is the assistance and support of one identified person. Parents have raised with me the point that although personal budgets can bring freedom for them, they are concerned about

[Caroline Nokes]

how they will cope with the additional responsibility of managing a personal budget if they do not have a dedicated person to assist them with the preparation of that budget and to help them learn how to manage it. At the moment, 25% of local authorities provide key workers to help with that process, but that means that 75% do not.

Through the amendment, I am trying better to understand the Government's thinking on the level of support that will be available for parents and other carers on the management of personal budgets. I know from constituency experience that that can come across as an enormous hurdle. In addition to the practical challenges of managing a budget, there is almost a cultural barrier, in that the sheer prospect of preparing and working through a budget can be a daunting deterrent. How does the Minister envisage the support working to ensure that personal budgets do not become too much of a burden on parents?

Mr Timpson: In the amendment, my hon. Friend has quite rightly recognised the legitimate concern of parents in her constituency that families and young people may not have the knowledge and confidence required to manage a personal budget without independent help and support. That is why our policy statement on personal budgets makes clear our intention that regulations under clause 48 will require local authorities to provide information, advice and support in relation to the take-up and management of personal budgets, including information about independent organisations that may be able to provide advice and assistance. That is in addition to the general requirement, in the indicative regulations under clause 36, on local authorities to provide any support that they consider necessary for parents or young people to take part effectively in the EHC needs assessment. Those requirements are also clearly set out in the draft code of practice.

We are wary of specifying support in the Bill, because that would require a definition, in some detail, of what a dedicated key worker actually does. That might constrain local models of provision, which have developed to take on a whole range of guises, and which come at different points of the system. In particular, we must take into consideration the suitability of some voluntary and community sector services to provide on behalf of the local authority. We are testing several models of personal budgets, not all of which will require key working support.

Be that as it may, we are very much aware of the importance of key workers in supporting families. I have met a number of parents who have children with special educational needs, and they have made abundantly clear how important key workers have been in enabling them to navigate the system, and the importance for them of being able to call on such support when they required it. That is even more the case for families with children who have the most complex needs, who need to be able to take advantage of these reforms, including the personal budgets. In drawing up regulations under clause 48, we will look carefully at feedback from the pathfinders and the findings of the formal evaluation of the pilot scheme, which will examine, among other issues, the views of families and young people on the support that they have received in connection with personal budgets. In the context of that, we will also consider whether we need to put any further specific guidance in the code of practice to support the availability of key workers.

In addition, as I mentioned in an earlier sitting, pathfinders have successfully developed targeted independent navigators to help families with more complex needs through the whole new system. We will look at ways to make those and one-stop shops more readily available across the country, particularly at crucial entry and transition points in the system. I am happy to continue to discuss that with my hon. Friend as we develop our thinking and understanding in this area. With those assurances, and with the re-emphasis on the importance of key workers in implementing the reforms, I hope that my hon. Friend will feel able to withdraw her amendment.

2.30 pm

Caroline Nokes: I am particularly pleased to hear the Minister use the term "one-stop shop", because one of the enormous barriers for families is that there seem to be too many agencies and too many people that they have to enrol with. Given that he says that the point will be set out clearly in regulations, and that there will be pathfinder projects, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mrs Hodgson: I beg to move amendment 143, in clause 48, page 35, line 3, at end add—

'(6) This section will not have effect until an Order is made by the Secretary of State, subject to affirmative resolution by both Houses of Parliament.

(7) Before making an Order under subsection (6), the Secretary of State must lay a copy of a report before both Houses of Parliament detailing findings from the pathfinder authorities established under the Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012, including but not limited to—

(a) the impact on educational outcomes for children and young people;

(b) the quality of provision received by children and young people;

(c) the value for money achieved;

(d) the impact on services provided for children and young people without EHC plans, or those for whom direct payments were not made.

(8) The Secretary of State may not prepare a report under subsection (7) until September 2014.

(9) An Order made under subsection (6) may amend this section as the Secretary of State deems necessary to ensure the effective operation of personal budgets, having had regard to the finding of the report produced by virtue of subsection (7).'.

From day one—since the Bill was a Green Paper—I have offered the Government qualified support for personal budgets. As a parent of a son who, as Committee members have heard, had a statement for severe dyslexia, I would have welcomed the opportunity to find appropriate specialist support for him and have that funded. As it happened, I eventually found him specialist support—although unfortunately I had to pay for it out of my own pocket—to help him get through his GCSEs, which he did. I am pleased to say that he achieved all Cs, including in English. If I had been told, when he was

nine and first statemented, that he would get a C in English GCSE, I would have sung "Hallelujah!", as I did when he achieved it. The money was well worth it.

Many other parents will have had similar experiences to mine, and will like the idea. That is why we supported the Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2011, in spite of the many concerns expressed in response to the Green Paper. People were rightly concerned, and felt that provision for children whose parents do not want to manage their own budgets should not be adversely affected, and that there should be sufficient independent, good quality advice out there for all parents. I sought and was given reassurances on those points by the Minister's predecessor when the 2011 order was debated. The problem is that, 15 months later, we are discussing the enabling legislation but we still have no firm understanding of how devolving budgets will work practically. The pilots took a long time to get off the ground, according to the anecdotal evidence that I have from around the country, and when they got going, the volume of cases in which direct payments were made was small, and the scope of those payments was limited.

I received an e-mail last week from a parent in one of the pilot areas, saying that after threatening judicial review, she was finally given direct payments—this was in one of the review areas—but the professionals she then commissioned to provide the support her son needs have yet to be paid by the local authority. I think it was for this reason that the Minister extended the pilots for another 18 months, which was sensible.

We are scrutinising a clause that has so many potential ramifications, in terms of how local services are structured and funded, without a good idea of what might actually happen. We need to be confident that the effect of the clause will not be that the quality of provision will fall. We need to be confident that, in these times of huge cuts to local authorities, with probably more to come in the comprehensive spending review, the effect of the clause will not be increased costs caused by the fragmentation of budgets and loss of economies of scale. The Minister will also be aware of concerns that schools and colleges have about their funding, allied to that. We also need to be confident that the effect of the clause will not be the emergence of a new kind of ambulance-chaser—a wave of brokers popping up offering the world to families if they will sign over their budget to them. Providers need to be accountable in more ways than just the age-old market way of people voting with their feet.

I am not confident at the moment, and I do not think that the Minister is confident either, hence the extension of the pilot schemes until the back end of next year. Given that we are not confident, the amendment in my name and that of my hon. Friend the Member for Wigan is intended to ensure that the section, as it will become, will not commence until we are confident—that is to say, after the end of that extended pilot period, and after the evaluation that the Government have commissioned has addressed the fears I have outlined.

The clause represents a key plank of the Government's reforms, and we do not want to vote against it. When those evaluations are in, and are positive, I will happily support the order that the Secretary of State will need to make if my amendment is agreed to. We just want to be sure that this is the right thing to do, before it becomes law and is rolled out across the country. I hope that the Minister will accept the amendment in the spirit in which it was tabled.

Mr Timpson: Again, I thank the hon. Lady for her support, albeit qualified; I understand why she is not free-flowing in her endorsement. I am sure that her agreement that this is a sound principle to take forward is partly influenced by the evidence that has come from the piloting of individual budgets for disabled children. The families taking part reported back that they had an increased sense of choice and control over the services that they were using—for instance, around improved access to social care—greater satisfaction with the services that they received, and a shift in the type of services that they used, including a greater use of community resources, so there is already a sound evidence base with which we are taking this proposal forward.

I recognise the genuine concerns that the hon. Lady has about this innovative approach, and those concerns are reflected in the amendment. Of course, it is imperative that we get this right. That is why our policy statement shows that the regulations about personal budgets will include the important safeguards currently set out in the pilot scheme, including a need for local authorities to consider value-for-money issues—a matter she raised—and the impact of direct payments on other service users.

I want to reassure the Committee, if I can, that we will continue to develop the regulations as the Bill progresses through Parliament, taking account of the implementation lessons of the pilot scheme, building on the strengths and approaches that we know work well, and addressing any issues that may arise. We are also considering whether we need to amend the clause in light of the amendments to impose a duty on health commissioners, and we will bring forward an amendment on Report if necessary to reflect just that.

In doing so, we will also draw on the findings of the formal evaluation of the pilot scheme, which the hon. Lady has told us about. It has been commissioned as a discrete element of the evaluation of the SEN pathfinder programme, and it will meet the commitment that we gave to the other place and to the Committee to evaluate the pilot scheme. That evaluation will be available in May, before the Bill passes on to the other place; that will give the Commons an opportunity to consider that element of the evidence.

The evaluation is focusing on the development processes and challenges involved in setting up direct payments for special education provision, and it will provide an evidence base covering the level of demand from families, the practicalities of introduction and the implications for wider provision. These issues and others are reflected in chapter 6 of the interim pathfinder evaluation report, which was published in October last year. It set out the initial findings in relation to the start-up work being undertaken by local authorities named in the order.

The report in May will provide a full update on the progress made in implementing the pilot scheme. To do that, it will draw on a series of in-depth consultations with families, allowing us to understand better their experience of the SEN direct payment processes, and their views on the support that they received and the difference that the use of direct payments has made

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towards achieving their desired outcomes. The report will capture the work of a group of accelerated pathfinders, established and supported by the Department, working with its delivery partners, to speed up the in-depth testing of the use of direct payments for special educational provision. Learning and case studies from that group of local authorities will also be made publicly available through the pathfinder website.

The hon. Lady reminded us of the extension that I gave to the pathfinder pilots. Of course, that is not just in relation to personal budgets; that is right across the spectrum of activity taking place in pathfinders, including activity around assessment and the planning of the local offer.

It is important that we continue to learn from those experiences. For example, in relation to understanding the powerful difference that a direct payment can make, we already know from one of the pathfinders of a young person of college age who is wheelchair-dependent and who struggled to get to college unaccompanied to study for their A-levels. Although they had a personal assistant, that assistance only related to the time when they were at school, so they attended school only one day a week on average. The local authority education department agreed to a direct payment for a personal assistant managed by the family, to support the young person in getting to and from school. That is a good example of how we know personal budgets, through one form of direct payments, can make a huge difference; that young person now attends college four days a week.

I reassure the Committee of our commitment to take full account of the findings of the evaluation report and the ongoing work of the pathfinders when developing regulations made under this clause and the code of practice. I hope that I have reassured the hon. Lady that there will be a full evaluation of the direct payments pilot scheme before direct payments are introduced under the Bill, and that she feels able to withdraw her amendment.

Mrs Hodgson: The amendment is very important. I listened carefully to the Minister, and I welcome his commitment to tabling amendments on Report. Even with his reassurances about consultation at the end of the pilots, I am disappointed that he has not taken on board the amendment to ensure that we do not make bad legislation. I do not wish to divide the Committee on the principle of the clause, on which we are in full agreement, but I feel strongly that Parliament needs to have the evidence that the reform can work before it makes a final decision. I will therefore divide the Committee on the amendment. I hope that any Government Members who want to make sure that we are not legislating for an unworkable reform will consider joining us, but I am realistic about how these things work.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 3]

AYES

Esterson, Bill	Powell, Lucy
Hodgson, Mrs Sharon	Reed, Steve
Jones, Graham	Sawford, Andy
Nandy, Lisa	

NOES

Barwell, Gavin	Nokes, Caroline
Buckland, Mr Robert	Skidmore, Chris
Elphicke, Charlie	Swinson, Jo
Leadsom, Andrea	Timpson, Mr Edward
Milton, Anne	

Question accordingly negatived.

Clause 48 ordered to stand part of the Bill.

Clause 49 ordered to stand part of the Bill.

Clause 50

APPEALS

Mrs Hodgson: I beg to move amendment 144, in clause 50, page 35, line 24, at end insert

'or the failure to do so within a prescribed time scale'.

The Chair: With this it will be convenient to discuss amendment 145, in clause 50, page 35, line 37, at end insert

'or the failure to do so within a prescribed time scale'.

Mrs Hodgson: The clause is welcome, and we have no objection to it in principle. All that my amendments seek to do is help those families who have been messed around—those who have waited and waited for their local authority to respond to their request, but whose local authority keeps on obfuscating. The amendments would ensure that where that was the case, families would be able to use the threat of tribunal—perhaps not even the tribunal process itself—to encourage the local authority to come to a decision either way. It is no good saying, "That will automatically happen, because we have put time scales in the code of practice and the regulations"; if things happened as they should automatically, we would barely need the tribunal service at all.

2.45 pm

One of the biggest frustrations that parents can face is being fobbed off time and again while a local authority refuses to make a decision, all the time knowing that, because there is no actual decision to appeal against, there is not very much the parents can do. When they come to their MPs, or to our councillor colleagues, there is nothing we can do to get things moving if officers are determined not to play ball. Being able to go down the tribunal route if their council has failed them would give parents just that little bit of extra power, and make councils just that little bit more accountable to them. If the Minister is not minded to accept these changes, I hope that he will tell the Committee how the Bill will tackle the problem.

Mr Timpson: Parents' and, in future, young people's right to appeal to the special educational needs and disability first-tier tribunal is an important part of the SEN system, and we have preserved that in the Bill. Amendment 144 seeks to add to that right by giving parents and young people the right to appeal if a local authority fails to inform them of its decision not to secure an EHC assessment within a prescribed period.

Members will have seen that the draft regulations propose a six-week time limit for local authorities to tell parents and young people whether they will carry out an assessment or not, replicating the time limit set out in the current regulations; as now, local authorities will be in default of a duty if they fail to meet that time limit.

Parents do not currently have the right to appeal to the tribunal if a local authority does not comply with the six-week deadline. The tribunal's role in special educational needs appeals is to come to a judgment about local authority decisions on whether to carry out assessments, whether to draw up SEN statements, the contents of those statements, ceasing statements and other matters. The tribunal does not have a role in enforcing the prescribed process for carrying out assessments, drawing up statements and so on. Complaints about a local authority failing to comply with, for example, the prescribed time limits for the process of dealing with requests for assessments, carrying them out and drawing up statements can be made to the local government ombudsman, on the grounds of maladministration, and to the Secretary of State, on the ground that the local authority has failed to carry out a statutory duty. The Secretary of State can give a direction to the local authority to carry out its duty.

The amendment would not be effective or helpful to parents and young people. The tribunal is aiming to reduce the time it takes to turn around SEN appeals, but an appeal on the grounds that a time limit has not been met would nevertheless need to be registered with the tribunal; the paperwork would then have to be assembled and a date set for the hearing. Such a process is not suitable for appeals about failure to comply with a time limit, as it is likely that the local authority would have notified the parent or young person of its decision by the time the appeal was heard. In contrast, an appeal to the Secretary of State and an initial inquiry to the local authority are more effective ways of getting the local authority to carry out its duty.

Amendment 145 differs from amendment 144 in this respect: there is no time limit on when local authorities must have told parents and young people whether they will carry out a reassessment in the current regulations or in the draft illustrative EHC assessment and plan regulations. It is important that we consider the draft regulations ahead of consultation, in order to decide whether to impose on local authorities a parallel time limit for telling parents whether they will carry out a reassessment or not. On that basis, I urge the hon. Lady to withdraw her amendment.

2.48 pm

Sitting suspended for Divisions in the House.

3.14 pm

On resuming—

Mrs Hodgson: Given the reassurance that the Minister offered before the suspension, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Buckland: I beg to move amendment 35, in clause 50, page 35, line 42, at end insert—

'(g) the social care provision specified in an EHC plan;

(h) the healthcare provision specified in an EHC plan.'.

The amendment is a fairly straightforward proposal that would give the first-tier tribunal additional powers to hear appeals on the content of the health care and social care elements of education, health and care plans. As we are creating a single plan that cuts across education, health and social care, it is logical to create a single point of appeal for the content of those plans.

As the Bill is currently drafted, parents and young people will need to appeal or take complaints to different agencies depending on the part of the EHC plan to which a problem relates. The obvious place for a single point of appeal is the first-tier SEND tribunal, which sits in the health, education and social care chamber. It is not a big leap of faith for that tribunal to hear appeals on all three parts of a plan. Surely that is preferable to sending parents off to different parts of the system, which can only sow confusion and the sort of problems that we are trying to overcome with the Bill.

In the existing system of SEN statements, in which the education parts are statutory, it makes sense for the tribunal to hear only education-related issues, but that will not be the case in future, particularly when parents or young people appeal, say, the education and health elements simultaneously. We are trying to avoid the rather depressing spectacle of separate appeals for different elements of a plan.

We are happy that there has been a resolution on speech and language therapy, but it is sometimes difficult to disentangle health from education, and vice versa. In practical terms, we envisage that separate hearings will not only be inconvenient and impractical for children, young people and families but will make it difficult for the tribunals themselves to deal with cases where the outcome of one appeal depends on what is happening in a separate hearing.

A simple system of accountability is needed to accompany the single EHC plan. I am interested to hear my hon. Friend the Minister's observations on the proposal, or on any other way that he thinks a single point of redress could be created, which would improve transparency and accountability and go a long way to meeting the objectives that we all share.

Mr Timpson: I understand from my hon. Friend's tacit remarks that this is in effect a probing amendment to explore whether the first-tier tribunal for SEND could be a single point of redress for parents and young people appealing the provisions in their EHC plan. The amendment would widen the tribunal's jurisdiction from education provision to include health care and social care provision. I understand that a single point of redress for all the provisions in an EHC plan is considered helpful for the reasons that he has set out.

EHC plans will be for children and young people who have special educational needs, and it is therefore right that the tribunal's jurisdiction should be focused on decisions about special educational needs. It should be remembered that when a health care or social care provision set out in a plan is wholly or mainly for the purposes of education and training, it is to be treated as a special educational provision. Parents and young people will be able to appeal to the tribunal about such provisions. My hon. Friend mentioned speech and language therapy as an example. There is no reason to extend the tribunal's powers so that it can deal with appeals on health care

[Mr Timpson]

and social care more generally. There are already procedures that can hear appeals in relation to the health care and social care that will be set out in plans and not treated as special educational provision.

For health complaints, NHS bodies are under direct duties to involve patients in the decisions about their care, to consult patients and to uphold the NHS constitution that sets out patients' rights and pledges from the NHS about how it will deal with complaints. Locally, patient advice and liaison services help to deal with complaints about NHS care, including how to get independent help with a complaint. Of course, we have a duty in the Bill around health, which will strengthen the hand not just of parents but of local authorities in ensuring that health needs are met.

For social care complaints, as now, the main route for families to bring social care services to account will be through local authority complaints systems and the judicial review process. The joint commissioning clause includes a specific requirement for local authorities and their partner commissioning bodies to make arrangements for considering and agreeing how complaints about education, health and care provision can be made and are to be dealt with. That will provide families with a more accessible and co-ordinated way to complain about all aspects of their care.

The Committee has been provided with the indicative draft of the new SEN code of practice. Members will see that in the chapter on redress we will give details of the complaints processes for health care and social care provision in order to bring all routes of redress into a single accessible point of reference. I spoke in the previous debate about the one-stop shop in the development of a single interface for parents and young people, which they see very much as a first step to ensuring that they understand where they can go, whatever their issue—education, health care or social care—to get the advice and guidance that will triage them through the system in a much more transparent and effective way than at present.

I hope that reassures my hon. Friend that much closer fusion is generated by the legislation and the code of practice. In some of the pathfinder areas, we have seen, through the development of closer co-ordinated assessment, better understanding of each agency and the part it plays, and an improvement in communication that has led to improving services. That has prevented the need to go further into the point of complaints and redress, which we all want to avoid. The legislation is designed to try to avoid that at all costs.

Mr Buckland: My hon. Friend is right to say that the amendment is probing. I make these observations about the indicative draft. I do not think at the moment that there is enough clarity in the draft about what precisely happens to cases that need to be dealt with in a health or social care scenario. It may be that the indicative draft of the code of practice is not the place for that provision.

There may be a need to draft some provisions in the tribunal's rules of procedure to cover that point. For example, if a practice direction was applied by tribunals to what were seen as mixed issues of health, social care and education, the court would allocate a particular hearing to determine that or, better still, would resolve to sit in a way that was convenient and led by the facts of the case rather than by what I hope we can avoid—the often arcane and thorny paths that can be taken with such appeals.

I appeal to the Minister to ensure that deep, proper consideration is given not only to the indicative draft but that there is proper liaison with Her Majesty's Courts and Tribunals Service to ensure it elects to deal with those mixed issues when they come before the tribunal and the hearing. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Timpson: I beg to move amendment 221, in clause 50, page 36, line 11, at end insert—

'(5) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—

(a) in respect of the discovery or inspection of documents, or

(b) to attend to give evidence and produce documents,

where that requirement is imposed by Tribunal Procedure Rules in relation to an appeal under this section or regulations under subsection (4)(a).

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.'.

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

Clause stand part.

New clause 20—*Tribunal service: information on cases related to special educational needs*—

'(1) The Secretary of State must collect information on all cases related to special educational needs which are considered by the Tribunal Service, including—

(a) the local authority involved;

(b) the cost to the Tribunal Service;

(c) the amount spent by the local authority on fighting each case;

(d) the nature of each case; and

(e) the outcome of each case.

(2) The Secretary of State must collate and publish information collected in the exercise of his functions under subsection (1) once a year.

(3) The following bodies must make arrangements to provide such information to the Secretary of State as is necessary to enable him to perform his functions under this section—

(a) the Tribunal Service;

(b) local authorities.'.

Mr Timpson: Government amendment 221 complements the rules that govern the working of the first-tier tribunal. Those rules provide for the tribunal to issue summonses on parties to an appeal, either the parents and young people or the local authority or witnesses on their behalf, to act as a witness or to produce documents when that is necessary for the proper consideration of a case. The amendment provides for fines to be imposed up to level three on the standard scale—£1,000—if someone fails to comply with a summons.

The amendment is necessary on two counts. First, it re-enacts two subsections in the Education Act 1996 contained in section 336 that largely apply to Wales and the Welsh tribunal. A consequence of the Bill is that there will be separate legal frameworks for England and Wales and we need to re-enact this provision for England.

Secondly, the amendment supports the effective working of the tribunal by imposing a sanction where a summons to act as a witness or to produce documents is not complied with. Members may find talk of imposing fines of up to £1,000 somewhat draconian on the face of it. It should be remembered, however, that it is very much a backstop measure of last resort. We expect very few, if any, fines to be imposed as we expect very few, if any, people to be in breach of a summons issued by the tribunal. It should also be borne in mind that the tribunal rules limit the occasions when a summons can be issued. No one can be compelled to give evidence or produce a document if they could not be so compelled for trial in a court of law.

I am sure that hon. Members would wish for cases to be heard by a tribunal panel in possession of all the evidence and documents that it needs to make a just decision. I urge the Committee to accept the amendment.

In relation to the clause, I know that there has been concern about maintaining parents' rights. The clause preserves the right of parents of children with special educational needs to appeal to the first-tier SEND tribunal about local authority decisions in relation to assessment and what will be EHC plans. In addition, it gives the right of appeal to young people themselves—including those in school—rather than to their parent. That is a key part of the improved rights and protections for young people, particularly those in further education and training who will now be able to appeal to the tribunal while they have a plan. Parents of children under two will also have a right of appeal for the first time. The clause is complemented by the indicative appeals regulations that we have published for the Committee's attention.

We hope that more disagreements will be resolved without recourse to the first-tier tribunal, through greater involvement of parents and young people in the assessment and planning process, and through mediation. It is right that young people should be able to appeal a decision themselves. I hope that the Committee agrees that the clause should stand part of the Bill.

Mrs Hodgson: The new clause would make local authorities more accountable, both to local families and also, in this case, national campaign groups and organisations.

Just as the information published as a result of the Special Educational Needs (Information) Act 2008, which I tabled as a private Member's Bill, has helped campaign groups to spot where there are gaps in provision and where outcomes are better or worse than we might expect, my intention with the new clause is to build a national picture of where there is the most conflict in the system. Tribunal cases are not the only symptom of conflict; there is a lot of conflict leading up to that point and, as we know, many cases do not get to tribunal because families lack, or believe that they lack, the knowledge, time or energy or the financial means to take the case to that level.

The new clause, and the reporting that it would entail would not, therefore, provide a perfect picture of the level of conflict that remains in the system. However, in the absence of any real way of measuring that dissatisfaction, reporting on tribunal cases would give us a good idea of where there may be problems and, on the flipside, encourage local authorities to try harder to reach satisfactory outcomes with parents before cases get to that stage.

This idea has not come out of the blue; it came from the SEN policy review that I conducted last year. We heard from many parents who had been down the tribunal route and were understandably embittered by it. In many cases, just trying to get the right support for their child by taking their local authority to tribunal brought real stress and financial hardship on the parents, only for them to turn up on the day and find that the council's lawyer conceded instantly, or requested an adjournment.

There is also anecdotal evidence of local authorities who routinely do not abide by the letter of the law and the code of practice in an effort to keep their costs down, in the knowledge that only a small proportion of parents will take them all the way to tribunal. There are further anecdotal examples of councils spending tens of thousands of pounds on legal fees just to avoid spending a much smaller amount on provision.

3.30 pm

Today, I received a memorandum submitted by Paula Jewes, who has a 15-year-old daughter on the autistic spectrum. Paula is a trustee of Merton Mencap and backs up exactly what I have said:

> "Families of disabled or SEN children are extremely vulnerable and are less able than average people to advocate for themselves. On the other hand, some Local Authorities are highly motivated to avoid their legal obligations…Local Authorities often perceive SEN legislation to be unjust because it requires them to meet an individual's assessed need without consideration of their own limited resources…There is currently no effective means of addressing widespread abuse of the Tribunal System by Local Authorities. This is because the tribunal can only give directions on a case by case basis. Whilst their judgements set legal precedents and clarify general understanding of the law, widespread abuse of the system occurs prior to judicial decisions e.g. attempts to bully parents…by taking cases to the tribunal door and then negotiating, talking hearings through to a second day (normally not timetabled and so heard some months later), and using poor evidence or 'long shot' cases in order to delay delivery of an expensive provision."

I am sure that I could find hundreds of such examples.

There were calls by parents, as well as by the SOS!SEN hotline, to bolster the power of tribunals to impose financial sanctions on local authorities, but that is not necessarily the best way to tackle the behaviour. After all, when councils are fined it is ultimately their residents who have to pay, either through their rates or through suffering cuts to services. However, there needs to be something to discourage local authorities from allowing cases to get to the point where they go to tribunal.

We will never eliminate the tribunal stage entirely, because there will always be cases in which the parents may be in the wrong and making unreasonable demands. I recognise that that will sometimes happen, but if local authorities know that the information will regularly be made public—information about not just whether they have won or lost, but about how much they have spent in fighting cases—those that are overrepresented in that regard will re-evaluate their practices. That would not require much of the bodies involved—the councils, the tribunal service and the Department. The information could be published in digital format, and be collected as part of other audits that the Department undertakes,

such as that which provides the data for the reports on special educational needs in England. It would also fit well with the Government's transparency agenda.

For such minimal effort, there could be genuine savings to the public purse, as a result of a lower case load for the tribunal service, a lower spend on legal aid, and a lower spend by local authorities on their own legal representation. Most important though, it could spark an improvement in relationships between local authorities and the families of children and young people with special educational needs. That is one of the goals that the Government rightly have for the legislation—"less adversarial nature" are the words that we all remember from the Green Paper—but it is one area in which parents are still sceptical about anything changing.

I know that the Minister shares my ambition to reduce the need for cases to go to tribunal, and in subsequent clauses we will be discussing mediation, which is another part of the solution. I therefore hope that he will either accept the new clause, or make a commitment to return to the Department and examine the possible benefits and drawbacks that tabling his own amendments to that end might involve.

Mr Timpson: I understand the hon. Lady's argument about new clause 20—that the more information that is available about SEN matters, and the more we know about the provision for children and young people with SEN and the actions of the parties involved in the system, the better. In general, I agree with such sentiment, but I do not think that the new clause would provide a useful addition to the available body of evidence, for the following reasons. The Ministry of Justice and Her Majesty's Courts and Tribunals Service already publish information on the number of appeals registered, the outcomes, the type of special educational need to which the appeals relate, the number of appeals registered against each local authority, and other information, including judicial costs, venue costs, administration costs, the cost to a local authority defending a tribunal case and so on.

A few months ago, I was privileged to be invited to a SEND tribunal to sit in on a case and be present for the hearing. The case I saw was one in which the arguments and the issues were very finely balanced. I was genuinely impressed by the consideration that the appeal panel gave and the way in which it handled the case. Although I am of course not at liberty to give details of that case, I fear that, depending on the level of detail of the "nature of each case" that the Secretary of State would be obliged to publish, the proposed new clause has the potential to undermine what are meant to be private proceedings.

Looking back at that case, I can see that the information that the new clause would require to be published would not necessarily fairly represent what went on. It would just be recorded that such-and-such a local authority was the defendant, that the tribunal and the local authority spent so much on the case, that it was about this issue, and what the outcome was. That would misrepresent the case, in which, as I say, the arguments were finely balanced. It was both reasonable of the parent to bring the case and reasonable of the local authority to defend it, and for a decision to be made.

I understand the argument that highlighting which local authorities have most cases registered against them and what those cases are about could be used as a lever for improving provision and reducing the money spent on appeals to the tribunal. However, I do not think that publishing such information would necessarily achieve that, and I think that the Bill offers other and better ways of doing so. As I say, the Ministry of Justice and HMCTS already publish annual figures on the number of registered appeals, broken down by local authority. I am happy to provide that information to the hon. Lady, although it is available on the website. I am not aware that it has had any effect on the provision made for children across the country.

Mrs Hodgson: I am grateful to the Minister for letting members of the Committee know where we can find this information and that some of it is already available. I was not aware of that, and I wonder how many parents and people involved in the SEN world are. How accessible is it to parents? Where is it available? Is it widely known that it is in an easy-to-find place on some website, or is it hidden away where someone would have to know where they were looking?

Mr Timpson: I have not recently navigated around the webisphere and discovered for myself the precise web address, so I am unable to give the exact details for this information, but it is on the Ministry of Justice website as well as the HMCTS website. Obviously, the very fact that we have had the opportunity to highlight that fact during this debate will be of use in bringing that information to the fore.

Clearly, we must consider how we can provide access to a wider audience who would be interested in this information, perhaps through parent carer forums and other groups set up to advise and guide parents and young people who have a special educational need. The practical guidance offered will also be a way of enhancing the opportunities for people to learn more about what happens in their local area and to invest some time in looking at this information. There is a whole range of figures, depending on which part of the country we are talking about and which local authority area we are interested in, so I can reassure the hon. Lady that information is available online at the Ministry of Justice website, with the usual clicks to find one's way to the relevant page. I will be very happy to provide her with the exact web address once I have had an opportunity to familiarise myself with it.

To the extent that appeals are currently registered with the tribunal as a result of poor relations between parents and the local authority during the assessment and statementing process, I believe that the improved process for assessment and drawing up plans which put parents and young people at its heart will address that. To the extent that appeals are registered because there is inadequate provision locally, parents and young people will be able to bring that to the local authority's attention through their role, set out in legislation, in developing the local offer and provision in the area.

The hon. Lady rightly pointed out that a large number of cases—about 80%—that were registered with the tribunal were withdrawn by parents or conceded by the local authority. Our proposal about mediation information, which the hon. Lady has already said we will come on

to, is the most effective way of tackling that problem. There are many reasons why cases are registered with the tribunal. Many parents and their representatives will say that local authorities are prepared to fight cases because they are more interested in finances than in meeting children and young people's needs. On the other hand, I know that some local authorities would say that parents and their advisers register a case with the tribunal as a tactic to up the ante. I take the view that the publication of information for which there could be a number of competing explanations heightens contention in this area rather than reduces the adversarial nature of the system, which is one of the aims of the Bill. However, there is information out there, as I have said, which helps to address the concerns that the hon. Lady raised. I therefore urge her not to press her new clause.

Amendment 221 agreed to.

Clause 50, as amended, ordered to stand part of the Bill.

Clause 51

Mediation

Mrs Hodgson: I beg to move amendment 146, in clause 51, page 37, line 13, at end insert—

'(7A) All correspondence sent and received and documents produced by a mediation adviser or mediator in respect of a case must be made available to—

(a) the family of the child concerned, or the young person concerned;

(b) the local authority; and

(c) the First-tier Tribunal.

(7B) The First-tier Tribunal must have regard to documents supplied under subsection (7A) in consideration of a claim brought to it under section 50 (appeals).'.

I rise to speak to the amendment in my name and that of my hon. Friend the Member for Wigan. Before I speak to the amendment, I should acknowledge the improvement that the Government have made to clause 51 by ensuring that the mediation process is not mandatory. In an ideal world, mediation would be the end point of a dispute. Both sides would come to the table in good faith, and would be open to compromise with the intention of abiding by whatever the outcome of the mediation is. Unfortunately, as we know, by the time a case gets to the point at which mediation becomes an option, there has often been a complete breakdown in communication and relations between the local authority and the family. If mediation is simply about getting people who have not been able to agree around a table with an independent mediator— whose independence is questionable, given that they are paid by the council and are therefore reluctant to be seen as problematic—it will not achieve very much. It will simply delay the inevitable course that the case will take, and will therefore extend the period during which a child or young person does not get support and, if they are out of an educational establishment, education.

As the Committee knows, those points were made by the Select Committee on Education during its scrutiny of the draft clauses, as a result of the weight of opinion in the sector and of parents. To the Government's credit, the Committee was listened to. As a result, parents are now required to consider mediation before they apply to the SEND tribunal, a compromise that is widely supported. The amendment in my name and that of my hon. Friend the Member for Wigan does not, therefore, seek to make any substantive change to that arrangement. Rather, it seeks to ensure that when mediation is entered into, the process is documented properly and the documents are made available to the tribunal if a resolution is not found to help inform the judge's decision. That paperwork should also be available to the parents and the local authority to assist them in putting their cases together.

The primary reason why I believe the amendment is necessary is to ensure that tribunals arrive at the right decision by ensuring that they have all the relevant information available to them when they arrive at their decision. However, I believe that there are two allied benefits. First, both parties will be more likely to take part in mediation in a meaningful way if they know that their actions and contributions to the process will be known to the tribunal judge. That might influence the decision that is ultimately made.

Secondly, it will ensure that the mediation system is transparent, and that parents, in particular, have access to all the notes about the case. I do not think that it will place any additional burdens on any of the parties involved. A mediation adviser would, by necessity, be producing that paperwork and sending it to the tribunal. The involvement of the local authority and the family would not be more than sending an e-mail. However, the benefits that the proposal could bring are significant. I therefore hope that if the Minister asks me to withdraw the amendment, he will assure me that the purpose behind it will be adequately covered in regulations or that he will consider Government amendments further down the line.

3.45 pm

Mr Timpson: I understand that the purpose behind the hon. Lady's amendment is to ensure that all parties in a tribunal appeal are aware of all that took place at the mediation stage. However, the amendment would not have the beneficial effect that the hon. Lady wants.

Proposed new section 7B would require the tribunal to have regard to the documents, but seemingly not the correspondence, during the mediation process. That would be a retrograde step. Let us briefly consider a potential scenario. Supposing that a parent decides to go to mediation but they fail to reach an agreement with the local authority. What regard should the tribunal have to a certificate from the mediator which says that mediation has taken place that was clearly unsuccessful because an appeal was still registered? Should the appeal panel conclude that the parent was being obstructive by not accepting the offer from the local authority or that the local authority was being obstructive by not offering more? If the panel concludes one thing or the other, should that affect its decision in the case? Clearly, it should not.

It is right for the tribunal panel to look just at the facts of the case and come to its decision on those facts. That is why in other courts of law negotiation and mediation happen on a without-prejudice basis, which then does not affect or fetter the role of the judge in hearing the case when there are clear facts at his or her disposal on which to base their decision. We are discussing

[Mr Timpson]

decisions that can determine a child or young person's educational provision, and they should not be affected by any conclusions that panels may draw from whether a parent or young person has decided to try mediation or from the local authority's willingness to accept a mediated agreement.

Amendment 146 would also increase bureaucracy and is in part unnecessary. The people who need to see the certificates saying that mediation information has been given or that mediation has taken place would get to see them anyway. I cannot see how any correspondence about the date and venue of a mediation meeting is going to throw light on the case. Mediation is meant to be informal and independent, offering the parties the opportunity to be candid about their disagreement in a way that they cannot at the tribunal. I do not want that to be affected. I fear that if the participants felt that their discussions and disagreements were all going to be reported to the tribunal, the amendment would undermine the positive role that mediation can play.

For all those reasons, I urge the hon. Lady to withdraw amendment 146.

Mrs Hodgson: I listened carefully to what the Minister said, but I still do not agree with him. I cannot see how making such information available would not be helpful when moving to the next stage. I still think that it would help the judge and those making the decision in a tribunal to know what took place during mediation. I will not divide the Committee at this stage, but I will reflect on that and perhaps revisit this discussion on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 51 ordered to stand part of the Bill.

Clauses 52 to 55 ordered to stand part of the Bill.

Clause 56

SPECIAL EDUCATIONAL PROVISION OTHERWISE THAN IN SCHOOLS, POST-16 INSTITUTIONS ETC

Mrs Hodgson: I beg to move amendment 155, in clause 56, page 40, line 16, leave out from 'be' to end of line 17 and insert

'in the best interests of the child or young person and their family'.

The amendment was tabled primarily to get clarification from the Minister about the scope allowed to local authorities by the wording of subsection (2), under which a local authority can arrange for special educational provision to be made for a child outside school or college if it is

"satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place."

We had a long, excellent debate on inclusion before the Easter break, with speeches from most Committee members present, and there was consensus that there are real positives for many children from their inclusion in mainstream education. My concern about the wording of earlier clauses is mirrored in relation to that of this clause.

What does "inappropriate" mean in the context, and how can parents influence and challenge what their local authority takes it to mean, given that the word is so vague and open to interpretation? A local authority might believe that it is appropriate for a certain child to be kept at home and receive their special educational provision there because it would be much cheaper and easier for it to administer, and not necessarily because that offers the child or young person the best outcomes or is the best option for their family. That would not be the best option for most children or families, as I think the Minister would agree.

There will, of course, be cases where that arrangement is the best option, and I do not want councils to be limited in making that work for such families, but they need to be clear that the primary concern in deciding whether to make provision outside a school or college must be whether that is in the best interests of the child or young person. That may well be the Government's intention behind the wording, and indeed I hope that that is the case. I also hope that the Minister understands why I am concerned about the wording and will provide assurances that he will have another look at it, or ensure that the regulations are much clearer for parents and local authorities alike.

Mr Timpson: I agree with the motives behind the hon. Lady's amendment. Placement decisions should always be made after taking into account the interests of the child or young person, who should not simply be placed in alternative provision because that is convenient for the local authority. Throughout our debates on this part of the Bill, we have heard examples of circumstances in which placement decisions have not always gone right, and we need to guard against that.

Clause 56 will help local authorities to make the best arrangements for children and young people with special educational needs, but it does not apply just to the child or young person's placement. It may not always be appropriate for some of a child's or young person's special educational provision to be made in a school, post-16 institution or early years provider. When that is the case, the clause will enable local authorities to make alternative arrangements that meet the individual's needs. Before a local authority does so, it must consult the child's parent or the young person themselves, which is in keeping with our commitment to ensuring that young people and parents are involved in the decisions that affect them, as exemplified by clause 19.

There is scope in the clause, and the hon. Lady will have seen that the indicative code of practice includes a marker for home education, which is one of the alternative settings in which it may, in some cases, be appropriate for a child or young person to be educated. There is an ability to develop that as the code is drawn up and, on that basis, I urge her to withdraw her amendment.

Mrs Hodgson: I thank the Minister for his response and with the reassurances that he has given me, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 56 ordered to stand part of the Bill.

Clauses 57 and 58 ordered to stand part of the Bill.

Clause 59

SUPPLY OF GOODS AND SERVICES

Mr Timpson: I beg to move amendment 222, in clause 59, page 41, line 43, leave out 'another authority or any' and insert 'any authority or'.

This is a minor and technical amendment, designed to remove any ambiguity about who can supply goods and services. It will make it clear that a local authority may supply goods and services to a Welsh local authority to assist it in making special educational provision for an English child who is receiving relevant early years education in Wales. That replicates the position under section 318(3) of the Education Act 1996. There is a risk that the original wording could be interpreted as permitting an English authority to supply goods and services only to another English authority, which is not the intention. The amendment will clarify the position.

Amendment agreed to.

Clause 59, as amended, ordered to stand part of the Bill.

Clause 60

Access to schools, post-16 institutions and other institutions

Mrs Hodgson: I beg to move amendment 161, in clause 60, page 42, line 13, at end add—

'(4) A local authority should contact the governing body of a school, post-16 institution or other institution at which education or training is provided before accessing their premises, unless doing so would negate the purpose of the visit.'.

We are flying and making excellent progress. The clause is a sensible one, with which I do not have an issue. Local authorities should have the right to go into schools and colleges where they are funding provision for a particular child or young person to ensure that that student is getting what the council is paying for and to investigate any complaints received. I welcome the fact that the provision will include academies and free schools, which have less accountability to local authorities on a day-to-day basis than maintained schools. Amendment 161 simply presses the Minister to describe what he feels will be best practice in performing such checks.

The Association of Colleges has concerns that local authority officers who make unannounced checks could disrupt the education of the child or young person concerned, as well as that of their classmates, particularly if the check occurs when something else is going on, such as an Ofsted inspection or a one-off event, or when the pupil has a planned absence or is otherwise out of school. In such cases, it might not be the best use of the officer's time to visit on that particular day. There would undoubtedly be some benefit to negotiating a mutually convenient time for observations to be made.

There may well be reasons why an officer may want to arrive unannounced, to ensure that they do not benefit from the Ofsted effect of freshly painted classrooms and organised paperwork. If they receive complaints about provision, it is reasonable that they will want to get a good idea of what that provision is like on an ordinary day, and not give the school or college the opportunity temporarily to do what they ought to be doing anyway. Although there is a lot of value in allowing unannounced visits for extraordinary reasons, there is also value in giving notice for routine visits, both to ensure that the officer's time is not wasted, and so that schools and colleges are able to prepare and plan staff time, so that the visit does not disrupt the school day.

The clause as it stands will not prevent a local authority from giving notice, but neither does it make it part of the process. I do not expect the Minister to accept my amendment—I might be wrong; he may do so—so I would be grateful if he clarified what he thinks will be the best practice for local authorities in visiting schools and colleges, and whether there will be specific guidance to address the concerns I have outlined.

Mr Timpson: I thank the hon. Lady for her considered and constructive contribution. It is very much a hallmark of her efforts to provide a sensible and meaningful approach, to ensure that the Bill receives the right level of scrutiny and to cast a reasonable and pragmatic eye over what the Bill seeks to achieve.

The clause will allow a local authority to access premises to monitor the education or training provided as part of a child or young person's education, health and care plan. In fulfilling that role, it is important that the local authority can assure itself, if need be, that the provision set out in each plan is being delivered in individual cases.

4 pm

Ofsted, of course, has the primary role of inspecting education or training provision in England. That vital role remains unchanged by the clause. I can see that there would be a benefit to providers in having some notice ahead of any visit from the local authority. We expect the power to be used very infrequently by local authorities, and only as a back-stop when they deem it necessary. I would not want to constrain local authorities or unduly fetter their discretion to act, given the wide range of circumstances that they face, by being prescriptive on how they make use of a back-stop power, but I have been clear that I expect the power to be used infrequently. I will, however, be making it clear in the SEN code of practice that authorities should generally give 48 hours' notice, unless there is good reason not to.

The Committee will be aware that the Home Office consultation on the code of practice on powers of entry closed on 5 March and that the responses are being considered. The draft code seeks to provide a framework for the consistent use of powers of entry across Government and local authorities. It proposes reasonable notice, usually not less than 48 hours, but it is clear that if pre-notification of the visit would defeat the purpose of inspection, officers, provided they have the statutory power to do so, can still visit unannounced, providing they act within the limitations of the power.

The draft code recognises that unannounced visits may be needed for the purposes of gaining a picture of the ordinary day-to-day processes of an institution, rather than a prepared or manufactured impression, and of safeguarding children and vulnerable groups. The amendment would go against the intention behind the clause to ensure that there is a back-stop to protect the best interests of a vulnerable group of children and young people. A statutory requirement to give notice before entry would also take precedence over the code of practice. Given that position, I urge the hon. Lady to withdraw her amendment.

Mrs Hodgson: I thank the Minister for the reassurance with regard to including the 48 hours' notice where possible in the code of practice. That will be very

[Mrs Hodgson]

welcome and will ultimately achieve what I was trying to achieve with the amendment. In the light of that, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 60 ordered to stand part of the Bill.

Clause 61

USING BEST ENDEAVOURS TO SECURE SPECIAL EDUCATIONAL PROVISION

Mrs Hodgson: I beg to move amendment 162, in clause 61, page 42, line 28, at end insert—

'(2A) In fulfilling its duties under this section, the appropriate authority must provide a report of how it has done so for a registered pupil or a student at a school, where such a report is requested by—

(a) the local authority responsible for the education of a child or young person;

(b) the family of a child or young person;

(c) the young person;

(d) the First Tier Tribunal; or

(e) the Education Funding Agency.'.

The Chair: With this it will be convenient to discuss the following: amendment 163, in clause 61, page 42, line 28, at end insert—

'(2B) The appropriate authority must have regard to any advice regarding its duties under this section, where such advice is issued by—

(a) the Secretary of State;

(b) Her Majesty's Chief Inspector of Education;

(c) the local authority; or

(d) the Education Funding Agency.'.

Amendment 216, in clause 61, page 42, line 28, at end insert—

'(2A) In using their best endeavours to meet special educational needs, the school or other institution must provide a graduated response through using the School Action and School Action Plus stages.'.

New clause 23—*Inclusion within mainstream schools and post-16 institutions*—

'(1) This section applies where a child or young person with special educational needs attends a mainstream school or post-16 institution.

(2) The relevant authority should use its best endeavours to ensure that—

(a) the child or young person is able to access mainstream courses and qualifications within that institution;

(b) all staff working at the school who may have contact with the child or young person are aware of the needs of that child or young person;

(c) all web-based content provided by it or on its behalf meets British Standard 8878:2010; and

(d) all students in attendance at the institution are able to play an active role in school life.

(3) The relevant authority should produce and publish a document explaining how it meets its duties under this section.

(4) The Secretary of State should, within one year of the commencement of this Act, produce guidance for schools and post-16 institutions to assist them in fulfilling their duties under this section.'.

Mrs Hodgson: The amendments are designed to improve and bolster the clause, rather than fundamentally change it. It is, of course, important that schools and colleges make every effort to secure the best possible support for children and young people with SEN. In fact, we expect schools and colleges to make every effort to provide the best possible education for all of their pupils.

There is concern, however, that with specific regard to pupils who do have SEN or disabilities, where the nature of their SEND means that they are entitled to a certain level of provision, the school or college should be under a duty to provide that support, not simply to use their best endeavours to support them. I do not think we necessarily need to go that far. It is true that the term "best endeavours" is slightly open to interpretation, but rather than remove that, I think it would be more useful for schools to be up front about how they have interpreted it if they are called upon to do so.

Where there are complaints—where families do not believe that schools have been using their best endeavours—it would be for the relevant body to decide, based on the report that the school provides, whether the complaint has merit. The new subsection would also place an obligation on schools to account for themselves to parents, and the young person where appropriate. Having to account for one's actions and efforts in this way can only be a good thing and will lead to better provision in schools. I will therefore be grateful if the Minister tells me how that will be achieved if he does not accept the amendment.

Amendment 163 is similar in intention. It would place a duty on schools to heed the advice of bodies that may become involved in a case as a result of concerns being flagged by parents, young people, or indeed an Ofsted inspector, about how well the school is meeting its obligations under this part. The aim is to ensure that problems are rectified at the earliest possible opportunity by whichever agency receives a complaint. This is particularly important when it comes to free schools and academies and, for that matter, colleges, where the local authority's challenge and support role ordinarily does not extend. Again, if the Minister is not minded to accept the amendments, I hope he will go into some detail with regard to how local authorities in particular can effect change in the provision that a child or young person gets from their school or college.

New clause 23, tabled by the hon. Member for South Swindon, is another attempt to make education more inclusive, not just in terms of whether a school will admit a child or young person with special educational needs, but whether that school provides a fully inclusive environment. That means not only pupils being able to access mainstream courses and qualifications, but the entire faculty knowing about a child's particular needs or perhaps the manifestation of their difficulty, such as if they have Tourette's, so that they are not told off for things they cannot help or punished in a way which would cause them undue stress.

As I so often do, I will use my son as an example. As the Committee will know he is severely dyslexic and he was once punished basically for being dyslexic. He had done something wrong in class and had not written down something off the board and he was sent home to write out the school rules line by line. When I came

home late that night from London, I found him at the kitchen table where he had been sat all night writing out the school rules. When I challenged the teacher the next day he said he had no idea that Joseph had dyslexia, despite the fact that I had asked the school from the outset to ensure that all his teachers were made aware of this. Obviously there are problems with the training of that teacher, who did not spot an obviously dyslexic child, but that is a debate for a later point.

Facilities also need to be inclusive. Here are laws in place about physical access, but many school facilities are now web-based, such as cloud-based study resources and internal social networks and e-mail accounts. As we have discussed previously, there are gold standards for web-based services in terms of their accessibility for people with disabilities or learning difficulties, and I think that if they should be applied anywhere, they should be applied by schools and colleges, particularly given the importance of such services to modern education and indeed young people's social development. I hope that the Minister will see the merit of this new clause in the principles that it will set for schools on inclusion. If he does not see the need to accept it and enshrine those principles in primary legislation, I hope that he will provide assurances that they will be covered by statutory guidance or regulations.

I do not want to spoil the speech we are about to hear from the hon. Member for South Swindon on amendment 216, which I am sure will be excellent, but I would like to assure him and inform the Minister and the rest of the Committee that the Opposition have a great deal of sympathy for that amendment. We heard from Brian Lamb during the witness sessions that it did not really matter whether we have a two-step system, whether it is called School Action, School Action Plus or whatever. I can see what he means by that: if the single category has the flexibility and clear processes and lines of accountability that the School Action system has, then to some extent what it is called is irrelevant. As long as those children with SEN who are on School Action or School Action Plus—1.4 million according to the Government's latest figures, many of whom will have genuine and life-limiting learning difficulties or disabilities—get the support that they need to access the curriculum, I do not mind what it is called or whether it is a single category or two or more. The problem is that we simply do not know whether those children will get that support.

We are losing a system which is bedded in well, which parents and educators understand and which is more or less trusted across the board. I concede that there may be children on School Action who do not have a learning difficulty but who have problems at home. I am sure the Government have a stockpile of seemingly ridiculous reasons that children have been put into the School Action category, and perhaps we will be treated to some today. The problem is that in the vast majority of these cases, they will have been put on School Action because they are clearly falling behind and their teacher does not know how to meet their needs. Whether they have a learning difficulty or are just having difficulty learning, putting them on School Action is the only way that teacher can ensure that they get a bit more support.

If we want to reduce the numbers on the SEN register, we need to address the base level of expertise on learning difficulties among educators, particularly through initial teacher training and continuous professional development; we cannot do it on an arbitrary basis, based on a few exceptional anecdotes. People are wary that that is what the Government might be doing, as I am sure the Minister recognises, so it is imperative that we know as soon as possible what will replace School Action and School Action Plus.

I am also keen to ensure that those children whose progress and outcomes are at the moment tracked and reported on under the Special Educational Needs (Information) Act 2008 will continue to be monitored in that way. I asked the Minister about this during the evidence sessions, when he might not have had the relevant briefing to hand, but I am sure it will find its way to him today. I know that those within the single category will continue to be tracked, which is good, but will we no longer track those who have been on School Action but do not make it into the single category? Taking children off the register does not mean that they will stop having difficulty accessing the curriculum for some reason, but it does mean that they lose certain guarantees that being in that category affords them.

Until we know the answers to those questions and are confident that the new single category will be at least as good in terms of the tailored support it will afford children and young people with SEN, the Opposition will support the hon. Member for South Swindon in his calls for the current system to be retained.

Mr Buckland: I am grateful to the hon. Lady for previewing some of the things I want to say. I will not repeat what she said, because she made very well the point that we need to avoid getting too hung up about the descriptions of the stages, and whether it will be one or two stages. That is not the issue; as she said, the issue is making sure that teachers and other professionals have the training and awareness to identify any need properly.

As the hon. Lady said, some needs will not amount to special educational needs. Indeed, the Ofsted report, "A statement is not enough", which caused quite a controversy when it was published about 18 months ago, made that very point: there is a degree of incorrect identification. The identification of a particular issue does not have to be dealt with as a full-blown special educational need, and in many cases should not be. My amendment relates to that point.

The current code of practice, which was drafted in 2001 and so is now 12 years old, is clear about the process relating to the initial identification of a special educational need. It states that as part of their standard offer to all children, schools should be differentiating the curriculum, providing behaviour management interventions, making adaptations for disabled children and providing alternative learning environments. The code is clear that those standard interventions should not be seen as part of the SEN process, and in many schools that is exactly what is happening: provision is being made for that approach within the curriculum and the mainstream. Referrals to School Action should occur only if the teacher feels the child is not making progress despite use of the differentiated curriculum and other additional support. The problem that Ofsted found was that some schools were jumping straight to the SEN register without first going through the standard interventions.

[Mr Buckland]

My worry is that the creation of a single SEN category, and the removal of School Action and School Action Plus, will not solve the problem of initial identification. The two-stage approach is designed to provide a graduated response to meeting special educational needs once a pupil has already been identified as having SEN. The problem is therefore not so much with the stages as with practice and training.

4.15 pm

Parents place great value on the code of practice. The guidance in the current code about School Action and School Action Plus provides clear structures for the additional levels of support and for ensuring that parents, children and young people are closely involved in each step of the process. It is well established and clearly fundamental. We therefore need to think clearly about root-and-branch reform to the system without looking at the evidence for how things would improve. As my hon. Friend the Minister is aware, there is concern that the removal of School Action and School Action Plus will result in fewer children and young people with SEN getting the support that they need. The Government have not advocated a policy of a targeted reduction in the number of children and young people with SEN; they have rightly relied on the principle of better identification and therefore a better approach, without getting too hung up on labels, processes and nomenclature, but instead looking at the outcome, which is so important.

I am interested and keen to hear from the Minister how he sees the proposal as a way to improve identification of SEN. Could there be some other ways that might be more effective, without a complete uprooting of the existing framework?

Mr Timpson: The amendments relate to the critical issue of the support available to children and young people with SEN but without an EHC plan. The Bill maintains existing duties for that group, and extends them directly to academies, as mentioned. That specifically includes the duty to use best endeavours to secure special educational provision, to have an SEN co-ordinator to notify parents where SEN provision is being made and to publish information on how SEN and disability policy is being implemented. The Bill also makes provision for statutory guidance in the form of a revised code of practice to which schools and others must have regard when making their best endeavours. The indicative code sets out the proposed approach for pupils with SEN but no EHCP.

I want to reassure the hon. Member for Washington and Sunderland West about one of the issues that she raised on ensuring that all those who teach pupils with SEN are aware that the children have special educational needs. It dovetails with the issue of identification within the code, which was rightly raised by my hon. Friend the Member for South Swindon and which we will come on to; it is something that we referred to at one point, and I recall the hon. Lady taking some ownership of the phrase about ensuring that all teachers are SEN teachers—that is reflected in the code. Paragraph 5.6 sets out precisely the specific reference to schools and ensuring that all those who teach people with SEN are aware of their special educational needs.

The indicative code also makes it clear that the single category is not a smaller category. Quite rightly, my hon. Friend the Member for South Swindon spoke about not getting hung up on labels and processes, but we have to be clear in the debate that the definition of SEN remains the same. All those children with any special educational need will continue to be tracked as they are now. This is not an attempt to suppress somehow the number of children or young people who have a genuine educational need; it is to improve identification, for all the reasons given by my hon. Friend, and to ensure that throughout the education system and within schools there is responsibility, ownership and a better understanding of the importance of identification and of putting in the individual, personalised support that we know is most effective.

School governors must, first and foremost, be accountable to parents, carers and young people for what they provide. Clause 63 requires that parents or the young people themselves must be notified when special educational provision is made for a pupil. The draft code of practice sets out that education settings should have a clear plan for the support being put in place for children and young people with SEN, including the all-important outcomes to be achieved. This should be reviewed regularly, and the parent or young person should be involved in the process right from the beginning.

The reviews will allow the graduated approach to tackling need to be maintained, but in a way that focuses more on the individual and on whether outcomes are improving, rather than following a set process. We know from successful programmes such as Achievement for All, the expansion of which my Department is continuing to fund, that such regular reviews that closely involve parents and a wider group of teachers within the school can have a dramatic impact on outcomes. The code also sets out that schools and the local authority should work together to agree funding arrangements and a local approach for accessing different types of additional SEN support.

Before consulting publicly on a full draft of the code of practice and laying it before Parliament, we will continue to work with teachers, special educational needs co-ordinators and the many organisations that have huge expertise in this field, as well as with parents and young people, to make sure that the code provides the right framework to ensure that children and young people without education, health and care plans receive the right support.

Amendment 162 would make all education settings report on what they are doing when requested to do so by a wide range of people. I have described how the indicative code sets out a process for schools and others to work with and report to families, young people and local authorities. That is backed up by the requirement on schools to issue annual reports on pupils' progress.

The other two bodies listed already have suitable powers to request information where appropriate. The first tier tribunal can already request information on what provision is available and how it is meeting children's needs in relation to an appeal, in particular where schools and local authorities are arguing that a statutory assessment or an EHC plan is not required. The Education Funding Agency is not a separate

statutory body but acts on behalf of the Secretary of State in considering complaints about academies. It already has the necessary powers to investigate these bodies and to ask for relevant information. I hope that is reassuring for hon. Members.

Amendment 163 would place a duty on school settings to have regard to advice issued by the four sources listed. To avoid confusion, we think the code of practice is the right place for statutory guidance on these issues, and the code will be consulted on and approved by Parliament in a way that the guidance proposed by amendment 163 would not be. Such scrutiny can help to ensure that the code is comprehensive, not only on this issue but on many other issues that the Committee has explored.

Of course, local authorities and Ofsted can issue guidance on how they carry out their duties. For instance, Ofsted's inspection framework contains influential information on how it will inspect provision for pupils with SEN. However, I would not want to undermine the authority of the code by setting up alternative sources of statutory guidance that do not receive parliamentary scrutiny.

Amendment 216 would preserve School Action and School Action Plus approaches to managing SEN that are set out in the existing code of practice. We are changing the system because, as my hon. Friend the Member for South Swindon has already mentioned, Ofsted's 2010 review of SEN found that

"current systems focus too much on whether pupils receive additional services, and too little on the impact of their support".

Some schools meet pupils' needs effectively, but others miss the opportunity to involve specialists where a child is in School Action, or they neglect the contribution that they can make for a child at School Action Plus. Our new approach aims to keep the best aspects of the old approach, as identified by Brian Lamb, while renewing the focus on individuals and the outcomes that they should achieve.

Finally, new clause 23 seeks to prescribe in detail how mainstream schools and post-16 institutions should use their best endeavours to support children and young people with special educational needs, and to require them to publish a document explaining how they have done so. In addition to the best endeavours and information publication duties, clause 35 provides that children and young people with SEN should be supported to engage in the activities of the school together with other children. Taken with the content statutory guidance in the code of practice, they have a similar effect to the new clause.

Specifically, as I indicated in responding to amendment 106 to clause 32 and as the Committee will no doubt recall, the stipulation for "relevant authorities" to use best endeavours to ensure that web-based content is accessible would be covered by the duties that bodies have under the Equality Act 2010. Clearly, the provision and support for pupils who have SEN but no EHC plan is vital, if for no other reason than that—as the hon. Member for Washington and Sunderland West pointed out—we are talking about a large cohort of children whose individual needs all need to be met.

As we all know, early intervention can prevent escalation of problems and every child deserves to get the best support to make as much progress as they can, to put them on a sound path to adulthood. For the reasons that I have set out, the provisions in the Bill, combined with coherent statutory guidance in the code of practice, provide a strong framework and one that the variety of schools and other bodies supporting them can adapt to their own circumstances, to give everyone a sense of ownership of early identification, strong support and a personalised response for each child and young person through their education journey. I hope that addresses the issues that have been raised by hon. Members, and that the hon. Lady will feel able to withdraw her amendment.

Mrs Hodgson: This has been an excellent debate about some issues that greatly concern people out there in the sector as well as children and families, so I am very pleased that we have had it. It has covered a lot of issues.

I have listened to what the Minister has said with regard to the code of practice, which is coming into its own. The fact that we now have the code of practice for the journey of the Bill through the House is good; it has proven to be much-needed. I cannot imagine how we would have been able to scrutinise this legislation without the code of practice. The Minister made the right decision to ensure that we had a code of practice for the scrutiny of the Bill, and I commend him for that. As he mentioned, the code of practice contains the phrase, "All teachers are teachers of children with SEN" and I am proud to say that I have used it in the past. Hopefully, it will address some of the concerns that we have all raised about ensuring that teachers know how to identify and recognise children's needs that may have gone unidentified for many years.

The noble Lord Ramsbotham talks at great length and with great expertise about the young people in the criminal justice system and in prisons. I think between 70% and 80% of prisoners have unidentified speech and language and communication problems, and between 60% and 70% have undiagnosed dyslexia, so getting the identification right in schools is of paramount importance with regard to early intervention.

I am also pleased and reassured to hear the Minister say that this is not about getting rid of School Action and School Action Plus. It is not about suppressing the numbers of children and young people identified as having an SEN, which was one of the early worries. Some of the maybe misguided press at the time hinted that that was what the Green Paper and ultimately the legislation would be about. I was pleased to hear the Minister say that it is about ensuring that needs are assessed and then ultimately met. We are in total agreement with him and hope the Bill will achieve that.

I am also pleased that the code of practice seems to be a living and breathing document, which the Minister is willing to improve and amend during the passage of the Bill through the House. Hopefully, such a process will continue afterwards as well.

Mr Buckland: I need not repeat what the hon. Lady has said. She has explained clearly why we can all withdraw the amendments that we have tabled to the clause. I entirely agree with her that publishing the draft passage was an extremely important part of the process.

Mrs Hodgson: In the light of the reassurances that we have received today, I beg to ask leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Clause 61 ordered to stand part of the Bill.

Clause 62

SEN co-ordinators

Mrs Hodgson: I beg to move amendment 164, in clause 62, page 42, line 39, after 'staff', insert

'who shall be a qualified teacher.'.

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

Amendment 165, in clause 62, page 42, line 41, at end insert—

'(2A) The SEN co-ordinator designated under the provisions of subsection (2) must be, or on designation must become, a member of the senior management or leadership team within the school.

(2B) The SEN co-ordinator designated under the provisions of subsection (2) must be a qualified teacher.'.

Amendment 286, in clause 62, page 42, line 41, at end insert—

'(2A) The appropriate authority must designate a member of staff who shall be a qualified teacher and must have undertaken training to include a mandatory module on special educational needs, including dyslexia at the school (to be known as the "SEN co-ordinator") as having responsibility for co-ordinating the provision for pupils with special educational needs.'.

New clause 47—*Teachers*—

'(1) This section imposes duties on the appropriate authorities of the following schools in England—

(a) mainstream schools;

(b) maintained nursery schools.

(2) The appropriate authority must ensure all new teachers have undertaken in their initial teacher training a mandatory module on special educational needs, including dyslexia.

(3) The "appropriate authority" for a school is—

(a) in the case of a maintained school or maintained nursery school, the governing body;

(b) in the case of an Academy, the proprietor.'.

Mrs Hodgson: SENCOs play a vital role in delivering support for the children we have been talking about: the 1.4 million children and young people who have special educational needs but who do not have a statement so will probably not have an education, health and care plan. SENCOs also have a vital role to play in supporting many of those children and young people who do have a statement and an education, health and care plan.

Our amendments seek to place in primary legislation two stipulations that the draft code of practice seems to suggest that the Government support. They seek to ensure that SENCOs are qualified teachers and senior members of staff. I welcome the fact that the first of those is made explicit in the draft code of practice, but, if I was honest, I would much rather the Government put it in the Bill. We need to ensure that SENCOs have been taught how to teach the full class first and therefore have experience of leading learning. Preferably, they should have a few years' experience of that, although I would not wish to specify that exactly. Such experience is important because we expect the SENCOs to be able to drive improvements in teaching practices and policies in the school at which they are employed. They will find that difficult if they do not have that knowledge and experience themselves, and they will be less likely to be listened to by their colleagues who do have that knowledge and experience.

If they are to be successful in making those improvements, which can often mean having to convince colleagues of the need to change their own style of teaching and long-established methods, I strongly believe that it would also help if SENCOs were on the senior leadership or management team of a school.

4.30 pm

There are two reasons for that. Children with special educational needs need the most help, so we should want the best teachers to aspire to take on the role of SENCO, and we also want head teachers to give that responsibility to the best teachers at their disposal. However, anecdotal evidence suggests that that is not always the case. I have heard many professionals and parents describe how, particularly in primary schools, heads give the job to teachers they do not know what else to do with or sometimes to newly qualified teachers because none of the more experienced staff wants the role. It is as if being a SENCO is a derisory job that is done under duress.

By raising the status of SENCOs by saying that they should be part of the senior management team within a school, I believe we can positively influence the choice of individual to perform the role, at the same time as incentivising good teachers to work towards becoming a SENCO. This measure, in increasing the clout that SENCOs have, will vastly improve the quality of provision for children and young people in mainstream settings.

As Jane Friswell from Nasen said in the witness session, there is evidence to suggest that many of the new generation of SENCOs who are taking the national award currently are doing so as part of their path to further senior leadership roles, which means that over time we will have more heads and more deputy heads who have the experience of being a SENCO, and who will therefore recognise the importance of having school policies that cater for children and young people with special educational needs, which is greatly encouraging.

The amendments are common-sense improvements to a clause that we otherwise agree with. They follow the weight of evidence that the Committee heard a few weeks ago, and I suspect that the Minister agrees with them, so I hope he will allow them to be made. If he cannot, I hope he will give assurances that the requirement for SENCOs to be teachers, including in free schools, where even the teachers and head teachers do not have to be teachers, will remain in subsequent drafts of the code of practice, and that he will look at what the Department can do outside of the process to encourage more of the best teachers down the SENCO route.

Mr Buckland: May I briefly add my support to what the hon. Lady says about SENCOs? Being a SEN liaison governor in a secondary school, I can pay personal testament to the value of having an experienced teacher whose dedication to SEN was second to none. It is

encouraging to hear that more and more teachers are using the SENCO route to seek leadership. That will, I am sure, lead to great results. Like everybody else, I am impatient for change and I want to ensure that fully qualified teachers are SENCOs here and now.

Mrs Hodgson: I thank the hon. Gentleman for his intervention and support of what I am endeavouring to do with the amendments. We all agree that anyone who has personal experience of a child with SEN and has to deal with SENCOs knows how important it is for SENCOs to be as highly competent and highly trained as possible. They also need to carry clout within the school. Like the hon. Gentleman, I am impatient and want this now. We need to set in train the changes for the future as well. Some of what we hope to do here today will bear fruit in as little as three to five years, as some of these SENCOs train and over the following five years become deputy heads or head teachers. In 10 years' time we could see a very different situation. The Bill could be the start of that.

Annette Brooke (Mid Dorset and North Poole) (LD): I endorse the hon. Lady's comments. I am not sure which is the best way to achieve what she seeks. Many of us can mention our own examples, and my experience 10 years ago was of a relatively young SENCO. It struck me then that it is not just about being respected: unless one has a senior position in the school, one does not have that clout. A SENCO can be as well qualified as possible, but if older members of staff do not wish to recognise dyslexia, for example, nothing can be done.

Mrs Hodgson: I am very grateful that we are achieving such consensus, and I am sure the Minister will take notice of that. I look forward to his comments on those points.

I have a great deal of sympathy for the other amendments in the group, which were added last night, particularly new clause 47. The single biggest factor in determining the quality of provision in schools for all children and not just those with special educational needs is the quality of the teachers who work there, as we have said on numerous occasions. As we have discussed, however, that is particularly true for children with special educational needs. Every teacher is expected to teach children with special educational needs, but not every teacher enters the classroom with the benefit of knowing how to identify and adapt their teaching to meet the needs of those children. Some trainee teachers may spend as little as a day on SEN during their entire course and I have heard that some shockingly spend even less time than that, because it is an option. That is hardly sufficient when one in five children is identified as having some form of SEN or disability.

I am confident that there would be real merits if the Government increased the time available, including for much better identification and early intervention. As we know, that would save resources further down the line. I therefore look forward to my hon. Friend the Member for Sefton Central putting forward his case for amendment 286 and new clause 47, and to the Minister's response.

Bill Esterson (Sefton Central) (Lab): I am grateful to my hon. Friend for her comments on amendment 286 and new clause 47, which are in my name and that of my hon. Friend the Member for Nottingham North (Mr Allen). I completely agree with the important points that both my hon. Friend the Member for Washington and Sunderland West and others have made about the difference that having a senior experienced teacher as the SENCO can make in giving special needs credibility within a school.

Amendment 286 and new clause 47 would address the need for not just experience but qualification when it comes to SEN-dedicated teachers. As well as agreeing that it is best done by experienced teachers, they call for the SENCO to be a qualified teacher and I look forward to hearing the Minister's response. They deal with dyslexia in particular.

My hon. Friend the Member for Washington and Sunderland West earlier gave an example of how there can be misunderstanding. The amendment and the new clause would reduce the chance of a misunderstanding and inappropriate action being taken by teachers. The example that she described is sadly all too common in our schools. It should have been long ago consigned to the history books.

The Minister said earlier that all teachers should be SEN teachers, and that was an important statement to make. New clause 47 would address that by requiring a much stronger degree of training in what is available to all new teachers. I hope he agrees that such a proposal would help achieve the goals he set out. I look forward to his response on that.

It is important that proper recognition is given to how we identify dyslexia and the difficulty it can cause in educational attainment. My daughter has dyslexia and I know from personal experience how difficult it can be to help her in her education. Many good tools are available in schools and beyond, and there are many good teachers who know how to use those tools. Through amendment 286 and new clause 47, I am trying to find a way of ensuring that those tools are more widely available and recognised, that there is better identification, and that support is given. As my hon. Friend said, well-qualified teachers are the single most important way of achieving that goal.

A delay in identifying dyslexia—I am thinking of personal experience—is a problem and may have a significant long-term effect on the child or young person's education and life chances. That is why it is important to address that and other special needs. I hope that the Government will seriously consider how to take on board the suggestions for training for SEN co-ordinators and teachers because that would make a huge difference. I look forward to hearing the Minister's response.

Andy Sawford (Corby) (Lab/Co-op): I shall speak only briefly because my hon. Friends have clearly made the key arguments for the amendment, and I appreciate their raising the issues. I must declare an interest because my wife is a special educational needs co-ordinator in a primary school. She is a member of the leadership team and would expect no less of me than that I stand up in support of the amendments and make it clear that she believes, as do I from meeting SENCOs in the primary and secondary schools that I visit in my constituency, that they play an absolutely vital role.

The argument seems to have two strands. One is the nature of the role as it exists today. The way it has developed in recent years has been welcome and it has become much more significant. The Committee's proper

[Andy Sawford]

role is also to look forward at the changing landscape in which SENCOs operate in schools. They need a seat at the table when curriculum and funding decisions are made, not least because of the bearing that might have on special needs provision. Specialist provision in a school needs to be considered in relation to planning, staffing arrangements and so on. One critical role that a special educational needs co-ordinator has in a school involves teaching assistants and volunteers. Having that role on the leadership team is vital.

The skills that a special educational needs co-ordinator requires—leadership skills, communication skills, and the ability to sub-direct in their work—to carry out their role effectively are fostered in a leadership team and are appropriate to being part of that leadership team. It is also crucial to have authority within the school. If a SENCO is to work with teachers, learning assistants and other staff members in a school to ensure a proper focus on meeting the needs of children with special educational needs and to have strong relationships with external partners, it is vital that someone has the authority of being on the leadership team with the skills that come with being part of the school's leadership.

The critical point about the changing landscape is that although in the past SENCOs may have been the deputy head, the head teacher or a member of staff not on the leadership team, we may have had some confidence in the relationship with the local education authority in maintained schools and the way they worked with schools to ensure inclusion, but those relationships are changing. Now is not the time to debate the pros and cons of that, and we must accept that that is how it is and that with the move to academies, free schools and other arrangements the relationship with the LEA is becoming weaker in many areas. The Government's vision is that it will be replaced by other connections between schools and networks of support, but we must recognise that the schools for which really effective SENCOs are most important are those that are most likely not to have a SENCO on the leadership team or strong relationships with other organisations, whether as part of a chain or a federation of schools. They are often the schools that will be left behind, which is why it is so important that we ensure that children in such schools have at least a fighting chance.

4.45 pm

A relationship exists between the quality of the special needs co-ordinator, the performance of the school and the quality of the special needs education provided, and the importance of improving special needs education in schools. It would be interesting to know if the Department has ever looked into that. Guaranteeing that the SENCO will be part of the leadership team would be welcomed by people around the country, including those in vital roles trying to meet the needs of children with special needs and those with special needs and their families. I hope the Minister accepts the amendment. I apologise in advance, but I must nip out of the Committee, so I will not hear all of his response, but I will read it on the record.

Mr Timpson: Amendments 164 and 165 would require all special educational needs co-ordinators to be qualified teachers and for them to be appointed to school senior management teams. Those are issues where I am very much of a mind with the hon. Member for Washington and Sunderland West. Provisions to require SENCOs to be qualified teachers—including SENCOs in academies, which includes free schools as well—are in not only the code of practice, but the draft regulations for clause 62. The SENCO plays a key role, with the head teacher and governing body, in determining the strategic development of SEN policy and provision in the school. We must remember that the SENCO is not acting in isolation; the head teacher and the governing body, as part of fulfilling their duties and responsibilities to deliver strong and consistent SEN provision for children in their school, have a duty to ensure that the school makes certain that the SENCO has a valued role.

Mrs Hodgson: The hon. Member for South Swindon mentioned that he was a governor with responsibility for children with SEN. Is having such a governor a requirement on all governing bodies or do some schools just choose to go down that route?

Mr Timpson: It is not a requirement on all governing bodies. I have pleaded in the past for particular posts on governing bodies. Schools will clearly feel that they want some roles for specific groups of children, but we are not in the business of stipulating precisely how that should manifest itself on each governing body. I know from my constituency and talking to school governors that a large majority of schools have governors who, partly through having experience of special educational needs themselves, fulfil that role, often in conjunction with other roles, on the governing body. There is nothing to prevent that. There is a good case for governing bodies looking carefully at the merits that would flow from such an arrangement. The SENCO, the head teacher and the governing body need strong communication to ensure that they offer the provision we need to see.

It is important that the SENCO is a qualified and experienced teacher who can provide related professional guidance to colleagues and work closely with the head teacher, the governing body, staff, parents, carers and other agencies to secure high-quality teaching for children with SEN. Regulations, rather than the Bill, are the best place for detailed requirements on the role and qualifications of the SENCO. That replicates the way in which the provision is structured under current legislation.

Our intention that all SENCOs will have to be qualified teachers is clear. There is no intention to change that despite some wishing us to do so. To change the requirement, any future Government would have to amend the regulations, which are subject to parliamentary approval, so there is an insurance policy for the future. It is clear that SENCOs can be particularly effective where they are part of a school's senior leadership team. That point was made by the hon. Member for Corby from his knowledge of his wife's role as the SENCO within the senior leadership team in her primary or secondary school—

Andy Sawford: Primary.

Mr Timpson: Okay. That arrangement gives SEN provision a clear priority and influence over the strategic planning of teaching and staff development, and the indicative code of practice has been published to reflect exactly that. It states:

"SENCOs can be particularly effective when part of the leadership team."

There is therefore a clear steer in the code of practice.

It is right that schools should be able to decide their own management structures. Including such a provision in primary legislation would require a definition in legislation of what constitutes a school's senior management team. As we know, their nature varies from school to school, depending on the size and complexion of the school, so it is not practical or desirable to enshrine in legislation where SENCOs sit. However, the code of practice and regulations will give schools a strong steer about how much we value the role of SENCOs, and about how we believe that they should be given sufficient clout in the school environment to make their role as meaningful and productive as possible. Over and above that, however, schools are obliged to have regard to the code of practice in meeting their duties to pupils with SEN, and the advice that it sets out will therefore be a strong and sufficient prompt.

Amendment 286 and new clause 47 would require schools to ensure that all new teachers and all SENCOs have undertaken mandatory training in special educational needs, including dyslexia. I share the desire of the hon. Member for Sefton Central, particularly from his experience of children with dyslexia, to ensure that teachers and SENCOs have the necessary training to support and teach children with SEN. We are committed to improving the quality of teacher training to enable them better to identify all areas of special educational needs and disabilities, so as to overcome the barriers to learning faced by some children and young people. We want teachers to be able to develop the skills and knowledge to teach children with a broad range of SEN and disabilities, as well as to have opportunities to focus on specific areas of SEN, such as dyslexia.

Of course, it is up to schools to decide what training their staff need, but we are providing specific practical help for teachers and support staff so that they can better identify and recognise pupils with dyslexia and other special educational needs. For instance, through the National College for Teaching and Leadership and its predecessor, we have developed specialist resources for initial teacher training and new advanced level online modules on dyslexia to enhance teachers' knowledge, understanding and skills. We are working with key dyslexia organisations to ensure that those resources stay up to date and are widely used by teachers. I am happy to provide the hon. Gentleman with an update on progress in that area, which he touched on in his speech.

We have also agreed a £1.4 million national contract over the next two years with the Dyslexia-Specific Learning Difficulties Trust. It will assist schools, professionals and local authorities to improve the support available to dyslexic pupils, and draw on the evidence of effective programmes that we know work, so building their skills in the process. Through the national scholarship fund, we are supporting teachers to undertake postgraduate level qualifications in specific impairments, and many of them have applied to undertake masters level training in dyslexia.

Bill Esterson: The Minister has announced a range of investments and initiatives, which are all important and admirable. However, what we have heard whenever dyslexia is mentioned in the debates is a cultural issue around a lack of understanding or possibly even an unwillingness to understand. Does he accept that a cultural change is needed, which is what amendment 286 really drives at, and that we must somehow achieve that cultural change to make a real difference for children?

Mr Timpson: The hon. Gentleman makes a fair point. As I went around many parts of the country to talk to parents and visit pathfinder areas, that theme cropped up again and again. I said on Second Reading and in earlier debates in Committee that, important as the legislation is in setting the framework and putting in duties where they are needed in the system, we also need to be able to ignite a cultural change not only through the Bill, but by trying to change attitudes and improve the training on the ground, so that those on the front line in schools and agencies working with schools are under no illusions about their role and how they can best fulfil it. That includes having the best possible knowledge and understanding of the types of children—no two children are the same—so that they are not ignorant of the many manifestations of the challenges faced by children in their care.

To complete the suite of activity we have to try to tackle the issue that the hon. Gentleman has raised, a similar scheme for support staff was launched in 2012, and 274 support staff have undertaken SEN specialist training. That is clearly not going to solve the problem completely, but it demonstrates that there is engagement and effort to improve practice on the ground. A further round of that scheme was launched on 8 April, so there is ongoing commitment to improve the specialist training of SEN among support staff.

In addition, the Department is supporting high-quality teaching of systematic synthetic phonics, which has been proved to be effective for teaching dyslexic pupils to read and write. Funding is matched for up to £3,000 for approved phonics materials for key stage 1 pupils and a phonics screening check was introduced in July 2012 to help teachers to identify pupils who have not made the progress that we would hope to see.

On SENCOs, there is already a commitment for all new SENCOs to undertake a mandatory qualification. Regulations to be made under clause 62(3) will retain that requirement. Since 2009, almost 10,500 SENCOs have been funded to complete the national award.

I hope that that provides hon. Members with reassurance both on our intention to ensure that the SENCO is a senior and influential member of staff, and that both SENCOs and other teachers have the knowledge, understanding and skills to support children with special educational needs, including dyslexia. Furthermore, I hope that I have persuaded hon. Members that our approach represents a strong and practical way of doing that. I hope, therefore, that the amendment will be withdrawn.

Annette Brooke: I wish to ask what is perhaps an obvious question. It has always concerned me that many courses are advertised and there is much potential for continuous professional development, but that does not necessarily mean that courses are being taken up. The Minister has covered in part the mandatory requirements for SENCOs, but does he know whether there are records of actual take-up of the various courses on offer?

Mr Timpson: I am happy to write to the hon. Lady to give her the facts and figures on that. We are clear that there is the mandatory qualification. Mandatory means mandatory, but I am happy to write to her to provide more detail on that point.

Mrs Hodgson: I was very interested to listen to the Minister. There is much consensus on this issue, as there has been on many issues in this Committee, especially with regard to the SEN clauses. That is welcome and how it should be; the very point of this measure is to take away the adversarial nature of the journey for parents, so it is appropriate to take away the adversarial nature of the journey of the Bill through Parliament.

I was pleased to hear the Minister say that the draft regulations, as well as the code of practice, will contain guidance that says that without question, SENCOs have to be teachers in all schools, including academies and free schools. That is to be welcomed. I acknowledge that he said that regulations on the role of SENCOs are better than having the matter in the Bill. He may be right in that, but we do not want that role to be watered down at any point in the future. However, as long as either he or I are in the job, that would not be the case.

The Minister said that the regulations would improve the role of SENCOs and their position in the school's structure to ensure that they had sufficient clout. I look forward to reading the wording; perhaps we can develop that during the Bill's journey through the House to ensure that it is as tight as possible.

5 pm

I also welcome the fact that there will be mandatory training for SENCOs and teachers to ensure that all teachers are able to teach children with SEN. The Minister is committed to improving the quality of training, which is welcome, but when we talk about mandatory training, are we talking about one afternoon or one day a year? How much training will there be?

On continuing professional development after initial teacher training, I coined a phrase a few years ago, "One in five for one in five," which I thought was rather catchy. For those who have not caught on already, one in five children has SEN and there are five INSET days a year. Would it not be a good idea to use one of those five INSET days to train the work force for the one in five children in schools who have special educational needs? I was thrilled when, having discussed it with Lorraine Petersen, Nasen decided to adopt the proposal as one of its campaigns. Members might have come across the campaign, which is now running nationally. Does the Minister have any thoughts on that? Does he think it is a good idea, and does he want to adopt it in the regulations or the code of practice?

The British Dyslexia Association, the Dyslexia-SpLD Trust and Dyslexia Action have worked together to develop training modules. Earlier, my hon. Friend the Member for Sefton Central spoke about amendment 286 and new clause 47, and I understand that the training modules are ready—they are on the Department's shelf, or on its website or whatever. They are ready to go, so the Minister might want to point people towards them in the regulations and guidance.

In light of the enormous reassurances that the Minister has given to me and the Committee today, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 62 ordered to stand part of the Bill.

Clause 63

INFORMING PARENTS AND YOUNG PEOPLE

Mrs Hodgson: I beg to move amendment 166, in clause 63, page 43, line 14, at end insert ', an institution within the further education sector'.

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

Amendment 169, in clause 63, page 43, line 23, after 'school', insert ', an institution within the further education sector'.

Amendment 170, in clause 64, page 43, line 28, after 'schools', insert 'institutions within the further education sector'.

Mrs Hodgson: I do not intend to spend too much time on these amendments, as I tabled them more as a means of asking a question than to seek substantive changes.

Taken together, the amendments would amend clauses 63 and 64 to establish the same duties for post-16 institutions as will be conferred on schools, including high schools with sixth-form colleges. I received a briefing last night saying that colleges do not want those duties and that the Association of Colleges therefore does not support them. The association said that the argument against the duties is that young people who are taking GCSE-level courses, or who are on certain training programmes, might fall into the definition of being in receipt of special educational provision. Colleges would struggle to tell all those young people that they were in receipt of special educational provision.

The association also pointed out that it would be detrimental to young people's self-esteem and morale if they heard that they were receiving special educational provision. That makes me wonder whether my understanding of special educational provision, as defined by clause 21, is different to the Government's understanding, which they have been communicating to stakeholders. I do not consider courses that are not level 3 or A-level equivalent to constitute special educational provision. I would therefore be grateful if the Minister could shed some light on that. What exactly does SEP mean in the context of post-16 institutions?

That was not my initial question, however. My initial question was why post-16 institutions were not included in clauses 63 and 64 from the beginning, given that school-based sixth forms are. It is not my intention to place unrealistic burdens on further education colleges, but I am curious about why they should not be expected to tell a student that they are making special provisions for them, when the same student would need to be informed if there were doing a similar course in a sixth form.

Similarly, I wonder why the Government would not expect FE colleges to make information about their facilities and policies available to prospective students in the same way as a high school sixth form down the

road would rightly be expected to. That seems to be an anomaly, so if it is intentional and I have not got it totally wrong I would welcome an explanation from the Minister to set my mind at ease.

Mr Timpson: Clause 63 replicates an existing duty on mainstream schools and pupil referral units and requires the governing body, proprietor or management committee to tell the child's parent or the young person that special educational provision is being made. It does not apply where a child or young person has an education, health and care plan, as they will already be aware that such provision is being made for them by virtue of the plan. Clause 64 requires proprietors or governors of institutions covered by it to prepare a report containing information on special educational needs, and we will come on to that in a moment.

I recognise that although the two clauses place duties on schools, and in the case of clause 63 on pupil referral units, they do not place the same duties on the further education sector. I am also aware of the briefing from the Association of Colleges, to which the hon. Member for Washington and Sunderland West referred, in which the association sets out its concern that such duties would place a significant bureaucratic burden on FE colleges and indicates that there are a number of impracticalities.

The Bill does, however, places important new duties on FE colleges, which significantly extend the rights of young people as part of the new 0-25 system. In brief, the duties are to co-operate with a local authority, to admit a young person if they are named in an EHC plan, to use best endeavours to secure special educational provision, and to have regard to the code of practice. Those duties are crucial in giving young people their rights under the new system, but we have not assumed that every duty placed on schools should automatically be placed on FE institutions. The latter operate differently and cater for a different age range, and young people in further education access their provision in a different way, choosing specific courses. The Association of Colleges made many of those points in its briefing.

Amendments 166 and 169 are to clause 63, which replaces section 317A of the Education Act 1996, which was introduced to ensure that schools kept parents informed about any special educational provision for their child. However, that has not always been the case, with parents sometimes being completely unaware that their children were receiving special educational provision. The position is different in FE colleges because young people experience for themselves what provision they receive, and will therefore know if it is different from or additional to that received by others. It will also be rare that a young person will receive special educational provision for the first time when in an FE college, and that will be more likely as we move to a 0-25 system.

We have maintained the current duty on schools because that is where special educational needs are most commonly identified in the first instance. We do not want to rush into imposing new duties on the FE sector, particularly where it is unlikely that FE institutions are in a position to have to take action in response to the duty. That broad position also applies to amendment 170. Further education colleges already publish details about their provision for students with special educational needs in their prospectus and on their website. Like schools, the FE sector will be included in the local offer, reinforced with a duty to co-operate with the local authority.

Having given those assurances, I urge the hon. Lady to withdraw her amendment.

Mrs Hodgson: I am happy with the Minister's reassurances, but I am still unsure about why the Association of Colleges has taken the position it has. I suppose I can talk to the association about that—it is not for the Minister to explain it. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mrs Hodgson: I beg to move amendment 168, in clause 63, page 43, line 19, at end insert—

'(2A) In performing its duty under subsection (2), an appropriate authority must—

(a) attempt to do so as soon the decision is taken;

(b) ensure that the child's family or the young person are made fully aware of the reason for and the process behind the decision being taken;

(c) engage fully with the family or young person in making further decisions with regard to educational provision for the child or young person; and

(d) inform the local authority in which the child or young person residents.'.

I do not intend to spend a significant amount of time on the amendment because it is fairly self-explanatory. Opposition Members agree with the intention behind the clause: a child's family or a young person should of course be told if special educational provision is being made for them. If a school or an individual teacher has reached the point with a child where it is felt that additional support is required, I would have thought that the first thing that teacher would do would be to arrange to meet the child's parents to discuss the issue. Where a teacher believes a young person has the ability to comprehend it, I would have thought they would sit down with them to discuss the matter.

We probably should not need the clause at all; it should just be common sense, and in the vast majority of cases I am sure it is. However, the Department obviously feels that the clause is necessary to ensure that informing parents and young people happens in all cases; I think the clause should go a little further in describing the process that schools should go through.

As it stands, the clause would allow a school to start making provision in September but not tell the parents until the child's end-of-year report card is sent out in July. Technically, a school would have fulfilled its duties under the clause if it put just a few words to that effect in the report card. While we are adding a stipulation about informing parents to the Bill, we should also put in the stipulation that parents and young people should be informed as soon as possible after a decision has been taken, and that the school should engage fully with them in explaining the reasoning behind the decision and the implications of it.

Of course, in an ideal world the parents or the young person themselves would have been part of that decision—it would be something that the school did with them rather than to them. That is the kind of partnership working that parents have every right to expect from schools, as well as from the other agencies with which

[Mrs Hodgson]

they might come into contact. However, we do not live in an ideal world, as we know, which is why we are sat here, so while we are debating a clause that the Government obviously feel is necessary, let us make sure that it is strong enough to provide that, as far as possible, parents are given timely and comprehensive information about the education of their children.

Mr Timpson: The amendment would place requirements on how an educational setting should inform a parent or young person that special educational provision is being made. The hon. Lady is, understandably, seeking to ensure that children and young people, and their families, are involved from the earliest point. The amendment also seeks to strengthen the involvement of parents and young people in subsequent decisions about that support. Not for the first time, I entirely share the intention behind the amendment; however, I am concerned about the practicality of writing the measures into primary legislation. Such a level of detail about parents and young people, and how they will be informed, is most appropriately dealt with in the code of practice.

As it currently stands, the clause replicates existing protections for parents and young people in current legislation, so that they should be informed when special educational provision is made. The expectation made explicit in the code of practice is that that needs to be the sort of engagement between the educational provider and the family that the hon. Lady is seeking to achieve. Paragraph 5.6 of the indicative code of practice states that the first steps taken by a school or other educational provider should be to ensure that

"parents of children are fully engaged, consulted and informed and agreement is reached on how the child's needs will be met".

The code of practice sets out an identical requirement with regard to young people themselves.

There is a significant risk that by including the suggested measures in the Bill we would limit a school or nursery's ability to respond quickly to special educational needs and to the wishes of parents and young people. Organisations could interpret a legal duty as having to be fulfilled before appropriate support could be arranged. Delays in being able to notify the local authority or engage fully with the family could unhelpfully add to the delays that parents already report as being very frustrating and that we want to avoid at all costs.

We are at one with the intention behind the amendment. The code of practice makes clear how that intention should be fulfilled. I hope that, on that basis, the hon. Lady will feel reassured enough to withdraw the amendment.

Mrs Hodgson: We are learning more and more about how important the code of practice will be in ensuring that the legislation achieves what we all hope it will. Going forward, it will be interesting to see how everything we hope the code of practice will do will come to fruition, and whether it will be a strong, living and breathing document that people will adhere to and abide by in the way that we are discussing. We will continue to monitor the code of practice to ensure that it is as strong as we want it to be, but given the Minister's assurance that that is the best place to address my concerns, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 63 ordered to stand part of the Bill.

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

5.15 pm

Adjourned till Thursday 18 April at half-past Eleven o'clock.