



# Scrutiny Review of Special Educational Needs



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# Learning & Culture Scrutiny Committee

Democratic Services  
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# **LEARNING & CULTURE SCRUTINY COMMITTEE – 10<sup>th</sup> SEPTEMBER 2002**

## **REVIEW OF SPECIAL EDUCATIONAL NEEDS**

### **Report of the Lead Member Review Group**

## **SECTION 1 ~ SUMMARY**

### **INTRODUCTION**

1. This review was proposed by the Learning & Culture Scrutiny Committee on 30<sup>th</sup> January 2002, a briefing paper by Councillor Christine Witcher on the proposal having been prepared and circulated to members prior to that meeting. The Committee endorsed the project brief, in the form of a scoping document, on 12<sup>th</sup> March and the Co-ordinating Group of Scrutiny Committee Chairs and Deputy Chairs commissioned the review on 19<sup>th</sup> April.
2. This review was carried out under the Local Government Act 2000, Section 21(2)(e) which sets out the power for local authority scrutiny committees to “make reports or recommendations to the authority or the Executive on matters which affect the authority’s area or the inhabitants of that area”. It also comes within the County Council’s key priorities, especially:
  - Ensuring that children leave school well equipped to make a positive contribution to society and able to achieve a fulfilled life in the years that lie ahead of them
  - Working with partners to support vulnerable people within the community.
3. The Lead Member Review Group was directed by the Learning & Culture Scrutiny Committee to carry out this review in accordance with the agreed scoping document. In developing its recommendations, the Scrutiny Committee asked the Lead Member Review Group to highlight any legal requirements placed upon the LEA, to identify local needs, to assess the degree of compliance with the new Code, to evaluate alternative practices where possible, and to bring back a report with key findings.
4. The report presents our recommendations on the review as well as some of the steps that we suggest should be taken to implement them. We hope that these are to be welcomed not just by the Executive but also by the service itself in the spirit of self-challenge and the search for continuous improvement that scrutiny represents. Whilst there is much that is good to be found in SEN arrangements all services, this one included, can benefit from a process of robust investigation.

## **RECOMMENDATIONS**

- R1) The Committee RECOMMEND the Executive to investigate ways in which nursery/early years provision can work better in identifying SEN at an early stage in the maintained and non-maintained sectors, and to produce an action plan.**
- R2) The Committee RECOMMEND the Executive to request of the Education Directorate that measures be taken to:**
- **achieve or better the timescale targets contained within the SEN Development Plan;**
  - **improve continuity between schools in screening and assessing pupils at years 5 and 6.**
- R3) The Committee RECOMMEND the Executive to request of the Education Directorate that measures be taken to achieve higher quality statement writing. It is suggested that more specific terminology should be used and additional targets covering quality be added to the SEN Development Plan.**
- R4) The Committee RECOMMEND the Executive to clarify the funding arrangements for schools regarding the first 5 hours and to ascertain a clear mechanism for allocating more resources to schools.**
- R5) The Committee RECOMMEND the Executive to instruct the Education Directorate to diversify away from the currency of LSA hours and to consider a wider range of resources for meeting assessed need. Specifically the Executive are asked to encourage the Education Directorate to improve funding for specified Speech & Language Therapy and to improve links with the NHS for the purchase of such provision.**
- R6) The Committee RECOMMEND the Executive to investigate the use of the matrix, ensuring that it is widely published, clear, transparent and open to public scrutiny.**
- R7) The Committee RECOMMEND the Executive to consider introducing a more streamlined system which would involve restoring individual case officers' powers to make decisions on statements and resources, including placement, in accordance with the Education Directorate's criteria and statutory guidance.**



**R8) The Committee RECOMMEND the Executive to consider the panel's future role, such that:**

- **it meet as a multi-professional team only when cases are referred to them to consider officers' decisions on resources and assessment where disputes arise; and**
- **it comprises of an Educational Psychologist, representatives from Social Services, the NHS Learning Disability Trust, the voluntary sector and a Senior Education Officer, and includes a legally trained Chair**

**R9) The Committee RECOMMEND the Executive to instruct the Acting Chief Education Officer to produce an Action Plan to improve communication and to establish standards for good communication (e.g. supply written reasons for refusal), which could be monitored in the Development Plan.**

**R10) The Committee RECOMMEND the Executive to ensure that if there are particular court cases, judicial review or otherwise, involving Oxfordshire Education Directorate, then such cases are brought to the attention of the Learning & Culture Scrutiny Committee.**

**R11) The Committee RECOMMEND the Executive to instruct the Education Directorate to enhance transparency by producing a clear document on the revised Panels' workings, composition and powers under the new streamlined system (or the old system if retained).**

**R12) The Committee RECOMMEND the Executive to instruct the Chief Education Officer to have the SEN Development Plan reviewed annually and monitored more robustly**

**R13) The Committee RECOMMEND the Executive to ask the Education Directorate to work with Social Services and the NHS Learning Disability Trust to explore how best together, they can meet individual child's needs (e.g. by establishing a multi-agency support team).**

**R14) The Committee RECOMMEND the Executive to request more emphasis be given to training for SENCos and Governors.**

**R15) The Committee RECOMMEND the Executive to consider the financial and staff implications of the 3 options referred to in paragraph 105 of the report when formulating the Special Educational Needs budget for the next financial year.**



## **SECTION 2 ~ BACKGROUND**

### **AIMS OF THE REVIEW**

5. The Learning & Culture Scrutiny Committee appointed Councillors Christine Witcher and Zoe Patrick to the Lead Member Review Group and they led the review, supported by the two Scrutiny Review Officers, Matt Bramall and Julian Hehir. The Panel was appointed for a fixed term from 12th March to 10th September 2002, with the timetable in which to conduct the review being from 28th April to 3rd July 2002.
6. This review was deemed timely since this area is a central government priority and new government guidance was recently issued (January 2002). The service is a key component in meeting two of the corporate priority areas (see above) and is also a key issue for many local parents. The councillors involved, one of whom had a personal interest as the mother of a son with SEN, also felt there was a lack of information available about the policies and practices and wanted to test this perception.
7. The purpose (objectives) of this review therefore was to:
  - assess the effectiveness of the LEA's SEN procedures and check that they follow the law especially with regard to procedures on statementing, use of the assessment panel and working on tribunals;
  - obtain a clear picture of information needs of Councillors;
  - and make recommendations to improve the service and put procedures in place to adequately reflect changes introduced in January 2002 by new Regulations and the new responsibilities placed on the Council.
8. Given these objectives the Lead Member review group identified at a very early stage, that the Special Educational Needs Code of Practice (November 2001) was a key document. This is supported by the Education (SEN) (England) Regulations 2001, Consolidation Regulations 2001 and statutory guidance from the DfES on Inclusion.

### **THE SEN STATEMENTING PROCESS EXPLAINED**

9. For readers unfamiliar with SEN we now explain some of the terms used in this review. Pupils with Special Educational Needs are those children whose learning is not progressing at expected rates due to emotional, physical, or behavioural difficulties. Most children with SEN (89%) can be adequately supported in their school without the need for a statement of special educational need, via programmes known as School Action and subsequently School Action Plus. For the remaining children (11%) additional resources are needed for which their needs must be assessed. For those deemed in need a statement is then drawn up and their case is then further considered for extra resources to be identified.

Throughout this report there are references to the work of the “Assessment” and “Resource” Panels. As Chapter 7 of the Code advises, LEAs may operate moderating groups to assist them in taking consistent decisions and to consider evidence for all “referrals for statutory assessment”. (This means where parents, schools or other professionals believe that a child may have special educational needs which need to be provided for and request that the needs are assessed). In Oxfordshire, the Assessment Panel carries out the role of considering the evidence and taking decisions on statutory assessment and comprises the Senior Education Officer, an Educational Psychologist and a Headteacher. The same panel meets separately as the Resource Panel, to determine the allocation of resources as a consequence of assessments having identified specific Special Educational Needs. Both panels meet every two weeks.

## **THE LEGAL CONTEXT**

10. The Special Educational Needs and Disability Act & associated Regulations & Code of Practice aim to strengthen the right of children with SEN to be educated in mainstream schools when parents wish it. It introduces a duty on LEAs to make sure that parents are provided “with advice and information about matters relating to those needs”. It also introduces a duty to make arrangements to resolve disputes between schools and LEAs on the one hand, and parents of children with SEN on the other. The LEA must “provide for the appointment of independent persons to help avoid or resolve disputes, and ensure that people are aware of the service”. The arrangements cannot affect the right of a parent to appeal to the SENDIST (tribunal). It introduces the right for the Head Teacher of a school to ask the LEA to make an assessment if no such assessment has been made within the previous six months. The purpose of the Code is to give practical guidance on the discharge of functions set out in the Education Act 1996.
11. Among the fundamental principles identified in the Code are:
  - Identifying SEN early
  - Exploring good practice
  - Taking account of the wishes of the child
  - Taking account of the views of parents and their child’s particular needs
  - Reviewing interventions regularly
  - Taking a multi disciplinary approach
  - Making sure that the assessments are within the prescribed time limits
  - Determining that SEN statements are clear, detailed, within time limits, specify early monitoring arrangements and are reviewed regularly.
12. Also critical, so far as this review is concerned, are the SEN (Provision of Information by LEAs) (England) Regs 2001 as these mean that the LEA must publish their general arrangements for:
  - Identifying children with SEN
  - Monitoring the admission of children with SEN

- Organising the assessment of children's SEN statements, including any local protocols for so doing. (In the interests of establishing agreed local interpretation, LEAs may operate moderating groups to assist them in making consistent decisions, including headteachers, SENCOs, governors, educational psychologists and colleagues from health and social services. LEAs may use similar groups to consider the evidence for all referrals for statutory assessment. The Code says that such locally agreed processes are good practice, but the role of these groups must be clear, transparent and open to scrutiny. The assessment process is covered in more detail in Section 7 of the Code. )
- Providing support to schools with regard to making provision for SEN

13. The Code acknowledges the centrally important role of parents and reinforces the requirement to establish "Partnership Services" and the statutory duties to:

- ensure that the service has a development plan
- ensure that parents and schools are provided with clear information;
- ensure that the service is provided with accurate information on all the SEN processes set out in legislation
- establish a Service Level Agreement

14. These are in addition to the statutory duty to make arrangements, including the appointment of independent persons, with a view to avoiding and resolving disagreements between authorities, parents and children about the way that LEAs carry out their statutory responsibilities. LEAs must also take appropriate steps to make disagreement resolution services known to parents.

15. Chapter 7 of the Code is concerned with the statutory assessment of SEN needs, which were also central to this review. To summarise the Guidance, various key steps should occur to identify and make a statutory assessment of those children whom the LEA believes probably have SEN and that the LEA needs (or probably needs) to determine the child's SEN provision itself by making a statement.

16. In considering whether a statutory assessment is necessary the criteria for making such a decision is:

- that the school has responded appropriately to the requirements of the National Curriculum;
- evidence provided by the child's school parents and other professionals;
- evidence of action already taken by the school;
- evidence of the rate and style of the child's progress;
- evidence that where progress has been made, it is only as the result of much additional effort not commensurate with provision through "School Action Plus".) (When a class teacher or a SENCO identifies a child with SEN, the class teacher should provide interventions that are additional to and different from those

provided as part of the school's usual differentiated curriculum offer and strategies – this is known as "School Action". A request for help from external services is likely to follow a decision taken by a SENCO and colleagues, in consultation with parents, at a meeting to review the child's Individual Education Plan. The school should always consult specialists when they take action on behalf of a child through these means – this is known as "School Action Plus". At School Action Plus, external support services, both those provided by the LEA and by outside agencies will usually see the child concerned).

17. The Guidance indicates that a decision to carry out an assessment should also cover evidence of attainment, the child's special educational provision (having considered evidence about the child's attainment in conjunction with other factors the LEA may be able to identify immediate remedies that would mean that a statutory assessment was not necessary), communication and interaction, cognition and learning, emotional, behavioural and social development, sensory and/or physical needs, medical conditions etc.
18. If the LEA decides that an assessment is not necessary, they must write to tell the parents and explain the reasons; they should also set out the provision that they consider would meet the child's needs appropriately. They should write to the school too giving full reasons for their decision.
19. It is in the interests of all concerned that statutory assessments are carried out in a timely manner. The Regulations set out time limits in which the various parts of the process of making an assessment and statements must normally be conducted. The LEA must tell the parents (and the schools or the setting) whether or not they will make a statutory assessment within 6 weeks. The cumulative effect of the time limits is that the period from the receipt of the request for a statutory assessment to the issue of the final copy should normally be no more than 26 weeks.
20. In Making an Assessment the LEA must:
  - Seek written parental advice and ascertain the views of the child
  - Seek educational, medical, psychological, social services and any other advice
  - Inform parents that their child may be called for examination or assessment, and that they have a right to be present;
  - Ensure that Health & Social Services should normally respond within 6 weeks of any request for advice.
21. The LEA must then decide whether it needs to make a statement or amend an existing statement. It must make that decision within 10 weeks of serving a notice of intention under sections 323 or 329 of the Education Act 1996. If a statement or an amended statement is necessary it must draft a proposed statement or proposed amended statement within 2 weeks.
22. Where the LEA decides that a statement or an amended statement is not necessary, it must notify the parents and give reasons, notify the school of the decision and preferably provide a note in lieu of a statement within two weeks.

Parents must be informed of the right to appeal to an SEN tribunal, the statutory time limits, the availability of the Parent Partnership and Disagreement Resolution Service and that the latter will not affect the parents' right of appeal.

23. Under section 328 of the 1996 Act, the parents of a child with a statement may request a new assessment, within certain constraints.

## **THE REVIEW PROCESS**

24. The review, in questioning witnesses, focused closely on all of these areas and how the duties were applied in practice. Reference will be made throughout this report's findings to the above aspects of the Code, examining not just if there is compliance with the letter of the law but also assessing how effective arrangements are in delivering according to the spirit of the Code.
25. The review group met 7 times : 18th March, 19th April, 14th May, 23rd May , 17th June, 5th and 22nd July. Witness interviews took place on 26th and 30th April and 10th and 23rd May. The Group visited Gloucestershire County Council on 9th May and attended the CLT SEN annual Conference on 3rd July.

## **METHODOLOGY**

26. The methodology used to make enquiries and to gather evidence involved:
- ❖ A desk based compilation and review of literature, essential documents and relevant legislation
  - ❖ Comparisons with other LEAs by way of Audit Commission performance indicators, comparisons with statistical neighbours and a visit to a neighbouring Authority (Gloucestershire) <sup>1</sup>
  - ❖ Interviews with key witnesses/experts (see Appendix 2 for details)
  - ❖ Information and evidence gathering from the Central Law Training 2002 Special Educational Needs Conference – 3<sup>rd</sup> July 2002 in London.
27. In formulating our recommendations we have endeavoured to have regard to all of the analysis/evaluation set out above. We would like to publicly thank all those witnesses taking part for their time and candour, since without their cooperation the review could not have proceeded. A final caveat however, concerns the difficulty of interpretation of evidence when evaluating the outcomes from the service – parents do not want to experience a single bad case, yet external audit can produce good performance overall and still allow for bad individual cases. When giving evidence witnesses tended, understandably, to start from one or the other of these differing perspectives.

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<sup>1</sup> notes of the meeting available in the Members' Resource Centre





## **SECTION 3 ~ FINDINGS**

### **FOREWORD**

28. The key issues and questions which emerged from paper research, the visit to Gloucestershire, questioning of witnesses and the SEN conference together with our findings are set out in this section. These were reached with a high degree of consensus. There was little change to the focus of the review although it is clear that much was left unexamined by its scope, for example the provision for the majority of SEN pupils who are non-statemented. It should also be stated that the review considered SEN in general without any specific focus on one or other form of need in particular. One legal issue thrown up by the review which remains unresolved is the practice of using a matrix to help decision making when allocating resources, see p.26. The review was unable to secure a legal opinion from the Solicitor to the Council as no advice had ever been previously sought by the SEN Service or the Executive. It is suggested that the Executive satisfy itself over the legality or otherwise of this practice by the LEA.

### **IDENTIFICATION AND ASSESSMENT**

#### **a) Assessment Panel**

29. We have seen the LEA's assessment criteria published in May 1995 and subsequently updated for the SEN Handbook published in May 2000. We are satisfied that they complied with the Statutory Guidance in place at that time and broadly with the guidance in Chapter 7 of the new Code which is concerned with the evidence required, conditions for and criteria for taking decisions about whether or not to carry out statutory assessments. For example the Assessment criteria as stated in the Handbook comprise the essential criteria from the old Code and in addition the "Local Interpretation".<sup>2</sup> This is embellished in Section 7:7 – 7:45 of the new Code which, in a more substantive way, sets out the processes and evidence which must be in place for an assessment to take place. We feel assured by evidence from the LEA witnesses during the Review, that when the opportunity arises to update the Handbook, the Assessment criteria will be adjusted accordingly.
30. In terms of gathering appropriate evidence for the assessment nearly all the witnesses, both LEA staff and parents/ teachers, thought this was done quite well on the whole. Some witnesses felt the contributions of parents was taken properly

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<sup>2</sup> For instance Section 3:46 of the previous Code concerns the circumstances in which an LEA is considering whether to make a statutory assessment and concentrates on the evidence which LEAs should seek from schools and parents setting out the key indicative questions which LEAs should ask. This is developed in Section 3:47 - 54 and in the Handbook by the local criteria which must be in evidence for a statutory assessment to be an appropriate course of action.

into account, others felt obliged to point out that it depended on the articulateness or otherwise of the parents in question.

31. The main perceived area of weakness around assessment concerned the difficulties for the less 'obvious' needs, such as EBD. Many witnesses felt that the assessments worked well for the more 'obvious' needs, as revealed in the remark below:

*"Downs, autism and obvious physical disabilities evidence is very quickly acknowledged; other needs are not and have to be fought for."*

32. It is difficult to evaluate how client-led the system is and how much notice to take of remarks critical of the LEA. The statutory assessment process is experienced by parents in widely contrasting ways, some express satisfaction, finding it straightforward and appreciating its usefulness for their child, some view it as a "necessary evil", whilst for others it is distressing, confusing and unsatisfactory. This contrast is clear in two parental comments that appeared in the 2000/ 01 LEA survey: -

*"We started the statement process almost two years ago. We are so fed up with the whole process... I don't mind discussing this incredibly appalling and stressful procedure. However I do not think that the Parent Partnership Service could really have eased or assisted our situation, just a shotgun to the LEA officer's head!!"*

*"Accurate and appropriate – written by professionals who studied or worked with child – knew child best and were qualified to assess."*

33. Even a handful of negative comments may be cause for concern, and throughout this review we have heard plenty. The independent Parent Advisory Group (PAG) survey shows high levels of dissatisfaction, and the Recess research<sup>3</sup> also reported an overwhelmingly negative view. However against this it must be said that the LEA's own surveys show quite high levels of satisfaction (see p.30-1 for more on satisfaction levels)

## **b) Early Years/ Intervention**

34. In visiting Gloucestershire, the question was raised about whether a responsibility for early intervention at ages 2-5 was acknowledged and should the LEA establish a division to be responsible for this (like Gloucestershire). This review shares Gloucestershire's view that prioritising the early identification of SEN is a major issue and that subsequently early provision as well as assessment is the key.
35. A typical witness view is shown by the remark below:

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<sup>3</sup> Research carried out when considering whether to merge Social Services, Education & Cultural Services under one management structure.

*“Once the process starts there is some good written information; however from 2-5 there are grey areas in terms of the information given and on what the process of assessment and statementing is all about.... I didn’t know when my child was two that the LEA would have any obligations”*

36. The new SEN Code, (in the terms summarised by John McKendrick at the CLT conference), places particular emphasis on early years intervention, especially the identification, assessment and provision for SEN in early years. Such a preventative approach is justified in both cost effective and ethical terms. During the review witnesses acknowledged the importance of this aspect of the Code but were without specific proposals as to how this is to be achieved. We are doubtful as to whether a separate division is the solution to acknowledging this responsibility. Early Years intervention ought to take place via the LEA’s nurseries, private nurseries (as in the Gloucestershire model) but under the umbrella of the LEA. This links up with pressures, expressed during the review, for a more inclusive service in terms of incorporating all specialist services for SEN under one banner. The LEA has acknowledged the emphasis on early identification of SEN in the Code but as yet, has not produced an action plan.

- R1) The Committee RECOMMEND the Executive to investigate ways in which nursery/early years provision can work better in identifying SEN at an early stage in the maintained and non-maintained sectors, and to produce an action plan.**

## **STATEMENTS**

### **a) Quality issues**

37. Whilst many statements are considered to be accurate and well written others are criticised for being too general and lacking in specific detail. Some witnesses to the Review have questioned whether the quality and validity of statements of SEN prepared could be improved. One witness gave a representative statement of their concerns when they said:

*“Advice from statements and from Educational Psychologists is of variable quality; information in statements is too general and doesn’t provide enough detail”*

38. Terminology can be vague, for example “regular therapy” is used instead of specifying the actual frequency (every ten years is regular), and the over-use of “will have access to...” does not convey much meaning. A couple of remarks from teachers and SENCos were targeted specifically at the Educational Psychology service, requesting that their advice be less vague. Other witnesses, usually those working in the service, thought the quality of Oxfordshire’s statements was generally high and better than in previous authorities in which they had worked. However, given the importance of accurately identifying need and provision within a statement it is to be hoped that greater and greater specificity will become the norm. Well written statements are of benefit to everyone, not just the children, and as described below (p.22) should go beyond just quantifying LSA hours.
39. David Wolfe, a Barrister at Matrix Chambers, commented that so far as Statements of Special Educational Needs were concerned, a format was prescribed in the 1996 Act, in the schedule to the 2001 SEN Regulations, in the new Code of Practice and that a pro forma was attached to the 2001 Consolidation Regulations. The “system” broke down and he was asked to intervene, where statements of SEN had been poorly drafted. If statements were properly drawn up there was less scope for disagreement later on (and this corresponded with some of the reservations expressed among witnesses to the review about the drafting of statements). Legal proceedings usually commenced because stage 3 of statements (provision) had not been properly drafted.

### **b) Time-scales**

40. Compliance with timescales has improved dramatically over the past few years, for example the number of assessments that were carried out within the 18 week limit rose from 58% in 1997/ 98 to 83% in 2000/ 01. This is to be welcomed, however comparative Performance Indicator data show that this is still below the average for county councils and for all councils (see appendix 4).
41. Qualitative data arising from questionnaire responses and the statements of witnesses, whilst necessarily more subjective, often highlights the frustration poor adherence to timescales cause. A significant minority of parents find the process

takes too long and can be accompanied by poor communication from the LEA regarding progress of their case (see p.28 for further analysis of communication issues), as revealed in the following remark.

*“We have only been shown one IEP in 15 months and have heard nothing about an annual review which should have been due months ago.”<sup>4</sup>*

42. Whilst recognising improvement, the Review shares the conclusion of the most recent Ofsted Inspection that:

*“Further steps should be taken to speed up the process and to ensure that issues of continuity between middle and upper schools are resolved.”<sup>5</sup>*

This remark also highlights a specific area where time delays are likely, namely in the transfer from primary to secondary schools. The review heard a couple of anecdotal accounts of children wasting much of year seven, trying to get an assessment that they should have had before moving to secondary school. There is a need for improved continuity between all school transfers such that incidence of unnecessary time delays are reduced.

- R2) The Committee RECOMMEND the Executive to request of the Education Directorate that measures be taken to:**

- **achieve or better the timescale targets contained within the SEN Development Plan;**
- **improve continuity between schools in screening and assessing pupils at years 5 and 6.**

- R3) The Committee RECOMMEND the Executive to request of the Education Directorate that measures be taken to achieve higher quality statement writing. It is suggested that more specific terminology should be used and additional targets covering quality be added to the SEN Development Plan.**

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<sup>4</sup> From LEA Statementing Review Questionnaire 2000/ 01

<sup>5</sup> Ofsted Inspection of Oxon LEA, Jan 2000

## **FUNDING/BUDGET ISSUES**

### **a) Resources**

43. There was nothing in the Audit Commission report to say that SEN is under resourced. However, during the course of the review general concern was expressed about the adequacy of resources and specific concerns highlighted about how resources were deployed. The most consistent criticism concerned the “Velcro” response to need, in which Learning Support Assistant hours are simply stuck on to each case. LSA hours have become a kind of universal currency for SEN yet there is a need to find more creative solutions to address need. The current ‘banding’ approach focussed on LSA hours available reveals a resource based model rather than a flexible needs based approach. (Gloucestershire’s prioritisation of early identification ultimately raises questions about the need for assessment/ statementing and hence the debate about whether the system is led by early identification of need or by what the resources are. Their aim is a system where the “resource follows the child rather than the child following the resource”).
44. How support, once allocated, can be implemented within the context of the school should be looked at. Sometimes children will benefit from being involved in a group rather than having one to one assistance from an adult. One school created an ‘opportunity class’ for its SEN pupils and 70% of them returned to mainstream school. For initiatives like these to be successful there needs to be greater flexibility however. For example in the above case the system could not deal with subsequent applications for statements because the school had group educational plans and not individual ones which were required by the Panel.
45. More specifically, gaps in resources were identified around speech and language therapy, autism in the north of the county, and for EBD county-wide. There is a strengthened requirement for LEAs to be specific and quantify speech and language within Part 3 of a statement. The responsibility for the LEA to ensure that pupils requiring a certain level of this type of service is enforceable even if the NHS is providing the service. If the NHS cuts the service, the LEA would still have to provide it, probably from the private sector so the importance of ensuring a high quality service is critical.

### **b) 5 hours Learning Support Assistance**

46. The “five hours” issue kept coming up. It is Oxfordshire’s policy for schools to fund the first 5 hours of a pupil’s statement. Teacher organisations have raised this issue before and have concerns about it. The budget does not identify that the LEA have delegated funding for this for individual schools. There is anecdotal evidence of some schools being unwelcoming to parents of statemented children because of the high cost of all the meetings and paperwork required as well as funding five hours of LSA support.

47. At present schools are delegated double funding to provide for pupils without statements but who are classed as special educational needs and who need to access up to 5 hours learning support time per week. Schools have to provide for the first 5 hours of each of their statemented pupils out of the delegated funding for non-statemented pupils. This situation may have an adverse effect on pupils with statements in that schools may see these pupils as a financial burden and additionally, SEN pupils without statements are at risk from not being able to access the support to which they are entitled due to the support being given to the pupil with a statement. The Ofsted Inspection found that many schools spend more on SEN provision than they receive in delegated funds.

### c) Budget

48. Amongst witnesses there were occasional misunderstandings about the way that SEN funds were apportioned according to the so-called “Local Schools Budget”, and between the SEN statementing budget, the SEN index formula and money held centrally for growth in statementing. The review has established that the position is as follows: the “Local Schools Budget” is the delegated spend to schools; the SEN element of the total delegated budget includes money for statementing. The LEA recently moved from 85% to 87% of the “Aggregated Schools Budget” being delegated to schools, which entailed a requirement to find an extra £3 million comprising of SEN statementing and primary school meals. It is anticipated that in the near future the amount delegated will rise from 87% to 90%.<sup>6</sup>
49. With respect to the 87% requirement, a new SEN formula has been introduced and is being phased in from 2001/02 to 2002/03. The “SEN Social Deprivation Factor” was included in the new SEN Index at the DfES’s request. There are now 2 separate funds allocated through the SEN Index of £8.7 million: the SEN index amount and the social deprivation factor, but for budgeting purposes they are only shown as one sum. It is to be hoped that this goes some way to alleviating the District Auditor’s concern that the LEA delegated funds mostly based on socio-economic factors rather than educational factors.
50. The Ofsted Inspection 2000 stated that:

*“Funds for schools are delegated through a sophisticated SEN index that targets resources to schools in greatest need through a series of proxy indicators. Despite recent budget decisions taken by Members who have increased the amount delegated through the SEN Index, the actual amount spent in schools was greater than that delegated in every school where this was inspected... Given its success in educating a very high proportion of all pupils (98.9%) in mainstream schools, and the positive view of the support schools receive, the LEA is achieving its objectives satisfactorily within the limited financial resources.”<sup>7</sup>*

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<sup>6</sup> For instance see ‘The role of the LEA in School Education’, 2000, p.10

<sup>7</sup> Ofsted Inspection of Oxon LEA, Jan 2000

51. Historically, the SEN statementing budget has been overspent from one year to the next, although significant growth has been planned into the budget from one year to the next (as shown by table 1 below). The underspend arose from effective policy to support more children in-county and thus reduce spending on out-of-county provision.

<b>Table 1</b>	<b>Recoupment</b>		<b>Statementing</b>		<b>Total</b>
<b>Year</b>	<b>Budget £'000</b>	<b>(under)/ overspend £'000</b>	<b>Budget £'000</b>	<b>(under)/ overspend £'000</b>	<b>(under)/ overspend</b>
1997/ 98	1,354	108	1,380	634	£742,000
1998/ 99	1,505	(261)	1,789	149	(£112,000)
1999/ 00	1,643	514	1,944	(399)	£115,000
2000/ 01	1,382	449	2,492	336	£785,000
2001/ 02	1,810	387	3,103	(308)	£79,000

52. It is, however, fair to say that financial information about statementing is more readily available as a consequence of the recent budget developments and the LEA is more enabled to focus on how the resources are being spent.
53. Issues around the balance to be achieved between delegation of money to schools and keeping money centrally for the LEA are explored further in the section Financial & Staff implications, p.39

- R4) The Committee RECOMMEND the Executive to clarify the funding arrangements for schools regarding the first 5 hours and to ascertain a clear mechanism for allocating more resources to schools.**
- R5) The Committee RECOMMEND the Executive to instruct the Education Directorate to diversify away from the currency of LSA hours and to consider a wider range of resources for meeting assessed need. Specifically the Executive are asked to encourage the Education Directorate to improve funding for specified Speech & Language Therapy and to improve links with the NHS for the purchase of such provision.**



## **RESOURCE PANELS**

### **a) School Placements**

54. The Resource Panel should make the placement decision whilst deciding on overall resources, this would ensure that they follow the expectations of legislation and work to the following sequence:
1. Identification within Part 2 of a Statement
  2. Resourcing within Part 3 of a Statement to match identified needs
  3. Placement within Part 4 (Placement is decided on contents of Parts 2 and 3, not the other way round)
55. The decision of placement for a statemented child should be made simpler. LEA's have to take full account of the legal framework and parental preference. It is a legal requirement that although the LEA are not allowed to name a school within Part 4 of a Proposed Statement, this would not mean that they could not include a covering letter to parents explaining which school they feel might be appropriate for the individual child. This would not undermine the LEA's duty to have regard to parental preference, rather it would create good practice and enable both parties to discuss their views at an early stage and without being in a Tribunal situation. Although LEA's allocate a specific number of places for statemented pupils in special schools, this is not a criteria for the school being classed as 'full'. It is known for LEA's to 'hold back' places for pupils who they believe will need a place at a particular special school in the future, resulting in pupils from out of county or otherwise being denied a place. This practice could be classed as illegal.
56. There are issues surrounding the degree of balance in the assessment and statementing processes between professional and parents' views. Oxfordshire's decisions are taken by a Panel involving an Education Officer, Education Psychologist, Head teacher, Senior Education Officer but their meetings are confidential, cannot be accessed by parents, and minutes are not shared with schools, Parent Partnership Service, etc.
57. Resource Panels also deal with placement and it's recognised that the procedure for allocating a place for a statemented child within a special school/unit is a long process involving 3 different decision panels. The legal framework prescribes time limits for statements to be finalised, and the present process causes an adverse effect on the LEA being able to comply with deadlines. Parental preference overrides admission policy and catchment areas.

## **b) Power of Officers**

58. Assessment or case officers are generally well regarded by parents and teachers, for example in the Recess Consultation Exercise. However, the power of case officers was deliberately curtailed by the introduction of the Panels, in order to better control expenditure and to ensure consistency. On the basis of the evidence from witnesses, this review asks whether it is appropriate for reduced powers for individual case officers when they have undergone specialist training and have clear expertise and knowledge of their particular geographical areas as well as individual children involved. Why should their professional opinion be disregarded? To implement training and then undermine the skills created could be seen as an inefficient use of the Councils resources. Case officers are frustrated by being capped at 10 hours, and sometimes have to invoke the Resources Panel for 'silly' extras such as transport.
59. Consistency has improved but this could be achieved in other ways, such as through using publicised criteria as a decision making guide, through better monitoring, and by managers seeking greater involvement with the budget setting process from their staff. While it is difficult to know what the situation would have been had the Panels not been introduced, it is clear that budgets are still overspent and that targets to reduce the number of statementing have not been reached.

## **c) Use of a Matrix**

60. Questions were raised about whether resource criteria existed for Oxfordshire and to what extent they were applied by the assessment/resource panels. There were different perceptions about it being a "blanket policy", a "guide", etc. Guidance said that local procedures for reaching assessment and statementing decisions should be clear, public and open to scrutiny. The review group is considering whether the discrepancies in understanding and interpretation of the resource criteria matrix should be resolved by them, by the Executive or by the Courts. In Gloucestershire a tariff banding system is used and published in the manual of guidance to schools. It was acknowledged by Gloucestershire that the provision matrix worked less well for a mix of (individual) SEN. Decisions in Gloucestershire on assessments and resources are taken by one officer.
61. David Wolfe's view at the CLT Conference is that LEAs are able to produce policies for parallel banding of resources. It is lawful for a funding arrangement to be in place which explains what is allocated to schools by LEAs. It would be unlawful for the LEA to have a policy or guidance that looks towards not allocating resources on an individual needs led basis. Such policies (or matrices) should be open to Councillors and public scrutiny. It should be clear how they work and they should not compromise the legal framework. They should be promoted rather than remain confidential, if they are being used at all.
62. The Oxfordshire matrix is not a parallel banding of funding between the LEA and schools; it suggests an allocation of hours of LSA support for particular types of learning difficulty and compromises the ability to allocate on an individual need.

63. The Review also heard numerous complaints about the rigidity of the system, from LEA officers, through to teachers, SENCos and parents.

*“Process needs to be quicker, 3 years to get a child who had medical and educational problems a statement (we were told he did not fit the criteria) what on EARTH IS THE CRITERIA. A child with a known medical criteria is surely able to have instant access to the help they need.”<sup>8</sup>*

Some witnesses expressed the view that there should be a fast track route available in special cases, specifically those where needs are extreme and there is the greatest risk of harm from delays. The criteria to be used to determine when such a parallel procedure would be most suitable were not examined. However, serious consideration should be given as to whether one decision making panel would smooth the process of assessment and statementing (and related time/bureaucracy).

64. Issues were raised about the extent to which stakeholders (parents, parent support groups, SENCos, Headeachers, Educational Psychologists etc participated in the assessment and resource panels. Among the different views expressed was that greater participation could increase understanding of the decision making process but on the other hand, compromise the confidentiality of the issues being discussed. Was the parents’ role more explicit in the assessment and statementing processes now, due to statute? (Gloucestershire’s panel is not open to other interested parties or agencies).

- R6) The Committee RECOMMEND the Executive to investigate the use of the matrix, ensuring that it is widely published, clear, transparent and open to public scrutiny.**
- R7) The Committee RECOMMEND the Executive to consider introducing a more streamlined system which would involve restoring individual case officers’ powers to make decisions on statements and resources, including placement, in accordance with the LEA’s criteria and statutory guidance.**
- R8) The Committee RECOMMEND the Executive to consider the panel’s future role, such that:**
- **it meet as a multi-professional team only when cases are referred to them to consider officers’ decisions on resources and assessment where disputes arise; and**
  - **it comprises of an Educational Psychologist, representatives from Social Services, the NHS Learning Disability Trust, the voluntary sector and a Senior Education Officer, and includes a legally trained Chair**

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<sup>8</sup> From LEA Statementing Review Questionnaire 2000/ 01

## **INFORMATION**

### **a) General Communication**

65. There was consensus on the general compliance in the documentation produced by the LEA with the requirements of the Code of Practice. Correspondence has greatly improved – the text of letters was changed in anticipation of the Code – and the Parent Partnership Scheme produce a lot of leaflets. The Review has considered the letters produced by the LEA to support the SEN administration processes, which they understand are standard – and note both that improvements have been made to their readability and use of plain English and that legislative requirements (in the Code) demand inclusion of more complex information. This recognition of the importance of responding to parents and being customer focussed is to be acknowledged, welcomed and encouraged.

66. Despite clear signs of improvement over the years, poor communication was still a major and repeated theme throughout the review, and there were even cases of information going missing. The Review agrees with the unavoidable conclusion of the LEA that

*“There needs to be a continued improvement in relations between parents and the LEA, particularly in the area of communication”<sup>9</sup>.*

67. Another aspect which drew comments from several parents, was the ‘communication blackout’ period they experienced during the information gathering period when many wanted information on how far along their child’s case was in the process.

*“I was told it was a very difficult process to follow. That was an understatement.”<sup>10</sup>*

In light of the fact that there is a clear and easy way to track this via the Education Management System (EMS), one wonders whether this may be one area of parental concern that could be easily addressed.

68. Direct contact with the Education Officer is obviously something that parents value and contributes to a satisfactory outcome. Indirect contact is less valued:

*“My letters to LEA were LOST. Info received was WRONG. Almost impossible to speak to Educational Officer on telephone. LEA asks you to write if you are unhappy but then does not acknowledge correspondence – how do we know they have received it?”<sup>11</sup>*

Administrative procedures should be improved to ensure that these concerns are addressed. Furthermore, it is of great concern that a high proportion of parents did not feel they had been informed about the availability of the Parent Partnership Service. The review found there were sometimes administration problems – filing, training, pay, loss of paperwork.

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<sup>9</sup> From LEA Statementing Review Questionnaire 2000/ 01

<sup>10</sup> From LEA Statementing Review Questionnaire 2000/ 01

<sup>11</sup> From LEA Statementing Review Questionnaire 2000/ 01

*“Speed up the process as it took nearly two years to sort out, due to papers going missing and having to start all over again.”<sup>12</sup>*

69. Whilst it is clear that an amount of information and literature is available to interested parties (for example a handbook for schools, an information pack for parents, countless leaflets etc) there were repeated references to having “to battle” with the LEA. There were differences of view about how widely circulated, how understandable and how applicable the special needs handbook was and about the density and complexity of information generally. There were different levels of concern about how appropriately policies/ advice were distributed and how accessible they were, about information overload, about the ability to absorb assessment and statementing information. (Gloucestershire has concerns about how well they communicate which is based on parents’ questionnaire responses. However, criteria for resourcing SEN were openly published and communicated in their manual to schools.) This is difficult to quantify – what is a lot of information to one person may not be enough for another. The practical difficulty is about targeting information so people get what they need when they want it. Some people can feel they have too much information whilst others argue they haven’t had enough.
70. Holding meetings outside of Macclesfield House may be a simple way to improve communication and lessen perceptions of remoteness and dislocation.

## **b) Panel Workings**

71. The Review revealed a lack of understanding about the workings of the resource panels, how decisions were taken and communicated to the key parties and views about how well the panels worked. The moderation process provided by the panels was “less clear” and “not especially transparent” (Oxfordshire has twice monthly panels; Gloucestershire has monthly.) There was an issue about the availability of minutes too.
72. The workings of the (Assessment and) Resource Panels was the area which came in for the most criticism in the Review. They are all too frequently viewed with hostility and suspicion and at best they are seen as secretive and confusing, tortuous and time consuming. Overall it is the panels which arouse the strongest negative feelings. The review heard demands for greater transparency in this area repeated by several witnesses. Often individual case officers are viewed sympathetically, with parents feeling that it is often here that case officers’ views are overturned. The Code says that the role of these groups must be clear, transparent and open to scrutiny, yet the vast majority of witnesses felt that the degree of transparency here was very poor. Other witnesses preferred to point out that transparency is an ambiguous concept because it implies transparent to somebody, which then depends on their ability to process information. However

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<sup>12</sup> From LEA Statementing Review Questionnaire 2000/ 01

almost all the witnesses acknowledged that many parents do not always understand the process.

### **c) Conciliation/ Reasons for Refusal**

73. As far as the Resource Panel was concerned, we noted that parents were not able to attend to put their point of view nor were they given reasons for their rejection, thus adding to the air of secrecy associated with the Panels. Without decent explanations the parties concerned (parents, Parent Partnership Service, SENCos, Head teachers, Governors) learn nothing about the criteria being used. Not only does this encourage speculation about what the LEA 'are up to' it leaves them with few alternatives, namely to give up, to consider making an application to tribunal, or simply to re-submit and start again. The Review believes that the LEA should establish an appeals process outside of the resource panel, which parents could utilise, to ensure that the issues are not simply considered again by the resource panel. If recommendation 8 to the report is approved by the Executive, then this appeal process will follow.
74. There was an emphasis in statements made by witnesses from the LEA about greater communication and conciliation – yet there are an increasing number of tribunals. Similarly this was a key issue in Gloucestershire – but their tribunal numbers were decreasing. By way of comparison, in Gloucestershire tribunal statistics had reduced from 18 to 10 in approximately 3 years, whilst Oxfordshire's have risen from 13 to 37. The main difference seemed to be that in Gloucestershire if parents were dissatisfied with decisions, they could meet with the Education Officer to go through and reconsider the evidence. Questioning witnesses revealed differing views about the rights of redress of schools, SENCos, parents and professionals to panel decisions (see the issue about a lack of understanding of the panels, above). Overall, in Oxfordshire rights of redress are generally poor – resource panel decisions cannot be challenged.
75. Improvements in working in a more collaborative and conciliatory way could have tremendous gains for the service. If the reasons for decisions are better communicated and parents and other parties feel fully involved they are more likely to accept exactly the same situation and be much less dissatisfied. A common theme of the need for more partnership working came across strongly in witness evidence – between the LEA, parents and the Parent Partnership Service. The review also found that there is an issue about whether the Parent Partnership should be independent or part of the Education Directorate. Both Oxfordshire and Gloucestershire find it beneficial to have their PP scheme as part of the Directorate, yet there are credibility gains to be achieved by being properly independent.

### **d) Disagreement Resolution Service**

76. Although it is unclear whether increasing numbers of tribunals represents decreasing levels of satisfaction or greater information and understanding of their

rights on behalf of parents, evidence from tribunal figures would suggest that satisfaction is reduced (see appendix 5 for details). Ofsted accepted this logic when they stated that in 1999:

*“Appeals against LEA decisions are very low compared to the national figure. This indicates a high level of parental satisfaction with the statementing process, although there have been some cases where communication between the LEA and parents has been poor.”*

77. Indeed since in earlier LEA written documents, such as Best Value Form BV1, low tribunal figures were used as indicators of satisfaction we will continue with this convention. Moreover the BV1 identifies the percentage of appeals to tribunal and parental satisfaction ratings post assessment as the service’s most crucial indicators. More direct measures from surveys and questionnaires give differing views on satisfaction (see also p.18). Figures from the LEA’s own surveys show quite high levels of satisfaction whereas the Parent Advisory Group (PAG) survey shows high levels of dissatisfaction.
78. There was a lack of understanding about the Disagreement Resolution Service and how it would develop, as there were no performance targets or local monitoring although the statutory guidance states that a resolution service must be provided (The Regional Mediation Service is provided by Global Mediation Ltd. Oxfordshire is in the South Central consortium; Gloucestershire is in the South West). We have seen a copy of the local agreement but this does not provide any guidance as to how the DRS is supposed to develop.
79. There were negative connotations attached to the tribunal process – with parents worried about being labelled as “trouble making” – such that they are reluctant to proceed for fear of damaging their (poor) relationship with the LEA and thus burning their bridges. Also tribunals are often seen as threatening and can be off-putting. The view was also expressed that parents considering tribunal action are made to feel like they are the only dissatisfied ones, the only one’s to object. It is important that this practice be discontinued and that parents are given much better information about rights of internal redress and empowered by the LEA to think about alternatives.

## **e) Information for Councillors**

80. It’s been identified that Oxfordshire LEA have been involved in at least 4 Judicial Review Cases including one this year. Not all were successful and the Authority has incurred large costs from challenging the appeals including paying the costs of the other side involved. The Learning and Culture Scrutiny Committee Members should be fully informed of such Judicial Review cases and their outcomes. They should also have the details of any case and have the opportunity to scrutinize the reasons for going ahead with it.
81. We questioned whether financial information concerning the SEN budget should be more widely available and better communicated to Councillors and others? Was

the resurrection of the informal member/officer SEN Working Party a way to meet Members' information needs? We thought not, given that the Review has highlighted ways of improving communication and information. Furthermore, there are no permissible arrangements available under the provisions of the Local Government Act 2000 for such a body to be formally established.

82. David Ruebain of Levenes and co-author of Education Law and Practice, discussed the means by which decisions concerning SEN could be challenged and quoted extensively from judicial review hearings and other key cases including those relating to Oxfordshire. Given that one of the objectives of the review is to obtain a clear picture of the information needs of Councillors, we are of the view that all Members should be informed of the outcomes of such hearings and case law affecting Oxfordshire, as they occur.

- R9) The Committee RECOMMEND the Executive to instruct the Acting Chief Education Officer to produce an Action Plan to improve communication and to establish standards for good communication (e.g. supply written reasons for refusal), which could be monitored in the Development Plan.**
- R10) The Committee RECOMMEND the Executive to ensure that if there are particular court cases, judicial review or otherwise, involving Oxfordshire LEA, then such cases are brought to the attention of the Learning & Culture Scrutiny Committee.**
- R11) The Committee RECOMMEND the Executive to instruct the Education Directorate to enhance transparency by producing a clear document on the revised Panels' workings, composition and powers under the new streamlined system (or the old system if retained).**



## **POLICY**

### **a) The 2% target**

83. A question was raised by interviews with witnesses as to whether there was accepted guidance on appropriate statementing levels? For example Gloucestershire had a deliberate strategy of reducing this to 3%; Oxfordshire less explicitly to 2%. Was there an estimate from year to year based on a threshold of 2% of children likely to be statemented? And was there evidence that the LEA was actually setting a 2% “target”? Was this defensible if it was a “target” or a guide rather than a policy rule? And what could be the justification for 2%? (i.e. Changes to the SEN index, Expansion of the EBD outreach team, the more recent moderation processes, the use of the assessment panel?) LEA witnesses were somewhat equivocal in this respect but written statements clearly show a deliberate policy decision was taken to try and reduce the number of statements.
84. Among current debates in Gloucestershire, is whether more money should be devolved to schools for SEN, whether money should be put straight into statements or should the separate SEN and statementing budgets be looked at together. Gloucestershire has a “guideline” of 3% of pupils to be statemented; but there appear to be pressures to move away from the statementing model. Such debates clearly have significant financial implications (which are examined on p.39) but in information terms both councillors and the public would expect greater clarity over local policy.

### **b) Plans and Monitoring**

85. The SEN Development Plan gives a clear articulation of the directions to be followed and the framework for achieving its targets. SEN actions are also a consistent feature of the priorities to support school improvement outlined in the EDP. The question was raised about the purpose of the Development Plan, so far as the Education Directorate was concerned and how regularly the action plans in it were reviewed (as required by the Code 1:14). The SEN service managers felt it was “important to have produced it” because it was now required in statutory guidance, and the perception within the Education Directorate was that most targets were achieved.
86. However, the review found it difficult to obtain some SEN Development Plan documents and it is unclear how well used such a plan is by the management team. Despite being given one or two pages of updated plans from some officers, the review team were told such Plans were not produced and no further explanation for these differences was forthcoming. The review group were given different publication dates and have been unable to obtain sight of any updated Development Plan, save for the aforementioned two pages. Minutes from the now defunct Education Committee state that the plan will be updated annually and progress reported to that Committee but we find no evidence of this having happened, and it is unclear how monitoring is to occur under the new

arrangements.<sup>13</sup> This may contravene the requirement in the Code to publish arrangements for reviewing and updating plans on a regular basis.

87. In 1999 the Education Committee requested a report evaluating the implementation of the SEN Development policy and its impact on children after the first year – this has never happened. Moreover, it is not clear how effectively this plan is monitored within the department. Sometimes there is a mismatch between the actual data supplied to show performance and that which the plan says will be used to monitor performance. Moreover when details of past performance are supplied it is frequently unclear which of the preceding two years results relate too. For example ‘Activity 2.2 Improving multi-agency support’ will be monitored by the achievement of looked after children, yet no such figures are included to show actual performance, preferring instead to write the non-sequitous and rather vague statements:

*“1. Inadequate joint agency approach to children with behaviour problems, and  
2. Some children placed out-of-County because of lack of in-County therapeutic support”.*

88. There are also discrepancies between documents and a suspicion that targets may be considered a ‘moveable feast’ for there are disparities on some indicators.<sup>14</sup> The processes for target setting need to be made more robust and reliable, and work should be undertaken to ensure consistency across the Directorate’s plans. We suggest the linkages here should be tightened to make for more effective planning and performance management.
89. The accessibility of these plans should be improved, perhaps by placing them on the internet, intranet or in Outlook’s public folders, and a new section added to explain to readers how effective monitoring is to be managed.

*“More specific information about plans should be provided to all schools and special schools should be more closely involved in the formulation of policy”<sup>15</sup>*

To the above conclusion of Ofsted, the Review would add “*and councillors*”. Currently neither the Educational Development Plan nor the SEN Development Plan are available on the internet. Under the link to service plans one finds a note stating that The Performance Plan for Education will be available by May/ June 2002.

90. In short, a consistent and unified set of targets and measures in a plan stored electronically and available on the internet would be of value to staff and would be informative to customers and councillors. SEN performance management information needs to be improved through the collection of accurate benchmark data in order to set targets and adopt a performance management framework.

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<sup>13</sup> Commitments also repeated in BV1 Form

<sup>14</sup> For example the Oxfordshire Plan quotes targets for percentage of statements done in 18 weeks for 2001/ 02 as 83%, whereas the same target in the SEN Development Plan is 90%.

<sup>15</sup> Ofsted Inspection of Oxon LEA, Jan 2000

Although an emerging system is currently in place the service currently lacks an effective Performance Management system, the development of which needs to be accelerated. Monitoring PIs needs to become a positive management tool, not just a check on progress.

### c) Anti-statementing Model

91. There were concerns about the costs of assessment/statementing in terms of “bureaucracy”, time, people’s commitments, recoupment, meeting deadlines, money and curtailing the possibilities for seeking opportunities for resolution via further discussions. This gave rise to a tension between statementing as an inaffordable policy as opposed to it being the means to access resources – “the parents lobby keeps the statementing process going”; LSA hours are the “currency” and it was a question of how to access them.
92. A tension exists arising from differing responses to the problem posed by the excessive bureaucracy and associated costs (financial and emotional) involved in drawing up statements. Oxfordshire LEA was unable to provide an estimate of the costs involved, arguing that any method of calculating them would be essentially arbitrary. Evidence from other authorities (Gloucestershire average statement costs have increased from £2,300 to £4,200 in 2 years, largely because of costs of LSA hours and the need for a Learning Resource service at all was being re-assessed) and remarks from some witnesses suggest conducting an assessment and writing a statement costs in the region of £5,000. What often results from the statement is five hours of LSA time, which is costed at approximately £1,500 - £2,000 p.a., so it can take 3-5 years to recoup the cost. The argument goes that this bureaucracy costs approximately £2 - £2.5m<sup>16</sup> which is money that could be better spent on provision. Figures from the S<sup>52</sup> Education Budget Statement 2001-02 show that £1.1m was budgeted for assessment and statementing, and £4.7m set aside for provision, i.e. 23% of the resources went on the bureaucracy. It is not just about costs but also about resources more generally. Moving away from working at an individual level to more systemic methods frees up Educational Psychologists time to create a policy for schools to provide support materials, for example. This type of preventative work may be better than conducting endless individual assessments.
93. Some authorities have moved in this direction and it will be interesting to observe their experience over the coming years. For example Hampshire, Suffolk, Somerset and Kirklees have taken a SEN audit approach – where they delegate the money to schools who then audit all potential SEN pupils (based on poor reading results and/ or Performance P scales).<sup>17</sup> The audit approach requires schools to audit the needs of individual children. The criteria are banded, depending upon the children’s age. There are four bands and each band

<sup>16</sup> The lowest estimate heard was £4,000, the highest (including all hidden costs) was £12,000. This figure is based on £5,000 x 500 assessments p.a. Alternatively it could be constructed as £7,000 x 357 assessments p.a.

<sup>17</sup> The experiences of Kirklees and Hampshire Councils and their innovative responses to the financial viability problems around the ‘explosion’ of statementing have been written up in a document entitled “New Approaches”

represents a different level of funding. The audit score would be added up for each child. The audit score depends upon the number of areas of difficulty the child is experiencing and the severity of his or her needs. The audit score would then be translated into a sum of money. Audit sheets would be sent in to the LEA and schools would be asked to provide evidence for their judgement. Schools would then receive a whole school budget for meeting children's special educational needs. The advantage to such a process comes from meeting Governmental policy in favour of increasing delegation, e.g. from 85% to 87%, expected to rise to 90%.

94. The disadvantage is that parents are reluctant to trust schools to spend this money providing for their children, as such delegation removes what they see as the protection afforded by statements. Over the last ten to fifteen years parents have moved from a position of resisting statements, suspicious of the label attached to their child's difference, to one where statements are actively sought and viewed as a key mechanism to preserve resources for their child. Nationally there is a strong parental lobby fighting to protect resources attached to children via statements, and a similar movement exists locally as evidenced to some extent by the existence of PAG. The parental lobby in favour of statements may prove too strong for the Government to force this issue. Until parents were given demonstrable proof that they could trust schools to spend such moneys on improving their SEN provision they would be unwilling to back this approach. The LEA are critical of this reaction and feel that the statutory assessment process is still commonly perceived as a "statementing" process with its goal as a Statement. They feel they need to continue to work with schools and parents to broaden the view of SEN support so that they do not see it solely as something which can only be appropriately and effectively provided by means of a statement which they believe guarantees necessary funding.
95. David Wolfe, a Barrister at Matrix Chambers, had concerns "that many LEAs are moving away from statementing" (see above). The Audit Commission had commented on the "bureaucracy" attached to the statementing process and some authorities had moved away from this by transferring statementing budgets directly into schools, Suffolk County Council being given as an example. In his view, the transfer of budget arrangements and the practicalities involved (in effect ) reintroduced a statementing process, but without the safeguards and quantification brought by the SEN Code as there is no equivalent to a Statement of Special Educational Needs to provide a protection of the needs for the most vulnerable pupils. This idea can be seen as an attempt to shift the bureaucracy of assessment since the schools would still have to clearly identify the needs of pupils who had complex needs.

#### **d) Inclusivity and Consultation**

96. During the hearings witness were asked to rate (on a ten point scale – 1 being lowest and 10 highest) how good the service was at consulting with parents, and how successful it is in terms of being inclusive. There was a high degree of consistency in their answers with the average results being 5 and 7 respectively.

This (rather unscientific survey) suggests that these dimensions are judged to be at least, if not more than, adequate but still with room for improvement.

97. Among witnesses a need was felt for a more simplified admissions procedure for SEN pupils whilst retaining inclusion as a goal. As one witness put it:

*“Inclusion should remain as a goal but it has to be adequately resourced”.*

There was a suggestion that responsibility should be taken for co-ordinating the whole inclusion agenda and adopting a more coherent approach; for instance the creation of integrated support teams made up of various professionals which would provide a “one stop shop” to partnerships of schools, so that the schools would know where they were going to for all SEN support. Concrete proposals for structures to achieve closer working between the Education and Social Services Directorates (and partners) enabling them to deal jointly with particular issues, would move forward inclusiveness and integration in the SEN agenda.

## **e) Training**

98. “A lot of training was provided” but there were differences of opinion about the range and type of training to ensure that stakeholders involved in SEN were up to speed on the changes brought about by and the new requirements of the Code.
99. The Advisory & Inspection Service carried out induction for SENCOs and advised schools on how to implement all aspects of the Code and had received some very good feedback on training.
100. On the other hand, there was not always sufficient take up of training by groups such as governors, or along with SENCO colleagues from their own schools unless an individual school’s problem arose. The role of the Governor and the interpretation of the Code were not clearly defined.

**R12) The Committee RECOMMEND the Executive to instruct the Chief Education Officer to have the SEN Development Plan reviewed annually and monitored more robustly.**

**R13) The Committee RECOMMEND the Executive to ask the Education Directorate to work with Social Services and the NHS Learning Disability Trust to explore how best together, they can meet individual child’s needs (e.g. by establishing a multi-agency support team).**

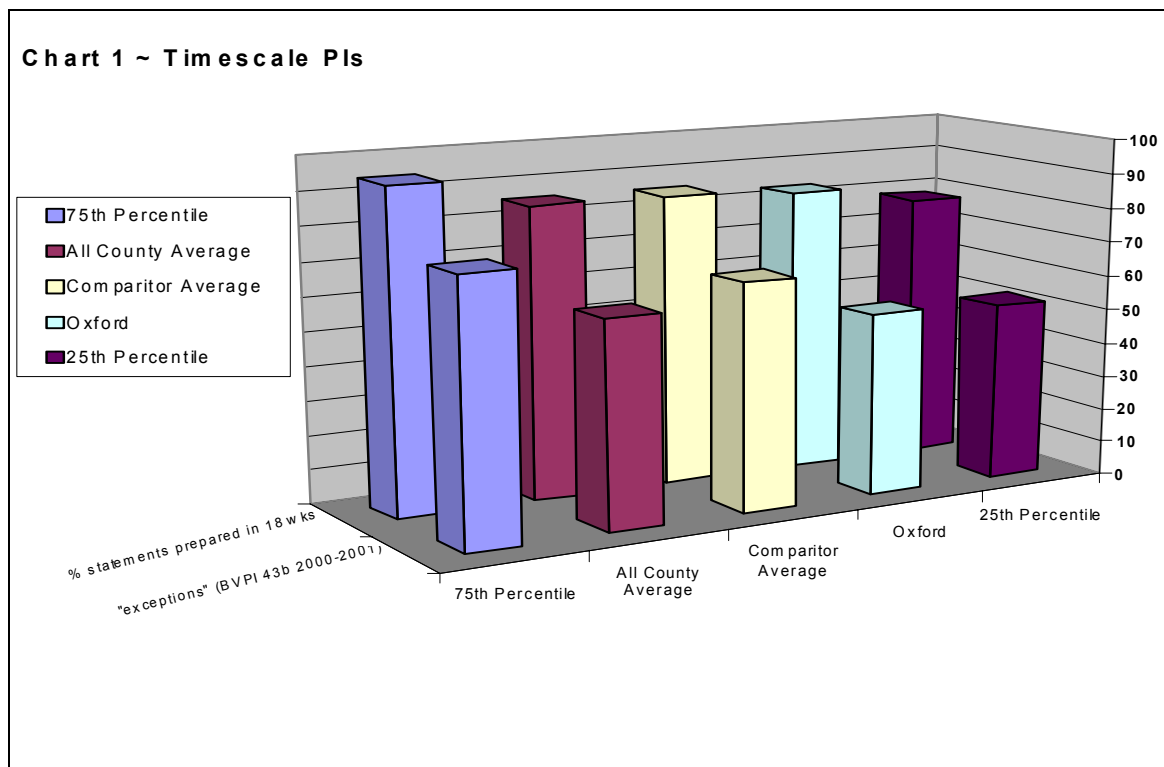
**R14) The Committee RECOMMEND the Executive to request that more emphasis be given to training for SENCOs and Governors.**

## **COMPARATIVE POSITION**

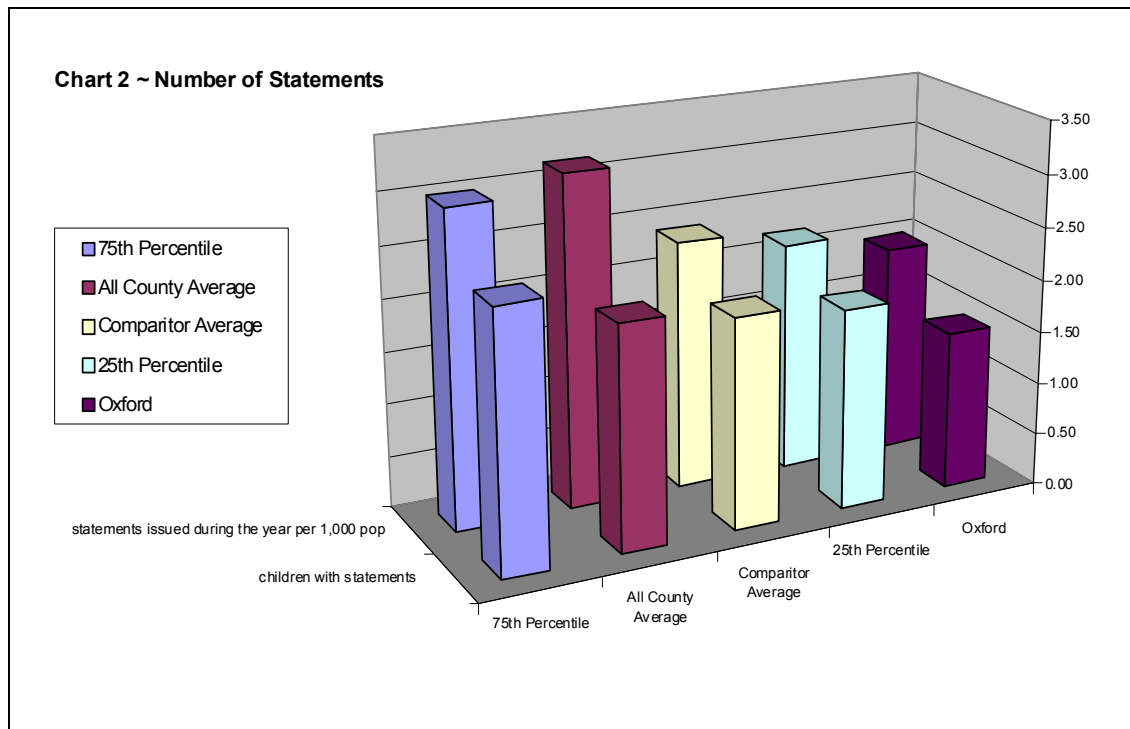
101. Comparisons with other authorities are difficult to make but some tables of relevant Performance data using nationally recognised Performance Indicators are included in [Appendix 5, pp.53-7](#). The most immediate fact emerging from these is that Oxfordshire can be characterised as an extremely low statementing authority; a conclusion reinforced by a District Audit Report some years previously:

*“The percentage of pupils with statements of SEN is lower than in similar authorities and nationally.”<sup>18</sup>*

102. The Ofsted report (Jan 2000) identified Oxfordshire as a low spending authority on SEN, spending £119 per pupil compared with an average for comparator authorities of £145 per pupil.
103. Insufficient work on benchmarking and a lack of management information limits the comparisons that can be made. Measured against relevant BVPIs the service is overall below average. Whilst some Performance Indicators are improving, such as number of statements issued within timescales, so are the results for our comparator counties, such that since 1997/ 98 Oxfordshire is below average on both the PIs shown on p.54. For some Oxfordshire is in the bottom quartile of performance. These figures also suggest that the LEA is doing well at promoting the Code’s aim of inclusion, in that they show Oxfordshire has a smaller than average number of children in special schools (i.e. higher use of mainstream schooling).



<sup>18</sup> Ofsted Inspection of Oxon LEA, Jan 2000



104. Tribunal applications are increasing, which means an increasing amount of resources is being spent on preparing for them. In 1999/ 00 Oxfordshire was almost average for its comparators, whereas in 2000/ 01 its position has worsened (twice as many cases) to become the authority with the highest proportion of cases being appealed (from the comparator group). This represents an increase of 100% between these years, much higher than the average 11% national rise. Although statistically it is unfair to draw too firm a conclusion from this increase (it may turn out to be an aberration rather than a trend), it is of some concern.

## **FINANCIAL AND STAFF IMPLICATIONS**

105. The LEA has 3 options (which have associated but unquantifiable implications at this stage):
1. To go through the assessment and statementing process on the basis of individual need and demand – a totally client/needs led model rather than a resource model;
  2. To “cap” – i.e. keep its target for only 2% of pupils to be statemented, beyond this the bureaucracy, resources, all parties’ time, etc. would be too stretched to cope well. (Gloucestershire have an explicit policy to cap at 3%). It is this practice that is often blamed for making the process feel like at worst a battle and at best a negotiation, due to the pressure it imposes to try and satisfy needs with the bare minimum (i.e. 5 hours LSA time).

3. To abandon a statementing model (and the statutory protection implied by it) in favour of a new approach, by delegating all the SEN resources to schools.

106. The Education Directorate should be clear where it stands. Whilst the review found numerous references to a policy to reduce the number of statements<sup>19</sup> many of the witness statements from LEA officers were varied on these options and/or were non-committal. The Educational Psychology service and some teachers seems to lean towards the third option, the SEN management look like they prefer option two, and much of the literature tend to imply the first. Clarity of the LEAs position would remove the confusion and mystery surrounding the information produced about the assessment and statementing processes, the workings and perceived purpose of the assessment and resource panels.
107. The review also heard that administrative staff constitute a vital link in terms of communication with parents and many witnesses felt these posts are poorly paid. To retain good administrators it may be necessary to consider increasing the budget to improve the terms and conditions of their employment. Money may also need to be found to update their IT systems and file storage space. The current situation creates a disincentive for administrative staff to provide information since it is sometimes hard to physically get a file off the shelf. Without having information at their fingertips staff can be distracted by other events when looking for desired documents. There are also budget implications to employing more outreach workers to advise parents of pre-school children, a potential aspect of the action plan recommendation 1 asks the LEA to provide.

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<sup>19</sup> For example BV1 Form; District Audit Report, p.6; Oxfordshire Stages of Assessment, p.3; Policy for Children with SEN, p.6



## **SECTION 4 ~ CONCLUSIONS**

### **OVERVIEW**

108. When considering this review as a whole it is clear that evidence of good performance has been found. For instance better information is provided, timescales have improved, elements of the Code were anticipated and changes made in advance of its publication to reflect new imperatives contained within it. Other good points include the production of a handbook and high levels of inclusion within mainstream schooling.
109. This picture is supported by the Ofsted Inspection of 2000 which concluded that:
- “Overall, the LEAs support for pupils with SEN is characterised by well-qualified staff working energetically with a clear sense of purpose and direction. Services are well managed and are focused on raising pupil achievement and supporting teachers. They were judged to be making a positive contribution to school improvement in nearly all of the mainstream schools visited.”<sup>20</sup>*
110. The District Audit Report of 1997/98 (completed in Nov 1999) was less complementary. It identified that “responsibility for SEN matters was shared between two divisions and to make this structure work well, the LEA must ensure that the two divisions share information routinely”.<sup>21</sup> Although this review has not examined internal communication specifically, given that it has identified communication problems as a major issue for the service more generally, this may be a cause for some concern.
111. The District Audit Report also identified at the time some weaknesses around the lack of a comprehensive SEN policy covering objectives and targets supported by performance measures. Whilst this was remedied by the publication of the SEN policy and the SEN Development Plan 2000, thus also achieving compliance with the Code, the review has found that more needs to be done to ensure these plans are widely available, well used and adequately monitored.
112. The main thrust of the Code of Practice is towards making SEN provision client-led. There are limits to what this means given that systems (no matter how necessary), tend to be influential once in place. However, it is clear that more can be done to improve the extent to which SEN activity is more client-led. For instance, currently case officers cannot allocate more than 10 hours of LSA time without recourse to the Panel. This was introduced two years ago to help keep the budget under control, rather than to provide any kind of direct benefit to the client. Similarly the Assessment Panel was introduced as part of a range of initiatives designed to bring down the number of statemented pupils and reverse a trend of increasing numbers. The review has uncovered a seam of feeling broadly characterised by the view that the bureaucracy involved is inflexible and that this puts artificial hurdles in the way

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<sup>20</sup> Ofsted Inspection of Oxon LEA, Jan 2000

<sup>21</sup> District Audit Report 1997/ 98

of children's' needs being met. It is difficult to assess just how much of this criticism is justified and how much it reflects differing perspectives. However, this perception is widespread and should be some cause for concern. Clearly more can, and should, be done to improve the degree to which the service is client-led.

113. A repeated theme of the review was that the system of identification, assessment, provision and placement lends itself more easily to specific SEN e.g. physical disabilities, rather than to EBD for instance. There is a view that the new Regulations and Code "encourage thinking down straight lines". The Code is meant to be in place for children and are intended to give greater weight to the voice of the child, but "by following due process children often fail to get the proper provision" because of the difficulties encountered in adequately and sufficiently carrying out identification, assessment, administration and so forth. If there was a criticism of the statutory framework, it was that the principles of the Code are right and the end result is often right but there is a bureaucracy in the middle and a system "which is not capable of dealing with anomalies" or of operating more flexibly. A number of witnesses identified gaps in provision for EBD and as an area in need of improvement. Similarly, the processes to deal with problems around exclusion were repeatedly identified as very slow, yet children with EBD experience a rapid worsening of their situation if excluded.
114. The Disagreement Resolution Service was virtually unknown by nearly all witnesses, but it had only been put in place in February 2002 so this was to some extent inevitable. However it would be unacceptable for this to be the same in a few months time. In addition to making the processes more democratic, open and transparent, there needs to be much greater clarity about what recourse people have to object or appeal.

## **AFTERWORD**

115. The Lead Member Review Group has undertaken this review on behalf of the Committee with a determination to meet all three of the objectives that it set itself. Throughout this investigation the Review Group has in some cases been able to elicit comprehensive answers to its questions. In other cases, there has been an inability to provide up to date management information and performance indicators for whatever reasons. In other respects the Group is content that it has marshalled all of the available evidence and presented it in a form that will be useful to the different audiences and recipients of the report. The Committee/Review Group believes that it is incumbent upon it to make an assessment of how well it has met each of these objectives. The following paragraphs give that assessment.
116. The first objective was to:
- ❖ *assess the effectiveness of the LEA's SEN procedures and check that they follow the law especially with regard to procedures on statementing, use of the assessment panel and working on tribunals;*

The Review Group believes that it has met this objective. However, during the course of this review it has become apparent that a virtually inherent tension exists

between the view of parents and that of the LEA. Each want the best results for the children in their care but for parents this means consideration of their child's needs, whereas for the LEA it means all children. A full appreciation of these perspectives goes a long way towards explaining some of the differing views heard whilst the review was gleaning evidence. It should also be noted that the review overlooked the need to hear directly from one of the administrative staff as a witness, which given their frequent role of dealing with parents may constitute a weakness. It was accepted at the outset that the review would be restricted to statementing but more work could usefully be done to look at the estimated remaining 89% of children with SEN but who are not statemented, a potential topic for a future review.

117. The second objective was to:

- ❖ *obtain a clear picture of information needs of Councillors*

The Review Group believes that it has partially met this objective as demonstrated in the recommendations numbered 6, 10, 11 and 12. It is especially important that Development Plans and Policy statements are widely available, with details about how they are to be monitored.

118. The third objective was to:

- ❖ *make recommendations to improve the service and put procedures in place to adequately reflect changes introduced in January 2002 by new Regulations and the new responsibilities placed on the Council.*

The Review Group believes that it has met this objective fully and, in keeping with the spirit of the code, has retained a strong customer focus throughout. The Committee hope to see the Education Directorate adopting a similar philosophy when drawing up any action plans as a result of this enquiry. The Review Panel members will also be keen to learn how the Executive intends to address the recommendations. They wish to evaluate the ultimate effectiveness of the entire review in 12 months time.

119. In order to monitor whether we are getting the best from witnesses a feedback sheet was used. The average response from all the witnesses is shown in the results below. Of the additional comments, one witness said they would reserve judgement as only time would tell whether the exercise is worthwhile, depending upon the objectivity of the panel. Other comments suggested the scoping document be sent to witnesses so they understood the context for the review.

Question	Result
The administrative arrangements for my attendance were well organised	Agree
I was clear about the role of the Scrutiny Committee in the context of the particular issue under discussion	Agree
I was clear about my role as a witness	Agree
I feel that the way the Committee functioned enabled me to contribute effectively	Agree
I feel that as a result of my attendance the Scrutiny Committee is better informed	Strongly Agree
Overall I felt that attending the Scrutiny Committee was a constructive exercise	Strongly Agree



**Appendix 1****BIBLIOGRAPHY**

Copies of all these documents are available for inspection in the Members' Resource Centre:

- Email responses from Oxfordshire's statistical neighbours (as detailed by Ofsted according to David Spark)
- Advisory Team for Inclusion (SEN) Service Plan 2002-03, (Draft 16/05/02), Oxfordshire County Council Advisory & Inspection Service
- Policy for Children with SEN, Spring 2000, Oxfordshire County Council Education Service
- Development Plan for Children with SEN, Spring 2000, Oxfordshire County Council Education Service
- Development Plan for Children with SEN - Extract, Autumn 2000, Oxfordshire County Council Education Service
- Development Plan for Children with SEN - Extract, Spring 2001, Oxfordshire County Council Education Service
- Oxfordshire Stages of Assessment: Criteria for Deciding to Make a Statutory Assessment, May 1995, Oxfordshire County Council Education Service
- Gloucestershire SEN Guidance Manual for Schools 2001/ 02, 2001, Gloucestershire County Council Education Department
- Oxfordshire's SEN Handbook for Schools, May 2000, Oxfordshire County Council Education Service
- The Green Pack of Information for Parents of Children with Special Needs & Disabilities, December 2001, Oxfordshire County Council & Oxfordshire Health Authority
- From Audit to Action: Support towards the Self-evaluation of SEN in Secondary Schools, Spring 2001, Oxfordshire County Council Education Service
- Resource Matrix, NOT published internal document
- A Proposal to develop a new approach to funding SEN, Suffolk County Council SEN Audit Project Consultation
- Inclusive Schooling: Children with SEN, November 2001, DfES
- Special Educational Needs: a Guide for parents and carers, 2001, DfES
- SEN – Proposed policy & Development Plan: Report by Chief Education Officer, Education Committee 5th October 1999
- SEN – Proposed policy & Development Plan: Report by Chief Education Officer, Education Committee 16th December 1999
- SEN – Funding in Mainstream Schools 1998/ 99: Report by Chief Education Officer, Education Committee 5th October 1999
- SEN Oxfordshire County Council Audit 1997/ 98, November 1999, District Audit
- Tribunal Data, internal document not published
- Results from Parent Questionnaire, March 2001, Parents Advisory Group

- Agreement for the Provision of Dispute Resolution Services, December 2001, Oxfordshire County Council, Hants County Council, Kent County Council and Global Mediation Service
- Form BV1 'Baseline Audit Questionnaire', November 1999, Oxfordshire County Council Best Value Team
- Form BV2 'Review Specification', February 2000, Oxfordshire County Council Best Value Team
- RECESS Consultation Exercise with Parents of Children with SEN (PAG), March 2002, Oxfordshire County Council Strategy Directorate
- Statementing Review Questionnaire 1998/ 99 Analysis, August 2000, Oxfordshire County Council Education Service
- Statementing Review Questionnaire 1999/ 00 Analysis, February 2001, Oxfordshire County Council Education Service
- Statementing Review Questionnaire 2000/ 01 Analysis, January 2002, Oxfordshire County Council Education Service
- Education (SEN) (England) (Consolidation) Regulations 2001, June 2001, HMSO
- Education Act 1996, 1996, HMSO
- Special Educational Needs and Disability Act 2001, May 2001, HMSO
- SEN Code of Practice, November 2001, HMSO
- Educational Development Plan 2002-07, January 2002, Oxfordshire County Council Education Service
- Summary of EDP for SEN Review Purposes, April 2002, Scrutiny Review Team
- Inspection of Oxfordshire LEA, January 2000, Ofsted
- Best Value Review of Bedfordshire County Council's Statementing Service, 2000, Bedfordshire County Council Best Value Team
- The role of the LEA in school education, October 2000, DfEE
- 'Placating Peasants' by John Wright, October 1999, Independent Panel for Special Education Advice (IPSEA)
- Criteria For Referral To The Regional Disagreement Resolution Service for SEN, January 2002, South Central Regional Inclusion Partnership (SCRIP)
- six Parent Partnership leaflets, one Global Mediation leaflet, and one PAG leaflet all produced to provide information for parents
- West Berkshire Council Website – 'Special Educational Needs ' April 2002
- Cambridgeshire County Council Website 'Welcome to Cambridgeshire SEN Service' April 2002
- Central Law Training SEN Conference 2002, July 2002 documentation.
- SEN Code of Practice Leaflet, 2002, Somerset County Council
- The Distribution of Resources to Support Inclusion, Nov 2001, DfES
- Special Educational Needs Tribunal Annual Report 2000 – 01, 2000, DfEE

## Appendix 2

### **List of Witnesses**

Oral evidence was obtained from the following 'witnesses' during the review public hearings:-

- ❖ Sarah McPhie - Parents Advisory Group (PAG)
- ❖ Irene Kirkman - Education Case Officers
- ❖ Mark Forder - Council of Oxfordshire Teacher Organisations (COTO)
- ❖ Marion Roiser- Parent Partnership Scheme Co-ordinator
- ❖ Chris Sey – Principal Educational Psychologist
- ❖ Geoff Branner – Representative of Special Educational Needs Co-ordinators (SENCo)
- ❖ Jerry Owens - Oxon Secondary School Head Teachers Association (OSSHTA)
- ❖ Ron Holland - Oxfordshire Primary School Headteachers Association (OPSHTA) and Headteacher who had sat on assessment panels
- ❖ Charlotte Christie - Education Case Officers
- ❖ Simon Adams - Oxfordshire LEA SEN Manager
- ❖ Lynn Werrell – Parent and former Special Needs Governor from a school Governing Body
- ❖ Sharon Jenkinson - Advisor (SEN) – Advisory & Inspection Service
- ❖ Sian Rodway - Oxfordshire LEA Principal Officer





Central Law Training Conference on SEN – 3<sup>rd</sup> July 2002

**John McKendrick**

Key points:

- Mainstream paramount
- Maintain statements (ensure best value/best provision for SEN)
- Parents need to be kept informed
- More emphasis on early years intervention
- Working in partnership with parents
- Pupil participation
- Involve child's health care

**David Wolfe**

- Statementing process - importance of what is in parts 2/3 of a statement (to set out all needs & provision)
- Children can go to court to compel LEA to make provision as set out in part 3.
- Cases should not get to court (paying costs a waste of time!)
- Concerns LEA's shifting away from making statements.
- Banding arrangements OK but statements could be out of kilter
- Must have arrangements in place to claw back money from schools if they do not deliver
- Issues re. naming specific schools on the statement

**David Ruebain**

- Tribunals: need a decision within 2 months
- Make sure appendices attached to statements are kept
- Need documents to support different schools
- Notify school if named in statement
- Issue re. failing to spot SEN (Phelps case)
- LEAs obligation to consult
- Parents need to be told if school refused
- If a school is named on statement it has to admit the child (cannot say FULL)
- Inclusive schooling issue

At the close of the Review, the Lead Member Review Group was able to clarify and to ask questions at this Conference, on some of the themes and issues raised during the review,.

David Wolfe, a Barrister at Matrix Chambers, commented that so far as Statements of Special Educational Needs were concerned, a format was prescribed in the 1996 Act, in the schedule to the 2001 SEN Regulations, in the new Code of Practice and that a pro forma was attached to the 2001 Consolidation Regulations. The "system" broke down and he was asked to intervene, where statements of SEN had been poorly drafted. If statements were properly drawn up there was less scope for

disagreement later on (and this corresponded with some of the reservations expressed among witnesses to the review about the drafting of statements). Legal proceedings usually commenced because stage 3 of statements (ie, provision) had not been properly drafted.

He also had concerns “that many LEAS are moving away from statementing”. The Audit Commission had commented on the “bureaucracy” attached to the statementing process and some authorities had moved away from this by transferring statementing budgets directly into schools, Suffolk County Council being given as an example. In his view, the transfer of budget arrangements and the practicalities involved (in effect ) reintroduced a statementing process, but without the safeguards and quantification brought by the SEN Code.

The former “Avon matrix” was raised. Its purpose had been to provide a formula for the allocation of SEN resources. In Avon, it had been attached to all individual statements of SEN and as such there were concerns about its lawfulness. There was a view that it was legitimate to use such a matrix so long as it was properly promoted, that it did not remain confidential and that it was not rigidly adhered to in allocating resources on an individual basis as set out in any statements.

David Ruebain of Levenes and co-author of Education Law and Practice, discussed the means by which decisions concerning SEN could be challenged and quoted extensively from judicial review hearings and other key cases including those relating to Oxfordshire. Given that one of the objectives of the review is to obtain a clear picture of the information needs of Councillors, we are of the view that all Members should be informed of the outcomes of such hearings and case law affecting Oxfordshire, as they occur.

John McKendrick, a Barrister at Hardwick Buildings and David Wolfe in discussing the framework of SEN and the new Code of Practice, drew out the main emphases of the new Code and in particular so far as this review is concerned, referred to:

- the greater emphasis on early years intervention (especially the identification, assessment and provision for SEN in early years)
- more involvement by parents in the processes including via parent partnership services
- taking more seriously and more fully involving young people (paragraph 3.15 of the Code) and hearing “the voice of the child”
- the involvement of the Connexions Service in the year 9 review and
- in the statutory assessment procedures.

The impact of other statutory provisions on the new SEN framework was also highlighted, namely the Special Education Needs and Disability Act 2001 and the Community Care Act and the relevance of the time limits set out in the Education (SEN) (England) (Consolidation) Regulations 2001.

(Copies of all the material produced for the conference is available in the Members' Resource Centre.)

### **SEN Service – Budget Notes**

The Statementing Budget itself, (approximately £2.3 million) was a centrally held LEA budget, not delegated, until the financial year 2002/03.

The SEN Index was always an element of the delegated schools budget.

Where does the 85% delegation figure (often quoted during the review), come from?

There are 2 strands to this:

- There has been a directive from the DfES during the last 2-3 years around the Council's final financial settlement. The Govt has wished to pass any extra Standard Spending Assessment onto the Education budget.
- There is another (technical) target which has now been set ; the LEA had to delegate at least 85% of the "Local Schools Budget" – this has now increased to 87%.

The LSB is the delegated spend. The SEN element of the delegated spend includes money spent on statementing. The background to this is that to move from 85-87% LSB, approximately £3 million extra was needed and 2 areas were looked at: SEN statementing and primary school meals.

How does the statementing budget process work?

The statementing budget =

1. Education Psychologists' costs, assessment and statementing costs etc
2. Provision for pupils with individual statements.

Once a statement had been produced in the past, the LEA had a statementing budget which was transferred into schools at termly intervals to support the statements. Now from 1<sup>st</sup> April, the money is transferred straight to the schools. Two "pots" of money have been held back centrally – to anticipate requirements for 10 year olds at the primary transfer to secondary and at the secondary leaving age. Some money is also held back in anticipation of growth in statement numbers; if few new statements materialise the money held back is carried forward into the next financial year as a central underspend – this has not been the case in practice.

The 87% delegation now means that £1.7 million is delegated for school meals and £2.4 million for statementing (from a total statementing budget of @ £3 million). The average cost of a statement may be calculated by assessing the preparation and review costs of a statement and dividing by the number of pupils concerned. Oxfordshire LEA is quite a high spender on SEN according to Audit Commission indicators, because of the particular emphasis which the LEA gives to its estimates of the % of time spent on activities.

What is the overall context within which the SEN budget is set?

The Education base budget is £246 million; the current costs of statements plus some growth is built into this figure. As a general comment, there was (say) 7-8 years ago, a stigma attached to “being statemented”. This is no longer the case in Oxfordshire and many parents see the statementing process as being a way to access the SEN system and the resources attached. As a general comment it is fair to say that indices of deprivation loosely correlate with the way that the SEN budget is allocated.

Some elaboration of terminology may be required here:

The LEA has a “Local Schools Budget”, (the revenue budget of £246 million) for the financial year which is the amount appropriated by the LEA for meeting all of the expenditure in the year of a class or description set out in the 1998 legislation. The “Individual Schools Budget” is the amount remaining after deducting from the local schools budget for the year “such planned expenditure by the authority in respect of the year as they may determine should be deducted....”. This is £207 million of which £144 million is age-weighted pupil related in distribution. £8.7 million of this is, effectively, processed through the SEN index. As may be seen elsewhere from reports to the former Education Committee concerning the 87% requirement and work on the school meals and SEN formulae, a new SEN formula has been introduced and is being phased in from 2001/02 to 2002/03. The SEN “social deprivation factor” was included in the new SEN index at the DfES’s request. There are 2 separate monies allocated through the SEN index (£8.7 mill) now: the SEN index figure and the social deprivation factor but they are only shown as one figure.

To summarise the SEN statementing budget has been overspent year on year by some ‘00’s of £thousands even though significant growth has been planned in from one year to another. Now, financial information on statementing (as a result of the greater delegation and formula changes etc) is more readily available and has enabled the LEA to focus more on how the money has been spent.

2000-01		All Average/				County councils					
Best Value & Audit Commission PI Description	BVPis Ref	Yes	75th	Median	25th	Average	75th	Median	25th	Oxon	Quartile
% of statements within 18 weeks (without exceptions)	43a (K12b)	82%	96%	87%	76%	85%	94%	86%	78%	83%	average
% of statements within 18 weeks (including exceptions)	43b (K12c)	57%	72%	58%	42%	60%	74%	60%	52%	53%	bottom
pupils with statements as a % of all children	AC B3 (K11)	2.1%	2.3%	2.2%	1.9%	2.1%	2.5%	2.1%	1.9%	1.5%	below
No. of statements issued during the year per thousand children	AC B4 (K12a)	2.7	3.1	2.6	2.2	2.5	2.9	2.5	2.2	2.00	bottom
% of pupils in special schools as % of all children	(K13)									0	n/a

1999-00		All Average/				County councils					
Best Value & Audit Commission PI Description	BVPis Ref	Yes	75th	Median	25th	Average	75th	Median	25th	Oxon	Quartile
% of statements within 18 weeks (without exceptions)	43a (K12b)	77%	92%	80%	69%	80%	90%	83%	73%	75%	bottom
% of statements within 18 weeks (including exceptions)	43b (K12c)	53%	66%	53%	40%	54%	62%	53%	46%	49%	below
pupils with statements as a % of all children	AC B3 (K11)	2.1%	2.3%	2.1%	1.9%	2.1%	2.3%	2.1%	1.9%	1.5%	below
No. of statements issued during the year	AC B4 (K12a)	235	289	181	122	450	494	379	296	280	bottom
% of pupils in special schools as % of all children	(K13)	0.83%	0.99%	0.82%	0.69%	0.74%	0.88%	0.75%	0.56%	0.60%	below

1998-99		All Average/				County councils					
Best Value & Audit Commission PI Description	BVPis Ref	Yes	75th	Median	25th	Average	75th	Median	25th	Oxon	Quartile
% of statements within 18 weeks (without exceptions)	43a (K12b)	67%	87%	69%	55%	72%	89%	72%	61%	66%	below
% of statements within 18 weeks (including exceptions)	43b (K12c)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	n/a
pupils with statements as a % of all children	AC B3 (K11)	2.10%	2.30%	2.00%	1.80%	2.10%	2.30%	2.00%	1.90%	1.5%	below
No. of statements issued during the year	AC B4 (K12a)	243	288	190	118	455	514	411	302	389	average
% of pupils in special schools as % of all children	(K13)	0.86%	1.01%	0.84%	0.70%	0.75%	0.90%	0.73%	0.60%	0.70%	average

1997-98		All Average/				County councils					
Best Value & Audit Commission PI Description	BVPis Ref	Yes	75th	Median	25th	Average	75th	Median	25th	Oxon	Quartile
% of statements within 18 weeks (without exceptions)	43a (K12b)	54%	82%	52%	30%	63%	82%	64%	48%	58%	below
% of statements within 18 weeks (including exceptions)	43b (K12c)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	n/a
pupils with statements as a % of all children	AC B3 (K11)	2%	2%	2%	2%	2.1%	2.3%	2.1%	1.9%	1.4%	bottom
No. of statements issued during the year	AC B4 (K12a)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	364	n/a
% of pupils in special schools as % of all children	(K13)	0.9%	1.1%	0.9%	0.7%	0.8%	0.9%	0.8%	0.6%	0.7%	below

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**2000/01 OUTTURN BV & AC PIs -ENGLAND**

The summary statistics (averages, quartiles) for the data here are in a separate file called 2000 01 BV\_ ACPI OUTTURN STATS

#	Authority	1				43a				43b				AC B3				AC B4				(K13)	
		LA21	SENs in 18 weeks without exceptions	SENs in 18 weeks without exceptions	SENs in 18 weeks without exceptions	SENs in 18 weeks without exceptions	SENs in 18 weeks with exceptions	SENs in 18 weeks with exceptions	SENs in 18 weeks with exceptions	SENs in 18 weeks with exceptions	Children with statements of special educational need	Children with statements of special educational need	Children with statements of special educational need	Children with statements of special educational need	No of SEN statements issued during year per 1,000 pop 0-19	No of SEN statements issued during year per 1,000 pop 0-19	No of SEN statements issued during year per 1,000 pop 0-19	SEN statements issued during year per 1,000 pop 0-19	% of pupils in special schools as a % of all children	% of pupils in special schools as a % of all children	% of pupils in special schools as a % of all children	% of pupils in special schools as a % of all children	
	YEAR	2000/ 01	1997/ 98	1998/ 99	1999/ 00	2000/ 01	1997/ 98	1998/ 99	1999/ 00	2000/ 01	1997/ 98	1998/ 99	1999/ 00	2000/ 01	1997/ 98	1998/ 99	1999/ 00	2000/ 01	1997/ 98	1998/ 99	1999/ 00	2000/ 01	
COMPARITOR COUNCILS																							
86.2	Cambridgeshire	Yes	63%	91%	92%	75%				68%	59%	2.1%	2.1%	2.3%	2.2%	4.33	2.62	2.71	2.80	0.8%	0.72%	0.80%	
92.2	Devon	Yes	63%	15%	28%	76%				26%	69%	2.2%	2.3%	2.2%	2.2%	3.22	2.02	1.96	2.30	0.9%	0.70%	0.75%	
93.2	Dorset	Yes	60%	75%	97%	92%				97%	92%	3.1%	2.0%	2.2%	2.3%	2.14	1.41	1.89	3.5*	1.4%	1.11%	0.85%	
97	Gloucestershire	Yes	17%	54%	90%	99%				47%	53%	2.0%	2.0%	2.1%	2.0%	2.00	2.67	3.17	2.70	1.1%	1.02%	0.94%	
98.2	Hampshire	Yes	82%	94%	94%	96%				86%	82%	1.5%	1.6%	1.6%	1.6%	1.51	1.51	1.27	1.62	0.8%	0.91%	0.88%	
110.2	North Yorkshire	Yes	37%	66%	60%	67%				50%	57%	1.9%	1.9%	1.9%	1.9%	2.93	2.40	2.26	2.56	0.7%	0.64%	0.67%	
112	Oxfordshire	Yes	58%	66%	75%	83%				49%	53%	1.4%	1.5%	1.5%	1.5%	2.26	2.42	1.74	2.00	0.1%	0.7%	0.6%	
114	Somerset	Yes	43%	66%	100%	100.0%				56%	62%	1.8%	1.8%	1.7%	1.7%	1.94	1.91	1.80	1.59	0.7%	0.58%	0.51%	
116	Suffolk	Yes	82%	92%	81%	75%				54%	60%	1.9%	2.0%	2.0%	2.2%	2.75	3.17	3.20	3.00	0.6%	0.59%	0.54%	
120.2	Wiltshire	Yes	86%	88%	92%	89%				72%	68%	2.0%	1.8%	1.8%	1.8%	2.04	1.96	2.12	2.10	1.0%	0.66%	0.56%	
1406	West Berkshire	#		56%	90%	#				76%	#		1.9%	2.2%	2.2%		2.76	2.97	3.16		1.30%	0.90%	
Comparitor average			59%	69%	82%	85%					62%	66%	2.0%	1.9%	1.9%	2.0%	2.51	2.26	2.28	2.38	0.8%	0.8%	0.7%
Oxon's relative position			7 <sup>th</sup>	7 <sup>th</sup>	9 <sup>th</sup>	6 <sup>th</sup>					9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	11 <sup>th</sup>	11 <sup>th</sup>	11 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	2 <sup>nd</sup>	9 <sup>th</sup>	11 <sup>th</sup>	j.6 <sup>th</sup>	8 <sup>th</sup>

\*Figures in bold font represent highest and lowest values within comparitor group

**Results from Oxon SEN Development Plan 2000 and Oxon LEA staff**

Performance Indicator	Result for 1997/98	Result for 1998/99	Target for 1999/00	Result for 1999/00	Target for 2000/01	Result for 2000/01	Target for 2001/02	Result for 2001/02
No. of assesment carried out within 18 weeks	58%	66%	70%	75%	80%	80%	90%	90%*
Number of tribunals per 10,000 school pop.		1.5						
Number of tribunals	??	13	n/a	17	n/a	37	n/a	??
Percentage of children with a statement		1.5%						
No. of referrals to ass't panel that meet criteria		65%	80%					
Percentage of children in special schools	1.1%	1.1%	1.1%		1.0%		0.9%	
Parent satisfaction	87%							
Parents reporting they received clear info	89%							
Key stage 1 average SEN levels - reading	1.9%	2.1%	2.3%					
Key stage 1 average SEN levels - writing	1.8%	1.9%	2.0%					
Key stage 1 average SEN levels - spelling	1.5%	1.8%	2.0%					
Key stage 1 average SEN levels - maths	2.0%	2.1%	2.2%					

**Results from Audit Commission web-site**

Performance Indicator	Result for 1997/98	Result for 1998/99	Target for 1999/00	Result for 1999/00	Target for 2000/01	Result for 2000/01	Target for 2001/02	Result for 2001/02
% of statements within 18 weeks (without exceptions)	58%	66%		75%		83%		
% of statements within 18 weeks (including exceptions)	0	0		49%		53%		
pupils with statements as a % of all children	1.4%	1.5%		1.5%		1.5%		
No. of statements issued during the year per 1,000 children	364	389		280		2.00		
% of pupils in special schools as % of all children	0.7%	0.7%		0.6%		0		

LEA Statementing Review Parental Questionnaire Analysis						
Question	1997/ 98	1998/ 99	1999/ 00	2000/ 01	2001/02	Change
Q4 The information about assessment process was clear	n/a	73%	78%	87%	??	better
Q5 The information about assessment process was helpful	n/a	80%	80%	88%	??	better
Q7a Information was given about PP Scheme	n/a	n/a	n/a	51%	??	??
Q7b Contact # was given for PP Scheme	n/a	n/a	n/a	39%	??	??
Q7c Information about IPS support was given	n/a	n/a	n/a	65%	??	??
Q10 More support was desired	n/a	65%	49%	38%	??	better
Q12 Parents' views on their child was sent to assessors	n/a	87%	89%	93%	??	better
Q13 Parents felt their views were taken <u>fully</u> into account	n/a	51%	57%	56%	??	better
Q14 Parents said their child had opportunity to contribute	n/a	40%	33%	38%	??	worse
Q15 Reprts & statements described parents' child well	n/a	76%	77%	86%	??	better
Q16 Assessment was viewed as useful	n/a	85%	77%	81%	??	worse
Q17 Letters from LEA were clear, easy to read & helpful	n/a	76%	73%	89%	??	better



Year	LEA	No of statements	No of applicants as % of statements	No of applicants per 10,000 of school population	No of Applications	Confirmed LEA won	Modified or Overturned LEA lost	Struck out or dismissed	Withdrawn
98/ 99	Cambridgeshire	349	0.00%						
	Devon	514			?	?	?	?	?
	Dorset	219	0.91%		2	100%	0%	0%	0%
	Gloucestershire	371	0.00%						
	Hampshire	588	10.03%		59	17%	10%	5%	66%
	North Yorks	329	6.99%		23	0%	22%	0%	78%
	Oxfordshire	389	3.34%		13	23%	31%	0%	46%
	Somerset	229	0.00%						
	Suffolk	475			?	?	?	?	?
	W.Berkshire	105			?	?	?	?	?
	Wiltshire	210	0.00%						
99/ 00	Cambridgeshire	361	10.25%	4.79	37				
	Devon	501	3.59%	1.87	18	?	?	?	72%
	Dorset	293	1.02%	0.55	3	67%	0%	0%	33%
	Gloucestershire	441	2.27%	1.17	10				
	Hampshire	494	13.97%	3.91	69	17%	28%	3%	54%
	North Yorks	309	4.85%	1.57	15	33%	7%	0%	67%
	Oxfordshire	280	6.07%	2.00	17	12%	12%	12%	65%
	Somerset	216	14.35%	4.41	31				
	Suffolk	480	7.50%	3.56	36	31%	36%	8%	25%
	W.Berkshire	113	1.77%	0.81	2	0%	100%	0%	0%
	Wiltshire	227	7.93%	2.80	18				
00/ 01	Cambridgeshire	373	8.85%	4.25	33				
	Devon	586	3.75%	2.26	22	?	?	?	36%
	Dorset	300	2.33%	1.27	7	14%	0%	0%	29%
	Gloucestershire	375	2.67%	1.17	10				
	Hampshire	630	11.11%	3.95	70	21%	19%	1%	59%
	North Yorks	351	5.13%	1.75	18	17%	0%	0%	83%
	Oxfordshire	322	11.49%	4.33	37	22%	30%	3%	46%
	Somerset	191	10.47%	2.83	20				
	Suffolk	444	6.53%	2.85	29	14%	31%	14%	41%
	W.Berkshire	120	3.33%	1.61	4	0%	0%	0%	0%
	Wiltshire	222	9.01%	3.08	20				

 1<sup>st</sup>

 6<sup>th</sup>

 11<sup>th</sup>

 1<sup>st</sup>

 11<sup>th</sup>

	Legal challenge	Use a matrix
Cambridgeshire		
Devon	?	NO
Dorset	NO	NO
Gloucestershire		
Hampshire	NO	NO
North Yorks	NO	NO
Oxfordshire	?	YES
Somerset	YES	
Suffolk	?	NO
W.Berkshire	NO	YES
Wiltshire		