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for Education

Research into how local authorities are ensuring sufficient places and supporting vulnerable children

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Executive summary

Introduction

This research has explored the future role of local authorities (LAs), and the respective roles of schools, trusts and other partners within local education systems, in an increasingly academised education system in England. The research has focused on two aspects of the role of the LA where LAs have important statutory responsibilities:

1. **pupil place-planning** – ensuring that there are sufficient school places for all pupils in a local area in mainstream schools and settings for pupils with high needs (special schools and alternative provision, or AP); and
2. **support for vulnerable pupils** – ensuring appropriate support for pupils with additional needs and/or vulnerabilities, including those with special educational needs or disability (SEND), those at risk of exclusion or requiring support from AP, and those requiring support from early help or children’s social care.¹

These are not the only two areas where LAs have important statutory responsibilities, nor can the LA’s broader role in education be reduced to these two areas. These are, however, two important areas requiring local-system-wide co-ordination, and thus clarity about respective roles and responsibilities within local systems. We have used the term “local education system” to describe the connections between education and children’s services within geographical LA boundaries.

The research was carried out between May and October 2021. We approached the work in three phases.

1. **Building the evidence base** – in-depth engagements with a range of school, trust and LA leaders and partners in 10 local areas.
2. **Testing emerging findings** – to test and build on our findings, we offered every LA in England the chance to attend a virtual roundtable (78 took part) and complete an online survey (we received responses from 119 LAs), and held discussions with national and regional academy trust leaders, Regional Schools Commissioners (RSCs), the Children’s Commissioner for England, and a range of national stakeholder bodies representing school, trust and LA leaders.
3. **Reporting** – collating the evidence we have gathered in this report.

¹ This research has focused on LA responsibilities relating to school-age children. We recognise that, in the SEND system, for example, LA responsibilities extend to pre-school children and post-school students. Because our focus has been on school-age children, we have used the term ‘vulnerable pupils’ in this report.

Overarching messages about roles and responsibilities within local education systems

The importance of (and reliance on) relationships

A core finding from this research concerned the critical importance of “relationships” within the education system in England. There is a positive aspect to this, namely the strong, collaborative, trust-based relationships and partnership structures developed by school, trust and LA leaders and partners. On the other hand, however, relationships are not a sufficient basis for effective, joined-up approaches to place-planning and support for vulnerable pupils. Approaches based on relationships alone are inherently fragile, dependent on the willingness of key individuals to take part, and vulnerable to changes in personnel and leadership. Building and sustaining relationships requires time, skill, and expertise – it is an essential aspect of the role of leaders within local systems for which they require a clear mandate and capacity.

How the make-up of the local education system affects partnership working

This research has considered roles and responsibilities in the context of the growth of academies. As such, we have explored the extent to which the make-up of a local system – the different types of schools, including academies – affects functions like place-planning and support for vulnerable children. We found that the make-up of the local education system *does* influence these functions, but not in a way that can be reduced to the proportion of schools that are academies. School, trust and LA leaders and parents/carers argued strongly that the determining factor in whether schools engaged with system initiatives like place-planning and support for vulnerable pupils was whether the leadership and ethos of a school were such that it saw itself as part of an interdependent local ecosystem or independent from the local system – “local-system-orientated” as opposed to “isolationist”. In their survey responses, 89% of LAs agreed that relationships within local systems depended more on ethos and leadership than school type, and 95% agreed that the LA and schools worked together irrespective of school type.

Nevertheless, our research also suggested that there are two ways in which academisation *can* affect local education systems. First, because there are different processes for making decisions and resolving disputes about place-planning and placements of vulnerable pupils for academies and maintained schools, where an “isolationist” school is an academy, it can be more difficult, complex, and time-consuming to resolve issues. Second, while not generalising, school, trust and LA leaders and parents/carers reported that, among the minority of schools that took an “isolationist” approach, these were more likely to be schools that were part of larger regional or national academy trusts.

The need to align roles, responsibilities, and decision-making authority

There was broad consensus among school, trust and LA leaders and parents/carers that, for roles and responsibilities to be meaningful and fulfilled effectively, it was important for

those roles and responsibilities to be aligned with the authority to take decisions, as well as with broader policy aims and incentives. Currently, there are aspects of place-planning and support for vulnerable pupils where there is a lack of alignment between roles, responsibilities, decision-making authority, and policy incentives. Our research found broad support for aligning roles, responsibilities and decision-making authority for place-planning and support for vulnerable pupils at local area level. Furthermore, there was broad agreement among school, trust and LA leaders and parents/carers that LAs were uniquely placed to play this role. (In relation to place-planning, a minority of trust leaders and national stakeholders argued that the RSC should be wholly or partially responsible for delivering place-planning.) Whichever way roles and responsibilities are configured, there was consensus about the need for clarity, alignment of responsibilities and decision-making authority, for reciprocal expectations of schools, trusts and LAs around participating in local partnership-based approaches to place-planning and support for vulnerable pupils, and a renewed, more collaborative relationship between local and central government.

Research theme 1: Pupil place-planning

In any area of policy, there needs to be alignment of statutory responsibilities, decision-making authority, and policy “incentives”. In relation to the first of our two research themes, school place-planning, we found that there are fundamental misalignments between statutory responsibilities and decision-making authority. Specifically, LAs are responsible for ensuring that there are sufficient school places for children in the local area, but they do not have the corresponding authority to take some key decisions that directly affect sufficiency. While this is not a new issue (since before academies, voluntary-aided schools have had control over admissions), the expansion of academies and free schools has expanded the scale of decisions about place-planning and admissions over which LAs do not have decision-making authority. In this section of the report, we explore current arrangements, challenges, and misalignments in relation to place-planning in mainstream schools (expansions, new provision, surplus places, closing provision and admissions) and for pupils with high needs.

Expanding existing mainstream school provision

In many local areas, school, trust, and LA leaders described well-established processes for planning mainstream school places. Such approaches comprised not only a technical aspect (projecting demand and matching that to supply), but also aspects based on dialogue and partnership (seeking agreement among school and trust leaders about how to meet demand for school places through “local solutions”).

Three sets of challenges were reported. First, school, trust and LA leaders described the impact on provision and budgets of unexpected medium-term fluctuations in pupil numbers. In most instances, these fluctuations resulted from unprecedented national and

international events (such as the pandemic, Brexit, and the Hong Kong resettlement scheme), but, in a small number of local areas, school and trust leaders were critical of LA planning and the lack of dialogue with school and trust leaders.

Second, school, trust and LA leaders cited a concern about the lack of join-up between the planning of housing developments and school places. This was particularly the case in shire counties, where upper-tier LAs argued that they had no formal role in negotiations about funding and decisions taken by district councils that had a direct effect on school place-planning. The issue was not exclusive to county councils, however – unitary authorities described the challenge of managing competing priorities of building houses and planning for school places.

Third, the most significant challenge reported to us was the misalignment between LAs' duties to ensure sufficient school places and their lack of authority to make decisions about the expansion of school places in academies. Where an LA determines that there is a need to expand school places, it has the decision-making authority to expand places in maintained schools, but in the case of academies it is the academy trust that must propose an expansion and the RSC who decides. LA leaders argued that this gives rise to difficulties in getting access to information about physical capacity in academies, uneven negotiating positions with academy trusts, and potential perverse incentives to look to maintained schools when expansions are required.

Creating new mainstream school provision

To expand school places, LAs may also develop new provision in the form of free schools. Several of the local areas with which we engaged had made extensive use of the “central route” free school programme (where the Department for Education (DfE) invites applications from prospective providers and decides on their proposals). Those that had used this route proactively were positive about how it had helped them to respond to increased demand for school places. All LA leaders welcomed the shift of emphasis of central route free schools, specifically to align with basic need for school places. Nevertheless, since it is the Secretary of State and not LAs deciding to approve central route free schools, there remains the potential for misalignment with local place-planning. Instances where central route free schools have been approved that cut across LA place-planning were reported to have become rarer, but some LAs we engaged had recent experience of this challenge.

Similarly, several LAs described the proactive and positive use that they had made of the “presumption route” for seeking free school proposals (where an LA identifies the need for a new school, it must seek proposals to establish a new academy). At the same time, LA leaders argued that the presumption route added complexity to the process of creating new provision, which brought risks of delays and challenges in fulfilling LAs' sufficiency duties. Examples were reported to us where delays in agreeing and building presumption route

free schools – delays outside the direct control of LAs – had created sufficiency challenges and had a negative impact on existing schools and trusts.

Dealing with surplus mainstream school places

Much of the focus of place-planning over the last decade has been on expanding school places. In this research, we found that local areas are starting to see a decrease in pupil numbers, particularly in the primary phase in cities and towns. Some local areas had responded proactively by facilitating a collective process to mitigate the risk of an over-supply of school places. Taking a system-wide, co-ordinated approach was reliant, however, on relationships and the willingness of schools, trusts and the LA to engage, rather than because of any formal mandate for such an approach.

Closing schools

LAs have the power to propose and decide upon the closure of maintained schools, but in the case of academies these powers reside with the trust and the Secretary of State. The challenge – and misalignment – reported here was where the priorities of the LA and trust in dealing with falling pupil rolls in an academy may come into conflict. Specifically, we heard examples where academies were facing falling rolls and financial challenges in the short term, and where the LAs in question had argued that there was a long-term demand for school places in the areas served by those academies, but nevertheless where central government had decided to close those academies or reduce the number of places. The fact that, in these examples, LAs reported that this left them with a shortage of school places (and the financial shortfall of having to fund new places) highlights the potential misalignment between statutory responsibilities, financial risk and decision-making authority.

Admission arrangements for mainstream schools

Open and fair admission arrangements are an important aspect of ensuring that every school-age child has access to a school place. School, trust, and LA leaders reported strong concerns about normal and in-year admission arrangements for mainstream schools. (Fair access and admission to special schools are described in other parts of this report.) The majority of the school and trust leaders we engaged argued that the increasing proportion of schools and trusts acting as their own admission authorities – responsible for setting admission arrangements and managing in-year admissions – creates risks to ensuring equitable access to school places.

While there was not a widespread and explicit view put forward that LAs should be the admission authority for all schools, this view was expressed by several of the national and regional academy trust leaders and national system leaders we engaged. Concerns were raised about how oversight of admission arrangements can be exercised effectively and how to ensure that practice complies with the Admissions Code (the code of practice relating to admission arrangements issued by the Secretary of State) in a system in which

some schools (academies, foundation schools and voluntary-aided schools) are their own admission authority.

In terms of setting admission arrangements, we heard two sets of concerns. First, LA leaders argued that the sheer number of schools and trusts that are their own admission authority made it increasingly difficult to oversee admission arrangements and ensure that these were compliant with the Admissions Code. Second, school, trust and LA leaders described the damaging impact on local schools and trusts of schools/trusts that are their own admission authority taking unilateral decisions about admissions arrangements – for example, increasing or reducing their published admission numbers (PANs) without considering the effect on the local ecosystem of schools.

In terms of normal admissions, the concerns raised by some academy trust leaders related to specific instances where their schools, finances and quality of education had been negatively affected by the overtly aggressive practices of a minority of other academy trusts. Concerns were also raised about the practice of establishing admission appeals panels, and whether some schools and trusts that are their own admission authorities were establishing panels that were genuinely independent.

In terms of in-year admissions, as with admission arrangements generally, LA leaders argued that the large and growing number of schools and trusts that are their own admission authorities made it increasingly difficult to identify and address non-compliant in-year admission practices and prevent delays to pupils accessing a school place. While the Admissions Code has strengthened the requirement for schools/trusts that are their own admission authorities to notify LAs about in-year admissions, the concern here was a potential blind-spot in identifying and addressing instances where an in-year admission was inappropriately refused.

* * *

Overall, the most common barriers to planning mainstream school places highlighted by LA leaders were: the lack of access to capital funding – specifically, sufficient funding to cover new builds, not just adaptations and maintenance; cashflow when waiting to receive section 106 funding; and a mismatch between incremental basic need funding and long-term growth in demand for places. Other barriers commonly identified by LAs included challenges in securing agreement to changes in planned places from schools; schools making unilateral decisions about PANs and admissions; and unexpected changes in pupil numbers. LA leaders reported that most of these barriers were just as likely to occur regardless of school type. LA leaders identified three specific barriers, however, that they considered were more likely to occur when working with academies: (i) accessing information about the supply of available places, (ii) securing agreement from schools to change planned school places, and (iii) schools making unilateral decisions about PANs and admissions.

Place-planning for pupils with high needs (SEND and AP)

Many LAs were engaged in developing approaches to high needs place-planning. They acknowledged that these approaches were at a formative stage, but also that the task of high needs place-planning was more complex, and had more variables with which to contend, than its mainstream counterpart. Specifically, those additional variables included changes in needs, variable joint working between education and health services, and the impact of decisions by parents/carers, schools and trusts, and the First-Tier Tribunal (SEND) (the latter is responsible for hearing appeals against LA decisions regarding SEN).

The DfE describes LAs as “commissioners” of high needs provision. Our research identified three sets of barriers that impede LAs’ ability to act as true commissioners. First, LAs argued that demand for high needs places was outstripping available resources, with LAs having limited ability to manage demand or increase available resources, both revenue and capital. (In their survey responses, 84% of LAs identified demand for places outstripping capacity as a regular barrier to high needs place-planning, while 62% identified lack of access to capital as a regular barrier.)

Second, LAs reported barriers to re-designating existing provision, especially if that provision is commissioned from an academy trust. As with mainstream academies, it is the academy trust that has the power to propose significant changes such as designations, and the RSC who decides, rather than the LA. In our survey, 67% of LAs reported challenges in reaching agreement to commission new provision regularly or occasionally, and 49% of LAs reported challenges in re-designating existing provision regularly or occasionally. Another option for LAs seeking to create new high needs provision would be to create a special/AP free school. LA leaders argued that this was not without challenges. Specifically, they noted that there was currently a lack of certainty about when future central route special/AP free school application waves would be held, and that the presumption free school route was not fast or responsive enough to offer LAs a reliable way to meet demand for high needs places. LA leaders also identified the lack of access to additional capital and revenue funding for new special/AP free schools as a barrier to relying on this as a means of creating new high needs places.

Third, LAs reported challenges in decommissioning provision that is no longer the most effective means of using available resources. Again, the lack of access to capital and revenue funding was cited as a barrier. Some LAs also argued that the process for decommissioning high needs places from an academy trust was more complicated, since it involved negotiations with the trust and the Education and Skills Funding Agency (ESFA). LA leaders – echoed by school/trust leaders and parents/carers – argued that the combination of these barriers created a vicious circle. Not being able to access or create the right number or type of high needs places locally meant LAs had to look outside the local area or to the independent sector, which in turn could increase pressure on high needs block resources. As we explain under our second research theme, pressure on the

high needs block was identified by LAs as the most common barrier to developing a strategic local approach to supporting vulnerable pupils.

Future roles, responsibilities, and decision-making authority for pupil place-planning

There was universal agreement among school, trust, and LA leaders that there needs to be a local body with responsibility for co-ordinating pupil place-planning, the authority to take decisions, and accountability for ensuring that there are sufficient school places in a local area. There was also unanimous support for the principle that the exercise of decision-making authority should be done in a way that encourages open dialogue, consensus, and agreement to “local solutions”. Furthermore, there was near-universal agreement among school, trust, and LA leaders that the LA is uniquely placed to be the body responsible for pupil place-planning.

When considering potential alternatives, there was no interest in schools/trusts taking direct responsibility for place-planning, although there was support for strengthening expectations that schools/trusts engage and participate in local place-planning. A minority of trust leaders and national stakeholders favoured increasing the role, responsibilities, and accountabilities of the RSCs for place-planning – either taking on responsibility for delivering sufficient school places or being jointly responsible with LAs.

Research theme 2: Support for vulnerable pupils

As with place-planning, in relation to support for vulnerable pupils there were challenges reported to us linked to the misalignment between LAs’ statutory responsibilities and decision-making authority. Our research suggests, however, that these challenges sit within the context of a more fundamental misalignment between, on the one hand, policy aims and incentives, and, on the other, roles and responsibilities.

Specifically, supporting vulnerable pupils effectively requires a system-wide approach that goes beyond individual institutions’ statutory responsibilities, and requires a range of policy areas, aims and incentives to be aligned. Any one institution’s ability to fulfil its statutory responsibilities and wider roles relies on all partners doing the same as part of a coherent continuum of support. There are, however, barriers to developing a whole-system approach to support for vulnerable pupils. The most significant barrier highlighted by school, trust and LA leaders and parents/carers was the lack of clear expectations and incentives relating to inclusion in mainstream schools. Without such expectations and incentives at national level, it is left to local areas to attempt to agree these locally, but without a formal mandate to do so.

Furthermore, such attempts to agree collective approaches at local level are dependent on relationships and the willingness of school, trust, and LA leaders to engage, and are inherently fragile as a result. School, trust and LA leaders and parents/carers stressed that

the challenges of non-engagement in strategic initiatives or non-inclusive practice were systemic issues, and not exclusive to any one type of school. Nevertheless, they reported that two areas that were more difficult to tackle if the school in question was an academy were: (a) non-engagement in strategic, system-wide approaches; and (b) non-inclusive practice and resistance to admission of individual vulnerable pupils.

Maintaining a collective approach also requires that LAs have the capacity and expertise to do this. The majority of LAs reported having increased their capacity to reflect greater demand on statutory areas of their work, but argued that their capacity was not keeping pace with the rising demand for statutory and non-statutory support for vulnerable pupils.

Developing strategic system-wide approaches to supporting vulnerable pupils

Our research has explored the ways in which local systems develop strategic approaches to supporting vulnerable pupils, including specifically children and young people with SEND, pupils requiring AP, and those requiring protection from harm.

In relation to children with SEND, we have not sought to describe the range of challenges facing the SEND system or to duplicate the much-anticipated SEND Review. Instead, we have described two main ways in which those challenges relate to the roles of LAs and partners in local systems. First, the current SEND system places LAs at the heart of a perfect storm of rising and potentially open-ended need and demand, finite resources from which to meet need, and a lack of levers to affect the factors driving demand. School, trust, and LA leaders reported consistently that they were seeing an increase in both the volume of demand and the levels and complexity of need. At the same time, resources from which to meet increased need and demand are finite (the high needs block of the Dedicated Schools Grant, or DSG), while variable approaches to inclusion, how the current statutory framework frames the way decisions about statutory assessments and plans are to be made, and parents'/carers' right to appeal to the Tribunal can contribute to greater demand on local SEND services. Second, while the local area SEND inspection, carried out by Ofsted and the Care Quality Commission (CQC), is premised on inspecting the *local area's* approach to SEND, this is not reflected in the accountability for individual institutions. While the experience of the local area SEND inspection has catalysed a local area approach to SEND, aside from these inspections, there is little that reinforces the mandate for LAs to convene partners and shape a collective local area approach to SEND.

Ensuring the appropriate use of AP and avoiding the inappropriate use of exclusions similarly require a local-system-wide approach. There are, however, two sets of barriers to this. First, there remain perverse incentives around exclusion in the current funding and accountability system. If a pupil requires support from AP, a school that keeps the pupil included will be responsible for funding that support and for the pupil's outcomes. If a school excludes the pupil, the LA is responsible for funding a placement in AP; the excluding school is not responsible for the pupil's outcomes, and, while it will lose the per-pupil funding for that pupil, this will be less than the cost of an AP placement. Second,

while DfE guidance states that permanent exclusion is to be used as a last resort, ensuring that it is used appropriately requires there to be an agreed local approach. There is, however, no expectation or mandate for schools, trusts and LAs to agree such an approach. Where local approaches have been agreed, these rely on good will and relationships, and are, as we described earlier, vulnerable to changes in personnel. While non-engagement in local AP arrangements was not reported to be an issue exclusive to any one type of school, LA leaders reported that the schools most likely not to engage were those in large regional academy trusts, where LAs had few levers to challenge non-inclusive practices.

By contrast, we heard a more positive set of messages about joint working around safeguarding in education, and specifically in relation to the role of the Virtual School. We do not want to overstate our evidence here – we recognise that the numbers of children under the remit of the Virtual School are smaller.² Equally, some Virtual School Heads reported resistance from a minority of schools to the admission of a child in care or threats to exclude a child in care. Nevertheless, the messages we heard were more positive than for other vulnerable groups. School, trust, and LA leaders identified four main reasons for these differences. First, demand is not open-ended. LAs can set thresholds based on risk, which allows them to manage the numbers of children coming into care. Second, there is a strong, unifying child-centred ethos espoused at central government and local practitioner level. Third, the roles of schools and the Virtual School are defined in a reciprocal and complementary way. Schools and trusts understand that LAs have a remit to challenge schools about support for individual pupils, but also that LAs can enable and support schools to meet pupils' needs. Fourth, the education of children in care is an explicit part of school accountability, including inspection.

We heard similar messages about joint working between schools and statutory children's social care services, notwithstanding school and trust leaders' concerns about higher thresholds and stretched capacity making it more difficult for schools to access support. Messages about joint working in relation to early help, however, were more varied. School, trust, and LA leaders reported that, unlike in the statutory children's social care system, within the early help system the expectation of joint working and schools' and trusts' role is not sufficiently aligned with policy incentives and accountability, that roles and responsibilities are less clear, and consequently that the engagement from schools and trusts in early help is more variable.

Ensuring the placements of individual pupils for whom LAs have statutory responsibilities

In parallel with their role in shaping system-level strategic approaches to supporting vulnerable groups, LAs also have specific statutory responsibilities in relation to the

² Our research was carried out before the expansion of the role of the Virtual School to all children with a social worker took effect.

placement of individual pupils, specifically those with education, health, and care plans (EHCPs) and those placed under a fair access protocol (FAP).

For pupils with EHCPs, LAs have the authority to name a maintained school or academy in Section I of an EHCP. Once named, the school is under a legal duty to admit the child. Despite this, we heard reports from parents/carers and school, trust, and LA leaders about a minority of schools in all local areas we engaged resisting admitting pupils with EHCPs. For completeness, we should say that some schools may have legitimate reasons for arguing that they cannot meet the needs of a pupil with an EHCP. Nevertheless, we heard examples, not just from parents/carers and LA leaders, but also from other school and trust leaders, of a minority of schools and trusts using inappropriate and unlawful practices to avoid admitting pupils with EHCPs. This was reported to happen either subtly (schools dissuading parents from sending their child to the school by claiming that the school could not meet their child's needs) or overtly (schools refusing admission even if named in an EHCP). LA leaders and parents/carers reported that it is harder to resolve such issues in cases involving academies because there is a separate process for challenging them (seeking a direction from the Secretary of State).

School, trust, and LA leaders also reported resistance to the admission of pupils under FAP. All admissions authorities are bound by the locally agreed FAP and must admit a pupil if this has been agreed under FAP. If they fail to admit, they may be directed. Where the school is a maintained school, LAs can direct admission, but for academies the power to direct resides with the Secretary of State. As with EHCPs, LAs argued that this separate process meant that, where a direction for an academy was needed, this could be complex and time-consuming, which undermined the principle of ensuring that vulnerable children are allocated a school place as quickly as possible.

Future roles and responsibilities relating to support for vulnerable pupils

There was universal agreement that support for vulnerable pupils required a system-wide approach and that this should be organised at a local area level. There was unanimous agreement that the co-ordination of a system-wide approach should be part of the role of LAs. School, trust and LA leaders and parents/carers saw no benefit in support for vulnerable pupils being co-ordinated at school/trust or regional level.

This is not to say that the LA should have *sole* responsibility for vulnerable pupils. Instead, school, trust and LA leaders and parents/carers argued that the LA's role should be one of system leadership. They envisaged this would entail having a mandate to convene partners, shape local strategic approaches and processes to ensure fairness and equity, plan and co-ordinate a coherent continuum of support, arbitrate disputes, and challenge instances of non-engagement and non-inclusive practices. The fundamental barrier to this is the lack of alignment between, on the one hand, roles and responsibilities and, on the other, policy aims and incentives. School, trust and LA leaders and parents/carers argued that addressing this would require three things.

First, there needs to be a re-statement of roles and reciprocal expectations. This includes recognising the mutually reinforcing roles of education and children's services. It also includes setting out the expectation of non-negotiable engagement from schools, trusts and LAs in locally agreed approaches and protocols designed to ensure equity of access for vulnerable pupils and fairness between schools.

Second, school, trust and LA leaders and parents/carers argued strongly that there need to be clear and common expectations of inclusive practice in mainstream schools, reflected in the accountability and inspection system. Where disputes about placements of individual pupils arise, there needs to be a swifter process for these to be addressed so that vulnerable pupils' education is not disrupted.

Third, specifically in relation to SEND and AP, school, trust and LA leaders and parents/carers argued that the tension between potentially open-ended demand and finite resources needs to be resolved. This is easier said than done, and will no doubt be at the heart of the SEND Review and policy-making in relation to AP and exclusion. The argument put forward here was not about there being limitless resources, nor about cutting back provision for vulnerable children. Instead, this was an argument about the necessity of being able to set expectations within local systems about which levels of needs should be met at the level of mainstream, pre-statutory support and which required statutory interventions, with these expectations reinforced through the accountability system.

Conclusion

The consensus among the majority of school, trust and LA leaders and parents/carers was that the LA role should be strengthened and aligned with decision-making authority (in relation to place-planning and the admission of vulnerable pupils) and wider incentives and accountabilities (around inclusion and support for vulnerable pupils). At the same time, the LA's role as the arbiter and custodian of locally agreed approaches to issues requiring system-wide co-ordination should be accompanied by reciprocal expectations that all schools and trusts should participate in local approaches and that LAs should engage in open, transparent and co-productive dialogue with all.

While this research was not tasked with making specific policy recommendations, we have derived a set of eight principles from the feedback we gathered that those participating in the research hoped might guide future policy in this area.

1. **Access:** An education system that ensures access to education for all children, including those with vulnerabilities and/or additional needs.
2. **Autonomy:** Respect for the complementary roles and autonomy of schools/trusts and LAs, but recognition that autonomy is not licence and does not apply to some non-negotiables, including ensuring access to education for all children.

3. Inter-connection: Partners within a local area should recognise that they form part of an inter-connected ecosystem, which requires all partners to agree to principles and protocols that ensure fair and equitable approaches to place-planning and support for vulnerable pupils.
4. Impartiality: Within local systems, there is a key role for an arbiter and champion of what is in the best interests of children and families.
5. Alignment: Responsibilities and decision-making authority should be aligned, so that no-one is held responsible for delivering something that they do not directly control.
6. “Local solutions”: decisions within local systems should be sought through co-production and “local solutions”, before formal decision-making powers are used.
7. Incentives and accountability should encourage collaborative, local-system-wide working on place-planning and support for vulnerable pupils.
8. Redress: There should be swift routes for dealing with disputes that focus on the best interests of pupils and avoid disruption to their education.

* * *

Introduction

The aims of the research

This research has explored the future role of LAs, and the respective roles of schools, trusts and other partners within local education systems, in the context of an increasingly academised education system in England.

This is the third research project that we, Isos Partnership, have undertaken to explore the role of the LA in the English education system since 2010. In 2011-12, we were commissioned by the DfE and the Local Government Association (LGA) to undertake action research into the evolving role of LAs, in response to the initial expansion of the academies programme under the Coalition Government.³ In 2013-14, we undertook a follow-up study to consider how the education system in England had continued to evolve.⁴ This second study was published in July 2014. At that time, 2,108 primary schools, 1,826 secondary schools, 109 special schools and 24 (formerly) pupil referral units were academies.⁵

By 1 September 2021, as we approached the mid-point of the present research project, the number of academies had grown by 140%. There were 6,402 primary, 2,757 secondary, 436 special, and 157 AP academies. Almost eight in 10 (79.4%) state-funded secondary schools were academies. The equivalent figures for state-funded primary and special schools and AP are around four in 10 – 38.1% of state-funded primary schools, 42.7% of state-funded special schools, and 45.5% of state-funded AP settings were academies.⁶ The period since 2014 has also seen a significant – and ongoing – transformation of the English education system. Not only has this period seen an increase in schools becoming academies, but the education system has also seen significant reforms of the curriculum, accountability measures, the special educational needs and disability (SEND) statutory framework, school funding, and admissions. At the same time, understanding of young people’s needs and potential vulnerabilities has developed further, with a stronger focus on mental health, contextual safeguarding risks, county lines, sexual exploitation and sexual harassment. There have been significant reforms of safeguarding

³ Parish, N., Sandals, L., and Baxter, A., 2012, *Action research into the evolving role of the local authority in education: The final report for the Ministerial Advisory Group* (DfE and LGA): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/184055/DFE-RR224.pdf.

⁴ Sandals, L., and Bryant, B., July 2014, *The evolving education system in England: A “temperature check”*, (DfE): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/325816/DFE-RR359.pdf.

⁵ See ‘Open academies and academy projects awaiting approval: November 2014’: <https://webarchive.nationalarchives.gov.uk/ukgwa/20141205083236/https://www.gov.uk/government/publications/open-academies-and-academy-projects-in-development>.

⁶ See ‘Open academies, free schools, studio schools and UTCs and academy projects in development’ (1 September 2021): <https://www.gov.uk/government/publications/open-academies-and-academy-projects-in-development>.

partnership working within local areas. Meanwhile, the debate about whether all schools should join academy trusts, put forward in the March 2016 white paper, *Educational Excellence Everywhere*, continues. Since early 2020, every local area has had – and continues – to contend with the impact of the coronavirus pandemic on education and children’s services. It is within this context that this research has been commissioned.

The research has focused on two aspects of the role of the LA – two areas in which LAs have significant statutory responsibilities:

1. **pupil place-planning** – ensuring that there are sufficient school places for all pupils in a local area in mainstream schools and settings for pupils with high needs (special schools and AP); and
2. **support for vulnerable pupils** – ensuring appropriate support for pupils with additional needs and/or vulnerabilities, including those with SEND, those at risk of exclusion or requiring support from AP, and those requiring support from early help or children’s social care.

These are not the only two areas where LAs have important statutory responsibilities, nor can the LA’s role in education be reduced to these two areas. They have, however, been selected as the focus for this research because they are two important areas where there needs to be clarity about the role of the LA and other partners in local education systems, in the context of the diverse “ecosystem” of schools of different types that exist across the country.

Throughout this report, we use the term “responsibilities” to refer to specific, legally-enshrined duties on public sector bodies. We use the term “role” to reflect the wider co-ordination of activity that goes on within local education systems, linked but not reducible to statutory responsibilities, to ensure all pupils have access to a high-quality school place and children with additional needs can access the right support.

The research has focused on two key “exam questions”.

1. Does the current configuration of statutory responsibilities, policy processes, funding and incentives offer a robust basis for fulfilling the aims of ensuring sufficient school places and securing support for vulnerable pupils?
2. How should the wider roles (related to, but broader than, specific statutory responsibilities) of LAs, schools, trusts and wider partners be configured to ensure that there are sufficient school places and support for vulnerable pupils?⁷

Throughout this report, as we did in the 2014 “Temperature check” research, we have used the term “local education system” to refer to the connections, inter-dependencies and

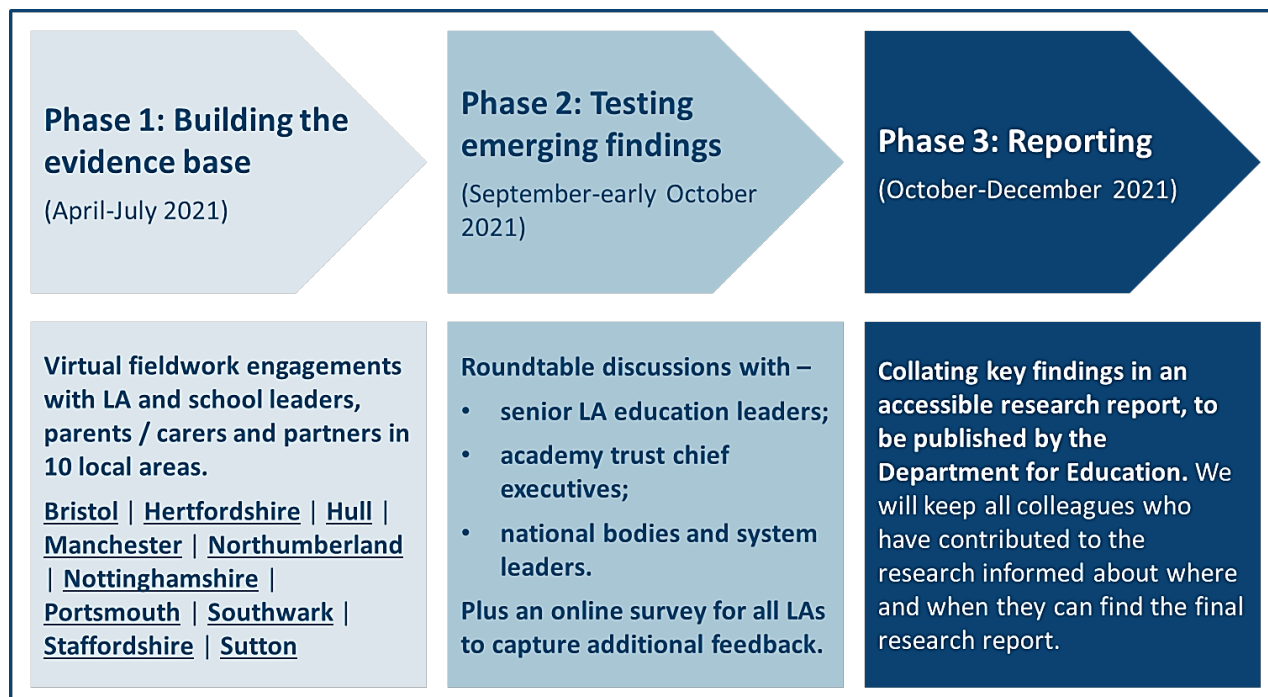
⁷ This research has focused on LA responsibilities relating to school-age children. We recognise that, in the SEND system for example, LA responsibilities extend to pre-school children and post-school students. Because our focus has been on school-age children, we have used the term ‘vulnerable pupils’ in this report.

relationships that exist between education and children’s services and settings within the geographical area based on LA boundaries.

How we have approached the research

We approached the work in three phases, as shown in the graphic below. Due to the coronavirus pandemic, all engagements in the three phases were undertaken virtually.

Figure 1: Summary of our approach to the project



Phase 1: Building the evidence base

In the first phase of the work, we undertook in-depth engagement with a range of leaders, partners, and stakeholders in 10 local areas – what we have termed “local education systems”. We selected local areas based on the following four sets of criteria, relating to our research themes.

1. **The make-up of the local education system** – because the research was to focus on the impact of academisation on the role of the LA and its responsibilities relating to pupil place-planning and support for vulnerable pupils, for the first phase of the research we wanted to work with local areas where a significant proportion of pupils were educated within academies. As such, we identified local areas where the proportion of pupils educated in academies was similar to or above the national average. We also included local areas with experience of free schools being created, those with a mix of local and regional (i.e., operating beyond one local area)

academy trusts, those with special and AP academies, and those with a significant proportion of voluntary-controlled/-aided schools.

2. **Pupil place-planning** – we selected local areas that had experienced significant pupil population growth in the last three years, as well as those that had experienced a decrease in the (primary-age) pupil population in the same period.
3. **Vulnerable pupils** – we selected local areas with high, average and low levels of deprivation, since this indicator is often associated with additional needs and vulnerabilities. We also selected local areas with high, medium and low rates of permanent exclusion and proportions of school-age pupils with EHCPs.
4. **Other criteria** – we also ensured the sample was balanced in terms of the size of the pupil population, type of local authority (unitary authorities, metropolitan and London boroughs, county councils), and geographical region (we had one LA from each region, including one inner and one outer London borough).

The 10 local areas that agreed to take part in the research were: Bristol, Hertfordshire, (Kingston-upon-) Hull, Manchester, Northumberland, Nottinghamshire, Portsmouth, Southwark, Staffordshire and Sutton. Across the local areas, we held a series of individual and small-group discussions with:

- elected Members with portfolio responsibilities for education and children’s services;
- senior LA officers responsible for education and children’s services – often the Director of Children’s Services and Assistant Directors or equivalent;
- Heads of Service and other officers with responsibilities relating to place-planning, admissions, and support for specific groups of vulnerable pupils;
- a selection of school leaders (headteachers and senior leaders, as well as academy trust chief executives) from primary, secondary, special schools and AP, reflecting the make-up of the local education system (maintained schools, including voluntary-controlled/-aided schools, and academies);
- the education leads from the local dioceses, particularly if the local education system contains a significant proportion of faith schools;
- parents/carers, often organised through the local area’s Parent Carer Forum.

These engagements took place during the second half of the summer term of the 2020/21 academic year.

Phase 2: Testing emerging findings

The focus of the second phase of the research was to test and expand on the key findings from our in-depth engagements with the 10 local education systems. We did this through three sets of activities, undertaken in the first half of the autumn term 2021.

1. We held three “roundtable” discussions with LA leaders where we shared key findings and questions from the first phase of the research – all upper-tier LAs in England were invited to attend one of two sessions (the third session was specifically for colleagues from the 10 LAs that had participated in phase 1). Representatives from a total of 78 LAs attended one of the roundtables.
2. We held similar discussions to test our findings and gather additional views with colleagues from national organisations. These included in-depth discussions with the chief executive officers and/or senior leaders from five large regional and national academy trusts. To gather further insights into the views of school leaders, we also held discussions with RSCs, the Children’s Commissioner for England, the Confederation of School Trusts (CST), the National Association of Head Teachers (NAHT) and the Association of School and College Leaders (ASCL). In parallel, we spoke to national bodies representing local government, including the LGA, the Association of Directors of Children’s Services (ADCS), and the Educational Building and Development Officers Group (EBDOG).
3. Lastly, we organised an online survey to gather additional feedback from LA leaders. All upper-tier LAs in England were offered the chance to submit a response, and we received a total of 116 responses. While we did not permit multiple responses from the same LA, some responses were submitted from leaders with responsibilities for two LAs. Overall, therefore, we received responses on behalf of 119 LAs, or 78% of all upper-tier LAs in England.⁸

Phase 3: Reporting

In the final phase of the research, during October and November 2021, we collated the evidence gathered from the first two phases – the fieldwork with 10 local areas, the roundtables with and survey responses from LA officers, and our discussions with academy trust chief executives and national bodies. The key findings are summarised in this report.

* * *

⁸ The characteristics of the 116 LAs that responded to the survey were broadly representative of all LAs: the proportion of pupils in academies (52% survey responders; 53% all LAs), deprivation measured by the Income Deprivation Affecting Children Index (21.4 survey responders; 20.9 all LAs), average size of pupil population (56,409 survey responders; 55,657 all LAs), and proportions of pupils with EHCPs (3.8% sample responders, 3.7% all LAs).

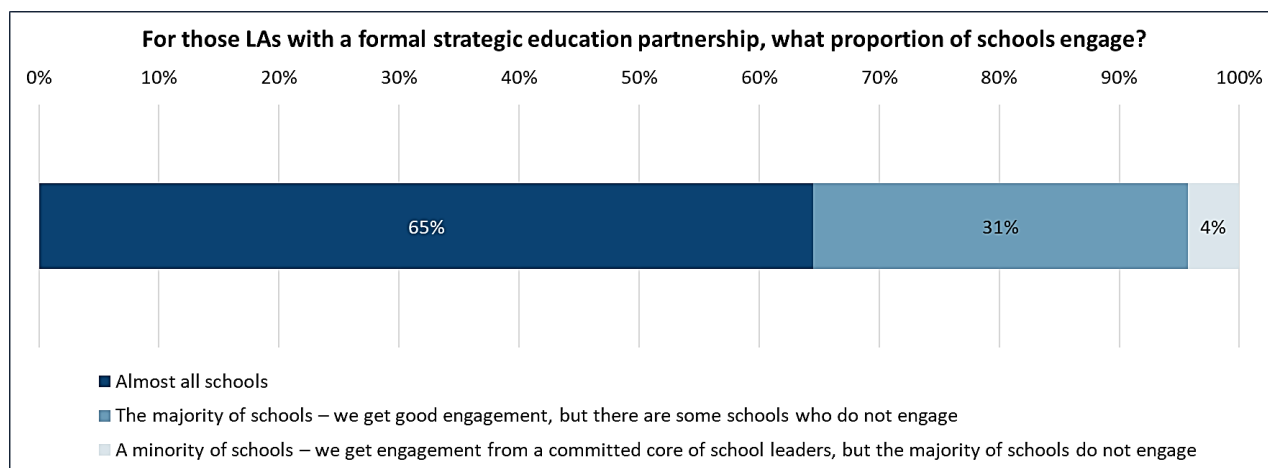
Overarching messages about roles and responsibilities within local education systems

The importance of (and reliance on) relationships

A core finding from this research concerned the critical importance of “relationships” within the education system in England. “Relationships” is the term that was reported to us most frequently by LA and school leaders during our evidence-gathering, and the centrality of relationships to work undertaken within local education systems has been a constant refrain throughout the research.

There are two aspects of this. First, there is a positive aspect, namely the way in which school, trust and LA leaders have built strong, collaborative, trust-based relationships, and a range of partnership structures to sustain them, within local areas. In response to our survey, 93 of the 116 LAs (80%) reported that their local area had some form of formal strategic education partnership.⁹ Of those that reported having a formal education partnership, as shown below in figure 2, the vast majority (96%) reported good engagement from the schools and trusts in their local area – two thirds (65%) reported that almost all schools engaged, and a further third (31%) reported that the majority of schools engaged.

Figure 2: Survey responses from LAs about the proportion of schools that engage with local strategic education partnerships



This is testament to the commitment of leaders of local systems, in LAs, schools and academy trusts, to develop and sustain these partnerships – while seen as positive, there is no formal mandate or requirement to develop or participate in such arrangements. Several of the 10 local areas we engaged in the first phase of the research have developed

⁹ In asking this question in our survey, we defined a formal “strategic education partnership” as a body or structure with a formal remit and membership (potentially underpinned by a memorandum of understanding or terms of reference), where senior LA officers, school leaders and other partners meet to consider and take collective action to address strategic priorities facing the local education system.

strong partnership structures and initiatives for taking co-ordinated action on matters relevant to the local system.

Case study: Sutton's Education Leadership Group

A high proportion of schools in Sutton are part of academy trusts – almost half of primary pupils attend schools that are academies, while in the secondary phase, 13 of the 15 schools in Sutton are academies (the other two are voluntary-aided schools). In a diverse local education system, school and LA leaders have recognised the importance of having formal processes for shaping a collective, strategic approach to system-wide issues. One of the key parts of this is the Education Leadership Group of the Sutton Education Partnership.

In 2019, after a series of challenges had tested the relationship between schools and the LA, including a critical local area SEND inspection in 2018, schools and LA leaders agreed to create the Sutton Education Partnership, to be led by the Education Leadership Group. This would be a formal group, comprising headteachers and governors, representing all phases and sectors of education, and LA and Cognus (commissioned provider of education and SEND services) leaders, to steer the response to issues of system-wide significance to ensure these were done in a spirit of co-production, openness and transparency. At the time, the priority was the response to the local area SEND inspection. Since then, the Group has continued to play a key role in shaping local approaches to SEND and, through liaison between the LA and the Heads' Forums, to place-planning and the local area's response to the pandemic. The Education Leadership Group has formal terms of reference, membership and voting rights, and includes a consultant headteacher who provides capacity to drive action.

As one senior LA leader described it, 'We have a number of templates for leadership of the local area, and the Education Leadership Group is an important part of this. We have complete sign-up to this as a means of shaping a strategic approach'. As one school leader put, 'I'm not sure how the school-LA relationship can work without a very strong headteacher board. Academy trusts need to see their role as part of this. If you have a local area where schools do not meet and you don't have the equivalent of our Education Leadership Group, the LA's role is untenable.'

As one secondary academy principal involved in their local area's formal strategic partnership put it, 'In an academised system, I am not sure how the LA's role is tenable without this structure.' Several of those we spoke to in these areas with strong partnerships commented that the quality of decision-making in relation to pupil place-planning or supporting vulnerable children was better as a result of the depth and quality of relationships that had been established. Furthermore, many school, trust and LA leaders

reflected that local partnership arrangements had been strengthened by the experience of responding to the coronavirus pandemic.

'During Covid-19, it was the LA who co-ordinated the [local area's] response. ... The LA included all academies, and was very inclusive. The relationship with academy trust CEOs worked incredibly well. I am massively in favour of operating locally and geographically, understanding the community we serve.' (Cross-phase academy trust chief executive officer, or CEO)

'Covid-19 has been the opportunity to look holistically at child wellbeing and family support in a more joined-up and far-reaching way.' (Primary school executive leader)

'Covid-19 has had a massive impact. [In our local area], there has been a very collegiate approach to dealing with the pandemic. We are now broadening the discussion to other educational issues.' (Special school leader)

'The collective response to the pandemic, involving education, public health and all schools was a significant and positive feature, and strengthened the relationship with all schools even further. We will collectively use the legacy of this work going forwards.' (LA officer)

Case study: The Hull Learning Partnership

Around eight years ago in Hull, there was a rapid move towards academisation. Lots of local academy trusts rapidly formed or expanded, with some schools joining regional and national trusts. At the same time, the LA was facing extreme budgetary pressures and made significant cuts to its school improvement service. Following the local area's SEND inspection, which resulted in the requirement to produce a written statement of action, relationships between the LA and local schools were very strained, and levels of trust were low.

Local schools were keen to join together in an area-wide learning partnership, with the LA emphasising the importance of this being a joint endeavour. Academy trusts, schools and the LA set about redefining their relationship by establishing the Hull Learning Partnership, which was underpinned by a formal "Education Protocol". This brought into being a new partnership, in which every academy trust in the city had a seat at the table. The LA sought to recalibrate its relationships with schools, by supporting schools with additional funding and restructuring of LA staffing. Since then, the Hull Learning Partnership has gone from strength to strength. It is the place for discussions on a range of strategic issues and all academy trusts in the city contribute.

The Hull Learning Partnership plays a key role in both supporting vulnerable children and pupil place-planning. There is a range of partnership boards, including, for example, a Pupil Place-Planning Board, which reports to the Hull Learning Partnership. This is at the heart of the pupil place-planning process. The Pupil Place-Planning Board has a “forward look” strategy, based on data, which are shared transparently. If an academy trust wants to change its published admission number (PAN), or make any other significant changes to its provision, it brings that discussion to the Board, then goes to the RSC. Where conversations about sensitive, city-wide matters are required, the LA holds these through open consultation with the Learning Partnership. For example, Hull leaders are starting a conversation about decreasing numbers of pupils in the primary phase. Transparency is seen as the key to success: as a starting point, every member of the Hull Learning Partnership can see everyone else’s data.

The Hull Learning Partnership is also a forum for raising challenging issues relating to vulnerable pupils and inclusion. For example, at the request of schools, the Hull Learning Partnership has begun to address the issue of the unequal distribution of children with SEND between schools. This work is in its early stages, but the Hull Learning Partnership is beginning to see increased inclusivity across Hull’s schools as a result.

While acknowledging how well the Learning Partnership works in Hull, the LA is very aware that this is not the case everywhere. As one senior officer remarked ‘Hull have a really strong group of leaders who want to cooperate – in other areas it’s much harder. If there is a mismatch between what successful academies want to do and the needs of the system, then you end up with failing schools. In Hull, leaders have demonstrated their pride in the learning community as a whole and their shared commitment to its success, in the interests of all of Hull’s children and young people.’

There is, however, another aspect of the importance of relationships in local education systems, as reported through this research. School, trust and LA leaders and parents/carers argued strongly that relationships do not provide a sufficient basis for effective joined-up approaches to place-planning and support for vulnerable pupils. Responsibilities around place-planning and support for vulnerable children are in place to ensure that every child has a school place, and that vulnerable pupils and those with additional needs get the support that they need to access education and do not face discrimination. LA leaders and some national stakeholders pointed out that “relationships” are not considered a sufficient basis for practice in similar policy areas, such as child protection, and should not be viewed as a sufficient basis for pupil place-planning and support for vulnerable pupils.

Furthermore, local approaches built on relationships were seen by LA, school and trust leaders to be inherently fragile. First, such approaches are dependent on individuals and

their willingness to be part of local approaches – changes in school, trust or LA leadership can undermine the basis of local partnership working.

'All it takes is one selfish person, one selfish trust [to undermine trust].' (Academy trust CEO)

'The current system is very reliant on good relationships rather than levers and controls. This makes the system fragile.' (LA officer)

'Nevertheless, this positive situation is still very much dependent on the quality and intentions of leaders involved on both sides, i.e., their individual determinations to make the LA-Academy relationship work effectively.' (LA officer)

Second, relationships require an investment of time, skill and expertise to sustain them and ensure that they are purposeful and effective, which in turn requires capacity. LA leaders argued strongly that building relationships and partnerships required ongoing investment of resources and capacity to ensure that they had people, at both senior and operational levels, with the knowledge, credibility and expertise to convene and maintain effective partnerships. They noted that this was not part of their statutory responsibilities and not something for which they were funded. They argued that this was, however, an essential aspect of their role as a leader within a local education system, and a crucial pre-condition for building the relationships necessary to co-ordinate activities like place-planning or support for vulnerable children.

Case study: The Bristol Excellence in Schools Board

The Bristol Excellence in Schools Board is a strategic partnership that brings together representatives from all school types and phases with the LA. It aims to provide coherence for the school-led system and facilitate 'a collective response to identified city-wide priorities and opportunities'. Membership is composed of key LA officers and 16 school leaders, including academy trust CEOs, and representatives from teaching schools, the Primary Headteachers Association, the Secondary Headteachers Association, the Specialist Sector Partnership, the Early Years Partnership and the diocese.

The LA has a leadership role as convenor of the Board, which is directly accountable to Bristol's Learning City Partnership Board. There is also a strong sense of collective leadership and ownership. The members of the Excellence in Schools Board jointly agree priorities for action and commission or broker activity to address identified challenges, and then monitor progress. Individual members are expected to use their

involvement in other fora to advance the ideas and direction the Board has set. Together they also provide a single point of contact with the RSC.

Over time, the Board has shifted its focus from schools with poor outcomes (it replaced the previous Standards Board and Teaching Schools Hub Board), and now has an expanded focus on meeting the needs of groups of vulnerable children across the local system. For example, the Excellence in Schools Board reviews inclusion and outcome data across different communities and explores how AP can support vulnerable pupils within mainstream education. The expert chairing and collaborative leadership style of the Director of Education is widely seen by school and trust leaders as having secured trust and a high degree of buy-in to this approach. Bristol's strong sense of identity as a city, and the fact that all school partners have local roots has also helped them to develop a shared mission.

As the CEO of a large academy trust put it, 'Excellence in Schools is more effective than similar partnerships in other areas and has been able to mobilise stronger schools to help those most in need – we've seen a harnessing of collective and moral integrity – and a high level of trust and confidence.'

As the Director of Education put it, 'The Excellence in Schools Board means there are always strategic-level conversations going on. It could potentially be challenging to have a range of academy trusts across the city, with different ambitions, so creating that system leadership through the LA role is important. Within that system leadership role, you need a really strong remit around advocacy – to look at outcomes for young people, to look at the gaps, to push, to have the voice for the seldom heard.'

How the make-up of the local education system affects partnership working

This research was commissioned to explore the role of LAs and other partners in local education systems in the context of the growth of academies. Specifically, we were asked to consider whether the make-up of the local education system – the different types of schools, including academies – affected how functions like pupil place-planning and support for vulnerable pupils were carried out. We found that the make-up of the local education system *does* influence these functions, but not in a way that can be reduced to the proportion of schools that are academies. The answer is a more nuanced one that relates to the dynamics, culture and relationships within a local education system.

Case study: The Portsmouth Education Partnership

In 2016 Portsmouth LA received a critical Ofsted inspection of its school improvement arrangements. Too many schools were requiring improvement and the attainment and progress of pupils was weak compared with similar areas and national averages. This provided the impetus to do something different. Portsmouth LA decided to take a proactive stand on academisation and actively encouraged all schools to become part of strong academy trusts. The LA redefined its role as a champion of the interests of children and young people and a convenor of a partnership to promote cooperation between schools in Portsmouth and to maintain the strong sense of a “Portsmouth identity”. All schools are members of the partnership, by virtue of being a Portsmouth school. The powerful idea here is that the partnership is seen as ‘a congregation and not a gym membership’.

Since its inception, the Portsmouth Education Partnership has flourished and has created the environment for secure and trusting relationships between the LA and academy trusts in the area. Many of those who contributed to the fieldwork for this research commented on how the Partnership had ‘come into its own’ during the pandemic, and that this had reinforced the need for, and benefits to be achieved through, closer working on a locality basis. The governance of the partnership has evolved too. Originally there was a separate board for academy trust CEOs, but as working relationships have matured and grown in confidence, academy trust CEOs now sit alongside other senior leaders in the local area on the main partnership board. Sub-groups have been formed to lead on agreed priorities, all of which are chaired by school leaders.

The Portsmouth Education Partnership has been particularly strong in promoting a co-ordinated, local and strategic approach to support for vulnerable children. As one headteacher and academy trust CEO commented, ‘Of all the duties the LA has, Portsmouth have made this absolutely clear and senior leaders speak very passionately about it. The Partnership has kept it centre of the agenda and it is a standing item at every meeting.’

Working across schools, trusts and the LA, the Partnership has developed strategic approaches to the identification of and support for children missing education and those at risk of exclusion; produced clear, transparent and fair protocols around fair access; and co-produced guidance on ordinarily available provision for children and young people with SEND. Some of the comments from academy trust CEOs describe eloquently the value of the Portsmouth Education Partnership, for example: ‘The LA genuinely consults and makes changes. We feel a partner and valued as an equal. We are really passionate about the agenda and proud to be a part of it ... Portsmouth stands out as a beacon. It is forward-thinking and brave.’ Yet, even with a partnership as strong

as Portsmouth's, the fault lines in the system are evident. As one senior LA officer described it, 'We don't have powers and levers. It is all influence rather than authority.'

School, trust and LA leaders, as well as the parents/carers to whom we spoke, argued strongly that the crucial factor in determining how schools and trusts engaged with initiatives around place-planning and support for vulnerable pupils was not the status of the school (whether it was an academy or a maintained school), but the leadership and ethos of the school or trust in question. Specifically, they argued that the determining factor was whether a school or trust was "local-system-orientated", meaning that it saw its role as part of an interdependent local ecosystem, or was "isolationist", meaning that it saw its role as largely independent from the local system.

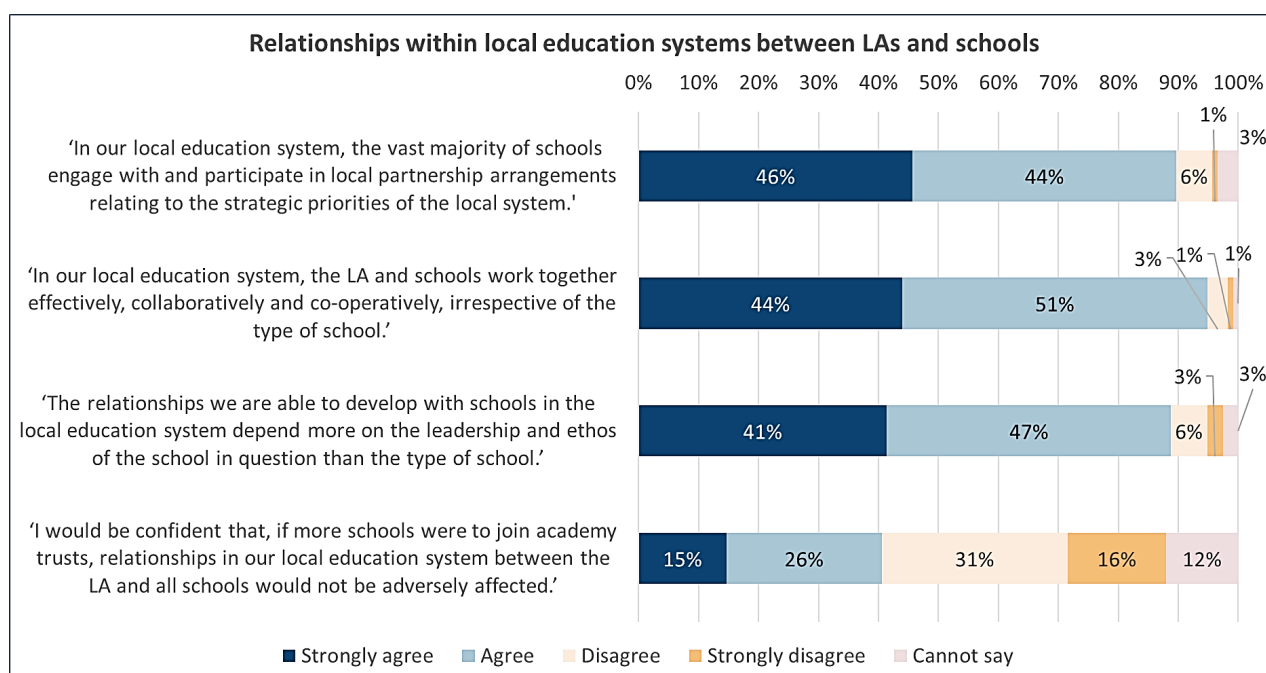
'... engagement in wider system development is less about the type of school and more about the culture and ethos of leadership within the establishment. There are a number of MATs [multi-academy trusts] that consistently engage in system development work and some that consistently don't. The same could be said for maintained [schools] and single academies.' (LA officer)

'It's a particular kind of leader, not a particular kind of school, who chooses to operate in an insular and self-serving way despite the impact on the wider system or who refuses to engage with the wider systems leadership because it doesn't suit. We have systems leaders in both parts of the sector ... I don't think it makes any difference to us as officers ... whether a school is maintained or an academy. What matters instead is the quality of relationships and the shared sense of moral purpose to do the right thing for children.' (LA officer)

These findings were supported by our survey of LAs. As shown in figure 3, below, 89% of LAs strongly agreed or agreed that relationships within local education systems depended more on leadership and ethos than the type of school in question. Similar proportions agreed that the vast majority of schools engaged in local partnership arrangements (90%) and that schools work together irrespective of the type of school (95%).¹⁰

¹⁰ Please note that percentages are presented having been rounded to the nearest whole number. This means that sometimes they will not add up to 100, or a figure 1% higher or lower may result when the percentages from two responses are added together.

Figure 3: LA survey responses to questions about relationships within local education systems between LAs and schools



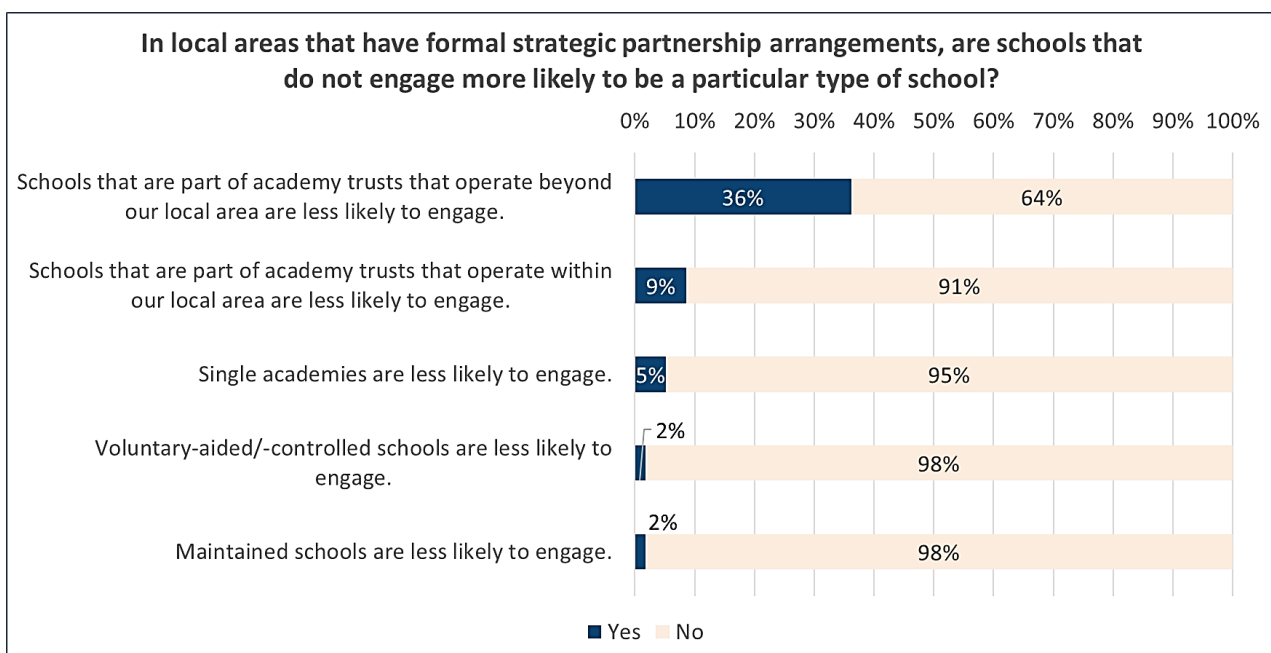
The one statement where there was a noticeably different view was about the extent to which LAs would feel confident that relationships would not be adversely affected if more schools were to join academy trusts. In response to this statement, 47% disagreed or strongly disagreed that relationships would not be adversely affected (31% disagreed, 16% strongly disagreed), while 41% agreed or strongly agreed that relationships would not be affected (15% strongly agreed, 26% agreed). It is interesting that LAs in local areas with high proportions of academies were just as likely to say that they thought relationships would be adversely affected if more schools were to join academy trusts as those LAs in areas with low proportions of academies. This suggests that negative answers to this question do not simply reflect a fear of the unknown among LAs with few academies at present. Instead, this is likely to reflect the messages we heard about the fragility of relationship-based approaches and their vulnerability to changes in personnel. This trend was also described by some school and trust leaders, and by parents and carers. For example, one Parent Carer Forum described the distinct change in dynamics when a larger national academy trust became responsible for a school in their local area.

Our research suggests that, while the quality of relationships and partnership working within local education systems cannot be reduced simply to the breakdown of types of schools, there are two important ways in which academisation *can* affect the local education system and the role of the LA within it. First, as we describe in the following two chapters, there are different processes for making decisions and resolving disputes about place-planning or securing placements of vulnerable pupils depending on whether the school in question is maintained or an academy. This means that, where an “isolationist” or “non-system-orientated” school happens to be an academy, and where relationships

alone have not delivered consensus on a question of place-planning or the placement of a vulnerable pupil, it can be more complex, difficult and time-consuming to resolve those issues. Second, LA, school leaders and parents/carers reported that, while by no means directly equivalent, the schools that were more likely to take an “isolationist” and “non-local-system-orientated” position were those who were part of larger academy trusts – those working at a regional or national level, whose centre of gravity was not necessarily linked to an individual local area and its education system. This point was supported by LAs in their responses to our survey, as shown in figure 4, below.

As we set out in figure 3, 90% of LAs reported that the vast majority of schools engaged in local partnership working, and 88% of LAs reported that leadership and ethos were more important factors in shaping relationships than type of school. As such, our research suggests that the issue of non-engagement is not widespread, but confined to a minority of schools. What figure 4 suggests is that, among the minority of schools that do not engage in local strategic partnership working, a higher proportion of LAs (36%) reported that the schools least likely to engage were from larger academy trusts operating beyond the local area than other types of schools. This is not to draw a direct equivalence or suggest that all larger academy trusts are not engaging in local partnership working. Instead, our evidence suggests that, among the minority of non-engaging schools, LAs were more likely to report non-engaging schools being part of larger trusts than being schools in local or standalone trusts, voluntary-aided/-controlled schools or other maintained schools. As one LA officer in an area with a high proportion of academies put it, ‘... trust connection to the locality is more important than the type of school – not all trusts are the same.’

Figure 4: LA survey responses about partnership engagement by school type



'The larger the trust, operating at scale at national level ... tend to engage less in local initiatives as a result. Smaller local trusts tend to have a stronger link to the LA. Some academies are easier to engage with than others and while the individual academies might wish to work with the LA it very much depends on the direction set by the trust.'
(LA officer)

The need to align roles, responsibilities, and decision-making authority (as well as capacity)

There was broad consensus among school, trust and LA leaders and parents/carers that, for roles and responsibilities to be meaningful and fulfilled effectively, it was important for those roles and responsibilities to be aligned with the authority to take decisions, as well as with broader policy aims and incentives. Currently, there are aspects of place-planning and support for vulnerable pupils where there is a lack of alignment between roles, responsibilities, decision-making authority and policy incentives.

In relation to place-planning, the misalignment is particularly pronounced between LAs' statutory responsibilities for ensuring sufficiency and where decision-making authority around significant changes to school places or admissions resides in relation to academies. This can result in situations where LAs are held accountable for the outcomes of decisions over which they have no direct control or involvement. In relation to support for vulnerable children, there were challenges reported to us linked to the misalignment between LA statutory responsibilities and decision-making authority. Our research suggests, however, that these challenges sit within the context of a more fundamental misalignment between, on the one hand, policy aims and incentives, and, on the other, roles and responsibilities.

Building on this principle, our research found broad support for aligning roles, responsibilities and decision-making authority for place-planning and support for vulnerable pupils at local area level. There was strong and widespread consensus that it was not practical for place-planning and support for vulnerable pupils to be led and co-ordinated at the level of individual schools or trusts, without an impartial, accountable body to arbitrate and co-ordinate. There was also very little interest in these functions being carried out at regional level. In relation to place-planning, a minority of trust leaders and national stakeholders argued that the RSC should be wholly or partially responsible for delivering place-planning. We describe this in the next chapter.

Furthermore, that broad consensus extended to the view that LAs were uniquely placed to be responsible for co-ordinating pupil place-planning and support for vulnerable pupils within local education systems. LAs combined many of the characteristics required to perform these roles, including:

- providing a place-based approach to system leadership, drawing together leaders of schools, education settings, colleges, wider education, and children’s and family services;
- being able to convene partnerships and bring together services around common initiatives; and
- providing local democratic accountability.

At the same time, however, we heard a strong view from school and trust leaders – echoed by many LA officers and elected members – that what was envisaged was not a directive leadership role for the LA, but rather an enabling, inclusive and co-productive system leadership role. Most school and trust leaders argued that, if statutory responsibilities and decision-making authority were to be aligned at local level, this would need to be accompanied by the expectation of seeking agreement through open dialogue, transparent sharing of information, and collaboration.

Such an approach would build on relationships where they exist already, while helping to establish expectations and overcome non-engagement where they do not. It would also build on precedents of expectations of local partnership working, such as schools fora and the development of local FAPs. We heard strong feedback from school, trust and LA leaders about the need to set out clear expectations of partnership working, engagement and open dialogue between schools, trusts and LAs.

‘It has to be part of the funding agreement and the way that trusts have to work.’ (National academy trust CEO)

‘The LA has a duty to form a representative schools forum for funding decisions, but you wonder whether something similar is needed with everyone represented focused on the management of information, IT, approach etc. ... Currently this is all done through a two-way conversation between individual schools and the relevant officer. There should be something like the schools forum, but it needs to have teeth and be carefully constructed.’ (Secondary academy principal)

‘Covid showed that the role of system-wide, city-wide overarching guidance and support had to be led by LAs from the front.’ (LA officer)

Joint working between local and central government

Many LAs spoke about how the pandemic had fostered – or necessitated – stronger joint working between LAs and RSCs, and had welcomed a new level of dialogue. Many LAs reflected on the change in the dynamics of the relationship that, to them, had felt one-way and transactional pre-pandemic. As one elected member put it, there was ‘a feeling of

impotence' when the LA spotted an issue, raised it with the RSC, but did not hear back about any action had been taken as a result. Reflecting on the pandemic – and on the questions posed by this research – some LA leaders pointed out that the most challenging relationship for them to manage was not with schools or academy trusts (as figures 3 and 4 show, most LAs reported strong relationships with schools of all types), but rather the relationship between local and central government. As one LA leader put it, 'It cannot be DfE versus LA. It has to be the two working together for what is right for the system.' LA leaders and national stakeholders argued strongly in favour of re-casting a new, formalised and more collaborative relationship, with aligned responsibilities and accountabilities, between LAs and RSCs.

The RSC colleagues we engaged broadly agreed. They noted that there had been a strengthening of relationships between RSCs and LAs during the pandemic period (noting that, by necessity, this had often required RSCs to “hoover up” information from LAs required by central government). They also welcomed the idea of moving to a situation where there was greater clarity about how RSCs and LAs should work together, both in terms of how those engagements should take place and the issues on which those engagements should focus. They saw this very much in line with the direction of travel of the education system. RSC colleagues agreed that there would be value in clarifying expectations of joint working between LAs and RSCs, but also their respective roles – they noted that there remained variation between LAs in how they engaged with RSCs, and some ongoing confusion about the respective roles of the RSCs and ESFA in dealing with concerns relating to academies.

The link between place-planning, support for vulnerable pupils and the wider LA role

As we noted in the introduction to this report, while this research has focused on the place-planning and support for vulnerable pupils, LA leaders argued that the LA role in education could not be reduced to its statutory responsibilities in these two areas. LA leaders – echoed by many school and trust leaders and parents/carers – argued that their role was broader and was crucial in ensuring links between education, children's services and a range of broader services supporting young people and families. LA leaders emphasised the importance of taking a joined-up approach to thinking about future policy in this area, the SEND Review, the Care Review, and the future of support for school improvement. While support for school improvement has been beyond the scope of this research, LA leaders argued for the need to maintain a link between any future model of support for school improvement, place-planning and support for vulnerable pupils. They argued that being able to evaluate and, if necessary, escalate concerns about the quality and inclusiveness of education provision in the local area was an important aspect of fulfilling their roles in relation to place-planning and support for vulnerable pupils.

* * *

Research theme 1: Pupil place-planning

Summary of current roles and responsibilities relating to pupil place-planning

LAs have statutory responsibilities relating to pupil place-planning. Section 14 of the Education Act 1996 makes LAs responsible for ensuring that there are sufficient schools in their local area to provide primary and secondary education appropriate for pupils' ages, abilities and aptitudes. In discharging this duty, LAs are required to have regard to the special educational provision required for pupils with SEND. The Education and Inspections Act 2006 expanded this duty, requiring LAs to exercise these functions with a view to securing a diversity of school provision and increasing parental choice.

Opening new schools: The Education Act 2011 introduced the so-called "free school presumption". This requires that, where an LA identifies the need for a new school, it must seek proposals to establish a new academy – free schools are academies without a predecessor school. Schools created through this route are called "presumption route free schools", distinct from "central route free schools", created through waves of applications co-ordinated by the DfE. While there are some limited circumstances in which a LA could set up a new maintained school, the effect of the free school presumption is that in most instances where a new school is required, LAs will need to create presumption route free schools.

Expanding schools: LAs work with schools of all types, including academies, to plan school places in their local area. Where there is the need to expand school places, in the case of maintained (including community, voluntary-controlled and voluntary-aided) mainstream and special schools (and resourced provision/units for pupils with SEND) above a specified statutory threshold, LAs can propose and, following a statutory process, decide upon expansions of maintained schools. Small-scale expansions of mainstream schools below the statutory threshold can be proposed by governing bodies, as well as LAs. In the case of expansions (or other significant changes relating to place-planning) in academies, DfE guidance for trusts states, '*The department has a strong expectation that academy trusts should work collaboratively with LAs ... on pupil places planning, taking into account the increases or decreases in pupil numbers forecast in the area, especially in areas of basic need. Academy trusts should consider how they can best support their LA in meeting this need.*' If there is the need to expand places in academies, where the LA and an academy trust may agree to an expansion, the formal power to propose 'significant changes' belongs to the academy trust, and the power to decide on those proposals belongs to the RSC. Some significant changes, including expanding capacity, can be "fast-tracked" if the academy has been judged good or outstanding, has progress measures in line with or above the national average, and is in good financial health. Other changes deemed 'potentially contentious' – including

proposals to reduce capacity in an area where there is need for places, or changes to provision specifically for pupils with SEND – require a full business case. For high needs places, LAs have the power to change the number of funded places in maintained schools and pupil referral units (PRUs). Changes in place numbers for academies are considered by the ESFA through an annual “high needs place change notification” process.

Reducing school places: LAs are not under a duty to reduce school places if pupil numbers fall, but DfE statutory guidance states, ‘*The department expects LAs to manage the school estate efficiently and to reduce or find alternative uses for surplus capacity*’. Changes to PANs are covered in a dedicated section on admissions below. LAs have the power to propose the closure of maintained schools (section 15 of the Education and Inspections Act 2006) and, following consultation, to decide on a proposed closure. LAs cannot propose the closure of academies – that power rests with the academy trusts and the Secretary of State, with the latter holding responsibility for terminating an academy’s funding agreement.

Rights of appeal: Where LAs are proposing to expand or close existing maintained schools, appeals can be made (for example, by the relevant diocese) to the Schools Adjudicator. In the case of new free schools or significant changes to open academies, the decision is made by the RSC on behalf of the Secretary of State.

Introduction

We opened the last chapter by highlighting the importance of “relationships”; the next two chapters will focus heavily on the importance of “alignment”. In any area of policy, there needs to be alignment of statutory responsibilities, decision-making authority, and “incentives”, such as accountability and funding, with the overall policy aim. In relation to the first of our two research themes, school place-planning, we found that there are fundamental misalignments between statutory responsibilities and decision-making authority.

Specifically, LAs are held responsible for ensuring that there are sufficient school places for children in the local area. In the case of academies, central route free schools (decisions about opening new provision) and voluntary-aided schools (around PANs), they do not have the corresponding authority to take decisions that can directly affect sufficiency. While LAs have the authority to take decisions in instances requiring the expansion or contraction of places in maintained schools, in the case of academies it is the trust itself that can propose “significant changes” and the RSC who decides. Under the free school presumption, LAs cannot open new maintained schools. They can identify need and seek proposals for a new academy but the decisions about and process for opening new free schools are taken by the Secretary of State. This means that, at present, other bodies have

the power to propose and make decisions on changes to the school estate that have a direct bearing on whether the LA can fulfil its statutory responsibilities or not. While this is not a new issue (since before academies, voluntary-aided schools have had control over admissions), the expansion of academies and free schools has expanded the scale of decisions about place-planning and admissions over which LAs do not have decision-making authority.

In this chapter, we explore current arrangements, challenges and misalignments in relation to place-planning in mainstream schools (expansions, new provision, surplus places, closing provision, admissions) and for pupils with high needs. We then set out our findings on the question of the future LA role and responsibilities in relation to pupil place-planning and what is needed for this role to be fulfilled effectively.

Expanding existing mainstream school provision

School, trust and LA leaders described having well-established processes for planning places in mainstream schools in place. In part, there were technical aspects to these processes – projecting demand and matching that to supply. In part, there were also aspects of the role based on partnership working and dialogue – in many local areas where we engaged in depth in the first phase of the research, there was an emphasis on the LA, schools, trusts and other partners in a particular locale building consensus around “local solutions”. This meant working with all concerned parties to reach agreement on how best to respond to a specific need for extra school places. We have summarised the key aspects of place-planning through seeking local solutions in the text box below.

Five key aspects of place-planning through seeking local solutions

Several local areas described having established a Place-Planning Board or equivalent that brought together academy trust and school leaders, the dioceses, RSCs and LA officers and members to share data, ensure transparency, and shape the overall approach to ensuring sufficient school places. This had five aspects.

1. **Analysis of demand for and supply of school places** – led by the LA, this entails taking account of demand (birth rates, pupil numbers, housing developments, and pupil movement, and potentially wider intelligence from schools, health professionals and other partners) and supply (available school capacity) to project the number of places required and how this matched the existing capacity within the school estate.
2. **Transparent presentation of the analysis** – this involves sharing the data with school and trust leaders and partners to build shared responsibility and ownership of the issues. One academy principal described there being a feeling of a “moral duty” to collaborate to ensure all children had a school place. In several local

areas, this would be shared through a formal partnership structure – a dedicated Place-Planning Board or through an existing structure, often Schools Forum. Several local areas described the importance of the RSC being part of or informed of these discussions to link up with areas where the RSC has decision-making responsibility for academies. In the examples described to us, the LA acts as the convener of these partnerships.

3. **Identification of potential changes required at a locality level** – this involves breaking down the analysis to locality level, identifying where there may be specific changes to school places required, and convening all concerned parties in that locality to seek to reach a “local solution” that all could agree was fair and equitable – e.g., expanding an existing school, or working with a trust to support a new free school proposal. Again, in the examples described to us, the LA acts as the convener and arbiter in these discussions.
4. **Creative use of capital funding** – this entails using capital funding to support expansions, but also enhancements, of the learning environment in schools (with an important link to place-planning for specialist SEND provision). Local areas in urban areas talked about the importance of this, given that space for new provision was at a premium.
5. **Open communication about local solutions agreed and decisions reached** – this ensures that there is transparency for all schools, trusts and partners about what has been agreed, where and on what basis to ensure that there are sufficient school places.

Case study: West Sussex’s Planning Places Board

In order to ensure that there was collective planning of school places within a diverse local education system, West Sussex County Council convened the West Sussex Planning Places Board. The Planning Places Board has been operating for over 20 years. It reflects the range of partners involved in reaching consensus and forming decisions about planning school places. The focus is on planning places in mainstream schools, but the Board has recently begun to scope out a role around SEND place-planning.

The Board is chaired by a senior LA officer, and its membership includes representatives from schools, academy trusts and the dioceses. The outcomes of discussions are routinely shared with the RSC. The Planning Places Board meets termly, and routinely covers updates on, for example, pupil projections, admissions, housing forecasts, academy conversions, free schools, input from dioceses, input from academy trust and the long-term sufficiency strategy. The Planning Places Board ensures that decisions about place-planning in West Sussex are shaped through engagement from the key

partners in the local system, and informed by a wider understanding of the challenges that face schools of all types in West Sussex. The Planning Places Board has helped the LA to deliver successfully almost 3,500 new school places across primary and secondary schools since 2016.

While the partnership element of the Board is crucial in ensuring that decisions about sufficiency of places are reached in an open, transparent and co-productive way, so too is the LA's role in convening the partnership. As one LA officer put it, 'the LA is the glue that pulls these disparate parts of the local system together.'

One local area described how they had found "local solutions" to their need to expand the school estate – creating eight new secondary schools and expanding every existing secondary school over a 12-year period. Another described how, over the last three years, they had created four new primary schools, with 2,300 primary places added and a new eight-form-entry secondary school, using a combination of basic need funding and section 106 funding from housing developers.

Case study: Creating new school places in Staffordshire

In many parts of the county, Staffordshire has witnessed significant population growth over the last 10 years. Staffordshire's experienced School Organisation Team uses a wide range of data, such as birth, health and housing data, combined with soft intelligence from schools, dioceses, local planning authorities and housing developers to project future numbers. The methodology is evolving all the time and increasing in accuracy – last year their predictions were only 0.1% different from the actual numbers of places required. A solid approach to forecasting demand, on 5-, 10- and 15-year planning horizons, combined with good relationships with schools and trusts, has been the foundation for Staffordshire's school expansion programme.

Over the last three years, Staffordshire has created 2,300 new school places. This has been achieved by expanding existing school sites and opening four new free schools, including a new secondary school – the first one in the county for 30 years. Already £57 million has been invested in additional provision to meet the demand for places, £28 million of which has come from contributions from developers.

Where school expansions or new schools are needed, the School Organisation Team will undertake an analysis of school sites and instigate discussions with local schools where the opportunities for expansion might be. The Team also works closely with academy trusts to open new free schools and to make successful applications through the DfE's significant changes process. The LA and academy trusts both see strong mutual benefits in these arrangements. As one academy trust CEO commented, 'We

have had a lot of discussions with the LA around three pipeline free schools. We have worked with the School Organisation Team and the Admissions Team, and our discussions are very candid. We have felt supported by the LA and understand their position.’ The same academy trust CEO, however, also underlined the fragility of the system: ‘It is difficult. Every new school has to be a free school. The LA can hope trusts play fair, but they can’t compel them to.’

The majority of school and trust leaders we engaged through this research concurred with these views. They argued in favour of the LA having the responsibility for forming a strategic overview and collective vision for place-planning across a local area and being responsible for its implementation, with the caveat that this responsibility should be discharged in a transparent and equitable way, through open dialogue with school and trust leaders in the local area. These views were echoed by education leads from the Church of England and Catholic dioceses we engaged through this research. They recognised that place-planning required local responsibility and co-ordination, spoke positively where there were strong relationships between LAs and the dioceses around place-planning, and stressed the importance of ongoing dialogue, not just with individual school leaders, but with diocesan leaders.

‘LAs should be responsible for pupil place-planning provided that it is transparent and equitable.’ (National Academy Trust CEO)

‘There needs to be a collective vision across a local area, to provide an element of reassurance for future planning and stability.’ (Secondary school headteacher)

‘Place-planning should absolutely be the LA’s role.’ (Diocesan Director of Education)

There were, however, three sets of challenges reported to us. First, school, trust and LA leaders described the impact on provision and budgets of unexpected medium-term fluctuations in pupil numbers. Specifically, they spoke about the significant impact that discrepancies between the projected and actual number of children in a locality could have on their budgets. Given that school funding is arranged on a per-pupil basis, if pupil numbers differ from planned places, this can have serious consequences for a school’s finances. With major international arrivals (several school, trust and LA leaders referenced the Hong Kong resettlement scheme), the impact of Brexit, and the impact of the pandemic, school and trust leaders reported that they were scrutinising LAs’ pupil projections ever more strenuously. In a small number of instances, school and trust leaders were critical of the LA’s approach to place-planning, and particularly the lack of discussion and engagement with school and trust leaders to build schools’ intelligence about pupil movement into the LA’s projections.

School and trust leaders raised concerns where they felt decisions were taken by LAs in ways that were not transparent and not based on mature, open dialogue with them – trust leaders in one local area reported that place-planning worked well, but could feel ‘a bit cloak and dagger’. Trust leaders argued that there would be benefit in setting out more formally the expectations of collaborative engagement, transparency and consultation in the place-planning process, both for schools and trusts and for LAs.

‘I feel that the level of competence among some LAs has to be scrutinised, especially around pupil place-planning data. This is the basis on which decisions about new schools are made. In [one local area where we have a school] the data that the LA have held and the DfE have used has “shafted” us. There are now not enough children in this area.’
(Head of Admissions, National Academy Trust)

‘There is little to no place-planning from the LA.’ (Secondary school headteacher)

The second challenge reported to us related to the lack of join-up between the planning of housing developments and school places. This was particularly the case in shire counties, where the district councils have responsibility for housing and negotiate the section 106 funding with housing developers. This is an area where (upper tier or unitary) LAs have a significant interest in ensuring that there is appropriate planning of the impact of housing developments on school places – in terms of funding, infrastructure resource being used in ways that support the development of schools, and agreeing the right site for schools. Furthermore, this is an area where decisions about housing developments can affect LAs’ ability to ensure that there are sufficient school places, but where LAs do not have a direct role in negotiations, which take place between district councils and housing developers. The issue was not exclusive to county councils, however – unitary authorities described the challenge of managing competing priorities of building houses and planning for school places.

Third, the most significant challenge reported to us was the misalignment between LAs’ duties to ensure sufficient school places and their lack of authority to make decisions about the expansion of school places in academies. Where an LA determines there is the need to expand school places, they have the decision-making authority to expand places in maintained schools, but in the case of academies it is the academy trust that must propose an expansion under the “significant changes” process and the RSC who decides. In these circumstances, the LA has the responsibility and financial risk if there are not sufficient school places (the costs of transporting pupils and/or creating new provision), yet it does not have the power to take, or even have a direct role in, decisions that have a direct bearing on whether there are sufficient school places. RSC colleagues noted that RSCs are held to account by DfE ministers for sufficiency, but LA officers noted that the formal statutory responsibility and the financial risk of a shortfall in school places rested with LAs

alone. This mismatch between responsibilities and powers was highlighted not only by LA leaders, but also by school and trust leaders. As one academy trust chief executive put it, 'Around place-planning ... academisation has disempowered the LA. They have no powers.' Another sympathetically described LAs as 'a toothless tiger'.

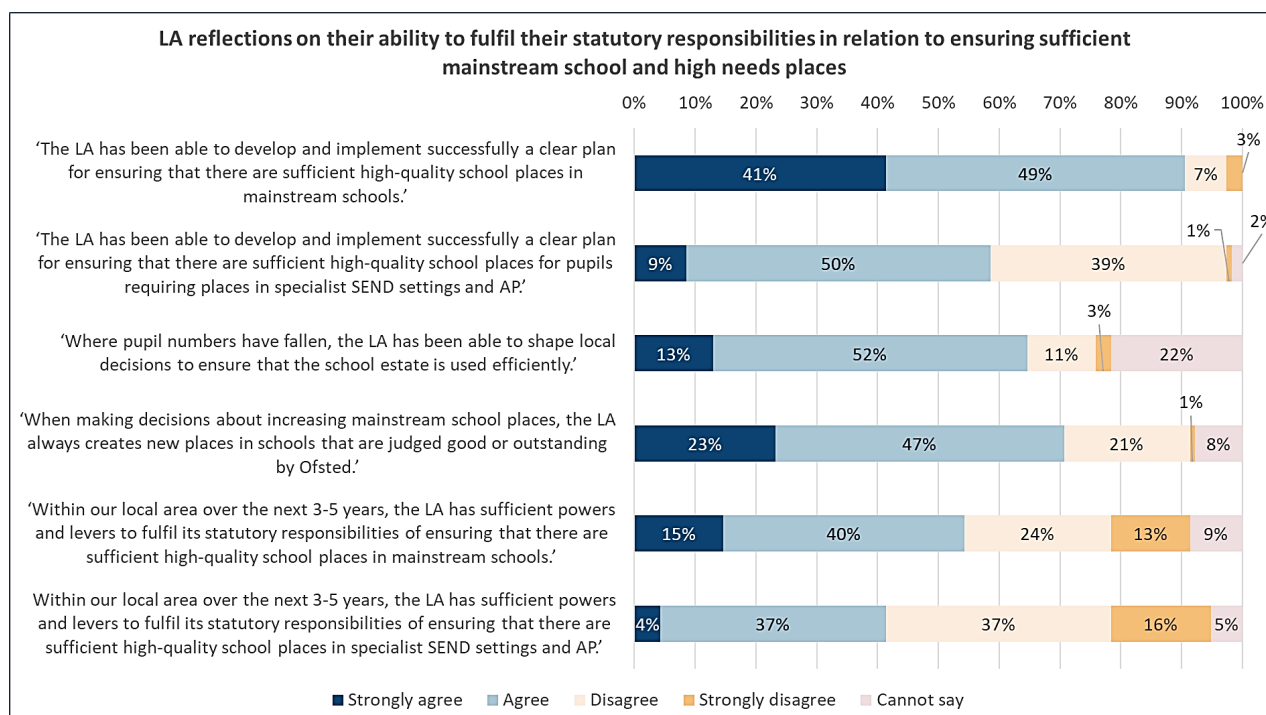
'The LA can only develop and implement successfully a clear plan for ensuring that there are sufficient high-quality school places in mainstream schools, in negotiation and agreement with academies. Although as an LA we are proactive in building strong relationships and collaborating with MATs, the final decision-making is not within our gift.'
(LA officer)

'We will do our utmost to bring people to the table to negotiate in those areas, but I will rely entirely on goodwill to achieve a consensus with academies. I have no idea what I will do if academies simply walk away.' (LA officer)

RSC colleagues agreed that there was a lack of alignment around place-planning responsibilities within an education system in which an increasing proportion of schools are academies. They highlighted that, in the vast majority of instances where they were asked to approve expansions of places in academies, these were cases where the LA and trust had agreed the expansion and where the LA was supporting it. The concern of LAs, however, was in the uneven negotiating positions created by the fact that the LAs had to get the agreement of academy trusts for the latter to propose an expansion, and the potential situation where trusts could refuse to expand places, leaving the LA with a shortfall in places and no way to rectify this.

In their survey responses, LA leaders underscored these messages. As shown in figure 5, below, 91% of the LAs considered that they had been able to implement a successful plan for mainstream place-planning (41% strongly agreed; 49% agreed). Only 54%, however, reported being confident that the LA had sufficient powers and levers to fulfil its statutory responsibilities over the next three to five years (15% strongly agreed; 40% agreed). A sizeable minority (37%) disagreed or strongly disagreed or could not say (9%). On this last question, LAs from areas with higher proportions of academies were less likely to agree that they had the right powers and levers than LAs from areas with average or low proportions of schools that were academies.

Figure 5: LA survey responses about place-planning responsibilities



There were four ways in which this misalignment between LA statutory responsibilities and powers was manifested.

1. **Access to information about the physical capacity of academies** – one LA officer responsible for place-planning described this as, '[t]he biggest single problem – we cannot be completely sure of the supply side of our academies.' While the physical capacity of an academy would have been captured in its funding agreement at the time it became an academy, any changes made since then may not have been captured formally. While academies are required to notify the ESFA, and indeed to go through the significant changes process, where expansions are deemed significant (for example, permanent enlargement of buildings), we heard examples where this process had not been followed. LA officers reported that getting up-to-date information about the physical capacity of academies was not problematic if the trust was open with the LA and prepared to provide this information. Issues arose where trusts were not willing to share this information or there were disputes about physical capacity. As one LA officer put it, 'We have no power, no authority, no ability to go into academies to ensure we are confident of the number of places they have in their schools.' LA officers reported that it was not clear who had the responsibility for holding up-to-date information about academies' physical capacity – whether this was the ESFA or RSCs – and how LAs could ensure they had access to it. LAs reported that the ESFA had piloted a net capacity assessment form, but were not clear what powers the ESFA had to challenge any discrepancies it found. One LA officer said, 'The DfE's powers seem to be as limited as ours.' This suggests that there is a significant gap in the current regulatory

framework that has implications for how LAs assess supply as part of their sufficiency duties. It also has potential implications for the use of public money – for example, if funding is used to create new places that are already available in academies. As one LA officer summarised, ‘LAs do not hold up-to-date information on the physical and net capacity of academies; therefore, there is uncertainty as to where capacity is available.’

2. **Uneven negotiating positions** – LA leaders reported that they are in an uneven negotiating position when it comes to expanding school places. This was not exclusively an academies issue – LA officers reported that schools, particularly in the secondary phase, were more likely to set conditions for accepting an expansion. LA officers also argued, however, that their negotiating positions were weaker still in the case of academies since it is the trust, not the LA, who can propose an expansion. As one LA officer put it, ‘Statutory responsibility sits with the LA but we have no authority to make it happen. We have all the accountability, but no authority, no power ... and schools exploit this.’
3. **Potential perverse incentives to expand maintained schools** – even where an academy trust agrees to propose an expansion, the decision-maker is the RSC. Where the RSC takes a different decision or where decisions are delayed, this can have a direct impact on the sufficiency of school places for which the LA is responsible. In other words, LAs would be responsible for decisions taken by the RSC. As some LA officers noted – and some academy leaders perceived – this lack of control and added layers of decision-making can create potential perverse incentives for LAs to look to the maintained sector for expansions which can be more easily secured, rather than looking to expand academies.
4. **Creating new school places in good or outstanding schools** – there is a strong expectation from national government that, in carrying out their place-planning duties, LAs look to create school places in schools judged good or outstanding. Figure 5 shows that, in response to the statement that ‘the LA always creates new places in schools that are judged good or outstanding’, 71% agreed, but 22% disagreed. (This was another question where LAs from areas with higher levels of academisation were less likely to agree and more likely to disagree.) LA officers explained that they would always seek to expand good schools in line with central government expectations. They noted, however, that in some specific circumstances they may need to expand an existing school judged less than good by Ofsted. (RSC colleagues we engaged agreed that there were situations where the need for sufficient school places would take precedence over the aim to expand good or outstanding provision.) LA leaders argued that, particularly in rural areas or specific localities, this may be a more practical and cost-effective means of securing school places for pupils than transporting them to schools away from their communities. As one officer from a shire county put it, ‘Although the LA would always seek only to add mainstream places in good or outstanding [schools] we are

aware that in a rural context there may not be choices about which school to expand.’ A minority of trust leaders raised concerns that LA decisions did not always take account of the quality of provision and seemed to be focused purely on “bums on seats”. This underscores the necessity for expectations of transparent, open dialogue between LA, school and trust leaders about the need for school places, options considered, and the reasons for the decisions taken.

Creating new mainstream school provision

Aside from expansions, the other way to increase the capacity of the school estate is to create new provision. Under the current statutory framework, there are two main routes through which new free schools (which are academies created without a predecessor maintained school) can be created. First, there are so-called “central route” free schools. This is where the DfE opens waves of applications for free schools, and proposers can submit proposals to open free schools. Decisions on these proposals are made by the Secretary of State.

Several local areas that took part in this research had made extensive use of the free schools programme to enable them to fulfil their sufficiency duty. LA leaders described how this had offered them a route to bring new providers into their local areas and helped them to respond to long-term increased demand for school places. One LA described how it had worked with all schools and trusts in its local area and with the RSC to take a proactive approach to encouraging central route free school proposals to enable them to meet significant growth in demand for school places. They described how they had been open with the RSC and all schools in the local area about the need for new school places, and the rationale for creating new schools, and had encouraged existing trusts to be involved in proposals to set up new free schools. As the place-planning lead for the LA put it, ‘This way of working is unique – working with all schools, trusts and the RSC. We would not have created the places we did without free schools.’

Case study: Manchester’s school places expansion programme

Manchester has had to take a very active role in place-planning over the last 10 years. During this time, the city has seen significant growth in pupil numbers, including movement of families and children into the city mid-year. For example, in the five years between January 2016 and January 2021, the number of school-age pupils grew by 4% nationally, while in Manchester the growth has been 10%.

The LA responded to this trend by taking a proactive and co-productive approach. It has worked with schools and trusts on a locality rather than an individual basis, to set out the scale of increased need for school places, as well as the opportunities, and asking openly who could help. Over the past 12 years, the city has accommodated significant growth

in primary schools by creating over 11,000 additional places. It has opened two new special schools and expanded most other special schools; expanded or increased PANS at every secondary school in the city; and opened seven new secondary schools, with two more approved through the free school process. This expansion programme has involved the LA working with academy trusts to make extensive use of the free schools route to meet the demand for school places in the city. Overall, 15 free schools have now opened in the city. As one LA officer put it, 'We would not have created the places we had by just relying on our basic need capital allocation and we needed to work with our academy trusts to encourage them to apply to open free schools.' The LA also worked proactively with the RSC to secure their understanding and support for the development of new provision.

The approach is, however, dependent on the quality of relationships within the city. As one LA officer put it, 'It works well because we have built strong relationships with schools and trusts in the city. Where it has been more challenging, it has been because we are reliant on DfE to open free schools in a timely manner so that the LA can meet its sufficiency duty. If the DfE does not deliver, the problem remains with the LA. For example, we have recently opened a new secondary school in under two years and yet we are still waiting for the DfE to start building a free school in an area with high demand for places which was approved in 2016. The responsibility and levers need to come together in one place.' As one primary academy principal with direct experience of working with the LA to expand school places put it, 'The LA has a really key role to play: they have the knowledge and information about schools and communities, where and why places are needed, housing developments, intelligence about pupil and family movement.'

All LA leaders welcomed the shift of emphasis of central route free schools to align with basic need for school places. Nevertheless, since it is the Secretary of State and not LAs deciding to approve central route free schools, there remains the potential for misalignment with local place-planning. While the DfE seeks to involve LAs in the application process and use local sufficiency planning to inform their decisions, the decision about whether to approve a central route free school proposal is taken by the Secretary of State. This can lead to situations where a new mainstream free school approved through the central route cuts across LA sufficiency plans. This was a significant concern in our earlier research, at the beginning of the free schools programme. It was less of a concern in the present research, but some LAs had experienced recent examples of large national academy trusts being approved to open free schools in isolation from local place-planning.

The second route through which new free schools can be created is the so-called "presumption route". As we described at the outset of this chapter, the Education Act 2011 introduced what is called the free school presumption, meaning that LAs must seek

proposals to establish a new academy where they identify the need for a new school. The effect of this is that LAs cannot, except in very specific circumstances, open new maintained schools. As with central route free schools, several LAs who took part in this research described in positive terms the way that they had used the presumption route to develop new schools to meet demand for school places. There were, however, also concerns expressed by LAs that the free school presumption had added additional complexity to the process of creating new provision, which could bring risks of delays and challenges in fulfilling LAs' statutory responsibility. While not all LAs had had negative experiences of the presumption route, there were some notable examples where delays in agreeing and building presumption route free schools had created sufficiency challenges and had a negative impact on existing schools and academies.

Examples of challenges in delivering sufficiency through the presumption route for free schools

In one local area, two new secondary free schools were proposed as part of the LA's and school leaders' plan for meeting anticipated structural increase in demand for school places. One of the schools has opened, but one has been delayed. Since it was approved, the patterns of demand have shifted, suggesting that there is a need for some additional places in the short term, but not the long-term need to justify the creation of a new school. School and academy leaders (since almost all secondary schools are academies in this local area) have come together to develop an alternative set of proposals for meeting demand for additional places to avoid the risk of an over-supply of school places and the knock-on effect on existing schools. As one academy principal put it, '... the demographics have changed, and the LA's figures suggested a structural oversupply of places. We have seen this in other local areas. It is devastating for schools – falling rolls, declining provision. ... We were concerned about structural oversupply, but we can see the short-term need to deal with additional places. A group of headteachers came together with an alternative proposal for how basic need could be met, and the LA evaluated those proposals.'

In another local, LA officers described 'three to four years of nightmare place-planning' where a planning issue caused delays of several years in opening two new free schools. The local area is awaiting the decision of the Secretary of State, but in the meantime has to make good the shortfall in places without funding and through expansions (which were ruled out initially, leading to the free school proposals being developed). As the LA officer responsible for place-planning put it, 'In that situation, you cannot be strategic – you are by definition trying to find quick wins.' As one academy trust CEO put it, 'I would be in favour of having the freedom for the LA to act autonomously under certain conditions. ... it's right that DfE are ring-holders but sometimes if there's a pinch locally you need to have a clear basis that those judgements are being made.'

In a further local area, the LA officer who responded to our survey described how ‘... the timescales and processes have been protracted and uncertain, which hinders clear, decisive and timely strategic planning for LAs, who still hold the statutory responsibility for sufficiency of school places.’

While we heard positive examples of presumption route free schools, the examples illustrate the potential risk that the misalignment of statutory responsibilities and decision-making authority could result in insufficient school places being available. The additional parties involved in the decision-making process – central government, LocatED (the government-owned property company, responsible for buying and developing sites for new schools in England) – and the extra layers of decision-making create risks of delays and complications that are beyond the direct control of the body responsible for ensuring sufficiency of places. Furthermore, where delays do occur, they force LAs to rely on temporary arrangements with schools and trusts. These are made with limited time and funding, which makes the negotiations more challenging, and can corrode trust and relationships. This can create a vicious circle – the lack of decision-making authority to control the creation of new provision means LAs are ever more reliant on relationships with existing schools and trusts to manage the impact of delays to new schools being opened, which in turn can damage and strain those relationships. As one LA officer responsible for place-planning put it, ‘By and large, we can make the free school process work for us as an LA, but there is an element of risk.’

Dealing with surplus mainstream school places

Much of the work around place-planning over the last decade has been based around the need to expand the school estate to meet increased demand for school places. Local areas are, however, starting to see a decrease in pupil numbers in the primary phase – this is particularly the case in large cities, but also in the larger towns in shire counties. Some local areas reported seeing highly localised trends of growth in demand for school places in one part of the local area and declining demand in another part. Overall, our research suggests that many local areas are starting to be affected by the need to reduce school places, albeit to different extents.

Among school, trust and LA leaders, there was broad consensus that, while imperfect, the incentives in the national policy framework were better aligned for expanding school places than for reducing them. Notwithstanding the challenges described earlier in the chapter, since expansions were often seen as a positive endorsement of a school, since expansions could in some instances be supported by capital funding (basic need or section 106), and since, if projections proved correct, additional pupils would equate to more revenue funding, school, trust and LA leaders reported that expansions were easier to agree than reductions in places.

This view was reflected in LA responses to our survey. In figure 5, above, while 90% of LAs either agreed or strongly agreed that they had been able to develop and implement a plan for ensuring sufficiency of school places, the figure dropped to 65% agreeing or strongly agreeing with the statement that the LA had been able to shape local decisions about the effective use of the school estate where pupil numbers had fallen. We found some evidence that LAs in areas with medium levels of academisation were more likely to disagree with this statement. This may reflect the challenges of reaching decisions about falling rolls in local systems with a mixture of school types.

Some local areas have responded proactively to the challenge of falling pupil numbers. Often, this has involved the LA convening school and trust leaders, as well as other partners (the dioceses, RSC, regional Ofsted leads), sharing information about pupil projections, providing tools and support to school leaders and governors to self-evaluate and consider the implications of projections for their schools and budgets, and facilitating a fair, collective process so no schools felt that they were being unduly disadvantaged. As one diocesan Director of Education put it, 'What was fantastic was the [LA] pupil planning team worked with all the schools they could to reduce PANs of all schools – if that hadn't been done as a locally managed process with the LA it would have been much more competitive and not in interests of all.' Within these examples, however, there remains an over-reliance on relationships – specifically, on the willingness of schools and trusts to engage in a collective process to resolve a sensitive, system-wide issue and avoid the risk of a structural over-supply of school places.

'The LA has not yet actively engaged in targeted discussions around reducing surplus capacity in an efficiency and place-planning sense. However, should that become necessary (e.g., due to falling pupil rolls) we would be concerned that we do not have the powers to compel reductions in PAN at academies. Reductions/changes are never simply about one school and so require an "area" view.' (LA officer)

It is important to note that, while the DfE guidance states that, 'The department expects LAs to manage the school estate efficiently and to reduce or find alternative uses for surplus capacity', LAs are not under a specific duty to reduce school places where pupil numbers are falling. The issue here is less about the alignment of statutory responsibilities and decision-making powers, and more about the management of risk. Those risks relate to the impact of a structural over-supply of school places and the impact on the quality of education across the local system. There are also risks to individual schools' and trusts' budgets. While LAs have the powers to reduce the PANs of schools for which they are the admission authority, they do not have the same power for schools that are their own admission authority (academies and voluntary-aided schools). Within this situation, there remains a risk that some schools and trusts will be adversely affected by falling rolls if not all schools agree to a collective approach to reducing school places. As one LA officer put

it, in an 'area with 800 spare places and one school is due to expand – who talks to the school? It should be the LA going to the RSC.'

Closing schools

LAs have the power to propose and decide upon the closure of maintained schools, but in the case of academies these powers reside with the trust and the Secretary of State (either can propose closure, only the Secretary of State can terminate an academy's funding agreement). LA leaders did not advocate that they should have the power to decide on the closure of academies. As noted at the end of the previous section of this chapter, one of the main risks in a situation where a school or academy may need to close due to falling numbers is a financial one. While in the case of maintained schools, the LA bears the financial risk, in the case of academies the risk is borne by the academy trust and ultimately the DfE. The challenge – and misalignment – reported here was where the priorities of the LA and trust in dealing with falling pupil rolls in an academy may come into conflict.

In one example reported during the research, an academy trust and the DfE had taken the decision to close an academy that was experiencing falling rolls and significant financial challenges. The LA, however, argued that there remained a long-term need for a school in that locality (and that there was not an alternative of expanding another school). LA leaders highlighted this as an example of a tension between one part of the education system being responsible for dealing with financial viability and compliance within individual institutions and another being responsible for long-term planning of school places in a local area. In this example, the DfE took the decision to close the academy. It was reported that this had created a shortage of places in that locality, with a knock-on effect on other schools (which had to accommodate pupils at short notice for whom they had not been planning) and on the LA (which bore the additional costs of transport and potentially of creating new provision).

In a similar example from another local area, a large secondary academy operating across two sites proposed a reduction in school size and consolidation into one building. The LA's projections showed that there would be an increase in demand for school places in that locality in the medium and long terms. The trust's proposed reduction of places was approved by the RSC, however. LA leaders argued that this had left the LA with a shortfall of school places, the only solution to which would be to create a new school, but which would take time and for which the LA had no funding – what they called 'a £40m problem'. These may be isolated incidents, but they reflect the potential consequences of a lack of join-up and alignment of priorities, statutory responsibilities, accountabilities, risk and decision-making authority.

Admission arrangements for mainstream schools

Summary of current roles and responsibilities relating to admissions

Decisions about pupil place-planning are closely related to the co-ordination of admissions. Section 84 of the School Standards and Framework Act 1998 gives the Secretary of State the power to issue and revise a code of practice – the Admissions Code. A revised Admissions Code was issued part-way through this research, and took effect on 1 September 2021.

Admission authorities: The Admissions Code requires that all schools have admissions arrangements relating to how children are admitted and criteria for managing instances where the number of applications is greater than the available places. Admissions arrangements are determined by admission authorities. The LA will usually be the admission authority for community and voluntary-controlled schools (unless responsibility has been delegated to the governing body). Governing bodies are the admission authority for foundation and voluntary-aided schools. Academy trusts are the admission authority for academies. All admission authorities are bound by the Admissions Code. Complaints about admissions arrangements are heard by the Schools Adjudicator, whose decisions are binding on all admission authorities. (Admissions for special schools and academies are different, as these are schools specifically organised to make provision for pupils with SEND. In most instances, admissions will be by means of an EHCP.)

Published admission number (PAN): All admission authorities must set a PAN. This applies only to the year-group in which pupils enter the school (the “relevant year group”). Admission authorities cannot refuse to admit a child in other age-groups on the basis that they have reached their PAN.

Admissions arrangements: LAs are responsible for co-ordinating “normal admissions” (applications for relevant year-groups). LAs are not required to co-ordinate “in-year admissions” (admissions requests received outside the normal admissions round) where they are not the admission authority), but may do so with the agreement of own admission authority schools. Parents have the right to appeal against an admission authority’s decision to refuse admission. In such instances, it is the admission authority that must convene an independent panel to decide whether to uphold or dismiss the appeal.

Making changes to PAN: As the admission authority, the LA is responsible for setting the PANs of community and voluntary-controlled schools. As own admission authorities, academies, foundation and voluntary-aided schools can increase their PAN without consultation (provided the LA is notified and changes are published). Other changes to an academy’s PAN are governed by the “significant changes” process. The DfE’s

guidance for trusts states, *'It would be helpful for admissions authorities to discuss their plans with the LA ... to consider whether there is a need for additional places in the area when considering increasing a school's PAN. When considering reducing a PAN, again, admissions authorities should consider the need for places in the area.'*

The new Admissions Code states that the purpose of the code and the admissions arrangements it sets out, 'is to ensure that all school places for maintained schools and Academies (excluding maintained special schools and special academies) are allocated and offered in an open and fair way.' The principle that underpins place-planning is one of equity and access, and admission arrangements are an important aspect of that – equity and access to education for families, but also fairness between schools.

Normal and in-year admission arrangements for mainstream schools were an area where strong concerns were registered from school, trust and LA leaders – admission arrangements for special schools are covered by different legislation and, along with fair access arrangements, are covered in the next chapter on support for vulnerable pupils. The majority of the school and trust leaders we engaged argued that a system in which an increasing proportion of schools are their own admission authorities, responsible for setting admission arrangements and managing in-year admissions, creates risks in a system designed to ensure equitable access to school places. As one academy trust leader put it, 'I wish we did not have own admission authorities. It is a nightmare.' Prominent national academy trust leaders and national system leaders described academy control of admissions as a 'red herring', and argued that 'the only fair and equitable way is for the LA do to this [act as admissions authority].'

There are, however, several dimensions to admission arrangements, and it is important to be clear about the aspects to which the concerns raised during our research related. While there was not a widespread and explicit view put forward that LAs should be the admission authority for all schools, this view was put forward by several of the national and regional academy trust leaders and national system leaders we engaged. Concerns were raised about how oversight of admission arrangements can be exercised effectively and how to ensure that practice complies with the Admissions Code (the code of practice relating to admission arrangements issued by the Secretary of State) in a system in which some schools (academies, foundation schools and voluntary-aided schools) are their own admission authority. Below, we have set out how these concerns related to the setting of admission arrangements, both normal admissions and in-year admissions.

In terms of setting admission arrangements, most school and trust leaders did not explicitly state that own admission authorities should not be able to draw up their own admission criteria. (Some national leaders of trusts and those representing school leaders did, however.) The concerns we heard here were twofold. First, given the number of schools and trusts who are their own admission authority, LA officers described the scale of the

challenge of ensuring that all admission arrangements are compliant with the Admissions Code. We note that admission authorities must consult on admission arrangements, and that the objections of any admission authority can be lodged with the Schools Adjudicator. Nevertheless, the issue described here was LAs and the wider system having the *capacity* to spot non-compliant practices when setting or amending admissions arrangements, including failing to consult on proposed changes to admission arrangements.¹¹

Second, school, trust and LA leaders described the damaging impact on local schools and trusts of some own admission authority schools/trusts taking unilateral decisions about admission arrangements – for example, increasing or reducing their PANs without considering the impact on the local ecosystem of schools. They argued that a lack of co-ordinated admission arrangements and the ability of some types of schools to set their own admission arrangements unilaterally could result in decisions being taken that ran counter to local needs, and could create problems of unfairness for schools and trusts, equity of access for families, and sufficiency of local provision.

In terms of normal admissions, the concerns raised here by some academy trust leaders related to specific instances where their schools, finances and quality of education had been negatively affected by overtly aggressive practices from a minority of other academy trusts. One academy principal responsible for turning around a challenged school described how, in the locality, another academy trust, whose academy was already over-subscribed, had cold-called parents who had been given a place at the first academy, invited them to appeal and apply instead for the already over-subscribed academy, had then admitted 30 children above their PAN, and then moved children after census day. While extreme, this was not the only incident of this nature reported by academy leaders about the negative impact of such practices on them by other trusts. (Such practices were not reported in the cases of other own admission authority schools.)

Furthermore, concerns were raised about the independence of admissions appeals panels set up by own admission authorities. We heard feedback from LA officers about academy trusts forming reciprocal agreements to act as the appeals panel for one another, supporting each other's decisions. We note that the same risk of the lack of true independence in appeals against admissions decisions could apply to panels established by LAs. The underlying concern here was whether the system for ensuring oversight of appeals decisions is sufficiently robust.

In terms of in-year-admissions, the challenges here were twofold. First, LA leaders argued that, due to the increase in the number of schools/trusts that are their own admission authority, the tasks of identifying and addressing non-compliant in-year admission practices and preventing delays in pupils accessing a school place were becoming

¹¹ The Admissions Code specifies the groups that must be consulted when changes are proposed to admission arrangements. These groups include parents of children aged between two and 18, other admission authorities, governing bodies, the LA and neighbouring LAs, and (in the case of schools with a religious character) the body or person representing the religion or religious denomination.

increasingly difficult. LA leaders cited examples of own admission authority schools misinforming parents about their right to apply for a place or refusing to accept in-year admissions. These concerns were echoed by some academy trust leaders and diocesan education leads. LA leaders described how practice that does not comply with the Admissions Code around in-year admissions can leave families “bouncing” between schools for weeks before the LA becomes aware of their situation. As one LA officer described it, ‘What we actually think is happening is screening by schools to prevent disadvantaged [children accessing school places] – children bounce around the system until they get to a maintained school and then we hear the story of the parent. We’ve had vulnerable parents report that schools say they simply don’t accept Year 6 admissions.’ Second, LA leaders also described challenges in maintaining oversight of in-year admissions, and the safeguarding risks this could pose if the LA was not notified that a child has been admitted through in-year arrangements. We note that, since we carried out our evidence-gathering, the Admissions Code has been introduced, with provisions that seek to strengthen requirements about timely notification of in-year admissions. We note, however, that these provisions relate to notifications of pupils who have been admitted, but do not necessarily address the concern about the potential blind-spot caused if own admission authorities are not following the Admissions Code in relation to in-year admissions, as in the example we have cited.

‘It’s like the wild west out here at the moment. There are some very aggressive trusts out there. It is all geared around money, not about the kids. We should be here to give a service for young people. There has to be a sheriff for the wild west. And the LA is perfectly placed to do this.’ (Secondary academy principal)

‘We should give LA back the power – academy trusts cannot run their own admissions.’ (Academy trust CEO)

‘I support academy freedoms, but I do not think there should be freedom around admissions. It is amazing that people can volunteer whether they do their own admissions or not.’ (National academy trust CEO)

‘We have the issue of “rogue schools” increasing their PANs – schools can do this without involving other schools. It is not that frequent, but there have been a couple of high-profile cases. It has a detrimental impact on other schools ... it draws children away from other local schools, that can have an impact on the quality of education and financial sustainability of those schools.’ (Secondary school headteacher)

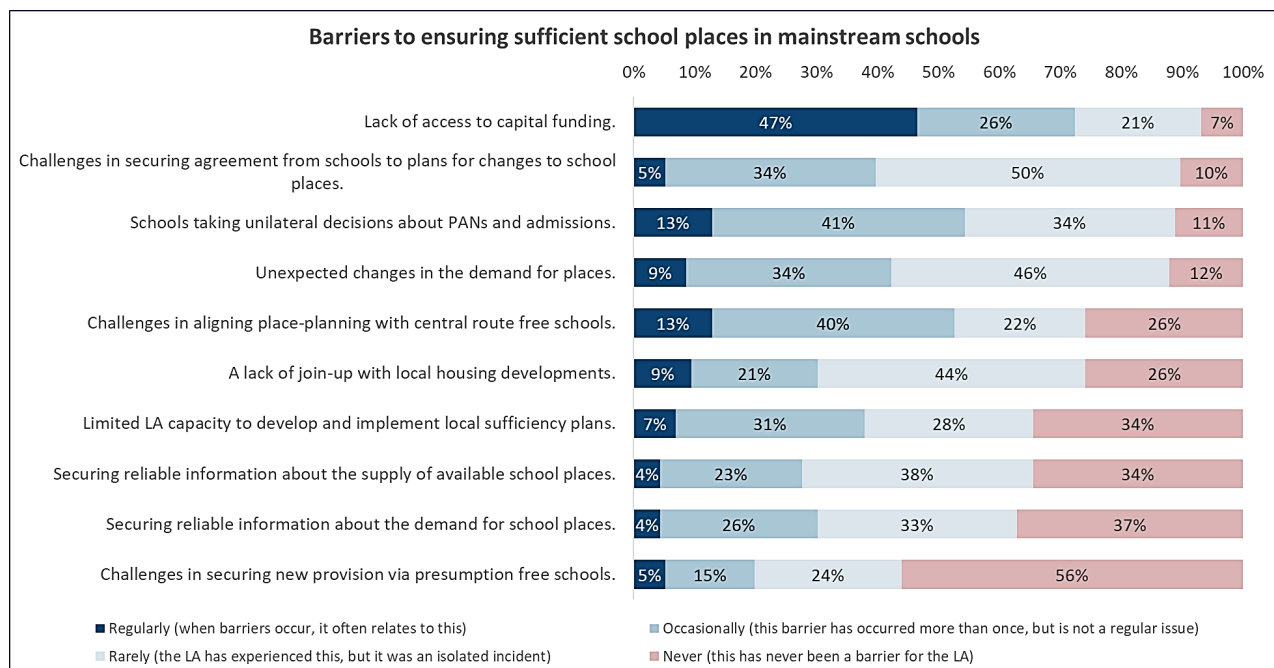
Furthermore, LAs and trust leaders reported that, where such issues were raised with the DfE, there did not seem to be the means to intervene to resolve these issues. LA officers reported that the process was time-consuming, automated (in contrast with local systems built on relationships and co-producing local solutions), and without the means for

resolution. One LA officer responsible for place-planning described the lack of resolution to a recent admissions issue where the LA had sought a decision from the Secretary of State: ‘It was resolved, but not resolved – it got left to the LA to pick up with the academy trust. There did not seem to be a hard line asking the trust or school to do the right thing, legally or morally.’

Barriers to fulfilling LA responsibilities for mainstream school place-planning

In our survey, we asked LAs about the barriers to mainstream school place-planning and how regularly or not they occurred. The results are shown in figure 6, below. Lack of access to capital funding was the most common barrier – identified as a regular occurrence by 47% of LAs, and reported in some form (as a regular, occasional or rare occurrence) by 93% of LAs. In their responses, LA officers explained that the issue here was the sufficiency of capital funding (to cover the cost of new builds/new presumption free schools, not just adaptations and maintenance), cashflow (for example, LAs having to borrow due to needing to start building new school places before section 106 funding had been received), and instances where there was a mismatch between basic need funding provided incrementally and a long-term increase in demand for places.

Figure 6: LA survey responses about barriers to mainstream school place-planning



There were three other barriers identified in some form by around nine in 10 LAs –

1. **challenges in securing agreement from schools to changes in school places** – this was identified by 90% of LAs, although 50% reported this as a rare occurrence;

2. **unilateral decisions about PANs and admissions** – this was identified by 89% of LAs, with 13% reporting that this occurred regularly, 41% occasionally, and 34% rarely; and
3. **unexpected changes in pupil numbers** – this was identified by 88% of LAs.

The barrier least commonly identified was challenges in securing provision through presumption free schools – 56% of LAs reported that this issue had never been a barrier, although this may reflect that some LAs have not had direct experience of seeking to create provision through the presumption free school route. By contrast, 74% of LAs identified the challenges of aligning local place-planning and central route free schools as a barrier – 13% regularly, 40% occasionally, and 22% rarely.

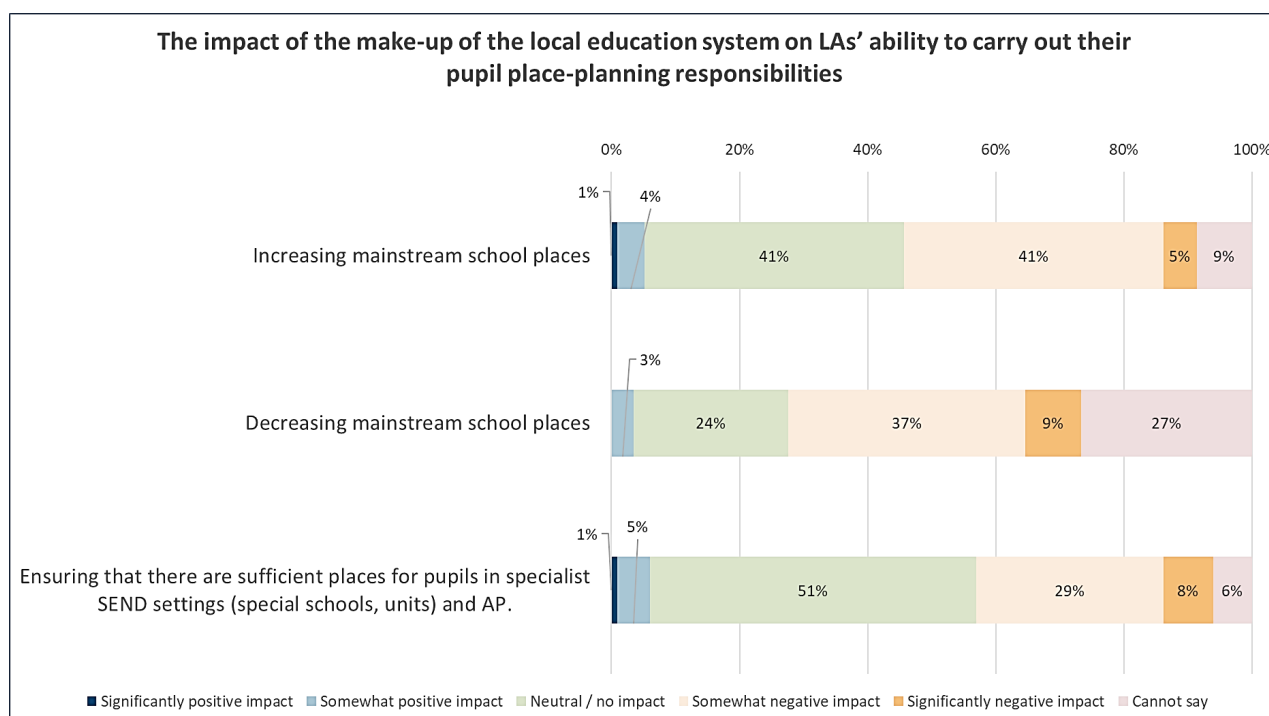
For those local areas identifying each barrier in the survey, we asked LA leaders whether those barriers occurred more commonly when working with schools of a particular type or occurred regardless of school type. For most areas, the most common response was that these issues occurred regardless of school type. Leaving aside free schools, which, by definition, are academies, there were three areas where LAs were more likely to report that barriers were more common when working with academies.

1. **Access to information about the supply of available school places** – this reflects the point made earlier in this chapter about the challenges in getting accurate information about physical capacity in academies, and the lack of clarity about who has the responsibility for gathering and maintaining this information. (LAs in areas with low proportions of academies were more likely to report this as a regular or occasional barrier than those in areas with medium or high proportions of academies.)
2. **Securing agreement from schools to changes to school places** – this reflects the point made in this chapter about the differences between school organisation processes for maintained schools and the significant change process in academies. (LAs in areas with low proportions of academies were more likely to report this as a regular or occasional barrier than those in areas with medium or high proportions of academies.)
3. **Schools making unilateral decisions about PANs and admissions** – this reflects what we described about the challenges of co-ordinating admission arrangements. (LAs in areas with high and medium proportions of academies were more likely to report this as a barrier that they had encountered than those in areas with low proportions of academies.)

In our survey, we asked LAs directly about the impact on their ability to fulfil their place-planning responsibilities of the make-up of the education system, and specifically the proportion of schools that are academies or part of larger trusts. As figure 7 below shows, on questions of mainstream place-planning (both increasing and decreasing school places), only a small proportion of LAs considered that this had had a positive impact.

While a significant proportion of LAs considered that the impact was neutral (41% in relation to increasing mainstream school places; 24% in relation to decreasing mainstream school places), almost half (46%) considered that the impact had been somewhat or significantly negative – this was the figure both for increasing and decreasing mainstream school places. As we explain in the section below, and in the chapter on support for vulnerable pupils, some of the challenges around high needs provision are of a more systemic nature, and in most instances apply regardless of school type. This explains why more LAs (51%) reported a neutral impact of the make-up of the local education system on high needs place-planning.

Figure 7: LA survey responses about the impact of the make-up of the local education system on their pupil place-planning responsibilities



Place-planning for pupils with high needs (SEND and AP)

Many of the LAs we engaged reported that they were involved in work to develop and refine their approaches to planning places for pupils with high needs – places in resourced provision, units or special schools specifically for pupils with EHCPs requiring special educational provision, and those in AP. Many LAs were seeking to develop and embed a similar approach to successful planning of mainstream school places – most acknowledged that mainstream place-planning was more established, and high needs sufficiency planning was at a more formative stage.

In addition, however, LA officers, school and trust leaders, and parents/carers recognised that planning high needs places was a more complex task than planning mainstream school places. While many LA place-planning officers argued that mainstream place-

planning was not “an exact science”, they agreed that there were more variables when it came to planning places for pupils (and indeed younger pre-school children and post-school students) with high needs. These included:

- **changes in the nature of young people’s needs** – different combinations of need, better identification of conditions that were previously not well understood, which could affect the specific specialisms of provision that might be required;
- **variable join-up between LAs and health services** – particularly in the context of SEND, the quality of information-sharing, particularly about identification of children with complex and lifelong conditions likely to require specialist provision and practices in identification and diagnosis of need can impact on the demand for specialist provision;
- **the impact of parental choice and the role of the SEND Tribunal** – in the context of SEND, parental confidence in and preference for one type of provision or another (mainstream schools, units, special schools), and, if appeals about placement decisions were made and upheld, the impact of Tribunal decisions could have a significant impact on local high needs sufficiency planning;
- **the impact of school decisions on exclusions** – similarly, in the context of AP, LA sufficiency planning has to be largely reactive to decisions about exclusions taken by mainstream schools, which can make proactive sufficiency planning more challenging; and
- **higher per-placement costs** – generally speaking, the per-pupil costs of placements in special schools and AP are higher than in mainstream schools (and, because of the national funding methodology, commissioned places are pre-funded at £10,000 per planned place). This means that the financial risks to LAs of a mismatch between high needs sufficiency plans and the demand for high needs places are higher than for mainstream place-planning.

Several local areas we engaged described positive examples of approaches to high needs sufficiency planning. In the context of AP, they had developed approaches where school and LA leaders adopted a principle of collective responsibility and custodianship for places commissioned in AP, acting collectively as decision-makers around access to AP to ensure that available capacity was not exceeded. (We describe these approaches in the next chapter.) AP leaders in other areas reported significant challenges. As one AP leader put it, ‘I don’t think the place-planning process has worked well, and consequently it has been reactive – a case of “expand, expand, expand”, each year mid-way through the year.’

In the context of SEND, two local areas had brought together special school leaders to work in an open, collegiate and co-productive manner to identify how, collectively, they could expand special school places to meet projected need. While beneficial, one LA officer noted that even this was not responsive enough to keep pace with the increase in demand. Special school leaders in other areas concurred – they felt that, more often than not, LA

officers were coming to them at short notice asking them to take ever more pupils in order to respond to the increase in demand. They recognised that the LA lacks the resources and levers to take a more long-term, strategic approach to high needs place-planning.

‘There are simply not enough places in the [local area]. The complexity of need has widened. It is a scattergun approach to finding a place for a child – “let’s just find them a place”. It feels like crisis-planning.’ (Special school headteacher)

‘We feel like we are being heard, but then no one is doing it. When it comes time to do something, there is a rush. It will be short-term, reactive.’ (Special school headteacher)

LAs as commissioners of high needs provision: Three sets of barriers

The DfE describes LAs as “commissioners” of high needs provision. LAs are responsible for taking decisions about the way in which resources from the high needs block of the DSG are used to support children and young people with high needs. This includes taking decisions about the balance of resources that are used to fund places in specialist SEND or AP settings (the number and specialism of those places, and from whom those places are commissioned), top-up funding for individual young people, and inclusion support services. To be effective, commissioners need to be able to (i) respond to demand within existing resources, (ii) re-shape provision to meet demand, and (iii) decommission provision that is no longer the most effective use of available resources to meet needs. Our research identified barriers that impede LAs’ ability to act as true commissioners in each of these three areas.

The combination of barriers in these three areas – being able to respond to demand, re-shape and decommission provision – created what LA leaders saw as a vicious circle. The barriers to being able to shape high needs provision swiftly and effectively meant that, where there were not enough high needs places with the right specialisms to meet local needs, LAs had to look outside the local area (potentially increasing demand for places in neighbouring areas) or to the independent sector. Because the independent sector generally caters for very complex, lower-incidence needs, a small number of additional placements in the independent sector can have a significant impact on the high needs block. As we describe in the next chapter on support for vulnerable pupils, high needs block pressure was the barrier to effective support for vulnerable pupils most commonly identified by LAs: pressure on the high needs block can reduce capacity and resources for early identification and support. School and trust leaders and parents/carers echoed LA officers’ concerns about this vicious circle.

'[The LA] has a very clear strategic plan for SEND provision, detailing our intentions to future-proof provision. However, there are serious limitations on the ability of the local authority to enact the plan in full due to limitations on the powers of the council to open new provision and the very low levels of capital funding allocated to the local authority for high needs provision. Free school waves are insufficient for the LA to plan strategically and long term as (a) there is no known timetable for the next opportunity to bid and (b) there is then no guarantee any bid will be successful. So far the LA has exhausted nearly all of the small to moderate investments it can make in its existing special school estate to meet an extraordinary rate of growth in demand for more specialist provision.' (LA officer)

'It is essential that the LA has oversight of placements of these children and accountability.' (Special academy principal)

Responding to demand within existing resources

First, LAs argued that demand for high needs places was outstripping available resources, with LAs having limited ability to manage demand or increase available resources, both revenue and capital. In terms of SEND, the number of EHCPs (previously statements of special educational needs, or SEN) rose by 82% between January 2014 and January 2021.¹² The number of new EHCPs made each year increased by 121% in the same time period.¹³ While many children with new EHCPs are placed in mainstream schools, between 40% and 50% of school-age pupils with EHCPs are placed in special schools. Any increase in the number of school-age children with EHCPs is going to create an increase in demand for special school places. While the numbers of pupils affected is smaller, in the context of permanent exclusion, which is a significant driver of demand for AP places, there was an increase of 18% between 2015/16 and 2018/19 (discounting 2019/20, when school attendance was disrupted by the pandemic).¹⁴

At the same time as demand is increasing, LA levers for responding to demand are limited. Revenue funding, in the form of the high needs block of the DSG, is finite. While the DfE has increased high needs funding in recent years, LA and school leaders, and

¹² See 'Education, health and care plans: England, 2021', link:

<https://www.gov.uk/government/statistics/education-health-and-care-plans-england-2021>. There were 237,111 statements of SEN in January 2014, and 430,697 EHCPs in January 2021. We would point out that the number of EHCPs includes conversions of previous statements of SEN, as well as learning difficulty assessments. Prior to 2014, young people with learning difficulty assessments were not included in these figures, but these were converted to EHCPs after 2014.

¹³ See the same source – there were 27,139 new statements of SEN and EHCPs during the 2014 calendar year, but 60,097 in the 2020 calendar year.

¹⁴ See 'Permanent exclusions and suspensions in England, 2019/20' – the figures show an increase from 6,684 permanent exclusions from state-funded schools in 2015/16 to 7,894 in 2018/19. Link: <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england>.

parents/carers we engaged, argued that this was not sufficient to keep pace with demand. At the same time, LAs argued strongly that there was not sufficient recognition of this increased demand for high needs places in allocations of capital funding. Changes in SEND are not captured in the annual school capacity survey, which is based on mainstream schools, yet this is the main source of data on which LAs' basic need capital funding is allocated. While extra funding for LAs provided through the special provision capital funding is welcome, LAs argued that the amounts being allocated here would only be sufficient to cover minor adjustments, but not full-scale rebuilds and new provision that many argued was needed. We would point out that the research was undertaken before the announcement of an additional £2.6 billion of capital funding for SEND places in the 2021 spending review. While additional funding will have been welcomed by LAs and partners in local areas, our research suggests that, as well as providing funding, it is also essential to address the factors that are driving the increase in demand. The former, without the latter, cannot entirely address the risk of demand outstripping available resources, even if those resources are increased.

'In SEND, the challenge linked to available capital accessible to LAs is an inhibitor to development of places both in mainstream and in specialist provision.' (LA officer)

'The very limited funding for SEND capital is a flaw in the system and LA borrowing is not a sustainable model.' (LA officer)

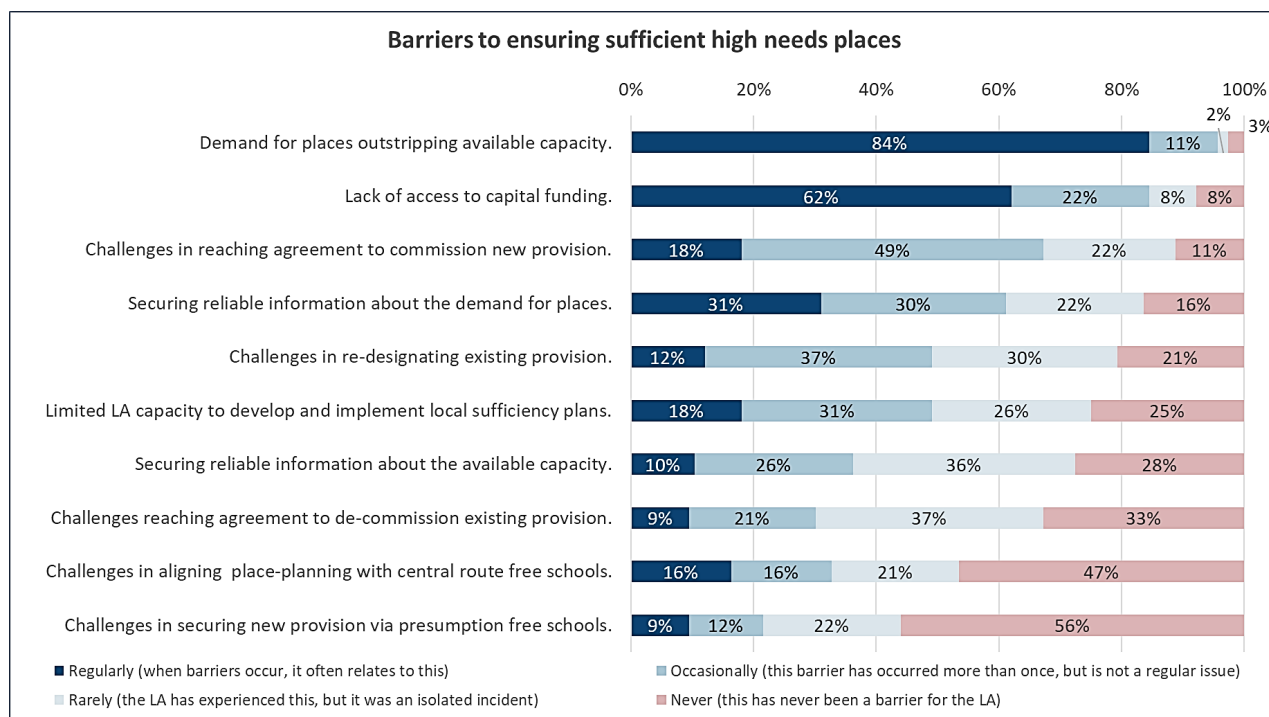
'For special schools there is currently no scope for identifying additional needs with the DfE. Funding for Basic Need is calculated based on the need for places identified within SCAP [school capacity survey] returns which exclusively relate to mainstream. Whilst a welcome development, this year's allocation of a separate Basic Need funding stream would appear to be a notional figure rather than one formulated around any established need for places. As such, and particularly in smaller authorities, it means that on its own it is not likely sufficient to address any substantial need for building and needs to be supported through other funding streams.' (LA officer)

These responses were corroborated by our survey of LA officers. As shown in figure 8, when asked about barriers to ensuring that there are sufficient high needs places, the two most common barriers identified as occurring regularly were demand outstripping capacity (identified as a regular occurrence by 84% of LAs) and lack of access to capital funding (identified as a regular occurrence by 62% of LAs).¹⁵ Around eight in 10 LAs reported as regular, occasional or rare barriers:

¹⁵ We also asked the question of LAs as to whether, for each barrier identified, it was more or less likely to occur when working with particular types of schools. For these barriers to high needs place-planning, the majority of LAs responded that the barriers were as likely to occur regardless of school type.

- challenges in reaching agreement to commission new provision (reported by 18% as a regular occurrence, 49% as an occasional occurrence, and 22% as a rare occurrence);
- securing reliable information about the demand for places (reported by 31% as a regular occurrence, 30% as an occasional occurrence, and 22% as a rare occurrence); and
- challenges in re-designating existing provision (reported by 12% as a regular occurrence, 37% as an occasional occurrence, and 30% as a rare occurrence).

Figure 8: LA survey responses about barriers to ensuring sufficient high needs places



LA leaders also reported concerns about the risk that high needs SEN places that one LA plans for and commissions may be used by other LAs. LAs reported that, since there was no uniform method for allocating top-up funding, this could lead to unofficial bidding wars, with special schools offering places to LAs paying higher top-up funding. This is an area where the legal provisions that seek to ensure equity of access and parental preference can come into conflict with the LA’s role as a commissioner and an individual LA’s statutory responsibilities to secure sufficient high needs provision. Such instances, although rare, could be exacerbated when the special school or AP provider in question was not “local-system-orientated”, and furthermore if that “non-local-system-orientated” special school or AP provider was an academy.

During the research, we identified considerable confusion about the role of special and AP academies from school and trust leaders. As one special academy principal put it, ‘Special

schools that are academies create tensions – the LA remains in an oversight role. Isn't the whole point of academies to step outside LA control?' While this reflects a misunderstanding of the LA and academy trust responsibilities in relation to SEND, it also reflects a lack of clarity about the role of special and AP academies. In another local area, despite the fact that the legal framework draws no distinction between maintained special schools and special academies, special school leaders were strongly of the view that special academies had greater control of their admissions, were less likely to be named in an EHCP if they argued that they could not meet a child's needs, and were in a better position to admit pupils from other LAs that were paying higher rates of top-up funding, compared with maintained special schools.

'The ability for other local authorities to access SEND places in our specialist provision has a real impact on capacity elements. This is very volatile, as LAs are seeking to meet demand needs but this can be to the detriment of each other, and we see some examples of academies working this place to drive funding up or leverage this challenge.' (LA officer)

'The further complication is that opening a new special school brings a risk that it will fill from elsewhere and not meet the demand locally.' (LA officer)

Re-shaping provision to meet demand

Second, LA leaders reported barriers to re-designating existing provision or creating new provision to respond to demand. These views were echoed by school and trust leaders directly involved in these initiatives. As with mainstream schools, LAs have the power to re-designate maintained special schools, but not special academies – this can only be done by the academy trust submitting a business case for significant changes to the RSC. As with mainstream schools, this may not present a problem if the LA and trust agree on the need for the re-designation. Changing the designation of a special school, however, can be a sensitive and emotive matter, especially among parents/carers, and there may little incentive for the academy trust, especially if they are being asked to change their specialism to support pupils with more complex needs. The risk here is that the LA may identify the need to re-designate existing provision, but if that provision is commissioned from an academy trust, and if the trust did not agree to the proposed re-designation, there would be an impasse in which the LA would be unable to implement its plan for using local resources to meet local needs.

An alternative would be to create a new special free school through the presumption route, but here the issues described above about the lack of capital funding and finite high needs block allocations can be a stumbling block. Furthermore, many LAs described the free school route as too slow, unresponsive and uncertain to be a central way of securing new provision to meet demand for high needs places. Leaders in one local area described how

they were seeking to create a new special free school, through the presumption route, as part of the LA's high needs block deficit recovery plan, but had been informed by the DfE that the opening of the new school would be delayed by one to two years. In this instance, the project had been delayed by something outside the LA's direct control, but the LA would bear the impact and cost of identifying and funding the shortfall in provision. The key message from this example was echoed by other LAs responding to our survey. Referring back to figure 8, 67% reported experiencing challenges in reaching agreement to commission new provision regularly (18%) or occasionally (49%), while 49% reported challenges in re-designating existing provision regularly (12%) or occasionally (37%). Challenges relating to special and AP free schools were rarer, which likely reflects the fact that a high proportion of LAs have not had direct experience of special and AP free schools. Nevertheless, 44% of LAs reported that they had experienced barriers in securing new provision via the presumption route (although for half of those, or 22% of all respondents, it was a rare occurrence). In the case of central route special and AP free schools, 53% of LAs reported this as a barrier – 16% reported this as a regular occurrence, 16% as an occasional occurrence and 21% as a rare occurrence.

'The result is the timing of when new high quality pupil places will become available no longer aligns with the forecasted demand so in our case there is a shortfall of SEND places.' (LA officer)

'The current system of applying for new schools does not support strategic planning, there is no guarantee of success and the opportunity to apply for schools is limited.' (LA officer)

'We are constantly in a deficit model in terms of specialist provision because we can't fund what we need – we can't open new schools so create a system that works within the existing estate.' (LA officer)

Decommissioning provision that is no longer the most effective use of available resources to meet needs

Third, LAs reported challenges in decommissioning provision that is no longer the most effective use of available resources. This is made more challenging if the provision in question continues to be full and in demand. The LA's long-term view may be that, in the future, to respond to changing patterns of need, the provision needs to be re-designated to specialise in more complex needs, and children with the needs the provision currently specialises in should be supported in other settings. Decommissioning high needs provision can be challenging where that provision is already full and seeing a significant increase in demand, where there are not additional resources to invest in new provision, and where there may not be a range of alternatives from which to commission new

provision. In many local areas, special schools of a specific designation and AP providers are *the* main or only local source of that form of provision.

As with other areas of place-planning, LAs argued that such instances could be more complicated where the provision in question – whether places in a SEN unit, resourced provision, special school or AP provider – was commissioned from an academy trust. They argued that there was a tension between the DfE describing the role of LAs as commissioners of high needs provision on the one hand, and the “significant changes” process and a perceived presumption in favour of academies keeping existing commissioned high needs places from the ESFA on the other.

As figure 8 shows, the challenges around decommissioning provision were less likely to be identified by LAs than other barriers – this likely reflects that the more significant challenge is keeping pace with increasing demand. Nevertheless, it is noteworthy that 67% of LAs reported that they had had experienced barriers when seeking to decommission high needs provision regularly (9%), occasionally (21%) or rarely as an isolated incident (37%).

Future roles, responsibilities and decision-making authority for pupil place-planning

Where should responsibility for place-planning be located in the future?

Among school, trust and LA leaders and parents/carers, there was universal agreement that there needed to be a local body with responsibility for co-ordinating pupil place-planning, the authority to take decisions, and accountability for ensuring that there were sufficient school places in a local area. School, trust and LA leaders were near-unanimous in their support for the principle that statutory responsibility and accountability had to be aligned with the authority to take decisions about the size and shape of the school estate. They argued that, otherwise, there would be a situation where a body was held statutorily responsible for something over which it did not have control.

Furthermore, there was also unanimous support for the principle that the exercise of decision-making authority should be done in a way that encouraged open dialogue, consensus and the seeking of agreement to local solutions around changes to the size and shape of the school estate. This would build on the positive practice and strong relationships that school, trust and LA leaders described having developed around place-planning in some local areas, but would locate this within a clearer and better aligned framework of roles, responsibilities and reciprocal expectations. LA leaders argued that there was a difference between having ultimate decision-making powers and using those powers on a regular basis. The aim of aligning statutory responsibilities and decision-making powers, and defining reciprocal expectations of schools, trusts, LAs and partners

to engage in local place-planning arrangements, was precisely to avoid situations where ultimate decision-making powers would need to be used.

Furthermore, there was near-universal agreement among school, trust and LA leaders that the LA was uniquely placed to be the body responsible for pupil place-planning. We asked those participating in the research to describe the characteristics of the body they would want to have responsibility for pupil place-planning. They described a set of characteristics that effectively describe the LA:

- being a public sector body;
- providing a place-based leadership of the local system;
- striking a balance between being sufficiently local to understand community trends and dynamics, yet able to operate at a locality/area level large enough to plan at scale;
- providing a focal point of local services – both within the LA, like early help, children’s social care, adult social care, transport, and from other agencies, such as health services, the police and housing – so that decisions about place-planning were linked with a wider community context and service infrastructure;
- being able to act as an independent arbiter;¹⁶ and
- being democratically accountable to local communities.

Therefore, the majority thought that the LA should remain responsible for pupil place-planning and what was needed was to align that responsibility with decision-making authority at local level, alongside a renewed set of expectations of collaborative working and seeking local solutions for LAs, schools and trusts.

We heard this view from school governors ...

‘Without the LA, I almost see chaos forming in pupil place-planning. ... The only organisation that offers the oversight over a large geographic area is the LA.’ (School governor)

‘LAs have responsibility for ensuring places, but no power to control this. If they do not have this, it is a chocolate teapot, a pointless exercise.’ (School governor)

... from school leaders ...

¹⁶ While there was broad consensus that LAs could act as an independent arbiter because they did not stand to gain from decisions about place-planning, other than in ensuring their sufficiency of school places, there were some dissenting voices that argued that because LAs maintained some schools, or because of the mix of their political and administrative functions, LAs could not be truly independent in matters of place-planning.

'It is essential that LA has oversight of placements of these children and accountability.'
(Special academy principal)

'It absolutely has to be the role of the LA. ... LAs need to be able to say, "this is the most efficient way to plan places for this planning area, do it." Currently, the layers mean the system is too piecemeal, delayed, slow, jumping through hoops.' (Primary school headteacher)

'LA could do with greater powers for opening new schools and directing schools – they have responsibility to give everyone a place but no direct powers to achieve that.'
(Secondary school headteacher)

'It would be a disaster if it was a free for all – MATs vying against each other for kids – it would be awful. It would disadvantage families and it would be unethical. I entirely support the LA having the overview [of pupil place-planning].' (Executive school leader within an academy trust)

... and from trust leaders ...

'I cannot envisage anyone other than the LA doing this.' (Primary academy trust CEO)

'Pupil place-planning should belong, in our opinion, with the LA.' (National academy trust CEO)

Through the research, we asked school, trust and LA leaders to consider the alternative ways in which place-planning functions might be organised – specifically, at a school or trust level, or at a regional level. While there was interest in strengthening expectations of engagement on the part of schools and trusts and dialogue between the LA, schools and trusts, there was absolutely no interest in schools or trusts taking direct responsibility for pupil place-planning. As one cross-phase multi-academy trust CEO put it, 'I don't want that job, and I don't want it coming to trust leaders.' There was also little appetite or perceived benefit in place-planning being carried out at levels above that of the LA. As one primary school leader put it, 'If not the LA, this would have to be done by central government – and the lack of discussion with local areas would be a nightmare. Or, it would have to be the RSCs, and they would need to reinvent the mechanics that LAs already have.'

There were, however, some dissenting views expressed by a small minority of the trust leaders (of larger, regional trusts in one geographical region) and national stakeholders to whom we spoke. A small number of trust leaders were frustrated at the variability in practice between LAs, and a perception of a lack of openness and transparency from LAs when forming plans for pupil places. Some argued that the LA could not play an impartial role as long as they were responsible for maintained schools. Those trust leaders offered a critique

of some LAs' performance of their statutory duties, rather than a fully thought-through alternative conception of how place-planning could be carried out.

Among some national stakeholders to whom we spoke, there was a genuine appetite to reorganise responsibilities for place-planning at the regional level. The argument put forward was that RSCs, acting on behalf of the Secretary of State, were already the decision-makers in cases involving significant changes in academies and the establishment of free schools. One suggestion was that responsibilities for *assessing* sufficiency could be split from responsibilities for *delivering* sufficiency – LAs should remain responsible for the former, but RSCs would be responsible for the latter. Another suggestion was that LAs and the RSCs should be jointly responsible and accountable for reaching decisions about place-planning for all schools. Both suggestions would involve moving away from an approach where there are different processes for deciding on changes to school places for maintained schools and academies.

Those putting forward these views recognised that this would require significant reorganisation of the RSC role and functions. LA colleagues, including some who were agnostic about this argument, questioned whether this would not simply require RSCs to re-create much of the capacity and local knowledge of LA place-planning teams, and questioned what benefit this would bring. Proponents of a regional approach to pupil place-planning also recognised that the criticism that LAs are not impartial because they maintain schools also applies to the Headteacher Boards who advise the RSCs. They argued that the RSCs' role as a regulator of the academy system would need to be substantially reformed and strengthened if they were to hold the responsibility for place-planning.

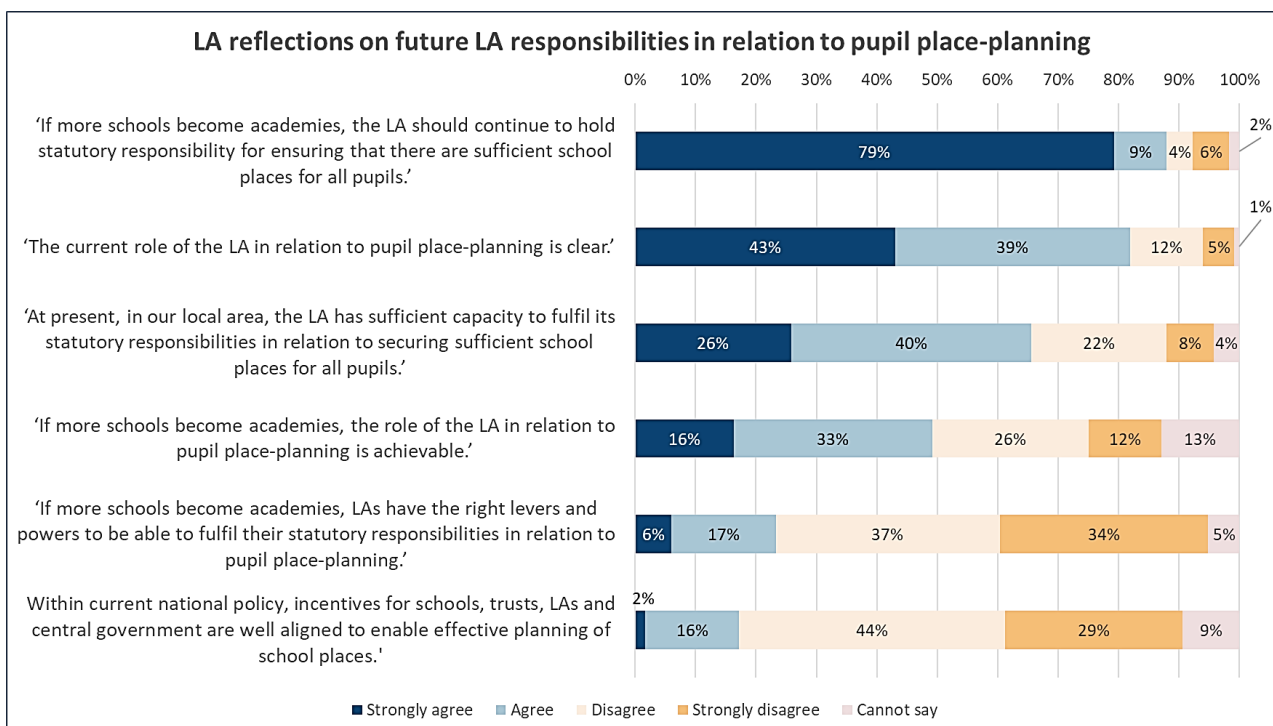
While we have included these suggestions for the sake of completeness, we would emphasise that the vast majority of LAs, as well as the school and trust leaders who took part in this research, argued strongly in favour of responsibilities and decision-making authority for pupil place-planning being aligned at local level, held by the LA and discharged with an expectation of open, transparent and inclusive partnership working with schools and trusts. These messages were echoed by the responses from LA leaders to our online survey, as showed in figure 9, below.

We would highlight points from these responses. First, unsurprisingly, the vast majority (88%) of LAs agreed or strongly agreed (79% strongly) that the LA should continue to hold statutory responsibility for ensuring that there are sufficient school places for all pupils. Interestingly, this figure was higher in local areas with high and medium levels of academisation. This may reflect the fact that, in local areas with low proportions of academies, a small number of schools becoming academies would cause significant change within the local system and could create uncertainty about how future arrangements around place-planning would work.

The second point we would make is that the survey responses confirm that the issue is not one of clarity (82% agreed that the role was clear) or purely one of capacity (66% agreed

their LA had sufficient capacity to carry out the role, albeit this figure was lower among LAs in local areas with high levels of academisation, suggesting that there is an association between higher levels of academisation and reduced LA capacity). Indeed, in a separate question in our survey, we asked LAs to tell us whether the number of staff working on pupil place-planning had increased, remained largely the same or decreased. The responses were largely split between remained largely the same (41%) and decreased (40%). The average number of full-time equivalent staff was 2.5, which suggests that, by and large, place-planning is done by small teams who need capacity to analyse the data, produce projections, and then have the capacity to engage proactively with partners to shape local solutions. Instead, the responses from LAs suggest that they see the fundamental issue as being one of having the right levers (72% disagreed or strongly disagreed) and the right incentives (73% disagreed or strongly disagreed). As one LA leader put it, ‘The way you make progress is through the relationships and partnerships, but you also need the levers, you also need the incentives.’

Figure 9: LA survey responses to questions about future LA responsibilities for pupil place-planning



What is needed to enable these roles and responsibilities, and the broader aims of pupil place-planning, to be fulfilled effectively?

Our research identified three things that would be needed for the roles, responsibilities and functions of pupil place-planning to be fulfilled effectively. First, school, trust and LA leaders argued that responsibilities, accountability and decision-making authority needed to be aligned. As noted in the previous section, the majority view was that these should sit with the LA. Specifically, this would entail six things.

1. **Expanding provision** – LAs having the ultimate decision-making authority to implement expansions of school places, irrespective of the type of school, having sought local solutions and subject to appropriate checks and rights of appeal, where local place-planning deems these essential to securing sufficient school places (or at least the ability to propose necessary expansions directly to the RSCs).
2. **Opening new provision** – LAs to have greater control of and accountability for the process through which new provision is opened at local level, and for there to be stronger protocols of joint working between central and local government to avoid local place-planning being “side-swiped” by central government decisions about school places.
3. **Local co-ordination of admissions** – this is a controversial area, but, as noted earlier in this chapter, we heard concerns from LA, school, trust and diocesan leaders about the tension between schools and trusts operating as their own admissions authority and the principle of ensuring equitable access to school places. While some prominent trust and national leaders argued that the LA should act as the admissions authority for all schools, there were other means put forward to mitigate the risks of unfairness and inequity stemming from non-compliant admissions practice. While this would not change trusts and schools that were their own admission authorities being responsible for setting their own admissions criteria, LA, school and trust leaders argued that there would need to be greater oversight to ensure compliance with the Admissions Code and stronger requirements around consultations on changes to PANs to ensure these did not run counter to local demand for school places and or risk destabilising other provision. Furthermore, arrangements to ensure the independence of admissions appeals panels should be strengthened. Lastly, there would need to be stronger co-ordination, potentially by LAs, of in-year admissions to avoid a blind-spot where non-compliant practice may leave families “bouncing” around the system without a school place.
4. **Reducing mainstream places** – LAs (or jointly with RSCs) to have the ability to convene schools and trusts to co-ordinate a system-wide approach to setting PANs to ensure that there is not a structural over-supply of school places and that the impact of falling rolls does not fall disproportionately on any one school or trust.
5. **Re-designating and decommissioning high needs places** – having sought local solutions with schools/trusts, LAs would have the ultimate decision-making authority to re-designate and decommission high needs places, where the LA’s high needs sufficiency planning deems these to be necessary to secure provision for pupils with high needs.
6. **Closing schools** – stronger protocols for how decisions about closing schools will be taken, involving the school/trust, RSC, ESFA and LA in reaching local solutions, and avoiding decisions being taken to close academies where LA projections suggest that there is long-term demand for school places.

However roles, responsibilities and decision-making authority might be aligned, there was a strong argument put forward about the need to strengthen the join-up between local and central government around place-planning, to ensure that roles and accountabilities are clearly defined and complement one another.

'A single cohesive system where Local and National Government have clearly defined roles and accountabilities that complement each other regardless of type of school.' (LA officer)

'While the responsibilities may be 'clear' in relation to place-planning, they are not conducive to resolving the issue.' (LA officer)

'In order for there to be greater sector adherence it's imperative that the RSC has more power – currently trusts are formed on the golf course. The RSC needs system design powers to make them responsible and accountable. That would give real clarity and make sure no trust dominates, and there is an offer which parents find useful and attractive.' (Academy trust CEO)

'There needs to be a requirement for the RSC to communicate with the LA about plans for free schools and academies – we need to be listened to when we say we don't need the places. We've got a 2-3 tier system happening here and it's not helpful. The RSCs, Headteacher Boards and academies have been given a remit to grow and the freedom to do that – and there is no obligation/duty for that sector to communicate with anyone else and they don't. We have all the duties and financial/reputational risks of not meeting those duties. We cannot grow or open new schools ... I don't necessarily want all the powers and the duty but there should be a duty on the system to work with the LA.' (LA officer)

'I agree that there is misalignment between LAs' statutory responsibilities and the RSCs' authority to take decisions on place-planning in academies, but the solution would be to bring the LA and RSC systems together. I want to see a genuine partnership between LAs and RSCs to ensure that we make the right decisions. We should be sharing the accountability and responsibility.' (National stakeholder)

Second, wherever decision-making authority is to be situated, this must be complemented by a clear expectation of partnership working on all partners in local education systems. School, trust and LA leaders, and RSC colleagues, argued strongly that this should be reciprocal – a requirement for trusts and schools to engage actively in and abide by local place-planning arrangements, with a reciprocal requirement on LAs to engage all trust and school leaders in place-planning and in seeking local solutions through consensus and co-production wherever possible. Most academy trust leaders, as well as diocesan education leaders, supported these reciprocal expectations, on the basis that there was open

dialogue with academy trust and diocesan leaders and active involvement in the process of developing sufficiency plans. They argued that these expectations should be set out explicitly in the academy handbook, funding agreements and other key regulatory guidance.

'You cannot not have these conversations [about place-planning and admissions] with the LA. You are running a state school. You cannot not have conversations with the people who are in control of sufficiency.' (National academy trust CEO)

'I still think the LA is the still the right body to be in charge of the strategic responsibility for ensuring sufficiency of school places. But, there has to be better dialogue with the MATs. ... MATs must be part of the decision-making of the LA.' (National academy trust admissions lead)

'Academies would need to be legally required to contribute and implement strategic local plans.' (LA officer)

Third, our research suggested that there would need to be three specific actions taken to address barriers to place-planning responsibilities being carried out effectively.

- i. **High needs commissioning** – either incorporate indicators of increased demand for SEN provision in allocations of capital funding or ensure that there are means by which LAs can raise the capital necessary to develop new and improve existing provision to reflect anticipated local needs. While there are broader policy reforms that the SEND Review will need to consider in order to resolve the tension between the potential for continued growth in demand and meeting that demand from within finite resources, LAs should have decision-making authority regarding the re-designation or decommissioning of existing provision, and greater control of (and accountability for) the process for creating new high needs provision where that is needed.
- ii. **Physical capacity in academies** – restate who should have responsibility for collecting and holding up-to-date information about the physical capacity of academies, and set out how to ensure that LAs have access to this to inform the supply side of place-planning.
- iii. **Joint working between district councils, housing developers and LAs** – provide a clear and explicit role for LAs, specifically upper-tier councils, in negotiations about housing developments, section 106 and community infrastructure funding so that there is agreement about how to align future demand for school places created by housing developments and the infrastructure required to support those school places.

* * *

Research theme 2: Support for vulnerable pupils

Introduction

This chapter focuses on the LA role in relation to children who have additional needs or who are considered vulnerable. We use these terms to refer to school-age pupils who may be vulnerable in the sense of facing barriers to accessing education or of achieving poorer outcomes, or who have additional needs that require additional support to be put in place to enable them to access education.

There are many different reasons why a child may be considered vulnerable or have an additional need – whether they have SEND, do not have a school place, require support from AP for health-related reasons or because they would otherwise be at risk of exclusion, because they are from a deprived background, because they have mental health needs, because they are at risk of harm or exploitation. Each of these reasons has a range of associated policy measures, statutory requirements, and conceptions of the roles and responsibilities of partners within local areas. A strong theme in the evidence we gathered from school, trust and LA leaders was the focus on potential vulnerabilities and barriers to accessing education in a more holistic manner brought about by the pandemic. While providing feedback on specific aspects of the current statutory and policy framework for different vulnerable groups, school, trust and LA leaders and parents/carers argued strongly for the need to focus more on how to create an overall culture of collective responsibility for meeting the needs of all young people in a local area, and taking a holistic, partnership-based approach to supporting them and their families.

In this chapter, therefore, we focus on two aspects of support for vulnerable pupils and the role of LAs within that:

1. at the strategic level, we focus on how LAs seek to secure and sustain collective buy-in to system-wide strategic approaches to supporting inclusion and support for vulnerable pupils across all partners (for example, across the continuum of SEND support and provision, in preventing exclusion and ensuring the effective use of AP, and around the education of children in need of early help and protection from harm); and
2. at the level of individual young people, we focus on how LAs discharge their responsibilities and powers relating to the placement of young people (for example, those with EHCPs or those requiring placements under FAP).

The chapter concludes with a summary of our findings about the future role of the LA, the reciprocal roles of partners in local education systems, and what is needed for these roles to be fulfilled effectively. We start, however, with some overarching messages about the roles and responsibilities of LAs and partners that are relevant to all groups of pupils who have vulnerabilities or additional needs.

Overarching messages about roles and responsibilities for supporting all pupils with vulnerabilities and additional needs within local systems

The need for a whole-system approach to supporting vulnerable pupils

As with place-planning, in relation to support for vulnerable pupils there were challenges reported to us linked to the misalignment between LA statutory responsibilities and decision-making authority. Our research suggests, however, that these challenges sit within the context of a more fundamental misalignment between, on the one hand, policy aims and incentives, and, on the other, roles and responsibilities.

Supporting vulnerable pupils effectively requires a system-wide, joined-up approach that goes beyond individual institutions' statutory responsibilities and recognises the interdependency between their broader roles. It is difficult to legislate for this, and requires a range of aspects of national policy to be aligned. These include not just statutory duties, but guidance on pedagogical practice, curriculum, training, accountability and funding. Any one institution's ability to discharge their statutory responsibilities and fulfil their wider roles relies on all partners doing the same as part of a coherent continuum of support. As one LA leader put it, 'The more coherent a local system is, the more there is shared ownership, the more effectively it will operate.'

Our previous research on SEND and AP has highlighted the importance of there being a strong sense of shared responsibility for a continuum of support for vulnerable pupils and those with additional needs – and the risk that those groups are seen as the sole responsibility of one agency.¹⁷ In this research, school, trust and LA leaders highlighted the importance of a sense of shared responsibility and a system-wide approach not just in supporting children with SEND and at risk of exclusion, but also in tackling common challenges such as contextual safeguarding, adolescent risk, county lines and criminal exploitation, sexual harassment in schools, children missing education and supporting vulnerable children and families throughout the pandemic. Local areas argued strongly that this was not just about having formal partnership structures (although they are important as well), but about the value of professionals with different knowledge and skills working together, in and with schools, to provide more holistic support for children and their families. Support for vulnerable children in this broad and holistic sense cannot be reduced to the technicalities of individual institutions' statutory responsibilities. Instead, our research found, effective support for vulnerable children needs to be grounded in a sense of collective responsibility and alignment of the wider roles of all partners within local systems.

¹⁷ See, for example, *Alternative provision market analysis* (October 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752548/Alternative_Provision_Market_Analysis.pdf; and *Developing and sustaining an effective local SEND system* (November 2018), https://static1.squarespace.com/static/5ce55a5ad4c5c500016855ee/t/5d1cdaee9e6a5400011b6aa7/1562172149452/181108_LGA+SEND_final+report.pdf.

School, trust and LA leaders argued that this was important before the pandemic, but all the more so now.

'Regardless of school designation it is critical that there is a locally led multi-agency support model in place for vulnerable children championed by the LA.' (LA officer)

'LAs are the only place that can pull together multi-agency services, support, links with police, with health. The role for the LA on vulnerable children is really important.' (Academy trust CEO)

Barriers to whole-system support for vulnerable pupils

The most significant barrier to whole-system support for vulnerable pupils, highlighted strongly by LA leaders and echoed in the feedback we gathered from school and trust leaders and from parents/carers, was the lack of incentives to support inclusion in mainstream schools (and in some cases the perverse incentives not to be inclusive). The SEND, AP and fair access systems rely on there being consistent definitions of needs that should be met within mainstream schools and that require additional support. School, trust and LA leaders and parents/carers argued, however, that there was no agreed definition of ordinarily available provision in the SEND system, nor, despite changes to the Admissions Code, a workable definition of what constituted "challenging behaviour". Instead, it is left to local areas and individual schools/trusts to agree, and to support staff through professional development, but without a formal mandate to do this. At the same time, as school, trust and LA leaders and parents/carers argued, the school accountability and funding systems can act as powerful disincentives to inclusion – because being inclusive is not sufficiently recognised in inspection and accountability measures, nor can the funding system adequately reflect the differences in inclusivity between schools. This can mean that schools can appear to be in a healthier position in performance and financial terms if they have fewer vulnerable children on their roll.

We would emphasise that the critique that school, trust and LA leaders and parents/carers offered here was not a generalisation about all or certain types of schools and trusts. Instead, their criticism was of the misalignment of incentives within the national system, the position in which this put school and trust leaders, and the consequent variability in inclusion of vulnerable pupils. They were critical of the mixed messages at national level – the tension between, on the one hand, language in the statutory framework and government guidance about early identification and help, child-centred planning, co-production with families, reasonable adjustments, trauma-informed practice, behaviour as communication, and, on the other, talking about the importance of discipline, zero-tolerance behaviour policies, an academically focused curriculum and school leaders' right

to exclude pupils. School, trust, LA leaders and parents/carers saw that this created confusion and variability in inclusiveness of vulnerable pupils between schools.

We heard these messages strongly from LA officers ...

'The incentives in the funding and accountability are disincentives to inclusion for mainstream schools.' (LA officer)

National policy around inclusion seems to focus more on how to exclude and emphasises behaviour rather than schools meeting needs appropriately e.g., SEMH [social, emotional and mental health]. This needs to be more aligned to what is going on at a local level. Increased focus on child development, trauma informed practice and meeting needs and not behaviours.' (LA officer)

'Heads lose their jobs when standards are low but not where a school is not inclusive.' (LA officer)

'There is a combination of variable SEND expertise and variable approaches to be inclusive across schools and this is poorly regulated and historically drivers for schools do not incentivise inclusion. It is to some extent left to the 'moral purpose' of leaders. Many are or want to be inclusive, but face barriers through the funding and accountability regime.' (LA officer)

'Effective support seems to depend more now on individuals' (heads, SENCOs) [special educational needs co-ordinators] personal values and leadership skills than 'whole system' alignment.' (LA officer)

... from parents and carers ...

'Some mainstream schools are less inclined to admit children with EHCPs. Nobody knows who is responsible for what outside the LA. It has nothing to do with the designation of the school. It is all about the leadership, SLT [senior leadership team] and Board. Parents are the ones left having to challenge the system, but it is difficult. The challenge in the system is coming from the people with the least capacity and resources to challenge. The measures of success are quite wrong – there is too much focus on performance measures.' (Parent Carer Forum)

'Ofsted should look at schools and only award good/outstanding [judgements] if they do well for children with SEND – you cannot just ignore our children, leave them out of the picture.' (Parent Carer Forum)

... and from school and trust leaders.

'The mainstream schools need support to develop their culture of inclusivity, and it cannot just come from us. It needs to come from the very top.' (Special academy principal)

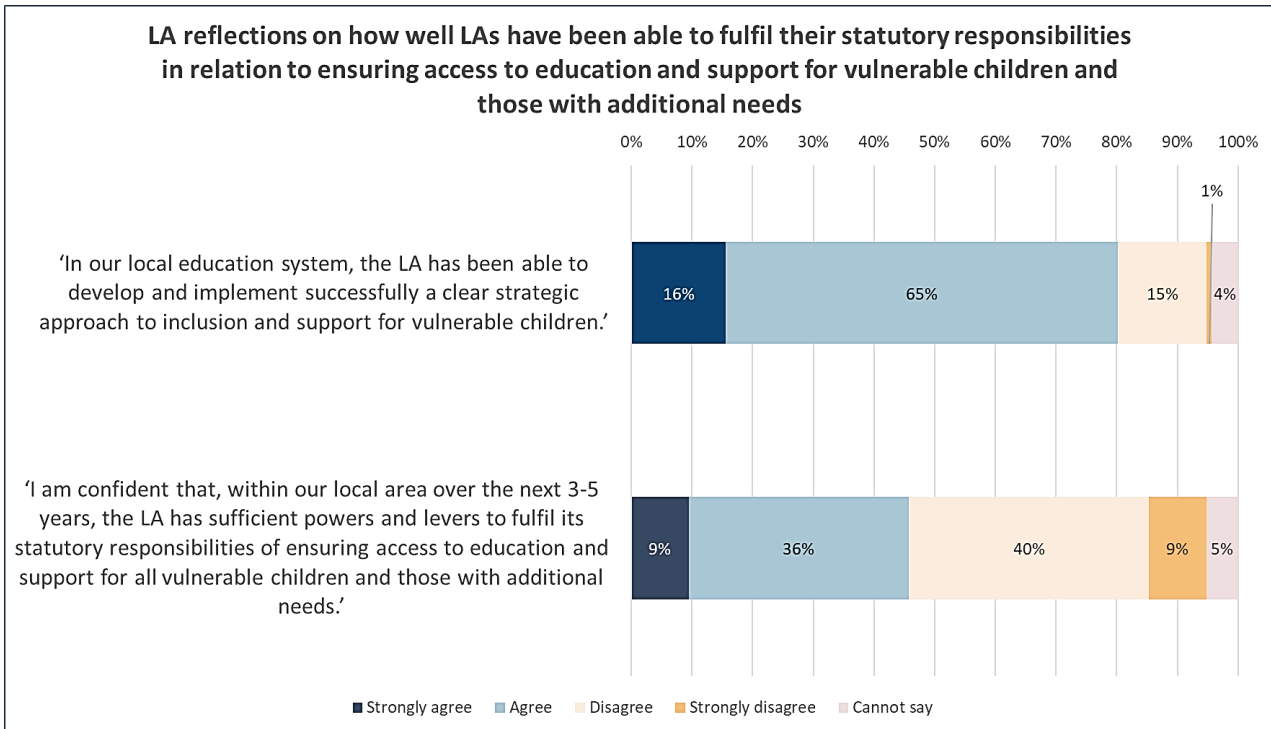
'It is not a level playing field – different schools have completely different views of inclusion/reasons why children are presented at FAP. There is a lack of honesty and transparency, and lack of fairness and accountability.' (Executive leader within large academy trust)

'Not enough is done to ensure schools are being inclusive – in terms of the children that schools are taking in, in terms of parental views. It is a challenge – schools can get away without being inclusive. Schools get no credit for being inclusive. When we were inspected, Ofsted did not care that we were taking more children with additional needs and were working hard with the LA. But this will hit our attendance, progress measures and finances.' (All-through academy principal)

These messages were supported by the findings from our survey of LAs. As figure 10, below, shows, eight in 10 (81%) LAs agreed that they had been able to develop a strategic approach to inclusion and support for vulnerable pupils. It is noteworthy, however, that the responses to this theme were somewhat less positive than those to the corresponding question about mainstream school place-planning. On place-planning, 90% of LAs agreed that they had been able to develop a strategic plan for mainstream school place-planning, and 41% agreed strongly. In response to the corresponding question relating to support for vulnerable pupils, 81% agreed overall and 16% strongly agreed.

Furthermore, LA responses were less positive on the question of whether, over the next three to five years, the LA will have sufficient powers and levers to fulfil its statutory responsibilities in relation to vulnerable pupils and those with additional needs. When asked if they had sufficient powers and levers to fulfil their responsibilities in relation to vulnerable pupils, 45% of LAs agreed or strongly agreed, but 49% of LAs disagreed or strongly disagreed. Our research suggests that this may reflect the fact that LAs recognise the necessity of developing a system-wide approach to inclusion, but are less confident that they have the powers and levers to deliver on this and their statutory responsibilities over the next three to five years.

Figure 10: LA survey responses about their confidence in fulfilling their statutory responsibilities for vulnerable children and those with additional needs

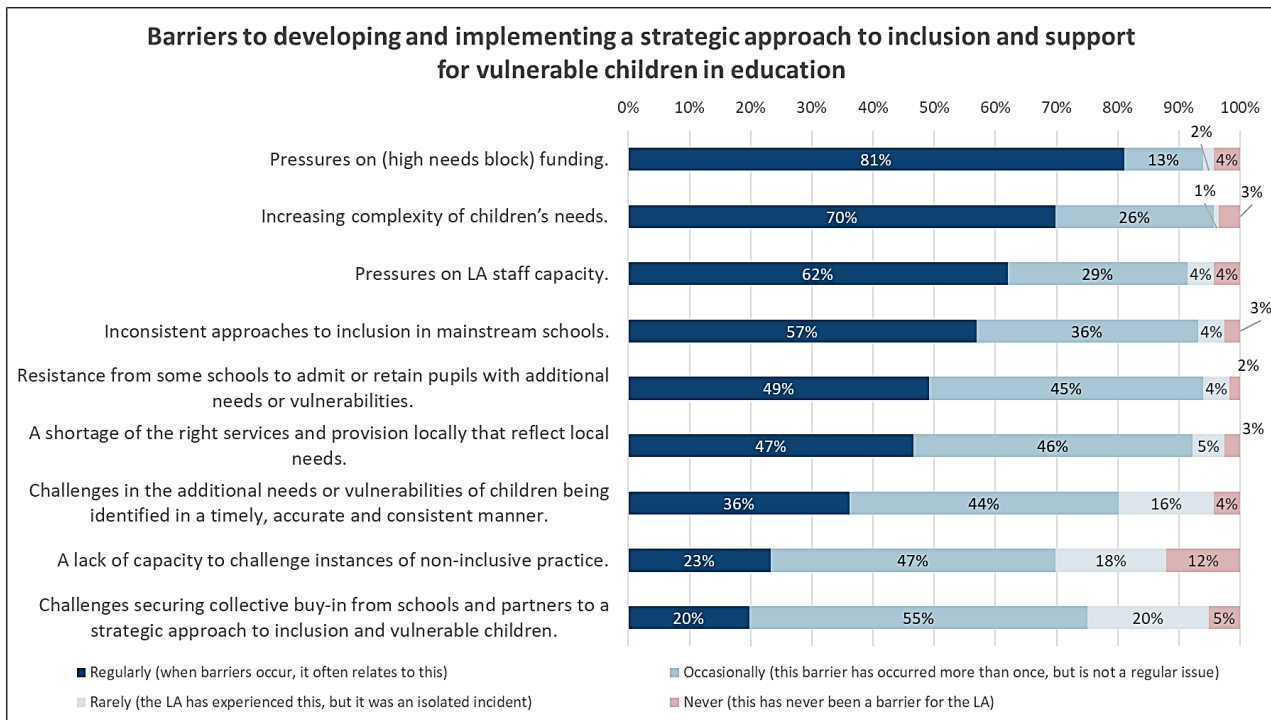


In the survey, we also asked LAs to reflect on the barriers to developing and implementing a strategic approach to inclusion and support for vulnerable pupils. The results are shown in figure 11, below. There are two key themes that we would highlight from these responses.

The first point to highlight relates to a reported mismatch between demand/need and resources. As we mentioned in the previous chapter, pressure on high needs block funding was the most common barrier cited – 81% of LAs reported that this was a regular occurrence. Other barriers reported as regular or occasional barriers by nine in 10 LAs included the increasing complexity of children’s needs (96%, with 70% reporting this as a regular occurrence), a shortage of the right services and provision to meet local needs (92%), and pressures on LA capacity (91%).

The second point we would highlight relates to approaches to inclusion and securing collective buy-in. Inconsistent approaches to inclusion were reported as a barrier by 93% of LAs (57% reported this as a regular barrier; 36% as an occasional barrier), and the timeliness, accuracy and consistency of identification of need was reported as a barrier by 80% of LAs. Resistance from schools to admission or retention of pupils with additional needs or vulnerabilities was reported as a barrier by 94% of LAs (49% regularly, 45% occasionally).

Figure 11: LA survey responses about barriers to developing and implementing a strategic approach to inclusion and support for vulnerable children in education



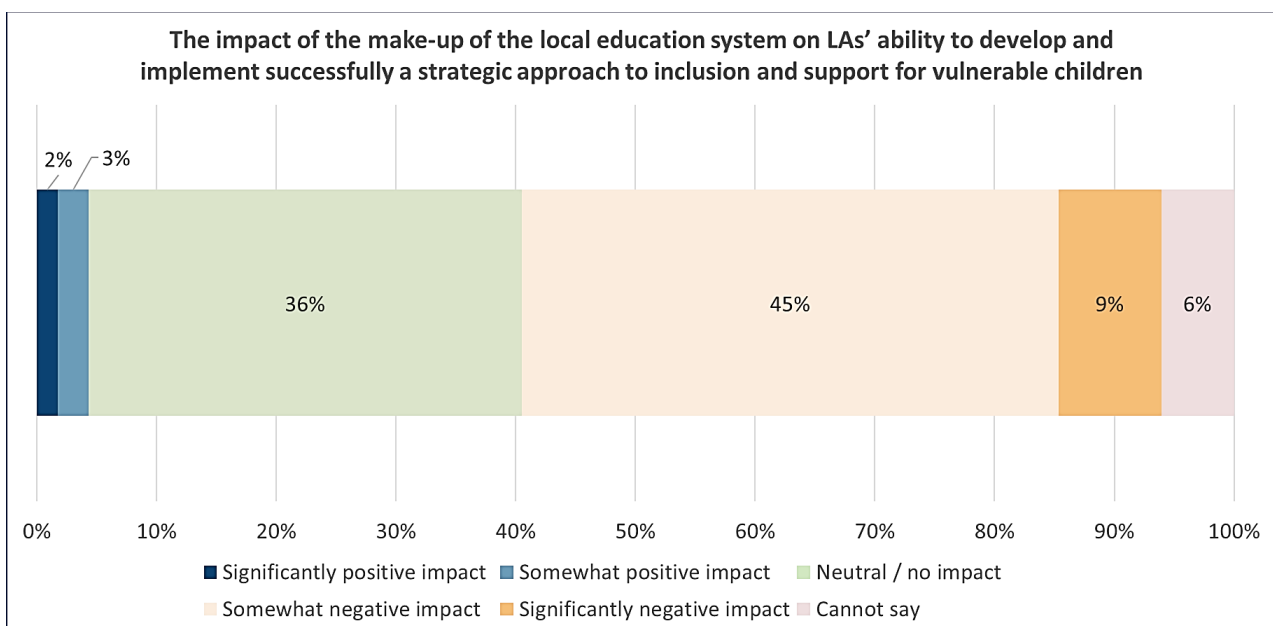
The mismatch between demand and resources coupled with inconsistent approaches to inclusion creates weaknesses in the system, even where statutory responsibilities for LAs and schools/trusts are clear. One LA officer who has responsibility for an established collective-responsibility-based approach to AP and reducing exclusions put it succinctly: ‘It is fragile.’ There are two ways in which this can manifest itself. First, at a strategic level, strong partnership approaches to inclusion and support for vulnerable pupils based on a principle of collective responsibility that have been developed locally are vulnerable to schools/trusts “opting out”. This may include, for example, not playing a full part in arrangements to co-ordinate access to AP, discussions about pupils under FAP, or disproportionate use of permanent exclusion. Second, at the level of individual pupils, school, trust and LA leaders and parents/carers reported challenges where some schools seek to resist the admission of pupils with additional needs (for example, through the EHCP placement process or placements under FAP). The impact of this variability was reported in terms of disruption to individual pupils’ access to education, and in terms of fairness between schools.

School, trust and LA leaders and parents/carers stressed the fact that non-engagement and non-inclusive practice were not issues exclusive to any one type of school – the challenge of “non-local-system-orientated” schools pre-dates the creation of academies, and can be an issue in any type of school. This was borne out by our survey, where the majority of LAs reported that most of the barriers to inclusion and supporting vulnerable children were just as likely to occur regardless of school type.

Nevertheless, school, trust and LA leaders and parents/carers also drew attention to the challenges posed by the different routes for challenging non-inclusive practice and seeking redress to uphold legal duties between maintained schools and academies. Put simply, where there is a dispute about the admission of a pupil under FAP or the admission of a pupil with an EHCP, the routes for resolving these disputes, specifically seeking a direction from the Secretary of State, are more complex and time-consuming when the school in question is an academy. Likewise, tackling non-engagement with locally agreed fair approaches to supporting vulnerable pupils is more dependent on relationships between the LA, trust and RSC to address. Again, this finding was borne out by our survey. There were two sets of barriers where LAs were split on the question of whether they occurred more in a particular type of school:

- i. challenges securing collective buy-in from schools to approaches around inclusion and support for vulnerable pupils (44% reported that this was more common when working with academies; 55% reported that this barrier occurred regardless of school type); and
- ii. resistance from some schools to admit or retain pupils with additional needs or vulnerabilities (56% reported that this was more common when working with academies; 44% that this occurred regardless of school type).

Figure 12: LA survey responses about the impact of the make-up of the local education system on LAs’ ability to develop and implement strategic approaches to inclusion and support for vulnerable children



As shown in figure 12, above, while a third of LAs (36%) reported that the make-up of the local education system was neutral or had no impact, 45% reported that this had a somewhat negative impact and 9% a significantly negative impact. The proportion of LAs reporting a negative impact of some form was higher in local areas with medium and higher

levels of academisation, whereas LAs in areas with low levels of academisation were more likely to report the impact had been neutral.

LA capacity in areas relating to supporting vulnerable pupils

LA officers reported that locally agreed approaches were vulnerable when there were changes of school leadership – a point echoed by school and trust leaders and parents/carers. They noted that such approaches were dependent on there being a critical mass of school leaders who were supportive of locally agreed approaches to inclusion and support for vulnerable pupils. Maintaining this critical mass required capacity in LA services, including but also beyond those responsible for carrying out statutory functions relating to individual young people.

As shown in figures 13 and 14, below, we asked LAs about the average number of staff working in specific areas of support for vulnerable pupils, and whether this number had increased, remained largely the same, or decreased over the last 10 years. Figure 13 shows that the largest areas in terms of the average number of full-time equivalent staff are SEND services – both statutory and non-statutory services. This is likely to reflect the fact that pupils (and indeed pre-school children and post-school students) with SEND account for the largest proportion of young people with additional needs.

Figure 13: LA survey responses showing the average number of full-time equivalent staff within the following broad areas of support for vulnerable children

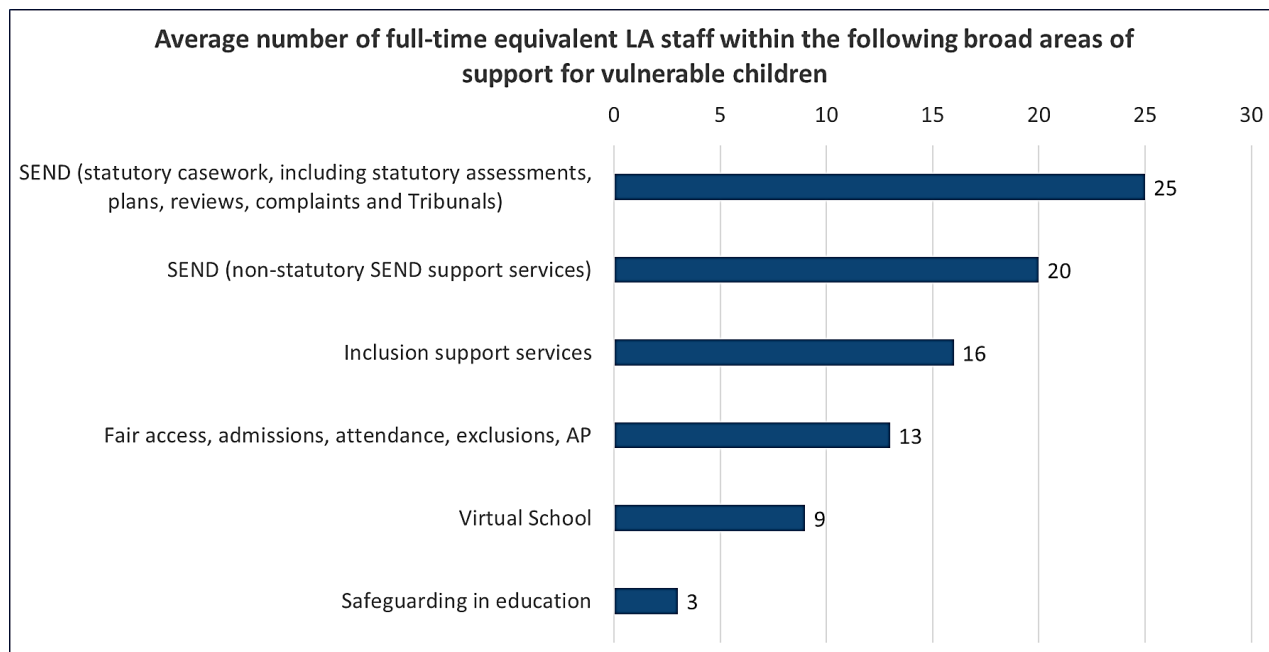
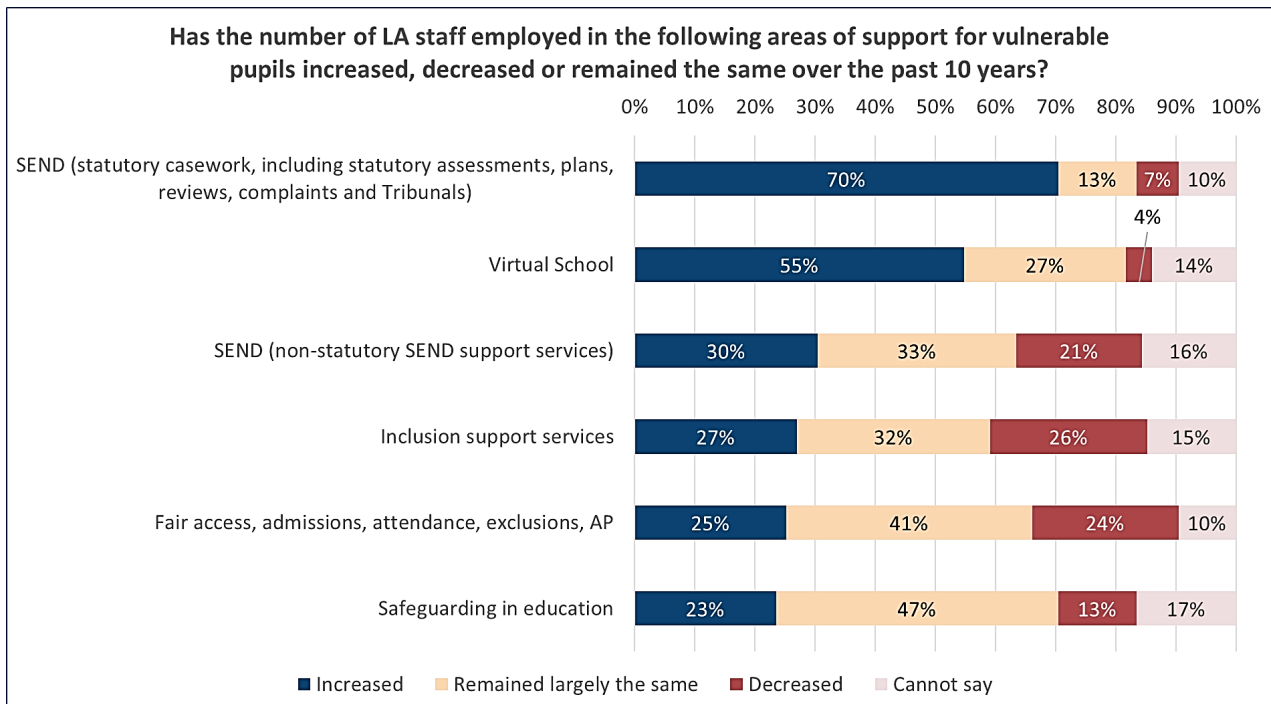


Figure 14 shows that the areas where the highest proportion of LAs reported an increase in the number of staff over the last 10 years (and the two areas where the majority of LAs reported an increase) were (i) statutory SEND services and (ii) the Virtual School for children in care. Tellingly, these are two areas where significant legislative changes were

introduced by the Children and Families Act 2014, and where national data shows increases in the proportions of children with EHCPs and in care respectively. For the remainder of the areas of staffing, the most common response given was that LA capacity had remained largely the same (between a third and half). In areas of SEND and inclusion support services, and fair access, attendance, exclusions and AP, between a fifth and quarter of LAs reported a decrease in capacity.

Figure 14: LA survey responses showing how the number of LA staff working on support for vulnerable children has changed over the last 10 years



As one LA leader explained, however, the challenge for many LAs was that increased demand outstripped LA capacity, with existing capacity being stretched by increased demand. LAs argued strongly that the increase in demand, particularly for statutory provision, was reducing capacity for more preventative support to schools, trusts and families, creating a vicious circle. The impact of stretched capacity relating to inclusion and support for vulnerable pupils was perceived by many school/trust leaders and parents/carers.

‘Increasing numbers of children with complex needs are putting pressure on services. As an LA we tried to maintain many support services when other LAs cut back. However, with the volume of children in the system requiring additional support over a lingering period of time this is proving unsustainable.’ (LA officer)

‘It boils down to a lack of capacity and capability.’ (Academy trust CEO)

‘The system is under-funded. There is no way of getting around it.’ (Parent Carer Forum)

'The recurring theme is capacity and such a movement of staff. Children are falling between the cracks. The inclusion team is very good but very stretched.' (Middle school academy principal)

'There is a significant lack of capacity in the LA – people are spread very thin. It is desperately frustrating.' (Executive headteacher)

Area 1: Developing strategic system-wide approaches to supporting vulnerable pupils

Support for children and young people with SEND

Summary of current roles and responsibilities relating to pupils with SEND

LAs have a range of duties under the Children and Families Act 2014 and the Equality Act 2010 relating to young people (not just school-age children, but from birth to 25) with SEND. LAs must carry out their functions with a view to young people in their area who have or may have SEND. They are responsible for keeping their education, training and social care provision for young people with SEND under review. Where an individual young person is brought to their attention, LAs are responsible for determining whether to carry out a statutory assessment (Education, Health and Care Needs Assessment, or EHCNA) and, if necessary, issue an EHCP. If issued, the LA is responsible for ensuring that the provision in the EHCP is secured and funded and that the plan is maintained.

Schools of every type have similar responsibilities for pupils with SEND, including using their best endeavours to identify and address pupils' SEND, as well as designating a teacher to co-ordinate SEN provision (the SENCO) and preparing a SEN information report detailing their support for pupils with SEND.

The graduated approach: The SEND Code of Practice states that, *'Where a pupil is identified as having SEN, schools should take action to remove barriers to learning and put effective special educational provision in place.'* It describes a four-stage cycle – assess, plan, do, review – which is known as the “graduated approach”. Responsibility for the graduated approach rests with individual settings, schools and colleges. While there are important links between support for young people requiring SEN support through the graduated approach and those with EHCPs, LAs have no direct responsibilities for the provision for young people requiring non-statutory SEN support – only for young people with EHCPs.

The challenges facing the SEND system are well known and the subject of the DfE's much-anticipated SEND Review. LA leaders referenced this regularly throughout our engagements. They argued that it was essential to see the outcomes of the SEND Review and that it was necessary to align thinking about the future role of the LA with the SEND Review. We should point out that this was the area of our research that generated some of the strongest messages from schools, trusts, LAs and parents/carers about the challenges facing local systems and LAs.

'There are pressures in the system that are making it close to implosion.' (Primary school headteacher)

'The system is in disarray. The reforms have opened the floodgates, the system is under huge pressure. It has affected the quality of LA support and services.' (Secondary school headteacher)

'The LA is fighting a system that is rigged against them – the statutory framework, parental choice for special and independent special school, it puts LAs in an impossible position.' (Special school headteacher)

Our intention is not to describe those challenges in detail here. Instead, we have described two main ways in which those challenges relate to the roles of LAs and partners in local systems. First, the current SEND system places LAs at the heart of a perfect storm of rising and potentially open-ended need and demand, finite resources from which to meet need, and a lack of levers to affect the factors driving demand.

In the last chapter, we quoted figures from national datasets showing an increase of 82% in the total number of EHCPs (previously statements) between 2014 and 2021. School, trust and LA leaders argued that, in addition to the levels of demand, they were also seeing an increase in complexity. As shown in figure 11, 96% of LAs reported increasing complexity of children's needs as a barrier to support for vulnerable pupils (70% as a regular barrier, 26% as an occasional barrier). It is difficult to quantify the increase in complexity using current datasets – for example, those that report pupils' primary need will not reflect an increase in complexity of need across multiple areas. This was, however, a strong theme in the feedback from school, trust and LA leaders, who argued categorically that the needs of young people in both mainstream and special schools (and indeed in early years and post-16 settings) were more complex than they had been 10 to 20 years ago. They argued that there were three factors behind this.

- i. **An increase in children with profoundly complex needs at birth surviving and requiring intensive care and support** – these children, when they reach school age, are likely to be placed in special schools, but, it was argued, this then has a

knock-on effect on children who would previously have been supported in special schools now being supported in mainstream schools.

- ii. **Better identification of need** – school/trust leaders and professionals recognised that there had been advances in the identification of need, meaning that needs that had not previously been well understood were now being identified. This was particularly the case in relation to autism and social communication needs, as well as the impact of trauma and adverse childhood experiences on children’s social, emotional and mental health needs. (Aside from better identification, many professionals also described an overall increase in the number of children with more complex forms of autism.)
- iii. **Complex combinations of needs** – school/trust leaders and professionals recognised that changing needs was by no means new – advances in medical science and identification are constant trends that affect how children’s needs are understood. What they argued was novel, however, was the *combinations* of needs across multiple areas and the challenges this posed for shaping support, services and provision – at a time of increasing overall demand and stretched resources – to respond.

While demand is rising and need is changing, the resources available to LAs are finite. At the same time, LAs lack control over some of the key drivers of increased demand and need. Specifically, many school, trust and LA leaders highlighted the lack of consistent expectations around mainstream inclusion. They also drew attention to the impact of the statutory framework in terms of the criteria for carrying out statutory assessments, the power of parental preference and recourse to the Tribunal. They argued that, although devised with the intention to improve support and prevent parents/carers having to battle the system, the SEND reforms have created a situation where LAs have little means to set consistent guidelines for, on the one hand, needs that should be met in mainstream schools at a pre-statutory level and, on the other hand, those that require a statutory assessment and provision underpinned by a statutory plan. The increasing numbers of LAs reporting deficits in their high needs block and having to move money from the schools block of the DSG was seen as the outcome, not of poor financial management, but of an inherent risk in a system where demand is potentially open-ended, and resources are finite. The outcome is a vicious circle, where resources are increasingly diverted into statutory, specialist provision, and away from preventative support for young people requiring non-statutory SEN support.

Second, there is a misalignment between the LA role and the policy aims and incentives within the SEND system, specifically in relation to accountability. In 2016, Ofsted and CQC began to inspect SEND arrangements in local areas. The inspection was not of LAs or any individual agency, but instead is premised on inspecting the *local area’s* approach to SEND, encompassing the ways in which education, health and care services, families and partners work together. For some local areas, the experience of the local area SEND inspection had validated existing partnership approaches to meeting the needs of children

and young people with SEND. For other local areas, the experience of inspection had provided a spur to action, helping partners to recognise the need for a joined-up approach, and the limitations of partners operating in silos. Among the LAs we engaged in this research, there were examples of LAs that had stepped back from their broader system role to focus on delivering their statutory responsibilities alone, and where weaknesses around inclusion and multi-agency partnership working had been identified in a subsequent SEND inspection. LA leaders argued that the LA's role in relation to SEND was broader than its statutory responsibilities – this was a larger, system convening and leadership role. The LA's role needed to encompass strengthening mainstream inclusion and SEN support and arranging funding for inclusion support services, for example. LA leaders argued that LAs playing this role was essential for both ethical and financial reasons – for the sake of delivering support for young people and for reasons of financial sustainability, they argued that LAs could not afford *not* to play this role.

Aside from the local area SEND inspection, however, there is little that reinforces the notion that SEND is a local area responsibility in the accountability of individual institutions. This means that, aside from local area SEND inspections and the requirement to prepare a written statement of action, often the joint responsibility of the LA and clinical commissioning group(s) (CCGs), there is little that reinforces the mandate for LAs, for example, to play this broader, system convening and leadership role. While useful, local area SEND inspections are too infrequent to reinforce collective work in local areas on their own – having started in 2016, the first cycle of inspections of local areas is only just reaching completion. As with other areas this research has explored, this means that the joint working between the LA (across education and care services), education settings, schools, colleges, and health services around developing strategic approaches to supporting young people with SEND rests on relationships and good will.

Pupils requiring AP

Summary of current roles and responsibilities relating to pupils requiring support from AP

School-age children may require AP – education when, because of exclusion or illness, or for other reasons, a child would not otherwise receive a suitable education. Schools have the power to exclude a pupil where they consider such a sanction is warranted – decisions to exclude must be lawful, reasonable and fair, and used as a last resort. Schools have powers to seek off-site provision for these pupils, through the use of AP, to 'improve their behaviour' (as stated in the DfE guidance), and are responsible for arranging and funding AP from the sixth day following a fixed-term exclusion. LAs are responsible for arranging and funding AP from the sixth day following a permanent

exclusion and in cases of illness or where a pupil would not otherwise receive a suitable education.

Ensuring the appropriate use of AP and avoiding the inappropriate use of exclusions, similarly, requires a local-system-wide approach.¹⁸ There are, however, two sets of barriers to this. First, there remain perverse incentives around exclusion in the current funding and accountability system. If a pupil requires support from AP, a school that keeps the pupil included will be responsible for funding that support and for the pupil's outcomes. If a school excludes the pupil, the LA is responsible for funding a placement in AP; the school is not responsible for the pupil's outcomes, and while it will lose the per-pupil funding for that pupil, this will be less than the cost of an AP placement. School, trust and LA leaders argued that, as a result, it is potentially disadvantageous in financial – and performance – terms to be an inclusive school.

Second, LAs have limited means to manage demand for AP and ensure that permanent exclusions (one of the main reasons why a pupil would be placed in AP) are not used inappropriately. Statutory guidance on exclusions states that exclusion should be used only as a last resort, but affirms, 'The Government supports head teachers in using exclusion as a sanction where it is warranted.' The Timpson Review found, however, 'that variation in how exclusion is used goes beyond the local context, and there is more that can be done to ensure it is used more consistently and appropriately.' Our research found that the school, trust and LA leaders and parents/carers agreed that the use of exclusion varied between schools and trusts, and that there were instances of exclusion being used disproportionately or inappropriately. While many school and trust leaders agreed that there needs to be fairness, consistency and transparency in the use of exclusion and AP, beyond examples of good practice and a shared moral purpose, there is no mandate for LAs and schools/trusts to agree to such an approach. Where inappropriate exclusions do take place, aside from on technical grounds and through persuasion, LAs have little power to challenge.

This was a strong message from many LA leaders ...

'Significant disincentives exist ... exclusion tolerance within accountability frameworks; exclusion process is unbalanced in terms of the power dynamics for parents and LA role restricted ...' (LA officer)

¹⁸ See the *Timpson Review of school exclusion*, published by the DfE in May 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf. See also our research, *Alternative provision market analysis* (October 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752548/Alternative_Provision_Market_Analysis.pdf, and *Responsibility-based models of decision-making, funding and commissioning for alternative provision* (May 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/988703/Responsibility-based_models_of_decision-making_and_commissioning_for_alternative_provision.pdf.

'It is too easy for schools and academies to permanently exclude vulnerable young people.' (LA officer)

'[What is needed is] For schools to retain responsibility for the outcomes of permanently excluded children.' (LA officer)

'Accountability for outcomes of pupils who are moved into AP either through [permanent exclusion] or in order to prevent [permanent exclusion] would incentivise academies and schools to work in partnership with APs.' (LA officer)

... and was echoed by school and trust leaders ...

'[When we set up a local partnership approach to inclusion and AP] There were a couple of schools who refused to take part. Over the years, they have seen the error of their ways, and now realise they are better off working with us. We do hear of some schools and trusts taking different approaches to inclusion.' (Primary school headteacher)

Some local areas have developed models for arranging AP, and avoiding inappropriate exclusions, based on principles of fairness between schools and collective responsibility for all pupils, including those requiring AP. Some of these models are based on the LA devolving high needs block funding to schools to support pupils through earlier support and avoiding unnecessary exclusions. Other local areas have created models based on collective decision-making through inclusion panels, where school/trust leaders and professionals come together to put in place tailored packages of support based on the needs of individual children requiring a more bespoke approach to tackle their barriers to accessing education. Such models are, however, fragile and vulnerable to changes in leadership – at school, trust or LA level. They are dependent on the willingness of schools and trusts to engage with such an approach.

Case study: Nottinghamshire's collective-responsibility, partnership-based approach to inclusion and AP

Following critical Ofsted judgements and discussions with Nottinghamshire headteachers, the local area's pupil referral units (PRUs) were closed (in August 2014) and a new model was put in place whereby high needs funding was devolved to schools to prevent exclusion and promote inclusion.

Funding is devolved separately on a district basis to primary and secondary schools respectively. The vast majority of Nottinghamshire schools are part of these partnership arrangements. Funding is calculated on an individual school basis, although the most effective partnerships have pooled their resources in a single "partnership pot". The partnerships also receive devolved funding for SEN, enabling them to take a holistic view

of inclusion support in their localities. In the small number of instances where a school in Nottinghamshire does exclude a pupil, the cost of their placement is recovered from the school or partnership in question. School leaders consider that the devolved funding enables them to be proactive and put in place alternative forms of support that avoid exclusion: 'It is subtle, but there is a world of difference between saying "you've reached the end of the line, you are being excluded, off you go" and "your journey being educated on [the mainstream school] site will come to an end, but you will always be a student of this school". ... Children leave school at the end of Year 11, but they leave from [our school] as [our] students.'

The LA maintains oversight of all vulnerable children through monthly multi-agency meetings focusing on all pupils whose mainstream placements are at risk as well as those pupils currently placed in AP. Where placements are at risk or the pupil, family, school or AP requires further support, the LA works proactively to address potential issues. The LA also maintains a quality-assured framework of local AP.

Since its launch, the rate of permanent exclusions has been consistently around half of that seen at national level, with proportionately fewer pupils placed in AP than is the case nationally. For example, in 2018/19, before the pandemic, the rate of permanent exclusion in Nottinghamshire was 0.04, while nationally it was 0.10. In 2019/20, the rate in Nottinghamshire was 0.02, while nationally it was 0.06. Despite its impact and longevity, this approach remains vulnerable to schools or trusts that refuse to engage and/or make disproportionate use of permanent exclusion.

Case study: Bristol Inclusion Panel

To reduce the number of permanently excluded pupils, and ensure all young people are educated in a setting that best suits their needs, Bristol secondary schools and the LA have set up the Bristol Inclusion Panel (BIP). BIP performs Bristol's statutory fair access functions (covering the admission of children under fair access), but goes beyond this to provide a formal agreement and forum for schools and the LA jointly to oversee managed moves for all those who have been excluded or deemed at risk of exclusion.

The BIP includes representatives from all Bristol secondary schools and meets regularly to consider the placement of every child in question, taking votes to decide on three school options to offer the parents. Decision-making is informed by details paperwork and a fair system for identifying where schools have specific challenges and capacity to admit pupils, based on cohort data provided fortnightly to the LA by all schools.

The BIP is widely deemed as highly effective in keeping young people's needs at the centre (as opposed to individual institutional interests). Success factors cited by school

leaders include the transparency of process, quality of information provided and highly knowledgeable and adept negotiation skills of the LA chair.

As one LA officer put it, 'With a very small number of BIP cases there is sometimes dialogue between schools and the LA to resolve any complicated issues or misunderstandings. There has not been an individual or minority of schools actually refusing to admit a child and we've not yet had to exercise any powers to enforce this agreement. The strength of BIP is the collegiate, yet challenging, nature of the panel. There are some difficult situations to manage and some tough conversations, but never a refusal to take a student.'

As one secondary school leader put it, 'One thing that Bristol is doing really, really well at secondary level is the Bristol Inclusion Panel. ... The turnaround is so tight and fast. We've had several children land with us and been able to do something. It works because it's a collaborative venture across the city and because the LA official who runs the panel is excellent – he knows all the schools and the provision.'

Non-engagement was not reported to be an issue exclusive to any one type of school. Indeed, some of the areas that have developed collective-responsibility-based models for organising access to AP and avoiding unnecessary exclusions were areas with high proportions of schools that are academies, and with local education systems made up of trusts of different sizes. As with other areas of support for vulnerable pupils, however, LA leaders reported that the schools that were most likely to disengage from such locally agreed approaches tended to be schools that were part of larger academy trusts that operated beyond a single local area. LA leaders also argued that, if an academy did disengage from a local approach to AP and preventing unnecessary exclusions, the LA had fewer levers through which to challenge the disproportionate use of AP or non-inclusive practices.

Safeguarding children in education

Summary of current roles and responsibilities relating to safeguarding in education

Duties to promote safety and welfare: Under the Children Act 1989, LAs have important overarching statutory duties to promote the safety and welfare of children in their area, as well as specific responsibilities to lead statutory assessments and child protection enquiries. Section 175 of the Education Act 2002 places a similar duty on LAs, in relation to their education functions, and the governing bodies of maintained schools and

colleges. A similar duty is applied to the proprietors of independent schools (including academies) through regulations made under the Education and Skills Act 2008.

Early help: Although not a statutory requirement, chapter 1 of the guidance, *Working Together*, describes the benefits of early help: *‘Providing early help is more effective in promoting the welfare of children than reacting later ... LAs should work with organisations and agencies to develop joined-up early help services’*.

Designated officers: The Children and Families Act 2014 required LAs to appoint an officer (the Virtual School Head) to promote the educational welfare of children in care (and, following the Children and Social Work Act 2017, those previously in care). Non-statutory guidance issued in June 2021 extended the role to children with a social worker. Similarly, schools must have a designated lead for safeguarding and a designated teacher for children in or previously in care.

Safeguarding partners: The legislation specifies three local statutory “safeguarding partners” – the LA, the CCGs within the local area, and the chief officer for the police force(s) in the local area. *Working Together* states, ‘Schools, colleges and other education providers have a pivotal role to play in safeguarding children and promoting their welfare.’ Schools are not named as safeguarding partners, but can be designated as a relevant agency, placing them under a duty to co-operate. *Working Together* states, *‘It is expected that local safeguarding partners will name schools, colleges and other educational providers as relevant agencies and will reach their own conclusions on how best locally to achieve the active engagement of individual institutions in a meaningful way.’*

Dealing with concerns: LAs have the power to issue warning notices to maintained schools, including where there are concerns about pupil safety. The RSCs also have the power to issue warning notices to maintained schools. If a maintained school fails to comply with a warning notice (or is judged inadequate by Ofsted), it is deemed “eligible for intervention” under the Education and Inspections Act 2006. If a maintained school fails to comply with a warning notice, the LAs and RSCs have powers relating to the governing body or to suspend the school’s delegated budget. Where LAs identify issues around safety in an academy, they should alert the RSC, who has the power to issue warning notices. Unless the academy is judged inadequate by Ofsted, the RSC will issue a termination warning notice only in exceptional circumstances.

Children in care and joint working with the Virtual School

By contrast, we heard a more positive set of messages about joint working around safeguarding in education, and specifically in relation to the role of the Virtual School. We heard very positive feedback about the Virtual School as a model for supporting the education and development of children in care – both from school and trust leaders about

the model of support, but also from LAs about the strength of engagement from schools and trusts.

'I have nothing but positive experiences of working with the Virtual School for Children in Care. We have 12 children in care in my school and the support and joint working is exceptional, a real strength of [our local area]. We have a fantastic process with the LA.'
(Secondary school headteacher)

'For children in care, it works very differently. First, there's the accountability – children in care are high-profile, and we know we will be held to account for a child-in-care's education and wellbeing. Compared to this, fair access is unregulated and unchecked. We do need the data, the power of Ofsted, to ensure we are held to account for this subset of pupils. Second, for children in care, there is a big focus on the child and on finding an appropriate placement. ... Third, there is the funding – children in care have an amount of money attached to them.' (Executive leader within an academy trust)

'Is there a difference in working with academies and maintained schools? No. It depends on the humanity of the headteacher. Are they interested in trauma and attachment? Once staff get involved and trained, it changes the culture of the school. We have credible ex-leaders having eyeball-to-eyeball discussions with headteachers. ... If we were having difficulty with some schools, we would have a conversation with the leadership and the governors. If they refused to engage, everyone knows that we have regular meetings with Ofsted, and they ask if any schools are giving us difficulty.' (Virtual School Head)

LA leaders cautioned that it would be unwise to draw easy parallels between what works in the context of the Virtual School model and how this could be applied to other vulnerable groups, not least for reasons of scale. In March 2020, there were 80,080 children in care in England, while there were 390,109 children and young people with EHCPs in England in January of that year.¹⁹ Nevertheless, the messages we heard were more positive than for other vulnerable groups. School, trust and LA leaders identified four main reasons for these differences.

- i. **Demand is not open-ended** – the drivers of need/demand are very different for children in care than other vulnerable groups. As one national stakeholder put it, while parents may feel that they must “battle” to get their child an EHCP and a placement in a school of their choice, by and large parents are not pushing to have their children taken into care. Furthermore, LAs have greater control of the continuum of support for children at risk of harm. They can take a risk-based approach about what sort of needs are met at what level, and are able to set

¹⁹ Our research was carried out before the expansion of the role of the Virtual School to all children with a social worker took effect.

thresholds to ensure that decisions about when child protection enquiries or care proceedings should be initiated. In a children's services context, the LA's role and responsibilities allow them to determine how they will respond to need and manage demand, rather than having to react to potentially open-ended demand.

- ii. **There is a strong, unifying, child-centred ethos** – school, trust and LA leaders identified that the role and responsibilities of the Virtual School were underpinned by a strong ethos of child-centred, trauma-informed practice that recognised behaviour as a form of communication about need, articulated consistently by central government and recognised by schools, trusts and LA professionals.
- iii. **The roles of the Virtual School and schools are defined in a reciprocal and complementary way** – school, trust and LA leaders understand that they have a joint responsibility to work together to support the education of children in care. We heard no feedback that children in care should be the responsibility of the Virtual School alone, but rather an understanding that a child in care was on the roll of both their home school and the Virtual School. Linked to this, there was a broad understanding that the Virtual School had a legitimate remit to champion the education of children in care and to challenge schools' practice in this respect, but also had the capacity to provide additional support (through the Pupil Premium Plus).
- iv. **The education of children in care is an explicit part of school accountability** – there is alignment between roles, responsibilities and policy aims around promoting the education of children in care, especially school accountability. School, trust and LA leaders argued that there were clear routes through which concerns about poor practice in supporting children in care in schools could be escalated and a link to the inspection framework.

Case study: The Hertfordshire Virtual School

School and academy trust leaders in Hertfordshire were full of praise for the Hertfordshire Virtual School. As one secondary school leader put it, 'We have had nothing but positive experiences of working with children in care and the Virtual School. The support is exceptional, a real strength of Hertfordshire. There is a fantastic process within the LA. We are really lucky.'

In Hertfordshire, there are almost 1,000 children in care (991 in March 2021, or the equivalent of 36 per 10,000 children, below the England average of 67). A key part of the role of Hertfordshire's Virtual School is promoting and celebrating the achievements and progress of children in care, ensuring that the Council feels proud of the children for whom it acts as the corporate parent. One of the things the Virtual School set out to change was a situation where children's services professionals could access data on the

number of care-leavers in prison, but not the number in higher education. In Hertfordshire, there are currently 83 care-leavers who are currently at university. This year, 28 care-leavers took up undergraduate places at university, including students at both Oxford and Cambridge. The Virtual School is also proud to have its first alumnus to be studying for a PhD. The Hertfordshire Virtual School has a long list of achievements, including strong rates of progress and a proportion of children in care achieving Grades 9 to 4 in English and mathematics GCSEs above the national average in 2020. These achievements are shared regularly, and captured in an annual celebration event that has been running for 18 years – described by the Virtual School as ‘a cross between the Oscars and school speech day’.

If one side of the job is to promote and foster a sense of pride in the achievements of children in care, the other is to provide a clear, expertise-based model of support, advice and challenge when working in partnership with schools and carers to promote the education of children in care. There is a strong team of over 30 members of staff, including ex-headteachers and care-leavers, with specialists in primary, secondary and post-16 education. The Virtual School’s work is informed by research and analysis of evidence, led by a data manager. Each year, headteachers from across the county, including those with children in care in Key Stage 4, are invited to attend a Forum for Change, where effective practice in supporting the education of children in care from across the county is shared with all schools.

We do not want to overstate our evidence here – in some local areas, the Head of the Virtual School reported instances of a minority of schools resisting the admission of a child in care, or threatening to exclude a child in care unless the Virtual School made alternative arrangements for the education of the child. Nevertheless, such examples were reported far more rarely than they were for pupils with EHCPs or those being placed under FAP (as we describe in Area 2 of this chapter). There was also broad support for the principle of extending the role of the Virtual School to cover all children with a social worker. A recommendation from the Children in Need review, published in 2019, it was announced in June 2021 that this policy would take effect from September 2021. Nevertheless, some LA leaders argued that this would fundamentally alter the nature of the role, and needed greater consideration and planning, rather than being added onto the existing role through non-statutory guidance.

Joint working around support for pupils known to statutory children’s services

We heard a similar set of messages regarding children known to statutory children’s services. School, trust and LA leaders recognised that there was a clear ethos (of safeguarding being everyone’s responsibility, not the sole responsibility of any single agency), complementary roles and responsibilities, and stronger accountability through the inspection framework.

Most school and trust leaders spoke positively about their engagements with social work teams. The challenge, as they saw it, was one capacity within social work teams and, in some areas, staff turnover. There was, however, recognition of the clarity of reciprocal roles and responsibilities and of the value of joint working between LAs, schools and trusts to maintain effective practice of safeguarding children in education. As one academy trust CEO put it, recognising the way in which the LA in their local area had involved schools in taking decisions about the role of children's social care, '[The LA] do a good job of involving us in difficult decisions about finite resources.'

School and trust leaders reflected that there were higher thresholds for children's services becoming involved, meaning that more was left for schools to manage, at a time when financial pressures on schools' budgets were limiting their capacity to provide a broader offer of support. We heard very positive feedback from school and trust leaders about the social workers in school pilot. They fed back that this had strengthened joint working between schools and early help/children's social care, provided a valuable source of support and information for schools, enhanced schools' understanding of the families of their pupils, and enhanced social workers' understanding of the education of children on the caseload.

Case study: Improving support for vulnerable children in Portsmouth

Very early on in the Covid-19 pandemic, Portsmouth LA realised that it needed better ways to keep an overview of the safety and wellbeing of its most vulnerable children and young people. In partnership with schools, the LA redeployed some of its existing staff to create a new role – a “link co-ordinator” for vulnerable children. Throughout the pandemic, the link co-ordinators worked with specific groups of schools, firstly to agree which children were viewed as vulnerable, either by the school or the LA, and then to track whether those children were attending school, accessing remote learning, or had been seen and supported by other LA teams or services. The tracking took the form of a visit to every school, every two weeks, to go through the list of children and then follow up on any concerns. Schools and trusts were closely involved in the design and set-up of the process.

After schools reopened to all children, the feedback on the impact of the link co-ordinator visits was so positive that the LA decided to invest in three permanent appointments to maintain this form of support to schools. The frequent conversations have enabled a better shared understanding of which children and families are vulnerable and why, have supported schools in developing strategies to increase the engagement and attendance of these children, and have enabled earlier and more effective deployment of LA support services such as early help, parenting programmes, or support in addressing domestic abuse. The discussions have enabled earlier identification of risk factors, before children reach the threshold for safeguarding interventions. In essence, the role has been key to

unlocking a more joined-up approach to supporting the most vulnerable children and families.

The feedback from schools and trusts on the development of the link co-ordinator role has been extremely positive. One primary headteacher described them as 'absolutely invaluable'. Academy trust CEOs and headteachers commented, 'Going through the case list and getting access to the early help intervention model is not perfect, but it means every child is known and every child's circumstances are known ... the link co-ordinators provide a huge benefit – I have been trying to persuade other LAs to do the same. The improved information is phenomenal ... Links to child protection and early help all come through the link co-ordinator officer. It is transformational.'

The early help system

Messages about joint working in relation to early help, however, were more varied. Specifically, school, trust and LA leaders reported that, within the early help system, the expectation of joint working and schools' and trusts' roles were not sufficiently aligned with policy incentives and accountability. As a consequence, we heard that the engagement from schools and trusts in early help is more variable.

Several of the local areas we engaged in the first phase of the work reported examples – rare, yet extreme – of schools refusing to engage with any early help or other preventative services provided by the LA before a child's needs had reached statutory thresholds. LA leaders argued that, in such instances, they faced significant barriers in identifying and addressing children's and families' needs in an early and holistic way. LA leaders also argued that such practices also meant that LA services were less able to identify potential issues of poor practice before they reached crisis-point. Being able to do both are important to LAs' ability to meet need early and avoid unnecessary escalation to the level where statutory involvement is required.

LA leaders also argued that they had better routes for addressing issues of suspected poor practice in maintained schools than academies. LA leaders argued that they had clear routes for intervening in maintained schools, but that both LAs and RSCs had more circumscribed powers when it came to intervening in academies.

'With maintained [schools] we can get in there, with academies we can't. Some will let us in the door and others don't. We've always tried to maintain strong relationships, our family help, our SEND services are all known to our schools and work with them. ... We try to listen to our schools whatever flavour they are and understand the challenges. We try to put systems in around schools ... Again, it comes back to that relationship.' (LA officer)

Area 2: Ensuring the placements of individual pupils for whom LAs have statutory responsibilities

Pupils with EHCPs

Summary of statutory responsibilities for pupils with EHCPs

Pupils with EHCPs: Section I of the EHCP is where the name of the school or college to be attended by a young person is named. The SEND statutory framework sets out the process for working with parents/carers, including hearing their preferences for a specific placement for their child, and consulting the school or college. Following this process, the LA has the power to name a school (maintained school or academy alike) or college in Section I. Once named, the institution is under a legal duty to admit the young person. If there is still a dispute at this point, schools and colleges can appeal to the Secretary of State that the LA has used its power unreasonably.

For pupils with EHCPs, LAs have the authority to name a maintained school or academy in Section I of an EHCP. Once named, the school is under a legal duty to admit the child. Despite this, we heard reports from parents/carers and school, trust and LA leaders about a minority of schools in all local areas we engaged resisting admitting pupils with EHCPs. They stressed that such practices were not common to all schools and trusts, and some of the examples reported to us were extreme. Nevertheless, each local area we engaged had similar, specific examples of schools creating barriers to the admission of a pupil with an EHCP. As we noted in the introduction to this chapter, referencing the survey responses summarised in figure 11, 94% of LAs reported resistance from some schools to admitting or retaining pupils with additional needs as a barrier to fulfilling their role around supporting vulnerable children. For completeness, we should say that some schools may have legitimate reasons for arguing that they cannot meet the needs of a pupil with an EHCP – there are specific legal grounds on which schools and trusts can argue that the admission of a pupil with an EHCP would be inappropriate. Nevertheless, we heard examples, not just from parents/carers and LA leaders, but also from other school and trust leaders, about a minority of schools and trusts using inappropriate and unlawful practices to avoid admitting pupils with EHCPs.

In the specific examples reported to us by LA officers and parents/carers, there were two ways in which this happened. First, a school would try to dissuade parents from stating a preference for the school, or more may challenge consultations with the school. We heard examples of academy trusts employing solicitors to challenge EHCP consultations.

Second, at a more extreme level, schools and trusts would simply refuse admission of children with EHCPs that named the school, even though they were under a legal obligation to admit the pupil. In one local area, the LA reported that one academy's leadership had stated that they would not admit any children with EHCPs unless the LA "made them" by seeking a direction from the Secretary of State. In both instances, LA leaders, while noting that these issues were not exclusive to academies, argued that they were harder to resolve where the school in question that was resisting admission was an academy, due to the more cumbersome process for seeking the enforcement of legal duties.

Taking the more extreme example, in this situation, LAs were forced to seek a direction from the Secretary of State to enforce a legal decision to name a school on the EHCP of a pupil with SEND. LA leaders argued that this was time-consuming (it could often take six months to get a direction), disruptive to the child's education, and likely to make the parent/carer change their mind about placing their child at that school. LA leaders argued, furthermore, that they were caught in a dilemma between seeking to uphold their legal duty (by seeking a direction) and not wanting to place the child in the middle of a legal dispute. Whether dissuading parents from sending their child to a school or resisting admission when named in an EHCP, LA leaders argued that, where these became a pattern of behaviour for a minority of trusts, they could raise – and had raised – this with the RSC. They argued that there was a lack of clarity about the RSC's remit in this area (specifically when to raise concerns with RSCs and when to do so with the ESFA) and lack of powers to intervene in academies that did not meet the threshold of eligibility for formal intervention (an inadequate Ofsted judgement or financial underperformance).

Parents/carers argued that, while in the case of maintained schools they could escalate concerns to the LA if they could not resolve an issue with the school's leadership, the only route to escalate concerns that could not be resolved with an academy's leadership was the RSC. Parents/carers argued that many families did not understand the role of the RSC or how to raise complaints about an academy trust's practice around inclusion.

Such practice, while rare at the extreme end, highlights the importance of aligning statutory responsibilities and legal duties with broader policy incentives and accountability. School, trust and LA leaders and parents and carers argued that this was an area where the lack of alignment and enforcement meant that legal duties were not being upheld, and the LA was encountering barriers to fulfilling their statutory responsibilities. RSC colleagues agreed that some of the powers that could be deployed to uphold legal duties were cumbersome and clunky, while noting that LA practice was also variable. Our research suggests that, whether the fault of non-compliant practice around the admission of pupils with EHCPs lies with LAs, schools or trusts, there is the need for a swifter route of redress if existing legal duties to ensure children with EHCPs are admitted to schools are to be upheld.

Furthermore, these incidents, while rare, are not one-off problems: they have a cumulative effect. Every LA that we engaged cited examples of schools with similar demographic profiles, but vastly different proportions of pupils with EHCPs. School and trust leaders argued strongly that the lack of challenge to some schools and trusts that were seeking to resist admitting pupils with EHCPs was creating an uneven playing field, with some schools having disproportionately high numbers of pupils with EHCPs (with a knock-on effect on their budgets) and some with disproportionately low numbers. This was seen to create inequity for schools, for children and for parents/carers, and to be corrosive of trust and relationships.

It was also reported to us that such instances of resistance were happening in the cases of children in care with EHCPs, especially if the child lives and is educated in a local area other than the one that is responsible for the child as a child in care. The issue, as reported to us, was the time it took for the LA in which a child in care was placed to adopt the EHCP, and then to have the consultations with schools. If there were no issues, it could still take one to two months for a child to be placed; if there were delays or resistance from schools, it could take longer. As one Virtual Head put it, 'You can follow the system as much as you want, but you don't get anywhere. There is a disparity, unfairness, that children in care don't get access to the right schools.' Again, this was not a widespread issue, but each local area we engaged described a similar set of challenges for a small, but persistent, minority of pupils. One unitary authority reported around 10 children in this situation, while a large shire county reported 60.

This was a strong theme in the feedback from LA officers ...

'Our back-up systems are too weak where you have an academy who is not playing ball on this. The system is not there.' (LA officer)

'It is becoming increasingly hard to balance the need to place young people, particularly vulnerable young people, in school settings. This is particularly the case in the secondary phase where the majority of settings are academies and therefore the local authority doesn't have the power to direct where a school is refusing to place a young person.' (LA officer)

... but also from school and trust leaders ...

'How can it be right that schools can turn down children with SEN and they all get put in schools that are already bursting?' (Secondary academy principal)

'I worry about having [a] more divided school landscape – between those schools that include and those in [a] minority that want to avoid taking pupils with SEND. (Those who include do not have the funds to support.) It is appalling – some schools say "we're not

the right school for your child” – every local area has a school like this, and it is not policed! Feels deeply unfair to other schools.’ (Governor, primary academy)

‘There is an issue about academies not agreeing to admit. It takes six months; the LA has to appeal to the Secretary of State. By then, parents have changed their minds. So you get situations where the caseworker tells the parent “Do you want to send your child to that school? Would you not rather send to [my school]?” This is not right!’ (Secondary school headteacher)

... and particularly from parents / carers ...

‘It felt to parents that the whole ethos was “we do not want your children here”. As a parent, do you put your child through regular trauma, or sit our children elsewhere? ‘We brought this to the LA at the [local SEND partnership board]. People who knew the system, they agreed with us, but they felt their hands were tied. I remember the shock at realising this – they had no power in this area. They can challenge the trust’s leadership, but they have to go “cap in hand”. We would argue that some trusts are breaking the law around disability discrimination and reasonable adjustments, and yet the response is “please sir, can you improve?”’ (Parent Carer Forum)

‘They can tie you up for so many months, and that’s months of your child’s education.’ (Parent Carer Forum)

‘If you are an academy, and don’t want to admit, it is easier to get away without challenge.’ (Parent Carer Forum)

‘We are paying schools from public funds, and they are not willing to take children with EHCPs. They are public servants. This has been lost from mainstream education.’ (Parent Carer Forum)

Pupils requiring placements through fair access

Summary of current roles and responsibilities relating to pupils requiring placements through fair access

Every LA must have a FAP. The purpose of a FAP is to ensure that vulnerable children and those having difficulty securing a school place through in-year admissions are allocated a school place quickly and their education is not disrupted. A local area’s FAP must be agreed by a majority of schools. Once agreed, all admission authorities must participate in and are bound by the FAP. (Updated guidance on FAP was issued in August 2021, alongside a revised Admissions Code.)

Where they are asked to admit a pupil in accordance with FAP, admission authorities must admit. If they fail to do, they may be so directed. The powers to direct the admission of a pupil under FAP differ for maintained schools and academies. The LA can direct the admission of a pupil to a maintained school under FAP (under the School Standards and Framework Act 1998). The Secretary of State has the power to direct academies under the terms of its funding agreement.

School, trust and LA leaders also reported resistance to the admission of pupils under FAP. As with EHCPs, this is another area where legal duties are clear, but the lack of alignment with policy incentives and accountability creates tension and barriers to the LA fulfilling its statutory responsibilities.

As described in the summary of roles and responsibilities at the start of this section, all admission authorities are bound by the locally agreed FAP and must admit a pupil if that has been agreed under FAP. The fundamental issue, as reported to us by school, trust and LA leaders, is what happens in instances where a school is asked to take a pupil under FAP and refuses. As with EHCPs, LA leaders cited specific examples of challenges in securing agreement to the admission of a pupil under FAP. They argued that this separate process meant that, where a direction from the Secretary of State for an academy was needed, this could be complex and time-consuming. This undermined the principle of fair access, which government guidance states is 'to ensure that vulnerable children, and those who are having difficulty securing a school place in-year, are allocated a place as quickly as possible.'

The challenges around fair access were strong themes in the feedback we heard from school and trust leaders ...

'It is called fair access, but it is not always fair. Some schools do say "no" and this is accepted; we get asked to take [children] and given no choice. Some of this comes from MATs not playing ball. Where that happens, all kids will come to the rest of us. There are ways that schools can delay and refuse, that they can keep pushing back against certain students.' (Secondary school headteacher)

'A minority of schools still out-and-out refuse to go with the decision of the FAP panel and the LA don't have the powers to enforce it.' (Primary school headteacher)

'Trusts should sign up to [FAP]; if they don't, questions should be asked. ... All schools should take their fair share, regardless of status. I agree that this is a gap in the system.' (Academy trust CEO)

... and from LA officers ...

'If there was anything we could do with extra it is to require all academy schools to accept Fair Access admissions under the protocol without having to go through a whole burdensome process that keeps a child out of school.' (LA officer)

'LA should be able to direct Academies to take a child on roll, thus avoiding the current lengthy delays in referrals to the ESFA.' (LA officer)

'FAP protocols – SOS directions focus on procedure and not best placement.' (LA officer)

Similar issues were reported to us about the challenges in maintaining oversight of children becoming electively home educated, and greater difficulty when seeking to challenge non-inclusive practice by academies and inappropriate encouragement to parents to home educate their children. In one example reported to us, the LA wanted to issue a school attendance order, but the academy principal said that they would not admit the pupil under any circumstance. It was reported to us that, when the issue was referred to the ESFA, they stated it was for the LA to mediate between the family and the academy.

Future roles and responsibilities relating to support for vulnerable pupils

Where should responsibilities for co-ordinating support for vulnerable pupils be located in the future?

As with pupil place-planning, there was universal consensus that support for vulnerable pupils required a system-wide approach that should be organised at the level of local areas. With vulnerable pupils, however, there was unanimous consensus that the co-ordination of that system-wide approach should be the role of the LA. This is not to say that the LA should have *sole* responsibility for vulnerable pupils, but rather that the LA's role should be one of system leadership – having a mandate to convene partners, shape local strategic approaches and processes to ensure fairness and equity, plan and co-ordinate a coherent continuum of support, arbitrate disputes, and challenge instances of non-engagement and non-inclusive practices.

School, trust and LA leaders and parents/carers considered that the LA was uniquely placed to play this role for the same reasons given in relation to place-planning – place-based leadership, links with local communities, being able to convene a range of local services and partners, and democratic accountability.

This was a strong theme in the views of school and trust leaders ...

'But ultimately, someone outside the schools has to have an overview of where children are placed. Otherwise, you will have children not accessing education. This has to be

the role of a body, and the body that we have established is the LA. With the best will in the world, academies are not going to take troubled children readily without certain protocols in place.' (Regional academy trust CEO)

'LAs only place who can pull together multi-agency services, support, links with police, with health. Role for LA on vulnerable children is really important.' (Academy trust CEO)

'There is not anyone else who could do this role.' (Primary headteacher)

'Whose responsibility is it to pull together brilliant education for all children, and to pull together Trust CEOs? Take the issue of sexual harassment in schools. We need an approach that brings people together around this agenda locally.' (Academy trust CEO)

'There is a bigger issue. When all schools are in MATs, who picks up permanently excluded children, who completes the EHCP, who distributes the funding? If they [the LA] doesn't exist, who will pick it up?' (Middle school standalone academy principal)

... as well as from parents / carers ...

'We want them [the LA] to be accountable and to make others accountable to them.' (Parent Carer Forum)

'When we heard the LA would retain accountability for meeting vulnerable children's and young people's needs, we felt they would have teeth. If this is to stay their role, they need more teeth, especially in relation to academies.' (Parent Carer Forum)

... and other partners in local education systems, such as dioceses ...

'You need the LA to hold objective viewpoint informed by criteria. Otherwise, schools are trading the most vulnerable pupils. ... There is the need to hold the honesty of the system – not because schools are nasty, but because leaders' job is to protect their school, their staff, their children. You need someone to act as a referee.' (Diocesan Director of Education)

School and trust leaders saw no benefit in responsibilities for co-ordinating support for vulnerable pupils being placed at school/trust or regional level. LA leaders and RSC colleagues did note the value of joint working, using their combined influence to convene school leaders to develop approaches to supporting vulnerable pupils. School/trust leaders and parents/carers recognised that, while LAs may go about fulfilling their roles and responsibilities for vulnerable pupils differently, the fundamental issue was not that those roles and responsibilities were in the wrong place or that the people discharging those roles and responsibilities were doing so in a uniformly poor fashion. Instead, they recognised

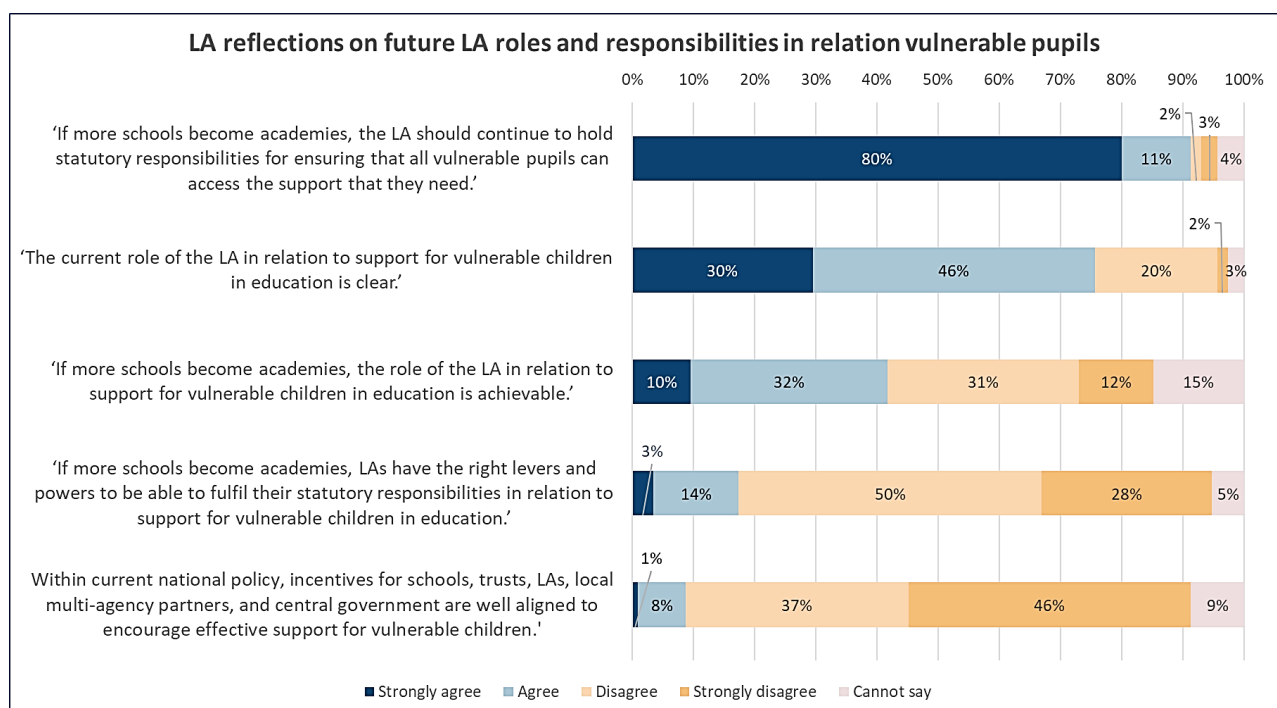
that there were systemic issues that were impeding the ability of LAs to fulfil those roles and responsibilities.

'If you went above LAs, the system would collapse.' (Primary headteacher)

'You can't shut down the LA – it has to be a custodian.' (Executive secondary headteacher)

These messages chimed with those we heard from LA officers in their responses to our survey, as shown in figure 15, below.

Figure 15: LA survey responses about future LA roles and responsibilities in relation to vulnerable pupils



There are three points that we would highlight. First, 91% of LAs agreed or strongly agreed that the LA should continue to hold statutory responsibilities for vulnerable pupils (80% strongly agreed; 11% agreed). Second, while 76% agreed or strongly agreed that the LA role in relation to vulnerable pupils is clear, this was lower than the corresponding figure for pupil place-planning (82%), with LAs less likely to strongly agree (30% for vulnerable pupils; 43% for place-planning). The fundamental challenge relating to the LA's role around support for vulnerable pupils is not the misalignment between statutory responsibilities and decision-making authority, as it is for place-planning. Instead, the fundamental challenge is the lack of recognition of and mandate for the LA's wider system-convening role around vulnerable pupils and the lack alignment between the LA's responsibilities and wider policy incentives and accountabilities.

This links to the third point we would highlight from the survey responses to these questions: namely, that 83% of LAs disagreed or strongly disagreed that national policy incentives for schools, trusts, LAs, partners and central government were well aligned to encourage effective support for vulnerable children (the most common response was ‘strongly disagree’, which accounted for 46% of responses; 37% disagreed). A similar proportion of LAs (77%) disagreed or strongly disagreed that LAs had the right levers and powers to fulfil their statutory responsibilities. Consequently, in their survey responses, LAs were split on the question of whether the LA role around support for vulnerable children was achievable – 42% agreed or strongly agreed and 43% disagreed or strongly disagreed. LAs from local areas with high levels of academisation more likely to agree.

The argument from LAs, even from those in local areas with low levels of academisation, was not to “roll back the clock” on academisation. Instead, LA leaders argued for the need, at the level of national policy, for policy aims around supporting vulnerable pupils and those with additional needs to be aligned with roles and responsibilities, policy incentives, and accountabilities. They argued that this was necessary in a diverse education landscape of schools and trusts so that there were no gaps and discrepancies that affected vulnerable pupils’ access to education and support.

‘Nobody wants to roll back the clock. But if we have MATs not working for the best interests of young people in the community, we don’t have any direct levers. We would have to go through the RSC, and not sure they have many levers. A lot of accountability sits with the LA, but the responsibility of delivery sits with schools. Doesn’t feel appropriate. We need some accountabilities placed on academy trusts and schools to deliver expectations [for vulnerable children].’ (LA officer)

What is needed to enable these roles and responsibilities, and the broader aims of support for vulnerable pupils, to be fulfilled effectively?

Our research identified three things that would be needed for the roles and responsibilities around supporting vulnerable pupils to be fulfilled effectively. First, school, trust and LA leaders and parents/carers argued that there should be a realignment of a series of reciprocal and mutually reinforcing roles. They highlighted the importance of recognising the mutually supportive roles of education and broader support for children and families, which has been brought to the fore by the experience of the pandemic. This is a longstanding and ongoing task: to strengthen mutual appreciation of the fact that education is a protective factor in children’s lives and development, while addressing challenges in a child’s life outside school can be key in unblocking barriers to learning in school. School, trust and LA leaders argued that recasting roles and responsibilities within local education systems should seek to strengthen joined-up, holistic support across education and children’s services, rather than define the roles and responsibilities as separate. They saw

the role of the LA as a crucial bridge between the two. As one LA leader put it, 'If things are not good at home, they won't be good at school. If things are not good at school, they won't be good at home. This connection would be lost in a wholly academised system without a strong role for the LA.'

Furthermore, school, trust and LA leaders and parents/carers argued that the reciprocal roles of schools, trusts, the LA and wider partners in participating in and upholding system-wide approaches and protocols to supporting vulnerable pupils needed to be strengthened. They argued that involvement in arrangements to ensure the fair use of AP and avoid unnecessary exclusions, or participation in upholding a system-wide continuum of support for young people with SEND, or engagement with the early help system, should not be seen as optional or at one institution's discretion, but should be a formal expectation of every school and trust operating in a local area. In areas where there already is that expectation, such as FAP, there should be stronger routes to ensure that those expectations are upheld and that there is accountability when schools or trusts do not uphold them. School, trust and LA leaders reiterated the point that this should not be about making the LA solely responsible for all vulnerable pupils. Instead, work is needed to reinforce the joint and mutually-reinforcing responsibilities of schools, trusts and LAs for vulnerable pupils. The LA role should, therefore, be one of convening partners, shaping strategic, fair approaches to supporting vulnerable pupils, upholding common expectations and agreed protocols, and holding to account any institutions not engaging in or upholding these approaches.

Second, school, trust and LA leaders, parents/carers and national stakeholders argued strongly that what they saw as the uneven playing field between schools and trusts needed to be rebalanced: ensuring equitable access to education and support for vulnerable pupils, and ensuring fairness between schools and trusts, could not be achieved if those cohorts of vulnerable pupils are disproportionately concentrated in some schools and not others. They argued that this undermined parental choice and parental confidence in the system, undermined equity of access for young people, undermined fairness and the comparability of accountability measures, and undermined the efficacy of funding. Correcting this imbalance would require three things.

- i. **Setting out clear and common expectations of inclusive practice in mainstream education** – many of the LA's responsibilities, in relation to SEND, FAP and safeguarding, rely on there being a common understanding of support in mainstream schools before, and ideally to avoid, the point where statutory services need to become involved. For LAs to be able to fulfil their roles, it is essential that there is a means to agree a consistent core of expectations – either at a national level, or a clear mandate to agree and uphold expectations at local level.
- ii. **Ensuring that support for all pupils, including those with vulnerabilities and additional needs, is central to the accountability system** – school, trust and LA leaders and parents/carers argued that there needed to be greater focus on

vulnerable pupils in the accountability and inspection framework. LA leaders stated that the new inspection framework was a good start, but highlighted what they saw as a significant gap – namely that inspection only focused on children on the roll of a mainstream school, but did not take into account pupils denied a place at the school or the characteristics and experiences of pupils leaving the school. One suggestion put forward was that part of the practice of school inspections should involve seeking feedback from the LA about the extent to which a school engages in locally agreed protocols and approaches relating to vulnerable pupils and its willingness to admit vulnerable pupils in proportion with the community it serves.

- iii. **Strengthening processes for resolving disputes around the admission of vulnerable pupils** – school, trust and LA leaders and parents/carers argued that the current arrangements for resolving disputes between LAs and academy trusts around the admissions of pupils with EHCPs (where an academy had been named in a pupil's EHCP) or under FAP (where the LA was seeking a direction from the Secretary of State) were overly time-consuming and complex, and counter-productive to the principle of ensuring children with additional needs and vulnerabilities are placed swiftly and do not suffer disruption to their education. LA leaders and national stakeholders proposed that either these processes needed to be significantly speeded up, or the balance changed so academies were required to admit pupils and the trusts were then responsible for appealing to the Secretary of State, rather than the LA seeking direction. They argued that the RSCs should have a stronger remit for tackling issues of non-engagement and non-inclusive practices. As one national stakeholder put it, 'For the system to work, we need the powers LAs have to have teeth.' Another suggestion was for academy trusts to be responsible for arranging and funding the cost of an alternative placement until the dispute about admission was resolved.

School, trust and LA leaders also argued that there needed to be a stronger and more responsive mechanism, within school funding arrangements, for recognising that some schools may have a higher-than-expected proportion of pupils with additional needs, and ensuring that those schools were not disadvantaged because of that. There is an existing mechanism through which LAs can provide additional funding, outside the mainstream school funding formula, for schools that are highly inclusive. School, trust and LA leaders considered that it was not always possible for this mechanism to be sufficiently responsive to the differences in proportions of pupils with additional needs in different schools. Furthermore, they argued that the broader issue here was the imbalance between some schools having disproportionately high numbers of vulnerable pupils and other schools having disproportionately low numbers. They recognised that funding mechanisms alone could not compensate for such stark differences in approaches to inclusion and the proportions of pupils with additional needs between schools. Nevertheless, they felt that the funding system should be more responsive to and enabling of schools that may, at times, have higher numbers of pupils with additional needs.

‘Schools should not be able to be good and outstanding if they do not do well for children with SEND. You cannot just ignore our children and put them out of the picture.’ (Parent Carer Forum)

‘The new Ofsted framework is a good start but there needs to be a continued focus on how well schools support vulnerable pupils and the proportion of vulnerable pupils in schools.’ (LA officer)

‘The move from use of data and focus on the curriculum/quality of education in inspection is welcome but is not trusted by all school leaders yet and there needs to be continued focus through inspection on the effectiveness of support for vulnerable children, not just those on roll but looking at pupil mobility and the characteristics of pupils leaving a school.’ (LA officer)

‘Ofsted are not required to speak to the LA about inclusive practice in academies and schools ...’ (LA officer)

Third, specifically in relation to SEND and AP, school, trust and LA leaders and parents/carers argued that the tension between potentially open-ended demand and finite resources needed to be resolved. This is easier said than done, and will no doubt be at the heart of the SEND Review and policy-making in relation to AP and exclusion. The argument put forward here was not about there being limitless resources, nor about cutting back provision for vulnerable children. Instead, this was an argument about the necessity of being able to set expectations within local systems about which levels of needs should be met at the level of mainstream, pre-statutory support and which required statutory interventions, with these expectations reinforced through the accountability system.

* * *

Conclusion

There are different ways in which the tensions that affect the LA's role could be resolved. The consensus from the majority, not just of LA colleagues, but also school and trust leaders and parents/carers, was that the LA role should be strengthened and aligned with decision-making authority (in relation to place-planning and the admission of pupils with EHCPs and under FAP) and wider incentives and accountabilities (around inclusion and support for vulnerable pupils). At the same time, many schools and trusts were willing for the LA's role as the arbiter of locally agreed approaches to issues requiring system-wide co-ordination to be strengthened as long as there was a clear expectation that all schools and trusts should participate and that LAs should engage in open, transparent and co-productive dialogue with all.

Many school and trust leaders referred to the importance of "checks and balances" in any constitution or set of rules relating to the power to take decisions and action. They argued that, while the statutory responsibilities of LAs relating to place-planning and vulnerable pupils should be aligned with the authority to take decisions and affect action, the use of this authority should be subject to robust checks and balances to ensure fair and appropriate use. Specifically, school, trust and LA leaders were interested in creating formal local partnerships with roles around place-planning and support for vulnerable pupils, to promote open dialogue and transparency, and provide a local "check and balance". Building on existing local approaches, such partnerships could play roles in considering analysis of system-wide needs for school places or of vulnerable pupils, help to foster local solutions, and provide oversight of decisions taken within the local area. School, trust and LA leaders were also interested in developing consistent routes of appeal and redress to regional or national regulators if there were concerns about the use of decision-making authority within local areas.

Overall, school, trust and LA leaders argued that there needed to be greater alignment in the roles of schools, trusts, LAs, partner agencies and central government in local place-planning (including district councils) and support for vulnerable children (specifically local health services).

Specifically in relation to place-planning, however, there were alternative proposals put forward for resolving the misalignment of statutory responsibilities and decision-making authority. While made by a minority of national stakeholders and larger regional trusts, the argument here was that the LA should be responsible for assessing sufficiency, but that the RSC role should be reformed to act as a regulator of the academies sector, with decision-making power and accountability for ensuring sufficiency of school places.

We have emphasised throughout this report that the issues we have identified are not characteristic of all local areas or all schools, or exclusively related to any one type of school. Nevertheless, there are areas where the misalignment between statutory responsibilities and decision-making authority has been increased by the different

processes that exist for maintained schools and academies around place-planning and routes of appeal around the admission of pupils with EHCPs or under FAP. It is imperative that these misalignments are addressed to avoid situations where it is more difficult for children to access a school place due to the type of school that they attend.

It has not been within the scope of this research project to make specific recommendations about how the future role and responsibilities of the LA, and the reciprocal roles and responsibilities of other partners within local education systems, should be configured and which, if any, of the views and proposals we have captured through the research should be taken forward. What we have derived from the feedback gathered from school, trust and LA leaders and parents/carers has been a set of eight principles, for which there was broad consensus, that colleagues hoped might guide future policy around the roles and responsibilities for place-planning and support for vulnerable pupils within local education systems.

1. **Access**: The education system should enshrine and ensure access to an appropriate education for all children, including those with vulnerabilities and/or additional needs.
2. **Autonomy**: Respect for the complementary roles and autonomy of schools/trusts and LAs, but also recognition of the fact that autonomy is not the same as licence. The exercise of autonomy should not undermine the first principle.
3. **Inter-connection**: The provision of education and other services that support children and families should be arranged locally, informed by a deep understanding of, and connection to, the communities served. Partners within a local area should recognise that they form part of an inter-dependent whole – having an effective and equitable approach to place-planning and support for vulnerable pupils requires that schools, the LA and partners sign up to some consistent ways of working and reaching agreements. Unilateral action can undermine that essential co-ordination and trust in the system. Schools, the LA and partner agencies should see their role, not just in terms of their own organisation, but as part of an inter-connected local system.
4. **Impartiality**: Within local education systems, there remains an important role for an independent and impartial arbiter and champion of what is in the best interests of children and families.
5. **Alignment**: Responsibilities, decision-making powers and capacity should be aligned so that no partner, agency or body should be held responsible for something without the corresponding decision-making power to affect a solution, and the capacity to fulfil the role.
6. **Local solutions**: There is no substitute for strong relationships between leaders and practitioners. The education system should build on and foster strong relationships within local systems. Decisions about place-planning and vulnerable

pupils should be sought through co-production and “local solutions”, before formal decision-making powers are used.

7. **Incentives and accountability** within the education system should encourage partners to see themselves as part of a local education system and to work collaboratively on system-wide initiatives, including place-planning and support for vulnerable pupils.
8. **Redress**: There should be clear, swift and efficient routes for dealing with disputes that focus on the best interests of pupils and avoid disruption to their education.

* * *

List of acronyms

ADCS – Association of Directors of Children’s Services

AP – alternative provision

ASCL – Association of School and College Leaders

CCG – clinical commissioning group

CEO – chief executive officer

CST – Confederation of School Trusts

DfE – Department for Education

DSG – dedicated schools grant

EBD OG – Educational Building and Development Officers Group

EHCNA – education, health and care needs assessment

EHCP – education, health and care plan

ESFA – Education and Skills Funding Agency

FAP – fair access protocol

LA – local authority

LGA – Local Government Association

MAT – multi-academy trust

NAHT – National Association of Head Teachers

PAN – published admission number

PRU – pupil referral unit

RSC – Regional Schools Commissioner

SCAP – school capacity survey

SEMH – social, emotional and mental health

SEND – special educational needs and disability

SEN – special educational needs

SENCO – special educational needs co-ordinator

SLT – senior leadership team



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