

Just for Kids Law's response to the Government's Behaviour in Schools Guidance Consultation

March 2022

Question 8

In paragraph 12, we propose a new national minimum expectation of behaviour which gives schools the ability to set a benchmark for behavioural standards. This sets out high standards of expectations from schools - for example, pupil behaviour not routinely disrupting teaching, routines, and leaders visibly and consistently supporting all staff to implement the school behaviour policy. Do you agree with this approach? If not, please explain why.

Just for Kids Law are concerned about the new national minimum expectation of behaviour proposed. Paragraph 12 states:

'All headteachers should take responsibility for implementing measures to secure acceptable standards of behaviour. They should ensure the school's approach to behaviour meets the following national minimum expectation.'

We believe that this requirement places too much emphasis on managing behaviour, rather than ensuring schools are a nurturing environment for all children and can support pupils to overcome barriers to learning. Schools must be a place where all children can be happy and can thrive. In its General Comment number 9, the UN Committee on the Rights of the Child (UN Committee) "*welcomes the introduction of child-friendly school programmes in many countries, which seek to provide interactive, caring, protective and participatory environments*"¹. Schools that focus on behaviour management and control are counter to this approach.

In our experience at Just for Kids Law, non-targeted interventions do not work as these tend to be more general interventions which are not tailored to a child's particular needs or personality. We find children with SEND or other additional needs fair better when their needs are assessed, and they are provided with tailored support to meet the needs specifically identified. Schools' interpretations of 'implementing measures to secure acceptable standards of behaviour' may lead to more schools developing harsher behaviour policies that might work well for some pupils, but

¹ UN Committee on the Rights of the Child (2009) *General Comment number 12: The right of the child to be heard*

less so for other children including those with SEND, disabilities and other barriers to learning, whose learning is affected by the level of the sanctions they face.

This paragraph allows schools to dictate the parameters of 'acceptable standards' of behaviour. We are concerned about what happens to students who fail to meet this threshold of behaviour. The new minimum expectation of behaviour has the potential to be interpreted in such a way that increases a punitive approach which ultimately leads to more permanent exclusions, suspensions and removals if pupils fail to meet this standard. The notion of children being under '*the control*' of teachers as mentioned in paragraph 95 is also incredibly problematic. Teachers may feel empowered to sanction pupils beyond what is necessary in order to maintain that 'control' or if they feel their control is being threatened. We are also concerned with the language used in other parts of the guidance such as '*disruption is not tolerated*' in paragraph 12. Disruption to a class is often a low-level behaviour issue, this can commonly be an issue for children with SEND such as autism who may not be able to regulate themselves. Such language places an unrealistic expectation on particular children to maintain often ill-interpreted levels of acceptable behaviour or face harsh sanctions.

Paragraph 13 goes on to state that schools '*should have rules with consequences for breaking them*'. This could make schools feel pressured into sanctioning pupils, with such sanctions often being counter-productive, and that a failure to do so could reflect poorly on the school during an inspection.

The Government should seek to remove the new national minimum expectation of behaviour that schools are recommended to implement. Instead, they should provide greater guidance for schools on how they can create a positive learning environment which nurtures all children and supports pupils with behaviour that challenges, rather than managing behaviour. Behaviour policies should promote positive behaviour within the school environment. However, such policies will only work if there are measures in place to support pupils. It is also crucial that children themselves are able to participate in the development of a school's behaviour policy in line with the UN Convention on the Rights of the Child. The UN Committee on the Rights of the Child (the UN Committee) has repeatedly recommended that more needs to be done to ensure that children's participation rights are realised in school, including in relation to behaviour policies.

Child Criminal Exploitation

Recent research from the Tackling Child Exploitation Support Programme found significant limitations in how well exploitation is recognised in schools.² As some children will have experienced CCE while in mainstream education, it is important for schools to be aware of the warning signs and associated issues. One issue is that the behaviour of a child may be the result of their exploitation, yet this may lead to their exclusion if a contextual safeguarding approach, which takes into account abuse in extra-familial settings, is not front and central to a school's response. If a child is being trafficked or criminally exploited, it will typically involve carrying a weapon, drugs or both.³ Such behaviour resulting from exploitation will likely be concerning for schools and many schools have zero tolerance policies in place to address such behaviour. However, in cases of CCE, zero tolerance policies may further a child's exploitation and punish them for something that is clearly a safeguarding issue and should be recognised as such.

² TCE (2021) *Excluded or missing from education and child exploitation: literature review and stakeholder views on safeguarding practice*

³ Ofsted, Care Quality Commission, HMICFRS, HMIOP (2018) *Protecting children from criminal exploitation, human trafficking and modern slavery*

CoP makes it clear that any delay in making necessary special educational provision can give rise to learning difficulties and subsequently loss of self-esteem, frustration in learning and behaviour difficulties (para 5.36).⁷

Too much emphasis is placed on holding high standards and no emphasis on actually supporting children with SEND to be a part of the school community. This approach risks making children with SEND feel as though they do not belong. It will segregate them from the rest of the school community and may mean that they are persistently targeted for their behaviour which is linked to their SEND. In response to how schools should manage disruptive behaviour, one of our campaigners at Just for Kids Law has said:

"There's so much missing. Especially when it comes to understanding the effects that different things can have on people – especially when they may not be neurotypical. Having gone through a lot of things in my life, the way I responded wouldn't have made sense to people who don't have any kind of conditions. For me it would have helped so much more if they understood my condition and how it affects me. Something as small as the lights could really affect me and nobody understood that. It'd really affect me I wouldn't be able to do my work at all. Schools need to get people who understand. They're missing so much on the way that, by the time they get the behaviour they want, they're doing so much damage in the process."

It is therefore important that schools take the additional needs of pupils into account when responding to behavioural issues. Schools must prioritise support for children with needs over placing high standards of arbitrary behaviour expectations and policies on them.

The list of preventative measures on paragraph 37 is not comprehensive and does not offer much for children with SEND. It offers little assistance to school staff or families to understand what preventative measures could look like. The most helpful measure is the measure to train staff on autism, however this should be extended to all areas of SEND and should perhaps be statutory requirement or at least a recommendation for all staff at school, rather than a preventative measure for misbehaviour.

Paragraph 52 states:

'A school should not assume that because a pupil has SEN or a disability that this must have affected their behaviour on a particular occasion – this is a question of judgement for the school on the facts of the situation. Nor must there be any assumption that a pupil's SEND automatically requires behavioural support to be put in place – again, it depends on the pupil.'

We are concerned as to how headteachers and teachers without relevant professional skills are going to be able to determine whether a child's behaviour is due to SEND or not. We often see incidents where children with SEND are accused of choosing to behave badly rather than an acknowledgement that behaviours are due to the child's SEND. It is difficult for a teacher to make this judgement in a neutral way without bias. For a teacher or headteacher to make such a judgement effectively, they would need training in different types of SEND and have the skills and knowledge to make an informed decision. The starting point of any assessment of a child with SEND who is exhibiting behaviour that challenges should always be that the child has needs and the behaviours are symptomatic of those needs. If there is any suspicion that a behaviour is not due to those needs, then there may be other needs that are not being met.

⁷ Ibid paragraph 5.36

At Just for Kids Law, we supported a child who was repeatedly punished for behaviour linked to her SEND. She was 13-years-old and permanently excluded for persistent breaches of the school's behaviour policy. She had ADHD, which had been diagnosed aged 12 after a long period on the waiting list for a CAMHS assessment. She was also on the waiting list for an ASD assessment. She had been consistently punished for behaviour which reflected her needs, such as failing to sit up and pay attention, not 'tracking' the teacher or looking at the teacher and fidgeting in class. Some teachers recognised that these manifested from her needs but many, including the headteacher, did not, and said that she was choosing to display these behaviours. This was recognised by the Governing Body who overturned the exclusion and she returned to the school.

This case demonstrates why it is important to address behaviour arising from a child's SEND appropriately.

Question 12

We are aware that schools often gather feedback from pupils to hear their views on the school's behaviour policy and wider culture. What is the best way to capture pupil voice and what is the impact on the behaviour standards?

We welcome the Government asking about the best way for schools to gather feedback to hear children's views on a school's behaviour policy and wider culture. As stated in Article 12 of the UN Convention on the Rights of the Child and expanded upon in the UN Committee's General Comment number nine, children have the right to participate and have their views taken into account in all decisions about them – both decisions impacting individuals and strategic decisions affecting a group of children. It is crucial that children are given a say in the development of a school's behaviour policy and wider culture as noted above.

Children we work with who have SEND and are excluded from school often do not feel involved in decisions made about them within the school which have far reaching consequences on their education. Involving children through pupil forums such as school councils or forums at all levels of the school have been shown to be beneficial, although such structures must be used in a meaningful way and ensure a diverse group of children are involved. As one of our young campaigners said:

"In order to have any positive change in schools, pupils need to be involved. It is really important to understand what the other side think."

We urge the Government to consider making it a key action for schools to do this in its final guidance.

We recommend that the Government draws on General Comment number 12 when looking at this issue and other practical guidance on ensuring that participation is done well, for example Save the Children's 'The nine basic requirements for meaningful and ethical children's participation'.⁸ We would also be happy to further discuss good practice and practical ways to listen to children with the Department for Education.

⁸ Save the Children (2021) *The Nine Basic Requirements for Meaningful and Ethical Children's Participation* https://resourcecentre.savethechildren.net/pdf/basic_requirements-english-final.pdf/

Question 15

Paragraphs 77-78 outline the support that schools may want to provide to pupils following behaviour incidents or a pattern of incidents. This includes engagement with the pupil or parents or inquiries into circumstances at home, conducted by the Designated Safeguarding Lead or a deputy. What other pastoral support should schools consider when trying to support students following behaviour incidents?

Pastoral support that schools should consider when trying to support students following behaviour incidents are:

- On site counsellor
- Greater consideration and emphasis on mental health
- Respectful staff-pupil relationships
- Valuing the voice of the child
- Open communication
- Students are made aware of how to report concerns
- Mentoring opportunities
- Using data to review practices

Question 16

As set out in paragraph 79, removal (sometimes known as isolation) is now defined as “where a pupil, for disciplinary reasons, is required to spend a limited time out of the classroom, at the instruction a member of staff”. The guidance says: “The use of removal should allow for continuation of the pupil’s education in a supervised setting”. Do you agree with this definition and guidance? If not, please explain why.

We do not agree with the use of removals for disciplinary reasons as they are detrimental to children’s mental health and wellbeing unless the child is exhibiting behaviour that is a danger to themselves or others and removal would help de-escalate the situation. We are pleased to see that this new definition states that *‘removal from the classroom should be considered a serious sanction and only used when necessary’*, but we believe that the Department should work with schools to end the use of isolation as a punishment.

Treatment of children in removals

Children and young people have shared experiences with us in which being placed in a removal room was psychologically harmful, damaging to their education and potentially a breach of their human rights. Often, they have had to spend days or weeks in isolation without any support to address the behaviour or circumstances which led to them being removed.

“When you’re ready to go back, you should be able to go back to class. What’s the point of sitting in silence the whole day? Aren’t you just going to turn up to school again the next day with the same emotions?”

Young person⁹

⁹ Ibid

In 2011, the UN Committee concluded that placing a child in isolation breaches that child's right to be free from all forms of violence, abuse, and neglect.¹⁰ In 2016, it recommended that the UK Government abolish the use of isolation rooms.¹¹ Removals have detrimental effects on the mental and emotional health of children and young people.¹² The Centre for Mental Health's briefing on trauma and challenging behaviour in schools shows that seclusion has a negative impact on the mental health of young people¹³ and on the emotional wellbeing of a young person's family.¹⁴

Children are often treated differently when placed in isolation. An investigation carried by the Guardian revealed that teachers were instructed to ignore pupils in isolation rooms.¹⁵ This is very likely to have knock on effects on a child's social, emotional and mental well-being, if a place where they are meant to receive a good and balanced education and be supported to grow, regards them as a problem that needs to be ignored.

We have heard from children, including children in primary school who told us that while in isolation they were not allowed to go to the toilet or to go outside during breaktime. This is not an acceptable way to treat a child. Others were given no work to complete during their time in isolation, instead simply being asked to write lines or an apology letter to their teacher. In some cases, isolation rooms are designed in a similar way to secure facilities, with furniture fixed to the floor and screens separating children from any visitors. One young person told us that when he first entered prison, he felt at home because of his experience of removal rooms while he was at school.

"The isolation room looks exactly like a prison. You're setting a young person up for jail time. There are cubicles on either side, and you can't see anyone and you're just facing the wall all day. That is not healthy. We've all experienced lockdown for who knows how long and how many people have come away with mental health issues? What do you think that's doing to young people in schools? What would be better would be a classroom setting with assistant teachers who can help the young person carry on with what they were learning in that lesson."

Young person¹⁶

Use of term removal

We are also concerned with the change in name from isolation to removals. The Oxford Dictionary defines removal as *'the act of taking somebody/something away from a particular place'* or *'the act of getting rid of something'*.¹⁷ We believe the change in name further reinforces the notion that pupils who may struggle with behaviour that challenges are problems to get rid of. One of our young campaigners has expressed that *'removal is as negative a word as isolation'*. They note how some children who experience being placed in isolation or removal are care leavers and have already experienced a removal from their homes.

¹⁰ UN Committee on the Rights of the Child (2011) *General comment No. 13 (2011): The right of the child to freedom from all forms of violence* <https://www.refworld.org/docid/4e6da4922.html>

¹¹ UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* <http://www.crae.org.uk/publications-resources/un-crc-committees-concluding-observations-2016/>

¹² *Isolating Children In School 'Damages Mental Health'* (forbes.com)

¹³ Centre for Mental Health (2020) *Trauma, challenging behaviour and restrictive interventions in schools* Page 5 - https://www.centreformentalhealth.org.uk/sites/default/files/2020-01/Briefing_54_traumainformed%20schools_0.pdf

¹⁴ Ibid.

¹⁵ Perraudin, F (2 September 2018) Use of isolation booths in schools criticised as 'barbaric' punishment *The Guardian* <https://www.theguardian.com/education/2018/sep/02/barbaric-school-punishment-of-consequence-rooms-criticised-by-parents>

¹⁶ Focus group with young people who have experienced school exclusion

¹⁷ <https://www.oxfordlearnersdictionaries.com/definition/english/removal>

We need to ensure that children know they are valued and wanted, whatever their needs may be. Children attend school to learn and build relationships. However, if the environment they spend the most time in constantly tells them they are a problem that needs to be removed and isolated, we risk making behavioural problems worse, thus exacerbating the issues that we seek to resolve.¹⁸ Simply changing the name does not change its use, how it will be governed by schools and the effect it has on children. Therefore, if the use of removing a child from the classroom is to be kept, it should be renamed with an associated fundamental different approach set out below, some suggested options are:

- De-Escalation Room
- Safe Room
- Reflection Room
- Safe Space
- Meditation Room

Removals should therefore be replaced by other intervention methods to help support a child to improve their behaviour. Mentoring, counselling and targeted intervention support are all ways to help limit the use of removals and support a child to improve their behaviour. Instead of removal rooms, the Government should look to create de-escalation or safe rooms as mentioned above that are welcoming and support the diverse academic, social, emotional and communication needs of all children; rooms that do not have a detrimental effect or reinforce the notion that a child is bad.

Question 17

As set out in paragraph 82, removal should be distinguished from the use of separation spaces (sometimes known as sensory or nurture rooms) for non - disciplinary reasons. These generally involve focused, in-school, teacher-led interventions for small groups of pupils with identified SEN or other needs: for instance, where a pupil is taken out of the classroom to regulate their emotions because of identified sensory overload. Do you agree with this approach? If not, please explain why.

Yes, we agree with this approach as long as the emphasis and use of separation spaces are not a sanction for bad behaviour, but instead a way to support pupils who may have different needs, allowing them to continue their education.

The use of separation rooms needs to be governed similarly to the use of removal rooms. Data needs to be collected on its use and schools must examine what that data is telling them about their use of separation rooms. They must not become a secondary removal room or another way of isolating pupils who demonstrate behaviour that challenges. Emphasis should also be placed on ensuring children are adequately reintegrated back into the classroom.

Question 18

¹⁸ Morrison, M. 9 January 2020 'Isolating Children In School 'Damages Mental Health' *Forbes*
<https://www.forbes.com/sites/nickmorrison/2020/01/09/isolating-children-in-school-damages-mental-health/?sh=3c62090630fd>

In paragraph 81, we outline that removal should only be used as a last resort to: a. restore order and calm following an unreasonably high level of disruption b. enable disruptive pupils to be taken to a place where education can be continued in a managed environment. Do you agree with these reasons? If not, please explain why.

We do not agree with these reasons. Firstly, the guidance fails to differentiate between immediate removals following an incident to allow child to regulate their emotions and calm down and pre-planned removals that last for a prolonged time. This distinction is important if removals are truly to be used as a last resort. Further, statistics demonstrate that schools do not often use removals as a last resort. The Centre for Mental Health outline research by The Challenging Behaviour Foundation who conducted an online survey on restrictive interventions in educational and respite settings. It was completed by 204 families. 71% reported incidents of seclusion, with 21% reporting that this took place on a daily basis. Additionally, a majority of families said that the interventions were not planned in advance, were not in their child's best interests and were not carried out with parental input.¹⁹ This demonstrates that removals are used quite frequently and not as a last resort.

If a child is to be removed from a classroom due to disruptive behaviour, measures should exist that allow the child to speak to mentors and speaking assistants as outlined in paragraph 84. They should also be given the option to speak to a counsellor, should that be more appropriate, to talk about any difficulties they might be facing, any reasons behind their behaviour, what caused or might have triggered their behaviour and how they are feeling. They must also be able to continue their education. This process can help ensure that children are not repeatedly placed in isolation. A young campaigner has shared the following:

"I think there should be more safeguarding opportunities, and people to talk to you and ask you what's on your mind. In lessons teachers won't ask you how you're doing, they might have no idea what you're going through. They should be easy to talk to and express your feelings to"

- Young person

It is important to also recognise that behaviour is communication. If a child is displaying behaviour that challenges, there may be underlying needs that are not being met. A child could also be experiencing challenges and difficulties in their life or could be experiencing abuse or neglect. Removals are a simplistic answer which will not address these needs or could result in a missed opportunity for children to receive support or a safeguarding intervention which they may desperately need. The Department for Education's own report warns that schools do not actually know if behaviour policies such as the use of isolation rooms, are having the desired effect on children of giving them a space to calm down, reflect and correct their behaviour. The report states, *'there was a lack of hard evidence of schools evaluating the impacts of specific preventative strategies'*.²⁰ It is therefore worrisome that the guidance still makes provisions for the use of isolation. We do not believe removal or isolation in this way should be used, in line with the UN Committee's recommendation, but if it is, then the Government must ensure that it is only used as a last resort through clear guidance and by encouraging schools to use alternative preventative

¹⁹ Centre for Mental Health (2020) *Trauma, challenging behaviour and restrictive interventions in schools*. Page 5-6 [Briefing_54_traumainformed_schools_0.pdf \(centreformentalhealth.org.uk\)](https://www.centreformentalhealth.org.uk/Briefing_54_traumainformed_schools_0.pdf)

²⁰ (2018) IFF Research Ltd, Professor Martin Mills (University College London) and Professor Patricia Thomson (University of Nottingham) Investigation in Alternative Provision Department for Education, page 10 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748910/Investigative_research_into_alternative_provision.pdf

measures.

Question 19

Paragraph 83 outlines the ways in which headteachers should govern the use of removal: 12 a. maintain overall strategic oversight of the school's arrangements for any removals, as set out in the school's behaviour policy; b. make sure the reasons that may lead to pupils being removed are transparent and known to all staff and pupils; c. outline in the behaviour policy the principles governing the length of time that it is appropriate for a pupil to be in removal; d. ensure that the removal location is in an appropriate area of the school, that the room is stocked with appropriate resources, and is a suitable place to learn, and is staffed by suitably trained members of staff; e. design a clear process for the re-integration of any pupil in removal into the classroom when appropriate and safe to do so. Do you agree with these proposals? If not, please explain why.

Length of removals

Removals are now defined as spending 'a limited time out of the classroom'. We have concerns around this definition used in the guidance. In our experience, removals are often not for a limited time. Children and young people tell us there is very little transparency about both the decision to place them in a removal room, and the length of time they will be kept there.

For example, we had a client who was put in isolation for 6 months for an alleged safeguarding risk but the school provided no information or explanation to the parent despite them enquiring. This is a common occurrence. Another would be informed at the start of each new school day that her time in isolation would be extended. This process went on for weeks.

Children often spend a substantial amount of time in removal and miss out on a significant amount of learning. This often affects a child's ability to integrate into the classroom especially when it is regularly used for long periods of time and can cause more disruption into the long term. It also disrupts their routine and isolates them from their peers. A 2018 BBC investigation found that children can sometimes spend at least five straight days in isolation.²¹ The Guardian also revealed how a child with mental health problems was placed in isolation for more than a month where she tried to commit suicide.²² Although we disagree with removals at all, if they are to remain as a disciplinary measure in the guidance, the Government must specify that they must be used only for the shortest possible time.

We are also concerned that without regularly collected data and clear oversight of a schools use of removal, it places a significant amount of control at the hands of schools to make use of a disciplinary measure. These measures often disproportionately affect pupils with SEN, pupils eligible for free school meals, looked after children, and pupils from certain ethnic groups such as Gypsy/Roma; Travellers of Irish Heritage; and pupils from Black ethnic groups including Mixed Black and White and Black Caribbean.

In the school exclusion guidance, the Government limits the number of days a pupil can be suspended for to 45 days in an academic year. Parents, social workers and virtual school heads must be informed of an exclusion without delay and no later than three days. Alternative Provision has to

²¹ Titheradge, N. (12 November 2018) 'Hundreds of pupils spend week in school isolation booths' *BBC*
<https://www.bbc.co.uk/news/education-46044394>

²² Perraudin, F. (3 April 2019) 'Mother sues over daughter's suicide attempt in school isolation booth' *The Guardian*
<https://www.theguardian.com/education/2019/apr/03/isolation-of-children-at-academies-prompts-legal-action>

be arranged for a pupil from the sixth day of a suspension or after the first day of a permanent exclusion. Considering the effects of removals highlighted previously, if they are to be kept, the Government should aim to put in place a framework to ensure that they are only used for the shortest possible time in the same way it has done for other measures.

At paragraph 87, the draft guidance states:

'Pupils should not be removed from classrooms for prolonged periods of time without the explicit agreement of the headteacher and with extensive support to continue their studies and address their behaviour in order to be reintegrated within the mainstream school community.'

This paragraph should be amended so that it reads "Pupils should only be removed from the classroom for the shortest possible time". Headteachers or another senior staff member, like a Year Head must review the needs of the child, the effects of being in removal on the child, and the strategies in place to help the pupil improve their behaviour or discuss any difficulties they are facing every time a removal is used.

Social workers and virtual school heads should also be informed after the first day spent in removal.

Informing Third Parties of a Removal

Schools should also inform a child's social worker or virtual school head if a child is placed in removal, in the same way this is now required for an exclusion. As removals are often used as an indirect way to exclude a child, isolate them from the rest of their class and has similar detrimental effects, informing third parties would ensure an extra layer of accountability and assist in monitoring how schools use removals.

Governance of Removals

Removals need greater governance if we are to truly safeguard children and ensure that schools and its disciplinary measures do not cause trauma. The Government's aim with this revised guidance, is to establish *'safe supportive environments conducive to learning'*²³. To ensure that this is truly the case, paragraph 83 should read *'Headteacher's must'* when governing the use of removals. They must ensure that the removal location is in an appropriate area of the school. They must ensure that is a suitable place to learn and must ensure the pupil receives education in line with their peers.

Question 20

Paragraphs 84-85 outline that schools should monitor who is removed from classrooms and frequently review this data to identify any patterns relating to any individual pupil and pupils with protected characteristics. Do you agree with this approach? If not, please explain why.

The requirement to monitor who is removed from classrooms and to frequently review this data should be a strict requirement on schools. Currently, in the draft guidance, the requirement to monitor this data is weak. Paragraph 84 in the revised guidance reads:

'Schools should consider additional approaches to support pupils who are frequently removed from the classroom such as meeting with mentors and use of teaching assistants. Schools may

²³ Behaviour draft guidance: https://consult.education.gov.uk/school-absence-and-exclusions-team/revised-school-behaviour-and-exclusion-guidance/supporting_documents/Behaviour%20in%20schools%20%20advice%20for%20headteachers%20and%20school%20staff.pdf

wish to collect and monitor data to identify who is being removed from the classroom regularly and consider if they may benefit from these additional and alternative approaches.'

This sentence should be amended to say:

'Schools must collect and monitor data to identify who is being removed from the classroom regularly and consider if they may benefit from these additional and alternative approaches.'

Paragraph 85 reads:

Separately, schools should analyse the collected data to identify any patterns relating to pupils sharing any of the protected characteristics in order to ensure that the use of removal is fair and the removal policy is not having a disproportionate effect on pupils sharing particular protected characteristics.

This paragraph should refer to specific groups of pupils that are likely to be disproportionately affected by removals. This list should include: pupils with SEN; pupils eligible for free school meals; looked after children; and pupils from certain ethnic groups such as Gypsy/Roma; Travellers of Irish Heritage; and pupils from all Black ethnic groups. Schools must be able to monitor their use of removals against these groups to ensure that they are not being disproportionately targeted.

In the DfE's report mentioned above, schools cited avoiding an exclusion as evidence of success of preventative behaviour strategies, but as schools did not carry out formal evaluations, they were unable to determine if it was their preventative strategies that led to this outcome.²⁴ However, if data was collected on the use of removals and its effects, schools and local authorities would be able to see that removals are not having the intended effects of managing behaviour. Effective equality monitoring is essential to ensure compliance with the Public Sector Quality Duty (PSED) under section 149 Equality Act 2010. Without such monitoring, DfE will not be able to understand whether any groups are disproportionately discriminated against. Furthermore, this requirement would assist in holding schools accountable so that children are not further traumatised or harmed by the use of removals. It is easy for schools to collect this data as schools have computer systems on which any sanction is recorded. As such, this is not a significant burden on schools. Such data should be regularly published and publicly available to ensure adequate accountability and scrutiny.

Question 21

Paragraph 86 outlines the specific actions schools should take when dealing with individual removal cases. Both include clear reference to pupils with SEND and their specific needs. Do you think the updated advice provides helpful guidance to schools on the decision-making process over using removal where necessary for pupils with SEND? If not, please explain why.

The guidance does not provide helpful guidance to schools on the decision-making process for using removals for pupils with SEND. There is in fact no reference in paragraph 86 to SEND. A more extensive list of the steps that need to be taken should be created including:

- Whether removal is the most appropriate form of discipline for a pupil.

²⁴ Page 10 -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748910/Investigative_research_into_alternative_provision.pdf

- Consideration of any underlying home or social factors.
- What the adverse effect of removal is on a particular pupil.
- Whether any assessment of underlying factors of disruptive behaviour is needed.
- Using other methods of managing behaviour first.

Schools must also ensure they create open communication that doesn't paint the child as the problem. Paragraph 86 states that teachers and headteacher's should '*facilitate reflection by the pupil on the behaviour that led to their removal from the classroom and what they can do to avoid such behaviour in the future*'. This perpetuates the notion that the child is a problem especially if it is linked to behaviour that is a result of their SEND. Communication should be facilitated that allows the pupil to understand what they may have done wrong, what their needs might be, how they can be supported to improve their behaviour and what support might be in place for them to address their needs.

Paragraph 53 also states:

All schools should consider whether a pupil's SEN or disability has contributed to the misbehaviour and if so, whether it is appropriate and lawful to sanction the pupil. To do this schools should consider whether the pupil understood the rule or instruction and whether the pupil was unable to act differently as a result of their SEN or disability.

The second sentence misstates the law and should be removed. Teachers may deem that pupils understand the rules and discipline them based on their perception of a pupils understanding or simply because they understand the rules. Many children understand rules, and can follow them, but do not regularly do so because of SEN or disability as one of our young campaigners demonstrates below. If this sentence remains, it could result in disability discrimination.

"Someone like me who has Asperger's syndrome can get really overwhelmed. People have meltdowns. They can be screaming or throwing stuff, but they're not doing that to be horrible people. For me I usually shut down - and people didn't understand that. When people kept pressuring me, that's when I have outbursts. And I'm not trying to be bad but you're trying to convince me that I am without understanding what's going on."

- Young person²⁵

Question 22

Paragraphs 96-100 outline how schools should adopt a range of initial intervention strategies to help pupils manage their behaviour and help to reduce the likelihood of suspension and permanent exclusion. We list a range of interventions including providing mentors, in-school units and engagement with parents. What other types of early intervention work well to address behaviour issues?

Mentors and counsellors would be a useful initial intervention to help pupils manage their behaviour and help reduce the likelihood of suspension or permanent exclusion. Mentors and counsellors may help to build trust and relationships with children to help them to open up. Often it may help to identify underlying causes of disruptive behaviour including issues in the family home, bullying and

²⁵ Focus group with young people who have experienced school exclusion

CCE. However, schools should bear in mind that many children who have experienced criminal exploitation may not recognise themselves as a victim.

Schools should also be made aware that exclusion can leave children mistrustful of potential sources of support as being excluded often leaves children feeling rejected and unwanted by the education system. This may be reflected in their behaviour or when initial intervention measures are put in place.

Question 23

Paragraph 101 outlines our definition of an in-school behaviour unit as “planned interventions that take place in small groups outside of normal lessons. The approach taken in such a unit should be aligned to the culture of the whole school and delivered in line with the school’s behaviour policy”. Do you agree with this definition? If not, please explain why.

The guidance does not provide adequate detail about how ‘in school behaviour units’ should operate and what oversight there should be. There is no requirement to monitor protected characteristics of pupils placed in these units. Safeguards need to be introduced in order to avoid the risk of segregation.

Paragraph 102 states:

‘Most in-school behaviour units are established solely to accommodate pupils from the school in which they are located, whilst some units, often termed AP units, are established to accommodate pupils from other schools as well. The placement of pupils from the local authority or a separate school into a unit is a form of alternative provision and those arranging and providing the placement must adhere to the duties set out in the Alternative Provision Statutory Guidance.’

We are concerned that multi-academy trusts can, in effect, set-up pupil referral units in one school where students with behaviour that challenges are sent with little oversight. There are no safeguards in the guidance to avoid this risk. Safety issues also need to be considered if this provision allows for placing children from different schools together in one school unit.

Question 28

Are there any particular issues you feel are not covered in the revised Behaviour in Schools Guidance?

The introduction of the guidance should recognise that behaviour may be symptomatic to a child’s needs, in particular SEND. Reasonable adjustments and understanding the needs of children with SEND should be threaded throughout the entire guidance and not simply separated into its own sections. For example, paragraph 3 should also include reference to providing support to children with SEND to meet their needs as a measure. It is important that schools have SEND and additional needs in mind throughout their application of behaviour policies to ensure that pupils with SEND are not discriminated against for behaviour arising from their needs.

Child Criminal Exploitation

At **paragraph 41**, the guidance notes that schools should take account of any contributing factors that are identified after an incident of misbehaviour has occurred. It recognises being subject to

criminal exploitation as one of the possible contributing factors to misbehaviour. However, the guidance fails to mention criminal exploitation in more detail, its warning signs and the effect this may have on a child's behaviour. Below are a few examples of how the guidance should be revised to reflect this.

Suspension and Permanent Exclusion: Paragraph 89-90

This section of the guidance should include direct reference to the considerations schools must have when deciding whether to permanently exclude or suspend a child. It should refer to the risk factors for child criminal exploitation and act as a guide to help schools identify where exploitation might be a factor in a child's behaviour.

These considerations at this stage are important as excluding a child exhibiting warning signs may be incredibly detrimental and push a child further into the hands of their exploiters. Schools should assess intervention and disciplinary measures on a case-by-case basis, taking into account the best interests of a child.

At **paragraph 90** where it directs schools to a list of circumstances that might warrant an exclusion or suspension, the guidance should make clear that consideration around the specific circumstances of the child must still be had even if the reason for exclusion is present on this list.

It should be inserted that, *'Poor behaviour may indicate that a young person has been, or continues to be, the victim of criminal exploitation. The headteacher must consider whether the child presents with any warning signs that they have been or continue to be a victim of criminal exploitation and consider whether exclusion is appropriate. The headteacher should refer to Annex (X) for a definition of child criminal exploitation and a guide to the relevant warning signs.'*

Guidance on specific behaviour issues: Page 34

Included under this heading on page 34, should be a section on child criminal exploitation and how this may be reflected in a child's behaviour. The guidance should highlight that exploiters often engineer a children's exclusion. This can include coercing a child to carry drugs or weapons into school or act in ways that may possibly lead to their exclusion.

On page 36 of the Behaviour Guidance from **paragraphs 126-128**, titled *'Suspected criminal behaviour'*, the Government should include reference to CCE when considering instances of criminal behaviour. The guidance should indicate the circumstances where criminal behaviour might be linked to child criminal exploitation, and the safeguarding measures that should be put in place to support a child who may be a victim. The following statement, or similar, should be inserted into **paragraph 126**:

- *'Schools should make an initial assessment of whether there are signs present which indicate that a child's criminal behaviour may be linked to child criminal exploitation.'*

Paragraph 126 refers to reporting incidences of criminal behaviour to the police. Where child criminal exploitation is suspected, schools should ensure the appropriate safeguarding lead is informed and children are referred into the National Referral Mechanism (NRM). It is important that children who might be exploited are treated as a victim of trafficking first and foremost, rather than a criminal. The guidance should direct schools to the list of First Responders and to guidance on when and how to ensure a child is referred into the NRM if they are concerned.

A definition of child criminal exploitation should be given in an Annex to the Behaviour Guidance so that schools are aware of what it entails. This is to ensure that the different ways it may manifest are considered by schools.

Searching and Confiscation

Paragraphs 70-76 make provisions for searching pupils and confiscation at school. It is crucial that any searching of a child and subsequent action is approached through a safeguarding, rather than a punitive lens. This was a key recommendation of the safeguarding review into 'Child Q'. In the light of the 'Child Q' case, who is a client of ours, we urge the Department for Education to work in partnership with us and other relevant organisations to strengthen all safeguarding guidance and training for schools. The Department for Education should also undertake a detailed review of the Searching, Screening and Confiscation Guidance and ensure it also includes a specific section on racial bias. This section must be subsequently amended to reflect the changes.

In relation to these specific paragraphs, it would also be helpful to define the meaning of 'reasonable grounds' as a reason for allowing the searching of a child without their agreement.

Paragraph 76 also states:

In the event of discovering a weapon, schools should treat this with the utmost seriousness and it may be appropriate to consider exclusion as one possible response.

We are extremely concerned that this paragraph fails to take into account the instances of child criminal exploitation where an exploiter may coerce a child into carrying a weapon into school. Cases should be judged on a case-by-case basis as it may not always be appropriate to exclude a child in response to finding a weapon as we detailed above.