

Westminster Hall Debate: School Exclusions 26 February 2020

About us

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

We provide legal support to young people through the process of challenging school exclusions. We advise children on their legal rights and entitlements and provide representation in exclusion reviews and discrimination appeals. Our youth advocates work with young people to secure support from health and special education services before, during and after an exclusion. Our participation team work with young people to process the experience of exclusion, express their feelings and inform our work on effecting systemic change in this area.

Just for Kids Law also launched the [School Exclusions Hub](#) in 2019, providing an online toolkit for advice and community organisations to provide support to families facing exclusion across England and Wales, and filling advice deserts that currently exist.

The Children's Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015. It works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children's rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children's rights.

Key messages

- 1. Children with SEND and from a Black Caribbean background are disproportionately excluded from school. The Government should urgently develop and implement a strategy to tackle this issue in consultation with relevant stakeholders and BAME children and young people.**
- 2. The exclusions process is grossly unfair and weighted in favour of the school. Children have no voice in the process. The Government should introduce an appeal stage review body with the power to bind a school to their decision in situations where the exclusion is found to be unlawful.**
- 3. In our experience, there are indisputable links between the number of young people in the criminal justice system and children who have experience of exclusion. The Government must include greater protections for children involved in criminal exploitation in the forthcoming review of the Statutory Guidance on school exclusions.**

1. Disproportionality in school exclusions

Official statistics show the number of school exclusions, both permanent and fixed term, have soared by 56% since 2011 and we have seen this increase mirrored in referrals to our organisation.¹ Official statistics also show children with SEN are excluded at a rate of five to one compared to their peers. Children on free school meals are around four times more likely to be excluded and children from the top 10% of the most deprived areas are almost twice as likely to be permanently excluded as those from the top 10% of the least deprived areas.

These trends are all reflected in our practice. However, from our experience, the statistics underestimate the extent of the problem because they cannot account for children who have never been added to the SEN register where they should have been. They also cannot account for children who have experienced adverse

childhood experiences (ACE) such as domestic violence, sexual abuse or criminal exploitation, which haven't led to an identification of SEN.

Currently, there is a legal requirement that schools must investigate the possibility that disruptive behaviour is the result of unmet need, and act to reduce the risk of permanent exclusion.² We find that huge number of exclusions result from behaviours linked to additional, unaddressed needs. Even more concerning is the fact that more permanent exclusions are for "persistent disruptive behaviour" than for any other reason.³ When this is the case, the permanent exclusion will often have been preceded by a series of fixed term exclusions which should act as a warning marker for risk of permanent exclusion and trigger urgent intervention. We find the frequent failure to do so is in part linked to school's behaviour policies which are increasingly moving toward strict or "zero-tolerance" models.⁴ Children with SEND will more commonly struggle to meet the requirements of such policies than their peers.

We find it deeply concerning that children from a Black Caribbean background are around three times more likely to be excluded over white British children. Irish Traveller/Roma children are five times more likely to be excluded. It is very disappointing that the Timpson Review into school exclusions did not substantively explore this issue, even though the review itself resulted from figures revealed by the Race Disparity Audit. It made three relevant recommendations but they were not substantial or exclusive to the particular issue of tackling race disparity. For example, Recommendation 19 simply recommends that local trends are tracked so that local authorities can "take steps" to ensure all vulnerable people are supported. This is extremely disappointing.

The ethnic makeup of staff and, in particular, heads and senior management in London schools fails to reflect the students and families they are working with.⁵ Whilst the Timpson Review highlighted the need for better representation in senior staff, the statistics show that, fundamentally, more needs to be done to dramatically improve diversity throughout the teaching profession.⁶ Young people tell us that this underrepresentation means that staff are less likely to understand the experience of people of their ethnic background in the education system and may be more likely to perpetuate the causes of systemic racial disadvantage that contribute to this disproportionality in exclusions. The Timpson review did make some recommendations on this topic, urging central government to extend funding for a program to improve representation in senior management but they did not go far enough.⁷

Additionally, it is very difficult for families who believe their exclusion is on the basis of race discrimination, or discrimination on the basis of any protected characteristic other than disability, to access justice. This is because discrimination cases for any characteristic other than disability are heard by the County Court rather than the First Tier Tribunal. At the County Court there is a court fee to start a case, the Court is not set up to accommodate litigants in person like the Tribunal is, and families have to go to court at risk for the other side's costs. This results in very few such cases being brought.

- **Will the Minister commit to the urgent development and implementation of a strategy in consultation with relevant stakeholders and BAME children and young people to address and eliminate disproportionality on the basis of race in school exclusions?**
- **Will the Minister commit to exploring whether the First Tier Tribunal would be a more suitable venue for race discrimination cases?**
- **Will the Minister commit to placing early intervention at the heart of the newly revised Statutory Exclusions Guidance and a sustained increase in funding to meet present demand?**

2. The process of exclusion

A school's governing body is the only compulsory mechanism of review for school exclusions. However, their role is conflicted: they are not independent of the school and have interests in the school community that may conflict with their duty to undertake a fair and independent assessment of the exclusion before them. This concern is echoed by the National Governors' Association.⁸

As a result, it is very difficult to succeed in overturning permanent exclusion at a governing body hearing. Just for Kids Law have had very few cases where the governors have offered reinstatement, even though our success rate at the Independent Review Panels (IRP) is much higher.

This problem is compounded by the serious flaws in the IRP system. Our experience of representing children through this system shows it is also weighted against the child and their family. This is because IRPs do not have the power to reinstate, meaning they are not an effective remedy. They merely send the decision back to the excluding school who can uphold it in spite of the IRP's findings. Every year, the number of children offered reinstatement is only around one third of the number of exclusions found to be flawed by IRPs.

This imbalance of power is aggravated by the huge complexity of exclusions law, which encompasses human rights legislation, equalities legislation, the general provisions of public law, and education law. Families have a maximum of 15 school days to learn all of this before the exclusion is heard by the school's governors. Schools, however, are often practiced in exclusion proceedings and will sometimes be professionally advised. To correct this, families would need access to free, professional advice. Access for legal aid in education cases is limited as there are only two providers. Legal aid does not cover exclusion appeals at all unless there is a discrimination claim. Therefore, any family seeking help is likely to require the support of a pro-bono service provider.

Finally, young people cannot bring a challenge against exclusion in their own right, only their parents can. This excludes them from the process and prevents them from having a voice in proceedings that may affect them for the rest of their life. The provision made in the Education and Skills Act 2008, which supports a child's right to be heard and taken seriously by the school governing bodies should be brought into force. This is particularly important given the number of excluded children who are looked after by the state (and who are therefore do not have a guardian who is independent of the system that schools exist in – local authorities often rely on the cooperation of academies in their area for discharge of other responsibilities and functions). This also affects children whose relationship with parents has broken down (and who therefore may not have a person who will be able and willing to bring an appeal on their behalf).

This situation is unsustainable and unjust. Regardless of the fairness of each exclusion, it is a potentially lifechanging decision for families and young people and they must be able to access an effective and fair review.

- **Does the Minister agree that the system must be reformed to include an appeal stage review body with the power to bind a school to their decision in situations where the exclusion is found to be unlawful?**
- **Will the Minister bring into force the Education and Skills Act 2008 provision to allow children to have the right to appeal against unlawful exclusions in their own name, without the need for a parent to do it on their behalf?**
- **Would the Minister reintroduce public legal funding for advice services in exclusion appeals?**

3. Tackling Criminal Exploitation

There is a clear and near-universally acknowledged statistical link between exclusions and young people becoming involved in violent crime as either victim or perpetrator.⁹ The National Crime Agency lists risk factors to child criminal exploitation and lists placement in a pupil referral unit as one such indicator.¹⁰ Barnardo's and

Ofsted have cited cases where a child's exclusion has been engineered by people who are seeking to criminally exploit them, in order to make them easier to control.¹¹ Children outside of mainstream school are more vulnerable to being involved in violent crime as either victim or perpetrator.

We have observed over many years of working in this field that the number of children in the criminal justice system who have experience of exclusion is enormous. Children in PRUs are typically supervised for fewer hours per week than those in mainstream education. Some disappear from the education system altogether and do not attend alternative provision. We see families opt not to send children to a PRU for fear of the impact, even where there is no other placement on the table. Children have reported to us that a process of institutionalisation occurs in PRUs, with exposure to violence, drugs and gang associations that had not been present in mainstream school.

In the criminal courts, if a child is referred through the National Crime Agency's National Referral Mechanism (NRM), and found to be the victim of childhood criminal exploitation (CCE), they may have a defence in law to the offences they are charged with. However, in education there is no equivalent. This means children can be excluded for behaviour directly resulting from their being exploited or trafficked. CCE can be hugely damaging for young people, and in some cases fatal.

- **Will the Minister ensure that the revised Statutory Guidance on exclusions will direct schools to consider the risk to young people before deciding to permanently exclude them?**
- **Will the Minister commit to including greater protections for children in school in future editions of statutory guidance or future legislation, particularly where their exclusion would actively further the aims of those seeking to criminally exploit a child?**

Case Studies

Elisa – 16 years old*

Elisa is a bright young person with a positive record of engaging with her education and achieving what her teachers expected of her. She attended a North London mainstream school. She is ambitious and hopes to be a lawyer or a politician. Sadly, ahead of her GCSE years her father suffered a serious accident and a life-changing brain injury. Her mother and father separated, and this led to a great deal of turbulence in her home life. She began to struggle to manage her anger and this caused her to be in breach of her school's behaviour policy on a number of occasions.

All these breaches were for minor, non-violent incidents. The school initially acknowledged the need for further support and agreed to make a referral to CAMHS. However, this didn't happen, and the incidents accumulated to the point that the school felt justified in permanently excluding Elisa.

By this time, she was in the final year of her GCSEs and so attending a PRU would be potentially devastating to her ambitions, because of the exceedingly low record of academic success among children in full-time alternative provision. She therefore challenged her exclusion and the independent review panel agreed that the school had failed to evidence any good reason to take such a dramatic step. They quashed it. Elisa then wrote to the school to ask to be involved in their reconsideration but they declined, simply replying to say that they had excluded her despite the IRP's findings.

Elisa is still in alternative provision, as is typical of children in AP during their GCSE years, she will struggle to get back into mainstream in time to take her GCSEs. Elisa says that the fact she was not allowed to be involved in the process of considering her exclusion is difficult to understand. She wanted to be able to speak with the school and be involved with the process that may come to affect her future for decades to come. She is

frustrated that the system identified the fact she had been treated unfairly but couldn't do anything to put it right.

Amir* – 23 years old

Amir has Aspergers. After his exclusion from school he became the victim of criminal exploitation. Amir explained that this would never have happened but for the exclusion, telling Just for Kids Law that it was a “*tipping point*”. He said that the school did not put in place support to enable him to cope in mainstream school and once the exclusion had happened, they simply “*washed their hands*” of him, enabling his exploiters to begin to control him.

Amir explained that he did not have any friends, so now he was out of school he had no one, and no support system he could depend on. He explained that this was an isolating feeling as school had acted as a reliable, routine outlet that he could not find outside of mainstream school. He was simply exposed to the people who sought to do him harm, and others harm through him.

Fortunately, Amir's dedication and capability enabled him to earn a scholarship from Accenture to study Mathematical Science at Bristol University and he can reflect on his exclusion having been able to move on. However, he is adamant that the governors need to truly understand the impact that exclusions have on a young person. In his own words, “*Exclusion should not meet an end to everything positive forever.*”

**Names have been changed*

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¹ Department for Education published exclusion statistics record 5080 permanent exclusions in 2010/2011 and 7900 in 2017/2018

² DfE Statutory Guidance (2019) *Exclusion from maintained schools, academies and pupil referral units in England*. See the Key Points and paragraph 22

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf

³ DfE summary of official exclusion statistics for academic year 2017/2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820773/Permanent_and_fixed_period_exclusions_2017_to_2018_-_main_text.pdf

⁴ Education Select Committee (2018) *Forgotten children: alternative provision and the scandal of ever increasing exclusions*. See paragraph 25 <https://publications.parliament.uk/pa/cm201719/cmselect/cmeduc/342/342.pdf>

⁵ See Timpson review at recommendation 4.

⁶ Cabinet Office (2018) *Race Disparity Audit*. See paragraph 10.11: “The majority of teachers in England were White British, with fewer than 1 in 7 coming from an ethnic minority group, and 1 in 12 from a non-White ethnic minority group in 2016.”

⁷ See Timpson review at Recommendation 4.

⁸ Jess Staufenberg (October 2018) *NGA: Replace governor exclusion boards with independent ‘tribunals’*

⁹ The Mayor has acknowledged this link and wrote to the Prime Minister to urge action on this issue in March 2019 e

¹⁰ NCA Intelligence assessment (2018) *County lines drug supply, vulnerability and harm*. See paragraph 30 <https://nationalcrimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/fil>

¹¹ APPG on Knife Crime (October 2019) *Back to School*. See page 14. <https://www.aep.org.uk/news/appg-knife-crime-report-on-link-between-school-exclusions-knife/>

Ofsted (March 2019) *Safeguarding children and young people in education from knife crime: Lessons from London*.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785055/Knife_crime_safeguarding_children_and_young_people_110319.pdf