

# **“They never give up on you”**

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Office of the Children’s Commissioner  
School Exclusions Inquiry

Executive Summary



Championing Children and Young People in England

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## About the Office of the Children's Commissioner

1. The Office of the Children's Commissioner is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The UN Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.
2. The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children to always operate from the child's perspective.
3. Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.
4. The Office of the Children's Commissioner has a statutory duty to highlight where it believes vulnerable children are not being treated appropriately in accordance with duties established under the UNCRC, as well as other international and domestic legislation.
5. The Office of the Children's Commissioner was reviewed in 2010 by Dr John Dunford. This review recommended that, in future, it should move towards the status of a formal Human Rights body. The Government has accepted Dr Dunford's recommendations in principle, and is taking forward their implementation, which will require primary legislation. Pending this legislation, the Office of the Children's Commissioner has begun acting "in the spirit" of these recommendations, consistent with its current statutory remit.
6. This Inquiry will be undertaken by the Children's Commissioner, using powers made available under Section 3 of the Children Act 2004.
7. These are:
  - (1) Where the Children's Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, [s]he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
  - (2) The Children's Commissioner may only conduct an inquiry under this section if he is satisfied that the inquiry would not duplicate work that is the function of another person (having consulted such persons as he considers appropriate).
  - (3) Before holding an inquiry under this section the Children's Commissioner must consult the Secretary of State.

(4)The Children's Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.

(5)As soon as possible after completing an inquiry under this section the Children's Commissioner must –

- (a)publish a report containing his/her recommendations; and
- (b)send a copy to the Secretary of State.

(6)The report need not identify any individual child if the Children's Commissioner considers that it would be undesirable for the identity of the child to be made public.

(7)Where the Children's Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under any enactment, he may require that person to state in writing, within such period as the Children's Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.

(8)Subsections (2) and (3) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section with the substitution for references to the person appointed to hold the inquiry of references to the Children's Commissioner.”

## About the UN Convention on the Rights of the Child

1. The UK Government ratified the UN Convention on the Rights of the Child (UNCRC) in 1991. This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the UNCRC is not incorporated into UK law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.
2. The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the UNCRC in all our activities.
3. In relation to school exclusions, the articles of the UNCRC which are of most relevance to this area of policy are:
  - Article 2: All rights apply to all children regardless of their personal circumstances and regardless of what they have done.
  - Article 3: The best interests of the child must be a primary consideration in all actions.
  - Article 12: Every child has a right to express their views regarding all matters that affect them; and for these views to be taken seriously.
  - Article 23: Children with a disability have a right to special care and support.
  - Article 28: Every child has the right to an education [...]. Discipline in schools must respect children's human dignity.
  - Article 29: Children's education must develop each child's personality, talents and abilities to the fullest.

# Acknowledgements

1. This report is the result of many months of work to collect, analyse and interpret evidence relating to school exclusions in England.
2. We would like to thank all those who have given their time and energy to this Inquiry. Without the help of those people and organisations, this report would not have been possible.
3. For reasons of confidentiality, we are unable to name the many schools, service providers and Local Authorities we have visited. However, we would like to thank them, their staff and the young people we met there.
4. In addition, we offer thanks to all those who submitted written evidence to the Inquiry, or who gave oral evidence in formal session. In particular, analytical services staff at the Department for Education have contributed enormously.
5. Thanks, too, to the Advisory Panel for this Inquiry, whose many years of experience and broad range of expertise have immeasurably improved this report, and to the Researchers at Canterbury Christchurch University.
6. The advice of Amplify, the Children's Commissioner's formal advisory group of children and young people, and of the young people brought together by Catch22 to advise this Inquiry, has been invaluable.
7. Finally, thanks to the staff of the Office of the Children's Commissioner, and in particular to John Connolly, Delyth Johnson, Sandeep Shah and Shaila Sheikh for their work in taking forward the Inquiry.

# Executive summary

# Foreword by the Children's Commissioner

1. This report is the result of the first formal Inquiry by a Children's Commissioner for England using powers in the Children Act 2004. It follows eight months of work by a small team of staff from my office, supported by an expert panel. We travelled throughout England and listened to hours of formal evidence as well as taking account of written evidence submitted by adults and children alike. Why this subject, and why now?
2. Firstly, in 2010 we asked researchers to gather the views of a representative sample of 2,000 children and young people on what makes school a triumph, a challenge or a disaster. Eight out of 10 said they had experienced disrupted learning caused by the bad behaviour of a minority. Yet nine out of 10 insisted schools should never exclude a child, but should help them deal with their problems. Even more surprising, only one in seven said that their school always got exclusion decisions right. We were struck by their opinions held in spite of having their learning disrupted by peers who were potential candidates for exclusion. They seemed worthy of further investigation.
3. Our second reason is that, while exclusion is a sanction used in England, it is not used in much of mainland Europe.
4. This report recognises that exclusion may be a necessary last resort in rare cases, but argues that all exclusions must:
  - be fair and transparent;
  - listen to the views of the child concerned;
  - lead to high quality alternative provision for the child excluded; and
  - be within the law.
5. Exclusion usually happens because of a child's behaviour. Schools, Academics and Ministers have recognised such behaviour often originates in troubled home lives which spill over into school. We were keen to know how schools exclude, why, using what systems of escalating sanctions, in whose interests, listening to whose evidence, with what consistency of approach and with what results.
6. Thirdly, despite our claims of being an equal society that treats children on their merits, some groups of children are far more likely to be excluded from school than others. These are children who are vulnerable because of who they are, and because of the challenges already present in their lives. They are:
  - boys rather than girls;
  - children with some types of special needs;
  - children from some specific ethnic backgrounds, and
  - the children of the poor.

7. One stark figure should make us all want to confront this scandal. In 2009-10, if you were a Black African-Caribbean boy with special needs and eligible for free school meals you were 168 times more likely to be permanently excluded from a state-funded school than a White girl without special needs from a middle class family.
8. This figure comes from official government statistics. Exclusions have fallen overall in the last few years, but these stark gaps remain. It is high time, on the basis of equality, natural justice and the inalienable right of every child to an education that we act to close those gaps.
9. This report celebrates good practice. Its title comes from something a teenager – to quote him, “a bit of a handful” – said to us during our fieldwork. We found schools of all types in a wide range of circumstances all over the country working together and with other agencies. They could prove they had saved the educational and life chances of their communities’ children and young people. Their young citizens knew they were lucky. The adults they worked with were passionate advocates of schools as places of safety and ambition, calm and standards. We have included as many of their stories in this report as space allows.
10. However, we publish this report as a straightforward challenge to all policymakers, parents, school and sector leaders to practise what the best schools are already doing. Permanent exclusion has a negative effect on an excludee’s life for far longer than the period immediately after exclusion. We knew a minority of schools exclude informally and therefore illegally but for the first time in this Inquiry have this on record. Whilst most schools work far beyond the call of duty to hold on to troubled and vulnerable children, a minority exclude on what seems to the observer to be a whim. And for whatever reasons, many of them explored in this report, we have not sufficiently challenged the failures and brought about the changes required. We must do so now.



Maggie Atkinson

**Children's Commissioner for England**

# Background

1. This School Exclusions Inquiry has examined the detail of the processes in place for excluding children from state-funded schools, and the factors which influence schools' decisions to exclude a child. Underlying this work is an assessment of how far the current exclusions system, and the changes introduced by the current Government through the Education Act 2011, are consistent with children's rights under the UN Convention on the Rights of the Child (UNCRC).

## Scope of the School Exclusions Inquiry

2. The Inquiry has examined:
  - the factors which influence schools' decisions to exclude, and their interaction with other public services whose interventions, in partnership with the school and the family, might otherwise have helped to avoid exclusion;
  - the effectiveness of the system of appeals against exclusions, including children and young people's access to, and understanding of, the processes, and their rights within it; and the likely impact of imminent changes to this system;
  - the impact of legislation, Government policy and regulation on practice in schools and other educational settings;
  - the impact of the support, monitoring, challenge and intervention mechanisms available to both schools and pupils from Local Authorities, church authorities and Academy sponsors on schools' exclusions practices;
  - the effectiveness of in and out of school provision and support aimed at preventing permanent exclusions, particularly any which is actively targeted at helping those groups who are statistically most likely to be excluded;
  - the characteristics of children who are disproportionately more likely than their peer groups to be excluded; the interaction between these characteristics where it can be ascertained; and if they can be ascertained and analysed, any proven reasons why these groups appear more likely to be excluded;
  - the impact of the existing equality and diversity duties on schools, including enactment, through schools, of their statutory duties under the Equality Act 2010;
  - examples of good practice in managing children identified as being at risk of exclusion, and equally good practice in reducing variation in exclusion rates between different groups of pupils. In particular, this report examines the potential for this good practice to be spread more widely and to influence policy. This part of the School Exclusions Inquiry will explore, among other things, the emerging Exclusions Pilot areas which started in England in 2011; and the efficacy of practice in several local areas where permanent exclusions stand at zero;
  - the decision making process up to the point of exclusion, and the work undertaken in any subsequent appeal.

## Background information on exclusions

3. Schools can exclude pupils by reason of their behaviour, provided the school acts within the law. The relevant law is explained to schools through Statutory Guidance.
4. Exclusions can be either permanent, where the child is removed from the school's roll, or for a fixed term, where the child remains on the school's roll but is forbidden from entering the premises for a defined period. A fixed-term exclusion is almost always for a period of up to a week. If an exclusion lasts for longer than a week, the child's "home" Local Authority becomes responsible for ensuring alternative educational provision.
5. The Department for Education (DfE) annually collects data on permanent and fixed-term exclusions from all state-funded schools. The data are analysed by the DfE and a statistical first release is published annually. We have used these data in the course of this Inquiry. However, the nationally published official data only represent a small proportion of the total quantity of information held by the education system as a whole about school exclusions. The Inquiry used the Children's Commissioner's statutory powers to request additional analyses of the data to be carried out by DfE statisticians, and to gain access to relevant data from Ofsted, the Local Government Ombudsman, and a representative sample of 40 Local Authorities. All this information has fed our findings and the report's recommendations.
6. Both permanent and fixed-term exclusions have fallen steadily over the past decade, and permanent exclusions in particular now affect only a very small minority of young people in schools. In 2009-10 (the most recent year for which the DfE validated data are available), 5,740 children were permanently excluded from state-funded schools in England. This represents 0.08 per cent of the school population (ie eight pupils per 10,000).
7. In 2009-10, however, 179,800 young people (2.4 per cent of the school population) were excluded on a fixed-term basis at least once. Almost all fixed-term exclusions (97 per cent) were for periods of less than a week.

## Over-represented groups

1. The children statistically recorded by the DfE as more likely than others of the same age to be excluded from school are not evenly distributed among the pupil population. There are substantial differences in exclusion rates between different groups of children and young people. These differences are substantial, and all have persisted for as long as data on exclusions have been collected. Given that for a permanently excluded child the effects of exclusion can be long-lasting, they are matters for concern and more importantly, for action.
2. The over-represented groups are defined by the following characteristics:

### 1. Special Educational Needs

3. Pupils with Special Educational Needs (SEN) are eight times more likely to be permanently excluded than their peers who do not have these needs. In 2009-10, pupils with statements of SEN were seven times more likely to be excluded than those with no level of SEN.
4. Pupils with SEN who were part of a larger group in the school population, the 18 per cent with SEN but without statements, were nine times more likely to be permanently excluded than those with no SEN.
5. More than two-thirds of all permanently excluded children, according to the same statistical analyses, are proven to have some form of identified SEN.

### 2. Ethnicity

6. The rate of permanent exclusion among members of particular ethnic groups is detailed in the DfE's statistical returns. Exclusion rates in some ethnic groups of children are much higher than those in others. For clarity, the terms used in this report to describe ethnicity are those used by the DfE in compiling statistics.
7. In 2009-10, exclusion, as categorised by the ethnic origin of those excluded, showed the highest rate was among children from Gypsy and Roma Traveller backgrounds, those who were Irish Travellers, and Black Caribbean children.
8. Black Caribbean pupils were almost four times more likely to be permanently excluded from school in 2009-10 than the school population as a whole.
9. The rate of fixed-term exclusion was also higher for these ethnic groups.
10. Seventeen per cent of Irish Traveller children, 15 per cent of Gypsy and Roma Traveller children and 11 per cent of Black Caribbean children received such an exclusion. Differences in exclusion rates are marked if excluded pupils' gender and ethnicity are examined together.

11. In the statistics available for 2009-10, Black Caribbean boys were 11 times more likely to be permanently excluded than White girls of the same age in similar schools. The same boys were 37 times more likely to be permanently excluded than Indian girls, who had the lowest rate of exclusion in the entire system.
12. In the same year, Gypsy and Roma Traveller and Irish Traveller children were four times more likely to be permanently excluded than was the school population as a whole.

### 3. Gender

13. The permanent exclusion rate for boys in 2009-10 was approximately four times higher than that for girls. Boys represented 78 per cent of the total number of permanent exclusions from school.
14. The fixed-term exclusion rate for boys was almost three times higher than that for girls. Boys accounted for 75 per cent of all fixed-term exclusions.

### 4. Children on low incomes

15. The final group of children who are disproportionately likely to be excluded from school are those from families living on low incomes. In education, the standard proxy measure used to estimate the numbers of low income families is the child's eligibility for free school meals, although other measures such as the index of multiple deprivation are occasionally used. The DfE's published data show that children eligible for free school meals are around four times more likely to be permanently excluded, and around three times more likely to be excluded for a fixed term, than children in their cohort who are not eligible for free school meals.

## The current policy context

1. The policy relating to school exclusions has been in the process of changing since the introduction of the Education Bill 2010 (now the Education Act 2011).
2. Changes have broadly been focused in four areas:
  - The Education Act 2011 removes the right of a parent to appeal to an independent panel against the permanent exclusion of their child from school. Independent Appeal Panels have been replaced by Independent Review Panels. Review panels will not be able to require a school to reinstate a pupil they judge was unfairly excluded.
  - Separately, the Government has announced its intention to change the accountability framework for permanently excluded children so that the excluding school retains responsibility for the child's academic attainment and attendance, and is required to commission and pay for alternative provision. Local Authorities will devolve the funding they currently retain to provide education for schools' excluded children to schools.
  - Statutory Guidance on how schools should operate exclusions is being amended to bring it into line with the new legislation and other changes to the law. It is also being made less prescriptive in a number of respects.
  - Finally, at the time of writing, the Equality Act 2010 is in the process of entering into force. The Public Sector Equality Duty consists of a general equality duty, which is set out in section 149 of the Equality Act 2010 and came into force on 5 April 2011. Given the large differences in exclusion rates by gender, race, socio-economic group and SEN/disability, schools, school operators, owners and sponsors, local and central government will all need to take account of these new duties with regard to exclusions.

## Statement of principles

1. The findings and recommendations set out in this report are based on the following set of principles.
  - Schools must be safe places for all members of the school community.
  - All children have a right to be safe, including those who have been excluded from school.
  - The rights of children must be upheld.
  - Adults must, in line with the UNCRC, protect the rights of children where children cannot do so on their own behalf.
  - The interests of the child at risk of exclusion, and of the other children in the school, must be a primary consideration at all times.
  - The system of exclusions must ensure equality of opportunity for all young people and their families, and seek out and address discrimination.
  - The principle of natural justice must be a key consideration. In practice, children should have a:
    - meaningful, proportionate right of redress when it is clear that exclusions are unjust, unlawful or disproportionate;
    - right to participate, in an informed, supported and appropriate manner, in the process of exclusions, including the right to seek redress on their own behalf.
  - Exclusion from a particular school does not mean exclusion from education as a whole.
  - Schools do not operate in isolation. They are part of a wider community, and should work collaboratively with other members of that community.
  - The exclusions system must be based on evidence of what works for children and young people.

# Findings

## Compliance with the UNCRC

1. The system of school exclusions is not compliant with the UNCRC. In particular, there are breaches of children's rights with regard to Articles 3 and 12.
2. Article 3 of the UNCRC states that the interests of the child must be a primary consideration in decisions made concerning that child. The evidence shows that, whilst in many cases the interests of the child are a primary consideration in schools' decisions to exclude, this is not always the case. Equally, the Statutory Guidance on exclusions does not specify that the best interests of the child should be a primary consideration.
3. To ensure schools make decisions consistent with the UNCRC, the new Statutory Guidance on exclusions should specify that the interests of the child concerned must be a primary consideration in exclusion decisions. Guidance to Independent Review Panels should specify this as grounds for appealing against a permanent exclusion.
4. Article 12 of the UNCRC states that children's views must be taken into account in decisions which affect them. There is no effective or systematic way for children's and young people's views to be heard, and taken account of, in the exclusions process, and no right for the child to appeal against an exclusion on their own behalf. In order for the exclusions system to be compliant with the UNCRC, these should be put in place.

## Illegal activity by schools

5. The issue of "unofficial" or "informal" exclusions attracts considerable policy and media attention. These are situations when a school requires a young person to leave the premises but does not record it as a formal exclusion. This might be for a fixed, usually short, period of time, or in the worst cases indefinitely. It also refers to instances when a young person or their family is "persuaded" to move school, a move usually sold to the family and the child as an alternative to a permanent exclusion going on the child's record.
6. This Inquiry has found evidence of several examples of such activity. These include:
  - unrecorded short-term exclusions to allow children to "cool off";
  - students being "sent home" and not allowed back into school until after a meeting has taken place with their parents. Where parents are unwilling or unable to attend this meeting, the informal exclusion can run for a week or more;
  - students being coerced by head teachers into moving to different schools; and
  - in one extreme case, a head teacher admitting to our researchers that he: managed Year 11 pupils from Christmas until May: we will get their parents in and ask them to keep their children at home for the rest of the academic year, otherwise it's a permanent exclusion. The pupils are coded as 'C' and slip under the radar."

7. This practice is illegal, and simply unacceptable. However, because it is usually covert and informal with no records kept, it is extremely hard to identify and quantify.
8. Given this behaviour is already illegal but persists in the system, further regulation is unlikely to be either necessary, or an effective deterrent. To protect children and young people's legal rights, however, more must be done to prevent these illegal exclusions. Creating mandatory standard wording for documentation sent to parents in cases of exclusion, and insisting on that wording's inclusion in the home-school contract, school prospectus and on the school's website, would go some way towards addressing this.
9. The Government should conduct research to identify the full extent of unlawful exclusions, and recommend measures to prevent a small proportion of schools continuing to act in this way. This research should investigate, in detail, the pattern of unlawful exclusions in a small sample of representative localities, with a view to identifying the scale of activity, and the lessons for both national policy making and school accountability which arise. The research findings should be widely publicised, and its findings used to inform data collection in the future.
10. In addition, should Ofsted find evidence of unlawful activity in the course of an inspection, the school should automatically receive a grading of "Inadequate".
11. Separately, in the course of this Inquiry, accusations have been made of a different type of unlawful activity by certain schools. David Wolfe, a barrister specialising in education law, stated in formal evidence that in some cases, Academies are attempting to avoid scrutiny of their exclusions by external Independent Appeal Panels, and refusing to hear appeals from parents.
12. This is a matter of allegations of breaches of the law. Therefore, the Secretary of State must fully investigate these accusations as a matter of urgency, and if the allegations are proven, apply appropriate sanctions to the schools concerned.
13. Separately, there is confusion over how parents and young people should complain when they consider that Academies are acting outside their funding agreements. Clarity is urgently needed about the role of the Education Funding Agency, the DfE and the Secretary of State in relation to Academy complaints and oversight if parents or their children have a grievance. The Education Funding Agency must be resourced to handle, in a timely fashion, complaints raised by parents about the behaviour of Academies where that behaviour is alleged to be in breach of contracts and funding agreements between school and state.

## The Role of Ofsted

1. Ofsted inspections can be influential drivers of change in schools. It is vital that the judgement criteria encourage schools to use good practice in exclusions. Evidence to the Inquiry from Ofsted demonstrates that this is inspectors' aim.
2. The available evidence shows that schools which manage behaviour well have low rates of exclusions, and vice versa. Therefore, there should be a presumption against Ofsted awarding grades of "Good" or "Outstanding" for behaviour in schools with high rates of exclusions.
3. Under the Education Act 2011, the Secretary of State can exempt some schools from regular inspections. At the time of writing, schools which had received an "Outstanding" grade overall at their last inspection are to be exempt.
4. However, Ofsted will have an ongoing role in monitoring these schools, and intervening where they feel it has become necessary.
5. To ensure schools exempt from inspection use exclusions appropriately and proportionately, Ofsted should monitor the following data in relation to these schools:
  - the number of permanent and fixed-term exclusions per academic year over a rolling three-year period;
  - complaints from parents of excluded children to Ofsted, the Secretary of State or Local Authorities regarding the circumstances of a child's exclusion;
  - the number of successful appeals against permanent exclusions in each academic year, or reviews of permanent exclusions where the review panel has sent the case back for the governing body to reconsider.
6. Where any of these data show trends which give cause for concern, Ofsted should conduct further investigations. Potentially, this should trigger an inspection in extreme cases.

## Appeals against exclusions

1. The issue of a right of meaningful redress against unfair and unlawful exclusions is a key principle of this Inquiry, outlined at the beginning of the report. This principle has two necessary elements:
  - a system through which individuals can appeal to an independent body which has the power to overturn the decision to exclude; and
  - a means of ensuring that those who are excluded, and their families, are made aware of their rights and are able to exercise them.
2. Evidence presented to the Inquiry supports the need for an independent system of appeals against unfair exclusions. The system of Independent Review Panels introduced by the Education Act 2011, where panels do not have the ability to insist on reinstatement, does not offer sufficient safeguards against schools acting unreasonably or unlawfully. We agree with the Joint Committee on Human Rights that these panels are inconsistent with Article 6 of the European Convention on Human Rights.
3. To ensure an effective safeguard against unreasonable exclusions exists, the Education Act 2011 should be amended at the earliest opportunity to reinstate Independent Appeal Panels as constituted prior to the Act.
4. Numerous witnesses told the Inquiry they had encountered excluded children whose families did not understand their rights. They were therefore unable to tell when a school was acting unreasonably or unlawfully.
5. To ensure young people and their parents become more aware of the legal framework for exclusions, the Government should:
  - make sure that across the state-funded education system, a standard approach is taken to the administration of all permanent and fixed-term exclusions;
  - make sure that the excluded child and their parents/carers are informed of:
    - the reason for the exclusion;
    - the length of the exclusion;
    - the evidence presented in support of the decision to exclude;
    - (for permanent exclusions) the process for appealing against the exclusion to the board of governors and, if necessary, an independent body;
    - the provision which has been made for the child to continue their education if an exclusion exceeds five days.
6. The Government should lay Statutory Guidance specifying the content of such communications and, with regard to the right of appeal, the wording to be used in a formal notice of exclusion. All state-funded schools should be required to follow this guidance, either through secondary legislation (for maintained schools) or through amendments to Academy funding agreements.

7. Schools should publish their discipline, behaviour and exclusions policies as part of their school prospectuses and on their websites. The same should apply to any home-school behaviour agreements schools enter into with parents.

## Thresholds for exclusion

1. To ensure justice in the system, and to minimise the chance of discriminatory behaviour, the DfE should issue guidance which sets out clear rights-based principles for exclusion thresholds, while leaving schools free to interpret these principles in light of their circumstances.
2. These principles should include:
  - The removal of a child from school premises by exclusion should only happen to:
    - protect the health and safety of the individual; or
    - protect the health and safety of others; or
    - prevent disruption to learning.
  - Exclusions, whether permanent or fixed-term, should only be used as a last resort when other measures have been tried and failed. Exclusion should only be the first response to a child's behaviour in exceptional circumstances (for example, in cases of assault, supplying illegal drugs or threatening someone with a weapon).
  - It is never appropriate to exclude for minor infringements of school rules, such as breaches of uniform rules or the wearing of jewellery, especially where such rules are more likely to disadvantage one gender, or certain ethnic groups, faiths or cultures.
3. There should be a presumption against permanent exclusions from primary schools. This should be reflected in revised Statutory Guidance. To ensure this presumption is upheld, every permanent exclusion of a primary school age child should be reviewed independently, regardless of whether a review is requested by the child's parents or carers.
4. No primary school should permanently exclude a child in Reception or Key Stage 1.
5. A school should not act unilaterally to permanently exclude a child who has the school named as specified provision on a statement of SEN. That is not to say the school cannot exclude the child at all. Rather, that the school should make a proposal that the child be excluded. This proposal should trigger a review of the child's statement. It would be for all professionals involved in the statementing process, including the school, to decide collectively whether a permanent exclusion was appropriate. As in any review of any statement, the child and family should also be involved.

# Equality

1. Certain groups of pupils are significantly more likely than others to be excluded. These are:
  - boys;
  - children from certain ethnic groups;
  - children with SEN; and
  - children eligible for free school meals.
2. In the course of the Inquiry, we have taken evidence from a large range of individuals and organisations, to try to identify why these differentials are so large, and what can be done to address them.
3. At our request, the DfE analysed the available data in new ways, to demonstrate the relative importance of these characteristics, one against the other and in combination. These analyses show the individual effect on the odds each characteristic has on the likelihood of a child being excluded. They show the compounded differences can be enormous.
4. To illustrate the impacts on individual children, it is useful to imagine two hypothetical young English people: Jack and Jill. They are the same age, and attend the same school. They have the same rights under the Human Rights Act, and the UNCRC.
  - Jack has SEN, assessed at School Action Plus. He is of Black Caribbean background, and lives in a low-income household. He receives free school meals.
  - Jill does not have SEN, is from a White British background, and lives in a more affluent household.
5. The DfE's analysis of the data shows Jack is 168 times more likely than Jill to be permanently excluded from school before the age of 16, and 41 times more likely than she is to be excluded for a fixed term.
6. Further, it appears these differential rates of exclusions are more pronounced in some schools than others. At the request of this Inquiry, DfE statisticians undertook an analysis of the correlation between the proportion of a school's population who come from those ethnic groups which have above-average exclusion rates in the national statistics, and the likelihood of those children to be excluded. It found that children from the relevant ethnic groups were much more likely to be excluded when they were in a small minority in a school than when they were with larger numbers of children from the same ethnic group as themselves.
7. These data are deeply concerning. So is the fact that these differentials have been known about and recorded for many years without any specific steps having been taken to address them, either in policy or practice.

8. Schools' work to implement their statutory duties under the Equality Act 2010 must include efforts to reduce the differentials in exclusion rates between different groups. All public bodies working in education, bound by the same duties, should consider how best to address these differential rates of exclusions in their own work in implementing their equality duties.
9. The evidence does not give us confidence that schools will carry out this necessary work without further insistence by Government. Given these duties are statutory, the DfE must work together with the Government Equalities Office and Equality and Human Rights Commission to produce best practice guidance for schools and other public educational bodies in interpreting their duties under the Equality Act 2010 with regard to exclusions. An assessment of compliance with these duties should form part of the criteria by which inspectors judge schools.

## Prevention of, and alternatives to, exclusion

1. This Inquiry examined good practice regarding strategies to prevent exclusions. This included in-school provision, and that run by external bodies. It also examined a number of alternatives to exclusion, including pilot activity now in progress, supported by the DfE.
2. There was considerable consensus in fieldwork visits and among those who gave evidence about how best to create and maintain positive learning environments. Successful head teachers stated their focus was on the quality of teaching and learning, alongside clear, consistently applied approaches to behaviour and discipline. Their view was that in most cases, effective teaching is the key driver of good behaviour. If teaching is engaging, effective and tailored to the needs and abilities of the students, good behaviour usually follows.

## School workforce development

3. The quality of school leadership is a key issue. Schools with strong leadership are demonstrably more able to agree, and implement, consistent policies and practice, including those concerning behaviour and discipline. Students know their behaviour will be managed in the same way by all their teachers, and this leads to greater “buy-in” to the school’s ethos. In this context, leadership is a characteristic displayed by adults at all levels of a school’s staff. Leadership is also shared appropriately with students.
4. The expertise of the school workforce with regard to SEN, cognitive and emotional development and cultural difference was identified as a key issue. Almost every school has a proportion of children with SEN, and practically every teacher will be required to teach children with some type of SEN in the course of their careers. In many parts of England too, children from a diverse range of backgrounds in terms of ethnicity, faith and culture, populate our schools. A lack of understanding of how to manage children who have differing abilities and cultural and relationship expectations, can lead to confrontations between teachers and children, increasing the likelihood of specific groups of children having disciplinary problems, exceeding boundaries and thresholds, and ultimately being excluded.
5. In the requirements for providers of Initial Teacher Training (ITT), the Teaching Agency should include a requirement to prepare all newly qualified teachers (NQTs) to teach children with the full range of SEN they should expect to find in a mainstream state-funded school. All trainee teachers should be trained to understand the cultural and other differences commonly found in English society and schools. All trainee teachers should study child development and socio-psychological matters such as attachment theory. Serving teachers and non-teaching staff should be expected to train, and to refresh their knowledge, in similar fashion. The likelihood is that this will make them all better equipped to succeed with England’s diverse population of children. It is equally likely that learners’ experiences will improve, and a diverse school system will have a better opportunity to flourish.

## Alternatives to exclusion

6. The Inquiry examined various models being used as alternatives to exclusion across England. These included alternative provision both inside schools and in the wider community, and area-based alternatives to exclusion shared between groups of schools.
7. The best provision, whether offered by schools on their own sites or other providers elsewhere, offers high quality, cost-effective alternatives to both permanent and fixed-term exclusion. Students value such high quality provision, often recognising that without it, they would have been excluded and faced bleak personal prospects outside the system.
8. There is currently no guidance for schools on good practice in managing or commissioning provision for pupils with challenging behaviour. As a result, this provision differs markedly from place to place, and is of varying quality. Of the provision seen, the following characteristics sum up good practice.
  - Students have curriculum continuity, allowing them to be more easily re-integrated into the mainstream when their issues have been addressed. In the very best provision, students are taught by, or have regular contact with, the teachers they would meet in class, and remain on the same examination courses as their peers.
  - The child's underlying behavioural issues are dealt with, not simply "parked". In the best cases, interventions include counselling provided by trained staff, and the use of formally implemented restorative approaches, both to confront students with the consequences of their behaviour, and to demonstrate what things could be like if matters improve.
  - Support is tailored to the individual, rather than a "one size fits all" approach being used.
  - There are strong links to mainstream provision. For students still in school, this is often the opportunity to mix with their peers at break or lunchtime, and to engage in extra-curricular activities. For alternative providers, links with the "home" school are strong and visible.
  - The provision is well equipped and is an attractive learning environment. There is no suggestion of this provision being "second best".

## Managed moves

9. Many parts of England operate "managed move" systems as an alternative to formal exclusions. Under these systems, when a school is no longer able to continue to educate and support a child as a result of the child's behaviour or in the case of an irretrievable breakdown in relationships for other reasons, the "home" school makes an agreement with another school or an alternative educational setting for the child to move without a formal exclusion appearing on their record.
10. Systems and practice vary enormously. In some case the move is negotiated informally between head teachers, and often consists of a simple reciprocal exchange of disruptive pupils between schools. In others, there is a more formal and closely monitored process. This Inquiry finds that for the child's sake, the latter system is preferable.

11. Clusters of schools, often involving the Local Authority or Academy sponsors as broker and critical friend, agree fair access and managed moves protocols. Together these govern how moves are managed, and ensure no single school is always the recipient of others' problems, and by the same token no school walks away from the area's children.
12. In the course of this Inquiry, a number of elements emerged that characterise good practice in managing moves between schools. Where practice was good:
- there was a formalised system (usually through fair access and managed moves protocols) which set out clearly the responsibilities of all concerned;
  - schools co-operated, rather than competed with each other;
  - relationships between head teachers were strong and based on mutual respect. Head teachers therefore supported, and when necessary, challenged each other;
  - children, young people and their parents were involved in the necessary decision making. They were given the opportunity to express their views and have those views taken into account, and were expected to reciprocate as a result of the meetings concerned;
  - decisions were made collaboratively, in the best interests of the child; and
  - both "excluding" and "receiving" schools shared responsibility for the child who was moving, until the point where they were settled in the new environment, at which point they were formally and fully transferred.
13. Where this good practice exists, it is to the benefit of the children and young people concerned, and those they leave behind in an environment where they have been disruptive or troubled. They make fresh starts in new environments without the stigma of a permanent exclusion. Managed properly, these systems are to be encouraged. It is unfortunate that they are often labelled alongside, and confused with, illegal exclusions, both being presented as examples of "sharp practice". This is unfair on those schools which operate such systems with care, integrity and professionalism.

## DfE Exclusion Trials

14. In autumn 2011, the DfE announced a series of trials in six Local Authorities across England. Within these areas, funding to manage provision for excluded children is devolved to schools. If a school elects to exclude, it remains responsible for the excluded child's continued education, commissioning alternative education from the sixth day of the exclusion. The child's attendance and academic performance will be recorded by the "home" school, and both count towards the school's performance data.
15. The principle behind the Government's approach to dealing with exclusions, as demonstrated in these trials, is sound. It builds on existing good practice seen in several localities in the course of this Inquiry.

16. Ofsted should inspect all aspects of a school's provision, including any commissioned from external sources, as part of its programme of school inspections. This will not fully address issues concerning quality assurance of alternative provision identified by Ofsted themselves. However, the clarity the inspection system gives will help schools to carry out their own quality assurance of the provision they commission. It will also provide a powerful incentive for schools to commission and monitor good provision, as they will know they are to be assessed on its quality.
17. Taken together, these changes should provide a better deal for many young people who would otherwise have been either permanently excluded, or placed in poor quality alternative provision. The model of funding delegation and school accountability used in the pilots encourages schools to act in ways associated with the good practice evident in Local Authorities which already have low exclusion rates.

## **Next Steps**

1. This report represents the findings of the first year of an ongoing Inquiry into school exclusions.
2. Under the Children's Commissioner's powers of inquiry, all public bodies which are the focus of recommendations in this report must respond in writing to the Inquiry's recommendations.
3. Responses should be returned by noon on 28 May 2012 to:

**Dr Maggie Atkinson**

**Children's Commissioner for England**

**33 Greycoat Street**

**London**

**SW1P 2QF**

4. Following analysis of these responses, the Children's Commissioner will announce further in-depth work in a small number of areas relating to school exclusions over the coming year. These areas may include, but cannot be limited to, the issues identified in this report.
5. The Children's Commissioner will publish a further Inquiry report into school exclusions in March 2013. This report will assess progress towards implementing recommendations, and will announce findings and recommendations from the second year's work.

## Full list of recommendations

### Recommendations to the Secretary of State for Education

1. To ensure that schools make decisions consistent with the UNCRC, the new Statutory Guidance on exclusions should specify that the interests of the child concerned must be a primary consideration in exclusion decisions. Guidance to Independent Review Panels should also specify this as grounds for appealing against a permanent exclusion.
2. To make the exclusions process compliant with Article 12 of the UNCRC, Statutory Guidance on exclusions should be amended to make it clear to schools that children and young people's views must be sought as part of the process, and must be taken into account when coming to a decision. Students should be able to appeal against exclusions on their own behalf.
3. The Government should conduct research to identify the full extent of unlawful exclusions, and recommend measures to prevent a small proportion of schools continuing to act in this way. This research should investigate, in detail, the pattern of unlawful exclusions in a small sample of representative localities, with a view to identifying the scale of activity, and the lessons for both national policy making and school accountability which arise. The research findings should be widely publicised.
4. The Secretary of State must fully investigate, as a matter of urgency, accusations made to the Inquiry regarding some Academies failing to abide by relevant law with regard to exclusions. If these allegations are proven, he should apply appropriate sanctions to the schools concerned.
5. Separately, clarity is urgently needed about the role of the Education Funding Agency, the DfE and the Secretary of State in relation to Academy complaints and oversight. The Education Funding Agency must be resourced to handle, in a timely fashion, complaints raised by parents about the behaviour of Academies where that behaviour is alleged to be in breach of contracts and funding agreements between school and state.
6. To ensure an effective safeguard against unreasonable exclusions exists, the Education Act 2011 should be amended to reinstate Independent Appeal Panels, as they were constituted prior to the Act.
7. To ensure that young people and their parents become more aware of the legal framework for exclusions, the Government should make sure that across the state-funded education system, a standard approach is taken to the administration of all permanent and fixed-term exclusions, following the example of what happens in family law cases.

8. Statutory Guidance should set out how schools should communicate exclusions to the child and the family. Specifically, the child and their parents/carers should be informed of:

- the reason for the exclusion;
- the length of the exclusion;
- the evidence presented in support of the decision to exclude;
- (for permanent exclusions) the process for appealing against the exclusion to the board of governors and, if necessary, an independent body;
- the provision which has been made for the child to continue their education if an exclusion exceeds five days.

The Government should lay Statutory Guidance specifying the content of such communications and, with regard to the right of appeal, the wording to be used in a formal notice of exclusion. All state-funded schools should be required to follow this guidance, either through secondary legislation (for maintained schools) or through amendments to Academy funding agreements.

9. To ensure justice in the system, and to minimise the chance of discriminatory behaviour, the Secretary of State should issue guidance which sets out clear rights-based principles for exclusion thresholds, while leaving schools free to interpret these principles in light of their circumstances, but with an expectation of clarity and transparency.

These principles should include:

- The removal of a child from school premises by exclusion should only happen to:
  - protect the health and safety of the individual; or
  - protect the health and safety of others; or
  - prevent disruption to learning.
- Exclusions, whether permanent or fixed-term, should only be used as a last resort when other measures have been tried and failed. Exclusion should be the first response to a child's behaviour only in exceptional circumstances (for example, in cases of assault, supplying illegal drugs or threatening someone with a weapon).
- It is never appropriate to exclude for minor infringements of school rules, such as breaches of uniform rules or the wearing of jewellery, especially where such rules are more likely to disadvantage one gender, or certain ethnic groups, faiths or cultures.

10. There should be a presumption against permanent exclusions from primary schools. This should be reflected in revised Statutory Guidance. To ensure this presumption is upheld, every permanent exclusion of a primary school age child should be reviewed independently, regardless of whether a review is requested by the child's parents or carers.

11. To allow strategies to be put in place to address differential rates of exclusion, the DfE should publish more extensive data on the exclusion of children with SEN as part of its annual return on exclusions for both fixed-term and permanent exclusions.
12. Guidance on managing in-house provision should be developed, alongside guidance on commissioning all alternative provision, using these elements as a starting point for schools, as they will shortly become responsible for commissioning.
13. The principle behind the Government's approach to dealing with exclusions, as demonstrated in the pilots, is sound, and builds on existing good practice seen by this Inquiry. Government should continue with these pilot schemes, and make an assessment at an early opportunity of when to extend this approach nationally. To maximise the chance of success, the DfE should assist Local Authorities in gaining buy-in from their areas' schools. This should include amending Academy funding agreements to reflect the new position regarding their shared responsibilities towards excluded children from schools across the area where they are situated.
14. To be compliant with Article 12 of the UNCRC, the views of the young people concerned, and those of their parents, must be sought as part of the evaluation of these pilots.

## Recommendations for the Teaching Agency

15. The Requirements for providers of ITT, the Teaching Agency should include a requirement to prepare all NQTs to teach children with the full range of SEN they should expect to find in a mainstream state-funded school. All trainee teachers should be trained to understand the cultural and other differences commonly found in English society, and therefore its schools. All trainee teachers should also study child development and socio-psychological matters such as attachment theory. Serving teachers and non-teaching staff should be expected to train, and to refresh their knowledge, in similar fashion. The likelihood is that this will make them all better equipped to succeed. It is equally likely that learners' experiences will improve and a diverse school system will have a better opportunity to flourish if this recommendation is adopted.

## Recommendations for all public bodies in education

16. All public bodies working in education and bound by the same duties should consider how best to address these differential rates of exclusion in their own work in implementing these new duties. Only by a concerted effort from a position of honest ownership of the difficult issues entailed can these gaps be closed.

The evidence does not give us confidence that schools will carry out the legally necessary work entailed without further insistence by Government. Therefore, the DfE must work together with the Government Equalities Office and Equality and Human Rights Commission to produce best practice guidance for schools and other public educational bodies in interpreting the new equality duties with regard to exclusions.

## Recommendations for schools and school operators

17. To ensure parents and pupils can identify and address illegal activity by schools, government and all school operators and sponsors should take steps to ensure that parents and pupils are provided with accessible, standard information about their rights.
18. Schools should include their behaviour and exclusions policies as part of their school prospectuses and on their websites. The same should apply to home-school behaviour agreements they enter into with parents.
19. There should be a presumption against permanent exclusions from primary schools. No primary school should permanently exclude a child in Reception or Key Stage 1.
20. It is our judgement that it is unreasonable for any school to unilaterally permanently exclude a child who has the school named as specified provision on a statement of SEN. That is not to say the school cannot exclude the child at all. The school should have to make a proposal that the child be excluded which should trigger a review of the child's statement. It would be for all professionals involved in the statementing process, including the school, to decide collectively whether a permanent exclusion was appropriate. Reviews of this type must, by law, already include the child and their parents or carers in reaching decisions. A review regarding a potential exclusion should be no exception.  
  
Where it is decided that exclusion is appropriate, the statement would need to be amended to reflect the new arrangements being made for the continuing education of that child.  
  
Where it is decided that exclusion is inappropriate, the statement should be amended to reflect the additional support needed by the school to continue to manage the behaviour of the individual, in order to prevent continued disruption to their own learning and that of others.
21. Schools' work to implement their statutory duties under the Equality Act 2010 must include efforts to reduce the differentials in exclusion rates between different groups.

## Recommendations for Ofsted

22. By definition, a school that is breaking the law to the detriment of its students is not providing them with a satisfactory education. Therefore, where Ofsted discovers evidence of illegal activity with regard to exclusions in the course of an inspection, this should automatically trigger a judgement of "Inadequate" for the overall assessment of the school.
23. Given that the available data show that schools with poor behaviour management are more likely to exclude large numbers of students, there should be a presumption that a school with very high levels of either permanent or fixed term exclusion should not be awarded a "Good" or "Outstanding" grading for its students' behaviour.

24. To ensure schools which are exempt from inspection use exclusions appropriately and proportionately, Ofsted should monitor the following data in relation to these exempt schools:

- the number of permanent and fixed-term exclusions per academic year;
- complaints from parents of excluded children to Ofsted, the Secretary of State or Local Authorities regarding the circumstances of their child's exclusion;
- the number of successful appeals against permanent exclusions in each academic year, or reviews of permanent exclusions where the Independent Review Panel has sent the case back for the governing body to reconsider.

Ofsted should monitor the above exclusions data in relation to schools exempt from inspection alongside all other monitoring data. Ofsted should then investigate further, potentially triggering an inspection where there is serious cause for concern:

- any significant increase in the number of permanent or fixed-term exclusions from year to year;
- a rate of permanent or fixed-term exclusions significantly above the rate expected for a school of that type;
- more than one review of a permanent exclusion which recommends that the governing body reconsider the decision to exclude.

25. The effectiveness of in-house provision should be inspected by Ofsted as part of the normal inspection process (as opposed to viewing it as an "add-on"), using the same criteria as for the rest of the school.

26. To ensure that students learning outside the school setting get as good a deal as those learning within it, Ofsted should inspect all aspects of a school's provision, including that commissioned from external sources, as part of school inspections.

27. An assessment of compliance with equality duties should form part of the criteria which Ofsted use to inspect schools.

