

# **“They never give up on you”**

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Office of the Children’s Commissioner  
School Exclusions Inquiry



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.



# The Children's Commissioner's School Exclusions Inquiry

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 United Nations Convention on the Rights of the Child (UNCRC).
2. The Inquiry was chaired by Dr Atkinson and the panel members were:
  - **Janet Mokades** – a schools adjudicator and Her Majesty's Inspector of Schools;
  - **Robin Richardson** – educationalist and former director of the Runnymede Trust;
  - **Ian St Rose** – manager of a provider of alternative provision for children;
  - **Simon Woolley** – Equality and Human Rights Commissioner and Chief Executive of Operation Black Vote;
  - **Roy Blatchford** – ex-Her Majesty's Inspector and now leads the National Educational Trust (NET). Panel member and critical reader but did not accompany the panel on visits and interviews.
3. Please see **Annex A** for details about the members of the panel.
4. Panel members supported the Inquiry in an advisory capacity. However, the contents of this report represent the conclusions of the Office of the Children's Commissioner and not necessarily those of individual panel members.
5. In addition to this small expert group, the Children's Commissioner has referred regularly to a wider stakeholder and reference group, from a diverse range of organisations and interests. These are listed in Annex B.
6. The Inquiry team has also been advised by:
  - a group of children and young people convened by the organisation Catch22; and
  - Amplify, the Children's Commissioner's longstanding young people's advisory group whose members are aged between 10 and 18 and come from all over England.
7. The Inquiry has examined:
  - permanent and fixed-term exclusions; and
  - other means schools can use to:
    - request that children move school; or
    - arrange the transfer of children for behavioural reasons.
8. It has not examined the process of managed moves between schools for reasons other than an individual's behaviour.

# Scope of the School Exclusions Inquiry

## 1. 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 have been shown statistically to be 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 explored, among other things, the emerging Exclusions Trials areas which started in England in 2011, and the efficacy of practice in several local areas where permanent exclusions stand at zero.

## 2. This report examines the decision making process up to the point of exclusion, and the work undertaken in any subsequent appeal.

## Background information on exclusions

1. Schools are able to exclude pupils by reason of their behaviour, provided the school acts within the law. The relevant law is explained to schools through Statutory Guidance.
2. Exclusions can be either permanent or for a fixed term.
3. A permanent exclusion results in the child being removed from the school's roll. The child's "home" Local Authority becomes responsible for ensuring alternative educational provision for them. This may be in another school, a Pupil Referral Unit (PRU) or "alternative provision" which may be run by one of a range of organisations, often in a less formal environment than school. If the parents of a permanently excluded child consider the school has acted unfairly, they can appeal against a permanent exclusion. In the first instance their appeal must be to the school's governing body. If the governors uphold the exclusion, at present the parents can appeal to an Independent Review Panel which hears both sides of the case and then makes a decision. Its findings are binding on all parties.
4. In a fixed-term exclusion, the child remains on the school's roll, but is forbidden from entering the premises for a defined period. This is almost always for less than a week. If a fixed-term exclusion lasts for longer than a week, the child's "home" Local Authority again becomes responsible for ensuring alternative educational provision. There is no right of independent appeal against a fixed-term exclusion by either the parents or the child.
5. The Department for Education (DfE) collects data on permanent and fixed-term exclusions from all state-funded schools on an annual basis. These data are analysed by the DfE and a statistical first release is published annually which shows a number of analyses of these data. We have used these data in the course of this Inquiry. The most recent school year for which these data are validated is 2009-10.
6. However, the nationally published official data only represent a small section of the total quantity of information held by the education system as a whole about school exclusions. In the course of this Inquiry we used the Children's Commissioner's statutory powers of inquiry to request additional analyses of the data to be carried out by DfE statisticians. We used the same powers to request additional data from Ofsted, the Local Government Ombudsman, and a representative sample of 40 Local Authorities. All this information has fed into our findings and recommendations.
7. Both permanent and fixed-term exclusions have fallen steadily over the past few years, and (particularly with permanent exclusion) affect only a very small minority of young people in schools. Tables A and B show the numbers for the last five years where data are available. However, given that there are several million children on schools' rolls at any given time, even a small proportion of the population can represent a large number of young people.

Table A – Permanent exclusions

	<b>Number of exclusions (percentage of pupil population)</b>				
	2005-06	2006-07	2007-08	2008-09	2009-10
Primary Schools	970 (0.02)	980 (0.02)	960 (0.02)	720 (0.02)	620 (0.02)
Secondary Schools	8,150 (0.24)	7,520 (0.23)	7,000 (0.21)	5,700 (0.17)	5,020 (0.15)
Special Schools	250 (0.23)	180 (0.2)	170 (0.19)	120 (0.13)	100 (0.11)
All Schools	9,330 (0.12)	8,680 (0.12)	8,130 (0.11)	6,550 (0.09)	5,740 (0.08)

Table B – Fixed-term exclusions

	<b>Number of exclusions<sup>1</sup> (thousands<sup>2</sup>)</b>				
	2005-06	2006-07	2007-08	2008-09	2009-10
Primary Schools	N/A <sup>3</sup>	46	43	39	37
Secondary Schools	348	363	324	308	279
Special Schools	N/A	17	16	16	15
All Schools	---	425	384	363	331

8. In 2009-10 (the most recent year for which 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). In 2009-10, 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 less than a week<sup>4</sup>.

1 This refers to episodes of fixed-term exclusions, rather than the number of excluded pupils – numbers in this table may refer to multiple exclusions of the same individual.

2 Rounded to the nearest thousand.

3 Data on primary and special schools unavailable for this year.

4 The law stipulates that schools can exclude for up to five days at any one time without having to make alternative arrangements for the education of the child. On the sixth day of exclusion, the Local Authority becomes responsible for ensuring that alternative educational provision is made available.

## Over-represented groups

9. 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 differences between exclusion rates for different groups of children and young people. These differences are substantial and long-lasting. All of them have persisted for as long as data on exclusions have been collected, and they seem stubbornly impervious to change.
10. The significant and long-lasting nature of these inequalities between groups was a key reason for launching this Inquiry in the summer of 2011.
11. Two categories of children and young people, counted by the DfE in detail and published in its statistical returns on exclusions from school, are also highlighted by the Equality and Human Rights Commission (EHRC) and in the Equality Act 2010, as people sharing protected characteristics. They are:

### **1. Special Educational Needs**

12. Pupils with Special Educational Needs (SEN) (both the approximately two per cent of the pupil population with and the approximately additional 18 per cent without statements of SEN) are, from the same statistical analyses quoted above, eight times more likely to be permanently excluded than their peers who do not have similar needs. In 2009-10, pupils who had statements of SEN were seven times more likely to be excluded than those with no level of SEN. Pupils with SEN who were part of the larger group of 18 per cent with SEN but without statements, were nine times more likely to be excluded than those with no SEN. 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**

13. The rate of permanent exclusion among members of particular ethnic groups is detailed in DfE statistical returns. Exclusion rates in some ethnic groups of children are much higher than those in others. For clarity, the descriptors used for ethnic groups throughout this report (other than those used in quotations) are those used by the DfE, and schools, in compiling statistical returns on exclusions.
14. 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.
15. 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.

16. The rate of fixed-term exclusion was also higher for these ethnic groups. Seventeen per cent of Irish Traveller children, 15 per cent of Gypsy and Roma Traveller children and 11 per cent of Black Caribbean children had received such an exclusion. Differences in rates are marked if excluded pupils' gender and ethnicity are examined together. Black Caribbean boys, in the statistics available for 2009-10, were 11 times more likely to be excluded than White girls of the same ages and in similar schools. The same boys were 37 times more likely to be permanently excluded than were Indian girls, who had the lowest rate of exclusion in the entire system. Gypsy and Roma Traveller and Irish Traveller children in the same year were four times more likely to be permanently excluded than were the school population as a whole.

### **3. Gender**

17. 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.

18. 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**

19. The final group of children 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 receive a permanent exclusion and around three times more likely to receive a fixed-term exclusion than children in their cohort who are not eligible for free school meals.<sup>1</sup>

## **Available evidence on the consequences of exclusion**

20. There is a great deal of research already published on this issue. The consequences of being permanently excluded from school have been shown to be very significant for the young person who is excluded, and to last for many years after the exclusion. Many children who are excluded, especially if the exclusion is permanent, do not re-engage with formal education before school leaving age. This disengagement often means they leave education at a disadvantage. Their likely lack of qualifications can severely limit their future life chances in comparison with the population as a whole.

21. Forty per cent of 16-18 year olds who are not in education, employment or training (NEETs), when their circumstances were examined more closely, had previously been excluded from school<sup>2</sup>.

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1 Statistical First Release: Permanent and Fixed Period Exclusions from Schools in England, 2009/10. DfE, July 2011

2 Youth Cohort Study: Activities and Experiences of 17 Year Olds: England and Wales 2005. DfE, November 2005.

22. Over half of young offenders in custody have, at some time before they ended up there, been excluded from school. Indeed, in a recent report by HM Inspectorate of Prisons on resettlement provision for 15-18 year olds in custody, 86 per cent of those interviewed said they had been excluded from school at some point<sup>1</sup>.
23. Quite apart from the consequences of exclusions to the individual, there is also a considerable, and costly, set of consequences to the country.
24. In 2007, the New Philanthropy Capital (NPC) organisation estimated the management cost of each exclusion to be in the region of £1,000<sup>2</sup>.
25. This includes the involvement of education welfare officers (who are mainly focused on ensuring attendance, but more broadly offer support to pupils), administration costs and the cost of any appeals following exclusion. The same document estimated the cost of places in PRUs to be around £14,000 per pupil per annum. This figure was corroborated by head teachers, who gave similar estimates of the costs of alternative provision in evidence to the Inquiry.
26. NPC estimated that the average excluded child costs £63,851 to society over their lifetime. This includes costs to the child in future lost earnings resulting from poor qualifications, and, also costs to society in terms of crime, health and social services. Each year, the total cost to society is £650m.<sup>3</sup>

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1 Thematic report by HM Inspectorate of Prisons. Resettlement provision for children and young people: Accommodation and education, training and employment. HM Inspectorate of Prisons, June 2011.

2 New Philanthropy Capital. (2007). School's Out: The costs of truancy and exclusion.

3 Ibid

## 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 on three areas:
  - The Education Act 2011 removes the right of a parent to appeal to an Independent Appeal Panel against the permanent exclusion of their child from school. Independent Appeal Panels have been replaced by Independent Review Panels which will examine similar cases. However, unlike Independent Appeal Panels, they will not be able to require a school to reinstate a pupil they judge was unfairly excluded. Instead, they can recommend that a school's governing body reconsider the case. If the governing body does not then reinstate the child, the panel can impose a financial penalty on the school.
  - Separately, the Government has announced its intention to change the accountability framework for permanently excluded children. At present, when a child is permanently excluded, their "home" Local Authority is responsible for finding alternative educational provision for the child. The Government intends to change this 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. As part of any school inspection, Ofsted will then inspect the commissioning of provision offered to an excluded child. This approach is currently being trialled in six Local Authorities in England.
  - Statutory Guidance on how schools should operate exclusions is being amended, in part, to bring it into line with the new legislation and other changes to the law, such as new equality duties (see below). However, in line with the Government's policy to minimise regulatory burdens on schools and maximise autonomy, it is also being made less prescriptive in a number of respects. Previous guidance has made it clear that exclusions are not suitable for minor breaches of school rules (such as not wearing the correct uniform). This guidance has been removed. In addition, sections on involving parents and pupils in the exclusions process have been made less prescriptive.
3. Separately, the Equality Act 2010 is in the process of entering into force. In addition to the Action specific duties for schools, 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, and specific duties imposed by secondary legislation which became law on 10 September 2011.

4. Guidance from the EHRC on implementing the duty states that, so as to advance equality of opportunity:

"public bodies must, in the exercise of their functions, have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

Advance equality of opportunity between people who share a protected characteristic and those who do not.

Foster good relations between people who share a protected characteristic and those who do not.

This involves:

Removing or minimising disadvantages suffered by people due to their protected characteristics.

Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The new duty covers the following eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation."

5. Given the large differences in exclusion rates by gender, ethnicity, 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 and it is likely that practice on exclusions will need to change.

## Statement of principles

In analysing evidence gathered in the course of this Inquiry, and in arriving at the findings and recommendations in this report, the Office of the Children's Commissioner has applied 10 principles derived from:

- the statutory remit of the Children's Commissioner set out in the Children Act 2004;
  - the UNCRC signed and ratified by the UK in 1991;
  - the recommendations set out in Dr John Dunford's review of the office and role of the Children's Commissioner in 2010;
  - other relevant legislation, particularly the Human Rights Act 1998 and the Equality Act 2010.
- 1. Schools must be safe places for all members of the school community**, and school leaders must take all reasonable steps to ensure this.
  - 2. All children have a right to be safe, including those who have been excluded from school**, either permanently or on a fixed-term basis. Schools and parents share a responsibility to ensure that the safety of the child is maintained during any period of exclusion. In practice this will mean that children should never just be sent home from school with no notice, and should always be handed into the care of an appropriate adult who is formally known to, and recognised by, the school, when they need to be removed from the school premises at the point of exclusion.
  - 3. The rights of children must be upheld.** This will often mean balancing the rights of the individual child at risk of exclusion with those of the other children in the school, and seeing that the rights of children are balanced against those of the wider school community. In extreme cases, this may mean that exclusions are necessary. However, they must be carried out in a way which is consistent with the UNCRC, and with other human rights safeguards, particularly the Human Rights Act 1998.
  - 4. Adults must, in line with the UNCRC, protect the rights of children where children cannot do so on their own behalf.** This will be because of their age, their stage of cognitive development, or a disability, particularly one which affects that development. In some cases it may be simply because the law prevents them from doing so. In this case, it is the responsibility of all adults who are in a position to do so to uphold children's rights. This includes those working in schools, in bodies which control, own, sponsor or operate schools in a diversifying system, and in both central and local government.
  - 5. 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**, in order for the exclusions system to be consistent with Article 3 of the UNCRC.

- 6. The system of exclusions must ensure equality of opportunity for all young people and their families, and seek out and address discrimination**, in line with Article 2 of the UNCRC, and the Equality Act 2010. All adults delivering a statutory service – that is, working in the state-funded education system – must consider how they can best address the longstanding and unacceptable differences in exclusion rates for certain groups. They must also take proactive steps to ensure differences in exclusion rates are not the result of discriminatory practices.
- 7. The principle of natural justice must be a key consideration** in operating, and making changes to, the system of school exclusions. As set out above, exclusion from school – particularly permanent exclusion – is a significant, negative life event for the young people concerned, with serious consequences for their future life chances. It is essential that justice is done and seen to be done in these cases. In practice, this is likely to mean that children are entitled to a:

  - meaningful, proportionate right of redress when it is clear that exclusions are unjust, unlawful or disproportionate;
  - right for the child to participate, in an informed, supported and appropriate manner, in the process of exclusions, including the right to seek redress on their own behalf.
- 8. Exclusion from a particular school does not mean exclusion from education as a whole.** All children, regardless of what they may have done, and regardless of their personal circumstances, have the right to a fully rounded education, in line with Articles 28 and 29 of the UNCRC. In some extreme cases, children may, nonetheless, need to be excluded from school: to ensure their own safety or that of others, or if their continued attendance at a school would breach the rights of others to an education. However, an appropriate, full-time, education must be provided for all such children within five days of their exclusion from school, and ideally sooner.
- 9. Schools do not operate in isolation.** They are part of a wider community, and should work collaboratively with other members of that community, and the services in it, in the best interests of their students. By the same token, other services should be open to working in partnership with schools so that the latter can hold on to troubled children. The Children Act 2004 places a statutory duty on all public services to cooperate in order to protect and promote children's welfare and well-being. This duty should be honoured by all concerned.
- 10. The exclusions system must be based on evidence of what works for children and young people.** Given the serious consequences for young people of being excluded from school, it is important that the policy and practice behind exclusions is based on what works best for improving the situation, in keeping with the other nine principles outlined above. Interventions must be based on the best available evidence, and on a shared commitment to ensuring children and young people's life chances are improved by the alternatives to school that they experience.

# Methodology

1. This Inquiry used a large number of different techniques and avenues to collect evidence to inform its conclusions. These are detailed in the sections below.

## Written call for evidence

2. The Inquiry was launched in July 2011 with two public calls for written evidence: one for adults and a second for children and young people. This call closed in October 2011, although we have received, and taken account of, a number of submissions after this date.
3. In total, we received 86 submissions to this call for evidence, of which 11 were from children and young people (both individually and in groups). Respondents are listed at Annex C and submissions are available in accordance with the Publication Scheme set out on the Children's Commissioner's website, except where respondents have requested they not be published.
4. In many cases, the evidence submitted through this channel represented personal or organisational experience and opinion rather than formal academic research. Where this is reproduced throughout this document, it is presented merely in the terms that the information was presented to the Inquiry – verbatim where possible.

## Field visits

5. Between September 2011 and January 2012, the Children's Commissioner, members of staff from the Office of the Children's Commissioner and the Inquiry panel made a number of field visits to mainstream primary and secondary schools, special schools, PRUs and alternative educational provision across England. On each occasion, the Inquiry met a range of stakeholders, always including the children and young people attending the provision. In total, several hundred young people spoke to the Inquiry. The following areas were visited:
  - a rural county in the North of England;
  - a city in the North of England;
  - a city in the West Midlands;
  - a county in the South East;
  - four London boroughs;
  - a rural county in the East of England.
6. In order to encourage openness and transparency, as well as to protect the identity of the young people we spoke to (many of whom were vulnerable for a number of reasons), the exact locations of the visits are not specified when cited in this report. Instead, we have identified the type of setting, the job title of the individual(s) we spoke to (or the age of the young people) and the region.

## Formal oral evidence

7. The Inquiry took oral evidence from a number of influential stakeholders, practitioners, policy makers and academics during sessions in December 2011 and January 2012. For these evidence sessions, the panel sat in formal session and a verbatim record of each session was produced. The list of witnesses who gave oral evidence is included in Annex D and transcripts of their evidence are available on the Children's Commissioner's website. Where this evidence has been used in this report, it is quoted verbatim and attributed to the named witness concerned, unless doing so would risk identifying a child or children.

## Review of existing research

8. A review of publicly available research was conducted by the Office of the Children's Commissioner between June and August 2011. This review supported the development of the initial scope of the Inquiry, and has informed its findings. This initial review was supplemented by a number of written submissions in the form of research papers. We have also received a number of further research papers from witnesses giving oral evidence. Where findings from these papers are quoted in this report, they are appropriately referenced.

## Primary research

9. In 2010, the National Foundation for Educational Research was commissioned to carry out research on behalf of the Office of the Children's Commissioner, investigating young people's views of the education system. They interviewed a representative sample of 1,957 young people between the ages of eight and 17 in schools across England during October and November 2010, the report being published in the spring of 2011. This quantitative research was then supported by a series of focus groups. One of its findings – that whilst 80 per cent had experienced disrupted learning caused by poor behaviour, 90 per cent considered exclusions should never be a consequence of that behaviour but schools should instead help children solve their problems – was a key reason for launching this Inquiry, and its findings have informed the Inquiry throughout.
10. For this formal Inquiry, following an open tendering process, a team from Canterbury Christchurch University (CCU) was commissioned to undertake a primary research project looking at the decision making process for exclusions in secondary schools. They researched 15 schools in London and South East England. Schools included maintained schools, faith schools and Academies. There was also a mixture of single-sex and co-ed schools, and two selective grammar schools.
11. Specifically, CCU examined:
  - whether schools had different thresholds for exclusions;

- the decision making process for deciding whether to exclude a student;
- whether the views of school staff were a factor in the decision making process;
- the role of school governors in exclusion decisions;
- whether the views of external agencies (children’s services, police and others) were taken into account;
- to what extent the views of young people and their parents were taken into account;
- whether the school’s relationship with the family was a factor in decisions to exclude;
- whether the ability to access alternative educational provision was a factor in determining whether or not to exclude;
- what mechanisms and support were available to school and pupils from Local Authorities;
- to what extent decision makers were aware of regulatory frameworks (such as Statutory Guidance, equality duties, etc.);
- whether schools treated different types of children in different ways (for example, whether they took account of SEN or disability in deciding whether to exclude);
- whether schools “informally” excluded children, without such exclusions being recorded on official data returns.

12. The full report of this research is included at Annex E.

## Data requests

13. Using the Children’s Commissioner’s powers as outlined above, several requests were made for additional data on exclusions. This is data which is held by public bodies, but is not routinely published:

- from 40 Local Authorities<sup>1</sup>, a breakdown of appeals against permanent exclusions by the characteristics of the excluded child, and the reason for exclusion;
- from 10 selected Local Authorities, case files for all appeals against permanent exclusion<sup>2</sup>;
- from the DfE:
  - a comparison of exclusion rates for schools rated “Outstanding” or “Good” by Ofsted with those rated “Satisfactory” or “Inadequate”;
  - a breakdown of exclusion rates by different school characteristics;
  - an analysis of the relationship between the proportion of certain types of pupils in a school and their likelihood of being excluded;
  - a multi-variant analysis of published data for permanent and fixed-term exclusions; and
  - a comparison of exclusion rates between Academies and maintained schools with the same pupil characteristics as Academies;
- from Ofsted, a breakdown of school-level and inspection results for all inspections of state-funded schools and PRUs in the last five years.

1 Authorities were chosen to provide a representative sample of English regions. Twenty-eight responses were received.

2 Randomly selected. Six responses were received.

## Input from children and young people

14. Throughout the Inquiry, children and young people have advised the Children's Commissioner on the priorities for the Inquiry, and the impact that certain elements of exclusions policy have on their lives. The Children's Commissioner's young people's advisory group, Amplify, was consulted in detail on three occasions. They advised the Inquiry on:

- its scope and terms of reference;
- their views on issues surrounding exclusions;
- the relevance of initial findings to the lives of young people, and how best to communicate the findings to a young audience.

15. In addition, a tendering process was undertaken to establish a reference group of young people who had been excluded or who were at risk of exclusion. The contract to deliver this aspect of the Inquiry's work was won by Catch22, a charity which provides support for vulnerable children and young people across the country. The group convened by Catch22 has advised the Children's Commissioner throughout on the:

- terms of reference for the Inquiry;
- relevance of emerging findings for children and young people at risk of exclusion, and their relative importance from their unique perspective as children and young people personally affected by the issue under investigation; and
- most effective ways to present the Inquiry's findings to children and young people.

16. Twelve young people (aged between 13 and 17) took part in the course of the Inquiry, from London, the West Midlands and the South East.

# Findings

## Legal and regulatory frameworks

1. This chapter examines the extent to which the current legal and regulatory framework for exclusions is fit for purpose, and consistent with the principles set out at the beginning of the report. It also examines the extent to which schools' processes are consistent with the law.
2. Specifically, it examines:
  - compliance with the UN Convention on the Rights of the Child (UNCRC);
  - school accountability systems and the influence of regulatory frameworks;
  - the system of appeals against exclusions, and forthcoming changes to this system;
  - the decision making process within schools, and its compliance with the law;
  - evidence of illegal activity by schools.

## Assessment of compliance with the UNCRC

3. In carrying out this assessment, both the legal framework for exclusions, and how schools and others working in education interpret this framework in making individual decisions have been taken into account.
4. This assessment is based both on the wording of the UNCRC, and of the commentary made on England's interpretation given by the UN Committee on the Rights of the Child during its most recent interim report on the UK in 2008<sup>1</sup>.
5. In particular, we have assessed the following articles (set out in full below):

## Article 2

### Text of the Article

6. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### Assessment of Compliance

7. Legally, the system of school exclusions in England applies equally to all children and young people in state-funded schools, and as such is compliant with Article 2. However, it is clear from

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<sup>1</sup> UN Committee on the Rights of The Child: Concluding observations on the United Kingdom of Great Britain and Northern Ireland, 2008. [www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.GBR.CO.1.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.GBR.CO.1.pdf)

an examination of the Government's own statistics on over-represented groups that not all children are equally likely to be excluded. Schools, all school operators, local and central government should consider how best to address inequalities in exclusion rates in their approaches to meeting their equality duties, in accordance with the recommendations in this report.

## Article 3

### **Text of the Article**

8. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Assessment of Compliance**

9. The system of school exclusions is not always compliant with this Article. The evidence shows that, while in many cases the interests of the child are a primary consideration in decisions to exclude, this is not always the case. Equally, the Statutory Guidance on exclusions does not specify this.
10. Head teachers need to balance the rights of the individual child with the rights of the other children in the school when making exclusion decisions. However, the evidence shows that exclusion decisions are sometimes made for other reasons, unrelated to the interests of the child.
11. A number of witnesses stated on the Inquiry's formal record of evidence that exclusion decisions are taken for other reasons. These include pressure from staff, or other children's parents; or exclusions undertaken to "send a message" about acceptable standards of behaviour to the rest of the school's pupils, as well as to the excludee.
12. Others, including commentators in the media<sup>1</sup>, have asserted that some schools (particularly those which place particular importance on academic excellence and an orderly community) have an unwritten policy of excluding underachieving pupils in order to boost the school's results

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1 <http://www.guardian.co.uk/politics/2010/nov/12/schools-exclusion-problem-pupils>  
<http://www.bbc.co.uk/news/education-15185863>

and position in performance tables. However, there is no concrete recorded evidence to support this. Indeed, evidence from Ofsted inspections suggests the opposite. This evidence suggests that higher exclusion rates are more usually associated with schools which are performing poorly in other areas of their work. It is likely that the tensions between assertions about schools' exclusion of underachievers outlined above and Ofsted's evidence will be a theme in the Children's Commissioner's work in the coming year.

**13. 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.**

## Article 12

### Text of the Article

14. 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### Assessment of Compliance

15. The system of exclusions in England is not compliant with Article 12. Therefore, excluded children's rights are breached. There is no effective way for children's and young people's views to be heard, and taken account of, in the exclusions process.

16. This was the experience of many of the young people interviewed for the Inquiry who had been through the exclusions process. One, when asked how he had his views taken into account said:

"They weren't. The school didn't listen to me – it just does what it likes."

17. Children and young people have no formal right to be heard in the exclusions process. The Statutory Guidance on exclusions states only that they:

"... should be invited and encouraged to state their case at all stages of the exclusion process."

18. This guidance should be made clearer, to emphasise that schools must take this into account when making decisions. Indeed, the evidence received suggests that even a low level of involvement is not routinely available to those at risk of exclusion.

19. Data from Canterbury Christchurch University's (CCU's) research for this Inquiry found that schools did not always examine ways to ensure pupils' views were taken into account during exclusion processes. One teacher interviewed for this study said:

"... we don't consult the student, we talk to the student. " (Key Stage 3 lead, School 3)

20. This was echoed by other children who spoke to the Inquiry. One, who had been permanently excluded said:

"I went to the school meeting but felt they had made up their minds already. If the head teacher makes his mind up you have no second chance."

21. Most respondents discussed ways that pupils were involved in reviewing behaviour and disciplinary approaches or policies, and pupil involvement, through the gathering of witness statements, in the collation of evidence leading to an exclusion. The latter was usually focused on gathering the information the pupil had about the event, rather than the views or opinions of either the excluded child, or other children witnessing the incident concerned.

22. Some schools interviewed for the study went even further, saying that "the views of the pupil and parent are not sought for a fixed-term exclusion" and that "I can't think of a case where the views of parents/children have been included."

**23. To make the process compliant with Article 12, Statutory Guidance on exclusions should be amended to make it clear to schools that children's and young people's views must be sought as part of the process, and must be taken into account when coming to a decision.**

24. Separately, there is currently no right for the excluded child to appeal against an exclusion on their own behalf. This is different from the situation in other types of education appeal. Students can now appeal on their own behalf to both the Schools Adjudicator, and to Special Educational Needs (SEN) tribunals. We warmly welcome these changes, which improve the ability of children and young people to participate in decisions which concern them. **To ensure the system is compliant with Article 12, this should be extended to exclusions, with students able to appeal against exclusions on their own behalf.**

## Article 23

### Text of the Article

25. 1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

### **Assessment of Compliance**

26. The situation with regard to Article 23 is similar to that for Article 2. Children with SEN are eight times more likely to be excluded than those without. As with Article 2, schools, school operators, local and central government should consider how best to address inequalities in exclusion rates in their approaches to meeting their statutory duties under the Equality Act 2010.

## **Article 28**

### **Text of the Article**

27. 1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;

- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

## **Assessment of Compliance**

28. Where the exclusions system works as it is supposed to, it is compliant with Article 28. Children are entitled to full-time alternative education on the sixth day after exclusion from a school. We agree with the Government that this is sufficient to ensure compliance with Article 28. However, there is strong evidence this does not always happen. It is not unusual for children who have been permanently excluded from school to have no full-time provision made available to them.

29. Equally, there is strong evidence, some of it given by head teachers and placed on the record with our researchers, that some schools unofficially, and therefore illegally, exclude children. In these cases, the school is in breach of Article 28, as well as acting illegally. The evidence on this serious issue is set out elsewhere in the report, as are our recommendations to address it.

30. The Government's trial projects which are currently underway, seeking to place responsibility for excluded children with excluding schools, have considerable merit. They should make it less likely that children will be removed from schools without alternative educational provision in place.

## **Article 29**

### **Text of the Article**

31. 1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Assessment of Compliance**

32. It is outside the scope of this Inquiry, and the remit of the Children's Commissioner, to assess the quality and sufficiency of alternative provision for excluded children. This is the statutory responsibility of Ofsted. It is, therefore, not possible to assess whether this provision is universally compliant with Article 29. However, there is considerable evidence to suggest that this provision is of unacceptably variable quality, and that systems of quality assurance for this provision are often not fit for purpose. Ofsted found this to be the case when examining alternative education provision in 2011<sup>1</sup>. While there are some very good providers, the system as a whole is under-regulated, and almost wholly unaccountable. It seems unlikely, given these two variables, that children's rights and interests would be upheld in every one of these settings.

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<sup>1</sup> Alternative provision. Ofsted, July 2011.

## Illegal activity by schools

1. The issue of "unofficial" or "informal" exclusions has attracted considerable policy and media attention. These are situations when a school requires a young person to leave the premises but the child's exit is not recorded 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 .
2. It is important to differentiate between these practices and well operated, properly monitored "managed moves" systems which exist in many areas. The detailed working of managed moves systems, and other alternatives to exclusion, are examined in detail elsewhere in this report. From the outside, managed moves and illegal exclusions may appear similar – with children moving from one setting to another, for disciplinary reasons, and without entering into a formal exclusions process.
3. However, there are a number of key distinctions:
  - In a system of managed moves, decisions are taken collectively by both the "excluding" and "receiving" institution. In cases of unofficial exclusions, decisions are taken unilaterally by the excluding school.
  - Managed moves systems are often monitored by other schools, the Local Authority and other interested bodies. They are accountable to a "Fair Access Protocol" which all sides sign up to. Unofficial exclusions are not monitored.
  - Managed moves are done in the open, with all sides aware of what is happening. Unofficial exclusions are covert and denied. One student told the Inquiry:

"I knew what was going on. I wasn't excluded, but I had to move. It was good to have a fresh start, and everyone knew what had happened in my last school."

(Girl, Year 10, West Midland)
  - A child changing schools in a managed move has a record in both excluding and receiving schools, and all parties work to ensure that the new placement succeeds. In unofficial exclusions, the excluding school is often not interested in a child's destination, simply that they leave. One young person told the Inquiry:

"The teacher from [names old school] kept coming to check up on me 'til I was settled in at [new school]."

(Boy, Year 8, West Midlands)
4. DfE guidance on exclusions is, and new guidance should remain, unequivocal on unofficial exclusions. The current guidance states:

"If a head teacher/teacher in charge is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and needs to be removed from the school site for that reason,

formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents or carers.

Where a pupil is sent home for disciplinary reasons for part of a school day, some head teachers have viewed this as a 'cooling off' period, and have not taken action to exclude the pupil formally. There is no basis in law for this. The relevant regulations do not state a minimum length of exclusion. If pupils are sent home in response to a breach of discipline, even for short periods of time, this must be formally recorded as an exclusion.

In every instance where a pupil is sent home for disciplinary reasons, head teachers/teachers in charge must formally record and specify the length of the exclusion (for reporting purposes this should be recorded as a half day, whole day or lunchtime). They should ensure that:

- they are meeting their legal duty of care towards pupils, and that parents are formally notified of the exclusion;
  - child protection issues are taken into account, eg bearing in mind the child's age and vulnerability, that a parent/carer is at home and the child is not placed at risk by, for example, being left to wander the streets; and that work is sent home or alternative provision is arranged.”
5. The vast majority of evidence to the Inquiry demonstrates that, across the system, almost all schools work incredibly hard to maximise the life chances of their students, and to enable those with challenging behaviour to remain full members of the school community. The great majority work very hard to avoid exclusions, which they see as an absolute last resort. They also, in many cases, see exclusion as a recognition that the school has failed a pupil.
6. However, this Inquiry has found proof that illegal exclusions are taking place. This finding echoes that of the Centre for Social Justice in its 2011 report, *No excuses*. We have seen compelling evidence of a number of illegal practices and for the first time, as far as we are aware, head teachers speaking to this Inquiry were prepared to admit to the practice, which includes:
- 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;
  - a young person who told the Inquiry: “I just got sent home. Don't know why. Had to go home and not come back. They didn't even tell my mum.”;
  - 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 both to identify, and quantify. Several Local Authorities have begun the process of identifying schools which act in this way and this is to be encouraged. However, they have found it difficult. Schools do not acknowledge it is happening, say they know it is elsewhere but of course they would never dream of doing it, or may even not realise themselves they are doing anything unlawful.
8. In many cases, parents do not complain about this treatment. Often they are unaware of their rights, and those of their children. Equally, they trust the school to act in good faith with them and their child. They do not realise schools are not legally permitted to act in this way, and do not realise there is a case to answer. In other instances, they told us, as they have told other researchers, that they feel complaining would be futile, that they would not be listened to, or their child would suffer the consequences if they did. Many also, in the words of one parent, feel "there is no point sending your child to a school that doesn't want him".<sup>1</sup>
9. Given this behaviour is already illegal but persists in the system, further regulation would be unlikely to be necessary or effective. **To protect children and young people's legal rights, however, more can and must be done to prevent these illegal exclusions. Creating mandatory standard wording for documentation sent to parents in cases of exclusion, and its inclusion in the home-school contract, school prospectus and website material as proposed above, would go some way towards addressing this, given part of the problem is a lack of knowledge of the law by children and families.**
- 10. 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 used to inform data collection by Government in the future.**
11. One Local Authority we visited has begun this process, investigating instances where a child changes school "in-year", without changing their home address. They are using this measure as an indication that there may be a cause to investigate further. We visited a second Local Authority where this approach was being considered, and would commend it as one of the starting points for this research.
12. If the Government does not conduct such research in the near future, we will use the Children's Commissioner's powers under the Children Act 2004 to conduct this research ourselves, to inform

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<sup>1</sup> Evidence from the DfE Advisory Group on Gypsy and Traveller education.

policy on behaviour and exclusions and to promote and protect children's rights.

13. 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.
14. Ofsted also has a role to play in preventing illegal activity by schools. 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.

## Alleged Breaches of Academy Funding Agreements

15. 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 giving formal evidence that in some cases, Academies are attempting to avoid scrutiny of their exclusions by external Independent Appeal Panels. He told us that this is due to these Academies' understanding of the status of their funding agreements:

"[Funding agreements are] a contract between the Secretary of State and the Academy. Very basic law: parties to a contract have rights under it, nobody else does.

My client is a pupil in the school. My solicitor [...] writes a letter saying, 'We think you acted unlawfully. We think you didn't comply with the exclusions guidance ... which your funding agreement says you should have done.' The letter we get back from their solicitors says, 'Your client isn't party to that agreement. That's in the agreement. You can basically jump.'

Now [for] every single [Academy] in their contract it specifically says, 'The Academy will act like a maintained school in terms of exclusions including having regard to the exclusions guidance.' We write a letter because they haven't complied with the guidance in various ways. The answer comes back, first of all, 'Your client isn't party to the agreement, even if your client was, this guidance was given to maintained schools telling them how to exercise their statutory powers, and statutory applications, those duties don't apply to us, therefore we fail to see how this guidance can have any relevance to us.' Which is clearly not the contractual intention.

Every single one of those cases [which are taken to judicial review] settles."

16. Mr Wolfe is claiming that certain Academies decline to operate within the terms of their funding agreements, and exclude children without having regard to the guidance which forms part of this agreement. He made further claims that some also choose not to comply with their funding agreements in their acceptance of children with statements of SEN: "exclusion by admission".

17. It has not been possible to corroborate this accusation, as many of the cases Mr Wolfe refers to are subject to confidentiality agreements. However, the accusations are extremely serious and merit further investigation. Mr Wolfe stated, from his experience in handling cases and dealing with clients, that this is the position with a substantial number of schools and is symptomatic of a pattern of behaviour, rather than being limited to a few "bad apples".
18. This is particularly concerning considering the evidence given by the Special Education Consortium (SEC) during the passage of the Academies Act 2010, and again in response to the 2011-12 consultation on revised guidance on exclusions. SEC argued that it would, in practice, be very difficult to hold Academies accountable when they are not meeting their responsibilities, because there is no intermediary between Academies and the Secretary of State.
19. During the passage of the Academies Act 2010, Lord Hill stated in response to concerns:
- "If anyone has concerns that an Academy is not complying with its statutory characteristics or the terms of its Academy arrangements, these can be brought to the attention of the YPLA or the Secretary of State, who will look into them and take such action as is appropriate... the YPLA has the capacity and capability to [fulfil this role], but we shall certainly keep it under review."<sup>1</sup>
20. Unfortunately, despite these assurances from the Minister, SEC does not believe that this has happened. SEC reports that members frequently tell them that parents who called the Young People's Learning Agency (YPLA) were advised that handling complaints against Academies was not within their remit. This was still happening a year after the YPLA was given this responsibility. SEC tells us that it is not convinced the YPLA (soon to become the Education Funding Agency) has the operational capacity to fulfil this role, especially as the number of Academies increases across the system.
- 21. 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 these allegations are proven, apply appropriate sanctions to the schools concerned.**
- 22. Separately, clarity is urgently need 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.**

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1 [www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100706-0001.htm#10070629000860](http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100706-0001.htm#10070629000860)

# School accountability and the influence of regulatory frameworks

1. There are several different ways in which the accountability and regulatory framework for schools may have an impact on their exclusion decisions. This chapter examines the influence of:
  - the Statutory Guidance on exclusions;
  - the role of the Local Authority;
  - the Ofsted inspection framework;
  - school performance tables.

## Statutory Guidance on exclusions

2. Researchers at CCU found that, while there was a general awareness of the need to stay within the law in the schools researched, there was little specific reference to particular, named regulatory frameworks. This was the case even when asked this question directly in interviews. Most schools and staff members referred instead to the school policy or to Local Authority guidance. There was then an assumption that this will be linked to regulatory frameworks. One said:

“I use the school policy document, which I assume work within Local Authority guidelines, which I assume work within statutory guidelines.” (Head of Year 7-8, School 2)

“Everything is in the policy and this is what the head teacher wants everyone to refer to, and lots of it has come from the Local Authority website.”

(Special Educational Needs Coordinator, School 13)

3. There was also an indication that regulatory frameworks are “less influential than professional judgement over what we believe are in the best interests of the child.” (Head teacher, School 2)
4. Only two schools specifically referred to “the exclusion document from the DfE [Department for Education]” (Headteacher, School 9) and to the “best practice exclusion guidance document.” (Focus Group, School 14).
5. When further information is required, schools generally tend to “go to the DfE website when not sure” (Head teacher, School 1) or to Local Authority websites: “... we have a working knowledge of the regulations. If we are concerned we look further to see are we meeting statutory requirements.” (Assistant head teacher, School 11). In one faith school interviewed, there was also an indication that policies were derived from advice provided by the Catholic Schools Service (School 8).
6. A further tension exists in relation to the positioning of Local Authority guidance: “... the blur is where there is guidance. The Local Authority will often present guidance as though it is statutory where it is not.”

7. This may be because of the length and complexity of the guidance. The Government's commitment to shorten and simplify this guidance as part of its overall work to reduce the regulatory burden on schools is, therefore, welcome (subject to the recommendations made elsewhere in this report). Greater connections should be made between this Statutory Guidance and the framework for school accountability. This could be achieved either through the Ofsted inspection system, or by publishing school-level data on exclusions (including successful appeals) as part of schools' performance data.

### The role of the Local Authority and other school organisational bodies

8. Across the educational landscape, the role and level of funding of the Local Authority is changing. This is as true for its role in exclusions as elsewhere. With an ever increasing number of school providers, and more self-governing schools, Local Authorities are offering fewer services. In addition, more funding which was previously centrally held is now delegated to schools. Their role is becoming that of a local commissioner – ensuring that the system on their "patch" is working effectively for children in that area, regardless of which organisation is running services.
9. In the course of the Inquiry we visited eight Local Authorities across England, and received written evidence from a further 25. These included London boroughs, county authorities, metropolitan authorities and unitary authorities. With regard to school exclusions, these authorities operate a wide variety of different models, designed to meet the needs of their young people and reflect the different circumstances of the area. These arrangements are often influenced by the history, nature and strengths of inter-school partnerships and collaborative working. Two examples are given overleaf.

## Case study – Authority A

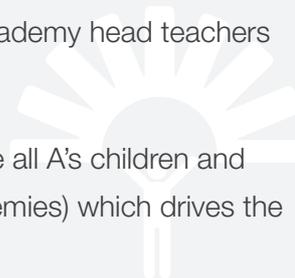
Authority A is a highly diverse Inner London borough, which contains areas of both the greatest wealth, and greatest poverty, in the UK. Elected members and senior officers described the last six years as a journey in terms of the approach of behaviour management. To address historically high levels of primary exclusion, pupil development centres (PDCs) were set up in 70 primary schools. After two years of PDCs being in place, permanent exclusions dropped to zero, which has been the case for the last four years. PDCs provide the facility to focus on the emotional and personal needs of the child. They are run by Higher Level Teaching Assistants and Learning Mentors trained in communication skills, their deployment reducing costs in comparison to the use of more expensive teachers. Fixed-term exclusions do exist but these are used for short periods only.

Authority A has no community secondary schools – a situation which has actively been encouraged by elected members and officers. All secondaries are either Academies or Voluntary Controlled. Authority A has, however, attempted to maintain relationships with Academies. They have found this continuation of relationships easier with Academies which have converted from existing schools, as there, relationships with key individuals already exist. The relationship, however, has proved more difficult with “startup” Academies.

If a permanent exclusion is imminent the school consults the Local Authority and alternative strategies are discussed. One means of dealing with troubled children is peer mediation, a similar approach to Restorative Justice. The Local Authority has strong working relationships with local colleges supporting alternative provision for young people. Every child matters proved an important influencing tool in this Local Authority. The Children’s Trust ensured that most head teachers wanted to be part of a process that was owned by the community of schools. Good links between primary schools also had a knock-on effect to secondary schools. Through open relationships between the Local Authority and schools, the head teachers have maintained a deeper understanding of financial pressures on themselves and the Local Authority, and also of the Local Authority’s community and political objectives.

The Local Authority expressed concern about access to some newer and stand-alone Academies’ data, on both exclusions and other issues, citing a need, at times, to make formal requests for it to the Secretary of State. Encouragingly however, most Academy head teachers had chosen to participate in forums with their peers and the council.

As heard elsewhere, the Local Authority has a strong ethic that “these are all A’s children and therefore we have a legitimate interest in all our children” (including Academies) which drives the inclusion approach.



## Case study – Authority B

Authority B is a rural county in the East of England. It has virtually zero permanent exclusions. Several different models of cooperation are in operation across the county on exclusions and the risk of them for some children. In one group of eight secondary schools, the Local Authority's funding for alternative education is devolved to the schools via a formally recorded partnership, "bought into" by all the local schools. A binding condition for this partnership is that across the group, no student should be permanently excluded. The partnership buys no places at the county's Pupil Referral Units (PRUs), but contracts together to deal with and provide for all children in the area, using the funding available for that purpose. Individual schools and this partnership are all responsible for the education of all their children, whatever the circumstances might be. One head teacher said, "We can meet the needs of these young people without central provision, and so far that has been the case." The Director of Children's Services (DCS)<sup>1</sup> and his team considered the devolution created financial ownership which provided a clear reason for the partnership to exist. He also considered a strong element of peer pressure between head teachers helped minimise the number of very robustly monitored and formally run managed moves.

In budgetary terms, this collaboration means that roughly £1m is devolved to the schools. Eighty per cent is devolved directly to the individual schools, the remaining 20 per cent allows for 10 per cent contingency and 10 per cent additional capacity, eg mental health.

A solution was negotiated within the partnership to enable any affected parents to visit three schools in the cluster and decide which school they wanted their child to attend. The excluding school remains financially responsible for that child, and also funds any additional support that the child needs. The ownership of, and accountability for, the child remains that of the excluding school, while commissioning the services of another school in the partnership. Part of the county-wide managed move protocol is a clause that states that if a placement breaks down within 15 weeks the responsibility reverts to the original school.

<sup>1</sup> Director of Children's Services.

## Ongoing role of the Local Authority

10. There is, as these two brief and very different case studies illustrate, no "one size fits all" model for the role of Local Authorities in exclusions. A Local Authority with no maintained secondary schools will need to work very differently from one with few or no Academies. It is, therefore, difficult to draw national conclusions from these different models. We have, however, identified some good practice run by the Local Authorities visited, which is discussed in detail in the Alternatives to exclusion chapter.

- There is a common thread running through the work of all the Local Authorities visited: The first is that Local Authorities accept that they remain responsible for making sure every child in their area has a full-time educational place. In the case of exclusions, this means “holding the ring” between different schools and alternative providers, as well as intervening where an excluded child cannot find a place. Depending on the Local Authorities’ circumstances, they do this in different ways.
  - Local Authorities are fulfilling an important role in brokering solutions between schools, which could become even more important as the number of school models and providers continues to increase over the coming period. This role should continue to be the responsibility of the Local Authority.
11. Both head teachers and Local Authority officers who submitted evidence were clear that diversity of provision was not an issue. The crux of the matter is the commitment to all of an area’s children by all providers. This is, in effect, the “deal” a child receives no matter where they are educated or in what model of school.

## The role of Ofsted

12. The Ofsted inspection regime is a particularly influential driver of change in schools. Almost all schools reported that when making decisions or setting policy, they pay close attention to what Ofsted takes into account. It is vital that school inspections encourages schools to use good practice in exclusions. Evidence from Ofsted demonstrates that this is also the aim of inspectors.
13. DfE data demonstrate a strong negative correlation between schools’ effectiveness and the number of children they exclude. Put simply, less effective schools, particularly those that are less effective at managing behaviour, consistently exclude more pupils . This, of course, makes intuitive common sense. A school which is not a calm and purposeful learning environment is more likely to have a larger number of instances of poor behaviour among its pupils. This in turn may lead a school to resort more readily to exclusion, whether fixed-term or permanent.
14. This is not to say that all exclusions in all schools are indicative of ineffective behaviour management. However, exclusion rates, and the reasons for exclusions, are important indicators which should be taken into account when inspectors are examining a school’s effectiveness in managing behaviour.
15. In particular, 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.

## Schools Exempt from Inspection

16. Under the terms of the Education Act 2011, the Secretary of State is now able to exempt certain schools from inspection. At the time of writing, schools which had received an "Outstanding" grade overall at their last inspection are now exempt.
17. Ofsted will, however, have an ongoing role in monitoring these schools, and intervening where they feel it has become necessary.
18. To ensure schools which are exempt from inspection use exclusions appropriately and proportionately, Ofsted should monitor the following data from 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.
19. 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.

## The role of school performance tables

20. A number of submissions to the Inquiry expressed concern that schools may be excluding underachieving students to improve examination results and bolster their position in the league tables. This potential practice was the subject of substantial media interest in January 2012<sup>1</sup>.
21. This risk may well exist. The performance tables as currently constituted may encourage schools to try to increase the number of high-achieving students they have, and minimise the number of low achievers. However, no concrete evidence that this is actually happening in schools has been forthcoming in the course of this Inquiry. On the contrary, there is substantial evidence of many schools "going above and beyond the call of duty" to maximise the life chances of their students, including those whose persistently poor behaviour is a cause for concern. This commitment is recognised and appreciated by students. One said:

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<sup>1</sup> <http://www.guardian.co.uk/politics/2010/nov/12/schools-exclusion-problem-pupils>  
<http://www.bbc.co.uk/news/education-15185863>

“It’s really good here – they never give up on you.”

(Boy, 15, West Midlands)

22. Another said:

“They’re like a part of you. Basically like your family, they know everything about you, they know what to do when something’s wrong.”

23. A third, who described himself as “difficult, sometimes trouble,” when asked by the Children’s Commissioner to describe relationships between adults and children in his school compared to how things had been at the one he had transferred from on a managed move, said:

“It’s dead simple really Maggie. It’s a bond.”

24. Finally, a student at a school in the West Midlands told the Inquiry:

“I’ve seen naughty kids through the years, and our school doesn’t just throw them out, which I think is a good thing. Because it gives them a sense of “oh, the school has faith in me. Should I repay it?”. In a majority of cases they do.”

## 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 this report. This has two necessary elements:
  - a system whereby individuals can appeal to an independent body, which has the power to overturn the decision;
  - ensuring that those who are excluded, and their families, are made aware of their rights and are able to exercise them.

### The appeals system and changes due to the Education Act 2011

2. The evidence presented to this Inquiry supports the need for an independent system of appeals against unfair exclusions. The introduced system of Independent Review Panels introduced by the Education Act 2011, which do not have the ability to insist on reinstatement, will not offer sufficient safeguards against schools acting unreasonably or unlawfully.
3. This is for a number of reasons. Firstly, we support the assessment of the Parliamentary Joint Committee on Human Rights which, during its assessment of the Education Bill 2010, stated:

"In our view it is clear, in light of the Court's reasoning in the *Orsus v Croatia* judgment, that as a matter of Convention law Article 6 ECHR applies to decisions permanently to exclude a child from school. [...] whether considered as a matter of Convention law or as a matter of the common law, the right of access to an independent court or tribunal applies to permanent exclusions from school."

And

"In our view it is clear that, if Article 6 applies, the provisions in the Bill for review panels without full appellate jurisdiction on factual matters and without the power to order reinstatement, are incompatible with the requirements of that Article. We therefore recommend that, if Parliament is persuaded of the necessity to reform the current system, the Bill be amended in order to remove this incompatibility."<sup>1</sup>

4. Evidence to the Inquiry by David Wolfe, a barrister specialising in education law, corroborated that finding. Mr Wolfe stated:

"The obvious legal issue [is] about whether the new review panels [...] comply with Article 6 of the Human Rights Convention. I am sure they don't. There's no debate about that whatsoever."
5. Secondly, a system which does not allow independent appeal is contrary to the principle of natural justice. As stated elsewhere in this report, permanent exclusions can affect a young person's future life chances. It is essential that all due care is taken to ensure they are administered fairly and proportionately.

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<sup>1</sup> [www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15404.htm#a6](http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15404.htm#a6)

6. The most recently available statistics on the success rates for appeals against exclusions showed that just under 25 per cent of appeals made against permanent exclusions were successful, and in 27 per cent of those cases, reinstatement was directed by the Independent Appeal Panel. This may not represent a large number of young people – 30 out of a total of 470 appeals heard by Independent Appeal Panels in that year<sup>1</sup>. However, the ability to reinstate was fundamentally important for those 30 young people, whose schools had acted unreasonably in deciding to permanently exclude them. Without directing reinstatement, these young people's life chances may have suffered, as well as their education.
7. It is important that young people and families have confidence in the exclusions system, and believe schools will act fairly and reasonably. That confidence is, unfortunately, not always present, as these case studies illustrate. As part of the research carried for the Office of the Children's Commissioner in 2010 by the National Foundation for Educational Research, the 2,000 young people surveyed were asked whether they felt schools acted fairly in exclusions. Only one in seven considered this was always the case. The two case studies above may represent a small minority of localities and practices but the fact that such practice happens at all is unacceptable.
8. A number of witnesses expressed a concern that head teachers may be more likely to exclude young people in "borderline" circumstances when they are aware that this decision cannot be overturned by an external body. These included members of several Independent Appeal Panels, one of whom stated:
 

"Some of the ones I've seen, I'm absolutely sure they would push their luck if they thought they could get away with it."
9. While there is no way of knowing whether this will actually happen, it is certainly a risk which should be borne in mind when deciding how best to constitute the appeals system.
10. It is clear from the evidence to the Inquiry that a minority of schools do act unreasonably or unfairly in excluding pupils, and that a right of redress is required. Case files of successful appeals were requested from 10 randomly selected Local Authorities. While most successful appeals turned on procedural issues, or a judgement of whether the school had acted proportionately, there was a small number of serious injustices. These include the following two examples of plain bad practice, taken from real case files:
  - A school in the East Midlands which, after excluding a pupil, convened a panel of four members of the governing body to review the exclusion. This panel included two staff governors with vested interests in seeing the exclusion confirmed, and under instruction from the head teacher to uphold it. The Independent Appeal Panel upheld the appeal and directed reinstatement.

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<sup>1</sup> Statistical First Release: Exclusions from Schools 2009/10. DfE, July 2011

- A school in Inner London which excluded a child for reasons that were admitted as being about his special needs. The Independent Appeal Panel session was adjourned by the Local Authority on four separate occasions, twice as a result of the school's inability to produce evidence or provide witnesses. The Local Authority did not challenge this, but let this serial delay by the school continue unchallenged. This meant that the appeal was not heard until almost a year after the exclusion. By the time it was heard, the child was settled in a new school. As a result, the child's parents decided to continue with the appeal so as to clear their child's name, but not to seek reinstatement to the initial school so as to avoid further disruption to their child's education. At this point, the excluding school withdrew the exclusion, stating that, if they did not have to accept the child back in the school, they would not press for the exclusion. Neither the Local Authority nor the panel challenged this practice.

11. Finally, an independent system of appeals against unfair exclusions is an important safeguard against direct or indirect discrimination in the exclusions system. The data published over several years indicates that inequality of outcome is currently an endemic feature of the system. This state of affairs is considered in detail below. Countering its effects is imperative.

12. Success rates of appeals give a reasonable proxy measure indicating that for whatever reason, a school has made a mistake in deciding to exclude a pupil. In the course of this Inquiry, we examined success rates for appeals by different groups of pupils in 28 Local Authorities, representing every region of England. The data demonstrate that some groups are much more likely than others to lodge a successful appeal which proves they have been unfairly excluded. In many cases, those most likely to be permanently excluded were also most likely to have successful appeals. For example, for Gypsy and Roma Traveller and Irish Traveller children, who are the most likely ethnic group in the system to be excluded, 100 per cent of appeals were successful. Investigating why they remain so very likely to be excluded when their appeals are 100 per cent successful if they are, will be part of 2012-13's work by the Office of the Children's Commissioner.

13. An independent system of appeals which includes the power to directly reinstate an unfairly excluded child is a fundamental requirement.

**14. 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.**

## Individuals' ability to appeal

15. The evidence received suggests that many of those young people most likely to be excluded are also less willing and able to appeal, either on their own behalf, or with the support of parents whose own experience of, and attainment in, education may also be poor, leaving them ill-equipped to fight the system even where they have a case.

16. Numerous witnesses told the Inquiry they had encountered excluded children whose families did not know what their rights were. They were unable to tell when a school was acting unreasonably or unlawfully. Parents reported to us, often in a resigned manner, that their children, often with SEN, were sent home for a day here and there or sometimes much longer, without notice, for minor incidents, without being recorded as an exclusion. They were not aware this activity is always illegal, and they had never been told their or their children's rights. In our evidence gathering, the impression from parents and young people was that in dealing with these symbols of authority, they trusted schools and head teachers to act reasonably, in good faith and within the law. They were generally reluctant to challenge schools' authority to act:

"They know the law – or claim to, and I don't. I had no idea that what they were doing was illegal."

(Parent of excluded child, London)

17. This sentiment was echoed by the students themselves. One told the Inquiry (when asked if she knew what schools were allowed to do on exclusions):

"Schools can do what they like, can't they?"

18. This is problematic. It means that unfair exclusions are liable to be more likely where they are not challenged. In particular, vulnerable children and young people will miss their education.

**19. 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.**

### **Protection of children under the Children Act 1989**

In public proceedings for the protection of children, Statutory Guidance specifies the processes required to ensure that the principles of the Children Act 1989 are followed (Children Act Guidance Vol 1 2008). The following are illustrative of the steps designed to ensure that the child, parents and significant others are able to fully participate in a fair and open process designed to meet the best interests of the child.

**1. Letter before proceedings:** Before making an application for a care or supervision order a Local Authority is expected to seek legal advice and to communicate with the parents (and child, if of sufficient age and understanding) the nature and extent of their concerns. The Local Authority should send a "Letter before proceedings" to the parents, the contents of which should also be explained carefully and directly to the parents. The purpose of such a letter is to enable the parents to obtain legal assistance and advice, prior to a meeting with the Local

Authority, the intention of which is either to deflect proceedings or, at least, to narrow and focus the issues of concern. (Paragraphs 3.3 and 3.29)

**2. Keeping parents informed** – the plan for the child: At or immediately after the meeting with the parents (and their legal representative) that takes place as a result of the "Letter before proceedings", the Local Authority should provide a revised plan for the child in writing, setting out what the parents and the Local Authority are to do to safeguard the child and the steps that the Local Authority will take if this action is not effective. The outcome of the meeting should also be explained orally to the parents by the Local Authority. (Paragraph 3.31)

All further steps in the process are specified in the guidance above and in related case management guidance for those involved in public law proceedings.

**20. 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.

**21. The Government should produce Statutory Guidance which should specify 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.**

**22. 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.**

## Schools' decision making processes

1. Evidence received from a range of sources indicates that different schools have very different approaches to exclusions. There are a number of reasons for this, described here.
2. In many cases, schools explicitly link their approaches to behaviour management, and hence to exclusions, with the stated ethos of the school.
3. Researchers for CCU found that faith schools were particularly likely to self-identify as having an ethos that emphasised minimising exclusions.

One head teacher told them:

"... as a faith school, and this is something that I have to communicate quite carefully to parents, part of our commitment is to keep children in school."

Another said:

"... as a Christian Academy, it is important to focus on forgiveness and reconciliation."

We also heard evidence from Simon Golden of the United Synagogue, expressing similar views:

"The values that lie at the heart of United Synagogue Schools are embodied in the principles of Torah and Halakha, which means Jewish laws and practice. They include the welcoming of every Jew, creating a sense of belonging, preparing for lifelong Jewish learning, Jewish spiritual growth and practice, mutual responsibility within the community and the wider world. I think what's important is [...] creating a sense of belonging and preparing for lifelong Jewish learning. [...] first of all, the absolute primacy of learning. Education is everything."

4. There was a clear dichotomy of views from different sources, representing two very different sets of expectations regarding standards of behaviour in schools and other settings. This was particularly the case when discussing very vulnerable children – particularly those known by their schools to have chaotic home lives, who often found it most difficult to conform to behavioural norms in schools, and who were less supported by adults in their lives outside school.

"Some teachers will see us in a bad mood and ask us what is wrong. Some teachers don't think about it like that and just think you're being bad."

"Say for example, I had a fight... sometimes I would get an exclusion and he wouldn't... how is it that we had the same fight but they didn't get sent home?"

5. One school of thought was that rules should be applied completely consistently to all members of a school community, regardless of background or personal circumstances. There was an acknowledgement that some students may need more support than others to comply with these rules, and that it was the responsibility of the school to give this support. However, the outcomes

required (for example on attendance, punctuality, uniform) were non-negotiable. Those holding this view considered that setting strong boundaries and expectations removed the space and energy that could otherwise be occupied by futile conflicts about minor issues, and created a place where order pertained, equality of treatment matched equality of expectation, and learning was centre stage. Some of the children interviewed for the Inquiry supported this approach:

"You know where you are. No point arguing about uniform or whatever – you're not going to win. Plus I like looking smart – it's going to help me get a job."

(Boy, 17, London Academy)

6. A second group took a different view. They considered it was the responsibility of the education system to meet the needs of the individual child, and that this did not mean expecting the same standards from all, regardless of their starting point. They argued that certain children have lives out of school which are so chaotic and disorganised that it is unrealistic to expect them to conform to the same behavioural norms as their peers. They may be suffering neglect or abuse at home, which makes it almost impossible for them to function in the same way as normal children. This school of thought insisted that the system should not, but often does, set them up to fail. Those holding this view considered getting vulnerable, troubled children to attend and learn, respond to adults and trying to change their lives, was a struggle in its own right. Getting to that point, they considered, mattered more than uniform, and indeed, than compliance with rules.
7. It was clear that both schools of thought had the best interests of the child as a primary consideration. We make no judgement on whether one approach is "better" than the other. Indeed, both have merit, each in different circumstances. Much of our evidence gathering showed both approaches can be demonstrated to work, provided they have at their centre the best interests of the child.
8. A number of witnesses suggested schools' approaches to exclusions vary on a pragmatic basis, responding to the individual circumstances of the school. Examples included reports that new head teachers taking over struggling schools might have an initial "crackdown" on behaviour to "send a message" about acceptable standards, leading to a short-term uplift in fixed-term exclusions before a settled norm emerged. Other head teachers, facing similar circumstances, institute blanket policies of not excluding children for any but the most serious circumstances, such as incidents risking life and limb.
9. Broadly speaking, the young people who spoke to the Inquiry said that they felt that exclusions were not usually necessary, other than in very extreme circumstances. One said:

"I think there will still be exclusions for people who are really naughty but I think they should sit them down in [...] Isolation? Then they have to stay there and do their work by themselves.

Because they can think about what they've done because if they're at home, they're not doing anything."

(Boy, 14, North of England)

10. Finally, some head teachers said extreme individual incidents will challenge standard policies. Understandably, even with inclusive policies, there can be exceptions where a permanent exclusion presents itself as the only available option. One Inner London head teacher told us:  
  
"I hate excluding – will do anything to avoid it. But I've done it, and I'd do it again. Let me give you an example. We had a Year 9 girl, victim of a serious sexual assault by another student. It happened off site. The boy was arrested and sent down. Now he's done his time and he's out. Am I supposed to take him back into this school? The girl's still here."
11. We can only sympathise with a school facing this extreme and difficult choice. It demonstrates the point that there are times when exclusions are necessary, to protect the safety of other students in the school and maintain order.
12. The picture that emerges from our evidence is of school leaders who are overwhelmingly committed to acting in the interests of their students, balancing the needs and rights of students who are vulnerable to exclusion with those of the rest of the student body and adults in the school. Often they act in extremely difficult circumstances.
13. This is appreciated by the young people concerned. Written evidence to the Inquiry from students at a school in Yorkshire stated:  
  
"We think that exclusions are fair when they are a last resort. At our school people are given any chances to change their behaviour and exclusions are always a last resort in extreme cases. Our school will help them find another school."
14. Almost all school leaders we spoke to were at pains to stress that they wanted to avoid permanently excluding, but not at all costs. They felt this "ultimate sanction" had to be there. However, for almost all, using it felt like an admission of failure. **The second year's work on this Inquiry may examine how other OECD nations, where exclusions are not part of the sanctions available to a school, deal with similar issues.**
15. Researchers from CCU found that despite differences in ethos and philosophy, the decision making process in schools was similar, and led to similar results. All the schools interviewed had a clear and formal process that was consistently implemented for fixed-term and permanent exclusions. In all of them, the process included a full investigation and the gathering of evidence statements from all involved, including the excluded pupil, pupils who witnessed the incident and staff.

16. In some schools, the head teacher was the ultimate decision maker. There, this approach was believed to ensure consistency of decisions across all pupils and incidents. In others, whilst there was use of a team approach to gathering and evaluating the "evidence", there was recognition that the ultimate decision to exclude remains with the head teacher.

"There is always a strategy meeting which involves the [looked after] child, the foster carer, parents if involved, all the professionals so that everybody is focused on solving the behaviour and the decision regarding whether to exclude or not. The ultimate decision, however, is with the Director, and this [exclusion] is often on the grounds of safety." (Focus Group, School 6)

"It is imperative that they see we are attempting to understand all sides of the scenario and we are trying to do the best for everyone involved. But there comes a point when we say, 'I'm sorry, I hear what you are saying, but they are still going to be excluded because of X, Y and Z'." (Inclusion Manager, School 11)

17. Schools noted that whilst the decision making process was in progress, the child may either be put in "isolation" within the school context (Focus Group, School 4), or may be informally sent home "for up to five days" (Focus Group, School 3) to give time to gather the evidence necessary to make an informed and consistent decision. This informal "sending home" is illegal because, being informal, it is not recorded as an exclusion.

18. Across all schools interviewed, the main differences in the decision making process for fixed-term and permanent exclusions was the involvement of the governing body. For fixed-term exclusions, governors would be informed of the decision, rather than consulted and involved in the process. The process for permanent exclusions generally included a full governors panel meeting, where the governors take an active part in the decision making process.

19. The online survey sent out by the researchers also identified a further difference between the process involved in fixed-term and permanent exclusions relating to the severity of the excluded child's offence, where "there may be no stages in the case of drug dealing." (Online survey response).

20. In both the interviews and the online survey there was recognition and discussion, by a number of respondents, of the use of Restorative Justice approaches as part of the exclusions process. Such approaches require students who have broken school rules to face the consequences of their actions directly, rather than simply inflicting punishments which have no relation to their behaviour. These approaches focus on enabling the student to understand that their actions have an impact on others.

21. We saw evidence of this on visits to localities. One young person told us:

“I had to sit down with this kid I’d kicked in, and he told me how much it had hurt, and how he didn’t know why I’d done it. It felt really weird, to be honest – when you lose it, you don’t think about this sort of thing.”

(Boy, Year 10, North of England)

22. Others told the inquiry that this approach had helped them modify their behaviour. One said:

“I’ve completely changed from what I used to be. Completely. I’ve calmed down and sorted myself out. I go to school every day and try to work and do everything I can.”

(Boy, Year 9, South of England)

23. Generally, schools across the sample interviewed had similar thresholds for exclusions, and identified similar behaviours that would receive a fixed-term or a permanent exclusion. Schools typically identified the following behaviours as representative of those that would warrant a fixed-term exclusion:

- fighting/physical violence;
- swearing at staff;
- theft;
- persistent defiant behaviour;
- drug taking;
- repeated offences over a period of time;
- racist/homophobic name calling.

24. These findings were further supported by the online survey results, where violence, persistent defiant behaviour, bullying and offensive (racist, sexist, homophobic) language were cited as those mostly involved in fixed-term exclusions. However, the length of exclusion given for a particular incident varied substantially from place to place.

25. The following behaviours are those that warranted a permanent exclusion within the schools interviewed:

- serious assault – particularly on a member of staff;
- supplying drugs;
- bringing a weapon with intent to use it.

26. Schools raised a number of issues with researchers, stating that there were sometimes tensions between different approaches to exclusion.

27. Many of those interviewed described a tension between having a fair and consistent approach to the decision making process which is fully shared and communicated with all: pupils, parents and staff; whilst also understanding and responding appropriately to individual needs and circumstances, and therefore, not always applying the same fair and consistent approach in all cases. This can be difficult to explain and justify to all and can result in resentment by pupils, parents and indeed, staff members.

28. Students reported that this can sometimes seem confused:

"Say, for example, that I had a fight with [names child] and then [names second child] also had a fight with him, I'd get excluded and he wouldn't. If you complain about this you get another day for arguing."

(Boy, Year 8, Inner London secondary school)

Another said:

"If they had never been in trouble and then they get into trouble, if you have a fight with them, then you'll be the one to get excluded!"

(Boy, Year 11, Inner London secondary school)

29. Whilst fair and consistent processes are, therefore, to be encouraged, schools recognise that in reality there is a need for flexible systems which are able to fully respond to individual pupil needs and circumstances, and which work "in the best interest" of the individual child.

30. Schools interviewed for the research said, for example, that the:

"... school deals with each child on an individual basis and likes to show compassion if they know there is other evidence that could lead to the child's disruptive behaviour such as an incident at home. For example: a child was displaying unusually disruptive behaviour in lessons and on investigating the full picture, the school discovered that the mother was waiting for a diagnosis of cancer. In this case the school would not disclose confidential information but would explain certain issues to the teacher so that they can manage the child's behaviour."

(Focus Group, School 4)

31. Another tension senior leaders within schools identified to researchers is the extent to which the decision making process takes into account the actions of the staff members involved, as well as the actions and behaviours of the pupil. For example, one school explained they would take into account to what extent:

“... has the member of staff that’s dealt with the particular behaviour contributed to the child’s downfall, or have they actually done everything they can to prevent an incident occurring.”

(Head teacher, School 1)

32. This is a difficult issue, and has an impact on the decision making process. Incidents are reviewed and addressed differently according to the impact that the staff member involved has had, including whether they have contributed to or escalated the behaviour which led to the exclusion.

33. The young people we spoke to in the course of this Inquiry largely supported their schools’ policies on behaviour and exclusions. They felt, however, that these policies were not always consistently applied, with some teachers having different expectations of them and some being more ready to use sanctions than others.

“It’s stupid. They all do it differently. You know that you can have a laugh with [named teacher], but if you say the same thing to [a different named teacher] you’ll get a detention.”

34. By and large, young people who contributed to the Inquiry accepted the need for exclusions to be used as a last resort, particularly for violent behaviour. However, they did not feel that fixed-term exclusions were a meaningful sanction in terms of changing behaviour. Those who had been excluded for short periods themselves described it as not working. One young person who was repeatedly excluded for short periods said:

“It doesn’t work, because whenever I got excluded, I just got sent home and stayed at my mum’s place and played the PS3 and stuff.”

35. Another group of young people submitted written evidence to the Inquiry stating:

“Excluding kids just gives them extra holidays. It doesn’t help.”

Yet another said:

“What happens is that kids get sent home for a few days then they come back. Some kids do it on purpose. They want to be excluded because the work is too hard.”

One member of Amplify also described almost being envious of those who were excluded for short periods:

“Obviously you would worry about missing important work and things, but you look at people who get sent home – watching Jeremy Kyle and texting their mates – and you think: ‘alright for some’.”

(Girl, 14, Amplify member)

36. Interestingly, this view was shared by the school leaders interviewed by CCU. One school leader said that:

"... fixed-term exclusions are a waste of time: sending them into a community where they find it hard to be received. It compounds the real problems and does not help them to face up to the consequences of their behaviour."

37. Recognition of the ineffectiveness of fixed-term exclusions as a strategy or approach to resolve a pupil's difficulties was expressed within the responses gathered, with schools identifying that they have "moved away from fixed-term exclusions because they didn't alter behaviour."

38. Another head teacher said:

"... it is regrettable that [fixed term] exclusion is the summit of your sanctions. It is not an effective tool, ... not convinced that it is an effective tool in changing the mind-set of children who have accrued lots of fixed-term exclusions. For the sorts of children accruing exclusions, it loses impact and just becomes a totting up exercise until you can move them on. Just becomes a way of evidencing."

39. The young people from Catch22 who steered the Inquiry came to a similar conclusion. They said very clearly that fixed-term exclusions were rarely, if ever, effective in changing behaviour. Instead, they said that a mixture of restorative programmes, internal isolation and removal of privileges (such as break time or the ability to participate in extra-curricular activities) were more likely to be effective punishments.

40. Whilst there was a large degree of consistency between schools regarding the thresholds and decision making process for excluding a student, there is one notable exception: we have found considerable disagreement over whether it is acceptable for schools to exclude children for breaches of uniform policy. We have heard from a number of schools which act in this way and the young people we spoke to in these schools were broadly supportive of this policy. One told us that:

"It helps to look smart, and people who don't aren't representing the school well."

Another that:

"It's fair enough. People know the rules, and it's not fair to have one rule for one person and other rules for other people."

41. However, other young people from different schools have different views, saying that:

“It’s not bothering anybody else, and it doesn’t mean I can’t learn. So why do I have to go home?”<sup>1</sup>

And

“It’s just stupid. I mean, why do they care how I dress?”

42. The current Statutory Guidance on exclusions states that:

“Exclusion should not be used for [...] breaches of school uniform rules or rules on appearance (for example, relating to jewellery, body-piercing, hairstyles, etc.), except where these are persistent and in open defiance of such rules.”<sup>2</sup>

43. This stipulation has been removed from the draft revised guidance issued for consultation in December 2011.

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1 Amplify member.

2 Improving behaviour and attendance: guidance on exclusion from schools and Pupil Referral Units – 2008. DCSF.

## Thresholds for exclusions

1. The Inquiry's findings demonstrate that, while there is a degree of consistency regarding exclusions between schools, there is still more to be done to achieve a consistent approach which is fair to students.
2. All schools are different and need to manage their circumstances in the best way possible, without unnecessary regulation by Government. Indeed, the evidence presented to this Inquiry indicates that schools can, and should, address issues of behaviour and discipline in a flexible manner. A "one size fits all" set of thresholds for exclusions, or for any other behaviour management systems in schools, is not appropriate.
3. However, it is against the principle of natural justice that the same behaviour by students can result in significantly different consequences from one school to another. Behaviour which would lead to fixed-term exclusion in one school, would not lead to any disciplinary consequence in another. This lack of consistency between schools may give rise to accusations of discrimination on the basis of ethnicity or gender. The removal of education from a child, even if only for a few days, is a very serious matter, which should only ever be a last resort. The evidence shows that this is generally how exclusions are used. However, the same evidence shows that there are significant exceptions to this rule.
4. **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, but with an expectation of clarity and transparency.**
5. **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.**

### Protection for particularly vulnerable groups

6. There is a compelling case for special protection for certain particularly vulnerable groups of children: in particular, very young children and those with a statement of SEN.

## Primary school age children

7. Many of those submitting evidence of this Inquiry, including teachers, head teachers, children and young people, academics and community groups, have requested the prohibition of permanent exclusions for primary school age children. In the view of these contributors, children under the age of 11 rarely, if ever, exhibit behaviour which would necessitate permanent exclusion. Moreover, they state that permanent exclusions for primary school age children are usually a sign of ineffective teaching and school leadership. They feel that a properly run school with effective teachers should be able to manage the behaviour of these children. This may be with a range of in-school support that provides for, and meets the needs of, these challenged young people, or with external support for extreme cases.
8. The fact that permanent exclusions are relatively rare in primary schools (only 620 permanent exclusions out of the 5,740 reported in England in 2009-10 happened in primary schools)<sup>1</sup> would appear to support this proposition. As would the data from the DfE showing that primary schools with ineffective behaviour management (rated “Satisfactory” or “Inadequate” by Ofsted), permanently excluded five times as many pupils as those rated “Outstanding” or “Good”<sup>2</sup>. In 2009-10, 220 children in Key Stage 1 were permanently excluded from schools in England.
9. Many primary schools already operate a “zero exclusions” policy, either officially, through written behaviour policies; or in practice. For example, one primary school head teacher we visited in the South of England said:

“I have never permanently excluded a child in 12 years here, and I really can’t think of any circumstances where I would. I’m not going to own up to that publicly though, because the children and their parents need to think that the ultimate sanction is there.”
10. The same head teacher told the Inquiry:

“... we actually I think, ‘if I exclude you, where do you go next, and you’re only 8’.”
11. For primary school age children, there should be a very strong presumption against permanent exclusion, unless circumstances dictate, and strong evidence supports, that no alternative course of action is possible. However, a total prohibition on permanent exclusions in primary schools would not be appropriate in all cases. We are aware that, in very extreme circumstances, it may be appropriate for a school to remove a child, in order to protect the safety of others in the school. Where pupils are being threatened with knives in primary school settings, for example, we would not wish to advise that regulations should prevent a head teacher acting to preserve a safe learning environment. Permanent exclusion should, however, be a very last resort, as it should be in all cases, regardless of the age of the child.

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1 Statistical First Release: Permanent and Fixed Period Exclusions from Schools in England, 2009/10. DfE, July 2011.

2 Data analysis conducted by DfE for this Inquiry.

12. The situation is different for children in the Early Years Foundation Stage (ie Reception classes in schools) and Key Stage 1. The evidence indicates that for children of this age (between age four and seven), the circumstances outlined above rarely, if ever, occur. Permanent exclusions at this age are extremely rare – only 220 in 2009-10 (less than one pupil in every 20,000 of the cohort)<sup>1</sup>.

13. In a report on exclusions of this age group in 2009, Ofsted found that:

"All the schools visited had had experience of young children who showed challenging behaviour or a degree of complex behaviour that stopped them from participating positively in learning. The schools' responses were determined by a combination of factors: their philosophy, their capacity and, sometimes, the support received from the Local Authority and other agencies."

14. They found that:

"Effective management of low-level disruptive behaviour was a key feature in all the schools that had succeeded in reducing the use of exclusions with young children or that did not exclude children of this age."

15. Almost all of the schools Ofsted visited had effective written policies for controlling behaviour, but:

"... their effectiveness, however, was determined by the degree to which the head teacher, senior leaders and governors had helped staff to have high expectations based on a clear set of values, clearly communicated and applied consistently. Where this was a strong feature, schools were able to reduce exclusions or cease to use them as a means of controlling pupils." <sup>2</sup>

16. In the course of this Inquiry, no evidence from any source has been submitted that supports excluding very young children, even in extreme circumstances.

17. For these children, extremely disruptive or even violent behaviour can of course occur, however young they are. However, it poses less risk to others (primarily because of the size of the children concerned) and is often a symptom of SEN, a family difficulty, or a more complicated developmental issue. In addition, as set out above, Ofsted found that the need for exclusions can generally be removed by focusing on strategies to improve behaviour and reduce low-level disruption, and by working with parents, carers and other agencies to support the family.

18. Schools should see examples of such extreme behaviour by very young children as a symptom of the bigger issues to be addressed, not simply a problem where the child is blamed. For extreme cases, where the child is affecting others' right to an education, additional support should be available, but within the school setting.

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1 Statistical First Release: Permanent and Fixed Period Exclusions from Schools in England, 2009/10. DfE, July 2011.

2 The exclusion from school of children aged four to seven. Ofsted, 2009.

- 19. 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.**
- 20. No primary school should permanently exclude a child in Reception or Key Stage 1.**

## Children with a statement of SEN

21. Children with a statement of SEN are particularly vulnerable. As a result of their difficulties, they are often least able to uphold their own rights, and the education system has long struggled to meet their needs. They are 2.4 times more likely to be permanently excluded from school than the national average, and eight times more likely than those with no SEN. This is despite the fact that, in the process of getting a statement of SEN, the personal and educational needs of the child will have been carefully assessed, and matched with a school. Indeed, the school they should attend has often been specified on the statement.
- 22. 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.**
- 23. 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.**
- 24. 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.**

## Equality

25. As set out above, 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.

26. 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.

27. At our request, the DfE has carried out analysis of available data to demonstrate the relative importance of these characteristics.

28. To see which of these factors are most associated with being excluded, the likelihood of being excluded was modelled using the logistic regression method on the pupil characteristics considered above. This technique shows whether the differences in exclusion rates can be statistically proven to be associated with a single characteristic, or a combination of characteristics. For example, mixed White and Black Caribbean pupils have higher than average eligibility for free school meals. Pupils from this ethnic group also have higher than average exclusion rates. This analysis helps isolate which factors – ethnicity or free school meal eligibility – can be judged responsible for the increased odds of a child being excluded.

29. The models were run separately for primary, state-funded secondary and special schools when assessing characteristics associated with fixed-term exclusions. For permanent exclusions, this was only possible for primary and secondary schools due to the small number of permanent exclusions in special schools.

30. The following charts show the individual effect on the odds that each characteristic has on a child of being excluded, while holding all other characteristics constant and equal. A value greater than 1 implies an increased likelihood of a child with that particular characteristic being excluded. A value of less than 1 implies a reduced likelihood of the child being excluded holding all other characteristics equal.

31. The effects shown in the charts are all relative to a child with the following reference characteristics:

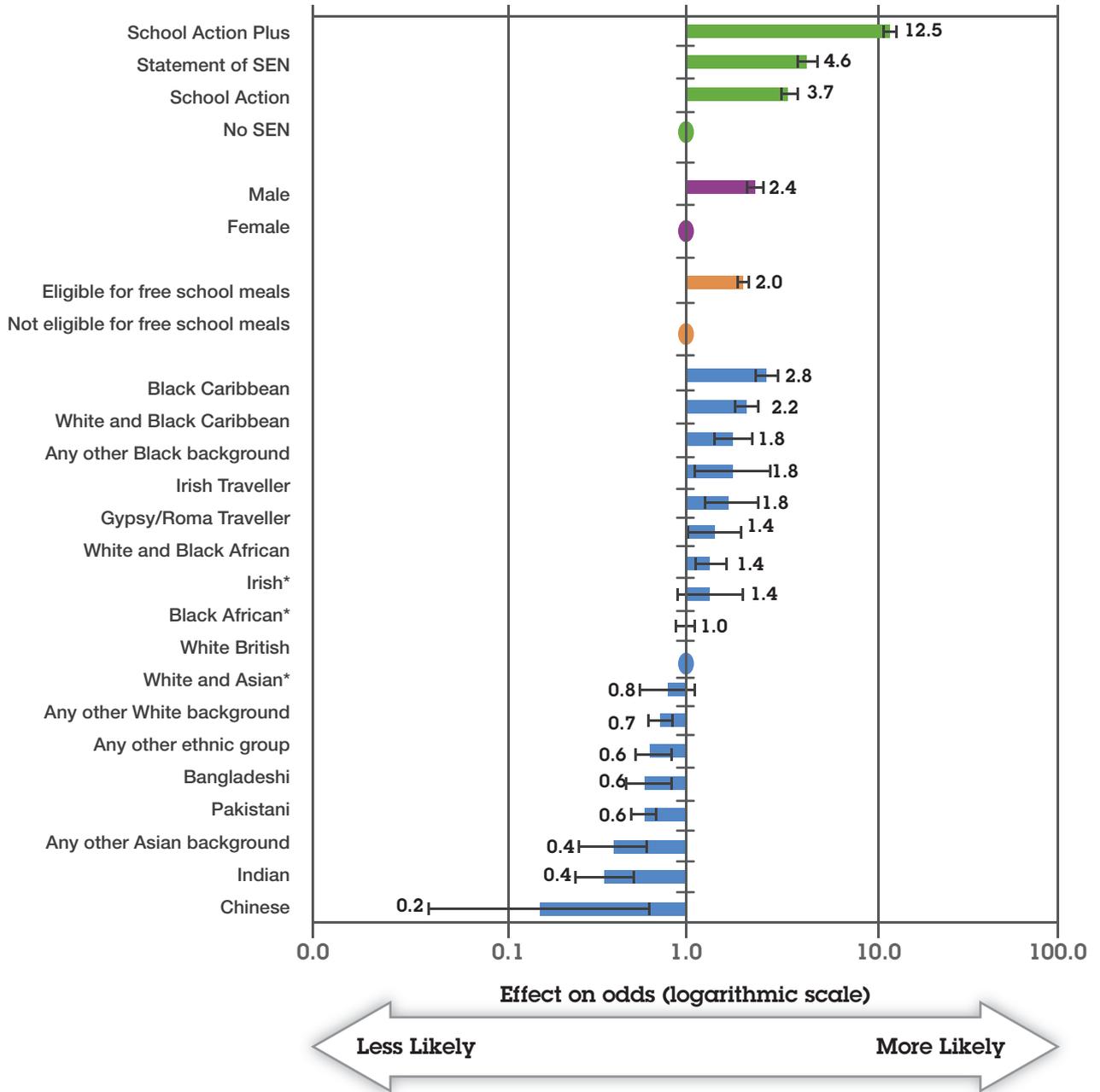
- female;
- White British;
- no SEN;
- not eligible for free school meals.

32. For example, the figures in chart 1 show that a pupil who was male, yet held the other reference characteristics listed above, would be 2.4 times more likely to receive a permanent exclusion than a female who held the same characteristics. A pupil eligible for free school meals, with all other characteristics remaining constant, is 2.0 times more likely to receive a permanent exclusion than a pupil who is not eligible for free school meals but otherwise has the same characteristics.

33. It is possible to convert the probabilities shown above into probabilities of receiving a permanent exclusion for pupils with particular combinations of characteristics from the model. The individual effects are multiplied together to find an overall effect which is then converted to a probability.

### Chart 1: All schools: Permanent exclusions

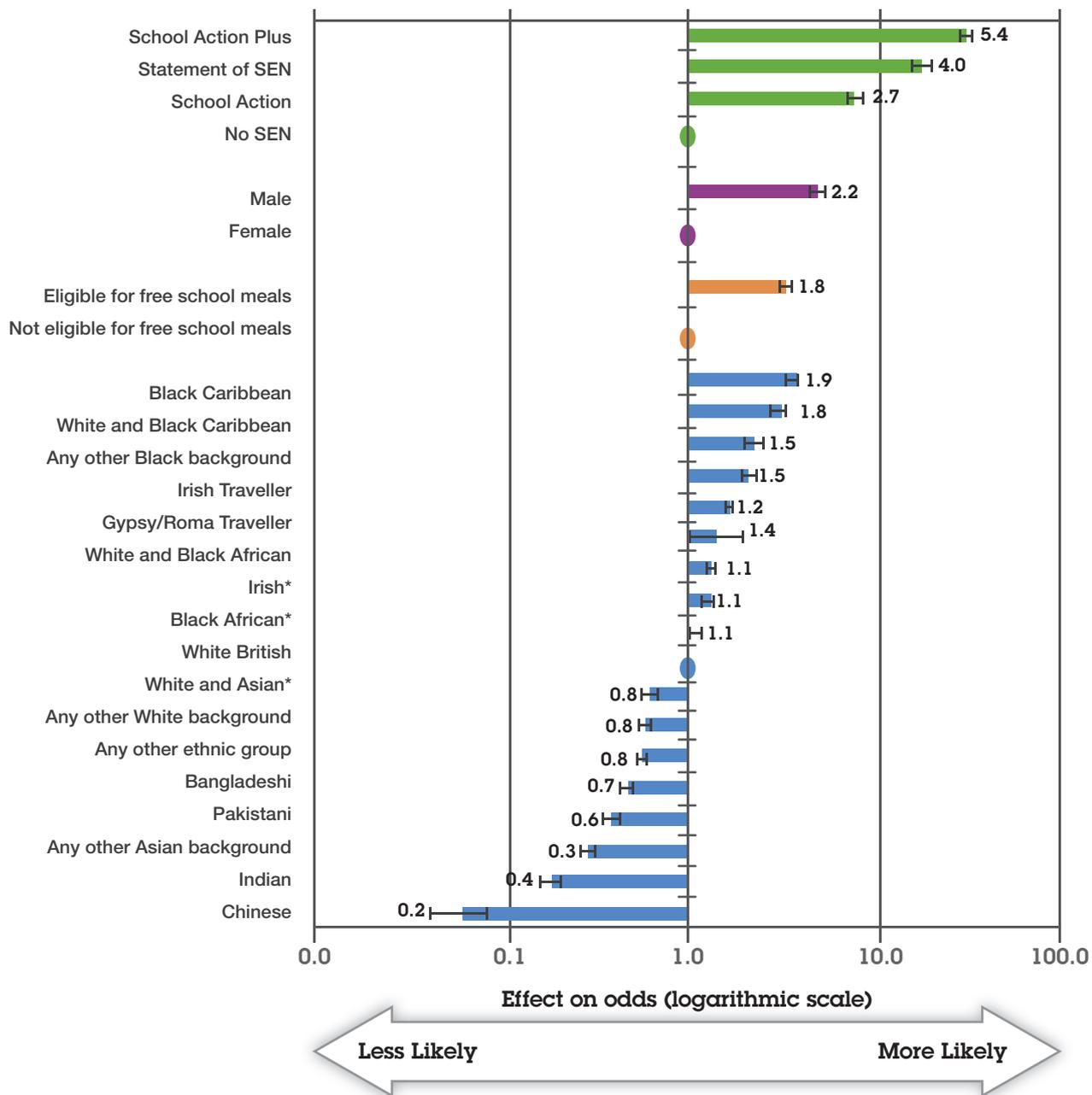
The effect of various pupil characteristics on the odds of being permanently excluded in all schools (2009-10)



Source: School Census 2011.

## Chart 2: All schools: Fixed-term exclusions

The effect of various pupil characteristics on the odds of having a fixed term exclusion in all schools (2009-10)



Source: School Census 2011.

34. The strongest predictor of being excluded from school, either permanently or on a fixed-term basis, is having a SEN, particularly at School Action Plus level. This is followed by being Black Caribbean (for permanent exclusions) or male (for fixed-term exclusions).
35. To illustrate how this 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 as each 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.
36. 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.
37. To add a third hypothetical child, Joe is White British, has SEN at the School Action Plus level, and is on free school meals. Joe is 60 times more likely to be permanently excluded than Jill, but 2.8 times less likely than Jack.
38. The four ways in which Jack, Jill and Joe differ – ethnicity, educational need, gender and relative poverty – are connected. It is well recorded for example, that boys are more likely to be diagnosed as having SEN than girls, and that children in poverty are also more likely to have a SEN. By the same token, children from some communities, including, but not only, Black Caribbean backgrounds, are more likely than their peers from other groups to live in poverty, and to have a SEN. Charts 1 and 2 demonstrate how these characteristics interact in the life of the child.
39. Further, it appears that 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 from ethnic groups with above-average exclusion rates, and the likelihood of children from those groups being excluded. In other words, is (for example) a Black Caribbean child more likely to be excluded if they are one of very few such children in a school, or if the majority of pupils in the school are Black Caribbean. Charts 3 and 4 show the results of this analysis.

Chart 3 – Permanent exclusions

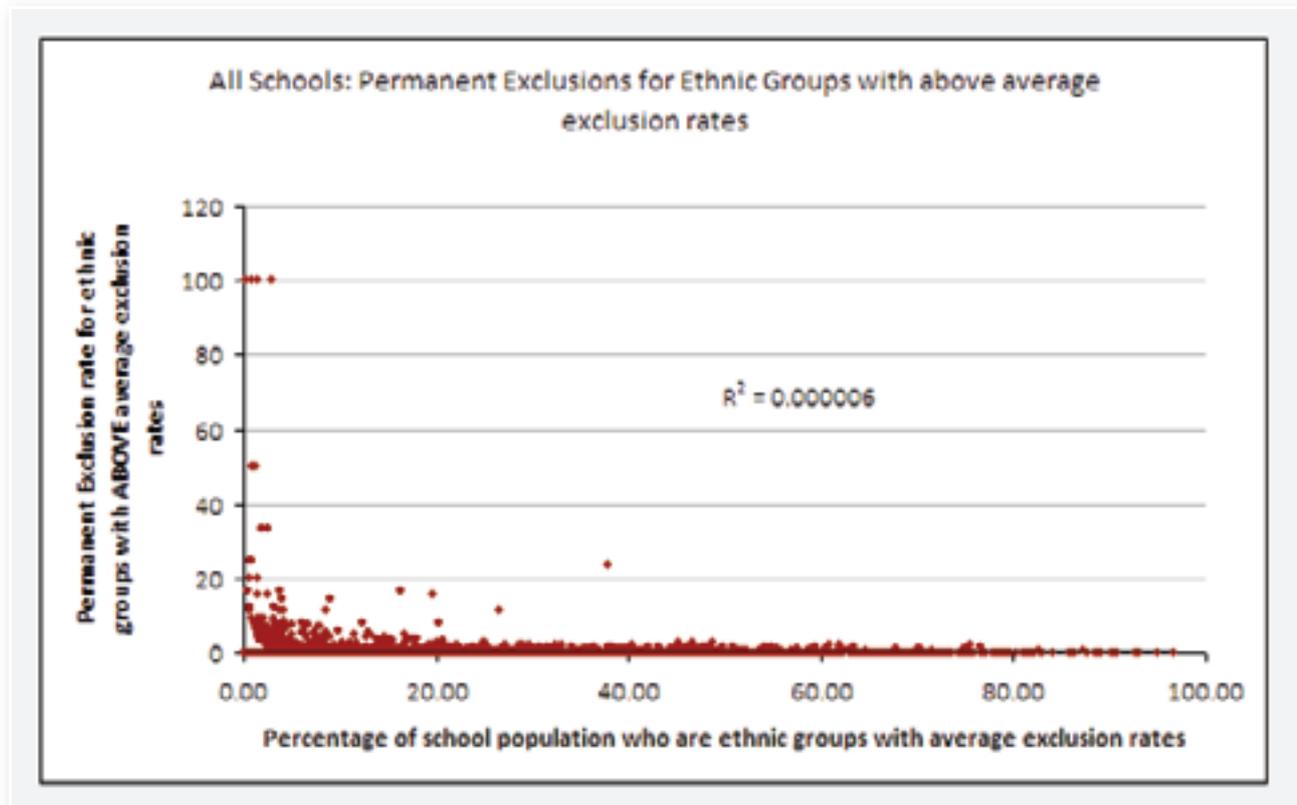
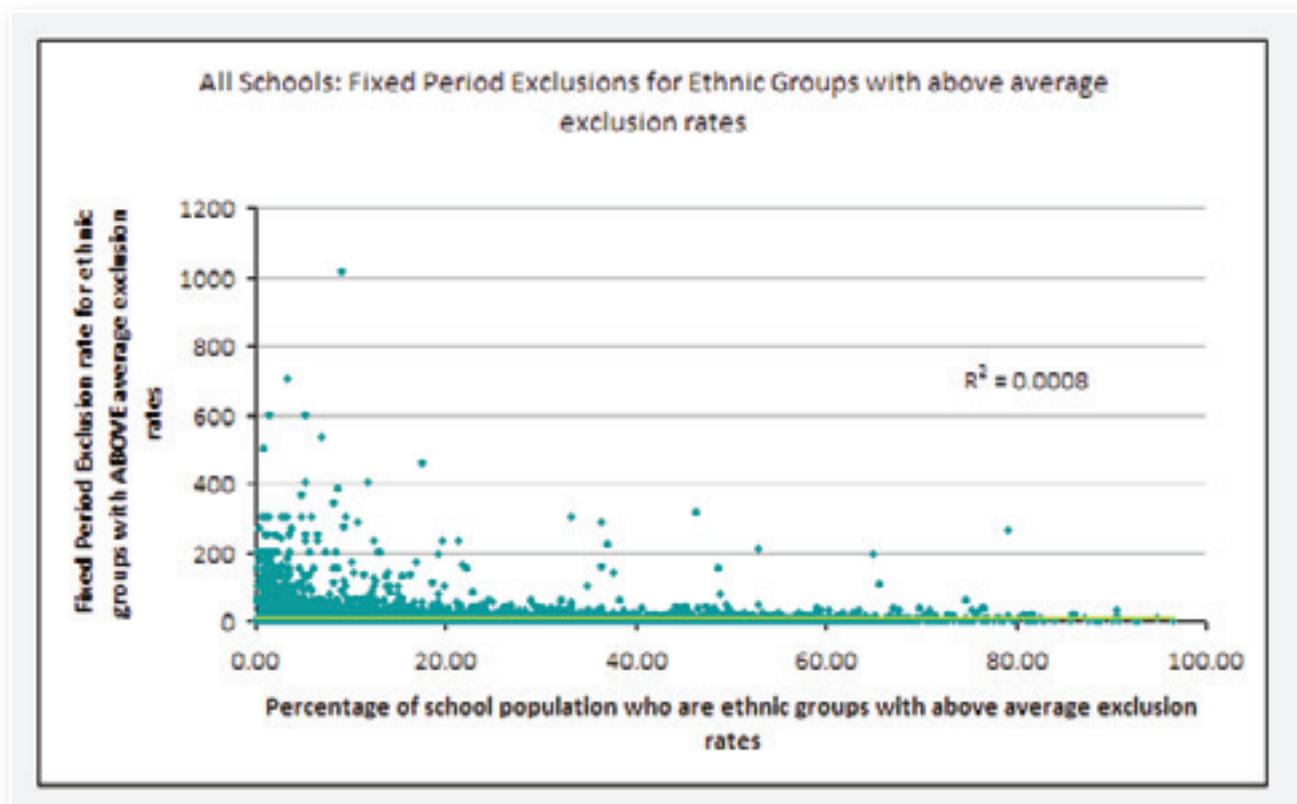


Chart 4 – Fixed-term exclusions



40. These data show that, for both permanent and fixed-term exclusions, young people from ethnic groups with above-average rates of exclusion are most likely to be excluded when there are relatively few of them in a school.
41. 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. This should change now. All those in the education sector should work together to address these inequalities, as outlined elsewhere in this chapter.
42. Although they are connected, these four kinds of inequality must be discussed separately. Each has distinctive features. A programme to reduce child poverty will not automatically deal with all the challenges connected with special educational needs, nor with all of those connected with gender or ethnicity. By the same token a programme aiming to raise the achievement of children and young people from Black Caribbean communities will not automatically help other communities.
43. Evidence submitted to the Inquiry focused almost exclusively on ethnicity and SEN as the prime drivers of inequality in the exclusions system. These characteristics are examined below.

# Ethnicity

1. “Children of West Indian parents,” declared an influential report in 1969, “the largest of all the immigrant groups, have been a source of bafflement, embarrassment and despair in the education system... They have often presented problems which the average teacher is not equipped to understand, let alone overcome.”<sup>1</sup>
2. Over the 40 years since these words were written, there have been improvements in the lives and education of young British people of Black Caribbean heritage. Attainment gaps have been closing slowly, and there is less “bafflement, embarrassment and despair.” But young people of Black Caribbean heritage, or of mixed Black Caribbean and White heritage, are still many times more likely than others to be excluded, and there is still a widespread perception amongst parents and community leaders, put to this Inquiry in different parts of England, that the causes lie in practices, routines and expectations in schools.
3. This view was also presented in evidence to the Inquiry by academics, notably Professors David Gillborn, Audrey Osler and Carl Parsons in oral sessions, and Professor Gus John in writing.
4. Professor Carl Parsons of the University of Greenwich, told the Inquiry that:

“Head teachers say things like ‘We’re colour blind. It’s their behaviour.’ When confronted with not just these two kids, two Black kids this year excluded, but over the last three years, guess what, six? The school’s attainment levels for Black Caribbean kids are at this (diminished) level over the three years, pretty well unchanged, and exclusion remains the same, yet they will still be steadfast [that there is no issue] which does seem to point to a racist dimension.”<sup>2</sup>
5. Professor Parsons and others suggested that this related to a reluctance to directly address issues of race in the education system, with either pupils or professionals.
6. Dr David Gilborn reported that:

“A Department for Education sponsored project ... looked at schools which were over-excluding Black kids. During the research, several of the schools were inspected. Not one inspection report mentioned the fact they were over excluding Black kids, even though some reports included statistics. That’s evidence of what we hear when we talk with inspectors, which is that often many of them don’t have specialist training in race. Race is an incredibly delicate issue. It’s highly politicised, and they just don’t want to put it in the report.”
7. And that:

“If you adopt a supposedly colour blind approach what happens is that, behind the scenes, you have racialised outcomes.”

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1 Rose, E.J.B. et al. (1969). *Colour and Citizenship: a report on British Race Relations*. Oxford University Press, 1969, page 281.

2 Oral evidence to the Inquiry, December 2011.

8. Several groups of parents, community leaders and teachers proposed that increased exclusions of children from these ethnic groups is due to an inadvertent racism in the education system. We also heard from community groups in different locations, that their perception is that ethnicity, as well as gender and SEN, play a part in exclusions. Their perception is that certain teachers and school leaders treat certain pupils – Black boys in particular – differently, and are more ready to exclude them. One told us:

"Lots of evidence already exists regarding exclusions. There is nothing new in this debate. But despite all we know nothing has been done about racism in the system."

9. One teaching union has expressed similar concerns, and proposed that it could be addressed by including further content in Initial Teacher Training (ITT) or Continuing Professional Development (CPD) for teachers. Specifically, this union would welcome training for teachers (who are disproportionately White, middle class and female) on inter-cultural understanding.
10. Alternative views to these stark statements were not put to the Inquiry. They do, however, exist, though they are in a marked minority. One educationalist, himself of Black Caribbean background, writes:

"What we now see in schools are children undermined by poor parenting, peer-group pressure and an inability to be responsible for their own behaviour. They are not subjects of institutional racism. They have failed their GCSEs because they did not do the homework, did not pay attention and were disrespectful to their teachers. Instead of challenging our children we have given them the discourse of the victim – a sense that the world is against them and they cannot succeed."<sup>1</sup>

11. In 2006 a report compiled and published by the Department for Education and Skills (DfES) weighed the conflicting views which exist about the reasons why young Black people are disproportionately excluded from school. It concluded as follows:

"In-school and out-of-school factors... make a contribution to the picture of Black exclusions. However, in seeking a solution to the exclusions gap, a focus on out-of-school factors has very real drawbacks (lack of evidence base, risk of locating the problem with Black communities and thereby excusing inaction by the system). Consequently, a focus on in-school factors seems preferable."<sup>2</sup>

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1 Sewell, A. (2010). Master class in victimhood. Prospect, October 2010, pp. 33-4 (p. 33).

2 Wanless, P., Dehal, I. and Eyre, R. (2006). Getting it, getting it right: exclusion of Black pupils: priority review, p.13.

12. The report concluded that a key essential concept is institutional racism. Its explanation of the concept was as follows:

“Decisions made by people who themselves may not be consciously racist have the unintentional and cumulative effect of producing a racist outcome (one that has a disproportionately negative impact on one or more ethnic groups). Properly understood, institutional racism is not such a ‘scary’ thing for an institution to admit to. Admitting its existence is merely an acceptance that the institution is subject to the same sub-conscious conditioning as the rest of society.”<sup>1</sup>

13. The report listed both the features of, and the factors which militate against, good practice in reducing exclusions. It cited, in this latter respect, “a general tendency towards ‘one size fits all’ approaches, which do not recognise issues specific to sub-groups of the cohort”, and “an assumption that universal policies (for example, targeted at exclusions per se, or at socio-economically deprived groups) will deliver equal outcomes for all ethnic groups.”

14. Evidence presented to the Inquiry, supporting the views of the academics who gave us formal evidence, indicates that schools do not routinely consider their duties under equality legislation when making decisions about exclusions. These duties, where they are considered at all, are not generally related to behaviour issues, or to exclusions. Rather, they are linked to issues such as admissions policies, or the design of curricula.

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<sup>1</sup> Ibid, p. 26.

## SEN

1. Many who gave us evidence have suggested high rates of exclusions for children with SEN may be due to their having challenging behaviours which are assessed as Behavioural, Emotional and Social Disorders (BESD) – a category of SEN. They suggest these children, often classified as being at the School Action Plus level of the statutory SEN Code of Practice, would be expected to be many more times more likely to be excluded than their cohort given that their SEN is defined by their challenging behaviours.
2. Equally, others, including the Association of Educational Psychologists and the Special Education Consortium, suggest many schools find it difficult to manage the behaviour of children with other special needs, particularly those on the Autistic Spectrum. Some witnesses, and many of those we met on visits for this Inquiry, suggest schools exclude these children as a means of securing specialist provision or support.
3. Figures collected by the DfE bear this out for children who have received fixed-term exclusions. Those with BESD are by far the most likely to be excluded<sup>1</sup>. However, these data are not published as part of the annual exclusion figures, and there is no evidence to suggest that they have influenced policy making. Equally, these data do not publish similar statistics for permanently excluded children.
- 4. To allow strategies to be put in place to address differential rates of exclusion, the DfE should publish these data as part of its annual return on exclusions for both fixed-term and permanent exclusions.**

### Schools' awareness of equality issues

5. Schools visited in fieldwork sessions, and those investigated as part of the research by CCU, typically spoke of "treating each case on its own merits" or "emphasising consistency".
6. Where there was a limited awareness of having to pay due regard to issues of equality, the situation is mixed, with schools more likely to take some characteristics into account than others, presenting an immediate issue of inconsistency across the system.
7. In particular, schools have some awareness of the need to have some regard for the implications of particular needs (particularly SEN) when considering approaches to dealing with children and their behaviour. One head teacher told CCU researchers that:

"We would look at whether the child has any SEN that would need to be taken into consideration, eg: there is a Year 10 boy with ADHD who is not taking his medication at the moment, and we are therefore taking that into consideration when making a decision."<sup>2</sup>

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1 Special Educational Needs Information Act: An analysis. DfE, 2011  
[www.education.gov.uk/rsgateway/DB/STR/d001032/osr20-2011.pdf](http://www.education.gov.uk/rsgateway/DB/STR/d001032/osr20-2011.pdf)

2 Link to annex of CCU research.

8. Another told researchers that:

“If I thought it was a student with special needs meant they couldn’t control that and they didn’t have a choice in their reactions, we would find an alternative way of dealing with it.”

9. However, for other schools, consistency for all pupils, including those with SEN, was more important. One school leader told CCU that:

“... it can often be difficult dealing with SEN students but the school needs to be seen as treating all children the same.”

10. Another that:

“... if pupils realise that a child is treated differently, there comes a point when this undermines school systems.”<sup>1</sup>

11. There was a general awareness that pupils with SEN have particular needs, and that it is the responsibility of the school to ensure that they are working positively to implement strategies and approaches to support the pupil. However, the extent to which this would influence a decision over whether to exclude varied considerably and unacceptably.

12. One school, which had a “zero exclusion” policy, discusses situations where pupils may display inappropriate behaviours, firmly placing the responsibility for that behaviour with the staff rather than identifying the child as “the problem”:

“It is our problem – we solve problems. Any problems displayed by a child means we haven’t got something right.”

13. The needs of pupils who are Looked After Children (LAC) were also highlighted in the CCU research. Schools told researchers that:

“The school has support clubs for LAC children and often arrange six day breaks to work on a one-to-one basis with these children. Some LAC students cannot cope with normal lessons so have out of school and nurturing provision.”

“Often Looked After Children are left to languish for months after being excluded as it is difficult to place them and this is not ideal for the students as not only is their schooling disrupted but also their confidence and social awareness and social skills... Adults in the school will work with the children so they have an understanding that they are wanted and not rejected by the adults.”

“Looked After children are not excluded, alternative provisions are made if it’s deemed to be fitting for an exclusion, but you don’t exclude Looked After Children ever.”

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1 Ibid

14. However, while researchers found that many teachers recognised the particular needs of children with SEN and LAC, the situation was less positive for other groups who are disproportionately likely to be excluded. "Colour blindness" was a particular issue, one we found mirrored in the fieldwork undertaken for this Inquiry.
15. An online survey reported that factors related to whether the child had SEN or a disability, and if they are a LAC were very important in the decision to exclude (68.7 per cent of respondents for SEN, and 76.7 per cent of respondents for LAC). However, the picture for pupils from ethnic minority groups was much more mixed, with 25.4 per cent of respondents thinking that this was always taken into account, 22 per cent believing that it was occasionally taken into account, and 35.6 per cent reporting that this factor was never taken into account (17 per cent gave a "don't know" response to this question). As the equality duties for schools are both clear and binding<sup>1</sup>, such figures are a cause for concern.
16. Throughout all the school visits made for this Inquiry, no school reported they took into account any other relevant characteristics (primarily gender and ethnicity) when looking at decisions to exclude, or at the contents of, or any changes to, behaviour policies which inform these decisions. In fact, the opposite was at times true, with three of the schools visited having behaviour practices which appear discriminatory, and are contrary to schools' legal duties. These include school rules on hair length which applied to boys, but not to girls; or which related to hairstyles much more likely to be worn by one ethnic group. In both cases, breaches of these regulations could lead to immediate short-term exclusions, without any notice given. Students were not allowed back into school until hair had been cut – meaning that these exclusions could be indefinite. Such conduct by schools is not permitted under the current exclusions guidance. It is illegal. It is directly contrary to schools' Equality Duties under the Equality Act 2010, to the rights enshrined in the Human Rights Act 2004, and the UNCRC.
17. Given the longstanding, and increasing, differences in exclusion rates between different ethnic groups, and between boys and girls, these findings are a cause for concern. The evidence demonstrates that schools are not routinely aware of the legal requirement to have due regard to gender and ethnicity. This Inquiry has focused solely on exclusions but has seen no evidence of the situation being different for other issues.
18. The existing Statutory Guidance on exclusions reminds schools of their duty to have due regard to the equality of children with protected characteristics under the Equality Act 2010. We welcome the fact that this requirement is also included in the new draft guidance for schools. However, the evidence we have received, and the continuing national data showing higher rates of exclusion for children with some protected characteristics, indicates this is insufficient.

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<sup>1</sup> See in particular sections 84-89 and 149-157 Equality Act 2010 (c.15) and the Equality Act 2010 (Specific Duties) Regulations 2011.

**19. 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 and bound by the same duties should consider how best to address these differential rates of exclusions in their own work in implementing these new duties. Only by concerted effort from a position of honest ownership of the difficult issues entailed can these gaps be closed.**

20. 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. An assessment of compliance with these duties should form part of how Ofsted inspect schools.**

21. It is of course correct that, in individual cases, the facts of the case should decide the outcome. Most schools only exclude a very small number of students in any given year, and therefore, it is difficult for them to draw any conclusions, or indeed lessons, from these small numbers. However, given the significant persistent differences in exclusion rates across the system, schools, all school operators, local and central government all have a responsibility to act on this issue in the context of their own responses to the Equality Act requirements. All such bodies should explicitly address inequalities in exclusion rates in action planning for fulfilling these duties. This issue has existed for far too long. There is no excuse for allowing it to continue.

22. Specific duties under the Equality Act 2010, once fulfilled, promote and facilitate good practice and help address barriers to its adoption. It is essential that inequality in school exclusions should be tackled by all education providers as a matter of urgent priority.

## Prevention of, and alternatives to, exclusion

1. This chapter examines good practice identified by the Inquiry regarding strategies to prevent exclusions. This includes in-school provision and that run by external bodies. It also examines a number of alternatives to exclusion, including pilot activity in progress now and supported by the DfE.

### Strategies to prevent exclusions

2. The Inquiry took evidence regarding two separate areas of potential intervention which could be made to improve behaviour in schools, and thus, to reduce the overall need for children to be excluded from school. These are:
  - strategies schools can use to improve behaviour;
  - interventions in the wider community to support schools in improving behaviour and supporting troubled children and families.

### Strategies for schools

3. There is substantial published evidence that behaviour in most schools is good most of the time. Ofsted inspection reports suggest behaviour in state schools in England is "Good" or "Outstanding", in over 75 per cent of schools inspected<sup>1</sup>. Given that Ofsted disproportionately inspects schools which have previously given cause for concern, or which face ongoing challenging circumstances, it is likely that the figures across all schools would be even more encouraging if all schools were inspected to the same degree. The pattern of statistics on exclusions and standards of behaviour is likely to be more pronounced in future, as Ofsted is expected to focus almost exclusively on lower performing schools, where, as noted earlier in this report, behaviour tends to be less positive and exclusion rates are higher.
4. Research commissioned by the (then) Department for Children, Schools and Families (DCSF) in 2008 showed 94 per cent of parents were satisfied with their child's school, with 74 per cent being either "very" or "extremely" satisfied. While 37 per cent of parents who were dissatisfied with their child's school cited behavioural issues as the reason, this only represents 2.2 per cent of the total sample of parents questioned<sup>2</sup>. The overwhelming majority of parents did not see behaviour in their child's school as a significant problem. Ofsted evidence, collected since that date, has confirmed this pattern.
5. The evidence collected for this Inquiry supports these findings. The schools, PRUs and other educational settings visited were overwhelmingly calm, purposeful, learning environments. That is not to say poor behaviour never takes place in them. However, those learning and teaching in these settings confirmed it is the exception, and is largely managed effectively by school staff, whether teaching or non-teaching.

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1 [www.education.gov.uk/research/data/uploadfiles/DCSF-RW041.pdf](http://www.education.gov.uk/research/data/uploadfiles/DCSF-RW041.pdf)

2 Ibid.

6. One young person told the Inquiry:

“The pastoral staff in our school aren’t teachers, they’re just pastoral. That’s good – it means you can talk to them about personal stuff and it doesn’t come back to you in class”.

(Boy, Year 9, Inner London)

7. There was considerable consensus among those who gave evidence about how best to create and maintain positive learning environments.

8. The favoured approach was summed up in oral evidence to the Inquiry by Sir Alan Steer, who conducted a review of behaviour and discipline in schools for the previous Government.<sup>1</sup>

“It’s not behaviour we should be talking about. It’s learning, and teaching and learning practices in school. [...] I will argue until my dying day that the issue is far more about the quality of learning and teaching with the behaviour being, [...] an indivisible part.”

9. This view was repeated in schools, including several which had previously been judged as failing, but had improved dramatically in the last few years. In each case, successful head teachers stated their focus was on the quality of teaching and learning, alongside clear and consistently applied behaviour and discipline policies and practice. Their view was that in most cases, effective teaching which engages young people and communicates the value of education for its own sake in an engaging way, 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.

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<sup>1</sup> Learning Behaviour: Lessons Learned - A Review of Behaviour Standards and Practices in our Schools. DCSF, 2009.

## Case study – Academy in Outer London

This school was one of the first in England to convert to Academy status, having failed successive Ofsted inspections, and showing little capacity to improve. Behaviour in the school was particularly problematic. The Academy sponsor, which now runs a large number of schools, initially instituted a "small school" model – with teaching being separated into small units, and pupils remaining within each unit, albeit within the same site. This failed to address behaviour. Older students, who were at the school at the time this was tried, told the Inquiry:

"It was madness, people coming in and out of lessons all the time. People showed up when they liked and talked to their mates. Even if it wasn't their class."

Members of staff described students refusing to listen to teachers from other units, and no clarity over which sets of school rules applied.

A new head teacher was appointed, who disbanded the small school model, and instituted a more centralised system. This included a much greater focus on academic attainment, with all students assessed in key subjects on a term-by-term basis, and class setting being adjusted accordingly. This approach sat alongside a strong emphasis on consistency of adults' as well as pupils' behaviour, on adherence to the school's dress code and pupils coming equipped to learn. Since then behaviour and performance have both improved, and the school was recently rated "Good" by Ofsted at its most recent inspection in 2009.

## Case study – Rural comprehensive school in Northern England

This school is much smaller than average, with only around 350 pupils on the roll. It covers a large rural area, and has a catchment area covering over 400 square miles. This school has a pupil population with relatively low attainment on entry due to many higher-achieving children attending nearby grammar schools. It has a higher than average proportion of children eligible for free school meals or with SEN. An Ofsted inspection report in 2006 criticised both the teaching and learning in the school (particularly the fact that teachers had very low expectations of pupils) and the pupils' behaviour, which was often getting in the way of effective learning.

The school had extremely low staff turnover, and had not employed a newly qualified teacher for 35 years. This, along with its physical isolation, led to an overly complacent view of the school's effectiveness among many staff. Many had been using the same lessons for many years, and their teaching style was boring students.

A new head teacher was appointed, who offered robust challenge to complacent members of staff. Over the next three years, all but one members of teaching staff moved on from the school. New policies were put in place, focusing on raising attainment and aspirations among the staff and students. Both staff and the student body collaborated on a behaviour statement for the school.

This school worked hard to raise attainment, alongside behaviour. This approach has paid dividends. An inspection in 2010 rated the school as "Good" and levels of attainment have risen sharply.

The students enjoyed being at school. One told the Inquiry:

"It's good here. Really calm. I like it being a small school too – everybody knows everybody and there's no bother."

(Boy, Year 10)



10. Behaviour policies are clearly important, but from both previously published evidence and that gathered for this Inquiry, appear secondary to ensuring effective and consistent teaching and learning.
11. The quality of school leadership is strongly cited as a key issue, both by those giving evidence, and in published materials. Schools with a strong leadership are demonstrably more able to agree, and implement, consistent behaviour and discipline policies. Students know that behaviour will be managed in the same way by all their teachers, and this leads to greater "buy-in" to the school's ethos (demonstrated by standards of behaviour) than would be the case if teaching was not consistent. In this context, leadership is a characteristic displayed by adults at all levels, and shared with students appropriately. This was summed up by a student in one school who told the Inquiry:

"They'll listen to your opinion more in [names school] than another school would. They would rather talk to you as a young adult, not talk down to you."

(Girl, Year 11, West Midlands)

## The School Workforce

12. A number of witnesses stated a need for greater awareness among the teaching profession regarding the identification of SEN, and of appropriate teaching strategies to manage the behaviour of children with particular types of SEN. Their view was that many exclusions could be prevented by greater awareness of, and skill in dealing with, SEN by teachers.
13. At present, most trainee and serving teachers receive very little initial training or continuing professional development in how to engage children with specific types of SEN or disability. The teaching profession, other than those working with the very youngest children, is also taught little or nothing about brain development, problems associated with developmental delay, or issues such as Attachment in young children. Neither are they taught enough about cultural, ethnic or faith differences among the child population in English schools. Matters of diversity, in cultural and other expectations, are usually touched on briefly in initial training, and as a matter of choice by the professional or the school in the other issues listed.
14. This lack of in-depth training and knowledge presents a serious concern. Almost every school has a proportion of children with SEN. 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, 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 with differing abilities, cultural and relational expectations, may lead – in our view unnecessarily – to confrontations between teachers and children, increasing the likelihood of specific groups of children meeting disciplinary problems, and ultimately being excluded.

**15. The Teaching Agency should include, in the requirements for providers of ITT, 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 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.**

## Wider community interventions

16. Whilst there is much that schools can and do achieve in their own spheres of responsibility, they are not the only element in a longer-term solution for our children. Schools are not islands, but function within a broader community, as do their pupils and families.

17. Young people spend most of their time outside school. Their lives outside often have an impact on their behaviour inside. Most adults would admit that they struggle to keep serious home concerns from affecting their work. It would be unreasonable to expect children to be any different. Even some primary school children were aware that the behaviour of their peers was often a result of issues outside school:

“Some people have a bit of trouble at home and this gets them in trouble at school. Sometimes their anger just picks up because they're like, frustrated or something or maybe it's home problems.”

(Girl, Year 4, South East)

18. There are many explanations for pupils' poor behaviour. Some may be signs of a problem outside school for which the child needs support, including what one head teacher termed “tough love” where necessary, but not explicit punishment. Head teachers and others working in schools stated that often the children who exhibit disruptive behaviour often included those who have caring responsibilities for parents or siblings, for example; or children at risk of abuse or neglect, or who had poor health. These are not simply “problem” children, even if they do often behave in ways which are challenging to teachers and disruptive to learning.

19. Professor Carl Parsons of the University of Greenwich described a lack of connection between the causes of disruptive behaviour and the focus of interventions. He told the Inquiry:

"If you allocate 100 per cent of the cause of any problems across the child, family, school and neighbourhood, then allocate the effort put in in those same four quadrants, what you get is that the majority of the cause is the family but our input is with the child and the school."

20. The Inquiry visited a number of settings where schools work with the whole family, not only the child at risk of exclusion. In many cases, the school leaders there found this vital in improving behaviour. Often, the child's parents themselves had problems at school (sometimes, indeed, at the same school), making it difficult for them to engage constructively. One parent said:

"I was here about 15 years ago, and [names her son's head teacher] taught me. Whenever she shouts at him, I still feel like she is shouting at me."

21. We were told many families have practical problems, often arising from poverty, under- or unemployment and the disruption this brings, or poor housing, rather than simply not being able or willing to engage with school.

22. We spoke to several third sector and legal organisations which offer support to families whose children are at risk of exclusion. These organisations, including School Home Support, Just for Kids Law (a legal charity) and Chance UK, emphasise that schools and children cannot solve the issues they encounter in isolation, but require support from other statutory and voluntary services, and also a schooling and regulatory system that obeys the law and works in the child's best interests.

### **Case study – Chance UK**

Chance UK recruits, rigorously trains and challenges, matches and provides ongoing support for adults who volunteer to mentor troubled and at risk primary school age children in several boroughs in London, and increasingly further afield. Change UK's Director Gracia McGrath describes family situations in which Chance UK intervenes in family dynamics and children's very challenging behaviour through mentoring and strongly presenting alternative models of what caring but disciplined adults should be like in their relationships with children, using this "supported child" model. Chance UK, and the schools which have been close to excluding difficult and troubled children before Chance UK's intervention, have positive proof of change for the better in the lives of both children and families. Without these interventions in difficult, often dangerous, families living chaotic, and sometimes criminal, lives, their evidence indicates that far more of these boroughs' children could be in care, as well as excluded from school.

## Case study – School-Home Support

School-Home Support (SHS) works with 750 schools in England, providing school-home support and parental engagement services. SHS provides immediate improvement support, professional support for pastoral staff, and support, including trained practitioners, inside the school. Particular areas of focus are: attendance/truancy, parental engagement, transition, complex needs and improving behaviour. SHS conducts independent evaluations into the difference the service makes. The core of their service is targeted family support.

SHS worked with Ben (not his real name), a Year 5 pupil with a history of poor punctuality, attendance and challenging behaviour at school and home, who had a detachment from other people's emotions. He witnessed years of domestic abuse. His mother was increasingly anxious about his behaviour and progress. Ben went into foster care when his mother became depressed and needed help for her emotional wellbeing. The SHS practitioner visited his mother and organised a multi-agency meeting. Ben's mother disclosed her emotions about Ben, and the practitioner got support from her GP including counselling for panic attacks and feelings around the domestic abuse. Ben was referred to a paediatrician and systems were devised to get Ben ready and at school on time. Trust has been built between the family and SHS practitioner as actions were followed up between meetings.

Ben returned to his mother following a transition plan with Social Care and Health, school, Child and Adolescent Mental Health Services (CAMHS) and SHS. Ben stayed in school despite 14 fixed-term exclusions and a managed move meeting. He received a diagnosis of Asperger's syndrome and has support from an educational psychologist, a learning mentor and two teaching assistants to support and anticipate anger outbursts. Ben's SATS results have not been impacted despite the exclusions, his behaviour has improved and he is fully involved with meetings. His mum is more positive and was proactive in seeking additional support for the ASD diagnosis. His dad is re-engaged in the process.

23. These third sector bodies and several Local Authorities expressed serious concern about the reducing capacity of these services as a result of reductions in local government and voluntary sector budgets. They report these services as being very stretched even before recent budget cuts.

## Alternatives to exclusion

1. This section examines some different approaches schools have taken to avoid formal exclusions. It is important to state clearly that the good practice approaches outlined in this section are qualitatively different to the informal, illegal exclusions condemned elsewhere in this report. Whilst from a cursory analysis a number of activities described here share similarities with illegal informal exclusions, there are a number of vital differences. The most important of these is that, where they are done well, managed and monitored alternatives to exclusion are formalised, and carried out openly, transparently and in the best interests of the child. They are co-owned, managed and monitored by all the schools in an area, and by school operators across Local Authorities, Academy chains and other authorities.

### Alternative provision within schools

2. A high proportion of the schools visited had provision within school to teach students who are disruptive in class, and whose behaviour has made it extremely difficult for others to learn. This provision varies considerably in nature and purpose, from essentially a "punishment suite", with pupils sitting in isolation and silence, completing traditional punishment exercises (such as lines) for half a day before returning to class, to fully equipped self-contained learning suites, which offer an alternative curriculum for a term or more, supported by good teaching and offering curriculum continuity.
3. The best of this provision offers a high quality, cost-effective alternative to permanent or fixed-term exclusion for students with challenging behaviour. Students value this high quality provision, often recognising that, without it, they would have been excluded. One told the Inquiry:

"Before, I was, like, proper naughty. But when I'm in the unit, I don't really want to, because none of my friends are here. I want to do my work and get back into mainstream [school]. If this wasn't here – I'd have been excluded by now, for definite."

(Boy, Year 11, London)

Another boy in internal provision said:

"It helps me, because [...] I can't concentrate in class. But here, I think because there's only a few of us, the teacher can see what we are all doing and I think that really helps me."

(Girl, Year 10, East of England)

4. There is currently no guidance for schools on good practice in managing in-house 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 reintegrated into the mainstream when their issues have been addressed. In the very best provision, students are taught by, and have regular contact with, the teachers they would meet in class, and are on the same examination courses.
  - The child's underlying behavioural issues are dealt with, not simply “parked”. In some cases, interventions include counselling provided by trained staff, and the use of formally implemented restorative approaches used to confront these 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 opportunities for students to interact with the rest of the school community – at lunchtime and before and after school.
  - The provision is well equipped and is an attractive learning environment. There is no suggestion of this provision being “second best” or undervalued by the school leadership, who are regularly seen in the facilities concerned.
5. These elements represent good practice in all alternative provision.
- 6. 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, who will shortly become responsible for commissioning. 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.**

## Systems of managed moves

7. 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 with a child as a result of the child's behaviour, they will make an agreement with another school or alternative educational setting for the child to move without a formal exclusion going on the child's record.
8. Systems and practice vary enormously. In some, the move is negotiated informally between head teachers, and often consists of a headline-documented exchange of disruptive pupils between schools. In others, there is a more formal and closely peer-monitored process. Clusters of schools, often involving the Local Authority as broker and critical friend, agree both a fair access and a managed moves protocol, which together govern how moves are managed, and ensure no one school is always the recipient of others' problems, and no school walks away from the area's children.
9. Equally, the way in which young people and their parents are engaged in the process varies considerably. In some areas, this is something which is “done to” the student, whereas in others both student and parent are fully engaged in the process, and have the opportunity to influence the decision.

## Case study – Authority C

Authority C is a city in the West Midlands. For the last 16 years it has had no permanent exclusions from its schools. There is a formal partnership between schools, PRUs, providers (including therapies), CAMHS and other health services, the Local Authority and other education providers, including Academies. This partnership is based on collective responsibility for all the area's children at risk of exclusion.

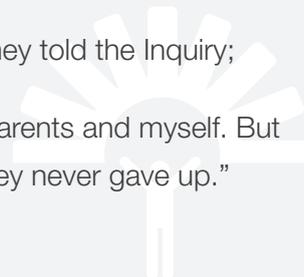
The system depends on partnership and trust between all parties. It is both robust and appropriately challenges practitioners, in part due to the longevity of the group and a low turnover of key leaders. It was initially established at the behest of, and funded by, the Local Authority. It is now self-sustaining. It provides a platform to support and challenge decisions about pupils' behaviour, whilst adhering to a "zero exclusion" ethos. The members – all the schools in the Local Authority area – hold each other to account. The partnership has a "Strategic Heads Group" of head teachers from every phase and type of school, with the aim of preserving the inclusive practice and the notion of "zero rejection". The schools now plan to establish a single purpose Trust which will enshrine and protect the approach for the future.

The partnership has a variety of approaches to match the needs of the children and young people: prevention; repeated opportunities to come back into education; managed moves between schools; onsite provision including of therapies and CAMHS; and effective, multi-agency, integrated case working for young people with particularly challenging issues to address, with all "high-end" agencies, managed by mental health and social care practitioners but also offering schooling, and co-located on a site which is open eight till late 364 days a year. The Local Authority sends no children out of the area for either schooling or specialist mental health care as a result, even those with extremely challenging problems and dreadful histories.

This approach is greatly appreciated by the young people concerned. They told the Inquiry;

"I just made everyone's life around me a bit of a pain, the teachers, my parents and myself. But they never gave up. They always kept trying, and that's a good thing. They never gave up."

(Girl, Year 13)



10. When dealing with managed moves between schools, the responsibility and financial burden of the child remains that of the excluding school until the child is settled in a new environment. It is only at this stage that the child's Unique Pupil Number (UPN) and the associated funding is transferred to the receiving school.

11. In the course of this Inquiry, a number of elements of good practice in managing moves between schools emerged. Where practice was good:
- there was a formalised system (usually through a Fair Access Protocol), which set out clearly the responsibilities of all concerned;
  - schools co-operated, rather than continuing to compete with each other;
  - relationships between head teachers were strong, based on mutual respect. Head teachers supported, and when necessary strongly challenged, each other;
  - children, young people and their parents were involved in decision making, given the opportunity to express their views and have those views taken into account, and expected to reciprocate as part of the meetings concerned;
  - decisions were made collaboratively, in the best interests of the child;
  - both “excluding” and “receiving” schools shared responsibility for the child who was moving, until the point where they were settled in a new environment.
12. Where this good practice exists, it is to the benefit of the children and young people concerned. They make fresh starts in new environments without the stigma of permanent exclusion. Managed properly, these systems are to be encouraged. It is unfortunate that they are often labelled alongside, and confused with, illegal exclusions described elsewhere in this report, both being presented as examples of “sharp practice”. This is unfair on those schools which operate such systems with care, integrity and professionalism.
13. However, where systems of managed moves are not operated according to the principles set out above, there are a number of risks.
14. As managed moves do not operate according to the same regulatory framework as formal exclusions, they do not have the same safeguards against abuse. Well run systems involve young people and their parents in decision making. However, there is no requirement to do this, and where the system is run badly young people may, instead, be coerced into what they are told is a “managed move” but which is no such thing, and is not in their interest. There is also no right of appeal against such a move, meaning it is difficult for any injustice to be addressed.
15. There is no requirement to monitor the characteristics of children moving schools. The authorities visited which operate their own systems were unable to produce such data in response to our requests, and to date, there is no national picture. As a result, it is impossible to know whether the same inequalities – of gender, ethnicity, poverty and SEN – exist as in the system of formal exclusions. Without knowing whether such differences pertain here, it is not possible to address any issues that might arise.

## DfE Exclusion Trials

16. In autumn 2011, the DfE announced a series of trials in six Local Authorities across England. Within these areas, funding, usually retained by Local Authorities to manage provision for excluded children, is devolved to schools. If a school elects to exclude a child, it remains responsible for their continued education, commissioning alternative education from the sixth day of their exclusion. The child's attendance and academic performance will be recorded by the school, and will count towards the school's performance data.
- 17. The principle behind the Government's approach to dealing with exclusions, as demonstrated in the trials, is sound, and builds on existing good practice seen by this Inquiry.** In the course of collecting evidence, field visits took place to two Local Authorities listed in the initial tranche, although one has subsequently withdrawn. A third, which was already operating in a similar way before the Government began the trials, was also visited.
18. From these visits, and from other evidence to this Inquiry, it appears to us to be likely this approach will have a positive impact on several of the concerns set out in this report. In particular, the requirement for schools to act as commissioners of provision for excluded pupils, rather than the Local Authority, as at present, is likely to encourage earlier intervention and reduce the numbers permanently excluded from school. It should incentivise schools to work collaboratively to offer alternatives to exclusion in a geographical area. It should also remove concerns that a particular school might exclude a poorly performing child in order to attempt to bolster its position in performance league tables.
19. Under current plans, as part of the inspection process, Ofsted will inspect the commissioning processes used by schools with any external providers who are taking their students. However, given the overall lack of quality assurance across alternative provision as a whole, and schools' lack of experience in acting as a commissioner of this sort, this is unlikely to be sufficient. **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.** This will not fully address the issues concerning quality assurance of alternative provision discussed elsewhere. However, the clarity the Ofsted judgements give 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 do this, as they will know they are to be assessed on its quality.
20. Taken together, these changes should provide a better deal for many young people who would otherwise have been permanently excluded, or placed in poorer quality alternative provision. The model of funding delegation and school accountability used in the trials encourages schools to act in ways associated with good practice in Local Authorities which already have low exclusion rates.

21. However, we have learned from the Local Authorities involved that they have faced opposition from some schools. This is borne out by responses to our consultation from a number of school authorities and operators, and one teachers' union. Schools have been resistant to being made accountable for the academic results of pupils they exclude. They consider it is unjust for them to have to commission alternative provision without – as they see it – receiving additional resources to do so. One Local Authority reported this has particularly been the case with its non-maintained schools, although we have not been able to confirm this.

**22. Government should continue with these trials, 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.**

**23. 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 trials.** This will ensure that evaluators will be aware of the consequences of schools' actions on their young people, and will be a valuable way of identifying any unintended consequences (for example, an upturn in illegal unofficial exclusions).

24. Given that more responsibility is to be placed on schools as commissioners of provision for excluded students, more support needs to be provided to schools to enable them to do this effectively. The majority of the schools visited expressed concern at the quality of alternative provision available, and the lack of independent quality assurance. This is a legitimate concern. Government should seriously consider drawing up a comprehensive quality assurance framework for alternative provision, based on the Ofsted framework. This is not to say that Government should be responsible for conducting the quality assurance of individual providers. Rather, such a framework should advise schools on good practice, including what to evaluate when commissioning provision.

## Alternative provision

25. In many cases, alternative provision is used by schools as an alternative to fixed-term or permanent exclusion. Alternative provision is a term covering a very broad range of different settings. Some will be run by the Local Authority, others by private or voluntary sector organisations. The "offer" to children and young people varies hugely from place to place, and is often considerably less formal than school. Provision may be offered full- or part-time, and the young person may or may not also attend school on some days a week in addition to the alternative provision on others.

26. It is outside both the scope of this Inquiry, and the remit of the Children's Commissioner, to examine the quality and effectiveness of alternative provision, or its sufficiency. Ofsted's remit includes these tasks.

27. However, the Inquiry visited a number of such settings in the course of evidence collection, and saw a range of practice during these visits. Where practice was good, it shared many of the characteristics of good practice in in-house provision:

- students had curriculum continuity, allowing them to be more easily reintegrated into school;
- links with the "home" school were strong and maintained. Teachers from the school were seen regularly on site. The school was aware of students' progress, and was involved in designing the learning programme for those students;
- the underlying behavioural issues are dealt with, rather than simply "parked";
- support is tailored to the individual, rather than a "one size fits all" approach being used;
- the provision is well equipped and is an attractive learning environment.

28. Where provision was well managed and delivered, it was highly valued by the students themselves. One told us:

"It's the environment. It's a totally different atmosphere. It's not the routine every day. You get to do different things. You get to talk to your key worker. They'll help you through your exams and talk one to one, which helps."

(Boy, Year 8, South East)

29. However, every school giving evidence to the Inquiry said the quality of alternative provision was too variable, and difficult to assess from the outside. This was echoed by a number of alternative provision providers themselves, and by Ofsted in a 2010 report into alternative provision . Schools reported that they "did not know where to start" in commissioning alternative provision for their students, and that it was "often a process of trial and error". (Head teacher, Comprehensive school, London)

30. Students, understandably, varied in their views of the quality of alternative provision. While some valued it, as set out above, others questioned its relevance. One, who had attended Alternative Provision run by the National Association for the Care and Resettlement of Offenders (NACRO) told the Inquiry:

"I don't know what I was supposed to be doing. They put me in a room with all these big men who'd been in prison, and told me to do, like, Year 8 work, when I was in Year 10. I really didn't want to be there."

(Boy, Year 11, Inner London)

31. There was a lack of clarity in the education sector regarding who should be, or is, responsible for the quality assurance of alternative provision. There is no national quality assurance framework, and both Local Authorities and schools were unclear whether they were responsible for the quality assurance of the alternative provision they used.
32. The issue of quality assurance was also key for Ofsted in their report into alternative provision.
33. As set out above, this concern will in part be addressed by Ofsted's role in inspecting all provision commissioned by schools in future. However, a national framework for quality assurance of this provision, as outlined above, will also be necessary to enable schools to carry out this commissioning role better.

## 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.

