

JUSTICE launches report “A new model for challenging school exclusions”



On 11th November 2019, JUSTICE launches its latest working party report, **Challenging School Exclusions**. The report calls for significant change to the current system, including better training for schools on excluding pupils, a new Independent Reviewer of individual exclusion decisions and the possibility of appealing to a judge-led tribunal.

This report examines the processes used to make and review a decision to exclude permanently a pupil in England and identifies serious weaknesses within the current system. The Working Party found that schools have inconsistent understanding of their Equality Act duties, that the governors' board review is ineffective and lacks independence, and that Independent Review Panels do not have adequate powers to reinstate or order alternatives for the pupil, even if the exclusion was unlawful.

The number of permanent and fixed term exclusions in England has risen year on year since 2012, with a rate of permanent exclusions which far outstrips that of Wales, Northern Ireland and Scotland. The effects of exclusion are concerningly inconsistent, disproportionately affecting children with special educational needs and disability as well as those from minority groups. Any exclusion interferes with a child's right to an education and permanent exclusions in particular can have far-reaching and serious consequences for a child's future.

Recent reviews have raised concern about the quality of decision-making and the prevalence of informal exclusions and so-called “off-rolling,” where schools convince parents/carers to withdraw the pupil. The Government-commissioned Timpson review this summer concluded that we cannot be confident that all exclusions are lawful, reasonable and fair.

The Working Party considers that the current system needs wholesale reform, to enable an independent and collaborative approach at the first stage of the exclusion process and legally sound review at the second. The recommendations aim to achieve a fairer system; one that would see fewer unlawful permanent exclusion decisions made and more effective challenge of those that are.

Our 29 recommendations include:

- More robust systems and processes in schools prior to exclusion, including **mandatory training on the law** governing exclusion powers for all teachers in leadership positions; more consistent **consideration of unmet needs**, particularly special educational and health needs, prior to permanent exclusion; and **better communication** between the school, the pupil and the parents/carers by meeting prior to exclusion and listening to the family's side.
- **Introducing** a new role of the specialist “**Independent Reviewer**” to conduct an investigative review into individual exclusion decisions, replacing the first stage review currently conducted by the governing board of the school, which the Working Party concluded is ineffective and lacking independence.
- **Transforming** the inadequate second stage of review, currently before Independent Review Panels (IRPs). The Working Party proposes the IRPs be replaced by a **new First-tier Tribunal (Education)**, which would have **powers** the IRPs do not, including remaking the decision afresh, directing mandatory reinstatement, wiping a child's record of the exclusion and requiring the pupil to be allowed to sit an exam.

Press release

- **Improving** the design, content and availability of **guidance** on the exclusion review process to make it coherent and accessible to parents/carers and pupils; signposting to, and improving the availability of, **independent legal advisors and support services**.
- **Enhancing** awareness by professionals within the review process of how to effectively communicate with parents/carers and pupils and include them within the process, including making **reasonable adjustments** for those with additional needs or vulnerabilities.
- **Including the pupil** by seeking their views at all stages of the review process.

Professor Richard de Friend, Chair of the Working Party, said:

Exclusion can have such a devastating impact on a child's future that it is vital that exclusion decisions meet all the required statutory standards. We have concluded that at present we cannot be confident that they do because of the weaknesses we have identified in the current procedures. We firmly believe that our recommendations will remedy these and therefore hope that the next government will adopt them.

Andrea Coomber, Director of JUSTICE, said:

Every child has a fundamental right to an education. This report shows that the current system does not go far enough to protect children from unlawful interference with this right, nor does it provide swift and effective remedies when such interference does take place. The report boldly rethinks the process of school exclusions and how they are challenged, proposing a system which is procedurally fair, efficient, robust, accessible and accommodating of the needs of all children.

Notes for editors

1. JUSTICE has a long history of using Working Parties of its membership to effect systemic changes within the legal system. For example, the Ombudsman system and Criminal Injuries Compensation Board were set up on the recommendation of previous JUSTICE Working Parties.
2. This Working Party was generously supported by Sidley Austin LLP and Matrix Chambers.
3. This Working Party, set up and supported by JUSTICE and drawn from its membership, included experts from the legal profession and beyond. The Working Party was chaired by Professor Richard de Friend and its members were: Ray Burningham, Administrative Justice Council member and former Chief Executive, Administrative Justice and Tribunals Council; Liz Campbell, JUSTICE Board member; Sarah Hannett, Barrister, Matrix Chambers; Andrew Lockley, part-time First-tier Tribunal Judge (Special Educational Needs and Disability) and former Solicitor; Sarah Michael, Solicitor; Laura Pease, Principal, Whitefield Schools and community school Governor; Erin Smart, Solicitor; Alex Temple, Public Lawyer and Policy Officer, Just for Kids Law; Professor Robert Thomas, University of Manchester; Independent Review Panel Chair and Administrative Justice Council member; Ibrahim Warne, Founder and Executive Director, Centre for the Advancement of Rural Development and Human Rights. Subgroup members were Jasmine Agyekum, Solicitor; Steve Edmonds, Director of Advice and Guidance, National Governance Association; Rani Kaur, Head of Advice, National Governance Association; Buvini Kularatne, Solicitor.
4. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the United Kingdom. For more information, please visit www.justice.org.uk.
5. Please direct queries to Jodie Blackstock, Legal Director on jblackstock@justice.org.uk.