



**SIMPSON
MILLAR**
The open lawyers

New exclusions guidance/ behaviour advice - data gathering and analysis

Date: 2 December 2022

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Data and statistics

- Permanent Exclusions/ Suspensions – lots of central government statistics
- Internal Exclusions (also known as Isolation, Removal, and in individual schools, through a myriad of euphemisms) – no central government statistics
- Off-site directions (and ‘managed moves’ to Alternative Provision) - no central government statistics
- New guidance makes clear that schools now need to be collecting and analysing more behaviour data.

Recent Guidance – focus on data

- New Exclusions Guidance (July 2022) and Behaviour Advice (September 2022) require much more focus on analysis of behaviour data from school leaders and governors. Potential for significant improvement if it is followed through in right way.
- Provides a starting point for input for others (Ofsted/Local Authorities/MATs/ RDs for education/ EHRC etc)

CBBC Newsround – 30 June 2005

Isolation rooms to punish pupils

If you get punished at school you might get a detention or maybe lines, but one school has come up with something new.

A school in Birmingham has come up with something called isolation, where kids who have messed around get sent to do work on their own - for eight hours.

They're not allowed out for breaks, have lunch at their desks and could be there for up to three school days.

Some people think the isolation room is bad for the pupils, but the school says results are improving.

› [Click here to tell us what you think about isolation booths](#)



Isolation/ Removal

- Most exclusions (39% PEX/ 42% Suspensions) are for persistent disruptive behaviour. Isolation often precursor to PEX or off-site direction.
- Exponential increase in use of isolation linked to expansion of academies (often common behaviour policies across MAT).
- September 2022 Behavioural Advice sets out in some detail what should be considered before it is used. Paragraphs **83** and **86** of the guidance - includes...
 - Requirement to notify social worker/ virtual head if have one
 - Requirement to consider if assessment of underlying factors is needed.

Isolation/ Removal - Data

- Data relating to individuals - Focus on interrogating '*repeat patterns*', making '*data-based*' decisions to consider whether frequently removed pupils may benefit from additional and alternative approaches, a pastoral review or investigation by the SENCO (para 84)
- Structural data– use data to identify whether specific departments or teachers need more support (para 84)
- Structural data– 'analyse the collected data to identify patterns relating to pupils sharing any of the protected characteristics and [whether] the removal policy is not having a disproportionate effect on pupils sharing particular protected characteristics' (para 85)
- “We anticipate that this guidance will mean that children with disabilities are more likely to receive the correct support...thereby reducing the likelihood of exclusion.”

Off-site direction

- Power to direct off-site for maintained schools – s.29A Education Act 2002
- Subordinate legislation – procedural safeguards, including requirements for reviews - Education (Educational Provision for Improving Behaviour) Regulations 2010
- Guidance – AP – Statutory Guidance for LAs, Headteachers and GBs
- Academies – have general powers in funding agreements to direct of site.
- **Legislation and Guidance does not apply to Academies** – Govt would like them to follow it.
- No time limits in regulations/ guidance. Just reviews.

Off-site direction - data

- Para 109-111 Behavioural Advice
- Schools need '*strong and effective systems for data capture, including all elements of the behaviour culture*' (109) and to monitor and evaluate this
- Need to collect data on permanent exclusions, suspensions, **off-site directions** and managed moves (110)
- Analyse data at multiple levels (111) to identify... "*systems problems or failure to provide adequate support*"
- Analyse by protected characteristic and "*using those findings to inform policy and practice*"



	School 1					School 2					School 3					School 4					School 5					School 6				
	Year 7	Year 8	Year 9	Year 10	Year 11	Year 7	Year 8	Year 9	Year 10	Year 11	Year 7	Year 8	Year 9	Year 10	Year 11	Year 7	Year 8	Year 9	Year 10	Year 11	Year 7	Year 8	Year 9	Year 10	Year 11	Year 7	Year 8	Year 9	Year 10	Year 11
Number of children with an EHCP	10	8	2	3	1	12	13	10	9	10	5	5	3	5	6	10	5	8	3	8	11	1	6	4	7	7	7	3	4	4
Number of children without an EHCP	171	95	92	153	160	29	32	19	5	14	125	131	116	130	101	154	159	154	159	145	230	237	233	237	224	204	218	208	184	204
Number of male children	87	46	53	84	93	108	118	107	112	98	67	74	58	71	62	80	86	89	78	93	145	134	132	119	133	131	144	136	116	121
Number of female children	94	57	41	72	68	84	72	83	79	95	63	62	61	64	45	84	78	73	84	60	96	104	107	122	98	80	80	73	65	77
Number of children entitled to Free School Meals	98	51	43	60	70	103	85	104	113	93	86	84	82	71	55	93	87	78	78	87	111	98	109	106	78	111	110	107	91	97
Number of children not entitled to Free School Meals	83	52	51	96	91	89	105	86	78	100	44	52	37	64	52	71	77	84	84	66	130	140	130	135	153	100	115	104	97	111
Number of children with special educational needs	23	39	15	25	17	32	37	29	23	30	27	18	18	21	8	22	33	36	27	26	53	48	50	48	47	59	71	57	33	34
Number of children without special educational needs	158	64	79	131	144	29	32	19	5	14	103	118	101	114	99	142	131	126	135	127	188	190	189	193	184	152	154	154	155	174
Number of Black, Black British, Caribbean or African children	61	36	32	56	66	78	81	92	91	87	47	53	48	46	39	25	27	34	31	25	110	115	116	104	107	70	64	48	35	60
Number of White children	39	26	29	33	30	22	35	36	23	19	18	22	20	27	20	64	65	56	59	52	55	48	66	78	59	45	40	52	53	60
Number of Asian or Asian British children	12	3	4	14	6	37	25	27	34	33	15	10	7	12	7	13	9	16	16	18	25	18	17	21	22	19	24	19	11	11
Number of Mixed or Multiple Ethnic Groups children	17	19	7	14	19	18	23	18	24	20	14	19	21	15	13	15	27	30	31	22	16	32	15	20	25	22	30	19	15	24
Number of children of Any Other Ethnic Group	52	19	22	39	40	37	26	17	30	34	36	32	23	35	28	23	33	24	24	36	9	19	20	14	18	33	43	44	40	27
Number of Reflection Room sanctions between 1 September 2021 and 27 May 2022	107	50	78	112	113	168	194	298	250	199	199	262	228	118	145	60	58	77	73	55	564	696	468	400	471	54	56	49	33	11
Number of Reflection Room sanctions for Black, Black British, Caribbean or African children between 1 September 2021 and 27 May 2022	57	20	23	62	63	99	152	193	90	108	47	102	98	65	79	9	8	15	15	13	428	467	320	206	224	Not recorded	Not recorded	Not recorded	Not recorded	Not recorded
Number of Reflection Room sanctions for White children between 1 September 2021 and 27 May 2022	7	12	1	6	6	4	29	52	40	19	93	64	63	24	15	26	24	26	24	12	30	55	74	119	107	Not recorded	Not recorded	Not recorded	Not recorded	Not recorded
Number of Reflection Room sanctions for Asian or Asian British children between 1 September 2021 and 27 May 2022	0	2	1	11	10	28	55	12	22	11	0	11	5	3	1	4	2	11	7	4	11	27	15	11	6	Not recorded	Not recorded	Not recorded	Not recorded	Not recorded
Number of Reflection Room sanctions for Mixed or Multiple Ethnic Groups children between 1 September 2021 and 27 May 2022	13	14	8	4	18	5	23	16	52	22	34	46	30	7	12	9	10	10	19	12	44	95	44	28	79	Not recorded	Not recorded	Not recorded	Not recorded	Not recorded
Number of Reflection Room sanctions for children of Any Other Ethnic Group between 1 September 2021 and 27 May 2022	25	1	41	22	17	32	35	19	46	39	25	38	29	19	36	9	15	8	7	13	13	44	13	33	55	Not recorded	Not recorded	Not recorded	Not recorded	Not recorded

	School 1	School 2	School 3	School 4	School 5	School 6
Number of children with an EHCP who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	9	30	5	18	14	9
Number of children without an EHCP who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	57	246	230	305	494	194
Number of children with special educational needs who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	141	84	89	83	132	62
Number of children without special educational needs who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	320	246	142	240	376	141
Number of children who are entitled to Free School Meals and have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	Not recorded	Not recorded	147	213	240	Not recorded
Number of children who are not entitled to Free School Meals and have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	Not recorded	Not recorded	88	110	268	Not recorded
Number of male children who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	305	225	144	198	319	136
Number of female children who have received a Reflection Room sanction between 1 September 2021 and 27 May 2022	156	125	91	125	189	67

BSR Referrals – Key groups - % out of pupils with a referral to the BSR

Year	All	Male	Female	PP	NON PP	SEN Support	EHCP	NON SEN	High PA	Middle PA	Low PA	No PA
Year 7	27%	32%	17%	34%	19%	41%	80%	22%	6%	25%	43%	0%
Year 8	37%	36%	38%	37%	37%	48%	33%	35%	11%	32%	52%	43%
Year 9	39%	40%	38%	48%	32%	57%	0%	38%	17%	48%	58%	38%
Year 10	37%	45%	28%	48%	27%	20%	33%	38%	26%	43%	25%	43%
Year 11	37%	41%	33%	45%	31%	53%	50%	34%	17%	36%	54%	0%
TOTAL	35%	38%	32%	42%	30%	46%	42%	33%	16%	36%	48%	39%

Year	All	BAFR	BCRB	WOTH	WBRI	BOTH	MWBC	MOTH	MWBA	OOTH	AOTH	REFU	CHNE	NOBT	APKN	ABAN	MWAS	AIND	WIRI
Year 7	27%	30%	42%	13%	19%	31%	20%	11%	50%	25%	0%	0%	0%	0%	50%	0%	0%	0%	0%
Year 8	37%	36%	41%	25%	25%	67%	67%	44%	50%	33%	0%	40%	25%	0%	50%	0%	0%	0%	0%
Year 9	39%	41%	45%	33%	12%	73%	44%	60%	60%	14%	40%	50%	0%	0%	0%	0%	0%	0%	100%
Year 10	37%	32%	48%	36%	33%	75%	38%	0%	67%	0%	0%	67%	0%	0%	0%	0%	0%	0%	0%
Year 11	37%	38%	47%	21%	29%	75%	40%	67%	0%	17%	25%	0%	0%	0%	0%	0%	0%	0%	0%
TOTAL	35%	35%	44%	25%	20%	57%	44%	34%	52%	18%	13%	50%	11%	0%	29%	0%	0%	0%	100%

Ethnic Codes

AOTH- Any Other Asian Background
 BOTH - Any Other Black Background
 OOTH- Any Other Ethnic Group
 MOTH - Any Other Mixed Background
 WOTH - Any Other White Background
 ABAN - Bangladeshi
 BAFR - Black African
 BCRB - Black Caribbean
 CHNE - Chinese

AIND - Indian
 NOBT - Information Not Yet Obtained
 APKN – Pakistani
 REFU - Refused
 WBRI - White British
 WIRI - White Irish
 MWAS - White and Asian
 MWBA - White and Black African
 MWBC - White and Black Caribbean

Appendix 2 - Overview of referrals in 2021 to 2022

No. of referrals to BSR	Number of pupils	Total BSR referrals
1	113	113
2	50	100
3	34	102
4	30	120
5	11	55
6	6	36
7	8	56
8	2	16
9	5	45
10	5	50
11	1	11
12	6	72
13	2	26
14	2	28
15	1	15
16	0	0
17	1	17
	277	862

13 children below with more than 10 referrals to BSR over the academic year

Pupil Name	Year	BSR	Gender	PP	EAL	SEND	Ethnicity
Pupil A	8	17	Male	-	-	-	Any other Black background
Pupil B	7	15	Male	Yes	-	EHCP	Black Caribbean
Pupil C	9	14	Female	Yes	-	-	Black Caribbean
Pupil D	7	14	Male	-	Yes	-	Black - African
Pupil E	10	13	Female	Yes	Yes	-	Refused
Pupil F	9	13	Female	-	-	-	Any other Black background
Pupil G	9	12	Male	Yes	-	K	White - British
Pupil H	7	12	Female	-	-	-	Black - African
Pupil I	10	12	Female	-	-	-	White - British
Pupil J	9	12	Female	-	-	-	Black - African
Pupil K	7	12	Male	Yes	-	-	Black Caribbean
Pupil L	9	12	Male	Yes	-	SEN Support	White and Black Caribbean
Pupil M	8	11	Male	-	Yes	-	Black - African



School Inclusion Project ('SIP') training

Ollie Persey and Nadia O'Mara, Garden Court
Chambers

Friday 2 December 2022



GARDEN COURT CHAMBERS



TOP TIER SET
2023



Garden Court Chambers

 @gardencourtlaw

Key resources

- [The School Discipline \(Pupil Exclusions and Reviews\) \(England\) Regulations 2012](#)
- [Statutory guidance on school exclusions](#)
- Just for Kids Law's ['School Exclusions Hub'](#)
- [Disabled children: a legal handbook](#)



Why school exclusions matter

- Permanent exclusions can be fundamentally life changing for a young person.
- Most permanently excluded young people will be sent to a pupil referral unit for their education.
- Provision at a pupil education unit is statistically poor, with 98% of students failing to achieve 5 satisfactory GCSEs.
- Permanently excluded young people can experience a range of social and emotional difficulties including anxiety, stigma and isolation.



Disproportionately excluded groups

- Some groups are hugely overrepresented in exclusion statistics.
- Someone with special educational needs or a disability is more than five times more likely to be excluded than one of their peers.
- Black Caribbean children are nearly three times more likely to be excluded.
- Children receiving free school meals are four times more likely to be excluded than their peers.
- Exclusions affect all school age children from 4 to 18 and above. Most excluded children are in year 9 and above.



Types of school

- **Mainstream schools:** are schools that the majority of the student population attend.
- **Special schools:** are selective based on need. They offer specialist support to children based on their special educational needs and disabilities (“SEND”).
- **Pupil referral units (“PRU”):** are institutions that provide education to people unable to attend mainstream education for various reasons, typically because they have been permanently excluded.
- **Alternative provision (“AP”):** refers to a range of schools that sit outside of mainstream schooling and offer specialist support but are not special schools.



The link between exclusions and crime

- There is consensus between the Government and other stakeholders that there is a statistical link between young people who are excluded and being involved in crime as either victim or perpetrator.
- Ofsted, the Children's Commissioner and other groups have found links between young people being criminally exploited and being excluded from school.
- Criminal exploitation is more likely when a young person is not in school. It includes the practice of "county lines" drug trafficking which places the victims at risk of criminalisation and serious violence.
- There is evidence to link the rise in exclusions to the rise in knife crime.



Types of exclusion

- **Permanent exclusion (“PEX”)**: results in the excluded young person being removed from a school’s register and denied access to the school’s grounds indefinitely.
- **Suspension**: results in a young person being denied access to the school’s campus for a set number of days, or part of a day, which is followed by a return to school.
- **Internal exclusion**: results in the young person being confined to a behavioural unit or otherwise segregated from the mainstream school population.
- **Informal exclusion**: includes any removal of a child from the school grounds that does not follow procedure. This includes sending a child home to “cool off”. They are always unlawful.



Exclusions that can be reviewed

- Any exclusion where discrimination is alleged can be challenged.
- All PEXs will be subject to a review.
- All FTEs that take the total number of days a student has been excluded for to more than 15 in a term will be subject to a review.
- Any FTE that takes the total number of days a student has been excluded for to more than 5 in a term, but less than 15, will be reviewed if the family chooses.
- FTEs that take the total number of days a student has been excluded to less than 5 in a term will not be reviewed.



The review process

- **Governors’ Body Hearings (“GBH”)** are the first stage of review for any exclusion. A panel of the school’s governors will meet to hear representations from the family and the school and either uphold a student’s exclusion or reinstate them.
- **Independent Review Panels (“IRP”)**: are a free appeal panel for families who want to challenge the decision of the governors to uphold an exclusion. They are only available to review PEXs.
- **First Tier Tribunal (“FTT”)**: is available where disability discrimination is alleged. The relevant tribunal is the Special Educational Needs and Disability (“SEND”) chamber. The FTT can direct reinstatement.
- **County Court (“CC”)**: is available for claims of discrimination on any basis other than SEND. The CC can direct reinstatement.
- **High Court (“HC”)**: is available to hear claims for judicial review, typically when the IRP process has been run but not resulted in reinstatement.



What are the steps to the school exclusion process?

1. The head teacher imposes a school exclusion.
2. If the exclusion qualifies for a compulsory review, the governors must meet to consider the exclusion in 15 school days.
3. If the governors decide to uphold the exclusion, the family have 15 school days to lodge an appeal to the IRP if they wish to do so.
4. The IRP must begin within 15 school days of receipt of the application for review.
5. If the IRP returns the decision to the governors of the school, they must meet within 10 school days to consider reinstatement.

*These steps assume the young person is not making a discrimination at FTT or CC claim as well as, or instead of, following the IRP process.



Who can exclude someone?

- The power to permanently exclude is in statute at s.52 of the Education Act 2002 (“the Act”).
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (“the Regulations”), made under s.52, set out the test for permanent exclusions and set out key definitions.
- The statutory guidance Exclusion from maintained schools, academies and pupil referral units in England (“the Guidance”) is binding guidance made under the Regulations. It is the primary point of reference for the law on exclusions.



When can a student be excluded?

- A school can only ever exclude someone for disciplinary reasons.
- By virtue of s.81 of the Education and Inspections Act 2006 every school will have a behaviour policy.
- The excluding school will need to be able to show either a serious breach or persistent breaches of this behaviour policy.
- Academic attainment, non-attendance or lack of resourcing to meet additional needs are not valid reasons for an exclusion.



What is the legal test for exclusions?

- All exclusions, like any sanction in school, must be lawful, reasonable and fair (the Guidance: Key Points). Any punishment in School, including exclusion, must be proportionate (s.91 of the Education and Inspections Act 2006)
- A PEX must be a last resort (the Guidance: Key Points).
- A PEX must only be imposed in response to a serious breach or persistent breaches of the schools behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- The threshold is higher for **Looked After Children (“LAC”)** and children with **Education and Health Care Plans (“EHCP”)**



What are the duties on a headteacher when excluding?

- The head teacher must provide a letter to the family confirming the exclusion, and the reasons for it in sufficient detail that the family can understand them
- The head teacher must notify the governors and the local authority of any PEX, or suspension that takes the total number of excluded days to more than 5 in one term Education must be arranged for the young person from the sixth school day of exclusion. This will be arranged by the school in the suspension, and by the local authority in the case of permanent exclusion
- For the first 5 days of the exclusion the excluding school should take “reasonable steps” to ensure that work is provided



Duties to mitigate the risk of exclusion

- Schools are reminded that poor behaviour may be an indicator of unmet need (Guidance: key points).
- Schools are also bound by the SEND Code of Practice (“Code of Practice”). This sets out that schools should keep the efficacy of interventions under review and amend them where they have not been effective (Code of Practice paragraph 5.43).
- Schools should request an EHCP where purposeful interventions have been attempted but have been unsuccessful in achieving an improvement in behaviour (Code of Practice paragraph 5.49).
- Where schools have failed to take purposeful action to mitigate the risk of exclusion, it may be that they have not used exclusion as a last resort and are in breach of the Guidance.



GBH

- Right of appeal is held by the ‘relevant person’ – a parent or the student if they are 18 years old.
- GBH must consider and decide on the reinstatement within 15 school days of a relevant exclusion.
- Facts must be established on the civil standard of proof – the “balance of probabilities”.
- Witness evidence should usually be provided in the form of a written statement. Relying on witness evidence of a person younger than 18 will require their consent and that of their parent or guardian.
- In the school’s panel pack, there should be any statements that the school wishes to rely on to establish fact. This may include a statement of your own client taken contemporaneously by the school.
- GBHs are often a rubber-stamping exercise.



The IRP process

- IRPs have a duty to conduct a judicial review “as far as possible”, as expressed by the High Court in *CR v Independent Review Panel of the London Borough of Lambeth* [2014] EWHC 2461 (Admin).
- IRPs can make one of three determinations:
 - Uphold the exclusion: this will end the exclusion challenge save for a claim for judicial review, or discrimination claim to the County Court or First Tier Tribunal;
 - Recommend reconsideration: this will have the effect of sending the decision back to the governing body, with reasons why their decision making was defective.
 - Direct reconsideration: this will have the effect that the governors must meet again and reconsider reinstating the young person. It has the effect of quashing the original decision of the governors to uphold the exclusion.
- In the case of an academy, the appeal must be provided to the academy trust. You can address it to the principal.
- In the case of a maintained school the appeal must be provided to the local education authority.
- The appeal notice must be provided within 15 school days of the governors’ communication of their decision. The IRP has no power to hear an appeal where notice is received outside of this time limit.



Public law principles

- The head teacher's decision must be in line with the principles of administrative law. Therefore, arguments on public law grounds can be made before the governors.
- The Guidance highlights 5 public law principles that apply to a head teacher's decision to exclude someone. The head teacher's decision must be:
 - Lawful
 - Rational
 - Reasonable
 - Fair
 - Proportionate



Equality Act 2010

- Public Sector Equality Duty ('PSED') under section 149: page 9 of statutory guidance
 - PSED is relevant to the question of justification under Equality Act 2010 claims
- Part 6 (Education), Chapter 1 (Schools), section 85:
 - Section 13: direct discrimination
 - Section 15: discrimination arising in consequence of disability
 - Section 19: indirect discrimination
 - Sections 20/21: breach of the reasonable adjustments duty
- Section 86: victimisation of pupils for the conduct of parents



SEN Expert

- The SEN expert's role is analogous to an expert witness, providing impartial specialist advice to the panel on how SEN might be relevant to the permanent exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.
- The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the permanently excluded pupil, were lawful, reasonable, and procedurally fair. If the SEN expert believes that this was not the case, they should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's permanent exclusion.
- Where the school does not recognise a pupil as having SEN, the SEN expert should advise the panel on whether they believe the school acted in a legal, reasonable, and procedurally fair way with respect to the identification of any SEN that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's permanent exclusion.
- The SEN expert should not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.



Trafficking and child criminal exploitation ('CCE')

- Behavioural incidents arising as a consequence of CCE, for example possession/supply of drugs and/ or possession of a bladed article/ malicious communications etc., resulting in PEX.
- Difficult to challenge – legitimate aim of ensuring safety of other students/ staff etc.
- Important to challenge however, not least because of evidence of links between PEX and crime and disproportionate levels of PEX within certain groups. Lacuna between Schools' approach to discipline/PEX and safeguarding potential victims of CCE (where there are attendant behavioural issues).
- In appropriate cases, possible to argue indirect race discrimination contrary to s. 19 EA 2010:
 - (i) PCP = rigid application of behaviour/drugs policy without exception for victims/ potential victims of CCE,
 - (ii) PCP puts victims/ potential victims of CCE at a disadvantage, b/c at a heightened risk of PEX or other disciplinary measures,
 - (iii) Available stats suggest victims of CCE in London are disproportionately black/ Caribbean (and disproportionately subject to PEX),
 - (iv) Justification = difficult but (a) has the School/GB complied with PSED?, (b) adequate safeguarding measures before/ after incident? (see, §31 Keeping Children Safe in Education Guidance), (c) does the YP have a positive RGD/CGD?, (d) has the School referred into NRM/ MASH?, (e) PEX treated as a last resort?, (f) intersectionality – is there a link to unmet SEN needs?
- In other cases, may be able to run discrimination arising from disability (s. 15 EA 2010) and/ or failure to make reasonable adjustments (ss. 20/21 EA 2010).
- Evidence gap → available statistical information inadequate to run a solid argument on indirect race discrim – need better evidence disaggregated by ethnicity/ other protected characteristics.



Prep for IRP hearing

- Request SEN expert if appropriate
- Prepare further evidence
- Written submissions (similar to short JR grounds)
- Review school's further evidence and SEN expert report



Format of the hearing

- Welcome and Introductions by the chair of the Panel.
- The School puts its case, explaining the reasons for the decision to exclude the pupil permanently and calling witnesses if necessary.
- Questioning by the appellants, and panel members.
- The appellants put their case, explaining the reasons for applying/requesting for a review against the decision to permanently exclude the pupil and calling witnesses if necessary.
- Questioning by the School and the panel members.
- SEN Expert statement/report (if appropriate).
- Statement of LA Representative (if appropriate).
- Summing up by the School.
- Summing up by the appellants.
- The appellants and School representatives leave.



What happens after the IRP hearing?

- Usually get the decision on the day
- Reasons follow c. 1 week later
- Reconsideration hearing?
- Order financial adjustment?
- Judicial review or other claim



Race Legal Support Fund IRP Hearings

Abi Hamer
Principal Legal
2 December 2022

EHRC Race Legal Support Fund

- We are looking to fund cases involving racial harassment and discrimination. If you are a legal practitioner in England, Scotland and Wales, you can apply to us for support towards your clients' cases
- Our legal support scheme began in 2017. It provides vital funding and legal assistance, so that individuals can pursue their claims and access the justice they deserve. Our latest fund focuses on race and will bring us closer to achieving racial equality across England, Scotland and Wales.
- We continue to take landmark cases that make the law clearer and set a precedent.
- Legal practitioners can apply to us for support towards their clients' cases where the client has experienced race discrimination, harassment or victimisation.

Race Support Fund and Independent Review Panel Hearings

- The Commission has decided that in light of the apparently disproportionate numbers of Black and ethnic minority students being excluded by some schools, and the discrepancies in penalties being applied, that, where there is an element of race discrimination, we may provide funding for solicitors or Counsel to represent students at Independent Review Panel Hearings (known as Independent Appeal Tribunal Hearings in Wales).
- Provided you can demonstrate that your case meets certain criteria, we will provide funding for representation at those Hearings. We have also agreed to consider these applications within 5 working days.

Other Opportunities with the EHRC

We regularly fund cases which raise novel or important points of law, including exclusion and disability discrimination cases, under our s28 powers. If you have an interesting or unique case, you can contact us and we may consider funding your work – even if there is no Race discrimination element.

We also intervene in cases where issues are raised which require clarifying before the courts, using our section 30 powers. Again, if you have a case raising a novel point of law which you think would benefit from the Commission's intervention, please let us know.

For the Race Support Fund, we are establishing our own referral panel of solicitors to support our regulatory work. The panel will be our preferred providers of legal services conducted by solicitors, similar to our existing panel of counsel.

You can find more information about the opportunity, the criteria and the tendering process on the EHRC procurement portal. The deadline for bids is 13:00 Tuesday 20 December.

Any queries or possible cases – Please Contact Us!

You can find out more about the scheme, information about how to apply, including the application form, and details about other cases we have supported on our webpage, or contact us at racesupportfund@equalityhumanrights.com.

Or contact us directly:

Abigail.Hamer@equalityhumanrights.com

Chloe.Pugh@equalityhumanrights.com

RaceSupportPM@equalityhumanrights.com



Challenging School Exclusions

Supporting families, children and young people to challenge a decision to exclude a child from school

Standing up for kids

JUST FOR KIDS  **LAW**

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Just for Kids Law

- Just for Kids Law (JfKL) was founded in 2006 by youth lawyers, Shauneen Lamb and Aika Stephenson who recognised that the children they represented often needed more than just legal representation.
- JfKL work with and for young people (**predominately in London**) to ensure their legal rights are respected and promoted, and their **voices heard and valued**.
- What we do?
 - **Legal support** – education, community care, housing, crime and immigration
 - **Strategic Litigation**
 - **Youth projects** – which includes our Youth Opportunities, [The School Exclusions Project – a youth participation project for 14-24 year olds who have lived experience](#)
 - **Youth advocacy** – supporting children and young people to have their voices heard and respected by professionals
 - **Policy and campaigning**
- **School Exclusions Hub** – online resource for professionals and parents (where you are able to download free templates for letters & submissions)

At Just for Kids Law the child is the client.



JfKL Approach

- Just for Kids Law takes a **holistic** approach to casework, viewing the **whole child**, rather than just the issue they present with. We Look to the underlying causes of harmful behaviour, which requires a welfare and **trauma informed approach** .

Trauma Informed Lawyering

“To be an effective child lawyer you have to be trauma informed”

- In summary to be aware of adverse childhood experiences and how this effects the child. How they present as a result of the trauma and how trauma impacts the development of the brain, mental health and behaviour. As well as how to build a empathetic and trusting client relationship with a child and advocate them in court ”.
- Trauma can present as: eg irritable, guarded, bravado, lack of remorse, emotionless, reluctant to engage , mistrust of professionals, desensitized to violence, vulnerable to grooming
- link to Trauma Informed training video <https://www.youtube.com/watch?v=mZ7ZYQyVJXo&t=3427s>
- Understanding the vulnerability and voices of clients you will be working with is so important and there is no one better who can explain this then then young people with lived experience of a school exclusion. Please watch this valuable short video by young people from JfKL .<https://youtu.be/uND5qn-02ek>

Trauma informed & Safeguarding

- “A permanent exclusion is a traumatic experience & impacts many children’s mental health”
- Safeguarding is an essential part of working with any young and vulnerable children and JfKL follow a stringent safeguarding policy.
- "Section 17 of the Children Act 1989 places a general duty on all local authorities to '**safeguard and promote the welfare of children within their area who are in need.**'
- "**Safeguarding is everyone’s responsibility**” **Working Together to Safeguard Children 2018.**
- **We would recommend safeguarding training for anyone interested in education law, although not mandatory to advocate for a school exclusion hearing.**
- If you have concerns about a child's safety or welfare contact Childline or the emergency services.

Some of the issues we see at JfKL

- “Children with SEND, on free school meals, gypsy/roma heritage traveller and children from black ethnicity* backgrounds are disproportionately excluded.”
- The vast majority of the young people we represent are vulnerable, have a number of social exclusion factors including Child in Need (CiN), Looked After Child (LAC), social economic issues, Special Educational Needs and Disabilities (SEND) and risk of child criminal exploitation.
- JfKL have written a report ‘Excluded, Exploited, Forgotten’ as there are serious risks to children excluded becoming victims of child criminal exploitation.
- Children with SEND are excluded prior to being provided with adequate support to meet their needs or because they have needs that the school feel it cannot meet – this is unlawful.
- Black/black mixed children represent the majority of school exclusion referrals at JfKL. We also see many of these parents report concerns that their child has SEN, however adequate support was not implemented and the child was instead punitively punished with isolations and exclusions.
- Lack of understanding of the issues young people face today for example sexting, social media, risk of child criminal exploitation and impact of an exclusion to society.....

*The Exclusions Guidance 2017 refers to this group as Black Caribbean

Homelessness

This article is more than 3 months old

Youth homelessness has risen 40% in five years, says UK charity

Centrepoint estimates 121,000 homeless or at risk, with analysis showing black people disproportionately affected

Aamna Mohdin



theguardian.com/education/2018/oct/23/send-special-educational-needs-children-excluded-from-schools

tional

Thousands of children with special needs excluded from schools

Pupils with special educational needs are denied opportunities by 'broken' system, experts say

Veale and McIntyre

t 2018 13.00



More than 1.2 million students in England have some kind of special educational need.

euronews.com/2022/01/05/london-records-worst-ever-death-toll-from-teenage-homicides-in-2021

Europe World Business Sport Green Next Travel Culture Video Programmes



A bouquet is left at a mural to highlight knife crime in London on April 30, 2021. - Copyright TOLGA AKMEN / A

London has recorded its worst-ever annual death toll from teenage homicides, with a total of 30 boys and young men killed in 2021.

On December 30, a 15-year-old was stabbed to death in a park in Croydon, while a 16-year-old died after being stabbed in Hillingdon. These were the 29th and 30th teenage homicides in the British capital in 2021, surpassing the previous peak of 29 in 2008.

Most of those who died were victims of knife crime and many were killed by other teenagers or by young adults in their early 20s. The youngest victim was 14 years old.



He's a big boy

He's a roadman

He's aggressive

He's in a gang

You are lucky criminal charges are not brought against you (said in an incident where there was no criminal offence)

- These are actual words, which have been used by headteachers and professionals to justify an exclusion and punitive treatment of black/black mixed boys.
- These terms are loaded with racial bias and adultification of black children.
- If there are genuine concerns a welfare and safeguarding approach should be adopted.
- In taking instructions from the client, reading the school exclusion records and in attending hearings, look for terms such as these, which stem from racial discrimination.
- <https://www.pnas.org/doi/10.1073/pnas.1714454115> research on black men being tall and big, increased stereotyping, being seen as a threat and being stopped by the police.
- After the hearings consider was the decision **free from the appearance of bias?** Was justice not just done, but clearly and unequivocally seen to be done?

Adultification

“Davis and Marsh (2020) define adultification as: ‘The concept of adultification is when notions of innocence and vulnerability are not afforded to certain children. This is determined by people and institutions who hold power over them. When adultification occurs outside of the home it is always founded within **discrimination and bias**. There are various definitions of adultification, all relate to a child’s personal characteristics, socio-economic influences and/or lived experiences. Regardless of the context in which adultification take place, the impact results in children’s rights being either diminished or not upheld.’

As indicated in research and literature, **Black children are most likely to experience adultification bias due to race, ethnicity and racism acting as compounding factors that hinder child protection responses and professional curiosity** (Davis, 2019; Davis and Marsh, 2020, 2022; Farrer, 2022). This group of children are therefore at a heightened risk of their safeguarding needs being unmet.”

Jahnine Davis defines adultification of black children as: “A persistent and ongoing act of dehumanisation, which explicitly impacts Black children, and influences how they are safeguarded and protected. This form of bias spans pre-birth and remains on a continuum to adulthood. Where at this juncture it becomes absorbed within the normative negative racialised experiences many Black adults encounter throughout their life course. Adultification may differ dependent on an individual's intersecting identity, such as their gender, sexuality, and dis/abilities. However, race and racism remain the central tenant in which this bias operate.”

Source: report by Jahnine Davis on Adultification bias within child protection and safeguarding HM Inspectorate of Probation Academic Insights 2022/06

Why you are needed

- There is **no legal aid** for school exclusion challenges, outside of judicial review and, on a very limited basis, discrimination.
- Pro-bono providers of support are few and far between, and are **non-existent** in most areas of the country.
- Just for Kids Law has to **turn away** the **majority** of enquiries for capacity reasons.
- **The law in this area is complicated for a layperson**, and families facing this process alone struggle to find justice in an adversarial system that is inaccessible, unfair and protracted.
- R(CR) v Independent Review Panel of the London Borough of Lambeth [2014] EWHC 2461 (Admin) Judge Collins J commented at paragraph 32 of the judgment: *“I am bound to say that it is difficult to see that it is entirely satisfactory for what is a lay body to be required to apply judicial review principles in the decision that they have to make. However, that is what Parliament has required and that is what has, so far as possible, to be applied.”*

Taking instructions



- Central to Just for Kids Law's ethos is **giving voice** to children/young people in legal proceedings, and having their **wishes and feelings** heard in any decisions effecting them.
- Whilst the parents/carers have the legal right to challenge an exclusion, we believe it is essential that **young people** are made to feel **comfortable** giving you instructions and to be as involved as much as possible and appropriate.
- Child clients who have experienced trauma may find it harder to trust their advocate, so you must think of ways of countering this and engaging with a traumatised child.
- **KNOW YOUR CLIENT (KYC)**
- In the first client meeting spend a few minutes get to know the child/young person.
- These can be the most valuable minutes in the whole client process, as these build trust, reduce bias and support the client feeling they were fairly heard and valued.
- E.g. sports you/they enjoy, what do you want to be when you are older?



Trauma informed tips for advocating for vulnerable families at the IRP hearing

- Take the time to remind them that you are here to **judge** them, and are there to work for them. (be careful of your own bias)
- Many of children/young people have reported that they didn't feel they knew what was happening in the school exclusion process. **..Talk with the child, as well as the parent in taking instructions and ask if the child wants to speak at the hearing.**
- When discussing personal/sensitive issues about the family/child e.g. domestic abuse, sexual abuse, mental health & SEN
- **Treat family with dignity**, ask permission before disclosing sensitive information...even if you think this is going to help you win the case.
- remind the clerk/panel at the beginning of the hearing to be sensitive to the fact that the child will be present and could hear things that could retraumatise.
- Inform the family you might want to take a break in the hearing.
- Ask who will support the family after the hearing.
- **A WIN for the client is feeling heard and respected, you may or may not win the IRP, but clients often report after being represented by JfKL they feel heard and believed for the first time.**

Checklist for IRP hearings

- Once a family receives a exclusion decision from the GDC, they have a strict **15 school days** to request an appeal to the IRP.
 - Have I asked the child's views challenging the decision?
 - Notify the Clerk to the IRP you are representing & Find out final date for written submissions.
 - Consider if you need to request an extension for submissions or postpone the hearing date after taking instructions from client.
 - Request minutes from GDC. Does the family wish to make any amendments to the minutes?
 - Was there any bias or concerns raised by family?
- **What would be helpful for the family to include in their submissions?**
 - Any **evidence of behaviour** in other settings such as after school/weekend clubs (eg letters/ reports Any evidence of good **behaviour/achievements** in the school;
 - Any evidence of parent communications to school **requesting support** for unmet SEN needs (ask parent/carer to check emails).
 - Any evidence of **SEND** or **discrimination**;
 - **Evidence** from professionals working with the family eg. Mentors social workers, doctors, CAMHs

Considering an appeal - getting the right balance



- Factors that weigh in favour of appeal:
 1. They are **free**;
 2. They are the **only accessible independent arbitrator** outside of cases of discrimination and judicial review;
 3. They **can lead to reinstatement** (a strong decision from an IRP raises the risk of judicial review proceedings if the school decline to reinstate);
 4. An **SEN expert** can be requested to provide answers to the panel.
- Factors that weigh against an appeal:
 1. IRPs can be **stressful** for the family;
 2. They **cannot direct reinstatement** of a young person, and statistics show that only around a third of successful IRP challenges lead to reinstatement;
 3. The IRP **cannot “clean” a students record**, meaning the exclusion will remain on file regardless of outcome
 4. **Remember the family only have 15 school days to lodge an IRP after the GB decision letter.**

Reading List

1. [Suspensions and Permanent Exclusions from maintained schools, academies and pupil referral units in England and pupil movement \(Statutory Guidance 2022\)](#)
2. [C & C v The Governing Body of a School, The Secretary of State for Education \(First Interested Party\) and The National Autistic Society \(Second Interested Party\) \(SEN\): \[2018\] UKUT 269 \(AAC\)](#)
3. [R\(CR\) v Independent Review Panel of the London Borough of Lambeth \[2014\] EWHC 2461](#)
4. [Excluded, Exploited, Forgotten article by Just for Kids Law](#)
5. [School Exclusions Hub](#)
6. [Mental health and behaviour in schools](#)
7. [Being tall, research on stereotyping of black men](#)
8. [Conversations around exclusions by young people from JfKL](#)
9. [Trauma Informed Lawyering Youtube](#)
10. [Adultification bias within child protection and safeguarding by Jahnine Davis](#)
11. [Keeping children safe in education 2022](#)
12. [Working together to safeguard children](#)

“With your help you will make a vital difference for a children excluded and ensure a legal system that is fair for all”