

**JUSTICE SCHOOL EXCLUSIONS WORKING PARTY –
 CORAM CHILDREN'S LEGAL CENTRE EVIDENCE**

Introduction

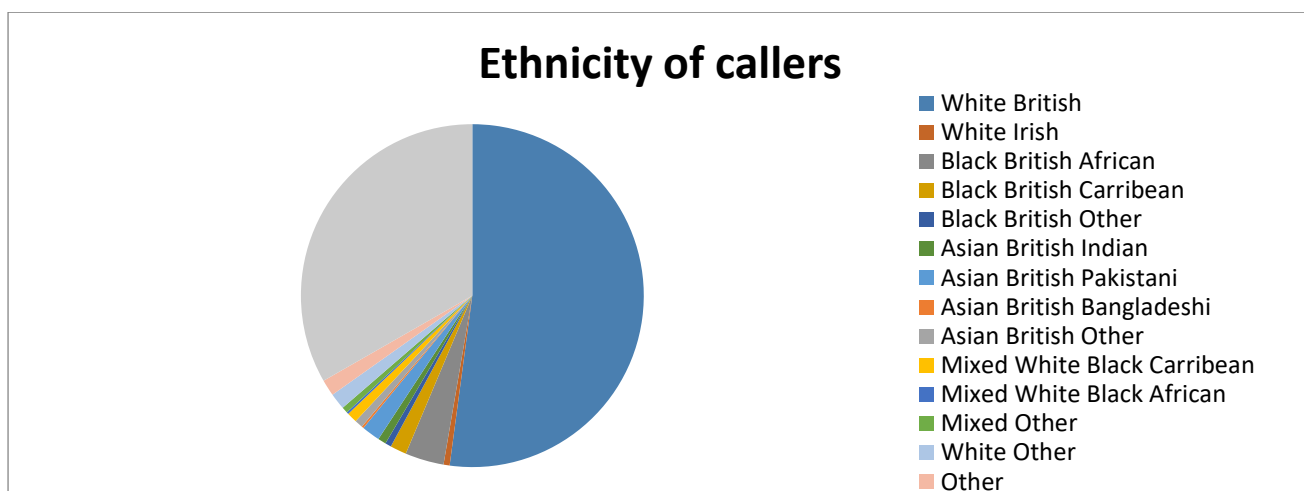
Coram Children's Legal Centre (CCLC), part of the Coram group of charities, works to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. CCLC's legal practice unit has legal aid contracts in education, family, community care and immigration law and CCLC operates the Child Law Advice Service (CLAS), providing legal advice on family and education law to over 17,000 unique callers a year.

From April 2016 to March 2019, CLAS dealt with 1905 calls relating to school exclusions, with the following breakdowns:

	2016-17	2017-18	2018-19
Primary school exclusions	118	149	84
Secondary school exclusions	491	628	435
Total	609	777	519

The CLAS website also received 92,076 and 86,988 unique views to its exclusions guidance information pages in 2018 to 2019 and 2017 to 2018 respectively.

Characteristics of callers (for period 2018/19):



Gender	Disabilities	Location of caller (top 5)
Female- 77% Male 21% Unknown 2%	Not disabled – 80% Physically disabled – 3% Have SEN – 1% Prefer not to answer – 16%	London – 25% Essex – 7% West Midlands 6% West Yorkshire -5% Kent -5%

Common issues raised by callers to CLAS about the school exclusions review process

From April 1st 2015 to March 31st 2018, CLAS received a total of 1,735 telephone calls which related to exclusion in a primary or secondary school. The advisor deemed the exclusion to be prima facie unlawful in 25% of the total number of calls. 24% of all unlawful exclusions related to children who either had undiagnosed SEN or were not receiving sufficient support for the suspected or diagnosed SEN.

In many cases parents and carers advised by CLAS reported that their child's additional needs were not being supported by the school but that they had been informed by the school that it was too soon to assess the child for any special educational needs. In other instances, the child had a statement of SEN or an EHC Plan in place but the school stated that it lacked the available resources to effectively meet a child's needs. In some cases, parents and carers have been discouraged in seeking support from the local authority where the school refuses to support a request for a Statement of SEN or an EHC Plan. An overriding theme from these calls was that many mainstream educational institutions lack the staff expertise, financial resources and time to accommodate SEN students.

CLAS also receives a significant number of calls involving children are missing out on education as a consequence of unlawful practices such as part-time timetabling, managed moves, encouragement to home school or other types of informal exclusion activity which is not captured in national datasets. Another issue seen is the increased use of internal exclusions – for example, placing a child in an on-site form of isolation.

Initial decision to exclude

1. What are the main reasons for exclusions / what types of behaviour are children excluded for in particular where permanent exclusions are for “persistent disruptive behaviour”?

Main issues for calls to Child Law Advice Service:

	Primary School	Secondary School
2016/17	SEN Issues Policy Breach Unlawful	Policy breach SEN Issues Violent behaviour
2017/18	SEN Issues Policy Breach Violent behaviour	Policy breach Violent behaviour Out of school behaviour
2018/19	Policy Breach SEN Issues Unlawful	Policy Breach Violent Behaviour SEN Issues

For Child Law Advice Service advisers, some of the most common problems include possessions of weapons, drugs and drug paraphernalia, SEN issues and violent behaviour usually linked to bullying. Unlawful exclusions would include exclusion because of poor academic performance, unable to meet SEN, poor attendance.

Most of the children dealt with by Coram Children's Legal Centre's (CCLC) Education Legal Team have SEN. Main reasons for exclusion include acts of aggression, absconding, damage to

property. Not following instructions and general poor behaviour usually lead to fixed term exclusions.

2. In Coram's view should there be a restriction on the circumstances in which a pupil can be excluded so that they cannot be excluded for persistent, but relatively minor breaches, of a school's behaviour policy?

Our sense is that this might be quite difficult to implement. From calls we get the impression that academy schools are harsher when it comes to exclusions for minor breaches. We have heard about strike systems where three very minor breaches (e.g. forgetting equipment) lead to exclusions. One positive development might be the development of more guidance around this.

3. Has Coram had experience of external agencies e.g. police involvement, and how this impacts how schools deal with exclusions?

Through the Child Law Advice Service we have heard of cases where the police arrest, question and bail young people with issues not relating to school and then schools take it upon themselves to exclude subsequently – this is often due to safeguarding another pupil involved.

We have had calls where police have determined no offence has taken place but school have continued to exclude. This is probably due to the difference in threshold i.e. balance of probabilities for schools, beyond reasonable doubt for police.

By comparison, criminal activity may take place in a school but the police do not get involved as they say it is a school matter or schools do not report the matter. The threshold appears to be unclear re police involvement.

4. Are teachers aware of the statutory guidance?

In our experience, teachers are aware of the guidance but do not always follow it – it is unclear whether this is deliberate or a lack of awareness. Some schools know how to use the guidance to their advantage when justifying exclusions. The guidance gives much discretion to schools and could benefit from more working examples.

Our experience is that many Head Teachers lack knowledge of SEN and the impact of this on the child's behaviour. This is evidence from their decisions where little emphasis is given to reasonable adjustments. For children with ASD for example, their disability is often ignored when decisions are taken to permanently exclude them for acts of aggression or violence. Previously they relied heavily on reg 4 but since recent Upper Tribunal case they have to show proper justification and evidence of reasonable adjustments.

5. What improvements would you make to the current statutory guidance (assuming the framework for exclusions review process remains the same) e.g. are there particular things that require clarification/ further guidance?

There needs to be more clarification surrounding school powers to extend or convert an exclusion. The guidance states that this can be done in 'exceptional circumstances' and gives the example of 'where further evidence comes to light'. CLAS sees cases in which these powers are abused and further clarity around in what circumstances exclusions can be extended/converted may help address this.

It should be made clearer that the statutory guidance relates to Sixth forms (not explained the same way as it is in other guidance). Colleges may try to exclude a pupil on the basis that they

failed to get certain grades despite the guidance stating that it must be for disciplinary reasons. The guidance specifically states that it would be unlawful to exclude for academic attainment/ability.

The term 'without delay' in relation to notifying parents of the exclusion should be more clearly defined, perhaps giving an exact time period (e.g. 5 days). More information should be provided in the guidance on off rolling and unlawful exclusions.

There is the threshold contained in the guidance in relation to permanent exclusion: "permanent exclusion should only be used as a last resort, in response to a serious breach or persistent breaches of the school's 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." It may be helpful to explore an equivalent threshold for fixed-term exclusions.

The guidance could contain more in relation to the investigation stage pre-exclusion, covering, for example, interviews with the child concerned, witnesses, obtaining evidence etc. It should place a burden on schools to seek advice from the local authority, EP services, CAMHS or other professionals involved with the child before the exclusions takes places.

6. Are teachers aware of Equality Act and other statutory duties relating to SEND support?

Yes probably aware but not always followed. More likely to receive training on SEND as involved in their day to day rather than exclusions which is more for head teachers. Better training is needed and a SEN expert should be more available to schools before final decision made by school. They should also have duty to liaise with the local authority before permanently excluding a child and consider advice from relevant expert professionals.

7. Are parents properly notified of exclusions?

Experience varies from case to case – while in some instances parents are properly notified and provided with all the relevant information, in others a lot of chasing is required. For example, CLAS receives calls where the adviser suggests that it sounds like the child has been excluded and then the caller will need to call school to confirm as they have not categorised it as one (this is one of the frequent examples of unlawful exclusions CLAS sees).

In other cases, the school has not properly elaborated on reasons for the exclusion in the letter when they have notified the parents.

Governing body stage

8. In your experience do parents / pupils attending the governing body hearing? If not, why not?

In our experience, parents will definitely attend the governing body hearing, but children very rarely do – they tend to write letters explaining their view.

9. What recurring issues do you come across with the governing body stage of the review process?

Impartiality and bias – concerns, for example, that they are friends of the head-teacher. Lack of cross examination of school teachers. Lack of expertise on exclusion law and SEN. Decisions are brief and do not explore all issues.

SEN experts are available at IRP stages – schools should have access to them at the governing body stage of the exclusions.

10. In your view what advice / support is needed to help parents/pupils navigate the review process and who should provide it e.g. does it need to be qualified lawyers?

Perhaps a guide included with the letter – maybe link to the exclusion guidance but make it more user-friendly.

Perhaps inevitably, Coram believes that legal advice should be available, especially for complex exclusions involving children who are disabled. We recognise, though that there is a spectrum spanning from public legal information and advice to full representation, and the telephone advice provided by the Child Law Advice Service is not provided by qualified solicitors/barristers. We explore this in our report '[Rights without Remedies](#)' which calls for:

- Continued government funding for public legal advice on education law issues.
- In the event of permanent exclusion, funded representation before the governing body and/or Independent Reviewing Panel should be provided

11. The Working Party is considering recommending the removal of the governing body stage of the process (because of lack of impartiality and ineffectiveness) and potentially replacing it with a more investigatory review process carried out by someone from the local authority (at least for permanent exclusions) whereby:

- a. Head teacher notifies local authority and parents/ carers of an exclusion
- b. A specially appointed LA staff member convenes a meeting with the head teacher / parents/carers and student and which the school will be required to established its case for permanent exclusion
- c. The LA staff member prepares are report to the students/ parents/ carers and school as to whether or not to confirm the PE with reasons for the decision.

Aside from the potential resourcing issues for local authorities, do you have any thoughts on (i) the removal of the governing body stage in general – do you think it serves any useful purpose currently? and (ii) the type of process outlined above as a replacement?

We agree that this sounds like a good recommendation. In our experience people often hold out for Independent Review Panel (IRP) due to a lack of confidence in the Governing Body and impartiality: they would prefer an external body with stricter rules.

If the IRP were given more power (as suggested in Q.16), there may not be a need to get rid of the GB stage as the IRP could review it and order reinstatement where necessary.

IRP stage

12. I understand that Coram have previously advocated for the reinstatement of the Independent Appeals Panel (IAP) system. Aside from the lack of a power to reinstate what other issues do you come across with the IRP stage?

We witness great confusion from callers re the IRP's remit and power – parents often think the IPR can order reinstatement and so are confused about the purpose of this stage when they discover that it cannot. It is also unclear whether the IRP covers non-compulsory school age.

13. Do you think that the panel benefits from having to include governors and head teachers?

Yes in the sense that they should know the process but their inclusion also raises issues regarding impartiality.

14. What is your view on the role of the SEN expert?

We see that many people rely on the SEN expert for undiagnosed potential SEN and also for children with SEN as a voice to explain their behaviour. Also to look at the process leading up to the exclusion and see if any underlying behaviours and whether adequate support put in place.

15. Do you think the current process provides an effective means for pupils' voices to be heard / views to be considered? If not, how could this be better facilitated?

The current process does not encourage pupils to go and this could be encouraged more. Maybe better encouraged by having an independent person coming to interview the child before the meeting so it is not as intimidating.

16. The Working Party are thinking about whether exclusion appeals should all be heard by a tribunal rather than a local appeal / review panel (the most obvious one being the FTT (SEND)) because it agrees that the body which reviews exclusions should have full appellate jurisdiction with the power to order reinstatement as well as other remedies and thinks there should be some form of legal expertise on the panel and needs to be some form of procedural rules / guidance.

Do you have any thoughts on this?

Yes we agree particularly as permanent exclusions can have such a detrimental affect on a young person. Obviously at present nobody external can reinstate so having an impartial panel with legal knowledge would give parents more confidence. This recommendation might need to go alongside recognition of the current problems facing the SEND Tribunal in terms of postponement.

17. Do you think that fixed term exclusions over a certain number of days should be reviewed by the IRP / replacement appeals panel / tribunal?

Yes need to put a set number of days (15 for example) but would need to clarify whether this is in a term, school year or single period. These exclusions, despite not being permanent, can still have a detrimental affect and there may still be underlying causes to investigate.

We'd also be interested to hear any other comments / suggestions you may have in respect of the exclusions review process.

There needs to be clarification regarding managed moves and directions off site and more information on parent's not being forced to remove their children from the school roll.

Case studies

Case study

The mother of Alex, a 12 year old child at a mainstream state school, called CLAS for advice. Alex had concentration problems from an early age and he was thought by Child and Adolescent Mental Health Services to have borderline deficiency order/ADHD, although this had not been formally diagnosed. Alex's new secondary school, which had not made any attempt to assess or identify Alex's special educational needs, had excluded him several times in six months. Alex was temporarily excluded while his school tried to negotiate a managed move to another school, but when this fell

through, Alex was trapped at home. Rather than permanently excluding Alex on a formal basis, which would at least have come under the scrutiny of an Independent Review Panel, his school had tried to force him out informally. By the time Alex's mother called CLAS, he had been out of school for nearly three months, during which time she had not been able to work.

Legal aid was available for a judicial review of the unlawful exclusion, but Alex's mum did not know how long her son had to be out of school before his exclusion became 'unlawful' and had no idea that her son's case was within scope of legal aid. Independent legal advice and information was vital to ensure she fully understood her son's rights and the action that could be taken.

Case study

The case involved an 8 year old child with SEN whose first fixed term exclusion followed an incident where he threw a bag at his teacher and hit them with a pole. The child's behaviour deteriorated after the exclusion but, in the view of the parents, the school failed to offer support to meet the child's needs. The behaviour escalated and the child attacked a dinner lady. Following further incidents the school issued a permanent exclusion. The mother appealed and the Independent Review Panel quashed the decision on the basis of irrationality; that the governing body had failed to consider all relevant points and did not comply with the Equality Act and SEN Code of Practice. The governing body upheld the decision to exclude. The client is escalating the matter to the First Tier Tribunal on the grounds of disability discrimination.

In this case the parent had felt persistently failed by the school in providing support for the child's SEN. It appeared that the school did not take account of relevant Statutory Guidance, namely the Special Educational Needs Code of Practice or the Exclusions Guidance.

This case demonstrates an example of where an IRP have recommended reinstatement and the Governing Body still upheld the exclusion.