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Friday 27 April 2018

## A review of school exclusion: call for evidence

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) under the provisions of the Children Act (2004). The DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to submit evidence to the Department for Education's review of school exclusion.

### Understanding the current context and drivers of exclusions

2. According to the latest available [figures](#) from the DfE, 35 children and young people were permanently excluded each day in 2015/16, up from an average of 30 per day in 2014/15; fixed period exclusions have also risen. Historically, exclusion has been reserved for only the most serious acts of misconduct, however, persistent disruptive behaviour is now the most common reason given for fixed term and permanent exclusions in all state funded schools. Worryingly, the rate of exclusion among children aged four and under grew at a faster rate than any other age category. The exclusion of very young children, in particular, cannot be condoned, as exclusion, of itself and inevitably, leads to a period out of education, often for children whose educational performance is already less than that of their peers, which exacerbates disadvantage.
3. In addition, we know that boys are more likely to be excluded than girls, as are children who are eligible for free school meals (FSMs), those with special educational needs and/or disabilities (SEND), learners from some BME backgrounds and children in care are also more vulnerable to exclusion than their peers. This cannot be right.
4. The growth in exclusions in recent years, after a period of sustained reductions, coincides with a series of significant education reforms, including changes to funding, school structures and accountability as well as the curriculum. As a result of these reforms local authorities (LAs) and Regional School Commissioners (RSCs) are accountable for the educational outcomes for all children attending state funded schools. LAs are determined to work with all schools to drive up standards, regardless of status or designation, but this can be difficult as LAs are prohibited by law from swiftly intervening in academies where performance and/or practice is causing concern. This is both frustrating and troubling for individual LAs and a coordinated response is clearly required - the geographical areas RSCs are expected to oversee are simply too large to fulfil an effective challenge role with individual schools. In the past, exclusions received greater focus and local areas were required to develop a clear local strategy to reduce exclusions, however, this duty has been removed.
5. ADCS is increasingly concerned that fragmentation within the school system is putting pupils' attainment at risk. The lack of a holistic system locally, together with the pressures of greater competition between schools plus a high-stakes inspection regime and falling budgets mean that more and more schools are struggling to meet the complex and overlapping needs of challenging learners whilst sustaining rapid improvement. Additionally, the high stakes accountability measures that have accompanied education reforms, such as the introduction

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of Progress 8, EBacc and new primary level tests, reward schools for academic outcomes. Sadly, the result is disengagement from learning for some of the children and young people who have the greatest need for a decent education to help them become socially mobile.

6. Inflexible school behaviour policies too often do not allow for reasonable adjustments to be made when children have previously, or are currently, experiencing adversity. The growth in 'zero tolerance' policies, particularly (but not only) in academy schools, mean exclusion is almost inevitable for any learner who struggles to meet stringent expectations deployed in the name of 'consistency.' This is leading to the marginalisation of vulnerable groups which cannot be right, particularly if misbehaviours are linked to additional needs. Whilst good discipline in schools is important, punitive measures do little to change behaviours and may only serve to reinforce them further.
7. ADCS members are concerned that a growing number of exclusions could have been averted if more resources were available for pastoral and classroom support - the real-terms reduction in school funding is driving down capacity to deal with behavioural issues at an early stage. This means that individual pupils, particularly those with complex health and social care needs, are at a growing risk of falling out of mainstream education, especially when we factor in the reduced ability of LAs to step in and provide additional support due to a 49% reduction in funding since 2010 ([NAO, 2018](#)).

#### **Informal exclusions and other alternatives to permanent exclusion**

8. ADCS is also concerned that increasing numbers of children and young people are slipping under the radar and are missing out on education as a consequence of a number of borderline-improper or actually unlawful strategies 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. Further, being in education is one of the strongest protective factors for vulnerable children and young people. Exclusion can exacerbate safeguarding issues, such as gang involvement, and there is a well-proven link between offending behaviours and not being in suitable, full time education or training.
9. We know relatively little about the scale and use of internal exclusions e.g. placing a child in an on-site isolation unit, nor the impact on learner's outcomes. It would be helpful if this review sought to shed further light on this area of practice.
10. Exclusion is not the only route open to headteachers if the relationship between the school, a learner and their family has become strained or has broken down. If delivered promptly, managed moves can offer a valuable alternative in terms of keeping learners in mainstream settings. However, the benefits of a fresh start can be overestimated if undiagnosed or unmet health and social care needs underpin disruptive behaviours. Exclusion can be more attractive to school leaders than managing a 'difficult' child as it represents a quicker, cheaper solution for the school – in the short-term LAs pick up the bill for the alternative provision package put in place, and society picks up the long-term bill for ill-educated children. Exclusion is very rarely in a child's best interests.

#### **Elective home education**

11. The [Children's Commissioner](#) has previously found evidence of schools encouraging parents to educate their children at home without formally recording this as an exclusion. The 2012 report noted it is rare for schools to systematically break the law, a small number of educators taking part in the study were aware of pupils being removed from the school roll without an adequate alternative being put in place: "*The educated at home is a massive loophole,*

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*because certainly in my previous life there was one school that actually had a letter that they used quite often that they took round to the house and said 'I will educate my child at home, sign here'. And so, they were off the school roll and supposedly educated at home.”* ADCS members are becoming increasingly concerned that this practice, though not widespread, is becoming more common.

12. We do not have a clear picture of the numbers of children currently being educated other than at school in this country. Many LAs report growing concerns about the fluidity of this cohort and the apparent use of home schooling as a way of removing pupils from school without this being recorded as a formal exclusion, an issue also raised in the Office of the Schools Adjudicator's most recent annual report. This practice raises multiple issues about the preparedness of parents and carers to offer a suitable and efficient educational experience in the home, the child's wishes and the long-term impact on their outcomes. As a respondent to a recent ADCS survey on home schooling said: *“Parents of Year 9, 10 and 11 students who EHE [electively home educate] at this late stage for the first time increasingly report an ‘unresolved difficulty’ with an academy as a the key reason or motive. It can include the threat of attendance penalty notices or behavioural issues linked to the potential for further exclusions. Increasingly some parents allege that EHE is suggested to them... These parents invariably say they do not know what EHE entails.”*
13. At the launch of Ofsted's most recent annual report (2017), HM Chief Inspector of schools warned that growing numbers of vulnerable pupils are left “out of sight and out of mind” by a system that is quick to condemn them to a life without a proper education. While an analysis by Education Datalab (2017) found evidence that pupil moves are being used to boost the results of schools in a minority of cases. Analysis showed that that pupils leaving a school's roll can have a very flattering impact on results, GCSE pass rates could be up to 17 percentage points lower in some cases if league tables are reweighted to include all pupils who received some of their education there, in proportion to how much time they spent there.

### **Alternative provision**

14. ADCS is concerned alternative provision (or AP) is being used as a shortcut to improve school performance. Off-rolling pupils into a AP, such as a pupil referral unit (PRU), effectively removes children from official data and this practice was recently challenged by the Children's Commissioner in the 2017 report, *'Falling through the gaps in education,'* as fewer than one in five pupils attending PRUs have been permanently excluded.
15. ADCS is concerned that a new wave of AP free schools does nothing to promote an inclusive education system. Whilst there is a place for AP within the education system, directing growing numbers of learners off-site in order to improve their behaviour is a risky strategy. Transitions are stressful and trusting relationships built with teaching and pastoral staff, not to mention peers, can be broken. This may further exacerbate the issues giving rise to poor behaviour.

### **Guidance on exclusions**

16. The DfE's statutory guidance on exclusions (2017) is clear about the need to protect high risk groups yet these same vulnerable groups e.g. learners with SEND and those in care, are disproportionately affected. Although the guidance was only recently updated, it is clear a more fundamental review is required, one which seeks to understand and address the drivers of exclusive behaviours as well.

17. In response to the 2017 consultation changes to the exclusions guidance, ADCS made the following suggestions which remain relevant:

- It would be helpful if the guidance placed a much greater emphasis on meeting the learner's needs and putting an appropriate support package in place before commencing a fixed-term exclusion in order to minimise the long-term impacts on educational outcomes for learners, particularly children in care. All schools, in partnership with the local authority, should work together to secure appropriate full time provision for a permanently excluded child or young person until such a time as a new school placement is confirmed in recognition of their vulnerabilities whilst outside of full-time education.
- It is our belief that, in addition to notifying parents or carers, the relevant local authority should be alerted by the headteacher to a fixed-term exclusion for any child in care. Ideally this will be done via the virtual school head (VSH) who has a duty under the Children and Families Act 2014 to support learners in care via advocacy and the development of solutions with schools, where appropriate, when concerns arise.
- Section 6.1 lists the various parties who should be invited to meet with the governing body to discuss an exclusion, it would be helpful if the guidance specified this should be a corporate parent in the case of a child in care, ideally the VSH, or a member of their team.
- ADCS believes the guidance could be much more robust around the rights and needs of children in care. Our members would welcome greater consultation between the headteacher and the VSH before taking the decision to exclude a child in care for any length of time given school changes are a known risk-factor in terms of educational progress and attainment. Wherever possible appropriate behavior management strategies should be employed, particularly if a rapid escalation of behaviours following a lower level incident is at the heart of the issue in hand. If poor behaviour is a consequence of very difficult circumstances e.g. a key decision about their life is about to be taken, then sanctions are also not appropriate.
- ADCS is concerned that the powers of the independent review panel (IRP) are undermined by the delegation of the final say to the school's governing body. If the IRP, which includes an SEN expert, finds that the decision to exclude was made in error, or flawed because there was no reasonable adjustment made for special educational needs impacting on self-regulation, for example, then reverting to the original decision-maker is unsatisfactory. ADCS would urge the Department to give further consideration as to whether this process offers a genuinely independent appraisal of exclusion decisions. Such decisions have a significant impact on a child or young person's future life chances.
- It is important that the guidance fully addresses the tensions inherent in the review of a governing body's decision to permanently exclude, the right to a fair hearing and the pupil's right to an effective remedy (this represents a breach of public law principles). Similarly, the latest iteration of this guidance attempts to clarify the notification process the IRP must follow once a decision has been made, including its duties in ordering financial payments. Whilst these changes offer greater clarity, the £4,000 fine payable to the local authority when the school refuses to accept an IRP decision does nothing to compensate the child or their family for the distress caused during this process.

18. The stakes are high for headteachers who wish to be inclusive, we urgently need to build an accountability system which not only values but rewards inclusion. A relentless focus on academic attainment has resulted in some unintended consequences. We know that the

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social and financial cost of allowing children to get to the point of exclusion are huge and for many this is the first step along a journey that ultimately ends with social exclusion in adulthood too.

19. Members of the Association's Educational Achievement Policy Committee would welcome the opportunity to discuss this response in greater detail at a future meeting. Please contact Katy Block, ADCS Policy Officer, via [katy.block@adcs.org.uk](mailto:katy.block@adcs.org.uk) in the first instance.

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