



Championing Children and Young People in England

Office of the Children's Commissioner:

**Formal Submission of Evidence to the
Education Bill Committee**

March 2011

Office of the Children's Commissioner

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 United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

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 always to operate from the child's perspective.

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Summary and recommendations

The Office of the Children's Commissioner very much welcomes the intentions of this Bill. In particular, we welcome its focus on addressing disadvantage in the education system, including the measures to improve access to high quality childcare for young people from disadvantaged backgrounds. We also welcome the provisions aimed at improving the achievement of children and young people who are currently less likely to succeed at school.

The Bill is an opportunity to give children and young people greater ability to have their voices heard in decisions which affect their futures – in accordance with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). We strongly support the Government's recent proposals to pilot this approach in the case of special educational needs tribunals. This Bill should extend this right to appeals of school admissions and exclusions decisions.

Discipline, behaviour and exclusions

- This evidence indicates a situation where behaviour in most schools is good most of the time, and where seriously unruly young people – those who are then permanently excluded – are in a very small minority. Legislative changes aimed at improving behaviour should therefore be proportionate, and protect children's rights.
- We believe that caution should be used in taking forward a number of the new powers for teachers set out in the Bill. There should be greater clarity on the circumstances whereby these powers can be used, and a legal distinction should be made between teachers intervening to prevent pupils harming each other (or members of staff), and other forms of restraint.
- The Bill should include a requirement for schools to keep records of when teachers have made use of these new powers, with an expectation that headteachers monitor their use to discourage ineffective teachers from becoming over-reliant on them.
- The requirement to give 24 hours' notice for detentions should be retained.
- Processes for excluding young people should be clear, transparent and accessible to all young people and their parents. Any weakening of the protections against unfair

exclusions could undermine children's rights under articles 3, 12 and 28 of the United Nations Convention on the Rights of the Child. There is also a case to examine whether this would contravene duties under equalities legislation to address and reduce discrimination on the basis of race and gender.

- A right of appeal to an independent body is a necessary part of this system, and the findings of the appeal body should be binding on both sides. We do not believe that the proposed system of review panels will meet this need, due to the fact that review panels will not be able to require a school to re-admit a child, even in cases of mistaken identity, or where the school has acted unlawfully in excluding.
- We therefore recommend that the changes set out in the Bill to remove exclusions appeals panels and replace them with a "review" system should be removed, and the current system of appeals panels maintained.

Changes to the role of the Schools Adjudicator

- We strongly welcome the extension of the remit of the Schools Adjudicator to cover all state-funded schools, including academies. However, we have concerns about changes to the role of the Schools Adjudicator in handling complaints about admissions; the ending of the requirement for local authorities to report on admissions systems to the Adjudicator, and the ending of the requirement for local authorities to set up admissions forums. Taken together, these changes are likely to significantly reduce the Schools Adjudicator's ability to identify breaches of the admissions code, and to act on breaches which are identified. We therefore feel that these changes should be removed from the Bill.

The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations 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 Convention is not incorporated into national 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.

In relation to the current Education Bill, the articles of the Convention which are most relevant to this area of policy are:

- Article 2:** All rights apply to all children, whatever their circumstances
- Article 3:** The best interests of the child must be a top priority in all actions concerning children
- Article 4:** Governments have a responsibility to protect the rights of children
- Article 12:** Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously
- Article 28:** *"Every child has the right to an education... Discipline in schools must respect children's human dignity"*.

The evidence below has been drafted with these articles in mind.

The Education Bill: general comments

This evidence builds on the initial submission made to the Education Bill Committee on 26 February 2011,¹ and the Children's Commissioner's oral evidence to the Committee on 1 March 2011. It covers only the areas of the Bill which are of direct relevance to the remit of the Commissioner, and in particular those areas where we assess that the rights of children and young people (as set out above) may be under threat.

To this end, this submission focuses on the following parts of the Bill: Part 2 – discipline and exclusions, and Part 5 – particularly provisions relating to the role of the Schools Adjudicator.

The Office of the Children's Commissioner very much welcomes the intentions of this Bill. In particular, we welcome its focus on addressing disadvantage in the education

¹ 'Views on the Education Bill', Office of the Children's Commissioner, 2011. See: http://www.childrenscommissioner.gov.uk/content/publications/content_472.

system, including the measures to improve access to high quality childcare for young people from disadvantaged backgrounds. We also welcome the provisions aimed at improving the achievement of children and young people who are currently less likely to succeed at school.

In general terms, we would like to encourage the Committee to use this Bill as an opportunity to give children and young people greater ability to have their voices heard in decisions which affect their futures – in accordance with article 12 of the UNCRC. We feel that children and young people should, in this and future legislation, be given the same powers as their parents to appeal decisions which have an impact on their futures. We strongly support the Government's recent proposals to pilot this approach in the case of special educational needs tribunals. In the case of this Bill, that would include, but not be limited to, appeals of school admissions and exclusions decisions. Where applicable, the legislation should also provide for them to be supported in this by a suitably qualified independent advocate.

Part 2: Discipline and exclusions

In our view, the key factor in discussing behaviour and discipline in schools is how best to ensure that every child's right to an education is balanced with the child's responsibility to behave in a way which does not damage the education of others.

Schools should be safe, orderly environments for all members of the school community. Every member of the school community has both a right to expect to be treated with respect by all others, and a responsibility to show respect. Disruptive behaviour must be managed effectively by teachers for the good of the majority. In exceptional cases this will require the removal of children from mainstream education. However, we believe that this must always be a last resort, and that the children who are excluded from schools retain their right to an education.

Current levels of behaviour in schools: the evidence base

It is important at the outset to assess objectively the extent to which behaviour and discipline in schools is a problem requiring a national policy response. It is dangerous to rely on anecdote or media reporting in doing this. Media reporting will inevitably focus on the newsworthy or sensational, and often does not have any interest in placing individual stories in context. Equally, it would be entirely possible to produce convincing reports based on anecdote or individual experience (for example from teachers) to argue both for and against the idea that discipline in schools is a substantial problem.

This is important because there is a need to ensure that legislative responses to improve behaviour are proportionate to the magnitude of the issue. This is particularly important when such responses restrict the rights of children and young people, as is the case with legal changes set out in the Bill.

Evidence from Ofsted inspections suggests that behaviour in state schools in England is "good" or "outstanding", in over 75% of schools inspected.² Given that Ofsted disproportionately inspects schools which have previously given cause for concern, or which face challenging circumstances, it is likely that the figures across all of the school population will be even higher.

Moreover, research commissioned by the Department for Children, Schools and Families in 2008 showed that 94% of parents are satisfied with their child's school, with 74% being either "very" or "extremely" satisfied.³ While 37% of those who were dissatisfied with their child's school cited behavioural issues as the reason, this only represents 2.2% of the total sample. The overwhelming majority of parents do not see behaviour in their child's school to be a significant problem.⁴

Research commissioned by the Office of the Children's Commissioner, and conducted by the National Foundation for Educational Research, found that parents' perceptions of behaviour in schools were shared by children themselves. Seventy-eight per cent found that teachers were able to maintain good behaviour in class.⁵

Finally, rates of exclusions from school are low and have been falling consistently for several years. The most recent Department for Education (DfE) figures show that in 2008/09, the number of permanent exclusions in school fell by 19.4% to 0.09% of all pupils (i.e. nine pupils in every 10,000).⁶ The number of fixed term exclusions also fell, from 326,000 to 304,000. Almost all (97%) of fixed term exclusions were for periods of less than one week.⁷

2 'National Indicator 86: Secondary Schools judged as having Good or Outstanding Standards of Behaviour as at December 2009', DCSF, 2010. See: <http://www.dcsf.gov.uk/rsgateway/DB/STR/d000923/OSR10-2010-TemplateNI86Final8.pdf> [accessed 22 March 2011].

3 'Survey of Parents in England 2008', DCSF, 2008. See: <http://education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-RW041> [accessed 22 March 2011].

4 Ibid.

5 'Children and Young People's Views of Education Policy', Office of the Children's Commissioner, 2011. See: www.childrenscommissioner.gov.uk [from 29 March 2011].

6 'Permanent and fixed period exclusions from schools and exclusion appeals in England, 2008/09', DCSF, 2010. See: http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000942/SFR22_2010.pdf [accessed 22 March 2011]

7 Ibid.

This evidence indicates a situation where behaviour in most schools is good most of the time, and where seriously unruly young people – those who are then permanently excluded – are in a very small minority.

Powers of search and restraint

We believe that caution should be used in taking forward a number of the new powers for teachers set out in the Bill. In particular, we are concerned about allowing teachers to use physical restraint, and allowing them to search young people against their will.

We are also concerned that, on the face of the Bill, there is currently very little clarity on the circumstances whereby teachers will be legally permitted to search a member of the opposite sex, and to do so without other staff members being present. We acknowledge that it may, very rarely, be necessary for this to happen – for example in order to prevent a violent crime taking place. However, at present there is insufficient clarity on the circumstances where such action would be legally acceptable.

These circumstances should be defined clearly. Ideally this would be done on the face of the Bill – given the significant risks attached – or at the very least through secondary legislation. It should be clear that these new powers are intended only to be used as a last resort. Moreover, a legal distinction should be made between teachers intervening to prevent pupils harming each other (or members of staff), and other forms of restraint – such as those used in the secure estate – which require specialist training, and are only suitable for use in very extreme circumstances, by suitably qualified staff.

In practice, we expect that effective teachers will rarely, if ever, need these powers, as they will be able to prevent classroom situations from escalating to the point where they are required. New rights for teachers should therefore be accompanied by new responsibilities. The Bill should include a requirement for schools to keep records of when teachers have made use of these new powers, with an expectation that headteachers monitor their use to discourage ineffective teachers from becoming over-reliant on them. As we expect that these powers will only very rarely be used, this should not impose a disproportionate burden on schools, while acting as strong protection for children's rights.

Ending of 24-hour notice of detentions

We have concerns with regard to the ending of the requirement to give 24 hours' notice for school detention. We understand the intent of this change – both in terms of making detention a more meaningful sanction for teachers, and in more closely linking the behaviour and the punishment. However, we fear that it may have unintended

consequences which could reduce its effectiveness. Behaviour management in schools is best served by creating an atmosphere of mutual respect between all members of the school community. We feel that creating sanctions for poor behaviour (such as this one) which are explicitly designed to inconvenience pupils and their families seriously risks undermining this atmosphere of respect.

This may also have a disproportionate impact on certain vulnerable groups. In particular, this may cause significant problems for young people with caring responsibilities outside of school. Such children may not have disclosed these responsibilities to the school. We therefore recommend that this proposal should be amended to reinstate the requirement to give reasonable notice of detentions.

Changes to the exclusions system

Permanent exclusion from school is a significant life event for a young person. While it will sometimes be necessary to prevent disruption to other young people's education, we feel that it should only ever be considered as a last resort. Processes for excluding young people should be clear, transparent and accessible to all young people and their parents. Finally, we believe that a right of appeal to an independent body is a necessary part of this system, and that the findings of the appeal body should be binding on both sides.

There are two reasons why we feel this is important. Firstly, the consequences of being permanently excluded from school are extremely significant for the young person concerned. Many never re-engage with formal education, severely limiting their future life chances. Forty per cent of 16-18-year-olds who are not in education, employment or training (NEETs) were previously permanently excluded from school.⁸ Similarly, over half of young offenders in custody have been excluded from school previously.⁹ This is particularly significant given that the permanently excluded represent only 0.09% of the school population.¹⁰

Secondly, exclusions disproportionately affect specific demographics, particularly those who are most vulnerable for other reasons. Boys are three times more likely to be excluded than girls. Children from certain ethnic groups (particularly Traveller and black Caribbean backgrounds) are the most likely to be excluded. Exclusions are also higher

⁸ 'Youth Cohort Study & Longitudinal Study of Young People in England: The Activities and Experiences of 18 year olds: England 2009', DCSF, 2010. See: <http://www.dcsf.gov.uk/rsgateway/DB/SBU/b000937/b01-2010v2.pdf> [accessed 22 March 2011].

⁹ 'Punishing Disadvantage: a profile of children in custody', Prison Reform Trust, 2010. See: http://www.outoftrouble.org.uk/sites/default/files/Punishing_Disadvantage_0.pdf [accessed 22 March 2011].

¹⁰ 'Permanent and fixed period exclusions from schools and exclusion appeals in England, 2008/09', DCSF, 2010. See: http://www.dcsf.gov.uk/rsgateway/db/sfr/s000942/sfr22_2010.pdf [accessed 22 March 2011].

among pupils on free school meals.¹¹ Children with special educational needs (both with and without statements) are over eight times more likely to be excluded from school.¹²

Given the damaging consequences of exclusions and the evidence that they disproportionately affect more vulnerable groups within the pupil population, we feel that any weakening of the protections against unfair exclusions could undermine children's rights under articles 3, 12 and 28 of the UNCRC. There is also a case to examine whether they contravene duties under equalities legislation to address and reduce discrimination on the basis of race and gender.

We agree with the Association of School and College Leaders, and the National Association of Head Teachers that the removal of a right to appeal will not be in the interest of schools, who will otherwise find themselves involved in lengthy and costly legal action as a result of exclusion appeals. We do not believe that the proposed system of review panels will meet this need.

The fact that review panels will not be able to require a school to re-admit a child, even in cases of mistaken identity, or where the school has acted unlawfully in excluding, means that cases will still be taken to judicial review, and the rights of these children will still be undermined.

We strongly support the Government's piloting of approaches to exclusions which require schools to pay for provision for excluded children, and to retain a responsibility for these children. However, these proposals are at present at a very early stage of piloting. It is therefore important to ensure that legislation does not assume that this pilot will become a national programme, and that all necessary protections for children's rights are maintained until such time as it is fully implemented.

We therefore recommend that the changes set out in the Bill to remove exclusions appeals panels and replace them with a "review" system should be removed, and the current system of appeals panels maintained.

Part 5: Changes to the role of the Schools Adjudicator

We strongly welcome the extension of the remit of the Schools Adjudicator to cover all state-funded schools, including academies. We feel that this will be of great benefit to parents and young people in understanding the process for stating a preference for a school – both at primary and secondary phase – where they may be applying to a

¹¹ Ibid.

¹² Ibid.

mixture of academy and maintained or foundation schools, as well as understanding how over-subscribed schools allocate places.

We know from research carried out on our behalf by the National Foundation for Educational Research (NFER)¹³ that young people value highly the ability to express a preference for the school of their choice – 79% of those questioned said they thought they should be able to go to the school of their choice. However, we also know that they find the process for doing so, and the admissions system generally, confusing – with only half reporting that they understood how it worked.

We feel that young people's understanding of the admissions system would be strengthened by adding to the remit of the Schools Adjudicator a duty to increase awareness of the content of the admissions code among young people and their parents. This would enable them to make better informed decisions when applying to schools, and encourage schools to be more open and accountable to parents and young people in the criteria that they use. We would encourage the Committee to add such a duty to the Bill.

Separately, we have concerns that a number of changes made in the current Bill risk reducing accountability for schools, and increasing the chances of young people falling victim to breaches of the Admissions Code.

These include: changes to the role of the Schools Adjudicator in handling complaints about admissions; the ending of the requirement for local authorities to report on admissions systems to the Adjudicator, and the ending of the requirement for local authorities to set up admissions forums. Taken together, these changes are likely to significantly reduce the Schools Adjudicator's ability to identify breaches of the Admissions Code, and to act on breaches which are identified.

The ending of local admissions forums, particularly at a time where many more schools will begin to act as their own admissions authority, will make it less likely that local authorities will be able to identify breaches of the code taking place in schools in their area. Where these are successfully identified, they will no longer be required to alert the Adjudicator to these breaches, meaning that fewer will be adequately investigated or addressed. Finally, additional restrictions on the cases which the Adjudicator is able to take forward will mean that fewer referred cases are investigated.

¹³ 'Children and Young People's Views of Education Policy', Office of the Children's Commissioner, 2011. See: www.childrenscommissioner.gov.uk [from 29 March 2011].

The majority of these breaches will be relatively minor, and in many cases inadvertent. However, they will undoubtedly lead to children unfairly losing out on their choice of school. Reducing accountability in this way risks adding to the social segregation and stratification of schools which the Government has identified on page 1 of its equality impact assessment of the Bill. We therefore recommend that the duties on local authorities to hold local admissions forums, and to report to the Adjudicator, be retained.

Changes to the role of the Local Government Ombudsman

Finally, we have concerns that the rights of children and their parents risk being undermined by the removal of the ability to take complaints regarding schools to the Local Government Ombudsman. While the proposed new system of managing all complaints through the Secretary of State has the advantage of treating all state-funded schools in the same way, it removes a layer of accountability which is independent of central government. The very real difficulties many children and families face in accessing existing complaints procedures in relation to schools and public services should not be underestimated – removing local accountability in this way puts up significant barriers for children in challenging decisions that impact negatively on their lives.