

# The role of governors in a fair and robust exclusion process

Standing up for kids

**JUST FOR KIDS**  **LAW**

# Just for Kids Law - who we are and what we do

- Founded in 2006 - recognised that the children and young people often needed more than legal representation.
- We work with and for young people 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
  - Youth projects – which includes our Youth Opportunities, The School Exclusions Project
  - Youth advocacy – supporting children and young people to have their voices heard and respected by professionals
  - Strategic Litigation
  - Policy and campaigning
- School Exclusions Hub – online resource for professionals and parents

# Some of the issues we see in practice

- The vast majority of the young people we represent are very vulnerable, have a number of social exclusion factors including CiN, LAC, social economic issues, SEND, risk 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 met – this is unlawful.
- A perceived bias towards the school in particular in relation to safeguarding the school community.
- Lack of understanding of the issues young people face today for example sexting, social media, risk of exploitation and impact of exclusion.
- A disproportionate number of exclusions of children as young as 5/6 years old eg for disruptive behaviour.
- The number of exclusions upheld at reconsideration hearing.

# Impact on Young People

- Young people have stated they have:
  - **Feelings of isolation** - being taken out of a journey their peers are in.
  - **Carrying self-blame** - even when the exclusion was unfair or not their fault.
  - Their **self-esteem** being impacted.
  - Been through a **traumatising** experience that impacts them throughout their lives.
  - Exclusion compounds the **instability** in their lives.

# Impact on Young People

- Case studies
  - Emma was permanently excluded for disruptive behaviour – she had moved foster care placement and was travelling 2.5 hours a day to and from school, which was exhausting. She is now an adult feels she held the sole responsibility for the exclusion. The exclusion impacted her mental health and self-esteem.
  - Rian was 16 when he was permanently excluded. As a result of the exclusion he had to do his GCSE in one year. He is now 23 and at Uni studying law. The exclusion made this unlikely and much more difficult than his peers. He was only able achieve this due to the support of family. He states that he didn't allow himself to process the exclusion, as he didn't want to hold him back. He realises now that he suffered a lot of trauma during the exclusion process and had no outlet or ability to process the trauma.
  - Lucy (a LAC) was permanently excluded for distributing indecent picture of herself. She denied the allegation. The permanent exclusion was overturned and Lucy was reinstated. However she went to another school due to how she was treated. The school never apologised for its unlawful decision. Lucy is still impacted by the actions of the school eg the distance she has to travel to the new school.
  - Zafa is autistic. He was excluded due to his 'behaviour' which was directly linked to his autism. Zafar through his own determination has been able to get to University. In the process he has taught himself about autism and now realises that the school just did not know how to support his needs. At the time he was just a child and only saw and understood things from "his lens", a neuro-diverse lens.

# What does the guidance say?

- Governing Body **must** consider the reinstatement of an excluded pupil within 15 days of the exclusion if:
  - the exclusion is permanent;
  - fixed-period exclusion which are more than 15 school days in a term; or
  - it would result in a pupil missing a public exam, national curriculum test.
- Governing Body **must** consider the **interests and circumstances** of the excluded pupil, including the circumstances in which the pupil was excluded (para 63).
- The headteacher **should** give the **pupil an opportunity** to present their case before taking the decision to exclude (para 17).
- Governing Body **must** consider **representations from parents**, headteacher and the local authority (para 64).

# What does the guidance say: Helpful provisions and tips - 1

- **'Balance of probabilities'** – it is more likely than not that a fact is true (para 65)
  - This is based on all the evidence available to the School/ Governing Body.
  - It is important to differentiate between assumptions and facts supported by evidence.
- Judicial Review Principles: is the decision to exclude lawful, rational, reasonable and procedurally fair?(para 71 and 159)
  - **Unlawful/ illegal** – what is the law? Has the headteacher/ governing body acted outside of its powers?
  - **Irrationality and proportionality** – Is the decision to exclude reasonable? Is it based on all the relevant points? Does the evidence back up the decision? Is the decision proportionate in all the circumstances?
  - **Fairness of procedure** – Is the governing body acting impartially? Has there been an abuse of power by the headteacher/ governing body by it acting unfairly? Is there any evidence of unconscious bias in headteachers decision or within the governing body?
- Reminder - it is unlawful to exclude for a non-disciplinary reasons; eg disability, attainment, attendance or the actions of parents.

# What does the guidance say? Helpful provisions and tips - 1

- Types of Discrimination: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment.
- Has the excluded pupil had an opportunity to be heard (para 17)
- Are there **contributing factors**: such as bereavement, mental health issues, bullying, any significant changes in day to day life, in care/ taken into care (para 18)
- Has the school investigated **underlying causes** of disruptive behaviour – including use of multi disciplinary assessments (para 19)
- Was the exclusion an appropriate sanction?
- Is the child from groups with **disproportionately higher rates of exclusion**? (para 21)?
  - If so what steps have been taken to consider what extra support the group might need and to identify the needs of the individual pupil? (para 22)
- Has the school proactively engaged with the family (para 24)?



# The Role of Governing Body in ensuring a fair hearing

- To hold the headteacher decision to account.
- Listening to and giving weight to the **views of the child and family**.
- Putting the **child at the centre** of decision making and understanding the impact of an exclusion on the child.
- Understanding **SEND** and how this may impact a child's behaviour, actions, inactions, responses etc.
- Understanding that vulnerable children and young people often display challenging behaviour and with support to meet their individual needs this can change.
- Ensuring that the entire school understands the vulnerabilities and challenges that children today face – including SEND, exploitation, social media, sexting
- Recognising and acknowledging any unconscious bias.

# Ensuring Fair & Non-Arbitrary Exclusions

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# Observations of the Exclusions System

- Behaviour policies are unclear, poorly written and sometimes illegal
- HT decision often rushed, inadequately evidenced and based on emotion
- Entire process is heavily weighted in favour of schools
- Parents/carers often unable to properly access information or advocate
- Governors forget their safeguarding responsibilities
- Governors are afraid of overturning headteachers' decisions
- All parties are unclear on the statutory guidance
- The result is inconsistent, arbitrary and unfair exclusions



## How can governors ensure best practice **before** exclusion?

- Do not rubber stamp **behaviour policies**
- **Define** 'serious incidents', as well as 'serious harm'
- Agree the behavioural **culture** of the school
- Agree the **principles** to be applied to exclusion
- Agree **alternatives** to exclusion (e.g. AP at cost)
- Scrutinise **behaviour management systems** and **exclusions data**
- Scrutinise **pastoral systems** to ensure effective joined-up interventions



## How can governors enable **fair and non-arbitrary** decision-making by headteachers?

- Introduce a **pre-exclusion checklist**, to be included in the evidence
- Ask who the headteacher **consulted** in school or MAT (Head of Year or SENCo where appropriate; Head of Governance)
- Insist on **high quality evidence** of breach(es)
- Ensure headteacher explains how pupil's return would **seriously harm**
- **Persistent breaches** - make sure to ask why now? Tipping point?



## How can governors ensure **parents/carers** can access the process?

- Ask about **parental communication**, ensuring access at each stage
- Ask if headteacher **met with the family** before deciding to exclude
- Accommodate **parents' schedules** to ensure they attend the hearing
- Where appropriate, make sure you **hear from the pupil**
- Ensure **interpreter** available where necessary
- If parents do not attend, **ask what they would have asked**
- Use your **clerk**



## How can governors ensure a **fair & robust** exclusion review hearing?

- Insist on regular **training** on the guidance and best practice
- Use **suggested questions list** to make sure nothing is missed
- Use a **deliberations checklist**, to be made part of the evidence
- Be familiar with **SEND Code of Practice** and reasonable adjustments
- Remember your **safeguarding** responsibilities first and foremost
- **Natural principles of justice** - trust your gut, it knows
- You are reviewing **ALL of the evidence** before you, not just whether HT's decision was reasonable at the time it was made
- Do not be afraid to overturn when necessary - you are not there to support the headteacher, you are there to support lawful processes