

# A consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

Response of the Centre for Social Justice

February 2012



THE CENTRE FOR  
SOCIAL  
JUSTICE

## Introduction

We have serious concerns about the timing of this consultation. It closes on 17 February, in circumstances where the Children's Commissioner's report on exclusions is not due to be published until the end of March. In addition, we understand that Charlie Taylor, the Department for Education's (Department) expert adviser on behaviour, was due to submit two reports – on attendance and alternative provision (one of which we believe will address unofficial exclusions) – to the Secretary of State before Christmas. However, the reports have not yet been released. We would expect the findings and recommendations contained within each of these reports to help to inform and improve the revised guidance.

**In light of the above, we strongly urge the Secretary of State to extend the period of this consultation, and to refrain from introducing and/or amending any regulations and issuing final revised guidance on exclusions, until the above mentioned reports have been published and so that their findings and recommendations can be taken into account in this consultation.**

We are also mindful of the Department's exclusion trial and note that it will undertake an evaluation and consider 'in particular the impact on outcomes for those pupils who are most vulnerable to exclusion, and use the evidence from it to inform future policy to address disproportionate exclusion.' In view of this, we query what the Department's intention is with respect to the new guidance on exclusions.

We also have reservations about the approach of the consultation. The Department states (Response Form, page 4): 'The objective is to ensure that the revised guidance gives sufficiently clear information to people involved in the exclusion process... Suggestions for brief inserts and/or revisions to this exclusion guidance are welcome. However, in line with the Department's aim to provide more effective guidance, it is not the intention to widen the scope of the document or lengthen it.' We question the extent to which a consultation can be meaningful on this basis. Questions tend, in the main, to be framed in such a way that focus is placed on the guidance being sufficiently clear. Whilst this is important, the information it contains must also be sufficiently detailed (yet concise) to avoid potential confusion or abuse, and the exclusion process itself must be fair. We believe that widening the scope and length of the revised guidance on the basis referred to in our response is necessary to achieve this and for the guidance to be effective.

The Department states (Summary Report, page 2): 'These reforms are one part of our wider policy to support schools to promote good behaviour so that all children can receive a good education. We believe that this [sic] is vital to support schools to promote good behaviour if we are to ensure that all pupils are able to achieve their full potential, regardless of their circumstances.' However, we do not believe that the revised guidance supports this rhetoric. It can be argued that instead of supporting children to improve and stay within mainstream education as far as possible, the exclusion process may actually, in some cases, work against them.

This document is intended to provide constructive advice to the Department and aims to draw out the key points in response to the consultation questions. Many of our comments and suggestions are based on the extensive evidence gathered for the Centre for Social Justice's (CSJ) policy report on educational exclusion *No Excuses*.<sup>1</sup> At the time of its publication, in September 2011, we urged ministers to use *No Excuses* as a blueprint for radical reform on exclusion, in line with the Department's commitment to transform education in failing schools. We are concerned and disappointed to see that the relevant recommendations contained in *No Excuses* have been largely ignored in the revised guidance.

## Answers to consultation questions

### 1. Do you agree with the scope of the proposed regulations for academies? If not, what further changes should be made so that the regulations are appropriate for academies?

If the regulations are right then of course it would make sense for them to apply to academies in the way described. We think the exclusion regime for academies should be broadly the same as for maintained schools. We do not have any further comments.

### 2. Do you think that the guidance on early intervention is sufficiently clear? If not, how might it be improved?

No, the revised guidance on early intervention is not sufficiently clear and is confused. We welcome encouragement being given to schools with respect to intervening early and identifying underlying causes of a pupil's challenging behaviour. However, this should be done at the earliest possible opportunity, otherwise needs can remain unmet and become more entrenched, potentially resulting in further and/or serious challenging behaviour and an increased risk of exclusion. Early intervention should mean taking action whatever the problem is and at whatever stage it presents itself. On the one hand, the Department states (Response Form, page 8): 'Where possible it is important for schools to identify any underlying causes of disruptive behaviour and intervene to prevent problems escalating to the point of exclusion.' However, on the other hand, at page 4 of the revised guidance, it is not until a pupil 'displays continuous disruptive behaviour' that schools are encouraged to 'try to identify whether there are any causal factors and intervene early in order to reduce the need for any subsequent exclusion.' The most common reason for exclusion is for persistent disruptive behaviour.<sup>2</sup>

The position is further confused in paragraphs 17 to 19. Again, schools should not wait until a pupil 'demonstrates persistent or serious poor behaviour' before they 'should consider whether alternative or additional support is required.' We welcome encouragement being given to head teachers to consider the use of a multi-agency assessment and undertaking this in a wider sense than in relation to a pupil's educational needs. However;

<sup>1</sup> Centre for Social Justice, *No Excuses: A review of educational exclusion*, London: Centre for Social Justice, September 2011

<sup>2</sup> Department for Education, *Permanent and Fixed Period Exclusions from Schools in England, 2009/2010*

head teachers should not wait until pupils 'demonstrate persistent disruptive behaviour' before taking such action, or until the point at which they are 'considering the permanent exclusion' of a pupil before beginning a dialogue with the responsible Local Authority (LA). Again, this is not conducive to an early intervention approach. The same comments apply in respect of paragraph 21.

Examples should be given on the most effective ways in which schools can take a preventative approach through early intervention, and on how they can best identify and address the underlying causes of challenging behaviour. Information, guidance and examples of best practice should also be included on the Department's website.

Reference should be made to the vital role that effective voluntary and community sector organisations and Safer School Partnerships play in improving pupils' behaviour and minimising the potential need for exclusion – including managing the influence of street gang activity and weapon carrying, and conflict resolution. Restorative approaches can also provide another effective means of challenging and improving pupils' behaviour and resolving conflict. This should also be referred to. We welcome reference to engaging with pupils' parents in the context of intervention strategies. However, emphasis should be placed on the critical importance of parental engagement. The aim should be for schools to build high quality relationships and interactions with parents, from the earliest possible opportunity.

- 3. Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?**

Yes.

- 4. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to enable the SEN expert to perform their role effectively? If not, how might it be improved?**

Yes. However, there is a risk that this could, in reality, be a meaningless exercise for some pupils in light of the concerns raised at Question 16.

- 5. Do you believe these examples are sufficient to enable the [LA] to identify individuals that are suitable for the role? If not, please explain what other examples of expert would clearly meet the criteria of having the required expertise and experience of the SEN requirements on schools.**

Not sure. If it is accepted by the Department that one group is most suitable for the expert role amongst the examples given in the revised guidance, or from other examples which may be suggested in the consultation, then this should be stated in the new guidance, to ensure that LAs appoint individuals with the most relevant expertise and experience of the SEN requirements on schools. This is essential to a fair process.

6. Do you think the statutory guidance in relation to the exclusion of looked after children is sufficiently clear? If not, how might it be improved?

No; for the reasons explained above at Question 1. The heading of the section also runs contrary to an early intervention approach. It refers to statutory guidance 'on the exclusion' of looked after children, as opposed to action being taken to prevent such children from becoming at risk of exclusion. The same comment applies in relation to the headings which apply to paragraphs 17 to 20.

7. Do you agree with this approach to simplify the requirements on when information relating to an exclusion should be provided?

Yes.

8. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to ensure that parents will be properly informed about the exclusion process? If not, how might it be improved?

It is not so much the explanation of the legislation and the statutory guidance that we have concerns about but some elements of the exclusion process itself. These are raised at Question 16.

9. Do you think that the guidance on supporting pupil participation is sufficiently clear? If not, how might it be improved?

No, the guidance on supporting pupil participation is not sufficiently clear. The revised guidance states at page 5: 'Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, where appropriate, taking into account their age and understanding.' However, we understand that it will not apply to pupils on periods of exclusion for up to and including five school days in one term. It appears they will not be entitled to make representations, or to attend any meeting convened – as no such meeting is required under the revised guidance. Reference to a pupil's right to participate is only referred to under the section entitled 'Statutory guidance to governing bodies on preparing for a meeting to consider reinstatement.' Other concerns are raised at Question 16.

The revised guidance states that the governing body should 'consider what steps [it] will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (including providing accessible information or allowing them to bring a friend), taking into account their age and understanding; or identify how [it] might enable the excluded pupil to feed in his or her views by other means if attending the exclusion meeting is not possible.' Clarification and examples should be given as to when the different approaches ought to be taken. What might be best practice in some circumstances may not be appropriate in others.

In addition, there seems to be some contradiction. Whilst paragraph 51 refers to those who must be invited to the governing body's meeting to consider an exclusion and

who are allowed to make representations, it does not include pupils. Likewise, whilst paragraph 57 lists the individuals whose representations the governing body are required to consider, it does not include pupils. Reference to pupils should be inserted for the avoidance of any doubt and in light of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC):

*'Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'*

**10. Do you agree with the proposal to allow governing bodies to meet in order to consider reinstatement earlier than six school days after being notified?**

Yes. We welcome efforts to expedite the process. However, we have concerns in relation to meetings convened towards the latter stage of the timeframe, as raised at Question 16.

**11. What should the limit on the number of school days of fixed period exclusion in a school year be under the new system?**

The limit should be lower. It is argued that: 'Enduring harm to children's educational development can follow from as short a period out of school as two weeks.'<sup>3</sup> However, thousands of children are being excluded for such periods – whether by one-off or repeat exclusions. It is acknowledged that they can be an effective sanction in some situations – i.e. addressing the underlying causes of challenging behaviour, or improving behaviour in the long term. Despite what the current guidance encourages, there seems to be a lack of consideration of alternative strategies to address challenging behaviour on the part of some schools. We suggest that the limit should be less than two weeks. Other concerns are raised at Question 16.

**12. Do you think the guidance on pupil reintegration following a fixed period exclusion is sufficiently clear? If not, how might it be improved?**

No. The basis upon which head teachers should consider whether a reintegration interview would be appropriate should be explained – not least to help inform governing bodies when undertaking any potential future review of the head teacher's decision to exclude, including whether he/she should have previously held a reintegration interview. It would be of serious concern if head teachers interpreted the new guidance as indicating that reintegration interviews hold no value. They clearly will in many cases. The new guidance should encourage head teachers to consider them, if not compel them to do so.

<sup>3</sup> Kelly D, *Education and Difficult Children*, in *Young Minds Magazine*, 29, 1997 cited in Abdelnoor A, *A complete guide to managed moves as an alternative to permanent exclusion*, London: Calouste Gulbenkian Foundation, 2007, p16

**13. Is the flat rate sum of £4,000 right?**

No.

**13b. If you answered 'no' to question 13, please indicate whether you consider the amount should be higher, lower or varied. If you think it should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.**

The amount should be higher. It should also be varied so that the younger the pupil excluded, the more expensive the financial readjustment/payment should be for the school.

**14. Do you regard this 15 day requirement for responses as reasonable?**

Yes.

**15. Do you think the tribunal procedure rules need amending in any other respect in order to be suitable for permanent exclusion cases? If so, please explain.**

No.

**16. Please let us have any other comments on the revised guidance or regulations, including any further suggestions for how they might be improved without significantly increasing their length.**

We reiterate that whilst it is important for the new guidance to be sufficiently clear, the information contained must also be sufficiently detailed (yet concise) to avoid potential confusion or abuse, and the exclusion process itself must be fair. We believe that widening the scope and length of the revised guidance on the basis referred to in our response is necessary to achieve this and for the guidance to be effective.

**General points**

- We are concerned with the language used in the opening paragraphs – for example, 'When children behave badly', 'bad behaviour,' and the initial emphasis on exclusion. Challenging behaviour can impact on the learning of others, and schools may understandably need to remove some pupils from the classroom. However, it is important not to stigmatise children or to simplify the underlying cause(s) of their challenging behaviour. There should be reference to the importance of preventative strategies and targeted support for vulnerable pupils – to help them to improve their behaviour; and to schools having exhausted all possible strategies before considering an exclusion.
- Guidance should be included on the most effective and appropriate options for pupils who are at risk of exclusion, or which can be used as an alternative to permanent exclusion. Only cursory reference is made to managed moves.

- Guidance should be included on the appropriate circumstances in which learning support units (LSUs) and internal inclusion units/centres should be used by schools and on what constitutes best practice in terms of the relevant models in each case. Some schools are taking a very different approach to that which is currently recommended. This must be addressed. Internal exclusion units should also be reclassified as inclusion units/centres, to send a clear signal about a required change in culture and approach. Information, guidance and examples of best practice should also be included on this on the Department's website.
- Reference should be made to the importance of pastoral and therapeutic provision in helping pupils to understand and improve their behaviour. We are seriously concerned to note that the word 'inclusion' does not appear at all in the revised guidance. This should be rectified and emphasis placed on schools prioritising inclusion provision. Examples should be given of best practice. Reference should be made to the role that some schools can effectively play as 'surrogate parents' to vulnerable children (as demonstrated by Mossbourne Academy and supported by Sir Michael Wilshaw). Information, guidance and examples of best practice with respect to internal inclusion should be included on the Department's website.
- Reference should be made to the importance of training for head teachers and teachers in respect of child development, managing behaviour, and conflict resolution.
- Partnership and collaboration is key in the context of exclusion. Although we understand that the Department hopes to encourage such an approach through its exclusion trial, there is no cross reference to this in the revised guidance. Encouragement should be given for schools to work in partnership with other schools and relevant stakeholders and to pool their resources.
- Head teachers are required to draw parents' attention to sources of free and impartial information at the point of notifying them about an (official) exclusion. However, given the fact that some schools are operating unscrupulous practices and/or illegal exclusions, we recommend that advice and advocacy support should be made available and provided for parents whose children are not in class or school on a full-time basis.

#### Paragraphs 6 to 16

- Throughout the revised guidance there is a lack of clarity between the 'A guide to the law' section and the 'Statutory guidance' section. For example, paragraph 13 should be under the section entitled 'The head teacher's power to exclude: A guide to the law,' and paragraphs 6 to 10 should be under the section entitled 'Statutory guidance on factors that a head teacher should take into account before taking the decision to exclude.'
- The new guidance should state that unofficial exclusions do not just result from sending pupils home in response to poor behaviour, but also (in certain circumstances) from sending pupils off-site – for example, to alternative provision.



- Clear, sufficiently detailed and concise guidance should be given on (i) the circumstances in which head teachers may remove pupils from the classroom and/or the school site, and (ii) schools' legal duties and the appropriate circumstances in which referrals, dual registration, managed moves and part-time timetables should be used. Clarity is required in respect of what constitutes unofficial exclusion in each case. Emphasis should be placed on the need for schools to secure the best outcomes for pupils through these processes and on employing strategies for supporting children to improve their behaviour and tailoring provision according to their individual needs. There is currently some confusion and a lack of transparency with respect to these processes, which are being abused by some heads to carry out unofficial exclusions. This issue must be confronted head on. It appears that the relevant legislation will remain in force in relation to these processes. By failing to provide the necessary information in the revised guidance, the Department is not promoting transparency and could inadvertently fuel the existing problems. The Department's proposal to release new guidance on the use of alternative provision this year and to update the exclusion guidance to cross-refer where appropriate will inevitably result in confusion. We strongly recommend that the Department issues one comprehensive guidance which deals with all of these issues together.
- Examples of what constitutes serious breaches of a school's behaviour policy should be included, or schools should be encouraged to specify in their behaviour policy what they regard as serious.
- Schools should be discouraged from using repeat fixed period exclusions and encouraged to employ alternative strategies for addressing challenging behaviour. We note that the Department proposes to issue guidance on the use of the power under Section 29(A) of the Education Act 2002 to refer pupils to off-site educational provision to improve their behaviour. However, again, we strongly recommend that there should be one comprehensive guide and that this information should be incorporated within the new guidance on exclusions.
- Reference should be made to other factors that schools should consider before making a decision to exclude – for example, ensuring that a thorough investigation has been carried out, considering all of the evidence available to support the allegations while taking account of the school's relevant policies, and details of written records and documentation required. These are all essential to a fair process.
- The guidance should be slightly expanded on the standard of proof, to cover what is required in respect of more serious allegations. Again, this is essential to a fair process.
- Reference should be made to the legal responsibilities (e.g. duty of care and child protection) that head teachers must comply with in every instance where a child is sent home/to off-site provision and emphasis placed on the critical importance of this and of formal records being kept. Some head teachers are not complying with the current guidance and legislation, and seemingly without consequence. Some schools are making it difficult for LAs to identify children who are missing from education by virtue of failing to comply with the established protocols, legislation and guidance. This must be addressed.

### Paragraph 17

- Reference should be made to other appropriate sources of support, beyond that potentially provided by the LA. For example, some schools may wish to directly commission (as many already do) voluntary and community sector organisations or social workers. In addition, given the cuts in LA budgets, they now have significantly less money for the very types of provision which are so desperately needed to support vulnerable children (e.g. for behaviour strategy, EPs, EWOs and speech and language therapists). The exact nature of the new LA role also remains unclear and needs to be clarified. This is in the context of there being no guidance from the Department on the pupil premium with respect to how schools can secure the best outcomes for disadvantaged children, and on what constitutes the best value for money.

### Paragraphs 27 and 28

- We support schools being encouraged to arrange full-time education before the sixth day of an exclusion. However, some schools are failing to comply with the current legal requirement to provide such education from the sixth day. This must be addressed.
- Some schools are failing to comply with the current legal requirement to set and mark work for pupils during the first five days of an exclusion. This must be addressed. The proposed change could inadvertently lead to an increase in some schools failing to provide homework for pupils on fixed period exclusions. In some cases, pupils will be given repeated and/or significant fixed periods of exclusion across terms and academic years. In addition, the guidance makes no reference to the plan that head teachers are currently required to make for pupils on fixed period exclusions. Emphasis should be placed on the importance of head teachers having a carefully thought through and tailored strategic plan for addressing a pupil's behaviour – while on fixed period exclusion and on their return. In the absence of this, we are concerned that such exclusions will, in many cases, be rendered even more ineffective.

### Paragraphs 41 to 65

- **Underlying concern regarding the exclusion process:** Many parents whose children are excluded are some of the most disadvantaged in society. They can face barriers to engaging with their children's education and with the system. Some may have had negative educational experiences themselves, may have impoverished literacy and distrust schools. They may struggle to understand the complexities of the exclusion process, including the system of appeals. One parent informed us that a lot of parents of excluded children may find it difficult to talk about it "because of the shame they feel and stigma attached to it. Many feel disempowered and do not have the knowledge and/or resources to challenge exclusion (which is a highly complex process)." There can be serious amounts of paperwork involved and it can be overwhelming for some parents. Many will not even challenge an exclusion. For those who are more likely to, the process should be as simple, efficient, open and accessible as possible.

- **Fixed period exclusions for less than five school days in any one term:**
  - The Department is proposing to remove the right of parents to request the governing body to review the head teacher's decision. While the governing body currently has discretion as to whether or not to agree to such a request, it is considered best practice to do so. However, under the revised guidance, the governing body will not be required to arrange a meeting with parents. We are concerned about this proposed change. While parents would still be able to make representations (and it does not specify that these must be written), some may struggle to do so – for reasons given above, for example. We argue that the status quo should be retained. We also have concerns in light of the points made below regarding notification requirements.
  - There is currently no legal requirement for head teachers to inform the governing body of fixed period exclusions for up to and including five school days in any one term as they occur, unless it would result in the pupil missing a public exam. However, head teachers are required to notify both the governing body and LA of these exclusions once a term (unless the school has more than three terms during the school year, in which case different requirements apply). However, it appears from the draft regulations and revised guidance, that head teachers will no longer be required to notify the governing body of such exclusions – only the LA. In which case, a pupil could be given a number of fixed period exclusions, or a fixed period exclusion of up to five school days in any one term, and it not come to the governing body's attention unless their parents make representations to it. Furthermore, a pupil could be given fixed period exclusions for up to 15 school days in an academic year and the governing body not be aware of those exclusions or have reviewed the fairness of them, unless the pupil's parents make representations to it. It is being proposed that a pupil will not be entitled to participate in the procedure and so has no right for his/her voice to be heard by the governing body at all. We argue that the status quo should be retained – that head teachers should be required to notify the LA and the governing body of these exclusions, in order to promote transparency and ensure that the governing body has up-to-date and full knowledge of the extent to, and circumstances in which, fixed period exclusions are being used in their schools.
- **Fixed period exclusions for a total of more than five school days but not more than 15 school days in any one term:**
  - The governing body is only required to review a head teacher's decision and to convene a meeting if parents request it to do so. The Department is proposing to allow the governing body to meet earlier than six school days after receiving notice of the exclusion. We welcome efforts to expedite the process. However, we have concerns about the extent to which, in reality, some schools convene meetings toward the latter end of the timeframe – i.e. close to the 50 school days. We argue that the timeframe should be shortened, particularly in light of the

basis upon which reference to the six school days is proposed to be removed. Fixed period exclusions for more than five but less than 15 school days in any one term are significant and, in our view, require a quicker response on the part of a governing body.

- On the basis that a pupil is given fixed period exclusions of more than five but not more than 15 school days per term, he/she could therefore be given fixed period exclusions for a total of up to 45 school days in an academic year (assuming his/her school has three terms per academic year). In these circumstances, and despite the very high level of exclusion, conceivably there could be no meeting convened by the governing body unless requested by the parents, and no review of the head teacher's decision or assessment of its fairness.
- The notification that head teachers are required to provide must include the reasons for the exclusion and duration of any fixed period exclusion. It may not therefore be obvious from the data that it is the same pupil being given fixed period exclusions. Some individuals may not be alive to this and may not even ask. We believe that all notifications should name the relevant pupils so that it is clear to governors and the LA when and which pupils are receiving repeat fixed period exclusions and to promote transparency.
- The points raised above call into question the extent to which some governors have a sufficiently up-to-date and informed awareness and understanding of pupil behaviour, and how it is being addressed. It also raises the question as to whether a head teacher's decisions are being adequately monitored, and that appropriate support is in fact in place to meet the needs of their vulnerable pupils. This would be of greater concern again if the proposed change for head teachers to no longer be required to inform the governing body of fixed period exclusions for up to and including five school days is introduced.
- During the periods referred to above, problems can escalate and needs remain unaddressed and unmet. They can become more entrenched, compounded by lack of or no support being given to the pupil (and parent(s)). This can potentially lead to further and/or more serious incidents of challenging behaviour, which can increase the likelihood of the pupil being at risk of further fixed term exclusion(s) or, worse still, permanent exclusion. It can be argued that instead of supporting children to improve and stay within mainstream education as far as possible, the system may actually, in some cases, work against them.
- **Pupils' right to make representations:** It appears pupils on periods of exclusion for up to and including five school days in one term will not be entitled to make representations (or to attend any meeting convened as no such meeting will be possible under the revised guidance). We recommend that the status quo should be retained – both with respect to parents having the right to request a meeting and to the pupil being invited to participate in any such meeting convened.

## Paragraphs 95 to 101

- In order to consider whether or not a pupil should be reinstated, a governing body must consider the pupil's circumstances, including the circumstances in which the pupil was excluded. Pupils with SEN are amongst those who are disproportionately excluded. We understand that some governors are unlikely to be familiar with issues surrounding SEN. The purpose of appointing a SEN expert at an independent review panel (IRP) is to advise the panel on how SEN could be relevant to the exclusion. However, we believe it would be more appropriate, fairer and meaningful for parents to be entitled to request a SEN expert earlier in the process – i.e. where a governing body is considering the head teacher's decision and where they have the power to reinstate a pupil. A cost argument may be raised in response to this. However, evidence demonstrates that it is significantly more expensive for a pupil to be educated (or not) outside of mainstream education.

## Changes to IAPs

- Where an IRP may recommend that the governing body reconsiders its decision, it seems the only requirement on the governing body is to reconvene within 10 days of notification of the IRP's decision. While there may be a genuine reconsideration on the part of some schools, we are concerned that for others it may just be a question of being seen to be going through the process and a box ticking exercise.
- Although the revised guidance states that an IRP 'will be expected to direct that the school makes an additional payment of £4,000', the draft regulations state that an IRP 'may, as opposed to must, direct the LA to make a financial adjustment to a school's budget share for the funding period in the sum of £4,000 in such cases. The draft regulations should be amended to state 'will' as opposed to 'may.'
- The Department states (Summary Report (page 2)): 'It is likely that most governing bodies will offer to reinstate a pupil if directed to reconsider the decision by a panel. The important principle is that it is the school that is best placed to make that decision, taking into account the wider impact of reinstatement on other pupils at the school.' Whilst this may be true for many schools, we have serious reservations about it in relation to others (particularly in light of how some schools are illegally excluding pupils). We anticipate that some schools will be prepared to take the financial hit rather than reinstate some pupils. It seems likely that it will be cheaper for them to do so – to have their budget readjusted by £4,000, rather than keep them on roll and potentially address their challenging behaviour by means, for example, of a referral to alternative education provision and on a longer term basis. This could inadvertently create a perverse incentive for schools to exclude pupils unfairly and avoid reinstating them.

## Special thanks

The CSJ would like to thank David Smellie for his assistance with this response. David Smellie is a Partner at Farrer & Co LLP Solicitors and head of the firm's Schools Group which advises schools on all educational matters including exclusions. David is named in Chambers and Legal 500 as the leading UK schools lawyer and was a key adviser to the CSJ's educational exclusion report *No Excuses*.

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