

Government review of Exclusion and Alternative Provision

– Briefing note for Children’s Services Scrutiny Committee

The Education Select Committee published the report of its inquiry into alternative provision (AP)¹ on 25 July 2018 (see briefing to Children’s Services Scrutiny Committee of 13 September 2018). The report

This briefing paper summarises the Government’s response² to the Select Committee report, published in October 2018. Some proposals within this response also reflect plans already set out ‘Creating Opportunity for All: our vision for reform’³, and the current review of exclusions being led by Edward Timpson (due to report in December 2018).

Responses to individual recommendations from the select committee:

What’s going wrong in mainstream schools?

Select committee recommendations:

- 1. The Timpson Exclusions Review should ensure that it looks at the trends in exclusion by school type, location and pupil demographics. (Paragraph 18)*
- 2. The Timpson Exclusions Review should examine whether financial pressures and accountability measures in schools are preventing schools from providing early intervention support and contributing to the exclusion crisis. (Paragraph 20)*

Government response:

- Throughout the review, Edward Timpson is engaging with key stakeholders, including a range of schools of different types and phases, alongside exploring the data on exclusions.
- We have also received over 900 responses from parents, children, schools, local authorities and other organisations, and these have been analysed to inform the review (the vast majority from parents).

Select committee recommendations:

- 3. The evidence we have seen suggests that the rise in so called ‘zero-tolerance’ behaviour policies is creating school environments where pupils are punished and ultimately excluded for incidents that could and should be managed within the mainstream school environment. (Paragraph 25)*
- 4. The Government should issue guidance to all schools reminding them of their responsibilities to children under treaty obligations and ensure that their behaviour policies are in line with these responsibilities. (Paragraph 26)*

Government response:

- We recognise that effective behaviour strategies across all schools, where children feel safe and stimulated in their education, are key to ensuring that all children are able to achieve their full potential. We believe that head teachers and teachers know best how to improve behaviour in their own schools.

¹ Forgotten children: alternative provision and the scandal of ever-increasing exclusions - <https://publications.parliament.uk/pa/cm201719/cmselect/cmeduc/342/34213.htm>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748723/ESC_Government_response_FINAL.pdf

³ <https://www.gov.uk/government/publications/creating-opportunity-for-all-our-vision-for-alternative-provision>

Select committee recommendation:

5. The Government and Ofsted should introduce an inclusion measure or criteria that sits within schools to incentivise schools to be more inclusive. (Paragraph 27)

Government response:

- We agree with the Committee's recognition of the importance of schools being inclusive of all children, to create an environment in which every pupil has the opportunity to do well.
- The introduction of progress 8 provides greater accountability on schools to ensure they are supporting all pupils to make as much progress as they can, as it enables schools with lower attaining intakes to be recognised for the progress they make with those pupils.
- In his speech to the Association of Directors of Children's Services on 5 July 2018, the Secretary of State outlined the Government's commitment to both equip and incentivise schools to do better for children and young people with special educational needs and disabilities (SEND).

Select committee recommendation:

6. We do not think that Ofsted should take sole responsibility for tackling off-rolling. Off-rolling is in part driven by school policies created by the Department for Education. The Department cannot wash its hands of the issue, just as schools cannot wash their hands of their pupils. (Paragraph 34)

Government response:

- Unlawfully removing a child from the school admission register is not acceptable practice, and we take any allegation of schools unlawfully "off-rolling" pupils very seriously. Once a pupil has been admitted to a school, they can be removed from the admissions register only in limited circumstances prescribed under regulation 8 of the Education (Pupil Registration) (England) Regulations 2006, as amended.
- In April 2018, the Department published a call for evidence on elective home education (EHE). We are analysing the responses received and we will publish a response to the call for evidence in due course, setting out our conclusions on elective home education and related issues.

Select committee recommendations:

7. An unfortunate and unintended consequence of the Government's strong focus on school standards has led to school environments and practices that have resulted in disadvantaged children being disproportionately excluded, which includes a curriculum with a lack of focus on developing pupils' social and economic capital. There appears to be a lack of moral accountability on the part of many schools and no incentive to, or deterrent to not, retain pupils who could be classed as difficult or challenging. (Paragraph 36)

8. We recommend that the Government should change the weighting of Progress 8 and other accountability measures to take account of every pupil who had spent time at a school, in proportion to the amount of time they spent there. This should be done alongside reform of Progress 8 measures to take account of outliers and to incentivise inclusivity. (Paragraph 37)

Government response:

- The Government agrees with the Committee's comments which recognise that Progress 8 is a more nuanced and improved measure of school performance accountability than existed previously.

- We recognise, however, that no measure is perfect, and it can drive perverse incentives in the system in the absence of a counterbalance incentivising schools not to exclude pupils. This can be particularly true for schools with challenging intakes. This is why we are continuing to take action to improve school performance measures.
- Following feedback received about the disproportionate effect that a small number of extremely negative scores can have on a school's average progress score, from 2018, we are introducing a limit on how negative a pupil's progress score can be when calculating the school average for Progress 8 and for primary progress measures. This change will ensure that a school's overall progress score is not disproportionately affected by extremely negative progress scores of pupils whose attainment was affected by reasons beyond the schools control (e.g. health issues).
- Furthermore, we are considering issues around 'pupil-mobility' and exploring options to incentivise inclusivity in school performance measures.
- In a speech on 4 May 2018, the Secretary of State announced that there will be a public consultation on proposals to introduce a transparent 'trigger' to identify schools that would benefit from an offer of support.

The process of exclusion and referral

Select committee recommendations:

9. The exclusions process is weighted in favour of schools and often leaves parents and pupils navigating an adversarial system that should be supporting them. (Paragraph 44)

10. When a pupil is excluded from school for more than five non-consecutive days in a school year, the pupil and their parents or carers should be given access to an independent advocate. This should happen both where pupils are internally or externally excluded from school, or where the LA is arranging education due to illness. (Paragraph 47)

Government response:

- The Government recognises the importance of engaging parents and carers with every aspect of a child's education, and has taken steps to ensure that they have access to information about the exclusions process.
- In September 2017, we published new, non-statutory guides for parents to support their understanding of the exclusions process.
- All head teachers are legally required to notify parents when their child has received an exclusion and the reasons for it, without delay.
- The head teacher should also draw attention to relevant sources of free and impartial information and advice on exclusions that parents can access.
- The Government welcomes the Committee's proposal for stronger parental engagement. The [Timpson] review of exclusions is exploring how the parent and pupil experience of exclusion varies and is looking for best practice in engaging parents and pupils effectively in the exclusions process. We have sought the views of parents through the Call for Evidence, which received over 900 responses of which the majority were from parents. The Department will consider any necessary action following the publication of Edward Timpson's report.

Select committee recommendation:

11. Legislation should be amended at the next opportunity so that where Independent Review Panels find in favour of the pupils, IRPs can direct a school to reinstate a pupil. (Paragraph 45)

Government response:

- The Government does not intend to implement the Committee's proposal, but our intention is to support schools to manage poor behaviour and intervene early to address any underlying causes. In addition, the Government is committed to improving the quality of the provision so that excluded pupils receive an excellent education.

Select committee recommendations:

12. Where responsibility sits for excluded children in a local area has become very ambiguous. The Timpson Exclusions Review needs to clarify whose responsibility it is to ensure that excluded or off-rolled pupils are being properly educated. This could be the local authority or it could be local school partnerships, but at the moment too many pupils are falling through the net. (Paragraph 46)

13. Local authorities have statutory responsibilities to provide suitable education for pupils and yet can have little oversight or scrutiny over decisions about exclusions and placement decisions. This may be due to inadequate resourcing, which needs to be addressed. We are also concerned by the lack of transparency about exclusion rates that are available to parents about schools. (Paragraph 62)

14. We recommend that LAs are given appropriate powers to ensure that any child receive the education they need, regardless of school type. (Paragraph 63)

Government response:

- The Committee rightly recognises that our guidance on exclusions suggests that there is a role for local authorities to play in the oversight and monitoring of exclusions.
- When a child is excluded, all schools including academies are required to notify the local authority.
- All local authorities are also required to have a Fair Access Protocol in place to ensure that outside the normal admissions round unplaced children, especially the most vulnerable, are offered a place as quickly as possible. These Protocols are often used to monitor vulnerable children in the area and ensure that they are effectively placed in other schools.
- The [Timpson] exclusions review is looking at the factors driving differences in exclusion rates between schools, areas of the country and pupils with different characteristics, and it is focused on how exclusion is used in practice. The review is not looking at the legislative framework for exclusions.
- The review is also being conducted alongside the AP reforms announced in March 2018, and we are also committed to clarifying the expectations for the roles and responsibilities of schools, alternative providers and local authorities in commissioning and delivering high quality AP.
- We plan to build on AP research and the conclusions of the [Timpson] exclusions review by updating statutory guidance, commissioning, funding, inspection arrangements and legislation as required.

Select committee recommendation:

15. The Government should encourage the creation of more specialist alternative providers that are able to meet the diverse needs of pupils with medical needs, including mental health needs. (Paragraph 53)

Government response:

- The duty to arrange AP and responsibility for commissioning is devolved to a local level. It is right that local areas decide what provision is needed in their area as they know their population best. Schools, local authorities, medical professionals and other agencies should work in partnership to deliver provision to meet the needs of each individual child.
- Alternative providers also often have close links to wider mental health services. In December 2017, the Government published a Green Paper, 'Transforming children and young people's mental health provision', which sets out an ambitious set of proposals to fill the gap in support for children and young people's mental health. This outlined how Government will test, through the Mental Health Support Team trailblazers, how mainstream, special and AP settings, including PRUs, can enhance provision for the most vulnerable children.

Select committee recommendations:

14. There is an inexplicable lack of central accountability and direction. No one appears to be aware of all the provision that is available, which impacts on both schools, local authorities and parents. Unless all providers are required to notify the local authority of their presence, not all schools or LAs will be able to make informed decisions about placements. Without someone to take responsibility for co-ordinating and publishing information about the local provision that is available, parents and pupils will remain unable to fully participate in discussions about alternative provisions referrals. (Paragraph 56)

15. All organisations offering alternative provision should be required to inform the local authority in which they are based of their provision. The local authority should then make the list of alternative providers operating in their local authority available to schools and parents on their website. (Paragraph 57)

Government response:

- We agree that schools, alternative providers and local authorities should work in partnership to commission AP effectively, and that commissioners of AP should be aware of all AP available in their area. We will consider the Committee's recommendation alongside the recently published findings from the AP research programme we have commissioned, as part of our programme of reforming AP.

Select committee recommendation:

16. Pupil Referral Units, and other forms of alternative provision, should be renamed to remove the stigma and stop parents being reluctant to send their pupils there. We suggest that the Government seeks the advice of pupils who currently attend alternative provision when developing this new terminology. Many have described AP as specialist provision, offering children a more tailored, more personal education that is more suited to their needs. (Paragraph 58)

Government response:

- No child should be stigmatised by where they attend school. We recognise that for some children and parents, a referral to AP does not initially represent a positive choice. However, many children who attend AP recognise that it has given them more tailored support, a second chance and a fresh start to engage in their education.

- We want AP to provide an ambitious education that meets children's needs and prepares them for success in the next phase of their education, and we recognise that many providers already do this, regardless of their name.
- Schools are able to choose their names, both when they are established and at any point afterwards, and we know that many alternative providers adopt this approach. [Locally, New River College chose their name in collaboration with their students, choosing to refer to it as a college rather than a Pupil Referral Unit]. We support local authorities and governing bodies in taking this approach.

Select committee recommendation:

17. Schools should publish their permanent and fixed term exclusion rates by year group every term, including providing information about pupils with SEND and looked after children. Schools should also publish data on the number of pupils who have left the school. (Paragraph 64)

Government response:

- The Department publishes a National Statistic release annually, which reports on permanent and fixed-period exclusions from state-funded primary, state-funded secondary and special schools, based on exclusion data collected via the School Census. As well as school level exclusions, this publication includes information on the following:
 - Reasons schools report for excluding pupils;
 - Exclusions for different pupil groups, including SEND, ethnicity, free school meal eligibility and English as an Additional Language;
 - Independent exclusion review panels; and
 - Exclusions from PRUs.
- Edward Timpson's review of exclusions is exploring the differences in exclusion rates between schools, areas of the country, and pupils with different characteristics, to examine the factors that drive these differences.

Select committee recommendations:

18. Schools do not always have the capacity and specialist knowledge to have full responsibility for the commissioning of long-term placements for pupils who will often have complex needs. If, as we discussed in paragraph 52, local authorities are unaware of provision in their area, they too do not always have enough knowledge to make appropriate commissioning decisions. A fragmented approach to commissioning responsibilities and a lack of oversight and scrutiny around decisions means that pupils are being left vulnerable to inappropriate placement decisions. (Paragraph 66)

19. The best Fair Access Protocols work well because they are local and understand the needs of their communities. However, this is not always the case, and it is not right that some schools can opt out of receiving pupils back to mainstream schools or following the Fair Access Protocol. (Paragraph 71)

20. Government should issue clearer guidance on Fair Access Protocols to ensure that schools understand and adhere to their responsibilities and encourage reintegration where appropriate. No school should be able to opt-out and if necessary either the local authority or the DfE should have the power to direct a school to adhere to their local Fair Access Protocol. (Paragraph 72)

Government response:

- The Government implemented Fair Access Protocols through the School Admission Code, to ensure that, throughout the school year, unplaced children, especially the most vulnerable, are found and offered a place as quickly as possible, so that the amount of time any child is out of school is kept to the minimum.

- All local authorities are required to have a Fair Access Protocol in place, developed in partnership with local schools, including academies, who are also required to comply with the Fair Access Protocol for their area. That means if a child is referred to a school via the protocol, they must be admitted. Where it appears a school is in breach of a statutory duty, the Secretary of State has the power to intervene and direct the school to comply with that duty.
- It is important that local authorities and schools have the freedom to develop and agree Protocols, which best serve the needs of children in their area. In practice, many local authorities establish Fair Access Panels to facilitate the Fair Access Protocol, and we encourage the use of these where all schools and local authorities are working in partnership to make sure every child referred to the protocol is found a suitable school place as quickly as possible.
- We are considering revising the guidance around Fair Access Protocols, to ensure roles and responsibilities are better understood.

Select committee recommendations:

21. There should be greater oversight of exclusions and the commissioning of alternative provision for all pupils by the local authority. These children need a champion, and schools need both challenge and support. (Paragraph 76)

22. There should be a senior person in each local authority who is responsible for protecting the interests and promoting the educational achievement of pupils in alternative provision, which is adequately resourced. This role and post-holder should be different from that of the Virtual School Head for Looked-After Children. (Paragraph 77)

Government response:

- In practice, many local authorities will already have this staffing structure to ensure there is sufficient oversight of the commissioning process, including where a school is commissioning AP, and a champion to represent this group of children.
- We are concerned that implementing this requirement at this time would impose additional burdens on local authorities, and we believe that local authorities should be able to allocate their resourcing and funding to meet their needs best.

What does good alternative provision look like?

Select committee recommendations:

23. Government should collect best practice and provide dedicated resources and guidance to schools to improve behaviour and reduce exclusion and develop appropriately resourced Learning Support Units. This guidance should include that all LSUs are staffed by at least one qualified teacher. The Government should also investigate the practice of placing students in isolation units. (Paragraph 87)

Government response:

- We support the use of in-school alternatives where they are used to provide support to pupils, to keep a child engaged in their education and to prevent exclusion.
- The Department is aware that many mainstream schools establish and maintain internal behaviour support units (referred to as Learning Support Units by the Committee) as a tool to effectively managing behaviour within school.
- With regard to isolation rooms, the Department's behaviour and discipline advice makes clear that schools can adopt a policy which allows disruptive pupils to be placed in isolation away from other pupils for a limited period. As with other disciplinary penalties, schools must act lawfully, reasonably and proportionately in all cases.

- Through the review of exclusions, Edward Timpson is looking at practice in schools in relation to behaviour management and exclusions, including identifying effective approaches that improve outcomes. He aims to report on his findings by the end of the year.

Select committee recommendations:

24. Ofsted should carry out thematic inspections of in-school alternative provision. (Paragraph 88)

We welcome the Committee's recommendation and we support Ofsted in looking at the use of in-house alternatives, as part of their ongoing wider work investigating behaviour management in schools.

25. All trainee teachers, in order to achieve Qualified Teacher Status, should be required to undertake a placement outside of mainstream education, for example in a special school or in alternative provision. (Paragraph 96)

Government response:

- We agree with the Committee that teaching in AP should be held in high regard, and attract the highest quality leaders and teachers, which in turn ensures there is sufficient high quality and specialist provision to meet the needs of these children.
- The Government does not prescribe the content of Initial Teaching Training (ITT) courses. It is for ITT providers to use their professional judgement to determine the content and structure of courses, but they must prepare trainee teachers to demonstrate that they have met all of the Teachers' Standards at the appropriate level.

Select committee recommendations:

28. We do not consider that there are sufficient checks on unregistered providers. If pupils are placed in unregistered provision, without sufficient oversight, their education and safety is put at risk. We are not convinced that the quality and consistency of oversight is enough not to require there to be registration and regulation across the sector. (Paragraph 109)

29. No pupil should be educated in unregistered provision for more than two days a week. The Government, Ofsted and independent school inspectorates should consider how this may affect different forms of alternative provision so that where providers want to accept pupils for more than two days a week, they are able to register and be subject to a suitable inspection and regulation regime. Schools that commission any alternative provision should be responsible for the quality of that provision. (Paragraph 110)

Government response:

- We are clear that all schools, regardless of their type, are responsible for providing a safe environment to educate young people.
- A setting must be registered as an independent school if it meets the criteria for registration.
- It is a criminal offence to operate an unregistered independent school. Where settings are illegal and unsafe, the Government has a duty to act and protect the children within those settings. That is why we have established a joint team with Ofsted.
- We have also signalled our intention to change legislation, when parliamentary time allows, to strengthen the registration requirement in relation to independent education settings.

Select committee recommendations:

30. Mainstream schools should be more proactive in their engagement with alternative provision. All mainstream schools should be 'buddied' with an alternative provision school to share expertise and offer alternative provision teachers and pupils opportunities to access teaching and learning opportunities. (Paragraph 113)

Government response:

- We know that many mainstream schools and alternative providers have developed strong working partnerships to collaborate and share expertise and practice.
- It is the Government's vision that effective practice in AP is shared across the school system and with other services, because the sector has extensive expertise in working with vulnerable children that would benefit mainstream schools.

Successful outcomes and destinations**Select committee recommendations:**

31. This framework should take into account the fragmented educational journey that these pupils will have had, and enable schools to demonstrate all the achievements of their pupils. We urge the Government to ensure that it uses the very broadest of measures, including softer skills that pupils have developed as well as harder outcomes like apprenticeship take up. (Paragraph 119)

Government response:

- We recognise that, beyond Ofsted judgements, there is no systematic way of identifying and celebrating effective practice in AP.
- As set out in our vision for AP, we intend to develop a bespoke performance framework for the AP sector, to ensure that there is a suitable mechanism for measuring the activity in AP that enables pupils to make rapid personal, social and educational progress.
- The development of the performance framework will consider a number of metrics such as improved attendance, destinations and educational outcomes.

Select committee recommendations:

32. It is extraordinary that the increase in the participation age was not accompanied by statutory duties to provide post-16 alternative provision. Pupils neither stop being ill at 16, nor do they stop being in need of additional support that would enable them to access education. These pupils are being denied access to post-16 education because the system is not designed or funded to accommodate their additional needs. There is a clear will in the sector to provide post-16 education to pupils in alternative provision, and a clear need on the part of pupils. (Paragraph 123)

33. Given the increase in participation age to 18, the Government must allocate resources to ensure that local authorities and providers can provide post-16 support to pupils, either in the form of outreach and support to colleges or by providing their own post-16 alternative provision. (Paragraph 124)

Government response:

- The Government agrees it is important that children and young people in AP are able to access post-16 education and training provision that meets their needs, and we remain committed to ensuring that they are able to achieve successful and sustained outcomes in adult life.

- The duty on local authorities to arrange AP applies only to children of compulsory school age (5 to 16). When the Government raised the participation age to 18, it did not raise the compulsory school age, but expected 16 and 17 year olds to engage in the wide range of education and training possibilities available to them.
- We recognise that children in AP may need additional support when entering post-16 provision.
- It is our expectation that the majority of children in AP would benefit from one of the many types of post-16 provision on offer, and we do not believe at this time that there is a need for Government to impose a new duty on local authorities to establish new types of post-16 provision when the landscape is already so varied.
- We welcome the Committee's views on post-16 provision for children in AP. We will continue to consider how we can further improve outcomes for these young people.

Government review of Exclusions and Alternative Provision – Overview

House of Commons Education Committee:
(Sept 17 – July 18)

‘Forgotten children: alternative provision and the scandal of every increasing exclusion’ (July 2018)

Report suggests its conclusions and recommendations be read as a Bill of Rights for pupils and parents, as follows:

- Schools should not rush to exclude pupils: (i.e. schools should be inclusive).
- Parents and pupils have a right to know how often schools resort to exclusion: (i.e. schools should publish their exclusion rates termly)
- Parents deserve more information when their children are excluded: (i.e. the process currently parents and pupils fighting a system that should be supporting them).
- Pupils and their parents should have someone in their corner: (i.e. access to independent advocacy).
- Parents and pupils should be given accurate information about the range and type alternative provision that is available locally: (i.e. all AP providers should be required to inform the local authority in which they are based - the local authority should then make the list available to schools and parents).
- Independent Review Panels should be able to direct a school to reinstate pupils: legislation should be amended at the next opportunity so that this can happen.

Secretary of State for Education
‘Creating Opportunities for All – our vision for Alternative Provision’
(March 2018)

Sets out the Government vision for AP:

- The right children are placed in alternative provision;
- Every child in alternative provision receives a good education;
- Every child can make a successful transition out of alternative provision;
- Alternative provision becomes, and is recognised as, an integral part of the education system; and
- The system is designed to achieve high quality outcomes for children and value for money for the taxpayer.

Sets out the Government’s plan to:

- Lay strong foundations for reform by: building the evidence base; reviewing exclusions practice; and supporting schools to establish systems to manage poor behaviour
- Develop and share effective practice within alternative provision by: ensuring alternative AP settings can access school improvement resources and improving young people’s transition out of alternative provision
- Strengthen partnership arrangements for commissioning and delivering alternative provision

Government response to the Education Committee’s report on alternative provision (October 2018)

Summary:

- Commitment to equip and incentivise schools to be more inclusive
- Consider evidence on elective home education
- Consider pupil mobility and impact on school performance
- Consider a ‘trigger’ for support to schools who disproportionately exclude
- Consider further measures for stronger parental engagement following Timpson report
- Consider revision to Fair Access guidance on roles and responsibilities
- Consider practice in schools in relation to behaviour management / exclusion
- Develop a bespoke performance framework for the AP sector
- Consider how to further develop post-16 provision for young people in AP
- Changes to primary legislation and the introduction of Independent Review Panels rejected

Edward Timpson Review of School Exclusion (Due to report in December 2018)

Terms of Reference: to explore

- Practice in schools in relation to behaviour management and exclusions.
- The exclusions process in schools e.g. how head teachers decide when to exclude, the role of governors
- practice in schools in relation to directing pupils to alternative provision
- the drivers behind the variation in exclusion rates of:
 - pupils of groups
 - geographic variation
 - rates between schools
- Best practice in managing exclusions e.g. Fair Access protocols
- How effective joint working impacts on exclusion
- How the parent and pupil experience of exclusion varies
- Steps taken by schools to ensure that their behaviour and exclusion practices are compliant with duties under the Equality Act 2010
- The statutory guidance in place to ensure effective use of exclusion