

## **Exclusions Review tried hard but falls short of a fix by Tania Tirraoro, Special Needs Jungle**

*"Schools must be places that are welcoming and respectful, where every child has the opportunity to succeed. To ensure this is the case, they should understand how their policies impact differently on pupils depending on their protected characteristics, such as disability or race, and should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion"*

*"A report by Policy Exchange found the impact of poor behaviour on those working in our schools is profound: almost two-thirds of teachers are currently considering, or have previously considered, leaving the profession because of poor behaviour."*

Those two quotes by Edward Timpson in his finally-just-published Exclusions Review explain, in a nutshell, the difficulties faced by schools. Some of course, don't particularly worry about the first part and that's what this review was designed for - how to come up with a solution that's fair to all. So, the report that will fix everything, is finally here. But the real question is, will it?

Weeelll it's a nice try, but it doesn't really answer all the issues faced by children with SEND. Because as well as a vital missing piece (more of which later), at the same time that the report was issued, so was the Department for Education's response. So they've been sitting on the report for a wee bit while they mulled it over and in publishing their reply, they've have effectively kneecapped it.

The outcomes of children with disabilities is often poor. The outcomes of excluded children are also often poor. So it follows that outcomes for a child with SEND (diagnosed or undiagnosed) who has been excluded (perhaps more than once) are likely to be very poor indeed. We know this to be true because the justice system is overflowing with such people.

The report, as you would expect from a nice chap such as Ed Timpson, who genuinely cares about vulnerable children, is empathetic and does cover some serious issues. It doesn't say much about the main issue that has caused the uptick in exclusions - lack of schools funding. Exclude the expensive, hard to deal with kids and kick them off down the road to another school and save your league tables at the same time - killing two birds with one stone. If a school is well-funded it can afford to come up with he touchy-feely vital interventions that the report talks about.

But if the government has no real intention putting its hand in its pocket - or if it doesn't get much in the upcoming spending review, then none of this is possible, so Mr Timpson's bright ideas that he has sweated over for months and make sober reading won't actually change much. Although it did mention the call for evidence for the SEND Funding review that Matt wrote about on Monday, it skirted around the funding elephant in the room

In fact, it's barely worth reading the entire thing when you've got the DfE's reply right there that mainly tells everyone the bits that they're going to pay any attention to. It mainly talks about what it's already doing that is clearly having no impact whatsoever on exclusions.

But still, let's take a little look at **some** of what the report recommends and set against it, what the DfE is going to do. As you would expect, we're going to concentrate on the areas concerned with SEND as I'm not planning to write a book-length article.

However, I am including some responses from parents whose children have been excluded or off-rolled, some responses from charities and some comments from our own SNJ columnists.

## What does the report conclude?

The report concludes **that systemic improvement is required**, and sets out a “vision” for reforming practice built on four key pillars:

- a system that delivers ambitious leadership for every child at all levels;
- better equipped schools able to meet those expectations;
- the right incentives so that schools are clearly recognised for inclusive practice and using exclusion appropriately;
- and stronger safeguards to ensure that no child is being inappropriately pushed out of school or education altogether

But as we shall see, the Department for Education, while paying lip service to these ideals, isn't going to promise anything that it might not be able to deliver after the spending review

## Clarity on Guidance

The report calls for more clarity in the Exclusions guidance for both schools and local authorities including working together to support vulnerable children and share best practice and that schools should abide by the Equality Act 2010 and should only use exclusion as a last resort. The DfE is also called on to provide funding for better training in behaviour for leaders.

### What did the DfE say?

The Department for Education pledged to publish clearer, more consistent versions of current guidance by summer 2020 and new guidance on the use of in-school units and ‘managed moves.’

It's also going to establish a practice programme that, “..embeds effective partnership working between LAs, schools, alternative provision and other partners such as the police and health bodies to better equip schools to intervene early for children at risk of exclusion and to ensure that the most effective provision is put in place for those who are excluded.

Additionally, it's also pledged to revise the SEND Code of Practice before the end of 2020 - which is well overdue considering it still refers to Independent Supporters (remember them?)

And an interesting way to get rid of exclusions is to call them something different:

*“We will also return to referring to fixed term exclusion as ‘suspension’ and permanent exclusion as ‘expulsion’, to prevent confusion and conflation between the two terms.” DfE*

## SENCOs as leaders

A particularly interesting quote is where he calls for school mental health leads and SENCOs are, equipped “*to be effective in their operational and strategic role as SEND leaders.*” Mr Timpson, if you recall, presided over the Children and Families Bill where initially, the SENCO was supposed to be part of the senior leadership team, but this had been watered down by the time the Bill became law, so perhaps this is his attempt to remedy that.

### What did the DfE say?

In response to this, the DfE banged on about some stuff it's already doing such as funding the development of a SENCO induction pack and a guide for school leaders about effective

deployment of SENCOs. (This plays into the Nasen/Whole School SEND Workforce Reference Group that I am part of so there is parental representation here you'll be pleased to hear) The only new thing I can tell is a commitment to support schools and colleges to train a Designated Senior Lead for Mental Health, free of charge. (although this also may be something already announced elsewhere?)

## Trauma and attachment

Mr Timpson also mentions training for attachment and trauma, which is vital and a welcome inclusion - but this should surely be extended to Initial Teacher Training too as this is such an important issue that can have devastating effects on a child (and subsequent adult's) life.

### What did the DfE say?

While its guidance for Virtual School Heads teachers for Looked-After Children includes awareness trauma and attachment, The DfE says it will, "...consider the need for further training and support on attachment and trauma as part of the Children in Need Review."

## Off-rolling and unlawful exclusion

*There is a clear need for the government to do more to understand the scale of this problem and the impact it is having on those involved, but from the cases seen, it is apparent that there are some children who end up in unsuitable education or with no education at all, exposed to even greater risks. Edward Timpson*

Department for Education: "We believe this practice is relatively rare, but we are clear that it is unacceptable."

Having said it doesn't think off-rolling is a widespread problem, the DfE did pay attention to the recommendations to tackle the opportunistic shedding of pupils as a way to boost performance tables by agreeing further consultation on how to make schools responsible for the children they exclude and accountable for their educational outcomes:

*"Over the summer, we will work with education leaders to design a consultation, to be launched in the autumn, on how to deliver these reforms in practice. In consulting, we will consider how to reform school accountability for children who are excluded; and will explore ways to enable schools to fulfil new accountabilities for permanently excluded children through reform to commissioning and funding arrangements for alternative provision."*

On the subject of unlawful exclusions, the review talks of children being sent home without a formal record of exclusion, perhaps to calm down or to avoid an exclusion on their record but. *"not only does this potentially impact on their educational outcomes, but it also poses significant safeguarding risks because they do not have the protective factor of being safe and engaged in education..."*

It also mentions the routine use of part-time timetables, where schools allow children to attend for only part of the school day, in an attempt to legitimise an informal exclusion. The report said parents and carers spoke of long-term arrangements spanning several years to which they had not consented, which simply amounted to their child not being offered a full-time education. *"The consequences for the child can be devastating. Parents and carers reported how informal exclusion left their children with "high anxiety and school refusal", with one parent highlighting that informal exclusion has "had a detrimental impact on his mental health ... [and] destroyed my sons self-esteem ... This has become a downward spiral". This can also have a direct impact on the child's family, who may have no real avenue of appeal and no alternative education arranged for their child."*

**On this, the DfE is silent**

## Othering

There's been concern, not least by the SEND Inquiry, over the use of "other" to record why a child has been excluded. The review urged a more accurate capturing of the reasons for expulsion.

"To increase transparency of when children move out of schools, where they move to and why, LAs should systematically track pupil moves to identify trends, taking action where necessary and ensuring children are receiving suitable education at their destination. Where Ofsted finds this should always be reflected in inspections reports and in all but exceptional cases should result in a judgement that the school's leadership and management is inadequate."

The DfE agreed in its response that the "othering" of almost a fifth of all permanent and fixed period exclusions was concerning and it pledged to investigate how the code was being used and improve the list of options available to coding.

However, it had nothing to say on Mr Timpson's recommendation that parents and who have agreed to home educate (through off-rolling or under threat of permanent exclusion) should have time to consider the implications of taking on their child's education and, during this period, a right to decide whether their child should return to their most recent school if they choose.

## Ofsted:

Mr Timpson recommended:

- Ofsted should consistently recognise schools who succeed in supporting all children, including those with additional needs, to remain positively engaged in mainstream in the context of a well-managed school.
- Ofsted should communicate their expectation that outstanding schools have an ethos and approach that will support all children to succeed while accepting that the most serious or persistent misbehaviour, which impacts on the education and safety of others, cannot be tolerated.
- Ofsted must continue its approach set out in the draft framework and handbook of routinely considering whether there are concerning patterns to exclusions, off-rolling, absence from school or direction to alternative provision and reflecting this in their inspection judgements.

### What did the Dfe say?

Not much, other than it looks forward to Ofsted's upcoming revised inspection handbook and then it passed the hot potato over Amanda Spielman, Ofsted's Chief Inspector for further response.

## Local Offer

- The Local Offer should include information about support services for parents and carers of children who have been, or are at risk of, exclusion, or have been placed in AP
- DfE should also produce more accessible guidance for parents and carers and invest resources to increase the amount of information, advice and support available locally to parents and carers of children who are excluded or placed in AP.

### What did the DfE say?

*"We recognise the need for better signposting for parents and carers. We will update guidance for parents as recommended, and will consider how to meet the recommendations on Local Offers and Information, Advice and Support Services."*

*“For the children concerned, there is an urgency in the reforms required, and the government needs to set out how it intends to ensure successful implementation of the recommendations in this report.” Edward Timpson*

## **Vulnerable children**

This is a particular area of interest for Ed Timpson as the child of a family who fostered nearly 90 children. He says, *“A child who is distressed, angry, confused, lacking confidence and trust in others is a child that needs help.”* He has produced some of the most potent evidence in this area so I will just paste in these relevant parts”

*“Children in Need” who have been supported by social care have some of the highest chances of being excluded. But the report uncovered something unexpected - the typical trend of more boys being excluded than girls is reversed, with the gap in the relative likelihood almost double that seen for boys in many cases.*

*“...Children who have experienced domestic violence, loss or separation can find it hard to trust adults around them or form positive attachments. This can result in behaviour that may look like defiance but is often rooted in mistrust, fear or negative examples of behaviour they have seen in their own lives. These children may respond differently to particular sanctions which, rather than leading to changing their behaviour, can further damage relationships with adults around them. One parent described the impact of repeated fixed period exclusions on her adopted son as “enormous. It is another rejection ... you were rejected by your birth family and now the school”.*

*“The analysis produced for this review shows that 78% of permanent exclusions issued were to pupils who either had SEN, were classified as in need or were eligible for free school meals. 11% of permanent exclusions were to pupils who had all three characteristics....*

*“Children with identified SEN accounted for 46.7% of all permanent exclusions and 44.9% of fixed period exclusions...*

*“It is notable that permanent exclusion rates for children with EHC plans are around half those of children with SEN support, but they are 2.8 times more likely to receive a fixed period exclusion compared with all children. This pattern is not mirrored for those receiving SEN support, where both fixed period and permanent exclusions are issued more than three times as often compared with all children. This may, in part, be down to the strength of the exclusion guidance, which sets out that head teachers should “as far as possible” avoid permanently excluding a child with an EHC plan. The guidance does not specify this for fixed period exclusion.” There remains a significant association between pupils who receive SEN support for Behaviour, Emotional and Social Difficulties (BESD) – a categorisation that DfE stopped using in 2014, at which point it introduced a separate SEMH type SEN (of those identified with BESD in spring 2013/14, 67.1% were recorded with SEMH in spring 2014/15. Nonetheless, these types of need are distinct).*

*“Children with SEMH as a primary need but who do not have an EHC plan, are around 3.8 times more likely to be permanently excluded, compared to children with no SEN. Children with SEMH type SEN (who do not have an EHC plan) are also significantly more likely to be excluded for a fixed period, even controlling for other factors.*

*“The likelihood of permanent exclusion for children with BESD or SEMH type SEN who have an EHC plan is significantly lower, and for children with SEMH type SEN in particular, the chance of permanent exclusion is reduced to below that of those with no SEN. This may reflect the strength of the guidance in asserting head teachers should avoid excluding children with an EHC plan, or may be a reflection that those with specific support in place for their SEN are less likely to behave in a way that results in exclusion.*

*“The chance of exclusion for children receiving SEN support who have a specific learning difficulty or moderate learning difficulty is also higher than for children with no SEN, once we strip out the influence of overlapping factors.*

*“For other types of primary need, the higher likelihood of exclusion seen in the raw rates reduces markedly when other factors are accounted for in the new analysis. Children receiving SEN support for autism (and therefore do not have an EHC plan), are no more or less likely to be permanently excluded than those with no SEN, after controls. Children who do have an EHC plan for autism are around half as likely to be permanently excluded than children with no SEN, potentially suggesting that having an EHC plan for autism may lead to a lower likelihood of permanent exclusion, and that the higher rates seen in the raw rates are explained by other factors.*

*“It could be argued that it is unsurprising that children with SEMH needs are more likely to be excluded, because this is often associated with challenging behaviour. However, not only is it important to note that this will not be true of all children with this SEN type, but my view and that of many parents, carers and staff in schools who submitted evidence to this review, is that if we know this can be the case, we must be better and smarter at knowing how to support these children towards a more positive outcome than exclusion. This might include alternatives to ensure they can meet their school’s behaviour standards – whether that is through adjustments in school or making positive choices about moving to a more specialist setting, where it is agreed that is more appropriate.*

*“It is also notable that, as well as evidence that children identified as having particular types of SEN are more likely to be excluded, there is evidence that children who have been excluded are more likely to go on to be identified as having SEN, or those with SEN support being issued with a EHC plan after their exclusion. Children who do not have identified SEN in Year 7 are 11 times as likely to go on to receive SEN support by Year 11 if they have been excluded, compared to those who have not been excluded. Children who receive SEN support in Year 7 are 4 times as likely to go on to receive a statement/EHC plan by Year 11 if they have been excluded.<sup>64</sup>*

*“This reflects the experience of many parents and carers who spoke about exclusion of children with SEN being the result of a failure to understand and properly identify children’s needs, or using this information to put in place the right support to help them overcome barriers and engage with the curriculum offer. Failure to do this can manifest in poor behaviour by the child. Parents and carers of children with SEN set out how their children can be positive members of their school community and have their own aspirational goals to achieve, but without the support to help them overcome the barriers to better outcomes, they can struggle to meet the standards expected of them.*

*“For other children, properly meeting their needs may result in them moving out of mainstream and into a special school that can offer them the level of support that would rarely be available in mainstream. Where that is the case, there are clear processes schools should follow to properly assess the needs of children and make informed decisions about a child’s needs and how and where they are best met. It is concerning that exclusion may, in some cases, be the route through which these questions are asked, or even – in a small number of cases – a deliberate tool used to ensure a proper assessment is made. It is concerning that a minority of school leaders spoke about permanent exclusion being used as a tool to ensure a child was assessed for an EHC plan, or given a place outside mainstream school, rather than primarily as a tool to manage poor behaviour. “*

*Edward Timpson*

## **What did the DfE say?**

The DfE put the responsibility squarely on the shoulders of local authorities

*“We agree that, since circumstances vary for each child, and the influence of out-of-school factors will vary according to local context, it is important that schools, LAs and local partners work together to understand what lies behind local trends. ..In revising our guidance, we will clarify our expectation that this information should be used to inform improvements in practice and reduce disparities, with particular reference to those groups more likely to experience exclusion, nationally, including children with certain special educational needs (as well as mental health problems), or children who have a social worker.”*

## **What is good practice?**

The report cites examples of good practice Mr Timpson has found, such as schools that have, *“established on-site units staffed by experienced teachers and support staff, who give respite to classroom teachers and are skilled at intervening to address poor behaviour, to schools that work with others to deliver support and interventions. This can include working with other schools or the LA to run transition programmes for children who may struggle with the move from primary to secondary school, or commissioning high-quality Alternative Provision to offer part-time, bespoke packages to re-engage children in their education, based on an activity that sparks interest in them.”*

## **How did children’s charities react?**

The two major autism charities, Ambitious About Autism and the National Autistic Society, issued comments, some of which I’ve included below:

### **Jolanta Lasota, CEO Ambitious About Autism:**

“An alarming number of children with autism are missing from our education system and the Exclusions Review was an opportunity to take decisive action.

“However, a big question mark remains over how effective its recommendations – many of which require further consultation - will be in supporting more autistic pupils to achieve a full and rewarding education.

“Proposals to make schools accountable for pupils they exclude and reduce the fixed term exclusions limit will go some way to protecting pupils from falling out of education altogether - but these measures only come into play once schools have made the decision to exclude. We must have more proactive strategies that would ensure vulnerable children’s needs are better understood and supported at an earlier stage in their education before they reach crisis point.

“We know from our work with autistic young people and their families that a failure to support the particular differences that autism brings can often result in pupils having ‘meltdowns’ or ‘shutdowns’ which can lead to behaviour that challenges. It is critical therefore that these differences are taken into account under the rollout of a so called ‘crackdown’ on poor behaviour in schools. Otherwise we fear autistic pupils that can’t conform to new behaviour rules will become increasingly marginalised.

“Finally, the review has also failed to tackle the widespread problem of unlawful exclusions. 56% of the families we surveyed said their autistic child had been unlawfully sent home or denied a full education. The government has made it very clear that unlawful exclusions should never happen – and yet if schools are not held to account when they break the law, these incidents will continue to slip under the radar. The result is autistic pupils missing out of thousands of hours of education they are entitled to and being pushed out of mainstream education.”

### **Jane Harris, Director of External Affairs at the National Autistic Society,**

“Exclusions can have a devastating impact on an autistic child. We hear awful stories of children who spend months, even years, out of education and lose all faith in the system and themselves.

“Today’s report is welcome recognition of this unacceptable situation. The Government’s own figures show that children on the autism spectrum are three times more likely to be formally excluded than children without special educational needs. On top of this, others face being informally excluded or off-rolled. This is unlawful and must stop.

“School can be an overwhelming place for autistic children – things like bright lights, sudden noises, unclear instructions or other children’s unpredictable behaviour can trigger extreme levels of anxiety. This can lead to behaviour that seems naughty or disruptive but is actually an indication that they are overwhelmed, anxious or distressed.

“This has to change. As today’s report says, schools and councils must work together to make sure there is better support to avoid exclusions. For autistic children, this means making changes to behaviour policies, and ensuring that all school staff understand autism. This must be built on the right range of schools – mainstream and specialist – being available in every area. Far too many families face long legal battles to get the support their children need, whether within a specialist school or in mainstream.

“If any families are facing an exclusion or looking for any information or advice about schools, we would encourage them to contact our Education Rights Service.”

### **Eleanor Wright, SOSSEN**

“I’m disappointed that they’ve swerved the opportunity to look properly at the review process. Simply saying that the DfE must do more to help parents won’t change the fact that the procedures and legal requirements themselves are daunting, and I can’t see their recommendations making any appreciable difference to the numbers using the appeal process. More importantly, it means that in reality schools will still not be adequately accountable for exclusion decisions.”

### **Beth Bodycote of Not Fine in School**

“Accountability is a huge issue - no matter what is stipulated in the review who is going to 'police' whether schools and LA's follow it especially when the complaints process is such a huge joke!”

SEND parent & advocate, Lisa Thomas:

“It’s all so fruitless, after so much evidence. The Government need to make clear the role of LAs in the new education 'network'. What power do LA's have left? This is partly why exclusions are increasing in first place, because schools are not accountable to LAs any more, nor to the LGO. This report gives us no need not to march on May 30th. I've got my boots out today!”

### **Marguerite Haye, SNJ columnist & SEND Advocate**

Ed Timpson says exclusion from school should never mean exclusion from education, but this is exactly what happens as there is usually no appropriate replacement provision for SEND children. Schools must remove the punitive approach and offer an open dialogue with parents/carers. Exclusions do not work. There has to be a different approach and not shift the blame to the children.”

### **Carmel Lennon, parent of excluded child**

“For a very lengthy review that has taken 14 months, there isn’t much positive change therein. For my child it is too little too late and won't bring back the four years education he has lost due to part-time timetables and permanent exclusion! The only point of worth, that MIGHT make a real difference to vulnerable children who are facing exclusion, is the 'DfE should make schools responsible for the children they exclude and accountable for their educational outcomes' but even that point is not agreed & will be up for consultation. All in all a disappointing read”

### **Siena Castellon, SNJ columnist and autistic schoolgirl**

Although The Timpson Review recognises that SEN students are disproportionately excluded and proposes steps to address this, the Review fails to distinguish between "poor behaviour" and behaviour that is attributable to a learning disability. On page 7 the Review states: "*Whatever lies behind poor behaviour, schools need to be places where children learn and the school workforce can teach, without disruption.*" I disagree with the review in that the explanation of a behaviour and what is communicated by that behaviour, matters. For example, an autistic student whose senses have been overwhelmed by the noise, crowds and fluorescent lights in the classroom may experience a melt-down. A autism meltdown is not poor behaviour, but rather an involuntary response to being in physical discomfort and possibly, pain. Yet, The Timpson Review does not make this distinction. I believe this is a significant shortcoming."

### **Rachel, Not Fine in School**

Personally, I think it is a good snapshot of the current situation. It's great to see that the wide ranging needs of children are being recognised and that 'one-size-fits-all' isn't the answer. The Review emphasises the need for services to work together for the common good of the children whilst alluding to far greater transparency and focus on early intervention – this suggests they will have to listen to parents/carers.

### **Louise, parent of excluded child**

I am delighted that the Government has finally acknowledged that there is malpractice in school exclusions but there is no 'Bill of Rights' for parents of excluded children.

### **Rachel parent of excluded child**

I think this is just looking at the symptoms rather than the cause. Exclusions are the end result of the failure to correctly address the issues which could be lack of appropriate support or simply that the child is in completely the wrong environment. It may not be the schools issue alone, it might be that multi-agency provision is inadequate but just limiting the number of exclusions won't change any of that, it's just a narrow focus of the bigger issue which should be looked at. I believe this to be the unaccountable academy system & the funds which are diverted to pay excessive executive salaries, an education system that only values testing & results and of course the lack of funding by the government. Also a government that says there isn't a problem with any of those things really doesn't help either.

Thank very much to all parents who contributed (and I'm sorry I haven't been able to include everyone or everything you said)

What's your viewpoint? You can always comment further in our SNJ SEND discussion group for parents and practitioners alike