Exclusions appeal systems – DfE research

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Summary

The DfE commissioned research Independent Review Panel and First-tier Tribunal Exclusion Appeals systems (February 2014) examines the two routes which can be used to challenge a pupil’s permanent exclusion from school. The research was done by Sheffield Hallam University.

Key findings include:

- Two-thirds of parents appeal because they feel their child’s exclusion was unfair and want the exclusion removed from their child’s record. A third of heads feel the appeal was misguided or ill advised. Parents want to appeal, but looked for help in preparing for the appeal hearing.
- Making an appeal was straightforward for the majority of parents although some parents made extensive preparation. The financial costs to parents and schools was relatively low in most cases.
- The Independent Review Panel (IRP) process was seen as fair in terms in terms of the hearing but was felt to be unfair in terms of the limited outcomes from Panel hearings. Schools felt it to be fair even though the school was open to scrutiny. Both parents and teachers questioned the impartiality of local authority officers. Panel members were said to have acted professionally.
- An SEN expert was present at most Panel hearings although the opinions were mixed as to the usefulness of such a person. Half the parents felt that SEND issues had not been discussed as fully as they would have liked during the appeal.

This briefing will be of interest to local authorities, schools, governors, parents and those organisations providing support and advice to parents seeking an appeal including Parent Partnership Services.

Overview

New arrangements for excluding pupil from school in England started in September 2012. The Education Act 2011 sets out two routes to challenge exclusions. The main one enables the parent to refer the school’s decision to an Independent Review Panel (IRP). See section 51A(3)(c) of the Education Act 2002 as amended by section 4 of the 2011 Act. The other one in schedule 1(11) to (13) of the 2011 Act removes the restriction in England of appeals to the First Tier Tribunal (Special Educational Needs and Disability) under the Equality Act 2010, Schedule 17. Consequently, parents can appeal on grounds that their child was excluded from school because of his or her disability (and therefore subject to disability discrimination). Previously, appeals went to an Independent Appeals Panel which, unlike the IRP, had the power to reinstate a pupil.
The Department for Education (DfE) commissioned Sheffield Hallam University's Centre for Education and Inclusion Research (CEIR) in 2012 to undertake a research study to compare the processes of these routes in challenging a permanent exclusion. Interviews were conducted with 21 parents, six young people, 16 headteachers, and seven governors. The authors stress that this sample is not statistically representative and therefore extrapolation cannot be made to the whole population.

### Briefing in Full

The Schools White Paper *The Importance of Teaching* (2010) outlined proposals to change the way permanent exclusions could be challenged. The changes included replacing the system of Independent Appeal Panels (IAPs) with a new system: Independent Review Panels (IRPs). Under the previous system, the IAP could direct a school to reinstate a permanently excluded pupil, whereas the new system provides independent scrutiny of a school’s exclusion decision but gives the school the final say on whether a permanently excluded pupil can return to the school. In addition, the remit of the First-tier Tribunal (SEND) was extended so that it could hear appeals against exclusion on grounds of disability discrimination. These proposals were taken forward in the Education Act 2011, with the changes taking effect from September 2012.

Although, originally, the research was intended to understand and compare the experiences of both routes, due to sampling and the lack of FTTs appeals, the research focused on the IRP route. Although the original intention was have roughly equal numbers of IRP and FTT cases, only one FTT case could be found.

Technically, seeking a review of an exclusion at an Independent Review Panel is not an appeal although the research paper invariably describes it as such. This briefing keeps to this nomenclature. The research does not examine the appeal to the governing bodies against the headteacher’s decision to exclude the pupil, a step prior to the independent review of the exclusion.

### Motivation to appeal

This part of the research looked at the motivations and rationales for making an appeal.

**Summary:** In around two-thirds of cases parents' decisions to challenge their child's permanent exclusion were based on their feeling that the permanent exclusion was unfair in some way. Parents wanted the exclusion removed from their child's record or for their child to be vindicated through the appeal process. Around a third of headteachers felt that parents were misguided or ill advised in making appeals and felt that the process was unnecessary and unhelpful. Parents were self-motivated to appeal but often looked for support and guidance in going through the process. When deciding which appeal route to use, parents had chosen the IRP over the FTT for a number of different reasons including not knowing of the FTT route.

Parents tended to be motivated to appeal due to feeling that the exclusion was unfair or unjust in some way. In many cases they did not necessarily disagree that their child had committed a serious offence or had persistently behaved poorly but felt that the school had not put the processes or support in place beforehand to attempt to better manage the escalating difficulties. Therefore, in the view of the parents, the school had not taken appropriate responsibility for the...
situation and consequently should be held to account. For example, where the school’s behavioural policies were perceived to be unclear and parents feeling that pupils were not given enough prior warning of the severe consequences of specific behaviours.

While headteachers are expected to take extenuating circumstances into account when making a decision to exclude a child, six parents felt that these were not taken into account or dealt with by the school, such as bullying, a death in the family or other personal issues.

Seven parents felt that the permanent exclusion was too severe a punishment, particularly where a one-off incident had led to the exclusion.

In contrast, headteachers interviewed sometimes did not understand why a parent had made the independent review, and in some cases felt that they may have been ill advised in doing so. A number of headteachers mentioned that their decision to exclude permanently had not been taken lightly and felt that they had put in place every possible measure to prevent this from happening. A small number of headteachers specifically mentioned that they felt the local authority or parent partnership had given allegedly misleading advice to parents.

**Desired outcome of the IRP/FTT**

Only seven of the twenty-one parents wanted their child to be reinstated in the school – the main intended purpose of the referral process. The majority of parents and pupils interviewed were not looking for the final outcome to result in reinstatement.

Ten parents were hoping to remove the exclusion from their child’s record entirely. However, the IRP process does allow a child’s record to be amended to reflect the outcome of the panel, including referencing, where appropriate, that the exclusion decision had been quashed by the panel, but not an exclusion had taken place.

Some headteachers were aware that the parent did not want reinstatement and felt that the whole process was needless, as the parents were not able to gain their desired outcome.

**Support, information and guidance**

Support and guidance for choosing to appeal and which route to take typically came from the Parent Partnership Service, the local authority and Coram Children’s Legal Centre, and in a small number of cases other sources including a family support worker, friends, family members and the internet.

Five parents specifically mentioned that they felt there was no support available and a further six alluded to the lack of support. Some parents spoke of feeling isolated and of having to go through what they considered to be a difficult process alone. From the research, it appears that the most confident and proactive parents were sometimes able to access the available support whilst some of the less confident parents found accessing support much more difficult.

Six parents had legal support. Reasons for this included having additional support to help put their case forward, to feel represented in some way, and to feel that they were not going through the process alone. One parent stated that she needed legal support in order to identify the grounds on which her case was being made. Three of these parents used Coram, two used another legal
service, and one used a trainee solicitor for free and was the only one to be represented at the IRP (by the trainee solicitor).

The parents found the legal support they received helpful in terms of giving advice, writing the appeal request, and dealing with paperwork. Nevertheless, some parents found the advice was quite general and non-specific or less useful because the support did not include representation at the IRP.

The remaining fifteen parents did not use legal services, most commonly due to high costs (six), not feeling they were needed or not knowing it was available.

For schools, two of the sixteen schools had appointed external legal representation and one felt it was necessary to deal with complex issues, including those related to SEND. Of the remaining fourteen headteachers, six highlighted the legal support provided by LA legal staff. Some indicated that this support benefited both parents and schools, for example, in clarifying the protocol on what was being asked.

The main reason headteachers gave for not choosing to employ additional legal services was that they felt it would not be necessary, feeling that they had followed school procedures in making the exclusion correctly and therefore had not acted in a way that would warrant the need for legal support.

Other reasons included schools not realising they could have such representation (two cases), the cost, and being unsure how to access this support. One headteacher did indicate that they might use a legal representative if they went through an IRP again feeling the process had been more rigorous than expected.

**Choice of appeal route**

While schools are required to notify parents that they may make a claim to the FTT where they believe their child’s exclusion relates to disability discrimination, at least six participants stated that they had not been made aware of the FTT route. Two parents explicitly stated that they had been told that the IRP route was their only option.

The apparent low-level awareness of the FTT route suggests that there may be inconsistencies in the amount and quality of information received by parents about both routes. One parent commented that although she knew of the FTT route, she had not been made fully aware of the difference in outcomes of the two routes (the FTT route can lead to reinstatement, for example).

Just over a quarter of parents interviewed said that they were aware of the two different routes, but at the time had seen the FTT as the next stage or a last resort.

**Preparation for an appeal**

This part of the research looked at how parents experienced the process of requesting an appeal, including the administrative procedures involved, the work undertaken by both parents and schools to prepare for an appeal.

**Summary:** Making an appeal request was said to be straightforward by the majority of parents. Extensive preparation was made in some cases, and all participants had prepared in some way.
Financial costs to parents and schools were relatively low in most cases. Academy schools had higher costs due to having to pay for the IRP (although the funding for academies reflects such responsibilities).

**Requesting an appeal**

Almost all parents involved in the study found the process of requesting an appeal straightforward, submitting requests in writing or in a few cases by email. A few parents received support from the LA in understanding the process, one was supported by a solicitor and two had help from Coram Children's Legal Centre.

However, two parents did find that requesting an IRP was not straightforward. One parent described putting the request in writing as 'daunting', whilst another parent found the whole process difficult due not knowing who to send paperwork to.

**Preparing for the appeal**

All of the parents prepared extensively for the panel hearings, in some cases spending many days on preparation. The level of preparation required took its toll on a small number of parents, with some noting how they had found the experience stressful or difficult, particularly for one parent with literacy difficulties.

The types of preparation focussed on information gathering and preparing written and oral statements for the panel.

In general, the amount of work prior to the review was also extensive for schools. On average headteachers estimated that the preparation for the independent review took about an extra day’s preparation on top of the several days’ work in preparation for the appeal to the board of governors. The preparation often involved a number of members of staff including the headteacher, senior leaders, administrative staff and the special educational needs co-ordinator (SENCO).

The preparation was much less onerous for governors. In most cases preparation involved reading through the written documentation, and in some cases meeting with the headteacher and other members of staff to discuss the case.

It seems to matter a great deal to schools and to parents to ‘win the appeal’. There are strong motivations from both parties for this. For schools this is likely to be related to the undermining of authority that may come from the appeal going against them; there is also the potential financial implications of losing the appeal. For parents this is the desire not to have a permanent blemish on their child’s record as well as a sense of fairness or a sense of duty to their child.

**Cost of the Appeal**

Direct financial costs to schools and to parents seemed in the main to be relatively small, with some exceptions. However, parents stressed that their costs were mostly related to the emotional and opportunity costs of spending so much time preparing for the appeal. Some headteachers also had found the process a difficult and stressful time. Almost all headteachers commented that their main cost was staff time, including their own time to attend the appeal.
Experiences of appeal

This part of the research looked at both schools and families' perceptions of the appeal day itself including location of the IRP/FTT, views on the panel members, and the length of time it took to get the outcome of the appeal.

Summary: Overall, the IRPs were described as fair in terms of the process on the day. Where parents raised issues about unfairness or potential bias this was because they felt that the process did not allow them their desired outcome. Conversely, school participants felt processes were fair, but the school was much more harshly scrutinised than the family. In the main, participants felt they were given the opportunity to have their say and to fully put their case across, with a small number of exceptions. Panel members were said by most to have been professional and suitable individuals, again with a small number of exceptions. The role of some key local authority members of staff were called into question by some parents and headteachers in relation to their impartiality.

Location of appeal

The statutory guidance states that the location of an IRP should be appropriate but does not include examples of appropriate and inappropriate locations. However, participants were broadly happy with the location of the appeal. Around a quarter of parents were not satisfied with the venue. For some this was because they felt the building was not a neutral location, particularly in the minority of cases where the review panel was held at the pupil's school or a local school (this was more common for academies). Other parents stated that they had found the location either difficult to get to or overwhelming due to the nature of the building.

Another issue which arose from a relatively small number of participants was that on some occasions, parents and the school party had to wait in an area together before entering the hearing room. Whilst statutory guidance states that venues should have a suitable area for the parties to wait separately from the panel, it does not specify that the parties themselves should be able to wait separately from each other.

Fairness of appeal

A positive finding was that the majority of participants felt that procedurally the hearings had been conducted fairly overall despite any disappointments with the eventual outcomes.

However, there were a number of caveats added by participants when discussing fairness, sometimes this related to wider issues and not in relation to the process on the day. For example, for at least six parents, and in one case the pupil, a central issue was that they felt the process did not allow them their desired outcomes, they felt they were unable to 'win' the appeal. This was because the school ultimately makes the final decision about reinstatement.

There were unprompted comments from parents, headteachers and most governors that the appeal felt like a very formal and legal process which was a surprise. This had led to feelings of intimidation and stress for some participants.

When asked about the fairness of the process most headteachers and a number of parents agreed that the onus was on the school to defend their actions. Headteachers commented that they were scrutinised much more closely than parents. Some of these headteachers felt that the...
review panel was dealing only with the school’s handling of the exclusions, the processes and procedures they followed and not about the incident(s) which led to the exclusion. This led to four headteachers saying that they would tighten up on their procedures or even reconsider excluding a pupil in the future.

However, others (both parents and teachers) felt that this was the correct way for the IRP to be conducted and that it was right that the school’s decision was called into question.

**Views on panel members**

For the most part, participants felt satisfied with the panel members’ suitability and qualifications to be on the panel. Positive comments included professional, competent, engaged, polite, fair and pleasant.

The make-up of the review panel typically consisted of a former headteacher, a governor of a different school and a chair. There was often a ‘lay’ person, for example a professional in the local community, and sometimes a legal expert from the LA was also present. Although statutory guidance states that where possible panel members should reflect the phase of education from which the pupil was excluded, there were some concerns raised from at least two headteachers and one governor that panel members were not fully representative of the school phases.

A recurring issue that emerged during interviews was the role of the local authority employees in the appeal process. A number of parents and headteachers questioned whether members of staff from the LA (who often attended appeals) were impartial. For example, two headteachers felt very strongly that there appeared to be a conflict of interest where the LA was concerned. The main issue was that there may be a vested interest from the LA as they would become responsible for an excluded child if the exclusion was upheld. On the other hand, some parents felt that the LA advisor was on the schools side.

**Outcome of the appeal and final decisions**

Statutory guidance is clear that the review panel should notify all parties of the decision ‘without delay’. Fourteen parents received the outcome of the IRP within a few days of it taking place. The remaining six parents said they were made aware of the outcome within a week or two. However, most parents were happy with the length of time it took to hear about the outcome, regardless of how long it had taken.

Similarly, ten headteachers said they found out the decision within a few days. There were some who had to wait longer than this and were disappointed at the time lag.

When asked about the time it took to go through the appeal process in its entirety some parents were less pleased. Some parents found the length of the IRP difficult as they felt it hindered them in making plans in relation to their child’s future education.

**Outcomes**

It appeared that most parents were clear on the outcomes of the IRPs, however, for a small number of parents and pupils there was some confusion around the outcome of the appeal. For example, one parent thought that because the IRP had quashed the school’s decision to
permanently exclude, her son would automatically be reinstated and was not aware that the board of governors had to reconsider this decision.

Governors’ roles in decision making

Governors are in a position of power in terms of making decisions about whether or not to uphold a headteacher’s exclusion decision and they must then be able to justify their reasons for this at an IRP. A small number of participants mentioned that training for governors is needed to ensure that they are fully aware of all aspects of the exclusion review process.

Special Educational Needs and Disabilities

This part of the research looks at the way SEND was taken into account during the appeals.

Summary: Parents are given the opportunity to request an SEN expert to be present at an IRP regardless of whether or not their child has identified SEND. Most parents had an SEN expert present at the IRP. Opinions were mixed as to the extent to which SEN experts had been helpful in the IRP but parents were more likely than headteachers or governors to have found them to play a significant part in the IRP. Where SEND had been seen to be relevant to the exclusion or the appeal, half of parents felt that SEND issues had not been discussed as fully as they would have liked during the appeal.

Thirteen parents considered their child to have SEND that was relevant to the appeal. The types of SEND were nearly all behavioural or emotional. Fourteen parents had either requested an SEN expert or had one provided for them.

Whilst governing bodies are required to notify parents of their right to request that an SEN expert attend the IRP, a minority of parents stated that they had not been made aware that they were able to request an SEN expert.

Where they were present, opinions were mixed as to the usefulness of SEN experts. Overall, parents found the SEN expert more helpful than the headteachers or governors did. Where there were concerns, this was sometimes the parents feeling that the review panel was not giving the SEN expert sufficient opportunity to put their case forward. Some felt that the SEN expert had only been allowed to speak in general terms and not be specific about the needs of the pupil involved. This appears to indicate a lack of understanding of the role of the SEN expert (the SEN expert’s role is like that of an expert witness, providing impartial advice on how special educational needs may be relevant to the exclusion).

Headteachers and governors were more likely to say that the SEN expert had not been helpful in the IRP, for example, by not being objective. Most headteachers who had not found the SEN expert helpful said that they felt that the SEN expert was not qualified sufficiently to be able to make judgements.

Governors also felt that the SEN expert had added little to the evidence presented.

A small number of headteachers felt that the SEN expert should have done more to prepare for the IRP in terms of looking into the school’s SEND policies and procedures and the child’s record. As with parents, this indicates a misunderstanding of the SEN expert’s role amongst some headteachers.
Recommendations

For schools (including academies):

- To review their processes and documentation to ensure they make clear reference to the two routes, and signpost support available to parents
- To consider providing training and guidance for members of the governing bodies on the IRP route

For IRP panels:

- To ensure schools and parents are aware of the role and responsibilities of the SEN expert
- To ensure that parents' wishes in relation to reinstatement of their child do not influence the decision on whether or not to quash an appeal

For government:

- To provide guidance on the role of the local authority (LA) representative in relation to the IRP
- To gather evidence on the extent to which guidance is followed especially on exclusion notification letters
- To ensure that parents are provided with information on the potential outcomes of each route
- To review guidance on the location of IRPs

Comment

There are important lessons in the research for local government on how to manage the LA role in the pupil exclusion process particularly over Parent Partnership Services and the quality of information provided to parents and working appropriately with schools that exclude pupils.

The research demonstrates that the appeal processes, in their entirety, are very stressful for both parents and schools. The research also highlights a misunderstanding of the outcomes of appeals, confusion about which route to take, a lack of information, and a misunderstanding of the roles of certain panel members including the LA role and the SEN expert role. Of more importance, the research has revealed a lack of understanding between schools and parents on the reasons for appealing, which can cause even more stress for both sides. In the light of important changes to the pupil exclusion process that affect practices in schools, it continues to be of paramount importance that schools and governing bodies take note of these changes and work with parents to try to understand and tackle unruly behaviour in pupils. It will also be important for the Department for Education, local authorities, schools and governing bodies to provide even clearer guidance and advice to parents seeking information on the appeal processes.

One issue which this research does not address fully is the impact of permanent exclusions on certain ethnic minority groups and SEND pupils, as there is some evidence that they are disproportionately impacted by the exclusions process. Indeed, there needs to be a better recording of excluded pupils with SEND. It will therefore be important that schools and local authorities take responsibility to comply with equality and human rights legislation.
External downloads

DfE Independent Review Panel and First-tier Tribunal Exclusion Appeals systems (February 2014)

DfE Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion (June 2012)

UK Parliament: The Education Act 2011

DfE The importance of teaching: the schools white paper (November 2010)

Related briefings

“Always Someone Else’s Problem”: Children’s Commissioner’s report on Illegal exclusions (November 2013)

Education Act 2011 (November 2011)

Guidance on Exclusions from maintained schools, Academies and PRUs in England 2012 (May 2012)

Schools White Paper – The Importance of Teaching (November 2010)

For further information, please visit www.lgiu.org.uk or email john.fowler@lgiu.org.uk