

**Excluded from school.  
Every day a child with autism is denied an education.  
Let's put them back in the picture.**



**#weneedaneducation**



**Ambitious  
about Autism**

## About us

Ambitious about Autism is the national charity for children and young people with autism. We provide services, raise awareness and understanding, and campaign for change. Through TreeHouse School, Ambitious College and the Ambitious about Autism Schools Trust we offer specialist education and support.

Our mission is to make the ordinary possible for children and young people.

## About autism

Autism is a lifelong developmental disability which affects one in 100 people in the UK. It affects the way a person communicates and how they experience the world around them. Some people with autism, including Asperger Syndrome, are able to live independent lives, but others may face additional challenges including learning disabilities. Early intervention, education and support are critical if children and young people with autism are to lead fulfilling lives, learn, thrive and achieve.

## School Exclusions Review

In March 2018, the Government announced an independent review into school exclusions, led by Edward Timpson MBE. The review will explore how head teachers use exclusion in practice, and why some groups of pupils are more likely to be excluded. Ambitious about Autism has submitted the evidence in this report to the review, which aims to report by the end of 2018.

## About the data

The new statistical evidence in this report on pupils with autism and exclusion was obtained through a Freedom of Information request submitted to the Department for Education on 26 January 2018. The data relates to the number pupils with Autistic Spectrum Disorder as their primary need who have received a permanent or fixed-period exclusion in each English region per year between 2011/12 to 2015/16 (the most up to date information available). See Appendix 1 for full details.

**This report has been written by Justin Cooke. Thank you to parents who have shared their experiences with us. Some individuals in this report wanted to remain anonymous; their names have been changed to protect their identity.**

## We need an education

Children are being denied an education simply because they're autistic. It's time to put them back in the picture. Join the fight at [##weneedaneducation](https://www.weneedaneducation.org).

[www.ambitiousaboutautism.org.uk/weneedaneducation](http://www.ambitiousaboutautism.org.uk/weneedaneducation)

# ▶ We need an education

All children have a right to a full education, but too many children with autism are being excluded from school. Some of them unlawfully.

## New evidence from Ambitious about Autism shows:

**Exclusions for children with autism have risen sharply – up by almost 60% across England – in five years.**

**In every English region, exclusions of children with autism have increased by at least 44%.**

**In contrast overall exclusions have risen by 4% in the same period.**

This rise in exclusions for children with autism is clearly not part of, or in keeping with, the patterns of overall exclusions or with SEN exclusions; it is a new and distinct trend.

**Children with autism are being excluded because they are children with autism.**

Some children aren't part of these official statistics – their exclusions aren't even recorded which is unlawful. Surveys of parents for Ambitious about Autism's 2016 report *When Will We Learn?* indicate that children and young people with autism were unlawfully deprived of education 26,000 times in one year.

The Government has commissioned an independent review of school exclusions to examine how schools use the practice and find out why some pupils are more at risk. Ambitious about Autism is calling on the review to look at the exclusion of children with autism as a separate issue and find solutions which will work for this group of vulnerable, neurologically different children who are being disproportionately excluded.

## Ambitious about Autism's key recommendations

**Ensure Ofsted has the power to thoroughly investigate unlawful exclusions and take appropriate action.**

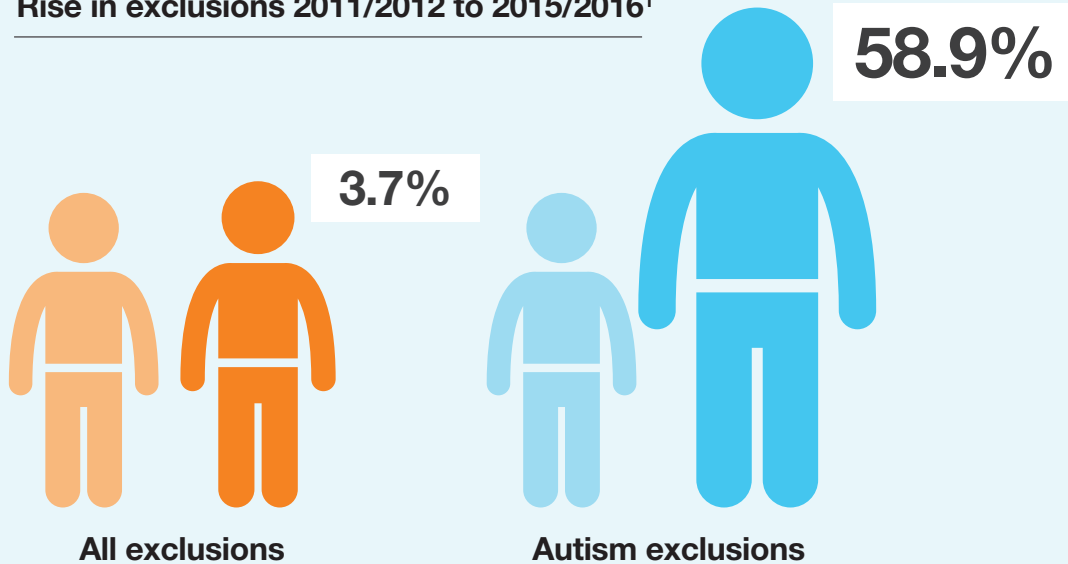
**All school staff – including teaching assistants and support staff – should be given training in understanding autism.**

**Strengthen the accountability of the system to ensure schools and local authorities are incentivised to support children with autism. For example, examining whether to make schools financially and academically responsible for children they exclude or place in alternative provision.**

# ▶ The disproportionate rise in exclusions

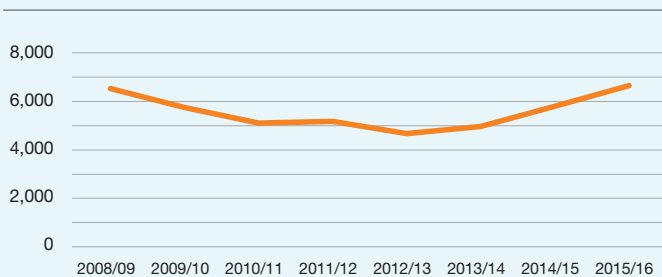
In the last five years exclusions of pupils with autism have jumped by almost 60%. This is in marked contrast to the overall exclusion rate, and is a new and distinct trend.

## Rise in exclusions 2011/2012 to 2015/2016<sup>1</sup>

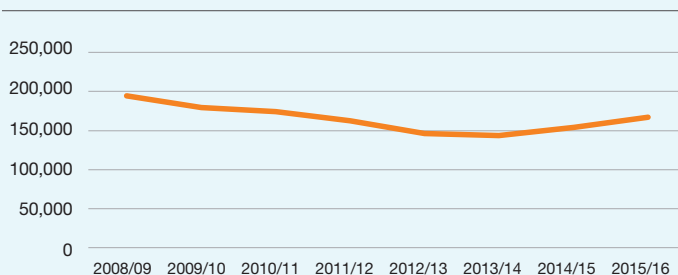


Before 2013/2014 overall exclusions, both permanent and fixed period, had been on a downward trend but have started to rise since.

## Permanent School Exclusions since 2008<sup>2</sup>

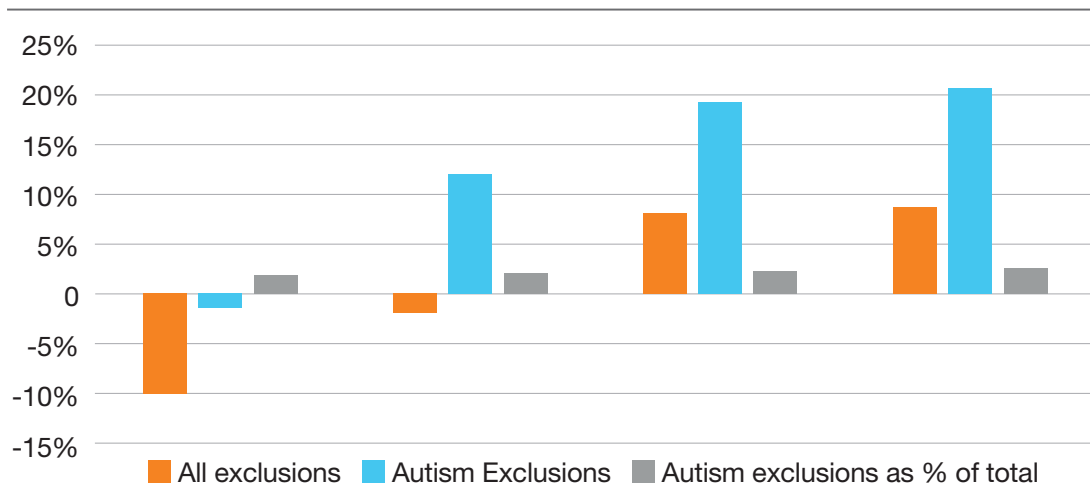


## Pupils with one or more fixed period exclusion since 2008

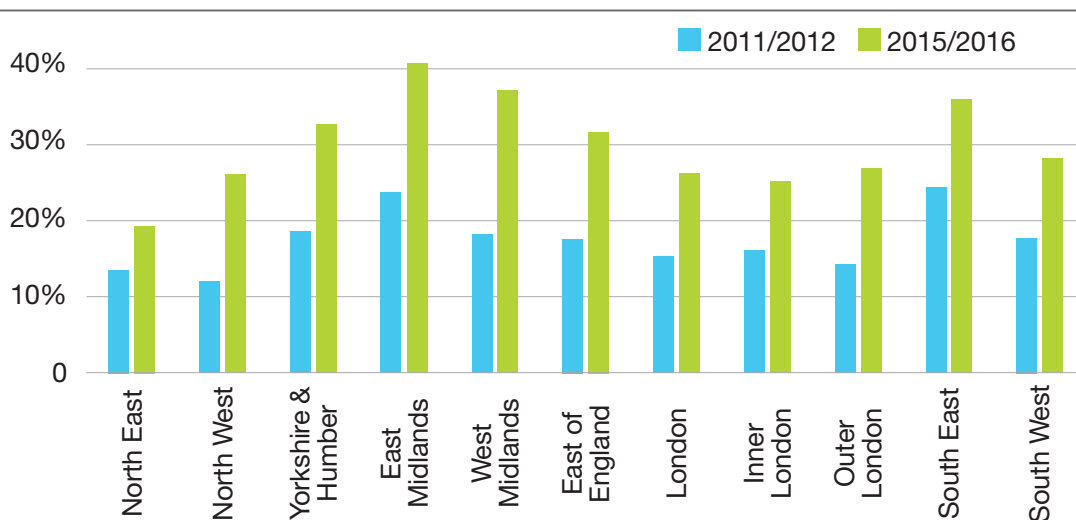


However, within this recent increase the proportional rise in the numbers of school exclusions for children with autism has been much sharper than both overall exclusions and within SEN exclusions.

### Year on year percentage changes in exclusions<sup>3</sup>



### Proportion of exclusions for children with autism within SEN exclusions in 2011/2012 and 2015/2016<sup>4</sup>



▶ **Exclusions for children with autism must be looked at as a distinct issue, not masked within exclusions for SEND or other disproportionately excluded groups. We must find out why such large numbers of their cohort are being excluded and why there has been such a sudden jump in the last few years.**



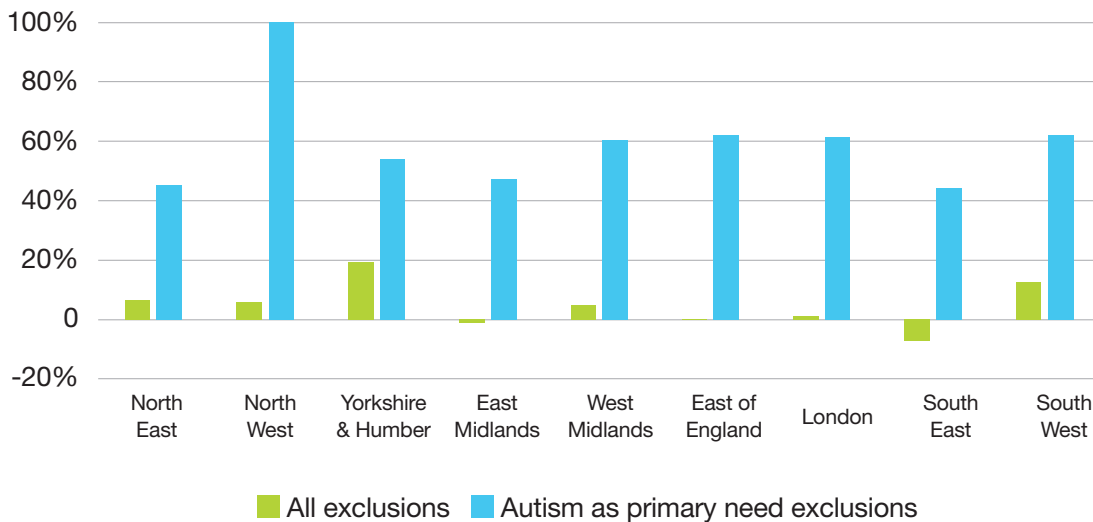
## ► Rises in all regions

Ofsted has identified and warned of eight “hot spots” for high numbers of exclusions of pupils in England – all within the North East and Yorkshire and the Humber. However, Ambitious about Autism’s data suggests that every region in England is a “hot spot” for exclusions of children with autism.

**We found that every region in England has experienced a rise in exclusions for children with autism of between 45% and 100% in the last five years.**

In marked contrast not all regions have had an overall rise in total exclusions. In the South East exclusions have fallen by just over 7% in five years, yet exclusions for children with autism in the region have risen by almost 45%.

### Regional percentage changes in all exclusions and exclusions for children with autism from 2011/2012 to 2015/2016<sup>5</sup>



## ► Increase in the number of children with autism

Some might argue that the rise in the number of pupils recorded as having SEN and autism in turn explains the rise in exclusions for these pupils, however they are still disproportionately represented for their cohort.

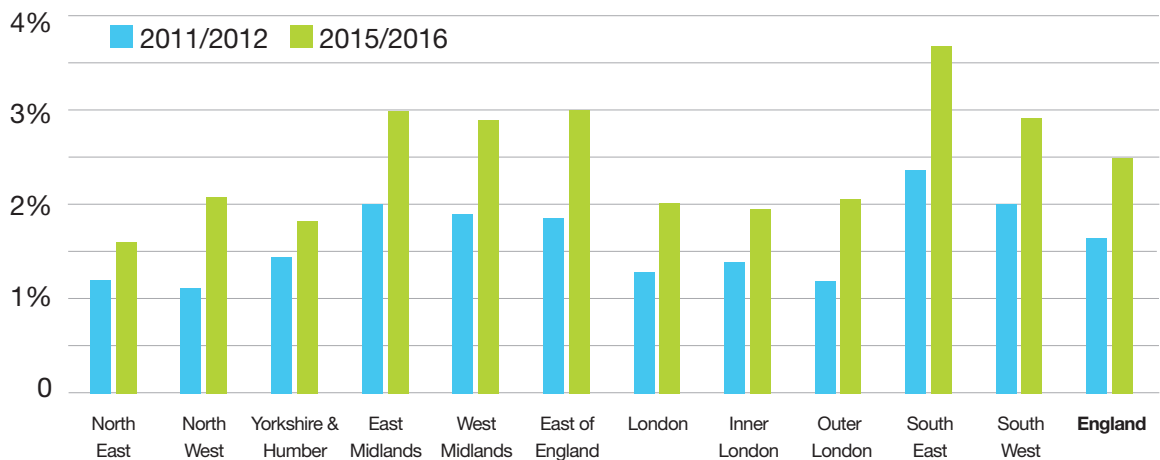
**Children who received help for autism as their primary SEN need has increased year on year.** In 2011/12 there were 66,195 children with autism rising to 100,010 in 2015/16.<sup>6</sup> This is a rise of 51.1%, still less than the 58.9% increase in exclusions for this cohort over the same time period.

Looking at the proportion of children with autism in relation to their exclusion rate, a more worrying picture emerges. In 2015/16 children with autism accounted for 1.17% of the school population.<sup>7</sup>

However, looking at the change in exclusions for children with autism as a proportion of all school exclusions, the data shows that 2.5% of all exclusions in England are for children with autism.

**The numbers of children with autism being excluded is massively disproportionate to their numbers, even taking into account the increase in population.**

### Change in exclusions for children with autism as a proportion of all exclusions in English regions from 2011/12–2015/16<sup>8</sup>



## ► Informal and ‘unlawful’ exclusions

**The official statistics only provide a picture of those exclusions that are recorded. Informal or ‘unofficial’ exclusions, such as sending a pupil home ‘to cool off’ are unlawful, regardless of whether they occur with the agreement of parents or carers.** Any exclusion of a pupil, even for short periods of time, must be formally recorded.<sup>9</sup> It is unlawful to exclude a pupil simply because they have additional needs or a disability that a school is unable to meet.

As this type of exclusion goes unrecorded it is very difficult to track its impact but if we assume Ambitious about Autism’s 2016 survey of parents’ experiences are typical it would mean that 26,000 children and young people with autism were unlawfully excluded that year.<sup>10</sup> This indicates that the number of children and young people with autism missing out on school when accounting for all types of exclusions will be higher.

# ▶ An ongoing problem

Ambitious about Autism's findings are also supported by the results of the most recent Teacher Voice Omnibus Survey<sup>11</sup>. The survey included questions set by the Department for Education which indicate a misunderstanding of exclusion law within schools and the widespread unlawful practice of unofficial exclusions as a result:

**29% of secondary school teachers and senior leaders believed exclusion law allowed them to encourage parents to withdraw children from school and apply to another.**

**6% believed that exclusion law allowed them to send children home, including children with SEN and EHC plans, to "cool off" at any time when in fact doing so would be illegal.**

**5% of teachers believe exclusion law allowed them to encourage parents to home school children if the alternative was an exclusion.**

These findings are also backed up by the recent All Party Parliamentary Group on Autism Report *Autism and Education in England 2017*<sup>12</sup> which called the current situation of 'informal' exclusions "prevalent and disturbing" and went on to say that:

*"However, the evidence suggests that [Statutory Guidance on Exclusions] is simply being ignored and that children on the autism spectrum are regularly unlawfully excluded, with consequences for their academic progress, self-esteem and mental health. Of the parents who completed our survey, one in four told us that their child had been 'informally' excluded at least once in the last year. Four in ten of the teachers who responded to the survey said that their school had excluded an autistic child, either lawfully or unlawfully, in the last year."*

The All Party Parliamentary Group on Autism put forward that the issue was one of effective enforcement of the current law, rather than requiring new legislation. They also made recommendations which mirror Ambitious about Autism's call<sup>13</sup> for a clear procedure for reporting unlawful exclusions, and making it clear which bodies are responsible for holding schools to account.

But perhaps the most in-depth investigation into informal, unofficial, unlawful and 'illegal'<sup>14</sup> exclusions was carried out by the Children's Commissioner for England in 2013. The Children's Commissioner's 2013 report *Always Someone Else's Problem*<sup>15</sup> found that illegal exclusions impact disproportionately on the groups which are also most likely to be formally excluded and this particularly affected children with SEN.

They also found that 6.7 per cent of schools had sent children home for disciplinary reasons without recording it as an exclusion, and 2.7 per cent of schools have sent children with statements of SEN home when their carer, classroom support or assistant is unavailable.

They reported four key reasons for illegal exclusions:

## 1 Lack of awareness of the law

They reported a **widespread lack of awareness and understanding of the law regarding exclusions understandably among parents, but more worryingly among teachers and school leaders**. They found:

- ▶ Around a third (31 per cent) of teachers did not know whether it was legal to encourage a parent into educating their child at home.
- ▶ Around a quarter (24 per cent) of teachers did not know whether it was legal to falsify attendance records for a child who had been asked not to attend school.
- ▶ More than a third (39 per cent) of teachers did not know whether it was legal to send children with a statement of SEN home when their carer or teaching assistant was unavailable.





## 2 Gaps in the accountability framework for schools

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**They found clear gaps in accountability for illegal exclusions** with statutory bodies feeling no obligation to address the issue, with Ofsted the only one in any form to seek to address illegal exclusions, either at a local or national level proactively. They felt this situation was unacceptable and “a source of shame to the entire education system”, but also considered this situation unlikely to change unless concerted action was taken. Sadly to date this has not happened.

## 3 Unintended consequences of the incentives in place for schools

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**Many parents and representative bodies felt illegal exclusions may be an unintended consequence of the accountability system and incentives in place for schools.**

The high stakes nature of league tables and inspection regime, formal exclusions data, reductions in the availability of specialist support services for schools and the lack of a meaningful sanction on a school for illegally excluding a child all being highlighted.

## 4 A lack of a meaningful sanction

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**They found that the law regarding exclusions was clear, but the consequences of a school breaking this law was not.** Even if a school is found to have acted illegally, the school will face no financial penalty, the school’s league table place is also unaffected. They found no evidence for Ofsted’s statement that it would probably award an ‘inadequate’ rating to any school it finds to be excluding illegally or cases in which it had done so.





# ▶ The Government's response to unlawful exclusions

The Government's response to the Children's Commissioner for England's reports<sup>16</sup>, both *They go The Extra Mile* and *Always Someone Else's Problem*, set out a range of measures aimed at reducing exclusions and ending unlawful ones.

They placed these measures within an overriding policy context that looked to "ensure that schools have sufficient powers to manage behaviour lawfully and support them to tackle the underlying causes of exclusions" and reaffirmed its view that, for academies and free schools, the body with responsibility for identifying and addressing unlawful exclusions was the Education Funding Agency (EFA), which was replaced with the by Education and Skills Funding Agency in April 2017 (ESFA).

However, this remit does not appear anywhere on ESFA's website or within its current business plan or its objectives<sup>17</sup>. In fact within the agency's published procedure for dealing with complaints about academies it lists a larger number of reasons why they don't take complaints and say that they will look at an academy's failure to comply with their legal obligations only "unless there is another organisation better placed to consider the matter".<sup>18</sup>

One other route, which the Government has previously suggested, is reporting a Headteacher to The National College of Teaching and Leadership (NCTL) for serious misconduct.

We have investigated this route and have found evidence that it could work; but have also found evidence that the NCTL have refused to take cases saying they do not investigate unlawful exclusions.

This is backed up by answers from Ministers to parliamentary questions<sup>19</sup> which confirm that the NCTL does not record inappropriate exclusions as a category of misconduct and that they would expect this type of misconduct to be dealt with only at a local level by employers.

**Children with autism were unlawfully deprived of education 26,000 times in one year.**

The figures, both from official national statistics and collected elsewhere, clearly show the measures and approach the Government has taken has failed. Exclusions and unlawful exclusions have all increased since the Children's Commissioner for England published its reports in 2013. This review is a potential catalyst for change to tackle the problem of exclusions.

More recently the Department has stated that it does not believe it is its role to impose sanctions against schools and that it does not hold data on unlawful exclusions. Since 2013 we have also had a large growth in the number of academies and free schools which, alongside other changes in school and higher needs funding, have resulted in a large increase in the direct control of schools, via the ESFA, by the Department for Education.

We firmly believe the Department for Education can no longer assert that it is not a direct player in the accountability structures and sanctions systems of schools. We feel that ultimately the responsibility should rest with the Department for Education and the Secretary of State for Education, which must take a more proactive approach towards unlawful exclusions in schools and be ready to impose sanctions against any school if it acts unlawfully.



## Allen's story

*My son Josh is 13. In secondary school last year Josh was unlawfully excluded for seven mornings and a further six half days prior to his Education Health and Care Plan application*

*Josh is a great kid, he enjoys playing sport though this can cause a few problems as his oppositional defiance disorder and other mannerisms can lead to unwanted outbursts. But generally he's polite, he loves maths and is very good at it. Before the exclusions began, he used to say he wanted to be a Maths teacher.*

*The half day morning exclusions were when the school was giving Josh 'Intensive Day punishments' which meant he had to go in at 2pm till 5pm on those days. The school recorded him as present in the morning sessions on the legal registers, even though he wasn't allowed to go to school until 2pm. This is unlawful – he had been excluded – and they need to report every time they exclude pupils. This didn't just happen for Josh, 'intensive days' are part of this school's policy for dealing with pupils with challenging behaviour. They are habitually, illegally excluding children, across the school.*

*At first we didn't know it was unlawful to call parents to pick up during school time without recording it and telling us our rights. On one occasion, I was called in to take him home as he was upset and wandering the school and not listening to them. I asked how they were recording this when they called us to pick him*

*up as they couldn't cope. I wanted to be sure they had evidence that Josh needed extra support. School decided that they would mark these occasions in the registers as 'C' (collected by parents) with a notation next to it. We agreed to this, as we believed this would help us collect the evidence that Josh needed extra support, and because we didn't know that technically this was an exclusion.*

*Beforehand, they were marking the times we were called in to collect, as Josh being present in school for the whole day. I now know both of these actions were unlawful – and worse, us complying with the school in the hope it would build evidence that Josh needed more support actually achieved the opposite. He wasn't recorded as excluded – so no one thought to assess if his needs were being met. He was being failed twice.*

*These exclusions affected our whole family. On two occasions my daughter, who is a few years above Josh, was asked to call us using her mobile to get us to come in and pick him up. She has anxiety issues and yet they added this sort of pressure to her – it's totally inappropriate.*

*Eventually I asked the local authority to help... In June 2016, I called the County Inclusion Office to ask if the school had been in contact with them regarding Josh as they'd promised. They had not heard from the school at all. After describing what was going on and sending over records I'd kept, they said they*



"... in all my efforts, I couldn't find a single body able to hold the school to account.

Because of these exclusions my son stopped liking school, it knocked his confidence and has affected my whole family. In the school he was in, this is happening to other children, and it's happening in other schools too, and no one knows the scale of the problem."

had two major concerns with the way the school was recording things. They told the school that the unlawful exclusions needed to stop and that the ones that had occurred, needed to be retrospectively altered in the legal registers from the present mark to an exclusion mark. This never happened and County Advisers went back into the school in November 2016 and emailed again in December 2016 to tell the school to bring this and their other unlawful recording process in line with legislation.

Unfortunately nothing changed. The registers were left with fraudulent recordings and I was informed by County recently that nothing can be done as they have now finalised their January 2017 census on the registers. **I felt that the school shouldn't be allowed to unlawfully exclude children and get away with it, County had shown they did not have the power to hold the school to account so I began to look elsewhere...**

Over the next couple of months, I contacted my Local Councillors, my local MP, local educational psychologist services and Child and Adolescent Mental Health Services, the Department for Education's advice line and complaints service. I wrote to Ofsted, the Children's Commissioner, and then to the Secretary of State for Education. Despite the fact I had confirmation in writing that school had acted unlawfully in the way they had excluded my son, and that they'd refused to record it correctly even when directed to by the local education authority, no one could help. I knew my child's rights – but it didn't make any difference.

In desperation I called the police. School were acting unlawfully and had knowingly supplied incorrect

records to their funding body – surely someone could take action. But no – the police told me my only option was to make a civil case – and like most parents, I simply can't afford to.

**So, in all my efforts, I couldn't find a single body able to hold the school to account.**

**Because of these exclusions my son stopped liking school, it knocked his confidence and has affected my whole family. In the school he was in, this is happening to other children, and it's happening in other schools too, and no one knows the scale of the problem.**

Parents are powerless right now, not only in changing our children's situations – but even to get people to acknowledge these exclusions exist. Josh doesn't understand that when he is bored in a lesson he can't put his head on the table to show it. I know it's ridiculous to exclude him for this behaviour. If he's formally excluded I can object to that and it's recorded. When the school doesn't record exclusions within the law, Josh and I lose our right to be heard, and when no-one holds them to account, there is nothing stopping them excluding children for whatever reason they like. It's a dangerous precedent to not enforce this guidance – it's good guidance – but only as good as the amount of attention that is paid to it.

**Which is why I believe that the government must add to it, to show parents there is a way to raise concerns, and show schools there are consequences to acting outside the law. And to protect children like my son from being forced to miss out on their education.**

# ▶ When will they **we** learn

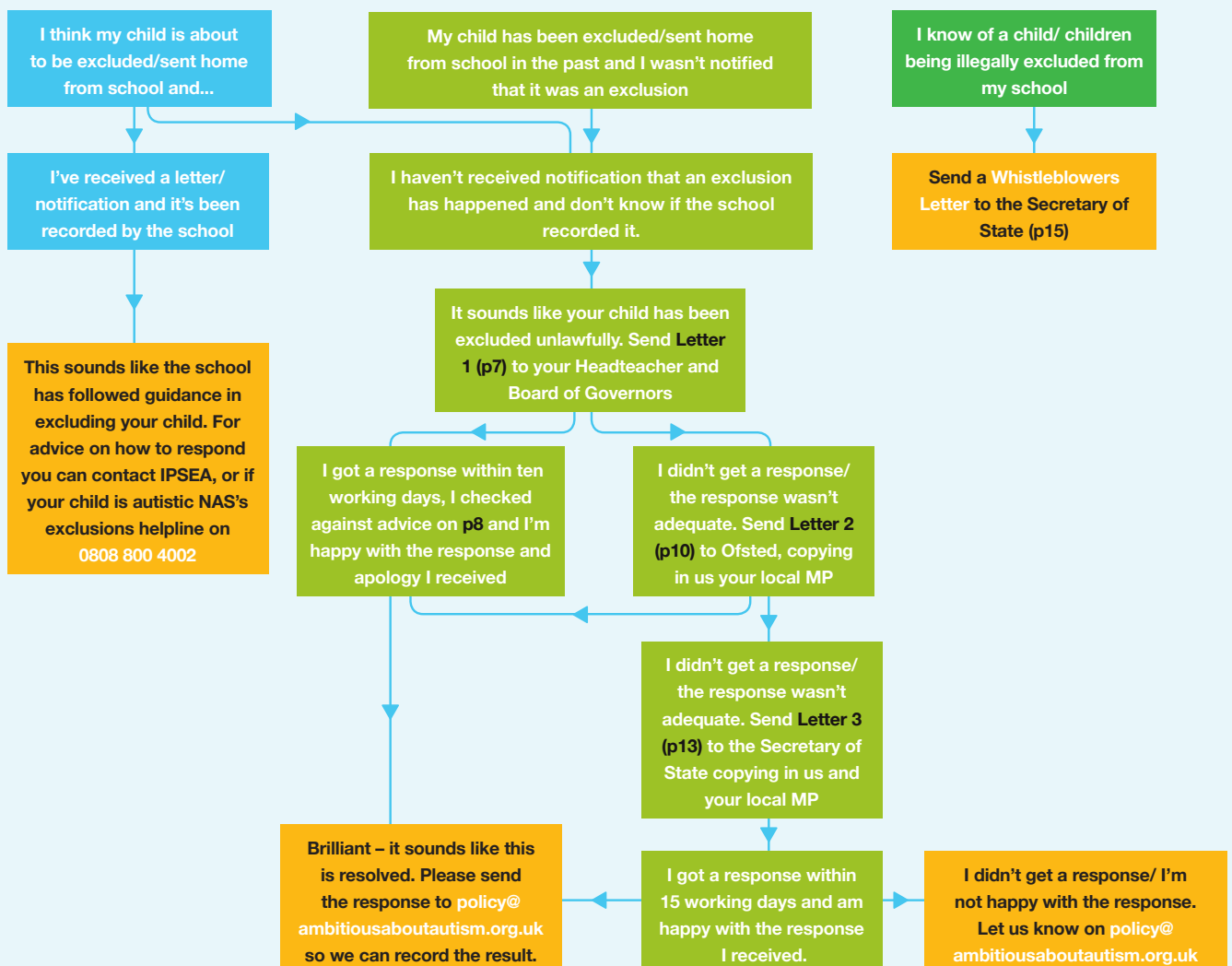
## Your guide to getting justice for all unlawfully excluded children<sup>20</sup>

To address the widespread lack of awareness of the law, and hopefully in doing so highlight the lack of a meaningful sanction, Ambitious about Autism produced its own guide and resource pack to support families in 2017.

We started from the point of view that the statutory guidance<sup>21</sup> correctly points out that any exclusion that is not formally recorded is unlawful, no matter the reason or length of time. However, we felt that the guidance had gaps on the tracking, reporting and consequences of unlawful exclusions which must be filled if the policy and the exclusion system are to be fit for purpose.

**Currently families hold no power and have no means to seek redress for unlawful actions by schools.**

Our guidance sets out what an unlawful exclusion is, whose responsibility it is that schools act within the law and ways parents and others can report unlawful exclusions to ensure people who are accountable know what has happened and take appropriate action. This includes ensuring that the government understand the scale of the problem. We set out how someone could report an illegal exclusion in a simple flowchart and provided resources and pro-forma letters to do so.



Sadly all evidence we have back from parents who have used the guide is that all the gaps in accountability identified in the Children's Commissioner for England's report from 2013 are still true; proving that unlawful exclusions are very much still looked at as being "someone else's problem" by all the bodies who should be enforcing the guidance and law.

There is also strong evidence that the structure of the school system itself is leading to more exclusions and that schools are becoming less inclusive. Schools are, and have been for some time, judged by their exam league tables. This creates increasing pressure to focus on academic pupils and not those who need extra help to attain, such as SEN pupils.

**A recent analysis of official data by the Guardian<sup>22</sup> found that more than 10,000 pupils left mainstream state secondary schools in the run-up to their GCSE courses and that thousands of teenagers were excluded and shifted to special schools.**

The Education Datalab think tank<sup>23</sup> has also published research concluding that some schools are moving "challenging students" in order to boost results. It recommended reweighting league tables to reflect the number of terms a pupil spent in each school.

**This of course does not take into account any unofficial exclusions and asking parents to move children before they are excluded, to remove them from the school roll.**

One of the increasing drivers towards exclusion is the pressure on school budgets and the funding of SEN provision. Children placed in mainstream schools with SEN support and EHC plans are funded via the schools block of funding, in contrast the same child in a special school would be funded via a local authority's high needs block.

There is a wide spread belief that if a school feels these children are too much of a drain on their funding they can easily off-roll the child via exclusion and so put the funding pressure back on to the local authority. The local authority

would have responsibility for an alternative provision short term and, increasingly likely unless another mainstream placement can be found, then a placement in a special school.

This analysis that the school system itself is directly leading to more exclusions is also supported by the Children's Commissioner for England who in welcoming this review said<sup>24</sup>:

*"I welcome this review. I have become more and more concerned that some schools are gaming the system by off-rolling some of the most vulnerable children – including some with Special Education Needs and Disabilities – into alternative provision or home education to try and improve the school's overall exam results. Our own research suggests there are tens of thousands of children we cannot be certain are being educated at all."*

This is also backed up by the findings of the recent review of experiences and outcomes of children and young people in residential special schools – *Good Intentions, Good Enough?*<sup>25</sup>. Much of the evidence provided by parents to this review revolved around unlawful exclusions, with schools found to be in breach of their duties under the Equality Act 2010, potentially leaving them vulnerable to disability discrimination claims.





## Billy's story

*Billy is 7 years old. He was diagnosed with autism at the age of 2. He's a bright boy but can become overwhelmed by too much noise and can find it hard to focus for long periods of time.*

*His school was made aware of his needs right from the start and he was given varying levels of support from teaching assistants throughout nursery – who would change frequently. This resulted in Billy falling behind academically.*

*When he reached Year 1 he was supported by a teaching assistant who specialised in special educational needs and his progress improved considerably – to the point where he caught up with the rest of the class.*

*However, in September 2017, Billy's school was taken over by a new head and many staff, including Billy's teaching assistant, left the school. Billy was placed with a new teaching assistant which he found difficult and this resulted in an outburst of behaviour that led the school to formally exclude Billy for 4 days.*

*Following his first exclusions, his mum Stacey and the school agreed that he wasn't coping in a mainstream school and needed to be in a special provision. However, the school later changed its mind*

*– following intervention by the local authority – and said Billy could cope in another mainstream school. This has resulted in the local authority refusing to sort an emergency placement for Billy in a special school or unit.*

*Billy was subsequently excluded 17 times and then in December the school took the decision to permanently exclude him from school.*

*Following this decision Billy was left with no education for two months – which had a massive impact on him. During this time he didn't want to go outside and felt very anxious. He was bored and didn't have any structure in his life. Also at this time, Stacey was told she couldn't take Billy out of their house between 9am and 3pm or else she will get fined by the local authority.*

*Stacey says the school simply didn't want to teach Billy and instead of supporting him, decided they wanted him out.*

*Billy finally started at a new mainstream school after February half term. For now he seems to be coping okay at his new school – but a final decision on whether he will be able to stay there will be taken in May – so the family are still on tenterhooks.*



# ► Special Educational Needs and Disabilities (SEND) children and exclusions



Whilst we believe that exclusions for children and young people with autism are a distinct and rising trend, these children make up a significant proportion of children with SEND, and findings for the wider group are relevant.

In particular the recent and ongoing joint Ofsted and Care Quality Commission (CQC) local area SEND inspections<sup>26</sup> and other recent Ofsted work show that the rate and numbers of SEND exclusions from schools was found to be a common problem.

Using the local area SEND inspections one year on report as a starting point we undertook a quick analysis of the Written Statement of Actions to determine any links between exclusions and children with SEN. We have found that high levels of SEN exclusions and problems with services for children with autism are common among these local authorities.<sup>27</sup>

Out of the nine written statements of action issued six were as a direct result of the area being “unable to show improvements in the proportions of children and young people who have SEND who were absent or excluded from school. In the majority of these areas, inspectors identified declining trends in attendance and rising levels of exclusions.” They also found that “strategies to improve attendance and exclusions were ineffective” and that unlawful exclusions are happening in nearly all local areas inspected with

parents reporting “that they had been asked to keep their children at home because leaders said they could not meet their children’s needs”.

- *“Children and young people who have SEND were found to be excluded, absent or missing from school much more frequently than other pupils nationally. Even in some local areas that had implemented the Code of Practice well, leaders did not have appropriate plans to deal with the levels of exclusion for these pupils.*
- *School leaders had used unofficial exclusions too readily to cope with children and young people who have SEND. Across nearly all local areas inspected, an alarming number of parents said that some school leaders asked them to take their children home. This was in addition, or as an alternative, to fixed-term exclusions. It is illegal.”<sup>28</sup>*

Ofsted has also found that children with SEN make up a large proportion of the rise in the numbers of child being home educated and have highlighted the link between the findings of the joint inspections on exclusions, especially unlawful exclusions, and parents feeling they had no alternative to home schooling.<sup>29</sup>

On unregistered schools they have found that a high number (43%) provided an alternative to mainstream school for excluded children, some operating in a grey area of the law with parents insisting they are part of home education not a school. They believe children in these unregistered schools are likely to include a high number of children with SEN.<sup>30</sup>

# ▶ Our recommendations

The School Exclusions Review needs to be bold in its approach and recommend improvements for a school system that has failed children with autism for far too long. We need to deal head-on with unlawful activity and redress the balance away from exclusions and back to inclusion.

As a starting point for real change we would like the review to draw a line under the evidence – the problem is well-defined - and look towards a set of recommendations which tackle the scale of the problem of disproportionate exclusions, both official and unlawful, for children with autism.

Drawing from Ambitious about Autism's *When will we learn?* campaign and other evidence we have a number of specific recommendations and areas for the review to consider.

## Recommendations

**Strengthen Ofsted's role on exclusions.**<sup>31</sup> Ensure Ofsted has the power to thoroughly investigate unlawful exclusions and take appropriate action.

**Better training for school governors** who are likely to hear exclusion appeals, teachers and school staff – not just in initial teacher training.

**All school staff** – including teaching assistants and support staff – **should be given training in understanding autism.**

**Strengthen the accountability of the system** to ensure schools and local authorities are **incentivised** to support children with autism. For example, examining whether to make schools **financially and academically responsible** for children they exclude or place in alternative provision.

- ▶ **A clear procedure for anonymously reporting schools breaking exclusions law** should be publicised to all parents, with the agencies responsible for holding schools to account reporting annually on the scale of the issue and how they are preventing this unlawful activity.
- ▶ All exclusions of a pupil with an EHC plan or who is a looked after child to be **reported.**
- ▶ **All EHC plans to be reviewed following an exclusion** to reassess needs.
- ▶ All unlawful exclusions to be dealt with as a **disciplinary matter for the head teacher.**<sup>32</sup>
- ▶ All **falsifying of school registers** to hide an exclusion to be dealt with as a disciplinary matter for the head teacher.<sup>33</sup>
- ▶ **Financial penalties placed on schools** identified to have unlawfully excluded.<sup>34</sup>



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# ▶ Appendix 1

## Freedom of Information Act request Number 0155041

Submitted on the 26th January 2018 to the Department for Education requesting the following:

- Q1.** How many children with autism as their primary special educational need received a permanent or fixed-period exclusion in each English Region and for each local authority area within each English Region in each of the last five years?
- Q2.** How many children with an education, health and care plan or a statement of special educational needs received a permanent or fixed-period exclusion in each English Region and for each local authority area within each English Region in each of the last five years?
- Q3.** How many children with autism as their primary special educational need who had received a permanent or fixed-period exclusion attended a Pupil Referral Unit (PRUs) in each English Region and for each local authority area within each English Region in each of the last five years?
- Q4.** How many children with autism as their primary special educational need who had received a permanent or fixed-period exclusion had not yet been placed elsewhere or recorded as still awaiting provision in each English Region and for each local authority area within each English Region in each of the last five years?"

Questions 1 and 2 answered by way of data tables. Please find full data tables attached as separate documents.

Questions 3 and 4 answered as not being held by the department.

*"The information you requested in questions 3 and 4 is not held by this Department. The Department does not hold statistics showing any alternative provision that pupils move to when excluded."*

# ► Appendix 2

## Ofsted and Care Quality Commission joint inspections – Quick analysis of Written Statement of Actions Between May 2016 and May 2017

Area	Exclusions	Autism Services
<b>Hartlepool</b>	Levels of absence, persistent absence and fixed-term exclusion for children and young people who have special educational needs and/or disabilities are too high, especially in the secondary phase, when compared with the national averages for all pupils.	Children and young people on the autism diagnostic pathway can wait for 10 to 12 months for a diagnosis, and too many families experience long waiting times for speech and language therapy or to see a paediatrician.
<b>Rochdale</b>	The number of fixed-term exclusions for SEN support children and young people is on a four-year increase and shows no sign of improvement.  There is a more proactive approach to dealing with children and young people with a statement of special educational needs or an EHCP at risk of exclusion. As a result, the number of fixed term exclusions more than halved between 2014 and 2015 and is now more in line with the national average, having been well above average historically.	There is a high level of parental dissatisfaction around how the needs of children and young people with autism are met across the local area, especially in mainstream settings.
<b>Surrey</b>	Fixed-term exclusion rates for pupils who have special educational needs in Surrey's mainstream schools, at school support and with statements or EHC plans, remained above national figures in 2015, with exclusions for pupils receiving school support showing a rising trend. The rate of permanent exclusion for both groups of pupils also shows a continuing increase, rising to above the latest nationally published figure for pupils with a statement or EHC plan.	Pathways for children and young people with autism are fragmented. A lack of clarity exists about referral processes, for parents and professionals, resulting in a wide variation in waiting times.  There is a lack of clarity in the local area about the role of GPs in identifying a child or young person as being unfit for school due to anxiety linked to autism. As a result, some pupils experience unnecessary unauthorised absences and have limited support for learning at home.
<b>Waltham Forest</b>	More pupils with a statement of special educational needs or an EHC plan are absent or temporarily excluded from schools in Waltham Forest, compared to all other pupils within the area and nationally.	Children and young people who are referred to Child and Adolescent Mental Health Services (CAMHS) with autistic spectrum disorders are not benefiting from a physical assessment to inform their support plan. This is not in line with the recommendations made by the National Institute for Health and Care Excellence (NICE).
<b>Middlesbrough</b>	Levels of absence, persistent absence and fixed-term exclusion for children and young people who have special educational needs and/or disabilities in mainstream primary and secondary schools are high and increasing.	Information about children and young people on the pathway for recognition, referral and diagnostic assessment of autism is not shared purposefully during the education, health and care planning process. As a result, they do not get the timely help and support they need.

<b>Dorset</b>	Rates of attendance for pupils who have special educational needs and/or disabilities with school support and EHC plans are above the national average and improving from the previous year. Exclusion figures for these pupils are below the national average.	Assessments for autism and Attention Deficit Hyperactivity Disorder (ADHD) are taking too long and delays are increasing. These delays are having a significant impact on children and their families who wait to be seen, with many reporting uncertainty and stress as they wait for the final EHC plan to be agreed
<b>Sandwell</b>	Exclusions are reducing and no pupils have been permanently excluded from special schools since the reforms. Fixed-term exclusions of pupils with a statement of special educational needs or an EHC plan are now closer to the national average.  Levels of absence, persistent absence and exclusions are too high, especially in secondary schools. This is particularly the case for pupils who have special educational needs but do not have a statement of special educational needs or an EHC plan	Some schools do not identify needs precisely and some do not record them accurately. As a result, Sandwell has a much higher proportion of pupils identified as having moderate learning difficulties than the English average and the recorded proportion of pupils with autistic spectrum disorder is smaller than the national average.  The previously very long wait of two and a half years in 2014 for a specialist diagnosis for autistic spectrum disorder is steadily reducing.
<b>Sefton</b>	Robust systems are in place to help prevent exclusions. There are clear guidelines given to headteachers and governors around the exclusion of pupils who have special educational needs and/or disabilities. High needs funding is used well to support crisis situations. There is also an effective managed transfer system, which is used to move pupils to alternative schools when appropriate. In addition, pupil referral units are used to support pupils who are at risk of exclusion. As a result of these effective systems, the number of fixed-term and permanent exclusions for pupils is below the national average.	There is no published autism pathway in Sefton. This lack of a clear pathway for diagnosis is adding to the confusion and general dissatisfaction of some parents with services across Sefton.
<b>Suffolk</b>	The local area's development of the In Year Fair Access Panel (where school leaders collaboratively make decisions on how best to support and manage the needs of pupils at risk of permanent exclusion) is starting to address some of the challenges schools and settings face in meeting needs effectively. School leaders have a better shared understanding of the level of need within their district, and this has resulted in a reduction in the high proportion of pupils permanently excluded from schools.  The In-Year Fair Access Panel's work resulted in a 20% decrease in the proportion of pupils permanently excluded between 2013/14 and 2015/16.  Many parents report that their children are absent or unofficially excluded from school because their needs are not diagnosed or met.	There is a backlog of referrals for autism spectrum disorder diagnosis and clinical psychology intervention. This places children, young people and their families at risk of reaching crisis point.

All information taken from <https://www.gov.uk/government/publications/local-area-send-inspection-outcome-letters>

# ▶ Appendix 3

## Changes to responsibility for excluded children placed in alternative provision.

The concept of moving responsibility for ongoing education for excluded children away from local authorities to schools is not a new one. Following the 2010 Schools White Paper<sup>35</sup> a pilot programme was conducted giving schools greater responsibility for the quality of education for excluded children placed in alternative provision.

The School Exclusion Trial<sup>36</sup> gave schools responsibility for finding and funding alternative provision for excluded pupils and tested the benefits of giving schools this greater responsibility. The trial was found to be successful and led to the inclusion of proposed changes in the Educational Excellence Everywhere<sup>37</sup> white paper in 2016:

- 6.76. *We will change accountability arrangements so that a pupil's mainstream school will retain accountability for their educational outcomes and will take a lead role in commissioning their provision, including when they have permanently excluded the pupil but the pupil has not subsequently enrolled at a different mainstream school. Mainstream schools will support AP providers to deliver a broad and balanced curriculum and high quality teaching by sharing subject specialists and facilities that smaller alternative providers would otherwise find hard to access.*
- 6.77. *Schools will be responsible for the budgets from which AP is funded. As they will also be responsible for commissioning and accountable for educational outcomes, they will have stronger incentives to take preventative approaches and to achieve value for money when identifying the best and most suitable alternative provision for any child that needs it.*

The Government have reaffirmed its commitment to these changes in its policy paper *Creating Opportunity for All*<sup>38</sup> and in the Schools' Minister Nick Gibb's recent evidence to the Education Select Committee.<sup>39</sup> Ambitious about Autism support these changes and would like to see them implemented.

### Changes to statutory exclusion guidance

As part of Ambitious about Autism's response to the Department for Education's review of exclusion guidance during 2017 we made a number of specific recommendations. Because of the limited scope the Department adopted for the consultation, these proposed changes have not been looked at in any detail. The Government review on exclusions should consider these.

### Reporting of unlawful exclusions to Ofsted

After point 14 insert:

15. *Any person who has good reason to believe that an unlawful exclusion has occurred must report their concerns directly to the Office for Standards in Education, Children's Services and Skills.*
16. *Where the Office for Standards in Education, Children's Services and Skills consider an individual establishment is not adhering to exclusions guidance they should advise the Secretary of State to issue directions to that establishment.*
17. *The Office for Standards in Education, Children's Services and Skills shall report annually on the information passed to it, including the numbers of reports, and any actions taken to enforce the complete recording of all school exclusions.*

### **The head teacher's duty to inform the governing board and the local authority about an exclusion**

New fourth sub-point to point 40 insert:

– *any exclusion of a pupil with an EHC plan or looked after child.*

### **The governing board's and local authority's duties to arrange education for excluded pupils**

Change of “may” to “must” within point 47 so that local authorities have a duty to review an EHC plan of an excluded child.

*47. In addition, where a pupil has an EHC plan, the local authority may need to must review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement.*

### **Statutory guidance to the local authority/academy trust on appointing independent review panel members**

Insert new point after point 103

*104. Where possible, panel members and governors should have an understanding of the law, statutory guidance and a schools duty towards protected characteristics and groups who are vulnerable to exclusion as well as having received a basic level of autism awareness training.*



# ▶ References

- 1 | Based on total number of pupils with a permanent or fixed term exclusion. Ambitious about Autism Freedom of Information Act request Number 0155041, please see Appendix 1, and National Statistics on exclusions <https://www.gov.uk/government/collections/statistics-exclusions>
- 2 | National Statistics on exclusions <https://www.gov.uk/government/collections/statistics-exclusions>
- 3 | Ambitious about Autism Freedom of Information Act request Number 0155041, please see Appendix 1, and National Statistics on exclusions <https://www.gov.uk/government/collections/statistics-exclusions>
- 4 | Department for Education Statistics: exclusions <https://www.gov.uk/government/collections/statistics-exclusions> and Freedom of Information Act request Number 0155041, please see Appendix 1
- 5 | National Statistics on exclusions <https://www.gov.uk/government/collections/statistics-exclusions> and Ambitious about Autism Freedom of Information Act request Number 0155041, please see Appendix 1
- 6 | Department for Education statistics, Special educational needs and disability (SEND) 2010 to 2017 <https://www.gov.uk/government/collections/statistics-special-educational-needs-sen>
- 7 | Total pupils on roll in 2016 was 8,559,540: School Census [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650547/SFR28\\_2017\\_Main\\_Text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650547/SFR28_2017_Main_Text.pdf)
- 8 | Ambitious about Autism Freedom of Information Act request Number 0155041, please see Appendix 1, and National Statistics on exclusions <https://www.gov.uk/government/collections/statistics-exclusions>
- 9 | Department for Education (2017) *Exclusion from maintained schools, academies and pupil referral units in England Statutory guidance for those with legal responsibilities in relation to exclusion* September 2017 point 14: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641418/20170831\\_Exclusion\\_Stat\\_guidance\\_Web\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf)
- 10 | Survey of 745 parents, carers and children and young people with autism collected as part of *When Will We Learn?* <https://www.ambitiousaboutautism.org.uk/when-will-we-learn-campaign>
- 11 | Teacher voice omnibus: May to July 2016 survey – Department for Education questions, research and analysis <https://www.gov.uk/government/publications/teacher-voice-omnibus-may-to-july-2016-survey-dfe-questions>
- 12 | All Party Parliamentary Group on Autism (2017) *Autism and Education in England 2017* <http://www.autism.org.uk/get-involved/campaign/appga/highlights.aspx>
- 13 | Ambitious about Autism (2016) *When will we learn?* <https://www.ambitiousaboutautism.org.uk/when-will-we-learn-campaign>
- 14 | It is worth noting that the Children’s Commissioner has used the stronger term ‘illegal’ to describe what the Department for Education term “unlawful” within in the Statutory Guidance on Exclusions, we have reused this term when addressing the Commissioner’s findings.
- 15 | Office of the Children’s Commissioner for England (2013) *“Always Someone Else’s Problem” Office of the Children’s Commissioner’s Report on illegal exclusions* [https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Always\\_Someone\\_Elses\\_Problem.pdf](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Always_Someone_Elses_Problem.pdf)
- 16 | The Department for Education (2013) *The Children’s Commissioner’s reports, ‘They Go The Extra Mile’ and ‘Always Someone Else’s Problem’: the government’s response* August 2013 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226526/Government-response-to-the-Childrens-Commissioner.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/226526/Government-response-to-the-Childrens-Commissioner.pdf)
- 17 | *Education and Skills Funding Agency Business plan for the financial year 2017 to 2018* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638379/ESFA\\_Business\\_Plan\\_2017\\_to\\_2018.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638379/ESFA_Business_Plan_2017_to_2018.pdf)
- 18 | Education Funding Agency: Procedure for dealing with complaints about academies [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/557407/Complain\\_about\\_an\\_academy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/557407/Complain_about_an_academy.pdf)
- 19 | PQ 111788 (Norman Lamb MP) answered by Mr Robert Goodwill MP on 16th November 2017 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2clords&uin=111788>
- 20 | Ambitious about Autism (2017) *When will we learn: Your guide to getting justice for all unlawfully excluded children* <https://www.ambitiousaboutautism.org.uk/sites/default/files/AAA%20Unlawful%20exclusions%20SPREADS%20LO%20RES.pdf>
- 21 | Department for Education (2017) *Exclusion from maintained schools, academies and pupil referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion* September 2017 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641418/20170831\\_Exclusion\\_Stat\\_guidance\\_Web\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf)
- 22 | *England schools: 10,000 pupils sidelined due to league-table pressures* The Guardian June 2016 <https://www.theguardian.com/education/2016/jan/21/england-schools-10000-pupils-sidelined-due-to-league-table-pressures>
- 23 | <https://educationdatalab.org.uk/>
- 24 | Anne Longfield, Children’s Commissioner for England Response to the Government’s review into school exclusions 16th March 2018 <https://www.childrenscommissioner.gov.uk/2018/03/16/response-to-the-governments-review-into-school-exclusions/>
- 25 | Department for Education (2017) *Good intentions, good enough? A review of the experiences and outcomes of children and young people in residential special schools and colleges* November 2017: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/657418/Good\\_intentions\\_good\\_enough\\_-\\_a\\_review\\_of\\_residential\\_special\\_schools\\_and\\_colleges.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/657418/Good_intentions_good_enough_-_a_review_of_residential_special_schools_and_colleges.pdf)

- 26 | Local area SEND inspections: one year on Ofsted and the Care Quality Commission (CQC) October 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652694/local\\_area\\_SEND\\_inspections\\_one\\_year\\_on.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652694/local_area_SEND_inspections_one_year_on.pdf)
- 27 | Please see appendix 2
- 28 | Quoted from page 5, their emphasis in bold type. *Local area SEND inspections: one year on Ofsted and the Care Quality Commission (CQC) October 2017*: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652694/local\\_area\\_SEND\\_inspections\\_one\\_year\\_on.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652694/local_area_SEND_inspections_one_year_on.pdf)
- 29 | Safeguarding and children who are not attending school Authored article Eleanor Schooling Ofsted National Director, Social Care December 2017 <https://www.gov.uk/government/speeches/social-care-commentary-hidden-children-the-challenges-of-safeguarding-children-who-are-not-attending-school>
- 30 | BBC report into illegal schools 14th March 2018 <http://www.bbc.co.uk/news/education-43409151>
- 31 | Supported by the Children's Commissioner for England: Any illegal exclusions which are found to have taken place should immediately be reported to Ofsted. Ofsted should record this information as part of its monitoring data on schools.
- 32 | Supported by the Children's Commissioner for England: Illegal exclusions identified by the EFA (in the case of Academies) or the local authority (in the case of maintained schools) should be reported to, and recorded by, the school's governing body. They should then form part of the evidence provided to the head teacher's annual performance review. This should also be dealt with as a disciplinary matter for the head teacher.
- 33 | Supported by the Children's Commissioner for England: Where a school is found to have falsified registers in order to hide an illegal exclusion, this is a criminal offence and should be dealt with accordingly. The head teacher should be referred to the National College for Teaching and Leadership for professional misconduct.
- 34 | Supported by the Children's Commissioner for England: Where a child has been identified to have been illegally excluded for a period of one month (either in a continuous period or as a result of repeated short-term illegal exclusions), the school should have a financial penalty.
- 35 | Department for Education (2010) *The Importance of Teaching: the Schools White Paper* <https://www.gov.uk/government/publications/the-importance-of-teaching-the-schools-white-paper-2010>
- 36 | *Evaluation of the School Exclusion Trial (Responsibility for Alternative Provision for Permanently Excluded Children) First Interim Report and Research Report* March 2013 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523693/Evaluation\\_of\\_the\\_school\\_exclusion\\_trial\\_first\\_interim\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523693/Evaluation_of_the_school_exclusion_trial_first_interim_report.pdf)
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