



Department
for Education

The Children's Commissioner's reports, 'They Go The Extra Mile' and 'Always Someone Else's Problem': the government's response

August 2013

Contents

Introduction	3
Response to the recommendations of 'They Go The Extra Mile'	4
Recommendation 1	4
Recommendation 2	5
Recommendation 3	5
Recommendation 4	6
Recommendation 5	6
Recommendation 6	7
Recommendation 7	9
Recommendation 8	9
Recommendation 9	9
Recommendation 11	10
Response to the recommendations of 'Always Someone Else's Problem'	11
Recommendation 1	11
Recommendation 2	11
Recommendation 3	11
Recommendation 4	12
Recommendation 5	13
Recommendation 8	13
Recommendation 9	13
Recommendation 10	14

Introduction

They Go The Extra Mile and *Always Someone Else's Problem* are reports of the Office of the Children's Commissioner School Exclusion Inquiry, which focus on reducing inequality in exclusion and unlawful exclusion, respectively.

All children are entitled to good education, regardless of their circumstances. As the Commissioner's reports set out, the issues that underlie the disparity seen in school exclusions are complex and longstanding, reflecting wider inequalities in society. Education has a vital role to play in addressing these inequalities.

Schools have clear legal duties in relation to exclusion, equality and the provision of education for pupils with special educational needs. These duties are backed by a robust inspection system and there are established processes for raising complaints that cannot be resolved at a local level. The findings of the Commissioner support our view that the majority of schools act lawfully when managing behaviour and supporting the needs of their pupils.

In addressing the issues highlighted by the Commissioner's reports, the Government's approach is not to place bureaucratic burdens on the majority of schools that act within the law, but rather to ensure that schools have sufficient powers to manage behaviour lawfully and to support them to tackle the underlying causes of exclusion.

Response to the recommendations of 'They Go The Extra Mile'

Recommendation 1

We share Ministers' conviction that a child's background should not limit our shared expectations of their achievement. We believe that this holds as true for behaviour as for academic attainment. We therefore recommend that all parts of the education system that disproportionately and adversely affect the most vulnerable children remain priorities for action. This includes the large differences in rates of exclusion.

Response to recommendation 1

Tackling the inequalities seen for different groups of pupils remains a top priority for the Government. Supporting good behaviour in schools is essential to achieve this aim. Many of the issues that underlie the inequalities seen in exclusion are inseparable from those that lead to inequalities in academic attainment. Removing the barriers to children engaging with education is fundamental to improving behaviour and academic attainment.

The Government is introducing wide ranging reforms to improve the quality of education that all pupils receive and strengthen support for children with additional needs. These reforms include:

- investing £2.5 billion a year by 2014/15 through the Pupil Premium to help break the link between family background and educational achievement;
- overhauling the Special Educational Needs (SEN) system so that children's needs are identified and addressed earlier;
- improving the quality of teaching by raising the bar for new entrants, putting teacher training into the hands of schools and streamlining performance management and capability arrangements to make it easier for headteachers to tackle persistent underperformance;
- supporting schools to address children's weaknesses in literacy and numeracy through the Year 7 catch-up premium;
- strengthening schools' powers to tackle poor behaviour whilst reinforcing accountability through a refocused inspection system; and
- taking forward the recommendations of the Taylor Review in order to support radical improvement in the quality of alternative provision, including trialling a system of increased school responsibility for permanently excluded pupils.

Recommendation 2

We recommend that the exclusion rates from “converter” academies should be monitored carefully over time, and any differentials that become apparent should be addressed robustly.

Response to recommendation 2

As the Commissioner’s report sets out, there is no evidence to support claims that academies are less inclusive than maintained schools. It is important, however, that all schools are accountable for their use of exclusion and that this use is monitored over time.

At a national level, the Department monitors the use of exclusion through the publication of an annual statistical first release. Data on exclusion for the 2011/12 school year was published on 25 July 2013 and included separate figures for exclusion from sponsored academies, converter academies and free schools. Publication of this data allows comparisons to be made between the use of exclusion by different categories of school, and provides a basis for policy consideration should significant differences be seen between categories.

The rates and patterns of exclusion for individual schools are also considered by Ofsted as part of the inspection process. This process places a specific focus on the use of exclusion for different groups of pupils.

Recommendation 3

We consider that quality assurance of Alternative Provision is best done on a locality basis, by a body with the appropriate expertise. We recommend that localities be incentivised to establish such a body where they have not already done so. These bodies should be robust and impartial enough to safeguard schools, which are charged with the deployment and use of public money to discharge a statutory function – schooling – to a standard that will bear scrutiny from Ofsted, the DfE and their communities, including their governors.

Response to recommendation 3

In line with the recommendations of the Taylor Review of Alternative Provision, the Government believes that accountability for the use of alternative provision must rest with the body responsible for educating a particular pupil. Schools are accountable for the quality of education that their pupils receive, regardless of whether they are providing it themselves or commissioning another provider to do so on their behalf. Ofsted has

placed an increased focus on schools' use of alternative provision and are also carrying out a thematic survey on this issue.

This is not to discount the value of robust, locally agreed arrangements for quality assuring alternative provision. Such arrangements already exist in several areas. The approach of the Government's exclusion trials provides an incentive for increased collaboration by devolving funding to schools and increasing their responsibility for arranging alternative provision. The first interim report of the trial evaluation identified early signs that partnership working between schools had increased and processes had been made more rigorous. The trial approach builds on the experiences of other local authorities where devolved funding has already led to schools working together to quality assure providers and hold each other to account for their use of alternative provision.

Recommendation 4

We reiterate our recommendation from "They Never Give Up on You" that the DfE should work together with the Government Equalities Office and the Equality and Human Rights Commission (EHRC) to produce statutory guidance for schools and other public educational bodies in interpreting the Public Sector Equality Duty (PSED) with regard to exclusions.

Response to recommendation 4

As set out in our response to this recommendation in *They Never Give Up on You*, revised statutory guidance on exclusion now makes clear that schools' duties under the Equality Act 2010 apply in relation to their use of exclusion and the Government has issued additional advice on how schools can meet their duties under the Act. Since this response, the Equality and Human Rights Commission has published its own advice to schools on the Equality Act. Officials in the Department commented on this advice, which includes a specific focus on equality in the use of exclusion. The Government does not believe that further guidance is needed on this matter.

Recommendation 5

We recommend that all school-based professionals should have a clear route of accountability to be able to draw problems to the attention of the relevant external body, without fear of reprisals, if they consider that a school is acting in a discriminatory manner.

Response to recommendation 5

There is already a clear route for employees to raise concerns that individuals or schools are acting in a discriminatory or unlawful manner. In the majority of cases concerns are best resolved at a local level and the employers of school-based professionals should

have established procedures for dealing with whistleblowing and handling grievances. If an employee felt unable to tell their employer that a school was acting unlawfully they could raise their concerns with the Department. Employees that raise concerns are protected from discrimination and unfair dismissal by Employment Tribunals, which have the power to direct reinstatement and require compensation to be paid.

Recommendation 6

In “They Never Give Up on You”, we recommended that the statutory requirements for providers of initial teacher training (ITT) should include a requirement to prepare all newly qualified teachers (NQTs) to teach children with the full range of SEN they should expect to find in a mainstream state-funded school. Further, we recommended that all trainee teachers should be trained to understand the cultural and other differences commonly found in English society, and therefore in its schools.

Finally, we recommended that all trainee teachers should also study child development and socio-psychological matters such as attachment theory.

Response to recommendation 6

The Government recognises the importance of a well trained workforce that is able to tackle barriers to learning and improve outcomes for pupils. New Teachers' Standards were introduced in September 2012 that set a clear baseline of expectations for teachers' professional practice and conduct.

As the Commissioner's report sets out, the revised standards include the expectation that teachers will:

- have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.

Other relevant expectations within the standards include that teachers will:

- have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these;
- demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development; and
- manage behaviour effectively to ensure a good and safe learning environment, which includes the specific expectation that teachers will manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them.

The Standards are used to assess all trainees working towards qualified teacher status (QTS) and all those completing their statutory induction period. Training providers must deliver courses that enable teacher trainees to meet the Standards, and Ofsted inspects all providers of programmes leading to QTS.

Initial Teacher Training cannot be considered in isolation and the standards also include the expectation that teachers:

- take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues.

In support of these standards, the Government wants to see a coherent approach to professional development that is led by the sector. Specifically in relation to special educational needs (SEN) we are taking forward our commitment in the Green Paper, *Support and Aspiration*, to provide significant support for specialist training and development opportunities for teachers, support staff, Special Educational Needs Co-ordinators (SENCOs), Educational Psychologists and school leaders. This includes:

- £1.3m for special schools to provide opportunities for trainee teachers in mainstream schools to gain SEN experience;
- £1.5m of SEN scholarships for teachers and support staff to increase their specific SEN knowledge and access training to masters level in SEN specialisms;
- funding for 9,000 SENCOs to complete the higher level SENCO award with funding for a further 1500 places in 2012/13;
- the publication of a range of continuing professional development materials on working with children and young people with SEN, to be updated and maintained by the sector;
- a range of grants for Voluntary and Community Sector organisations to support specific SEN training, including funding for the development of a hub to draw together SEN materials and a pilot to test out a specific SEN focused curriculum for trainee teachers;
- £3m to support the sustainable development of SEN specialist leaders in education through the teaching school alliances; and
- around £5m per year of investment in Educational Psychology training since 2010 with a further £16 million to be made available for 2013 and 2014.

Recommendation 7

We consider that materials prepared as part of the Lamb Review for teaching children with SEN still represent good practice in training teachers in how to teach children with particular special needs, and that they should be used more widely. We therefore recommend that the Teaching Agency slightly amend its website to make these materials easier to find.

Recommendation 8

We also recommend that a review be undertaken of the existing Teacher Training Resource Bank (TTRB) archived materials, with those still relevant to best practice in diversity and inclusion given due prominence in the work of the Teaching Agency.

Recommendation 9

Finally, we recommend that the Teaching Agency considers reinstating the TTRB or a similar mechanism to enable practitioners to share best practice with each other, and broker the more widespread dissemination of this best practice. This is not a question of government “telling” schools and others what to do. Rather, it is about government providing a shared space where good practice can be shared between practitioners.

Response to recommendations 7, 8 and 9

The Government believes that the identification and quality assurance of effective practice is best led by the sector. This supports a process that is both up-to-date and credible. In this context, we acknowledge that the Lamb materials have been identified as a valuable resource by the sector. The Teaching Agency is working alongside external experts to develop a strategy for these materials that makes them easier to access and be sustained into the future by the sector. It is intended that these materials, alongside others on Severe Learning Difficulties or Profound and Multiple Learning Difficulties produced in response to the Salt Review, will be located in a shared space.

The Teacher Training Resource Bank (TTRB) has now been replaced by TTRB3, with funding from JISC and the support of Canterbury Christ Church University Faculty of Education, the Teacher Education Advancement Network and the Universities Council for the Education of Teachers. The stated aim of TTRB3 is to become ‘a resource for the professional by the profession’. Practitioners are best placed to identify the material within this resource that is relevant to their own needs.

Recommendation 11

We recommend that individual teachers are further incentivised to give a higher priority to inclusion in their professional development. Developments currently underway to change the way in which teachers progress through the profession, including the increased use of performance-related pay, should give a clear incentive to teachers to ensure that their professional skills are continually improved and updated, including with regard to managing diversity and encouraging inclusion.

Response to recommendation 11

The Government believes that schools are best placed to make the right decisions on professional development for their teachers. As referenced above, the new Teachers' Standards make clear that teachers are expected to keep their knowledge and skills up-to-date. The Standards must be used by maintained schools to assess teachers' performance and Ofsted inspectors will consider the extent to which the Standards are being met when assessing the quality of teaching in all schools.

Under the new pay arrangements it will be for schools to develop pay policies that link pay increases to teachers' performance. Schools will be able to decide for themselves what factors they wish to take into account in making judgements about their teachers' performance. The Government recently issued advice to schools that makes clear one of the factors they may wish to consider is teachers' continuing professional development and improvements in their practice.

Response to the recommendations of ‘Always Someone Else’s Problem’

Recommendation 1

We recommend that the DfE should work together with the Government Equalities Office and Equality and Human Rights Commission to produce statutory guidance for schools and other public educational bodies in interpreting the Public Sector Equality Duties with regard to exclusions.

Response to recommendation 1

The Government has responded to this recommendation in our response to recommendation 4 of *They Go The Extra Mile*.

Recommendation 2

We recommend that governors be empowered to provide a more robust challenge to schools which exclude illegally. Repeatedly, witnesses to the Inquiry have stated that governing bodies are neither equipped nor willing to provide effective challenge to head teachers when it comes to exclusions, either formal or informal.

Recommendation 3

We recommend that governing bodies be required to nominate a Member to have overall responsibility for behaviour and exclusions, in the same way that they do for LAC, SEN and other issues. This governor should have a specific remit to examine the school’s policy and practice on behaviour management, including exclusions, and should receive mandatory training to support them on this. Governing bodies should have a responsibility to review the school’s behaviour policy on an annual basis, as they do with numerous other school policies, and a responsibility to ensure that it complies with the law.

Response to recommendations 2 and 3

The Government recognises the vital role that governing bodies play in school accountability and ensuring that every child receives the best possible education. We have high expectations of governing bodies and want to see them focusing their efforts on their three core strategic functions of: setting vision; holding headteachers to account; and making sure school budgets are well spent. In line with these functions, governing bodies have a specific responsibility for performance management of the headteacher.

Our role is not to micromanage this process but to put in place a framework that enables effective governance. We are cutting red tape by removing and simplifying duties on governing bodies, enabling peer-support through the National Leaders of Governance Programme, increasing the availability of leadership development training for chairs, and equipping governors with better performance data. Within this context, it is for individual governing bodies to identify the specific training they need to perform their functions.

Since September 2012, the School Inspection Framework has placed a strong focus on the quality of school governance. It has a specific focus on the effectiveness of governance as a central part of the overall judgement on the quality of a school's leadership and management. This will help to promote high quality governance and improve weak governance arrangements. Ofsted has set out nine criteria for judging the effectiveness of governing bodies. These criteria reflect governing bodies' three core strategic functions and include the extent to which governing bodies hold headteachers to account for teaching, achievement, behaviour and safety, and challenge and strengthen their leadership. Every inspection report will contain an explicit comment on the quality of a school's governance in light of these criteria. Where governance is weak in a school that 'requires improvement', inspectors may recommend an external review of governance arrangements.

The Government has also clarified our expectations and the legal duties on governing bodies in a new plain English, *Governors' Handbook*. This replaced the *Governors' Guide to the Law* and, for the first time, covers both maintained school and academy governing bodies. The Handbook makes clear that governing bodies must comply with their legal responsibilities for administering the exclusion process, as set out in the statutory exclusion guidance, and reinforces the wider role that governors have in holding headteachers to account for the lawful use of exclusion.

Recommendation 4

We recommend that all school-based professionals should have a clear route of accountability which enables them to draw problems to the attention of the relevant external body without fear of reprisals, if they consider that a school is illegally excluding pupils.

Response to recommendation 4

The Government has responded to this recommendation in our response to recommendation 5 of *They Go The Extra Mile*.

Recommendation 5

We recommend that all schools should, as a matter of course, publish their behaviour policies prominently on their website. Where they do not already contain information on exclusions, they should be amended to do so. This information should include information on the rights of children and their parents, as set out elsewhere in this report. These rights should also be issued to all parents alongside home-school agreements.

Response to recommendation 5

Maintained schools are already required to publish their behaviour policy on the school website. Where schools do not have a website the governing body must make arrangements for the behaviour policy to be put on another website and to make the address and details of the website known to parents. In setting the school's behaviour policy headteachers must determine the standard of behaviour the school expects of its pupils and the sanctions that will be imposed if a pupil's behaviour falls short of those principles.

Academies are also required to have a behaviour policy. The governing body must ensure that there is a written policy to promote good behaviour which sets out the sanctions to be adopted if pupils misbehave. An academy's behaviour policy must be made available to parents and prospective parents. Whilst academies are not required to publish their behaviour policy on their website, in practice many do so.

The Department funds a number of organisations to provide free and impartial advice to parents on matters relevant to exclusion. This includes the Coram Children's Legal Centre, a link to which is included on the Government's new information website, www.GOV.UK. Statutory exclusion guidance makes clear that headteachers and governing bodies should draw parent's attention to relevant sources of advice when notifying parents about an exclusion.

Recommendation 8

The gap regarding accountability for identifying and addressing illegal exclusions should be closed. We consider that the legal position is, in many ways, already clear, but that the responsible bodies do not give due regard to their duties in this area.

Recommendation 9

For the sake of clarity, we consider that, for maintained schools, local authorities have responsibility for identifying and addressing illegal exclusions. For the increasing number of Academies (including free schools) this responsibility rests with the EFA. We recommend that, as part of its response to this report, the DfE makes a clear statement that it agrees with this assessment, and expects these statutory bodies to give due

regard to this issue. This includes an expectation of improvements to the timely and thorough investigation of any complaints made regarding illegal exclusions, and the imposition of appropriate sanctions where schools are acting illegally.

Response to recommendations 8 and 9

Wherever possible, complaints about schools are best resolved at the local level. Initially this would be through a school's own complaints procedure. The local authority might also help to resolve complaints about maintained schools.

Where the local complaints process has been exhausted, or there is a need for urgent action, then the Department will consider a complaint that a school has acted unlawfully. The Education Funding Agency is the Department's delivery agency for funding and compliance, with a specific responsibility for considering complaints about academies, including free schools.

The Department has recently reformed and aligned its processes for considering complaints about maintained schools and academies to ensure that complaints are handled promptly, fairly and proportionately. This includes introducing a single online portal for the public to register complaints about schools. The Department has issued guidance to support complainants with clear information about its role in handling complaints.

In considering a complaint the Department takes seriously any evidence that a school has acted unlawfully. It is not the role of the Department to impose sanctions against schools, but if it was identified that a pupil had been unlawfully excluded we would act urgently to ensure that the pupil was receiving suitable, full time education. Where appropriate, this would include taking steps to ensure the pupil was readmitted to the excluding school. Evidence of any unlawful activity would be passed to Ofsted to consider and, if relevant, drawn to the attention of an individual's employer.

Recommendation 10

We recommend that the following measures be considered so as to remove the potential incentive on schools to exclude illegally:

- *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.*

- *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.

- *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.*
- *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 imposed equal to the amount of funding it receives for that child annually.*

Response to recommendation 10

The Government's view is that the revised school inspection system and individuals' accountability to their employer provide a robust mechanism of accountability.

As set out above, school inspection has been refocused to reinforce accountability for behaviour and governance. Where the Department identifies information that would be relevant to school inspection then it is reported to Ofsted. This would include evidence that a school had acted unlawfully in excluding a pupil. Ofsted has indicated that evidence of unlawful exclusion would be taken very seriously and would inform the judgements made about a school. The Department and Ofsted have committed to keeping their process for sharing information under-review to ensure that it is sufficiently robust.

Part two of the new Teachers' Standards sets the benchmark for the conduct and behaviour expected of all teachers in England at all times, including those teachers who work in academies and independent schools. This includes the expectation that teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Where a school considers a teacher to have breached the Standards, they may decide that it is necessary to take disciplinary action against the teacher. If a teacher is found to have committed gross misconduct and is subsequently dismissed from their post, or would have been dismissed had they not already resigned, the teacher's employer must consider whether it is appropriate to make a referral about the teacher to the Secretary of State. Members of the public may also refer an allegation of serious misconduct by a teacher. The National College of Teaching and Leadership is responsible for acting on behalf of the Secretary of State in considering these matters. In serious cases, this can lead to the Secretary of State prohibiting the teacher from teaching.



Department
for Education

© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at www.education.gov.uk/contactus.

This document is available for download at www.gov.uk/government/publications.

Reference: DFE-00133-2013