

**'I didn't stand a chance': how parents experience the
exclusions appeal tribunal**

HODGE, Nick <<http://orcid.org/0000-0001-5706-1865>> and
WOLSTENHOLME, Claire <<http://orcid.org/0000-0002-6660-6385>>

Available from Sheffield Hallam University Research Archive (SHURA) at:

<https://shura.shu.ac.uk/11825/>

This document is the Accepted Version [AM]

Citation:

HODGE, Nick and WOLSTENHOLME, Claire (2016). 'I didn't stand a chance': how parents experience the exclusions appeal tribunal. *International Journal of Inclusive Education*, 20 (12), 1297-1309. [Article]

Copyright and re-use policy

See <http://shura.shu.ac.uk/information.html>

'I didn't stand a chance': How Parents Experience the Exclusions Appeal Tribunal

Nick Hodge, Professor of Inclusive Practice, Sheffield Hallam University,
n.s.hodge@shu.ac.uk

Claire Wolstenholme, Research Fellow, Sheffield Hallam University,
c.e.wolstenholme@shu.ac.uk

This is the final post reviewer feedback version of the article that was accepted for publication by the International Journal of Inclusive Education on March 9th 2016.

Abstract

In September 2012 the process changed in England for how parents (and carers) can appeal against their child's exclusion from school. This paper is one of the first accounts of how parents experience the new system. Using data from a research study with a range of stakeholders in the appeals process, this paper focuses on the accounts of the 21 parents interviewed. Thematic analysis was utilised to identify the factors that motivate parents to make an appeal, the barriers and enablers to doing so, and the physical, emotional and financial costs that result from engagement with the process. The findings reveal that the costs are extremely heavy for parents with very limited rewards. The process is experienced as inequitable with a bias towards schools and many of these parents call for the provision of experienced legal support to make it a more balanced system. In spite of the challenges involved the need to call schools to account remains a strong motivation to appeal but this was not the preferred option for parents. Instead they call for schools to develop more inclusive and enabling environments that rely more on understanding the needs of pupils and their families than on exclusion from school.

Key words: Appeal; exclusion; education; schools; special educational needs; parents

Introduction

In England the number of permanent exclusions increased slightly across all school types from 2012/13 and, as of 2013/14 was at 0.06% of pupils, which is 6 pupils in every 10,000. The rate of permanent exclusions is higher in secondary schools (ages 11 to 16 years) at 0.13% than in primary (ages 5-11 years) (0.02%). Exclusion rates are higher for pupils with certain protected characteristics, for example pupils with Special Educational Needs (SEN) account for 7 in every 10 permanent exclusion, and pupils with SEN but without statements¹ are 9 times more likely to be excluded than other pupils. Exclusion rates also vary by pupils' gender and their ethnic group, for example boys are three times more likely to be excluded than girls, and pupils of Black Caribbean ethnicity are four times more likely to be excluded than other pupils (DfE 2015).

Rates of exclusions are higher in England than in Wales and Northern Ireland and in Scotland the rate is much lower (DfE 2015). Exclusion rates have historically been higher in the UK compared to the rest of Europe, however other European countries have not excluded in the same 'legalised and regulated form' as the UK (Walraven et al 2000:83). The removal of pupils from schools is used internationally within education as a 'disciplinary tool' (Mills et al. 2015; Parker et al. 2015: 229). It is 'common' practice within Western industrialised countries (Hemphill and Schneider 2013: 88) many of which have established systems of appeal. There is very little available information on pupil removal from school and rights to appeal in countries within the Global South. This may be because systems of school exclusion appear in many of these countries to be more informal and less regulated. In 2013 1 in 11 children of primary school age, meaning 59 million children, were out of school. Of these, 30 million were living in sub-Saharan Africa and 10 million in South and West Asia. These children were not excluded for behaviour but were prevented from accessing school due to reasons such as gender, poverty, ethnicity, disease, conflict and disability (UIS 2015). Estimates of disabled children and young people who access education in developing countries range only from 1-5% (Peters 2004). For those disabled children who do manage to access school, informal exclusionary processes often operate and result in pupils being compelled to drop out of education. One example is children with epilepsy in Sierra Leone who are forced out of education without any available system of redress by social attitudes such as fear and hostility from peers and teaching staff (Ali et al. 2014).

Although this paper focuses on how parents experience the school exclusion appeals process in England, it is likely to be of interest to those countries that have more formal processes of pupil removal from school through exclusion. International 'policy borrowing' in education is a recognised phenomenon in which countries look to others for models that might inform the development of their own responses to challenges (Halpin and Troyna 1995; Phillips and Ochs 2003). Aspects of the English education system have traditionally been adopted by other countries such as the United States for example (Chubb and Moe 1992; Smith and Exley 2006) and so the practices of appeal that are critiqued here may well come to be applied within other nations.

¹ A statement of special educational need was a formal legal document that detailed a pupil's educational requirements. This system is currently being replaced by Education, Health and Care Plans.

In September 2012 the process changed in England for how parents² can appeal against their child's permanent exclusion from school. This paper is one of the first reports on how parents are experiencing the new system. Even before the changes in the system, there was a dearth of literature on what appealing a school exclusion means for parents. This has effectively silenced the voices of parents and denied them the opportunity to describe the impact upon them and their families of engagement with the appeal process. The study reported in this paper set out to make a contribution to addressing this issue by capturing the experiences of 21 parents who had engaged with the new system of appeals. The paper begins with a description of the new process for appeals followed by an evaluation of how parents are positioned within the policy that underpins it. We then outline how the research study was conducted, the methods used for gathering data and the mode of analysis. The central element to the paper is the reporting of how the parents experienced engagement with the new appeals process and how this impacted upon them. We conclude with suggestions for how the procedures and practices of the appeals system should change to ensure a fairer, more enabling and less costly experience for parents.

In the English school system a pupil can be excluded either for a fixed period or permanently. The exclusion must be on disciplinary grounds. Permanent exclusion may be imposed in response to a serious breach or breaches of the school's behaviour policy and where the continued attendance of the pupil threatens the welfare of the pupil or others in the school. Only the headteacher can exclude a pupil. Upon doing so the headteacher must inform the governing body of the school³. Within 15 days of receiving notification of the permanent exclusion, the governing body, or a smaller group of delegated members, must consider the reinstatement of the excluded pupil. Parents are entitled to attend this review and to present a case for reinstatement. If the governing body decide to maintain the exclusion then they are obliged to inform the parents of their right of appeal against the decision to an Independent Review Panel (IRP) (DfE 2012). The IRP replaced the previous Independent Appeal Panel (IAP) in September 2012. The focus of this paper is on how parents are experiencing the process of making an appeal to the IRP.

The Independent Review Panel

The Independent Review Panel was established by the Education Act 2011 (DfE 2011). The IRP retained some of the features of the Independent Appeal Panel but is also constituted differently in a number of key areas. In England the Local Authority or Academy Trust (in the case of an Academy school⁴) must still arrange for an exclusion panel hearing to review the exclusion decision. As with the process for the IAP this will only happen if requested by a parent within the legal time frame: Parents have 15 days to request an Independent Review

² In English legislation a parent is defined as any person with 'parental responsibility' (DfE 2012:3).

³ The governing body consists of elected and co-opted lay members and school staff and it is their responsibility to provide strategic leadership, hold the headteacher to account and to make sure that the school's money is well spent (DfE 2014a).

⁴ Academy schools are schools in England that are directly funded by central government (specifically, the Department for Education) and independent of direct control by the local authority.

Panel from the date they are given notice of the governing body's decision to uphold the permanent exclusion. A critical change has been made however in the powers of the IRP. Previously the decision of the Independent Appeal Panel would be binding on the school. If the IAP decided that a pupil should be reinstated then the school would have no option but to comply. This is no longer the case: The Independent Review Panel cannot direct a school to re-instate a pupil. Effectively this weakens the position of parents within the new process as they no longer have a means to compel the school to reinstate the pupil, even if it appears clear that the IRP feel the decision was unjust. The appeal therefore now appears to take place within a policy power shift in which the English Government has given greater powers to schools to resist the reintroduction of excluded pupils (Pomeroy, 2000). These legislative and policy changes were made within a context of public concern fuelled by ongoing media claims that pupils were 'out of control' in England's schools with teachers subject to regular and 'terrifying' attacks (Harris 2009; Vasagar 2011; Phillips 2015). Even in the 2016 press, concern over the cost of compensation for violent pupil attacks on teachers led a Department for Education spokesperson to affirm that 'we have...ensured schools decisions (to exclude pupils) can no longer be overruled' (Mirror.Co.Uk 2016). Within this discourse parents are repeatedly positioned as part of the problem rather than as partners with the school in the education of their child or as those in need of support with tackling a challenging situation (Cassidy 2003). One recent headline in the press for example heralded 'parents to blame' for violent pupils' (Cassidy 2016: 7).

Within the new system there are three possible outcomes of an Independent Review Panel. Firstly to uphold the permanent exclusion decision. Secondly to recommend that the governing body reconsider its decision, and thirdly to quash the decision and direct the governing body to reconsider its decision. This third option means that the governing body is compelled to consider the decision again, but is under no obligation to come to a different conclusion. Moreover a 'direction to reconsider' outcome should only occur where a review panel considers the school to have acted illegally, or irrationally in making the permanent exclusion, or where it has been demonstrated that the procedures in doing so had significant flaws. If a governing body does however reconsider its decision after a direction to do so and continues to uphold the permanent exclusion, the Local Authority is expected to make a readjustment to the school's budget that would amount to a loss for the school of £4,000 (for Academy schools this would be a payment of this sum to the Local Authority) (DfE 2012). This payment is presented within the legislation as a contribution to the cost of alternative educational provision for the excluded pupil. However it is generally considered by schools to be a punitive fine (Ryan, 2012 cited Maddern, 2012). Parents do have the right to challenge an Independent Review Panel decision in the High Court by way of judicial review but this still would not lead to compulsory reinstatement of the pupil and none of the parents in this study indicated that they would exercise this right.

The potential outcomes for pupils and their parents have therefore been made more limited by the new legislation. Previously parents through the Independent Appeal Panel could ensure the reinstatement of their child. This acted as a public declaration that the Governors and Headteacher were wrong in their actions. Now the most that can be hoped for is that the IRP will compel the school to review its own decision. Traditionally the reasons given by the Independent Appeal Panel for reinstatements were identified by Richard Thomas (2011),

Chair of the Administrative Justice and Tribunals Council (AJTC)⁵ in a letter to Michael Gove⁶. These were 'because the panel either did not accept that the pupil had done what he or she was alleged to have done or considered that the decision to exclude was not proportionate' (p.2). The award of reinstatement therefore publicly acknowledged the wrong done to the child through exclusion. Within the new procedures parents are of course now disempowered from this form of address. Reinstatement only remains a possible option for pupils with Special Educational Needs and Disabilities (SEND)⁷.

So as an exclusion can no longer be overturned, one of the questions that we asked within this research was what then motivates parents to appeal. The Children and Families Act (DfE 2014b) captures the articulated philosophy of the Conservative and Liberal Democrat Government⁸ that parental voice is to be a critical force within Education policy and one that should be enabled and heard. We were curious to see whether the changes to the constitution and operation of the Appeals Panels enabled or disabled the voice of parents.

Exclusions and Children Labelled with SEND

There are some differences in the support available through the appeals process for parents of children with SEND and also in the nature of the potential outcomes. Parents (or pupils if aged 18 or over) now have the right to request that a Special Educational Needs (SEN) expert be present at an Independent Review Panel regardless of whether or not the school recognises the child to have any special educational need (DfE, 2012). This person is appointed by the Local Authority or Academy Trust and their role is to provide impartial advice to the panel on any SEN issues that may be relevant to the exclusion. They are not however expected to assess the special educational needs of an individual pupil. Parents of children with special educational needs and disabilities also have access to a different review panel, the First Tier Tribunal (FTT). In addition to the right to apply for an Independent Review Panel, if parents believe that the exclusion has resulted from discrimination, then they can may make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disabilities) (DfE 2012). Parents have 6 months in which to make a claim from the date on which the permanent exclusion is upheld by the school Governing Body. The First Tier Tribunal has greater powers than the Independent Review Panel as it can order the school to reinstate a pupil where it is decided that the pupil was discriminated against in the exclusion decision (DfE 2012). By the end of the data gathering stage of the research reported on here, only five First Tier Tribunals had taken place throughout the country and only one parent within this study had experience of this. Therefore the focus of this paper is only on how the Independent Review Panel was experienced.

⁵ The body with statutory responsibility for oversight of exclusion appeals.

⁶ Secretary of State for Education in the Coalition Government at that time.

⁷ The term 'special educational needs' (SEN) is the legal category assigned to children in England who are assessed as having difficulties with learning. SEN can also include perceived difficulties with behaviour, socialisation and physical impairments (Gov.UK 2014). With the Children and Families Act 2014 (DfE 2014b) the category has been renamed as Special Educational Needs and Disability (SEND).

⁸ The government that was in power in Britain when the legislation was enacted.

The Research

The research that is the focus of this paper was carried out by Claire Wolstenholme (Project Manager) and Mike Coldwell (Project Director), along with colleagues in the Centre for Education and Inclusion research (CEIR) at Sheffield Hallam University, between October 2012 and February 2014. The study was conducted on behalf of the Department for Education (DfE). The aim of the research was to understand how the process of challenging a permanent exclusion through the Independent Review Panel process was experienced by parents and young people, head teachers and school governors (Wolstenholme et al, 2014). Within this overarching aim specific aspects of the process were focussed on, namely; the motivations of parents to make an appeal, the preparation involved, how the different parties experienced the appeal hearing itself and how Special Educational Needs and Disabilities was managed within the hearing. The methodology employed was qualitative with data gathered through face to face interviews carried out by one of us; Claire Wolstenholme, with the support of colleagues from CEIR. Interviews occurred with 21 parents⁹, 6 young people, 16 head teachers and 7 school governors. Participants were recruited through close working with Local Authority¹⁰ staff across the country. Staff passed on the team's contact details and research information to parents and head teachers who were going through an appeal process. Parents and head teachers who were interested in taking part completed their details and then sent them back to the team. Interviews were carried out between January and July 2013. Parents and young people were interviewed in their homes; interviews lasted between 45 minutes and 2 hours. The interviews followed a fairly structured interview schedule but allowed for interviewees to talk through their experiences in depth where they desired. The interviews focused around the information required by the research funder. Details were not required concerning the personal characteristics of the parents such as age, class, ethnicity, sexuality or gender. So regrettably we were not able to explore the impact of these within the analysis. All interviews were transcribed and entered into a spreadsheet for analysis. Thematic analysis was employed to identify the key elements of experience for participants (Braun and Clarke 2013). This was done through the process of coding the data using topics from the interview schedule as a starting point. Codes were data driven and were both descriptive, and analytical in nature. Once coded, codes were then grouped into themes in order to shape the analysis (Dahlberg and McCaig 2010). When the themes were identified we returned to the research literature to see if we could find them reflected there. For this paper only the data from the parents is being reported upon. We have described some of the experiences of other stakeholders elsewhere (Wolstenholme et al 2014). However the marginalisation of parents within the process and their feelings of voicelessness struck us as particularly powerful themes. We felt compelled to make these central within a paper focused only on parental experience as one means of trying to remedy the power imbalance experienced by parents within the appeals process.

Experiencing the Appeals System

⁹ Face to face interviews with the 21 parents who had experienced the IRP were conducted by the team within CEIR'.

¹⁰ Local Authorities in England are the councils that provide services for local areas.

Motivation to appeal

For all of the parents in this study the primary motivation to appeal was the desire to redress a wrong by having an unjust decision overturned; traditionally this is the primary reason for parents deciding to go to appeal (Munn et al., 2001). For the parents in this study the wrongs included; feeling that the headteacher and governing body had overreacted and not taken into account the problems some children were experiencing with the transition to secondary school, other emotional challenges that a child was facing including a child being bullied by another child; feeling support services had failed their child; lack of recognition of SEND; using exclusion as a 'back door' method (Parent 5) to get rid of an unwanted pupil and a sense that the parents were being blamed for the child's behaviour rather than the school accepting any responsibility:

(I)t was way too extreme, he is only 11. It was his first term at secondary, he was trying to get used to the environment, I felt they didn't give him enough time or support (Parent 19).

She is 6 years old; it was a one off incident, I felt it was very unfair... (Parent 12).

The impression I got was that they just wanted him out of the school. The headteacher said she's "had enough" of [son's] behaviour and just wanted him out (Parent 14).

(I)t was the insults, the arrogance, the rudeness and thinking that we didn't exist; it became how they treated me, they wouldn't take any responsibility; they blamed me and my parenting skills (Parent 5).

For 20 of the parents the Independent Review Panel appeared to be the only means available to them to achieve a recognition and a correction of the wrong that had been done to their child. Some of these parents could have accessed the First Tier Tribunal but some did not know about this option and others were unclear as to whether they would qualify for it. Only one parent appealed via the FTT route but this was after she had been through the IRP process and had not achieved the desired outcome. The forms of redress sought by the parents included; removing the expulsion from the child's record; reinstatement into the school and a formal recognition of the failings of the school in their support of the child. For some parents the form of redress being sought changed as a result of engagement with the appeals process. Parents came to feel that reinstatement would not be in their child's interests as during the appeal the headteacher either demonstrated such little understanding of the child's needs or it was clear that the relationship had broken down between the school and the child:

I was wanting him to be reinstated at that point, I didn't realise at that point that the relationship had broken down and he would not be able to go back to that school (Parent 19).

For some parents they had not considered a practical outcome to the appeal beyond a formal acknowledgment of the unfairness of the act of expulsion:

We had to appeal, we felt so strongly that the decision was wrong, the recognition that she was unfairly excluded (Parent 11).

There were mistakes and failings on the school's side that I wanted recognising and made a point of even if the decision was going to be upheld (Parent 5).

It was felt to be important to 'make a stand' (Parent 9) and to challenge the school not only on behalf of their own child but on behalf of other parents who may find themselves in the same situation in the future (Parent 10).

Some parents entered into the appeals process without an understanding that the governing body could not be directed by the Independent Review Panel to overturn their decision; they could be compelled only to review it. This led to feelings of frustration with the process; a sense that the headteacher is a power above reproach or challenge and doubt over whether making an appeal is in fact worth the tremendous stress and effort involved:

Had I known we had no chance with the independent appeal, they weren't going to overturn that decision... (Parent 1).

The change in legislation means the head masters word is law and nobody independent can squash his decision (Parent 2).

I can't see the point in any of it unless they can order the school to reinstate. You are penalised even before you start, they don't have to reinstate (Parent 9).

There is clearly a need for more information about the appeals process and the potential outcomes to be communicated to young people and parents before they decide whether to proceed.

Experiencing the Appeal

The appeal involves a review of the processes followed by the school in coming to a decision to exclude a pupil. The exact focus of the appeal appeared to vary across the different panels, but generally it included an examination of the events leading up to the exclusion such as a lack of recognition of or support for the child's issues, the validity of the decision itself and the process of the notification of this decision to the young person and the parents. Where the appeal panel spent time revisiting the behaviour that led to the exclusion some parents found this to be challenging as it involved revisiting their child's transgression. This was also distressing for some of the young people involved:

There was one point with the solicitor where my daughter was quite distressed and it took longer than I would have thought for the chairman to intervene. I was sitting there thinking this is not right, a 14 year old being challenged in this way (Parent 11).

Thrackay (2013) using Mill's (1959) distinction between private troubles and public issues argues that for the families of children who come into contact with support services, what would typically be a private family matter then comes under public scrutiny:

The amount of people there was up in the town hall; why does there need to be ten people in one room - then just me? I felt really intimidated and scared... I would have preferred not to have been stared at by so many people (Parent 14).

Rather than undergo further scrutiny about the behaviour of the child or even that of the family, some of the parents in this study argued that the appeal should only focus on how the school dealt with the exclusion process or how school staff or other support services had failed the child before the incident occurred. Indeed this is what the parents had expected and prepared for and so were taken by surprise when the behavioural incident was revisited in detail:

They looked at the incident and it was end of story; I failed to get them to consider the failures in the school's procedures (Parent 10).

These findings illustrate that parents need to be forewarned that the behaviour that led to exclusion may be re-examined. They also illustrate a lack of clarity about what the panel will focus on within the appeal. Further negotiation is required therefore between panels and parents at the start of the appeal process to develop a shared understanding of the exact focus and remit of the appeal.

The Costs of Appeal: Physical, Emotional and Financial

Coping with the exclusion of their child from school and in addition taking on an appeal, placed the families in this study under significant stress. Runswick-Cole (2007) observes that engagement with education tribunals impacts upon 'the social, emotional and financial well-being of the family' (p.315). When a child or young person is excluded from school this often results in tremendous stress for parents (Parsons and Castle 1998; Munn et al 2001) and it is predominantly mothers who negotiate the process and so feel the greatest burden of this (Gazeley 2012). Permanent exclusion is often an additional stress within a family life that may already be oppressed by poverty, ill health and poor housing (Parsons and Castle 1998; Munn et al 2001). Exclusion can mean mothers trying to manage a young person at home without respite whose behaviour is as challenging there as it is at school (Gazeley 2012). This can then lead to a loss or threat to the income of the parent who is not able to attend work (Gordon 2001). Preparing for and attending the appeal also required parents to take time away from work:

I had to take time off work and that is not easy (Parent 11).

The appeal felt for some like a second job in itself. Parent 5 described preparing for the appeal as 'like a whole new job I took on' that she had to fit in 'at two or three o'clock in the morning...' It was the stress of this she felt that led to her being prescribed anti-depressants.

A great deal of emotion is invested in the appeal and it can feel a lonely and enormous task to undertake alone. Gale (2000) notes also how for mothers even talking about the exclusion of your child can be a very emotional experience. Gale argues that for many parents it will be necessary therefore to have someone there to advocate for the parents when it feels too overwhelming to do this for themselves. This was also raised as an issue by the parents in this study:

I think it would have been helpful to have someone there, the enormity of doing it all on my own (Parent 11).

I think it would have been helpful to have someone with you because it is daunting. It was just us two there (Parent 17).

The majority of parents talked about engagement with the appeal in similar terms as 'stressful' and 'intimidating'. They felt disadvantaged and disempowered in relation to the schools in terms of access to resources, familiarity with the process and credibility with the panel:

It felt like they believed the school. It was all of them against me (Parent 15).

They were given a couple of hours to state their case. We weren't allowed to comment on anything they said; you could only ask direct questions (Parent 17)

Trying to access support was problematic for some families. Even if they were given information on whom to contact, this still did not seem to lead to support. Voluntary support organisations and Local Authorities have been hard hit by austerity measures taken by the British Government and this had led to rapid and frequent reorganisation of, or cuts in, services and dramatic changes in available personnel (Bhati and Heywood 2013):

Support just wasn't there. I rang all the numbers from the leaflet I was given but nobody could help me (Parent 2).

I just wish there had been someone there who said right this is the procedure. This is what happens. We'll ring round. We'll do this. We'll find you this information out (Parent 5).

I tried to get support from all kinds of avenues...The school gave me contact details for support networks but they were all out of date, one had gone into administration, phone numbers and emails weren't valid... (Parent 11).

The processes that govern school exclusions are complex and negotiating them is costly. This immediately excludes 'parents who are poor and inarticulate' (Riddell 2003: 204). Minority ethnic groups also rarely challenge the decisions of schools and other education bodies through the appeals system (Riddell 2003). Gazeley (2012) argues that because parents are often less familiar than schools with the custom and practice of exclusion 'their lack of understanding of the details of these processes contributed to their being not powerfully positioned within them' (p.308). Lumby (2007: 221) in discussing the relationship between parents and schools argues that '(e)pistemological, political and pragmatic issues are inextricably linked in who has a voice and how it is understood'. Lumby argues that within the school system the voice of parents 'is not given epistemic equality with that of staff' (p.222). From the accounts of the parents in our study it appears that the IRP is constructed within the same ontology and that the voice of the school appears to them to speak louder and with more perceived authority than those of parents:

I didn't feel I had any weighting (Parent 5).

At no time did I feel as though we had a chance. It did not make me feel comfortable (Parent 1).

Wasn't sure that the head master panel member was impartial. I think he may have sided with the head teacher (Parent 8).

(I)t's all legalities and technicalities.... there is no chance for parents with literacy problems (Parent 2).

Gazeley (2012) argues that this may reflect differences in social class as the members of panels such as the IRP may inhabit the same social and cultural spaces and have shared meanings of how a school should function and how a young person should behave within it. Parents sense collusion between different parties in schools such as the headteacher and the Governing Body (Little 1998); practitioners seems to know and can all employ a set of practices that are shared amongst them but from which parents are excluded (Gazeley 2012). The parents perceive this as a complicity between school and the panel that makes the process feel like a 'witch hunt' (Parent 10). Parents may come to appeal with a long and negative history of involvement with education services (Gazeley 212) and they may have even been excluded from schools themselves (Macrae et al. 2003). Therefore parents may have little trust in what appears to be a system embedded within the customs and practice of Education. Since The Franks Report in 1957 the three principles of fair, open and impartial have been enshrined in the law that governs tribunals but from the perspectives of these parents within the IRP these are not overtly adhered to by the panels in all cases. Leggat (2001) laid down that users of tribunals 'need to be sure...that decisions in their cases are being taken by people with no links with the body they are appealing against' (para 1.4). For these parents the IRP panel appeared too aligned with the schools to be impartial:

The panel is called independent and unbiased but they weren't: they were linked to the school (Parent 1).

The panel were open at the beginning in saying that they knew the headteacher because they all worked in the borough (Parent 4).

The Law Observer (2011) argues that '(t)ribunals appear to have become ever more formal with complex rules tending to make the tribunal amenable only to those who frequently appear at tribunal hearings' (n.p). This certainly reflects the experience of these parents who felt unprepared for how formally the Independent Review Panel would be constituted and conducted. The parents felt again that the schools were advantaged by this as they have more experience of the process:

(T)he parent is at a disadvantage when they walk in; they have never been through that process (Parent 2).

They asked me at the end to summarize and I wasn't expecting that, if I had known I would have prepared a summary (Parent 8).

But the terminology that they used I had to ask them to explain (Parent 12).

I was meant to say something but I didn't know what I was meant to say.
(Parent 14).

Barry (1995, cited Callinicos, 2007) argues that people are positioned within hierarchies of power, status and money and within the appeals process parents perceive schools as being ranked more highly than themselves:

(F)elt very intimidated, the chairman was a solicitor. He was also at the Independent Review Panel; the school were basically being represented by a solicitor, free of charge, so straight away they have got the advantage. He knew all the legal implications of everything' (Parent 9).

It didn't feel fair. What chance did I have against the school or the education board? (Parent 14).

The school were allowed to speak freely it was completely different. They could just tell them their side, it was free speak for them, for us it was "stick to the grounds" and that was it (Parent 17).

To achieve equality between schools and parents within the appeal process there needs to be an acknowledgment and understanding of difference between the parties and how this impacts upon their experience (Baker et al. 2004). This is likely to involve a redistribution of resources to make representation at the Independent Review Panel a more balanced and equitable process (Gale 2000). One way of doing this would be to provide the parents with legal support:

If I knew anyone who was financially able to get legal representation I would recommend it now that I have been through it and seen how formal it is.'
(Parent 2).

The cost of legal support is a prohibitive issue for parents. Ten parents stated that they wanted to have a legal representative to help them fight their case at the hearing but they could not afford the fees and did not qualify for legal aid¹¹. A further two parents said that after having gone through the process they also felt that legal representation would have been preferable if they had been able to afford this. Some of the schools involved appeared able to fund legal support however and the parents felt that this created an inequity within the process that significantly disadvantaged them:

I can't afford a solicitor so the school is at an immediate advantage. (Parent 9).

I didn't stand a chance and I don't think for one minute I would have lost if they hadn't have had a barrister. I know that they have a flat fee of £10000 and I could never have afforded it (Parent 21).

¹¹ Some families in certain particular situations can qualify in Britain for government funded legal representation. Only a few families would meet the criteria for this however.

A very small number of parents did have some limited legal support through initiating and preparing the appeal. This was mainly through the organisation Coram¹². Only one parent had legal support present at the appeal hearing and this was a trainee solicitor as part of a scheme that the particular Local Authority had available at the time. The parents in this study identified a number of ways in which legal representation is a critical support. It allows someone to advocate on behalf of the parents and child who is not trying to manage the emotions of the situation:

Somebody less emotionally involved would have been very helpful' (Parent 9)

A lawyer will be alert to issues that could help the parent's case and even decide the outcome:

There were lots of other issues that were still overlooked... which a solicitor may have picked up on and may have swayed the panel to make a different decision (Parent 16).

And some parents felt that a lawyer would have helped them to feel less intimidated:

I think it would have been helpful to have someone with you because it is daunting. It was just us two there (Parent 17).

Legal representation therefore is recommended by these parents as perhaps the most vital but missing support. However there were some elements of the experience that they found supportive.

Supportive Practices

In spite of perceived inequalities within the system a number of the parents reported positively on their engagement with the panel. This included finding the panel members empathetic, supportive, enabling and appropriately suited for the role.

I didn't feel uncomfortable. I found all members to be very polite. They were nice people actually (Parent 4).

They were fair to both sides; they were only going by the case itself (Parent 7).

The Clerk was very approachable and lovely. The panel were approachable and pleasant and not intimidating (Parent 11).

They were very good, they were very independent, I felt supported really; they were there to listen to what I had to say. It was more balanced than the governors' appeal (Parent 15).

Some aspects of the process therefore did provide parental satisfaction.

¹² Coram is a children's legal centre that provides free legal information and advice to families <http://www.childrenslegalcentre.com/>

Satisfaction with Appeal

Assessing the levels of satisfaction of these parents in relation to their appeals is difficult as this was not something we directly asked parents as we were not requested by the Department for Education to address this specific question. But the interviews did provide data that indicate the levels of satisfaction. Just over half of the parents could be described as mostly dissatisfied with the process. The reason for this was largely because they were not able to get the outcome that they wanted, which in most cases was to have the child's record expunged and/or the child reinstated in school:

The whole process doesn't allow you to say take this off my son's record (Parent 15).

The outcome that I would have hoped for is gone; they got rid of it in 2012... I would like it taken off her record (Parent 18).

I think a lot of people would leave the process feeling let down...all they have the jurisdiction to do is send it back to the board of governors (Parent 2).

Other reasons for dissatisfaction that were provided included feeling intimidated by the process and the environment, and concerns that the panel members did not seem properly trained, prepared or were on the side of the school. For some parents the process generally felt badly organised. For parent 19, for example, the intended date for the appeal was changed twice which added to the stress and which can suggest to parents that their needs are not highly considered within the hierarchy of participants.

The parents who expressed most satisfaction with the appeal process perhaps unsurprisingly were, for the most part, those parents who had 'won' the appeal i.e. the panel directed the school to reconsider the decision. These parents reported that the panel was run fairly, organised well and the panel members had been sympathetic and professional. Parent 19 communicated a feeling of satisfaction when witnessing school staff needing to be polite and formal with panel members in contrast to the 'condescending manner' that she felt they demonstrated to parents:

Also the school responds differently to you as to the panel, when they speak to you it's like they are talking to a child, in a condescending way, whereas when they talk to the panel, it is far more respectful so they give a more open response, you get more information (Parent 19).

Conclusions

This paper reports on one of the first research studies conducted into how parents experience the Independent Review Panel, the new appeals panel for pupil exclusions. The findings of this study strongly support those of the only other enquiry that we know of into parental experience of the IRP: a research report for the Communities Empowerment Network that was prepared by Christy Kulz in March 2015. That enquiry, like this one, found that parents were disadvantaged within the system and should have ready access to an advocate or representative to help with negotiating the process (Kulz 2015). Our study provides further evidence that engagement with the new appeal process is stressful for parents. Preparing for

and attending an appeal extracts a heavy cost emotionally, physically and financially. Parents feel marginalised and disadvantaged within the process as they do not usually have access to legal support that is available to schools. Nor was there ready access to support organisations that could help the parents to find their way across this new terrain. Pupil exclusions often occur in families that are already struggling with poverty, marginalisation through race and class and supporting children who are struggling with school. The costs of undertaking an appeal are heavy, involving hours of preparation of the case and learning to negotiate the system; lost time from work; financial expense in hiring legal support and hearing within a relatively public setting your child described in unflattering and unmitigated terms. All of these stresses come at a time when parents are also managing a child who is either not at school or is trying to settle into a new placement and who is having to deal with the emotional repercussions of exclusion from school. Many parents therefore will not even feel able to engage with the appeals process. Although some parents find the members of the appeals panel to be supportive, the schools are perceived generally as being more familiar with and experienced in the appeals process as well as having more of a shared culture with the panel members. Parents are motivated to begin the process of appeal by a desire to right a wrong that has been done against their child. Sometimes parents began the process with the hope of an outcome in which the school would be compelled to reinstate the child and/or the expulsion could be removed from the child's record. However this is not within the power of the Independent Review Panel which can only instruct the governing body to reconsider the decision. The parents in this study questioned whether making an appeal is worth the challenges if neither of these remedies are now available as an option and yet the drive to have the school called to account still seems to be strong. These parents did not experience the changes to the appeals procedure as enabling. Instead the system now seems to these parents even more in favour of schools and exclusionary towards young people and their families. These parents call for further change that will redress the balance of power within the process. This would mean a return of the power of the panel to compel reinstatement of the pupil, free legal support for parents and young people to help achieve this outcome and clearer mediated information at the start about what the appeals process involves. Moreover, these parents would have preferred never to have been put into the position of needing to make an appeal. So above all these parents would call for schools and other related support services to have greater recognition of when and how children are struggling within school, to then provide the child with greater support and to involve parents within the negotiations about how best to enable this. Only then in the current system do they feel that young people and their parents will stand a chance.

Acknowledgements: We would like to thank Mike Coldwell for his assistance in early drafts of this paper. We would also like to acknowledge the contribution of fellow project team members; Bernadette Stiell and Ben Willis. Lastly we would like to thank the peer reviewers for their comments which we feel have led to a strengthened paper.

References

Some references have been removed for the review process.

Ali, D.B., Tomek, M. and Lisk, D.R. (2014) "The effect of epilepsy on child education in Sierra Leone" *Epilepsy Behavior* 37: 236-40.

Baker, J., Lynch, K., Cantillon, S. and Walsh, J. (2004) *Equality: From Theory to Action*. Basingstoke: PalgraveMacmillan.

Bhati, N. and Heywood, J. (2013). *Counting the Cuts: The impact of spending cuts on the UK voluntary and community sector*. Report for NCVO Accessed on 14/07/15 at http://www.ncvo.org.uk/images/documents/policy_and_research/funding/counting_the_cuts_2013.pdf.

Braun, V. and Clarke, V. (2013) *Successful qualitative research: a practical guide for beginners*. London: SAGE.

Callinicos, A. (2007) *Social Theory: A Historical Introduction*. Second Edition. Cambridge: Polity Press.

Cassidy, S. (2003) 'Parents are blamed for pupils' behaviour' *Independent* 23 April. Accessed on 02/02/16 at <http://www.independent.co.uk/news/education/education-news/parents-are-blamed-for-pupils-behaviour-116419.html>.

Cassidy, S. (2016) 'Parents to blame' for violent pupils' *I From @The Independent* Friday January 29.

Dahlberg, L. and McCaig, C., (2010) *Practical Research and Evaluation A start-to-finish guide for practitioners*. London: Sage Publications

DfE (Department for Education) (2011) *Education Act 2011*. Accessed 14 July 2015. <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>.

DfE (Department for Education) (2012) *Exclusions from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion*. Accessed 29 April 2015. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269681/Exclusion_from_maintained_schools_academies_and_pupil_referral_units.pdf.

DfE (Department for Education) (2014a) *The constitution of the governing bodies of maintained schools: Statutory guidance for governing bodies of maintained schools and local authorities in England*. Accessed 14 July 2015. <https://www.gov.uk/government/publications/constitution-of-governing-bodies-of-maintained-schools>.

DfE (Department for Education) (2014b) *Children and Families Act 2014*. Accessed 11 August 2014 www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006.

DfE (Department for Education) (2015) *Permanent and fixed-period exclusions in England: 2013 to 2014* Accessed 01 February 2016

<https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2013-to-2014>

Franks, Sir O. (1957) *Lord Chancellor's Department: Committee on Administrative Tribunals and Enquiries (Franks Committee)*. Accessed 14 July 2015.

<http://discovery.nationalarchives.gov.uk/details/r/C10253>.

Gale, T. (2000) "Rethinking social justice in schools: how will we recognize it when we see it?" *International Journal of Inclusive Education* 4 (3): 253-269.

Gazeley, L. (2012) "The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?" *International Journal of Inclusive Education* 16 (3): 297-311.

Gordon, A. (2001) "School Exclusions in England: children's voices and adults solutions?" *Education Studies* 27 (1): 69-85.

Gov.UK (2014) *Children with special educational needs*. Accessed 21 July 2014

<https://www.gov.uk/children-with-special-educational-needs/overview>.

Halpin, D. and Troyna, B. (1995) "The politics of education policy borrowing" *Comparative Education* 31(3): 303-310.

Harris, S. (2009) "Exclusions for school assaults on teachers and students top 83,000" *Daily Mail Online* Accessed 28 January 2016 at <http://www.dailymail.co.uk/news/article-1203184/Exclusions-school-assaults-teachers-students-83-000.html>

Hemphill, S.A and Schneider, S. (2013) "Excluding students from school: A re-examination from a children's rights perspective" *The International Journal of Children's Rights* 21(1): 88-96.

Kulz, C. (2015) *Mapping the exclusion process: Inequality, justice and the business of education*. Research report for Communities Empowerment Network. Accessed 15 July 2015
<http://www.irr.org.uk/wp-content/uploads/2015/03/Mapping-the-Exclusion-Process-Inequality-Justice-and-the-Business-of-Education.pdf>

Law Observer (2015) *Tribunals*. Accessed 14 July 2015.

http://www.lawobserver.co.uk/tribunals_25.html.

Leggatt, Sir A. (2001) *Tribunals for users - one system, one service*. Accessed 29 April 2015.

<http://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggatthtm/leg-ov.htm>.

Little, C. (1998) "Social Exclusions". *Journal of Social Welfare and Family Law* 20 (4): 447-453.

Lumby, J. (2007) "Parent voice: knowledge, values and viewpoint". *Improving Schools* 10 (3): 220-232.

Macrae, S., Maguire, M. and Milbourne, L. (2003) "Social exclusion: exclusion from school". *International Journal of Inclusive Education* 7 (2): 89-101.

- Maddern, K. (2012) TES magazine, "Excluding a pupil could soon cost you £4,000". *Times Educational Supplement*. Accessed 20 June 2014.
<https://www.tes.co.uk/article.aspx?storycode=6187340>.
- Mills, C. W. (1959). *The Sociological Imagination*. Oxford: Oxford University Press.
- Mills, M.; Riddell, S and Hjørne, E. (2015) "After exclusion what?" *International Journal of Inclusive Education* 19(6): 561-567.
- Mirror.Co.Uk (2016) "Violent pupil attacks on teachers costs councils £400,000 in compensation in just 12 months" January 27. Accessed on 28 January at
<http://www.mirror.co.uk/news/uk-news/violent-pupil-attacks-teachers-costs-7256302>
- Munn, P., Cullen, M.A., Johnstone, M and Lloyd, G. (2001) "Exclusion from school: a view from Scotland of policy and practice". *Research Papers in Education* 16 (1): 23-42.
- Parker, C.; Whear, R., Ukoumunne, O.C.; Bethel, A., Thompson-Coon, T.; Stein, K. and Ford, T. (2015) "School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review". *Emotional and Behavioural Difficulties* 20 (3): 229-251.
- Parsons, C. and Castle, F. (1998) "The cost of school exclusion in England". *International Journal of Inclusive Education* 2 (4): 277-294.
- Peters, S.J. (2004) "Inclusive Education: An EfA strategy for all children". Accessed 27 January 2016 at http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079993288/InclusiveEdu_efa_strategy_for_children.pdf
- Phillips, D. and Ochs, K. (2003) "Processes of policy borrowing in education: some explanatory and analytical devices" *Comparative Education* 39(4): 451-461.
- Phillips, M. (2015) "'Sworn at and hit by a bottle... School kids make my life hell': The Sun reveals terrifying rise in attacks on teachers" *The Sun* August 12. Accessed on 26 January 2016 at <http://www.thesun.co.uk/sol/homepage/features/6585669/Terrifying-rise-in-attacks-on-teacgers.html>
- Pomeroy, E. (2000) "Experiencing Exclusion". *Improving Schools* 3 (3): 10-19.
- Riddell, S. (2003) "Procedural justice and special educational needs assessment In England and Scotland". *International Journal of Inclusive Education* 7 (3): 201-222.
- Runswick-Cole, K. (2007) 'The Tribunal was the most stressful thing: more stressful than my son's diagnosis or behaviour': the experiences of families who go to the Special Educational Needs and Disability Tribunal (SENDIST)". *Disability & Society* 22 (3): 315-328.
- Smith, G. and Exley, S. (2006) "The influence of overseas examples on DES policy-making for the school system in England, 1985-1995". *Oxford Review of Education* 32(5): 575-597.
- Thackray, L. (2013) *The meanings of the 'struggle/fight metaphor' in the special needs domain: the experiences of practitioners and parents of children with high functioning autism*

spectrum conditions. Doctoral thesis (PhD), University of Sussex. Accessed 5 May 2015
http://sro.sussex.ac.uk/47168/1/Thackray%2C_Liz.pdf

Thomas R. (2011) "Letter to Michael Gove M.P". Accessed 29 April 2015
http://ajtc.justice.gov.uk/docs/Michael_Gove_March_2011.pdf.

UNESCO Institute of Statistics (UIS) (2015) Out of School Children Data release. Accessed 28 January 2016 at <http://www.uis.unesco.org/Education/Pages/oosc-data-release-2015.aspx>

Vasagar, J. (2011) "'Children's behaviour at school deteriorating' say teachers" *The Guardian* 18 April. Accessed 25 January 2016 at
<http://www.theguardian.com/education/2011/apr/18/childrens-behaviour-school-teachers>

Walraven, G., Parsons, C., Veen, D. and Day, C. (2000) *Combating School Exclusion Through Education*. Leuven-Apeldoorn: Garant publishing.

Wolstenholme, C., Coldwell, M., and Stiell, B. (2014) *Independent Review Panel and First-tier Tribunal Exclusion Appeals systems* DfE.