

# GETTING IT RIGHT FIRST TIME

## 15 STEPS FOR SCHOOLS TO AVOID AN UNLAWFUL PERMANENT EXCLUSION



**1 WHY BOTHER?** Unlawful permanent exclusions expose Schools. Not only to possible adverse publicity, or to criticism from Ofsted, but also to procedures, costs and demands on time and energy.

For example, there might be a challenge to the Governors' Pupil Discipline Committee. Or the costly and unpleasant process for a Head to appear in front of an Independent Review Panel.

A pupil's parent might also bring a claim of disability discrimination to the First-tier Tribunal (Special Educational Needs and Disability).

**2 GET IT RIGHT – AUDIT TRAIL:** The School's evidence must justify the Head's decision to permanently exclude. The law sees permanent exclusion as a last resort.

The audit trail should include: behavioural logs, incident reports witness statements, emails and file notes.

**3 INVESTIGATIONS:** Schools often let themselves down by the poor quality of the evidence they gather e.g. surrounding a one-off serious event.

Witness statements can be misleading, contradictory, or unable to withstand close scrutiny. It's a good idea to train staff on gathering evidence for exclusions.

**4 INTERVIEWS:** Head teachers don't always have somebody else in the room when they interview the pupil. Call someone in to take a note!

**5 ALTERNATIVES TO EXCLUSION?** What steps did the School take to avoid permanent exclusion? Is there evidence of early intervention and multi-agency input to address the pupil's needs?

**6 JUDGMENT:** The law will generally defer to the *judgment* of a Head, as long as this is based on *evidence* and the Head has given detailed, written *reasons*.

**7 REASONS:** These must be clear, written and legal. For example, the Head's letters to parents should explain why a pupil initially received a fixed period exclusion, yet later received a permanent exclusion.

**8 NO KNEE-JERK REACTIONS:** While Heads are conscious of not putting other students or staff at risk, they should not act in the heat of the moment. Always follow the principles of: Evidence, Judgment and Reasons.

**9 DON'T DISCRIMINATE:** Has the School made "reasonable adjustments" for a disabled pupil? Or directly or indirectly discriminated against a pupil with a protected characteristic?

**10 CONSULT:** Widely when drawing up policies, especially to avoid possible discrimination issues. Consider how the School will deal with incidents of poor behaviour outside the school gate.

**11 ADMIT DEFEAT!** If the audit trail does not stand up to scrutiny, or a Head has taken over from a predecessor and doesn't agree with the way things were handled – it's better not to "plough on" with a bad job. Take legal advice and take a view.

**12 TRAINING:** Keep up-to-date with the latest law, policy and advice from the DfE. Ideally all governors and school staff should be trained on exclusions.

**13 REVIEW POLICIES AND PROCEDURES:** Ensure all School policies which overlap with exclusions

are up-to-date and lawful. For example, policies on:

- behaviour and discipline
- inclusion
- screening, searching and confiscation
- bullying
- drugs
- gangs
- use of reasonable force
- school trips
- behaviour outside the school gate.

**14 KEEP UP-TO-DATE:** The law is constantly changing. The current Exclusions Guidance is dated 2012, however the Government is updating this ...so watch this space!

Assimilate the raft of regular other relevant Advice documents from the DfE.

**15 SEEK ADVICE:** this is a complicated and fast-moving area so don't be afraid to seek advice – whether legal or otherwise – advice early on is always preferable and more cost-effective.

**TANYA CALLMAN** is a Barrister and Legal Trainer at *Edulaw Chambers* specialising in education law, particularly for schools and local authorities.

Consultant Editor to the Education Title of *Halsbury's Laws of England* (Fifth edition, published September 2015)

[www.edulawchambers.co.uk](http://www.edulawchambers.co.uk)