

Education or Exclusion? The challenges and tensions between school exclusions and children's rights

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Education or Exclusion? The challenges and tensions between school exclusions and children's rights

Feyisa Demie, Durham University

LSE, Department of Social Policy

Wednesday 7 February 2024

Outline

- 1. The scale of the School Exclusions problem-What does the data tell us?
- 2. Reasons for the rise in exclusions and ethnic and SEN disproportionality
- 3. Conclusions and policy implications





FEYISA DEMIE

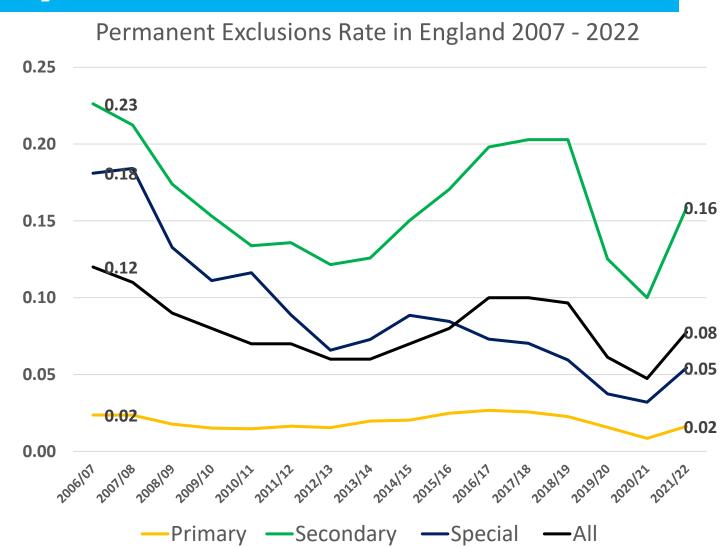
The Scale of The School Exclusions Problem - What does the data tell us?

- School exclusions are a hot issue in education.
- In recent years, there has been considerable concern among education policymakers, teachers, school leaders, parents, and communities about the growing numbers of exclusions and off-rolling in English schools.
- Permanent exclusions increased from 4,949 in 2013/14 to 6,495 in 2021/22
- Suspension increased from 269,475 to 578,280
- The permanent exclusions translates to an exclusion rate of 0.08%, or 8 out of every 10,000 pupils, and is an increase from previous years.
- There were 30,129 fixed-period exclusions in pupil referral units in 2021/22, up from 15,536 in 2013/14.
- Recent DfE (2021/22) data also shows schools rush to exclude pupils they are responsible for educating to alternative provision setting. Currently 13,191 pupils have been excluded in this way.

	Mainstream Schools			PRUs					
	Permanent		Fixed Period			Permanent		Fixed	
	Numb er	Rate (%)	Number	Rate (%)		Num ber	Rate (%)	Number	Rate (%)
2013/14	4,949	0.06	269,475	3.5	12,893	13	0.1	15,536	120.5
2014/15	5,795	0.07	302,975	3.88	13,583	17	0.13	19,409	142.9
2015/16	6,684	0.08	339,362	4.29	15,015	21	0.14	23,399	155.8
2016/17	7,720	0.1	381,864	4.76	15,669	21	0.13	25,815	164.8
2017/18	7,905	0.1	410,753	5.08	16,732	27	0.16	26,504	158.4
2018/19	7,894	0.1	438,265	5.36	16,134	36	0.22	30,831	191.1
2019/20	5,057	0.06	310,733	3.76	15,396	17	0.11	21,710	141
2020/21	3,928	0.05	352,454	4.25	12,785	16	0.13	17,802	139.2
2021/22	6,495	0.08	578,280	6.91	11,684	26	0.22	30,129	257.9

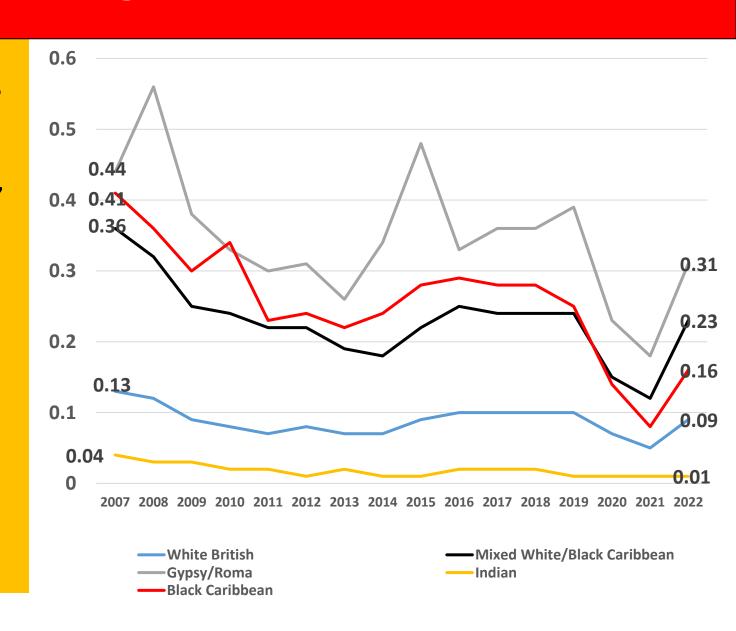
The scale of Permanent exclusion problems by type of schools in England (%) 2007-22

- The majority of permanent exclusions were found in the secondary sector. In 2021/22, there were 5,658 permanent exclusions from statefunded secondary schools, equating to 0.16% of the secondary school population.
- There were 758 permanent exclusions from state-funded primary schools in the same year, equating to 0.02% of the primary school population.
- There were 79 permanent exclusions from special schools, equating to 0.05% of the special school population.

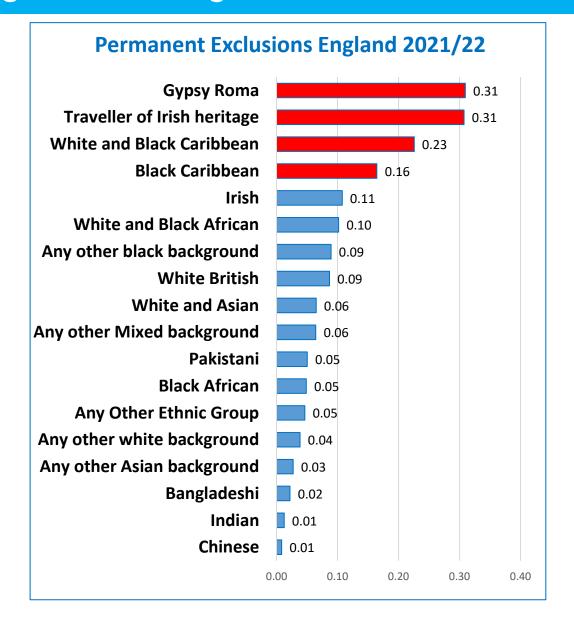


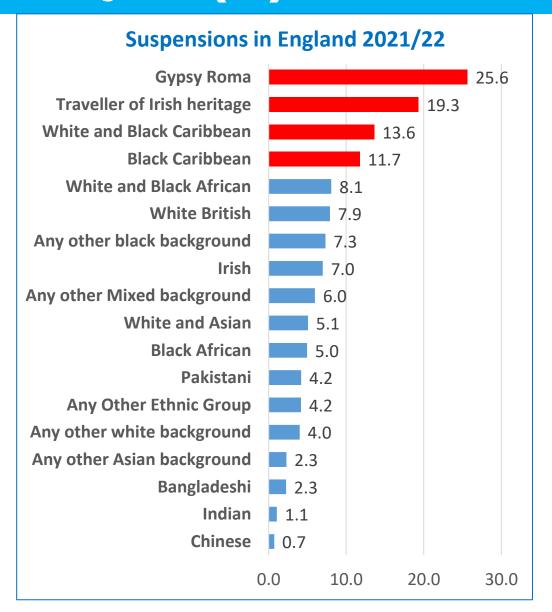
Ethnic disproportionality in school exclusions

- The Government data shows a worrying picture of disproportionality in school exclusions.
- Of particular concern is that of Black Caribbean, Mixed White Black Caribbean, and SEN pupils
- The empirical data also indicates that Black Caribbean pupils were more than three and a half times as likely to be permanently excluded as pupils overall and were twice as likely to receive a fixed-period exclusion
- Gypsy/Roma pupil exclusions are also about three times higher than that of the overall school population.



Permanent exclusions and fixed period suspensions by ethnicity 2020 to 2021 school year (%)





SEN and FSM disproportionality in School exclusions

		Permanent	Suspensions
FSM	FSM - Eligible	0.1	7.05
	FSM – Not eligible	0.02	1.71
Gender	Girls	0.02	2.09
	Boys	0.05	3.78
	EHCP	0.07	7.78
SEN	SEN support	0.12	8.16
	No SEN	0.02	1.94

Reasons for the rise in school exclusions: The views of school staff and governors

- The education market experiment
- 2. The league table factor
- 3. Austerity and funding cuts
- 4. Rising numbers of children with poverty
- 5. Fragmentation of the education system
- 6. Informal off-rolling

Several reasons emerged for rise in school exclusions:

- 1. Education market: The rise in school exclusions is a result of the education market
- 'The government has reduced state education in England to a quasi-market where children and their families are the customers' (Governor)
- 'Schools are judged on their national test and examination results, producing winners and losers. Headteachers and teachers either keep or lose their jobs, or communities keep or lose schools.' (Chair of Governors)

2. Austerity and funding cuts

- 'We are extremely concerned that this increase in exclusions is a result of the school funding crisis and cuts to local children's services.' (School Governor).
- 'I hear from the staff at school that there is no-one there to support the schools and families, because of budget cuts.' (Chair of Governors)
- 'Schools have had to cut back on the individual support they are able to give students, making it more difficult to provide early intervention and prevent behavioural problems from escalating.' Chair of Governors)

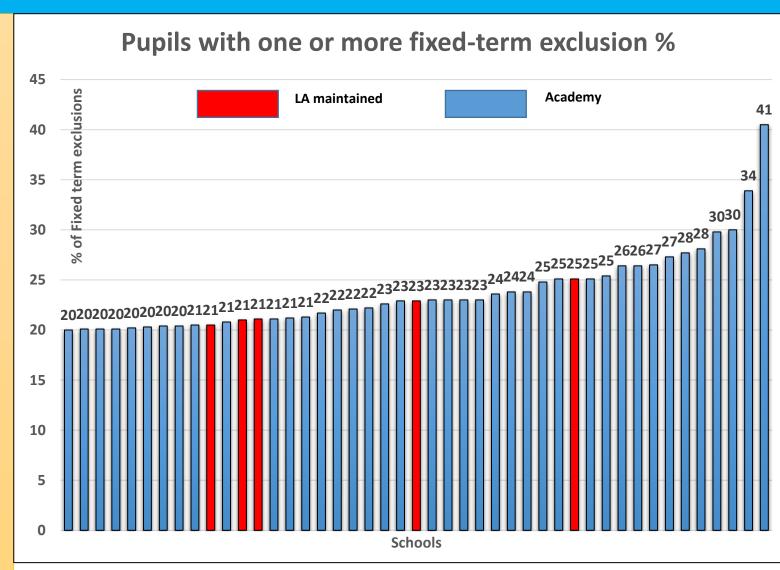
3. Rising numbers of children with poverty

- 'Over four million children in the UK were living in relative poverty. That's one in three.' (DWP, 2019)
- 'There are increasing numbers of children with these complex needs including child poverty; family problems.' (Headteacher)

Explaining the rise in exclusions?

4. Fragmentation of the education system in England

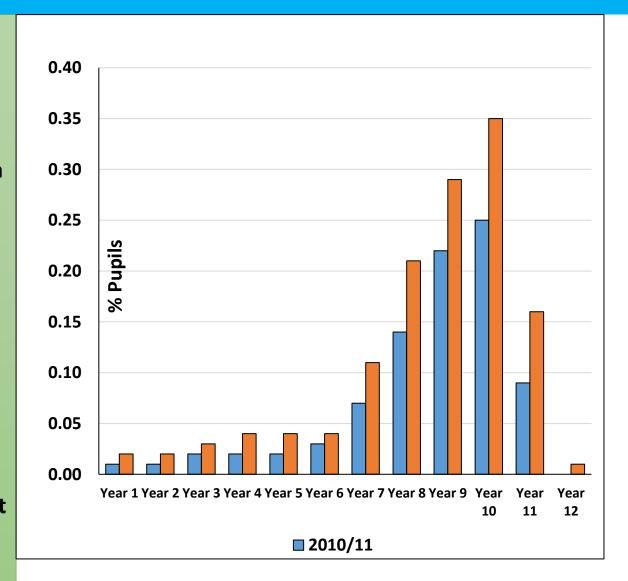
- Fragmentation of schools into academies and stat maintained schools accelerated exclusions
- 45 secondary schools suspended 20-40
 % of its school population. Of these 40
 are academies.
- One academy excluded 41% of its school population. This is unacceptable.
- 'Academy chains and academy PRUs are not accountable to local systems. As a result of fragmentation many students were excluded' (Parent of the excluded child)
- 'Academies are using exclusions to "improve" examination results. Many teachers note the use of exclusions in the GCSE period as a tool to push up the percentage of passing grades.' (Teacher)



Explaining the rise in exclusions?

5. Informal off-rolling:

- 1. This has now become a national debate as some secondary academies exclude to improve their GCSE results.
- 2. 19,000 pupils did not progress from Year 10 to Year 11 in the same state-funded secondary school, around 4% of the total (Ofsted, 2018).
- 3. Governors interviewed summarised their concern about off-rolling with a few words:
- 'Off-rolling is the single most destructive aspect of academies. This has resulted in increases in informal school exclusions.' (Chair of Governors C)
- 'Off-rolling is unacceptable.' (Chair of Governors B)
- 'Off-rolling is illegal and the government has failed to act (Governor D)



Conclusions and Recommendations

Conclusions

- There has been considerable concern about the growing numbers of exclusions
- Ethnic and SEN disproportionality in school exclusions is a national problem
- Academies have higher exclusion rates than local-authority-maintained schools
- Black Caribbean, Mixed White, and Black Caribbean, Gypsy, and Irish travellers represent the most excluded groups
- Reasons for the rise in school exclusions and disproportionality also suggested factors such as the education market and league table, fragmentation of the education system, informal off-rolling, and teachers' low expectations, institutional racism, lack of diversity, budget cuts, and poverty.

Tackling school exclusions- recommendations

- Off rolling concerns: DfE should review school league tables to stop schools using exclusions to boost GCSE results
- Lack of funding: Schools need more DfE funding to support pupils in schools and teacher recruitment.
- Managing behaviour problem: Schools should ensure teachers, SENCOS/school leaders have access to training
- Leadership challenges: Schools should develop a leadership team that is committed to diversity and equality
- Inclusion policy: Schools should develop a good inclusion and behavioural management policy that avoid exclusions
- Targeted intervention: Schools should provide early interventions and restorative justice practice to tackle exclusions
- · Alternative provision scandal: Children should be educated in schools. Schools should not rush to exclude pupils.

End of Presentation - Thank You.

QUESTIONS, CONTRIBUTIONS & COMMENTS?

Contact: Feyisa.Demie@dur.ac.uk

CHALLENGING SCHOOL EXCLUSIONS

Mathew Purchase KC



STANDARD PROCESS

- Main resources:
 - Section 51A of the Education Act 2002
 - The School Discipline (Pupil Exclusion and Reviews) (England) Regulations 2012
 - 'Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement: Guidance for maintained schools, academies, and pupil referral units in England'



STAGE 1: THE DECISION

- Headteacher
- Disciplinary grounds
- Guidance: permanent exclusion only where:
 - Serious breach or persistent breaches of school's behaviour policy and
 - Allowing the pupil to remain would seriously harm the education or welfare of pupils or others at the school
- Duty to inform without delay, including written notice to parent/guardian setting out:
 - duration of exclusion
 - reasons
 - right to make, and process of making, representations to the governing body



STAGE 2: GOVERNING BODY/TRUST BOARD

- Duty to consider representations but power to reinstate only applies to (a) permanent exclusions and (b) certain fixed-term exclusions (e.g. more than 5 days total in any term + representations)
- Function: decide whether or not pupil should be reinstated
 - Full reconsideration (note though the guidance suggests GB should consider 'whether the decision… was lawful, reasonable and procedurally fair')
 - Must consider interests and circumstances of pupil and others at school, and any representations
 - Should 'establish facts' on balance of probabilities
- Process: arrange meeting
 - Usually within 15 days
 - Parent/guardian allowed representation if requested
 - Ask for written evidence in advance
- Circulate 'bundle' at least five days before meeting if possible matrix@matrixlaw.co.uk +44 (0)20 7404 3447



- Duty to inform of decision and reasons without delay
- If decision is not to reinstate and the exclusion is permanent, must sent written notice setting out
 - right to apply to an independent review panel with details
 - right to make a claim under the Equality Act 2010

Issues:

- Relationship between GB and head teacher
- Obtaining relevant documents and other evidence, and in good time
- Organisation of meeting and securing a fair hearing
- Quality of evidence
- Anonymity of witness statements



STAGE 3: INDEPENDENT REVIEW PANEL

- Permanent exclusions only
- Function: review the decision of the GB
 - Must consider interests and circumstances of pupil and others at school, and any representations

Powers:

- uphold the decision of the GB
- 'recommend' that the GB reconsiders the decision
- applying judicial review principles, guash the decision and 'direct' the GB to reconsider it
- Direct GB to place a note on the pupil's record
- Order the LA to reduce school budget by £4,000 if, after a quashing direction, the GB does not reconsider or does not reinstate (?)



Process:

- Application within 15 days (from date of notice or conclusion of any Equality Act claim)
- Panel = lawyer, head teacher, governor
- Clerk
- SEN expert if requested (but cannot assess whether pupil actually has SEN)
- Hearing usually within 15 days
- Held in private unless otherwise directed
- Duty to inform without delay of decision with reasons

Issues:

- Composition/independence of panel
- Complexity of jurisdiction
- Limits on powers (cannot direct reinstatement, no fact-finding?)

Issues



DISCRIMINATION CLAIMS EQUALITY ACT 2010

- 'The Equality Act 2010 and schools: departmental advice' (quite old)
- Disability discrimination
 - Claim to First-Tier Tribunal
 - Six-month time limit but can be extended
 - Statutory definition of disability low threshold
 - Various claims available but most likely claim is 'discrimination arising from disability' (where reason for exclusion arises from disability, must be proportionate) or prior failure to make 'reasonable adjustments'



– Advantages:

- Clear legal framework
- Expertise of panel
- Closer scrutiny of decision than JR principles
- Fact-finding powers
- Greater remedy powers (including power to direct reinstatement or apology)
- Covers independent schools

– Disadvantages:

- Delay
- Greater formality



- Other forms of discrimination (e.g. race, sex)
 - Claim to county court
 - Six-month time limit but can be extended
 - Main claims: direct discrimination, indirect discrimination (where policy disadvantages group with protected characteristic, must be proportionate)
 - Advantages
 - Greater powers (can direct reinstatement and compensation)
 - Can appoint specialist 'assessor' to assist judge
 - Covers independent schools
 - Disadvantages
 - Delay
 - Costs
 - Much greater formality



MATHEW PURCHASE KC

Matrix Chambers
Griffin Building, Gray's Inn
London WC1R 5LN
DX400 Chancery Lane, London





EDUCATION OR EXCLUSION

Dan Rosenberg Partner – Simpson Millar LLP

Dan.Rosenberg@simpsonmillar.co.uk

Routes to exclude children from school/lessons

- Lawful permanent exclusion not only reason why children leave schools/are not in class.
 - Aim of talk to understand this.
- Many other methods:
 - Off-site directions
 - Managed moves
 - Suspensions
 - Isolation as sanction
 - 'Traditional' unlawful exclusions
 - Making life so miserable/untenable that children stop coming or parents pull them out (often linked to lack of support from school/other services for child's underlying problems).
- Less problematic
 - 'Relocation'
 - Temporary short term "removal" from lessons
 - Extra support/smaller group teaching



Off-site directions

- Permissible to direct a child off site to "improve their behaviour". Has to be for a specified period
 of time with a review mechanism and only to improve behaviour cannot be used as sanction.
 Primary legislation (s.29A Education Act 2002) and Regulations that govern its use in maintained
 schools. No legislation pertaining to academies...
- Now detailed guidance see para 36-47 Schools Exclusion Guidance 2023 and Alternative Provisions Guidance 2013 – Academies 'encouraged to follow' AP guidance.
- Often used as a mechanism to get child out of school permanently. Does not go on exclusion statistics. Often directed to Pupil Referral Unit (sometimes academy internal AP).
- Some parents will not agree to child going to a PRU end up dropping out.
- Often expectation from school that no return to mainstream, particularly for Years 10 and 11 children.
- Not aware of any proper analysis of data on this (characteristics of children off site directed/number who return to mainstream education and their characteristics).



Managed Moves

- Can be a good idea fresh start and permanent move to a new <u>mainstream</u> school, particularly when child has fallen into problematic company.
- Can only be done when in child's best interests. Needs to be with agreement of all concerned (including parents). Not – "It's a managed move. I'm the management, and your child's moving"
- Dealt with at paras 48-52 School Exclusions Guidance should not be abused. Cannot and should not arrange 'managed moves' to the local PRU (as happened in the past...)
- "Ofsted will consider any evidence found of a parent being pressured into a managed move that
 has resulted in off-rolling and is likely to judge a school as inadequate on the basis of such
 evidence."
- Still issues around managed moves 'failing' and child getting bounced back to original school for matters that would not normally lead to a formal exclusion.

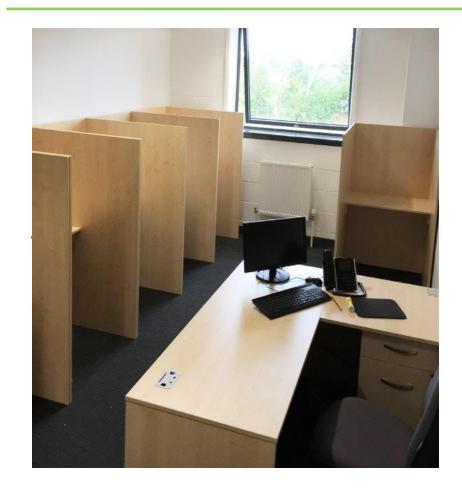


Suspensions

- Always been something that is there. Lots of data on it. Records kept and available. Significant disproportionality.
 - Class FSM as a proxy suspension rate for FSM eligible pupils four times that for non-FSM eligible pupils.
 - Pupils with SEN and no EHCP over four times more likely to be suspended than pupils with no SEN.
 - Gypsy/Roma children, Irish Traveller children four times more likely to be suspended.
 - Black Caribbean children and mixed race black Caribbean children twice as likely to be suspended.
 - Data published by ONS on a regular basis.
- Limits on total number of suspensions (45 days in year). 15 days in term triggers GB review.
- Hence attraction of Isolations/'Internal Exclusions' to achieve same effect (child out of lessons) as a suspension, but without headline statistics being impacted.



Isolation/Internal Exclusion







Isolation/Internal Exclusion

- Now termed 'Removal' in 2022 Behavioural Advice to Schools. Given different names in different schools but effectively the same.
- Children removed from classroom, and put in separate punishment room, normally with other similarly punished children.
- Supposed to be serious disciplinary sanction only. Supposed to be 'limited time'
- 2022 Behavioural Advice much better than previous lack of guidance para 79-88 and very sensible suggest all look at it. But isolation widely used in 'traditional' way to get 'difficult' children out of lessons (often for whole days or multiple days, set in advance)
 - Means of getting child out of class
 - Doesn't count towards termly/annual limits for suspensions.
 - Doesn't show up on central government statistics. Internal school matter only. Schools keep data see later.
 - Very cheap. Often up to 16 of children with highest needs in one room, and one person to supervise (often while doing other work).
 - Often serious mental health impacts acted for numerous children who have attempted suicide/MH deteriorated
- Unsurprisingly, if used repeatedly (particularly for neurodiverse children) makes them reluctant to attend/parents
 reluctant to send in if has significant impact on them.



"Traditional" unlawful exclusions

- "You need to withdraw your child otherwise I'll exclude him"
- "Your child can't return to the school otherwise I'll exclude them"

Now less common as a result of Ofsted Inspection Framework/ Schools Exclusion Guidance.

But still children regularly sent home after lunch/parents called to pick up/involuntary part time timetables (particularly for children with SEN).



Making life miserable/constructive exclusions

- Often relates to children with mental health problems/neurodivergent/with adverse childhood experiences (ACE)
 - Methods
 - Excessive sanctioning (particularly use of isolation).
 - No support/leeway in light of child's underlying conditions all children expected to conform to zero tolerance type environment some less likely to be able to than others.
 - Lack of support to children with mental health problems who are struggling to attend school.
 - Threat of prosecution of parents for non-attendance.
- Leads to both persistent absenteeism, and parents withdrawing children from school roll (often the former followed by the latter).
- School doesn't have to expend resources working with children who require most help can focus on others.
- To some degree consequence of collapse of SEN system/ability of local authorities to provide support to children in schools (both for resource based reasons, as well as barriers/blockages caused by academisation).
- Problem of children who are not attending externalised for the school previously headteachers and LA officers had same boss (Council Director of Education) now no longer the case with academies.



Less Problematic forms of 'exclusion'

- 'Relocation' as alternative to/step before 'removal'
 - Child 'relocated' from lesson to sit in another class in corridor and complete the class work set by the class teacher. Report back with work at end of lesson.
- 'Proper' use of removal
 - For minimum time/to enable dysregulated child to calm down and return to lessons later in day (at present most schools remove for rest of school day).
 - Never giving it as a sanction 'in advance' i.e. never sentencing child to a day of isolation.
- Extra support
 - In school units
 - Extra support/smaller group teaching
- Obviously, also other methods that remove need for child to be out of class in first place i.e. proper support for children with SEN (key)/understanding by school staff of trauma that children may have suffered/no discrimination.



DATA

- Schools keep <u>very</u> detailed data which can be broken down by ethnicity, FSM status, SEN status (proxy for disability), gender. Relates to all behavioural data not just exclusions/suspensions
- Should be analysed by schools and MATs
 - e.g. para 84/85 (removal) and paras 107-109 Behavioural Advice 2022.
 - Paras 108-111 School Exclusions Guidance 2023.
- NO explicit reference in guidance to Local Authorities reviewing this data/having any role. Missed opportunity
 given their interest they pick up pieces from exclusions/off-site directions/children not attending school. They
 have agreed to review when challenged.
- Areas for potential investigation.
 - Can compare schools within same academy chain.
 - Schools can even look at individual teachers in terms of sanctions.
 - Can use statistics to understand trends/outliers.
 - Can look at dual discrimination (e.g. Black children with SEN)
- Shouldn't really be a feeling that school is "racist/discriminating" empirical data can be tested. Same if concern about particular teacher.
- Collate and analyse data is collected issue is collating and analysing. Important from equality perspective.
- Plenty of interesting data sets/things for academics to look at



Excluded Lives

Costs of Exclusion

Kyann Zhang

07 FEBRUARY 2024

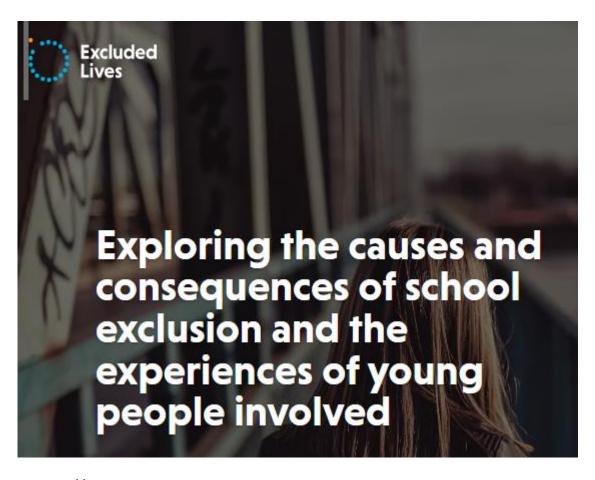






Excluded Lives





Excluded Lives is a multi-disciplinary project across the four jurisdictions of the UK

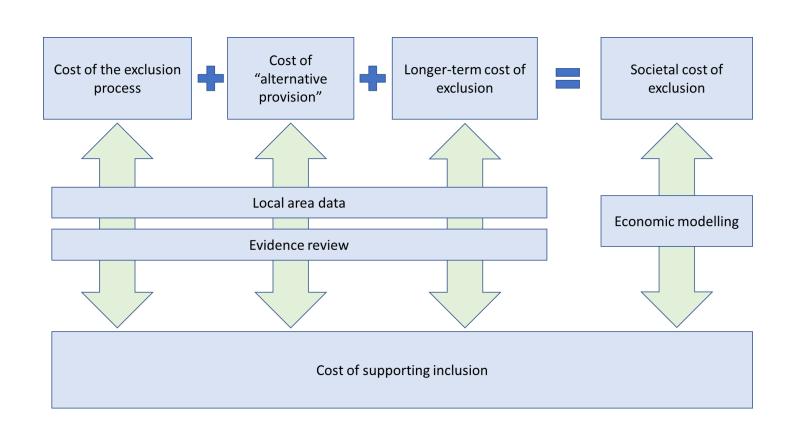
- University of Oxford
- University of Edinburgh
- Cardiff University
- Queens University Belfast
- London School of Economics
- Strand A: Landscapes of exclusion
- Strand B: Experiences of exclusion
- Strand C: Costs and Findings
 - C1: Economic costs of exclusion



The economic costs of exclusion



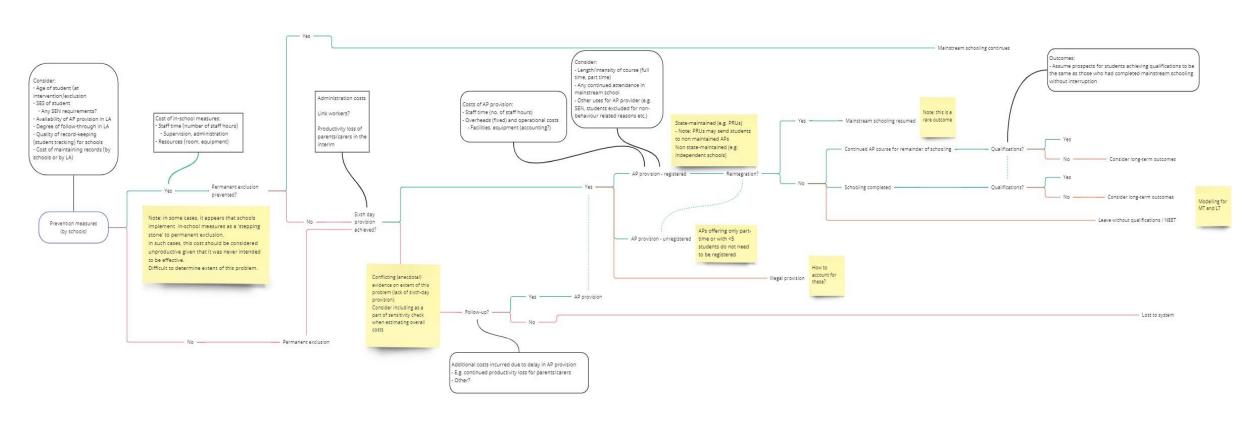
- Short-term:
 - Cost of the exclusion process
 - Cost of alternative provision
 - Costs to parents/caregivers
- Long-term costs: wider societal costs associated with negative outcomes that result from school exclusion
 - Unemployment / underemployment
 - Health / mental health
 - Criminal justice





Example pathways







Short-term costs



Case studies

- Informed by interview data collected as part of the Excluded Lives project
- Members of the project team in each jurisdiction compiled example 'exclusionary pathways'
 - Each case is a composite construction to protect individual confidentiality
- Supplemented by team members' prior knowledge of different processes (e.g. review panels, child planning meetings)
- Unit costs derived from publicly available sources (e.g. teacher pay scales, ONS)

Observations:

- Challenge to define a 'typical' pathway to exclusion
- Lack of information on time dedicated to activities related to school exclusion
- Existing studies do not take into consideration substantial time and involvement from parents/caregivers
- Question of how/which costs should be applied



Short-term costs



Example:

Note: measures prior to formal exclusion process

Question:

Are interventions achieving desired outcomes?

E.g. reintegration?Academic outcomes?Improved prospects?

What are the long-term outcomes?

Item	Participants	Duration	Cost
Monitoring and communication	Head of year (teacher)	2 hours per week over 25 weeks	£1,723
Monitoring and communication	Parent/carer	2 hours per week over 25 weeks	£1,064
Behaviour support	Pastoral manager	3 hours per week over 25 weeks	£2,662
Counselling	Counsellor	1 hour per week over 6 weeks	£117
Multi-Agency Safeguarding Hub (MASH) referral	Designated safeguarding lead	1 hour	£34
Children and Adolescent Mental Health Service (CAMHS) assessment	CAMHS	1 hour initial assessment plus 1 hour follow-up consultation	£700
Town ones, evolvei en 1	Parent/carer	2 days	£255
Temporary exclusion 1	Head teacher	2 hours	£137
Reintegration meeting 1	Parent/carer Head teacher Head of year (teacher)	2 hours	£248
	Parent/carer	5 days	£639
Temporary exclusion 2	Head teacher	2 hours	£137
Reintegration meeting 2	Parent/carer Head teacher Head of year (teacher)	2 hours	£248
Part-time alternative provision	Alternative provider	3 days per week over 8 weeks	£2,517

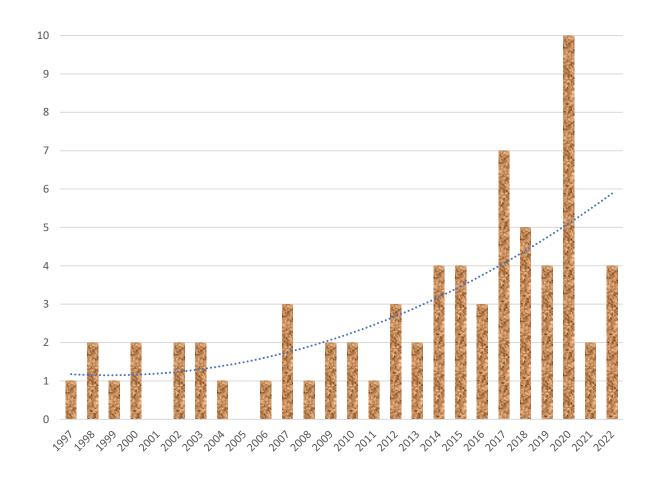


Long-term implications



Systematic review

- Outcomes from 12 months or longer after the exclusion takes place
- Studies from 1997 to 2002
- The majority (60%) of studies (n=63) were conducted in the US, followed by 27% from the UK.
 - Other countries included Australia (including joint studies with the US), Canada, New Zealand, Spain, and Chile.
 - The number of papers has increased steadily, particularly in the past decade
 - 70% published after 2012.





Long-term implications



School exclusion (in any capacity) is found to have adverse effects on all aspects of long-term wellbeing and associated behaviour, including:

Criminal justice: 23 papers

Education: 17 papers

Health/mental health: 11 papers

• Substance use: 10 papers

Antisocial behaviour: 5 papers

Employment: 2 papers

Other: 7 papers

Population	Individuals who have experienced school exclusion at any point during the years of their compulsory secondary education.	
Intervention	School exclusion in all forms - Temporary in-school or out-of-school suspension - Permanent exclusion (expulsion)	
Comparison	Individuals who have not experienced school exclusion	
Outcomes	Medium- and long-term effects	
Timeframe	Outcomes measure 12 months or longer after school exclusion	
	All papers with title and abstract available in English were included.	
Language	Where relevant papers are identified in languages other than English, appropriate steps have been taken to obtain a translation of the full text.	



Long-term costs



- Five papers (8% of total) provided estimates on the cost of school exclusion:
 - Estimates are heavily contingent on the assumptions regarding costed item, findings are highly context-specific
 - However, they provide insight into the potential scope of the issue in economic terms.
- Bagley and Pritchard (1998): average cost of exclusion for an individual excluded at age 12 was at least \$45,472 by the time
 they are 19.5 years old
- Parsons and Castle (1999): average cost £4,300 per year in replacement education, compared to £2,300 for mainstream schooling; mean cost to other services was £1,024 per year
- Brookes, Goodall et al. (2007): cost of lost earnings due to poor qualifications, and costs to society in terms of health, crime, and social services, based on an average age of 12.5 at the point of exclusion and calculated over the **lifetime**; they estimate the average excluded child costs **£63,851**
- Rumberger, Losen et al. (2016): comparing consequences of students dropping out of high school to those who did not, taking the perspective of an 18-year-old student over their **lifetime**, including earnings, involvement in the criminal justice system, and personal health. Social impact of each dropout to be \$578,820 in California and \$474,570 in Florida, which translated to USD6.2billion and USD1.6billion respectively



Further research



- Future study design:
 - Collection of data regarding resource use
 - Incorporate at the interview stage
 - Overarching frameworks on accounting for costs
- The 'path not taken'?
 - Cost of not excluding
- Outcomes of staying in mainstream school

- Long-term follow-up:
 - Measuring effectiveness (and cost-effectiveness)
 - How to define 'success' of interventions?
 - This is needed to better allocate resources

Thank You







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