

Consultation on Giving Children and Young People a Right to Appeal

Consultation Response Form

The closing date for this consultation is: 28 July
2009

Your comments must reach us by that date.

department for
children, schools and families

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name Anne Pinney, Assistant Director
Organisation (if applicable) Barnardo's Policy & Research Unit
Address: Tanners Lane
Barkingside
Ilford
Essex IG6 1QG

If your enquiry is related to the policy content of the consultation you can contact the Public Communication Unit on

Telephone: 08700 00 22 88

e-mail: info@dcsf.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794 311

e-mail: consultation.unit@dcsf.gsi.gov.uk

Please tick the box that best describes you as a respondent.

<input type="checkbox"/> Children and Young People	<input type="checkbox"/> Parent/Carer	<input type="checkbox"/> Governing Body
<input type="checkbox"/> Local Government	<input type="checkbox"/> Teacher/School staff	<input type="checkbox"/> Teaching and Support Unions including professional bodies
<input type="checkbox"/> Associated Representative Organisations	<input checked="" type="checkbox"/> Voluntary Sector	<input type="checkbox"/> Independent appeals panel/First-Tier tribunal members
<input type="checkbox"/> Other		

Please Specify:

As a leading children's charity, Barnardo's works directly with over 100,000 children and their families every year. We run 394 services across the UK for vulnerable and disadvantaged children, young people and their families. About two-thirds of Barnardo's services involve education, including:

- children's centres, parenting programmes and other early years services
- alternative provision for young people excluded or at risk of exclusion
- vocational training and work-based learning for 14-19 year olds
- special schools for children with social, emotional and behavioural difficulties.

Barnardo's support services include parenting and family support, specialist behaviour advice and support, therapeutic services and targeted support for groups such as young people with learning difficulties, mental health difficulties and care leavers.

Barnardo's Policy and Research Unit seeks to drive improvements in policy and practice for the young people we serve, learning firsthand from their experience.

Permanent Exclusions

1 Do you agree that a young person should be able to appeal their permanent exclusion from schools at ages 16 and 17?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
---	-----------------------------------	-----------------------------------

Comments:

Barnardo's strongly supports giving young people the right to appeal their permanent exclusion from school, in line with the recommendations of the UN Committee on the Rights of the Child. However, we recommend that this right should be available at a younger age than 16 - we suggest it should apply to all young people of secondary school age, in line with the approach in Scotland and Wales.

Failure to extend this right to young people aged 12-15 would exclude the vast majority of those permanently excluded, undermining the value of this policy change. DCSF estimates for 2006/07 show that the number of permanent exclusions at age 16 or 17 was only 60, compared to over 7000 for young people aged 12-15 (who account for 83% of all permanent exclusions).

To extend this right only to young people aged 16+ could justifiably be seen as a token gesture in response to the UN Committee on the Rights of the Child recommendations, continuing to deny the great majority of young people affected a right of appeal.

2 Do you think that a leaflet or guidance note aimed at young people explaining how they can appeal their permanent exclusions would be helpful?

X Yes

No

Not Sure

Comments:

A leaflet would be helpful, as a minimum. This should be developed in consultation with young people to ensure that it is written in an age-appropriate way. We also recommend that other media be developed, which may be more accessible to young people - such as a DVD explaining the process and a website, developed in partnership with young people.

All such information should direct young people towards sources of advice and support available to them during the exclusions process.

3 Do you consider that there is sufficient support currently in the system to support a young person through the process of appealing?

Yes

No

X Not Sure

Comments:

Probably not, as this is a new right of appeal. We would recommend that young people should be able to access support from an independent advocate, able to advise on their rights and provide support at appeal hearings. Most local authorities already provide advocacy services (often contracted out) so this could be an extension of their role.

4 What type of support might a young person need to make an appeal?

Comments:

As above – we would recommend support should be available from an independent advocate.

Ideally, this person should be independent of both the school and the local authority and have expertise in children's rights and advocacy.

5 Will vulnerable young people require additional support? If so what should that be?

X Yes

No

Not Sure

Comments:

As above – Barnardo’s would recommend that any child wanting to appeal should have access to an independent advocate.

This should be guaranteed for vulnerable young people, as a minimum – including young people who are looked after by the local authority, children with SEN, asylum-seeking children and children who do not speak English as a first language.

The additional support required will vary according to the individual’s needs. For example, some young people will face communication barriers due to hearing or speech impairments, or having English as an additional language. Some may have learning difficulties, so will require more support to ensure that they have fully understood the proceedings, choices open to them and the implications of decisions. Some may require social and emotional support through what may be a very stressful process.

Looked After Children

6 What support would best help a child living with foster carers or in a children's home to avoid or appeal permanent exclusion?

Comments:

Children in care can be vulnerable to stigmatisation and bullying, particularly if they have frequent moves of school, and this can trigger behaviour which ultimately leads to their exclusion. There should be structures in place to ensure that schools understand the care system and the needs of individual children placed with them, and that every effort is made to ensure that children are not stigmatised, stereotyped or bullied because of their care status. Barnardo’s recommends that schools should pay particular attention to children in care in their **anti-bullying policies**, in the same way they would include racist or gender-based bullying.

The **package of support** made available to looked after children should include resources to ensure that they do not feel ‘out of place’ at school – for example, they should have the right equipment, clothing and funding for after-school activities and trips that other children rely on their parents for. Looking different and not being able to join in the same range of activities can give rise to isolation and bullying.

When children in care appeal a permanent exclusion they should be fully supported by an independent professional. It is not appropriate to expect this role to be fulfilled by frontline care or social workers – who may not have the

necessary time or skills and who may feel there is some conflict of interest, as employees of the local authority concerned. We would therefore suggest that there should be a requirement for children in care to have automatic access to an **independent advocate** (as they do for complaints) when they are permanently excluded.

Every effort should be made to ensure that looked after children are **reintegrated to school (or an appropriate placement) as soon as possible, following their exclusion**; the recent Ofsted report (May 2009, *Day six of exclusion*) showed that many schools and local authorities struggle to meet the requirements of the Education and Inspections Act 2006 to provide suitable full-time education from the sixth day of exclusion. Long-term reliance on home tuition or a place in a Pupil Referral Unit is not a satisfactory alternative, denying young people access to the full curriculum offer and the wider activities and social opportunities available at school.

Finally, Barnardo's would recommend that for all children, but particularly for vulnerable children like those in the care system, **early intervention** is offered to address emerging difficulties, which may ultimately lead to exclusion. This should include involving parents and/or carers, and if difficulties continue to escalate, **early consideration of a 'managed move'** to another institution which may better meet that child's needs than the current school; it is critical that the young person should be actively consulted in this process.

7 Is the existing guidance for looked after children - that exclusion should only be used as a last resort - being implemented effectively?

Yes

No

Not Sure

Comments:

Looked after children are still far more likely to be permanently excluded from school than others, suggesting that practice continues to fall short of policy expectations. In 2008, the rate of permanent exclusion for looked after children stood at 5 times that of all children (SFR 07/2009).

We recommend that research should be carried out to learn from practice in local authorities and schools which have significantly reduced permanent exclusions of looked after children in recent years – encouragingly, numbers have fallen significantly, from 280 permanent exclusions in 2006 to 170 in 2008. This may also yield lessons to drive improvements in practice with other vulnerable groups.

8 What should the Independent Reviewing Officer be doing in order to ensure that the wishes and feelings of the child/young person are taken into account by the local authority?

Comments:

Barnardo's is concerned that independent reviewing officers (IRO) are frequently employed by the local authority, and that their role in representing the views of children can be compromised by their status as an employee.

We believe that **all looked after children should have access to professional independent advocacy** in order to ensure that their views are taken seriously, as required in law. A professional independent advocate makes sure that children understand what is happening to them, helps them to navigate the system and supports them to understand their rights and ensure that they are met.

There is also a strong argument that independent advocacy provides the representation necessary for the child under human rights law to ensure procedural safeguards in decisions concerning the child's welfare.¹ The purpose of independent advocacy is fundamentally different from that of the IRO. The expression of the child's views in the decision-making process by an IRO who is responsible for facilitating its outcomes is quite distinct from the representation of those views by an advocate who is independent of that process. There is a strong argument to say that under human rights law, natural justice requires the child to be independently represented in decision-making about their private and family life. As Mr. Justice Munby has said:

*'Article 8 imposes procedural safeguards which impose on administrative decision-makers whose decisions impinge on private or family life burdens significantly greater than I suspect many of them really appreciate. And the burden may extend in some circumstances not merely to **permit** representation but even to **ensure** that parents – and particularly children - are properly represented when decisions fundamental to the children's welfare are being taken.'*²

In other words, using the analogy of court proceedings, those who are making a judgment about the child's welfare cannot also argue the child's case.

9 Within the context of its duty to promote the educational achievement of the children it looks after, what other services should a local authority provide to

¹ Munby J, (2004) Family Law, and see www.voiceyp.org

² Article 8 of the European Convention on Human Rights and Freedoms as incorporated in the Human Rights Act 1998

prevent these young people from being excluded from school, including support for foster carers and children's homes?

Comments:

Please see answer to question six, above.

Beyond this, Barnardo's would like to see **more support made available to foster carers and residential workers out of normal working hours** - immediate access to advice and support should be available to foster carers, residential workers, children and young people themselves. Local emergency duty social work systems are not resourced to provide direct intervention unless there is significant risk, but timely support could prevent an escalation of crisis situations which can result in placement breakdown.

Foster carers tell us that timely (and if necessary, immediate) access to advice and support could have more impact on their ability to continue with individual placements and in their role as carers more generally, than financial remuneration. While this may not seem to be directly relevant to education and the issue of permanent exclusion, crisis situations at home and placement breakdown can impact seriously on children's behaviour in school.

10 Is it sufficient to strengthen the local authority role in preventing exclusions, or are changes in legislation required to give looked after children of secondary school age the best chance of reducing permanent exclusion?

Yes

No

X Not Sure

Comments:

We are concerned at the degree of discretion that individual schools have in defining 'last resort' in relation to permanent exclusions. While the measures put forward in *Care Matters* to managing poor behaviour and disseminating good practice are welcome, we believe that regulation and possibly legislation is necessary to define clearly 'last resort'. As highlighted in our response to question 7 above, looked after children remain five times more likely to be permanently excluded than others.

Consideration should be given to **requiring schools and the local authority to make a 'managed move'** – in close consultation with the child and their parents or carers - where it becomes clear that the school is no longer able to meet the needs of a child who is looked after and the situation appears to have broken down irretrievably, rather than resorting to permanent exclusion. This could involve placing a duty on other local providers to cooperate in this process and to act in accordance with the best interests of the child.

SEN Assessments and Statements and Disability Discrimination

11 Do you agree that children and young people should be able to appeal decisions on SEN statements and assessments and make disability discrimination claims to the Tribunal?

Yes

No

Not Sure

Comments:

Barnardo's would welcome the strengthening of children's right to be heard during the SEN assessment and 'statementing' process and in respect of disability discrimination claims.

Under the SEN Code of Practice (2001) local authorities should seek the views of children and young people as part of the statutory assessment process, but this is not a required element of the statement – while parental evidence must be appended, there is not the same clarity around children's views.

Statements have important implications for a child's education – specifying the special provision to be made for them and where they will go to school. Similarly disability discrimination is liable to limit a child's access to education, their capacity to be fully included in the life of the school and to benefit as fully as possible from the education on offer. These are important issues on which children should have the right to have their voice heard.

12 What would be the appropriate age for a child or young person to make such an appeal or claim? Options include:

Secondary school age

12 and above as for disability discrimination claims, as in Scotland

16 and 17 as for additional support needs (SEN) appeals as in Scotland and as for admissions in England

Other

Comments:

Secondary school age – we recommend this should be the consistent approach across all the appeal processes being considered in this consultation.

13 Should a competency test be applied, and in what circumstances?

Yes

X No

Not Sure

Comments:

Barnardo's would oppose a competency test, which would undermine the right of some children and young people – possibly an arbitrarily defined group - to express their views and make choices which could affect not only their education but their life-chances.

If young people have learning difficulties, then they need to be supported to ensure that they fully understand the proceedings and the implications of any choices they make. We urge you to seek expert advice from the Special Education Consortium and Council for Disabled Children on these issues.

14 If using a competency test who should make this judgement and what measures of competency should be used?

Comments:

We oppose a competency test.

15 Is there sufficient support currently in the system to help a child or young person through the process of appealing or making a claim of disability discrimination and to attend First-Tier Tribunal hearings?

Yes

No

X Not Sure

Comments:

As for the exclusions appeals, it seems unlikely that adequate support is there if young people have not have this right before.

16 What support do you think children and young people would need to help make these appeals and claims?

Comments:

Access to an independent advocate ideally, as for the other types of appeals. Most local authorities already provide advocacy services (often contracted out) so this could be an extension of their role.

In addition, parent partnership services may be well placed to advise and support children in the initial stages, so long as they were mindful of the need to be independent in their advice.

Young people with SEN or disabilities may need specialist support through the process, for example, if they have sensory, learning or communication difficulties which present barriers to communication or comprehension.

Support for Appeals on Admissions Decisions

17 Is there sufficient support currently in the system to support a child through the process of appealing?

Yes

No

X Not Sure

Comments

As for the other types of appeal considered in this consultation, it seems unlikely that adequate support is there if young people have not have this right before.

18 Do you think young people would need support to appeal about an admission decision? If so what kind of support would be needed?

X Yes

No

Not Sure

Comments:

As for the other types of appeals, we suggest access to an independent advocate. Most local authorities already provide advocacy services (often contracted out) so this could be an extension of their role.

19 Will vulnerable young people require additional support? If so, what would that be?

Yes

No

Not Sure

Comments:

Please see answers to questions 5 and 16.

Regulatory and Equality Impact Assessments

20 Do you agree with the costs and impacts set out in the impact assessments? Further evidence from stakeholders is welcome.

Agree

Disagree

Not sure

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply X

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

XYes No

All DCSF public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DCSF consultations are conducted, please contact Phil Turner, DCSF Consultation Co-ordinator, tel: 01928 794304 / email: phil.turner@dczf.gsi.gov.uk.

Thank you for taking time to respond to this consultation.

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 21 July 2009

Send by post to:
DCSF
Consultation Unit
Area Ground B
Castle View House
Runcorn
Cheshire
WA7 2GJ

Send by e-mail to: ypappeals.consultation@dczf.gsi.gov.uk