



Consultation response

‘Giving children and young people a right to appeal’

Submitted to the Department for Children, Schools and Families

July 2009

About Children England

Children England is the leading membership organisation for the children, young people and families voluntary sector. With member organisations working in all parts of the country, ranging from small local groups to the largest household names in children’s charities, Children England is in a unique position to use the collective voice of the voluntary sector to achieve positive change for children. Children England provides capacity building, support and information to its members and the wide range of voluntary sector organisations working with children, young people and families. It does this by building active networks, promoting good practice, stimulating policy debate and ensuring that the issues that matter most to its members are taken up with decision makers.

Introduction

This response to the Government’s consultation on giving young people a right to appeal has been produced by Children England. Our response has been directly informed by the experiences, information and viewpoints member organisations have fed into us on this important issue.

Our voluntary sector membership has considerable expertise in supporting children and young people to get their voices heard on issues that affect them, and to encourage young people and their families to be a crucial part of decision-making process undertaken by statutory agencies. Many of our member organisations work to support and champion some of the most vulnerable children in society including looked after children, those with special educational needs (SEN) and disabilities.

This response does not attempt to answer every question in the consultation but instead focuses largely on how better to support children and young people to make use of and understand the appeals process.

Principle of giving young people aged 16 and over the right to appeal a decision to permanently exclude them from school

Children England believes that to truly reflect the principle and spirit of the United Nations Convention on the Rights of the Child (UNCRC) young people must be given a right to appeal against school exclusion. Many member organisations feel that the right to appeal against permanent school exclusion should be available from a much younger age than 16. Young people have a right to be heard, particularly on an issue such as school exclusion where the consequences have potentially life-long implications. Many member organisations have argued that if a young person is able to communicate and understand what exclusion is, then they should be able to appeal.

In addition, the ability to appeal against a school exclusion may well have positive benefits for the young person above and beyond the issue in hand. By appealing young people may be encouraged to take responsibility for their actions and explain their behaviour/ the situation and any mitigating circumstances from their perspective – which might be very different from the perception of the adults involved. It may also provide young people with an experience of dealing with people in authority in a structured/ formal way and trying to influence their own situation rather than relying on adults to address their situation. If done well and with appropriate support this may provide a good exercise in citizenship and participation. The appeals process may also encourage young people to reflect on the situation after the ‘heat’ of the initial event has calmed down.

Looked after children

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

Children England is deeply concerned with the continuing high levels of permanent exclusions amongst the looked after population, despite the introduction of the Care Matters programme. This points to some profound problems that are intrinsically linked to the wider lack of support for children and young people in the care system from emotional support, to help with education and employment. To avoid looked after children being permanently excluded, these key issues need addressing:

- too many young people's lives are characterised by instability – placements regularly breakdown, there is a lack of continuity in relationships between young people and the people they need to support them;
- young people in care spend too much time out of school or other place of learning as looked after children are often ‘written off’ from a young age, with little encouragement from school staff to engage them in education;
- looked after children are often not able to experience after school activities, have access to computers and the internet

- looked after children do not have sufficient help with their education if they get behind and few people in the statutory sector are there to champion their needs;
- Carers are not expected, or equipped, to provide sufficient support and encouragement at home for learning and development; and
- looked after children need more help with their emotional, mental or physical health and well-being.

Many children and young people in the care system have suffered serious trauma before entering care, but the education system is ill-equipped to take this into account. Unless these profound issues are addressed it is likely that looked after children will continue to be left behind in education and at high risk of permanent exclusion.

Children England strongly supports giving looked after children, alongside their peers, the right to appeal against school exclusions. However the age must be lower than 16 and distinct mechanisms will be needed to support looked after young people in this process. Children England members, in consultation with young people have suggested the following as ways to avoid permanent exclusion and support an appeal process:

- There must be greater early intervention from Social Inclusion Teams as soon as problems arise in school with behaviour, attendance or attainment.
- Greater support for school staff including more training for staff on understanding the issues young people in care face.
- Greater access to advocacy is crucial.
- Greater access to 'catch up lessons' or private tuition to ensure young people do not irreparably fall behind.
- Young people should have a choice about who represents them and have access to peer representation.
- A pool of independent listeners allocated to regional areas to support young people going through the appeal process should be developed.

Equally, many organisations raised the problem of schools using informal or fixed term school exclusions with regard to looked after children. It was felt that these mechanisms offer no real redress, leading to young people falling behind quickly which compounds a sense of alienation from their school, education and peers.

Principle of giving children and young people the right to appeal special educational needs (SEN) statements and assessments and to make claims concerning disability discrimination.

Children England and its membership believe that in principle it is right that children and young people have the right to appeal on SEN statements and assessments and to make disability discrimination claims. However, it is important that each case is assessed individually as to whether a child or young person is able to understand the

process and able to cope with the demands that it necessarily places on them. In this case, having an age criteria to lodge an appeal seems arbitrary. However, what is clear is the need for independent advocates to support the young person in undertaking this process. It is equally clear that as each case and each child will have differing levels of need, the type of support will also need to be individually tailored. There will need to be specialist support and informal training which enables a young person to engage fully in this process. Moreover, it will be imperative that those hearing and assessing the appeal receive training on engaging with young people, and on the complex circumstances that may arise during an appeal looking at SEN or disability discrimination.

Are existing systems sufficient to support children and young people in exercising these rights.

The overwhelming response from our membership is that current systems are not sufficient to support a young person exercising their right to appeal. The current appeals system works on adult-time, based on adult-provided information and does not currently provide children and young people with the belief that they are being served fairly and seriously. To address this there needs to be a sustained effort to:

- Provide easily accessible information in a range of formats to children and young people on the appeals process, their rights and entitlements.
- Ensure there are independent advocates, available, accessible and well-supported in every local authority in the country.
- Increase access to peer representation.
- Assess those sitting on appeals panels on their ability to relate to young people alongside the more practical and legal aspects of an appeal process.
- Train school staff on understanding the appeals process and on how to support young people engaged in it.
- Raise the profile of a young person's right to appeal, complain and comment on statutory services more widely.
- Make the appeal process more accessible and understandable to parents and carers.

The consultation document also ignores the very important role of school governor in the appeals process. They are a crucial part of the system, and as such they must receive specialist training if the existing appeals system is to change. Any training must raise the profile of a child's right to appeal and be grounded in a more wide-ranging understanding of children and young people's rights.

Children England is keen to work with Government during the consultation and implementation stage on this important issue. We would be happy to facilitate engagement between key policy makers and member organisations who have contributed to our response and who are actively engaged on this issue.

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