UNIVERSITY OF BIRMINGHAM
University of Birmingham Research at Birmingham

Illegal school exclusion in English education policy

Whitehouse, Megan

DOI:
10.1080/13632752.2022.2092274

License:
Creative Commons: Attribution (CC BY)

Document Version
Publisher's PDF, also known as Version of record

Citation for published version (Harvard):
Whitehouse, M 2023, 'Illegal school exclusion in English education policy', *Emotional and Behavioural Difficulties*, vol. 27, no. 3, pp. 220-230. https://doi.org/10.1080/13632752.2022.2092274

Link to publication on Research at Birmingham portal

General rights
Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

•Users may freely distribute the URL that is used to identify this publication.
•Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
•User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
•Users may not further distribute the material nor use it for the purposes of commercial gain.

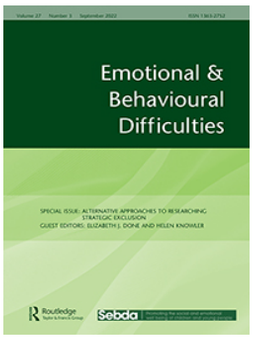
Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

Take down policy
While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact UBIRA@lists.bham.ac.uk providing details and we will remove access to the work immediately and investigate.

Download date: 10. Nov. 2026



Routledge
Taylor & Francis Group

Emotional and Behavioural Difficulties

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rebd20

Illegal school exclusion in English education policy

Megan Whitehouse

To cite this article: Megan Whitehouse (2022) Illegal school exclusion in English education policy, Emotional and Behavioural Difficulties, 27:3, 220-230, DOI: 10.1080/13632752.2022.2092274

To link to this article: https://doi.org/10.1080/13632752.2022.2092274

© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.

Published online: 13 Feb 2023.

Submit your article to this journal

Article views: 174

View related articles

View Crossmark data

Full Terms & Conditions of access and use can be found at
https://www.tandfonline.com/action/journalInformation?journalCode=rebd20

EMOTIONAL AND BEHAVIOURAL DIFFICULTIES
2022, VOL. 27, NO. 3, 220–230
https://doi.org/10.1080/13632752.2022.2092274

Routledge
Taylor & Francis Group

OPEN ACCESS Check for updates

Illegal school exclusion in English education policy

Megan Whitehouse

School of Education University of Birmingham, Birmingham, UK

ABSTRACT

This article draws upon legislation, policy, guidance and recently published research in order to explore why illegal exclusion, sometimes known as off rolling, is an under-researched area of education, and what the most significant barriers are to gaining a clearer understanding of the scale of, and reasons behind, the practice. In doing so, the article draws attention to policy obfuscation, inconsistent definitions and a desire to 'name and shame' offending schools. Furthermore, the contention is that school exclusion policy and safeguarding policy are not aligned, which means that many children, particularly those who are statistically more vulnerable to exclusion are denied their right to both education and to be kept safe from harm. I conclude by arguing that a shift in priorities, away from punishment and towards upholding safeguarding legislation, is required.

KEYWORDS

Off rolling; exclusion; policy; safeguarding

Introduction

Illegal exclusion from mainstream schools in England is a chronically under-researched area of education. This article draws upon key legislation, policy and guidance concerning both school exclusion and safeguarding, as well as recently published research on this topic to explore why this may be the case, and what the most significant barriers are to gaining a clearer understanding of the scale of, and reasons behind, illegal exclusion. In doing so, tensions are highlighted between the pressure for mainstream schools to ensure the inclusion and safeguarding of all pupils while navigating the quasi-market, illustrating how the illegal exclusion of pupils is embroiled in a perfect storm of cuts to key support services (Davies, Diamond, and Perry 2021), dominance of a punitive discourse in behaviour policy (Thompson, Tawell, and Daniels 2021; Ferguson 2021), and variations in the definition of what means to illegally exclude a child from school, combined with a lack of awareness of the law (CCO (Children's Commissioner's Office) 2013; Timpson 2019; Ofsted 2021a). This article argues that school exclusion policy and safeguarding policy are not aligned, which means that many children, particularly those who are statistically more vulnerable to exclusion are denied their right to both education and to be kept safe from harm (Porter 2016; Davis and Marsh 2020). The failure to align safeguarding policies with exclusion policies in a system riddled with perverse incentives to exclude (Thompson, Tawell, and Daniels 2021), increases the risk of vulnerable children and young people becoming 'collateral casualties of policy' (Thompson, Tawell, and Daniels 2021, 42). Struthers (2021) claims that this situation is not helped by the fact that the current safeguarding training given to teachers both pre-service and as continual professional development fails to incorporate human rights education, therefore preventing teachers from being empowered to act by a legal knowledge of human rights. Such an argument serves to illustrate a potential solution to the policy disconnect that is referred to throughout this article. In addition, the article

CONTACT Megan Whitehouse mxw851@student.bham.ac.uk

This article has been republished with minor changes. These changes do not impact the academic content of the article.

© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.
This is an Open Access article distributed under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

explores the presence of policy obfuscation, where the very guidelines that are supposed to ensure the legal exclusion of pupils from school fail to provide an agreed, consistent definition on what an illegal exclusion is and the circumstances in which it may occur (DfCSF (Department for Children, Schools and Families) 2008; Timpson 2019; Ofsted 2021a) – leaving the children and parents who are vulnerable to this process in, what Robert Halfon MP (Con) described as, a 'Wild West of exclusions' (TES 2018, para.13). While large scale quantitative data is limited on the topic of illegal exclusion/off-rolling we do know that it is children and young people who belong to most vulnerable groups who are most likely to be impacted by this practice (Hutchinson and Crenna-Jennings 2019) and swept up in this seemingly simple, but in reality very complex, legal tangle surrounding the use of school exclusion.

Illegal school exclusion/off-rolling in England

The true nature and extent of illegal exclusion from school in England is currently unknown however, articles published in the media do allow for an insight into the reasons why illegal exclusion occurs. In 2017, the Guardian published a story which detailed how a top performing grammar school located in Orpington, London had illegally excluded sixteen pupils who did not perform as well as they were expected to in their AS levels. By issuing illegal exclusions, the school prevented these pupils from obtaining their full A level at the school while ensuring the best possible league table result for the school itself. The article goes on to reveal that issuing illegal exclusions for the purpose of maintaining/obtaining excellent league table results is not uncommon amongst high achieving grammar schools, naming at least one other institution where this practice was rumoured to have occurred (Weale 2017). More recently, in 2021, the Telegraph and Argus reported that schools in West Yorkshire were attempting to obtain Education, Health and Care (EHC) plans for low achieving students in order to ensure their grades did not contribute to the schools league table results – some schools were also 'trying to get them into other settings' (Beecham 2021b, para. 8). Reports of these illegal exclusions for the purposes of manipulating league table positions prompted Leeds City Council to launch an investigation into off-rolling in their jurisdiction (Beecham 2021a). In addition, media articles also provide insight into how schools engaging in the process of off-rolling are reprimanded. In 2019, the Times Educational Supplement challenged Ofsted's consistency in reporting off-rolling when it was revealed that of two schools found to be illegally removing pupils from the school roll, only one was downgraded to Requires Improvement (Roberts 2019). When questioned about this, Ofsted stated 'The report speaks for itself and we have no further comment to make' (Roberts 2019, para.12). Furthermore, in 2021, Schools Week reported that three academy leaders had been found guilty of serious misconduct relating to historic off-rolling occurring between 2013 and 2016 which, again, involved the removal of pupils from the school roll for the purposes of improving/maintaining league table results (Belger 2021).

In an attempt to address this issue, Ofsted commissioned YouGov to conduct a survey of 1,018 teaching professionals in an attempt to establish what people considered off-rolling to be and how widespread the practice was in English schools (Ofsted 2019a). Ofsted followed up this survey with a blog post which detailed how they identify and report off-rolling when inspecting schools (Owen 2019). Despite this, Ofsted have since admitted that, due to linguistic variations in Ofsted reports, some instances of off-rolling were not flagged and therefore, were not investigated (Roberts 2021).

Timpson review of school exclusion

The Timpson Review arose from the Race Disparity Audit (Cabinet Office, 2017) in which exclusions were highlighted as a specific site of racial inequalities within education. The audit was commissioned by then Prime Minister, Teresa May, who in 2016 spoke of the 'burning injustices' present in the UK; specifically referencing the disproportionate exclusion of Black Caribbean boys (BBC News, 2016). Timpson's review comprised evidence gathered from nine local authorities in England and, in

each location, discussions with local authority representatives, parent groups, school leaders and charities. In addition, roundtable meetings with practitioners, pupils, leaders and academics were held (Timpson 2019). Timpson also commissioned the re-analysis of Department of Education exclusion data, a literature review exploring research on commonly excluded groups, and research into the experiences of children, parents and carers who have experienced exclusion; the latter was undertaken by the children's charity, Coram. The purpose of such an extensive review was to gain a better understanding of how exclusion policy is implemented in the school setting and why certain groups of pupils, namely, pupils with special educational needs (SEN), pupils eligible for free school meals (FSM), pupils who have experienced the social care system and pupils from certain ethnic groups, are more likely to be excluded from school. Timpson concluded by setting out 30 recommendations which were intended, when implemented, to ensure a fair, reasonable and lawful school exclusion process (Timpson 2019).

Timpson's focus was on what might be categorised as lawful permanent exclusions and suspensions from school. However, it is significant that illegal exclusion is referred to several times throughout the document when it is primarily described as off-rolling. Timpson defines off-rolling as a practice where children:

> [Children] are made to leave their school and are removed from the school roll without a formal permanent exclusion or by the school encouraging the parents to remove their child from the school, which is done in the school's interests, and at the school's request (Timpson 2019, 10)

Although Timpson was not looking for evidence of illegal exclusions and/or off-rolling, eight of the nine local authorities visited admitted to a knowledge of off-rolling taking place in local schools; such admissions were corroborated by parents, carers and even schools. Some parents and carers involved in the review recalled instances of being encouraged to educate their children at home or move them to another school in order to avoid a permanent exclusion appearing on the child's record, and such advice was being given even where appropriate alternative educational provision was not available; one headteacher admitted to a knowledge of off-rolling taking place in their own school (Timpson 2019).

Timpson is very clear about his views on off-rolling, describing it as 'quite simply wrong' and a 'rare but unacceptable practice' that is both a safeguarding issue in itself and has the potential to expose children to further safeguarding risks (Timpson 2019, 11). However, research on this issue has shown off-rolling to be anything but rare. Prior to the Timpson review being published, the CCO (Children's Commissioner's Office) (2013) in a report on illegal exclusion claimed, 'even at the most conservative estimates … an unacceptably large proportion of schools are acting illegally' (CCO (Children's Commissioner's Office) 2013, 10). Further, research from the Education Policy Institute found that 1 in 10 of the pupils in the cohort they studied 'experienced an unexplained exit at some point during their time at secondary school' (Hutchinson and Crenna-Jennings 2019, 9). In addition, at no point does Timpson (2019) shed any light on which pupils are more likely to be off-rolled and why that is the case. Fortunately, the Education Policy Institute research does dedicate attention to this, finding that many of the children who experienced unexplained exits in their sample were from vulnerable groups including; 'one in six children ever identified with SEND and children ever eligible for free school meals', 'one in seven of those with low prior attainment and of those from Black ethnic backgrounds', and 'close to a third of current or formally looked after children' (Hutchinson and Crenna-Jennings 2019, 10). As such, Timpson's instance that off-rolling/illegal exclusion are rare practices serves to further obscure and minimise concerns about the practice (Bei, Knowler, and Butt 2021). Timpson's (2019) only recommendation that specifically addresses off-rolling goes no further than to encourage Ofsted to routinely consider patterns to off-rolling and, where evidence is found of this practice, this 'should always be reflected in inspectors reports and, in all but exceptional cases, should result in a judgment that the school's leadership and management is inadequate' (Timpson 2019, 101). Yet, as Ofsted themselves have admitted, some instances of off-rolling have not been reported or investigated due to linguistic variations in how this practice is described in Ofsted reports (Ofsted 2021b).

The fact that the Timpson Review (Timpson 2019) never intended to go beyond an investigation of official and lawful school exclusions reveals a significant oversight that suggests a degree of naiveté, perhaps even wilful ignorance, on the part of Timpson and his team of researchers around the reality of exclusions in English schools. As such, the experiences of tens of thousands of children (Hutchinson and Crenna-Jennings 2019) were discounted because the practice of off-rolling was, 'not originally in the scope' (Timpson 2019, 27) of the Timpson review. Moreover, in neglecting to investigate the conditions and cultures which allow pupils from Black ethnic backgrounds to be disproportionately off-rolled (Hutchinson and Crenna-Jennings 2019), the Timpson Review fails in its fundamental aim to address the 'burning injustices' present in education (BBC News 2016). Furthermore, it demonstrates 'tacit intentionality' (Gillborn 2007) in that while the review did not explicitly intend to further racial inequity, the failure to meaningfully address racial disproportionality in off-rolling practices means that this inequity will continue to be experienced. For this reason, the Timpson Review should not be hailed as a landmark report as it has been by so many (DfE (Department for Education) 2019; George 2019b; Booth 2021). Hence, it is important to consider its findings and recommendations regarding illegal exclusion in the context of other policy documents in order to establish how the issue is being approached at governmental and policy level.

Legislation

School exclusion and its use as a disciplinary measure is outlined in legislation and accompanying guidance. The current law regarding school exclusion is set out in four key policy documents: the Education Act (2002); the Education Act (2011), the School Discipline (Pupil Exclusions and Reviews) (England) Regulations (2012) and the Exclusion from Maintained Schools, Academies and Pupil Referral Units in England (DfE 2017) statutory guidance. Under the current law, only suspensions and permanent exclusions are legal and the exclusions process is reserved for use on disciplinary grounds only, i.e. where a pupil either persistently breaches or commits a serious breach of the school behaviour policy, or where a pupil's behaviour would be detrimental to other learners should they remain in the school setting. Headteachers are the only members of school staff with the authority to issue an exclusion and when doing so they must have due regard for the 2017 statutory guidance mentioned above.

Illegal exclusions only came to light in 2008 with the publication of the Department for Children, Schools and Families, 'Improving behaviour and attendance: guidance on exclusion from schools and Pupil Referral Units' which stated:

> If a head teacher/teacher in charge is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and needs to be removed from the school site for that reason, formal exclusion is the only legal method of removal. Informal or unofficial exclusions are illegal regardless of whether they are done with the agreement of parents or carers (DfCSF (Department for Children, Schools and Families) 2008, 15)

The document makes it clear that sending a pupil home to 'cool off' is also unlawful if not formally recorded with the duration of the exclusion also specified. When a formal school exclusion occurs at a maintained school or academy, whether it be permanent or for a fixed period, the Education Act (2002, s.51A[3b]) ensures that the governing body of the school considers whether a pupil should be reinstated. Where the governing body make the decision to not reinstate a pupil, the Education Act (2002, s.51A[3c]) gives the local authority power to arrange for an independent review panel to review the decision. Furthermore, where a pupil is lawfully excluded, the school is responsible for setting and marking work during the first five days of the exclusion. After this period, if a fixed-term suspension has taken place, then the governing board must ensure suitable educational provision for the remaining duration of the suspension; where a permanent exclusion has taken place, the local authority are responsible for arranging suitable full-time alternative provision no later than the sixth day of the exclusion (DfE (Department for Education) 2017). This right to challenge an exclusion and to continue to access education illustrates why it is so important that headteachers follow

correct and lawful procedures when deciding to exclude a child from their school. However, it is important to note here that since 2010, when independent appeal panels (IAP) were replaced by independent review panels (IRP) (Dyke 2011), even in circumstances where an independent review panel recommend that an exclusion should be reconsidered, they no longer have the power to rescind the exclusion, therefore meaning that the governing board of the school have the final say in this process. Thus, while the visibility of illegal exclusion is increasing, the avenues for overturning even lawful school exclusion are becoming increasingly restricted.

Definitions

Unfortunately, regardless of what the law on school exclusion dictates, illegal exclusions do occur and they are not a new phenomenon. The CCO (Children's Commissioner's Office) 2013) published a report entitled 'Always Someone Else's Problem' that focused attention on the use of illegal exclusions in schools, claiming that such practices may take the form of sending a child home for a cooling off period, or encouraging a parent to home-school their child to pre-empt the school formally excluding them. The Children's Commissioner found that a small but significant number of schools were illegally excluding pupils, and that the pupils most likely to be illegally excluded were the same pupils facing higher rates of formal exclusion; pupils with SEN were especially over-represented (CCO (Children's Commissioner's Office) 2013). The report also claimed that some headteachers felt that they were acting in the best interests of the child by illegally excluding them since having an exclusion on their school record would render it difficult for a child to be accepted into another school. The Commissioner concluded that parents, pupils and teachers were not sufficiently aware of the law surrounding exclusion, thus allowing for the unquestioned use of illegal exclusions (CCO (Children's Commissioner's Office) 2013). Consequently, it was recommended that the DfE, produce more statutory guidance on exclusions in collaboration with the Equality and Human Rights Commission and the Government Equalities Office. It was also recommended that Ofsted review their approach to identifying the existence of illegal exclusion and give parents an opportunity to share their experiences of this practice (CCO (Children's Commissioner's Office) 2013). The DfE responded to this recommendation by claiming that additional guidance was not needed as only a minority of schools act outside of legal boundaries (DfE (Department for Education) 2013a).

However, Ofsted did appear to have taken the issue of illegal exclusion more seriously and in 2019 the Education Inspection Framework (Ofsted 2021a) and the accompanying handbook (Ofsted 2021c) were updated to include sections specifically dedicated to the off-rolling of pupils. Ofsted (2021a) defined this practice as:

> The practice of removing a learner from the provider's roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the learner - off-rolling in these circumstances is a form of "gaming". (Ofsted 2021a, "Leadership and Management" para. 3)

The guidance also states that, where evidence of off-rolling according to the above definition is found, the school leadership and management should be judged as 'Inadequate'. However, when considering the evidence uncovered by the Children's Commissioners Office (CCO (Children's Commissioner's Office) 2013), the definition of off-rolling put forward by Ofsted does not appear to be fit for purpose, primarily since some headteachers surveyed believed that they were acting in the best interests of the child. Furthermore, this definition fails to fully align with the definition of off-rolling provided by Department for Children, Schools and Families (DfCSF (Department for Children, Schools and Families) 2008) guidance; hence, the decision of Ofsted to specifically refer to permanent exclusion in their definition creates ambiguity around the legality or illegality of schools sending pupils home to cool off for a short period without registering this as a suspension. It is perhaps unsurprising that in a recent update to inspectors, Ofsted (2021c) admitted that, even where practices considered to be off-rolling were found at inspections, the inspection report did not

explicitly adopt the term 'off-rolling'. However, the update failed to provide clear guidance on off-rolling, instead issuing a somewhat contradictory statement regarding the role of inspectors in deciding what is in the best interests of a pupil and, therefore, whether an unlawful exclusion has occurred:

> It is not for inspectors to decide what is and is not in pupils' best interests, so they will ask leaders to explain why a move off the roll was in a pupil's best interests. When leaders' explanations are not convincing, and the evidence supports it, inspectors are likely to come to the conclusion that they have evidence of off-rolling (Ofsted 2021b).

Ofsted (2021a) definition of off-rolling specifically refers to the act of gaming, where gaming describes the deliberate manipulation of academic performance monitoring systems in order to gain competitive advantage over other schools (Done and Knowler 2021, 1039). Done and Knowler (2021, 1039) argue that, by defining off-rolling with reference to gaming, Ofsted discourage 'recognition of exclusionary practices that are not irrefutably related to academic performance as such'. It appears that, by Ofsted's definition, off-rolling is only a concern when it contradicts the principle of free and fair competition that sustains the quasi-market through which education is organised in England and which Ofsted supports. This definition fails to recognise that off-rolling may be driven by other factors such as discrimination and/or the inability to accommodate difference, especially as pupils with special educational needs and pupils experiencing disadvantage are most commonly off-rolled (CCO (Children's Commissioner's Office) 2013).

Safeguarding

Whilst policy and guidance relating to school exclusion is extensive, specific policy and guidance on the topic of *illegal* school exclusion is insufficient and sometimes contradictory, permitting inappropriate interpretations of the law and under-reporting of a significant safeguarding issue. Illegally excluding pupils from school is, undoubtedly, a significant safeguarding concern, especially where the exclusion occurs through parents being encouraged to educate their child at home. Where a pupil is removed from the school roll in order to be home educated, it is the duty of the school to inform the local authority of this decision under regulation 12(3) of the Education (Pupil Registration) (England) Regulations 2006. Once removed from the school roll, it is the responsibility of the parent to provide a suitable education for their child and at this point the local authority is no longer involved. This process of 'elective' home education also applies to children and young people with SEN as the Special Educational Needs and Disability (SEND) Code of Practice (2015) states that where a parent decides to home educate and has notified the school of this decision, their child's name must be removed from the school roll. The Children and Families Act (2014) (s.42[2])) states that the local authority must only arrange for SEN provision for a home educated child if they have an Education, Health and Care (EHC) plan. Furthermore, section 10.34 of the SEND Code of Practice states:

> Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents (DfE 2015, 215)

While such legislation is appropriate for parents and carers making fully informed decisions to home educate their child, there may be parents who have been pressurised or coerced into home education (Parliament. House of Commons 2021) who do not fully understand what it entails and/or lack the time and resources to home educate therefore meaning that their children may not in receipt of a 'suitable education' as defined by the Children Act 1989 (s.36). Concerningly, a survey conducted by the Association of Directors of Children's Services (2017) revealed that 65% of the local authorities surveyed had only one member of full-time staff, or less, to monitor home schooling within their locality, making it impossible to offer parents the support needed to fulfil a home educator role; according to s.31 of the Children Act 1989, failing to provide a child with a suitable education satisfies the threshold for 'significant harm' to the child. Parents in such situations may

resort to provision provided by illegal schools. An illegal school is one that is unregistered and operating independently (Ofsted 2019b). Ofsted (2021d) claims that children being educated in such settings are exposed to safeguarding and health and safety risks, and in the period 1 January 2016 to 31 March 2021 Ofsted have received 857 referrals concerning unregistered and illegal schools. Of this number, 386 were inspected and 105 were found to be attended by home educated pupils (Ofsted 2021d).

The Education Act (2002) (s.175) stipulates that local authorities have a duty to ensure and maintain the welfare and safeguarding of children in their jurisdiction and, where a child finds themselves in unsuitable education following off-rolling or exclusion, this is also a failure of the school. The statutory guidance on keeping children safe in education (DfE 2021) makes it clear that all individuals working in a school or college have a duty to safeguard and ensure the welfare of children and young people in their setting. The practice of illegal exclusion demonstrates how punitive approaches towards behaviour management, in an environment fuelled by high-stakes accountability and a lack of financial resources to accommodate difference, are prioritised over statutory duties to ensure children's safety and wellbeing, and fulfilment of potential.

Implications for research

Research on the topic of illegal exclusion is minimal in comparison to research regarding lawful permanent exclusions and suspensions. Research by Gill (2017) suggests that official exclusion statistics, collected and distributed by the DfE, significantly underestimate the scale of school exclusion. The basis of this claim was data gathered in the period spanning 2013/14-2016/17 indicating that 'the number of pupils educated in schools for excluded pupils is five times higher than the number of officially permanently excluded pupils' (Gill 2017, 13). It was noted that these figures may not accurately represent the scale of the problem as illegal exclusion can take various forms. Research by Nye and Thomson (2019) for the Education Data Lab arguably presents more accurate figures on the scale of illegal exclusion; the latest publication in a 'Who's Left' series claims that between 6,700 and 9,200 pupils from the 2018 cohort went missing from the education system, i.e. these children and young people 'remained in England and yet did not take any qualifications or, if they did, did not count in results anywhere'. This figure is higher than the 6,200–7,700 pupils that were estimated to be missing from the 2017 cohort (Nye and Thomson 2018). However, again, these findings should be approached with a degree of caution since they are estimates and 'without knowing individual children's circumstances, leaving state education can't be treated as synonymous with off-rolling' (Nye and Thomson 2018). What these estimates do imply is that the practice of illegally excluding children and young people from the state school system in England is far more prevalent than the Timpson review of school exclusion (DfE (Department for Education) 2019) would suggest.

A survey conducted by YouGov on behalf of Ofsted (2019b) did provide valuable insights on the nature and scale of off-rolling; 1,018 teaching professionals were surveyed and 14 educators interviewed across England, including one headteacher. However, due to the ordering of the questions, the results of this survey may be biased in favour of Ofsted's perceptions of the nature and causes of off-rolling. For example, at the beginning of the survey participants are asked to select, from a multiple choice list, what they perceived to be as the correct definition of off-rolling – this list included Ofsted's definition: 'A pupil being taken off the school roll in order to try and manipulate reported exam results/league tables' (Ofsted 2019a, 7), 68% of those surveyed identified this as the correct definition. Therefore, it can be argued that it is unsurprising to see that when participants were later asked to identify key drivers of off-rolling, 51% of the sample identified 'achieve/maintain a high position on a league table' (Ofsted 2019a, 12). Furthermore, of the 288 teachers who reported that they had witnessed off-rolling, 57% reported persistent behavioural issues as the main reason for this practice (Ofsted 2019a, 13). Whilst this research does provide some insight into which pupils are more vulnerable to off-rolling and the extent of teachers' awareness of the practice, the small sample size and Ofsted's apparent commitment to a narrative of gaming as the primary reason for

off-rolling do raise questions around the validity of these findings. Done and Knowler (2021, 1051) argue that the 'hegemonic status' of Ofsted's definition of off-rolling is likely to militate against other types of off-rolling and reasons for off-rolling being recognised.

Moreover, when researching illegal exclusion, sampling and recruitment of participants often appears to be an issue. McShane (2020) describes difficulty in recruiting participants and details the experiences of only three participants. McShane identifies that concerns around anonymity were marked amongst participants, with one stating 'that she would love to have the courage to "whistle blow", but that such an action would be a "career-wrecker"' (McShane 2020, 67). Similar issues were found by Done and Knowler (2021) when attempting to recruit senior leaders to a survey on off-rolling; despite repeated efforts to reassure potential participants of their ability to contribute anonymously, only 21 senior leaders took part in the survey. Nevertheless, such research provides insightful contributions to discussions surrounding illegal exclusion; for example, by illustrating the sense of professional risk evoked in acknowledging illegal exclusionary practices and, possibly, the 'shame at having to work in this way' (Done and Knowler 2019, para.6). The inclination of both the Children's Commissioner's Office and Ofsted to name and shame offending schools (Allen-Kinross 2019; George 2019a) may explain the reluctance of education professionals to engage in dialogue around off-rolling.

While it is increasingly agreed that illegal exclusion and, indeed, legal exclusion is an archaic practice that should have no place in a modern English school system (CCO (Children's Commissioner's Office) 2013; No More Exclusions 2021; Psychologists for Social Change n.d.) simply punishing schools that engage in such practices by publicly shaming them and issuing a judgement of 'Requires Improvement' in their Ofsted report only serves to marginalise school leaders and encourage new ways to remove 'difficult' pupils from the school roll. A shift in priorities, away from punishment and towards upholding safeguarding legislation, is required.

Conclusion

This article has explored the issue of illegal exclusion from the perspective of policy and legislation, addressing the contributions of the Timpson review of school exclusion (Timpson 2019) before outlining how various policy documents have contributed to the widely accepted definition of off-rolling provided by Ofsted and now accepted by many educational professionals (Ofsted 2019a; Done and Knowler 2021). Discussion of safeguarding legislation and the complexities involved in researching illegal exclusion was intended to provide context to the analysis of relevant policy. Two main conclusions can be drawn from this analysis. Firstly, the narrow definition of illegal exclusion or off-rolling that is dominant in legal guidance means that illegal exclusion will continue to be obscured; Ofsted's insistence on gaming as a key element of its definition raises concerns around the power of the principles that govern the quasi-market in education and consequent inability of mainstream English schools to provide a truly inclusive learning environment for *all* of their pupils. In terms of research and, in particular, the recruiting of participants, the dominance of Ofsted's definition is not conducive to either understanding the scale of the problem or to encouraging open dialogue about the reasons why headteachers and senior leaders decide to remove a pupil from the school roll illegally. Secondly, a culture of sanctioning and punishing schools rather than one of understanding, investment and reform, further discourages educators from sharing their lived experiences of illegal exclusion and does nothing to ensure that safeguarding legislation and exclusion guidance are upheld in the future. The two main conclusions outlined here serve to further reinforce the need for a shift in priorities within education policy. More needs to be done to meaningfully recognise, address, and understand the impact of the disproportionality in the use of off-rolling for pupils with SEN, pupils eligible for FSM and pupils from Black ethnic backgrounds. In order to address this problem, more needs to be known about the true extent of the issue however, in a hostile policy environment that seeks to 'name and shame' (Allen-Kinross 2019; George 2019a), or even wilfully ignore the problem of off-rolling, the potential for research is significantly curtailed.

As such, it is recommended that policymakers should concurrently engage with research that illustrates the perils of running an education system on principles of a quasi-market (Davies, Diamond, and Perry 2021; Done and Knowler 2019; Ferguson 2021; Thompson, Tawell, and Daniels 2021), while also making meaningful attempts to actively pursue the safeguarding and equity of education for *all* children and young people in England. It is also recommended that policymakers develop an agreed, consistent definition on what an illegal exclusion is and the circumstances in which it may occur, doing so may serve to both raise awareness and reduce the use of illegal exclusion practices.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributor

Megan Whitehouse is a PhD student in the department of Education and Social Justice at the University of Birmingham. Her research focuses on exclusion from schools in England.

References

Allen-Kinross, A. 2019. "Two More Schools Rapped by Ofsted for Off-Rolling." *Schools Week*, June 24. https://schoolsweek.co.uk/two-more-schools-rapped-by-ofsted-for-off-rolling/

Association of Directors of Children's Services. 2017. "Summary Analysis of the ADCS Elective Home Education Survey." October 2017. https://adcs.org.uk/assets/documentation/ADCS_EHE_Survey_Analysis_2017_FINAL.pdf

BBC News. 2016. "Conservative Conference: Teresa May's Speech in Full." *BBC News* Birmingham. October 5. https://www.bbc.co.uk/news/av/uk-politics-37563510

Beecham, R. 2021a. "Leeds Off-Rolling Inquiry to Look into Evidence of Schools excluding Troublesome Pupils." *Yorkshire Evening Post*, October 7. https://www.yorkshireeveningpost.co.uk/education/leeds-off-rolling-inquiry-to-look-into-evidence-of-schools-excluding-troublesome-pupils-3410172

Beecham, R. 2021b. "Low-Achieving Pupils Put on SEN Plans to Avoid Damaging School Attainment Figures, Meeting Told." *Telegraph and Angus*, October 4. https://www.thetelegraphandargus.co.uk/news/19692739.low-achieving-pupils-put-sen-plans-avoid-damaging-school-attainment-figures-meeting-told/

Bei, Z., H. Knowler, and J. Butt. 2021. "How Do We Progress Racial Justice in Education?" *IPPR Progressive Review* 28: 76–84. doi:10.1111/newe.12242.

Belger, J. 2021. "Three Academy Leaders Guilty of Misconduct over Off-Rolling Scandal." *Schools Week*, October 15. https://schoolsweek.co.uk/samuel-ward-academy-misconduct-off-rolling-cheating-findings/

Booth, S. 2021. "Timpson Two Years On: Exclusions Review Chair Wants Action." *Schools Week* 7. May: https://schoolsweek.co.uk/timpson-two-years-on-exclusions-review-chair-wants-action/

Cabinet Officee, 2017 Race Disparity Audit: Summary Findings from the Ethnicity Facts and Figures Website Accessed 20 February 2022 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf

CCO (Children's Commissioner's Office) 2013. "*Always Someone Else's Problem*." *Office of the Children's Commissioner's Report on Illegal Exclusions*. London: Children's Commissioner for England.

Children Act. 1989. https://www.legislation.gov.uk/ukpga/1989/41/contents

Children and Families Act. 2014. https://www.legislation.gov.uk/ukpga/2014/6/contents

Davies, P., C. Diamond, and T. Perry. 2021. "Implications of Autonomy and Networks for Costs and Inclusion: Comparing Patterns of School Spending under Different Governance Systems." *Educational Management Administration & Leadership* 49 (1): 128–144. doi:10.1177/1741143219888738.

Davis, J., and N. Marsh. 2020. "Boys to Men: The Cost of 'Adultification' in Safeguarding Responses to Black Boys." *Critical and Radical Social Work* 8 (2): 255–259. doi:10.1332/204986020X15945756023543.

DfCSF (Department for Children, Schools and Families). 2008. *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*. London: Department for Children, Schools and Families.

DfE (Department for Education). 2013a. "*Children's Commissioner's Reports on School Exclusions: The Government's Response*." London: Department for Education

DfE (Department for Education) 2013b. *Permanent and Fixed-Period Exclusions in England: 2011 to 2012*, London: Department for Education

DfE (Department for Education). 2017. *Exclusion from Maintained Schools, Academies and Pupil Referral Units in England: Statutory Guidance for Those with Legal Responsibilities in Relation to Exclusion*. London: Department for Education.
DfE (Department for Education). 2019. *Edward Timpson Publishes Landmark Exclusions Review*. London: Department for Education.
DfE (Department for Education) 2021. *Keeping Children Safe in Education 2021*. London: Department for Education.
Done, E. J., and H. Knowler. 2019 "Exploring Senior Leaders' Experiences of Off-Rolling in Mainstream Secondary Schools in England." *BERA Blog*. https://www.bera.ac.uk/blog/exploring-senior-leaders-experiences-of-off-rolling-in-mainstream-secondary-schools-in-england
Done, E. J., and H. Knowler. 2021. "Off-Rolling' and Foucault's Art of Visibility/Invisibility: An Exploratory Study of Senior Leaders' Views of 'Strategic' School Exclusion in Southwest England." *British Educational Research Journal* 47: 1039–1055. doi:10.1002/berj.3709.
Dyke, T. 2011 "Exclusions: A School's Right to Decide". *The Guardian*, March 21. https://www.theguardian.com/law/2011/mar/21/school-exclusions-independent-appeal-panels
Education Act. 2002. https://www.legislation.gov.uk/ukpga/2002/32/contents
Education Act. 2011. https://www.legislation.gov.uk/ukpga/2011/21/contents
Education (Pupil Registration) (England) Regulations. 2006. https://www.legislation.gov.uk/uksi/2006/1751/contents/made
Ferguson, L. 2021. "Vulnerable Children's Right to Education, School Exclusion, and Pandemic Law-Making." *Emotional and Behavioural Difficulties* 26 (1): 101–115. doi:10.1080/13632752.2021.1913351.
George, M. 2019a "Off-Rolling Schools to Be Named and Shamed". *TES*, June 11. https://www.tes.com/news/rolling-schools-be-named-and-shamed
George, M. 2019b "The Future of Exclusions: Timpson Review at a Glance". *TES*, May 7. https://www.tes.com/news/future-exclusions-timpson-review-glance
Gill, K. 2017. "Making the Difference: Breaking the Link between School Exclusion and Social Exclusion." *Institute for Public Policy Research*. https://www.ippr.org/files/2017-10/making-the-difference-report-october-2017.pdf
Gillborn, D. 2007. "Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform." *Journal of Education Policy* 20 (4): 485–505. doi:10.1080/02680930500132346.
Hutchinson, J., and W. Crenna-Jennings. 2019. "Unexplained Pupil Exits from Schools: Further Analysis and Data by Multi Academy Trust and Local Authority." *Education Policy Institute*, https://epi.org.uk/wp-content/uploads/2019/10/Unexplained-pupil-moves_LAs-MATs_EPI-2019.pdf
McShane, J. 2020. "We Know Off-Rolling Happens. Why Are We Still Doing Nothing?" *Support for Learning* 35: 259–275. doi:10.1111/1467-9604.12309.
More Exclusions, N. 2021. "School Exclusions during the Pandemic: Why We Need a Moratorium." https://nomoreexclusions.com/wp-content/uploads/2021/03/NME-Moratorium-Booklet-FINAL-spreads.pdf
Nye, P., and D. Thomson. 2018. "Who's Left 2018, Part One: The Main Findings." *Education Data Lab*, https://ffteducationdatalab.org.uk/2018/06/whos-left-2018-part-one-the-main-findings/
Nye, P., and D. Thomson. 2019. "Who's Left 2019, Part Two: How Do You Lose 6,700 Pupils?" *Education Data Lab*. https://ffteducationdatalab.org.uk/2019/12/whos-left-2019-part-two-how-do-you-lose-6700-pupils/
Ofsted. 2019a. "Exploring the Issue of off-rolling." https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936524/Ofsted_offrolling_report_YouGov_090519.pdf
Ofsted. 2019b. "New Data Shows Illegal Schools are a Huge Nationwide Problem". https://www.gov.uk/government/news/new-data-shows-illegal-schools-are-a-huge-nationwide-problem
Ofsted. 2021a. "Education Inspection Framework". https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework
Ofsted. 2021b. "Schools and Early Education Update: September 2021" https://www.gov.uk/government/publications/schools-and-early-education-inspection-update-academic-year-2021-to-2022/schools-and-early-education-inspection-update-september-2021
Ofsted. 2021c. "School Inspection Handbook." https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook
Ofsted. 2021d. "Unregistered Schools Management Information - 1 January 2016 to 31 March 2021". https://www.gov.uk/government/statistical-data-sets/unregistered-schools-management-information
Owen, D. 2019. "What Is Off-Rolling, and How Does Ofsted Look at It on Inspection?". https://educationinspection.blog.gov.uk/2019/05/10/what-is-off-rolling-and-how-does-ofsted-look-at-it-on-inspection/
Parliament. House of Commons. 2021. "*Strengthening Home Education: Third Report of Session 2021-22*." HC 84. London: House of Commons. https://committees.parliament.uk/publications/6974/documents/72808/default/
Porter, J. 2016. "Time for Justice: Safeguarding the Rights of Disabled Children." *Disability & Society* 31 (8): 997–1012. doi:10.1080/09687599.2016.1223605.
Psychologists for Social Change. n.d. "PSC Support the Moratorium on School Exclusions in England". http://www.psychchange.org/psychologists-for-social-change-support-the-moratorium-on-school-exclusions-in-england.html
Roberts, J. 2019. "Exclusive: Ofsted Challenged on Off-Rolling Consistency." *TES*, November 19. https://www.tes.com/news/exclusive-ofsted-challenged-rolling-consistency

Roberts, J. 2021. "Ofsted Admits It Failed to Flag up Off-Rolling." *TES*, September 9. https://www.tes.com/news/ofsted-admits-it-failed-clearly-flag-off-rolling-schools

School Discipline (Pupil Exclusions and Reviews) (England) Regulations. 2012. https://www.legislation.gov.uk/uksi/2012/1033/contents/made

SEN Code of Practice. 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

Struthers, A. E. 2021. "Protecting Invisible Children in England: How Human Rights Education Could Improve School Safeguarding." *Human Rights Education Review* 4 (3): 45–64. doi:10.7577/hrer.4473.

TES. 2018. "Pupils Abandoned by 'Wild West' Exclusions System." *TES*, July 25. https://www.tes.com/news/pupils-abandoned-wild-west-exclusions-system

Thompson, I., A. Tawell, and H. Daniels. 2021. "Conflicts in Professional Concern and the Exclusion of Pupils with SEMH in England." *Emotional and Behavioural Difficulties* 26 (1): 31–45. doi:10.1080/13632752.2021.1898769.

Timpson, E. 2019. "Timpson Review of School Exclusion." https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf

Weale, S. 2017. "Grammar School 'Unlawfully Threw Out' Students Who Failed to Get Top Grades." *The Guardian*, August 29. https://www.theguardian.com/education/2017/aug/29/grammar-school-unlawfully-threw-out-students-who-failed-to-get-top-grades