Another door shut?
The government has axed the independent appeal panel on school exclusions. Maryam Masalha asks: has another door shut for children seeking justice?

The independent appeal panel, the body which currently hears challenges to school exclusions, is being axed. Provisions in the Education Act 2011 will see the appeal panel replaced with a ‘review panel,’ affecting the majority of schools in England. The move simultaneously strips the panel of its power to reinstate pupils whom it finds to have been wrongly excluded from school, and is a further blow to a process which already shows worrying patterns of inequality.

At present, black children are statistically three times as likely to be excluded from school as white children. Children in care – many of them black – are eight times as likely to face exclusion. Children with special educational needs are also at much greater risk. The disproportionately high rate of exclusion among black pupils in schools, coupled with current political fervour for academies, shows to exclude twice as many pupils as State-funded schools, raise serious concerns about the UK education system. Curtailing the powers of the independent appeal panel, a channel through which young people can argue their case, will only worsen a system which is already reaching crisis point.

Independent appeal panels are currently made up of a panel of three to five members of the public who hear exclusion cases and have the power to reinstate pupils if they feel that the head teacher’s original decision was flawed. The new review panels will have much more limited powers, and will only be able to:

(a) uphold the decision of the responsible body,
(b) recommend that the responsible body reconsiders the matter, or
(c) if it considers that the decision of the responsible body was flawed when considered in the light of the principles applicable on an application for judicial review, quash the decision of the responsible body and direct the responsible body to reconsider the matter.

The panel will no longer be able to direct reinstatement. At most, it can order the decision-making body to ‘reconsider the matter,’ but only where there has been a breach of judicial review principles.

This immediately raises two problems. First, it is likely that the process of reconsideration will simply provide an opportunity for schools to vindicate themselves, rather than genuinely re-evaluate the situation and reinstate a pupil where a poor decision was originally made. Second, the reference to ‘judicial review’ principles in the Act raises serious concerns that the panel, whose members are often totally without legal training, will not be able to decide on potentially complex public law issues relating to the fairness or otherwise of a permanent exclusion. The majority of young people appearing before the panel have no legal representation whatsoever, and are therefore very unlikely to invoke the public law principles which appear in the Act.

Exclusion appeals can be seen to mirror the legal system and its flaws in many respects; the process seems fair, but imbalances in resources and ability to navigate the system result in only a small portion of exclusions even reaching the appeal stage in the first place. Consequently, the stripping back of this quasi-legal appeal process is based on the false assumption that vast amounts of exclusion decisions are being undermined in a systematic and widespread ‘interference’ with a head teacher’s right to manage their school. Similar arguments are often used to justify the ongoing assault on legal protection for workers and individuals. Why, for example, should a former employee take their employer to court following a potentially unfair dismissal when this interferes with an employer’s right to manage their business? The question assumes that decisions made by people in power or authority are always correct and should never be challenged, despite the impact this may have on an individual’s life. The independent appeal panel is not an alternative to a system which minimises exclusion by investing in schools and communities, but it is an opportunity for life-changing decisions to be scrutinised.

Gerry German is the director of the Communities Empowerment Network, an organisation which advocates on behalf of children who have been excluded from mainstream education. He is concerned about the use of permanent exclusion in schools, and thinks that more must be done to challenge the current regime. ‘I would like to see the Equality and Human Rights Commission undertaking selective casework and formal investigations aimed at exposing individual and institutional discrimination,’ he said. ‘Law enforcement is the key to bringing about change.’

Exclusion from school can be the catalyst for a host of further problems, from poor employment prospects to the breakdown of relationships with family and friends and involvement in criminal activity. The changes to the appeal panel do nothing to address the underlying causes of school exclusion. They may possibly lead to further injustices occurring in a system which is already plagued by inequality. The long term consequences of these decisions remain to be seen.

Since the time of this article being written, Gerry German has sadly passed away.

Maryam Masalha has worked as a volunteer for the Communities Empowerment Network, an advocacy charity which assists children and young people who have been excluded from mainstream education.