



Education Law and Youth Criminal Justice System

Research Report

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This report has been prepared for education purposes only. It in no way constitutes legal advice, it refers to the law in force at the date of publication. If you are a young person or if you care for a young person and you want advice about any of the issues in this paper please contact us or one of the organisations listed in the annexes.

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Contents

Why a research report on Education Law and Youth Justice?	3
How did we prepare this report?	3
Who is this report for?	3
Key findings from Freedom of Information requests submitted to institutions in Harrow and Brent:	4
The intersection between the right to access education and involvement with the Youth Criminal Justice System:	7
Key messages and conclusions:	14
Glossary of key terms.....	16
Useful websites:	19
Practical tips to improve practice – making adjustments	20
Check list for education providers.....	21
Recognising Exploitation.....	22
Flowchart: How to challenge an exclusion	23

Why a research report on Education Law and Youth Justice?

An exclusion is a life changing event for a young person. There is discrepancy between the statutory rules applicable to exclusion procedures where a school is subject to the School's Code and statutory guidance on exclusions and other education providers who are not subject to these statutory provisions. In the latter case admission and exclusion procedures vary according to each individual institution's policies without necessarily being subject to independent oversight of the procedure. In practice a young person enrolled in an educational institution that is not subject to the statutory framework may have very few safeguards or recourse to challenge a decision to not to admit them or to exclude them.

There is a real risk that young people will face a form of double jeopardy whereby not only are they involved with the youth justice system to address their offending behaviour but additionally they face being excluded from their educational institution. This is especially problematic because education is recognised as a protective factor when it comes to preventing re-offending and safeguarding the young person.

We have tried to summarise some of the rules applicable that may help young people and those working with them to understand their rights and stand up to unfair procedures such as unlawful requests for disclosure of criminal record during admissions procedures or unfair decisions to exclude a young person linked to their involvement in the youth justice system.

How did we prepare this report?

This report was prepared using a combination of desk research, meetings with key professionals, a roundtable and using the findings from a freedom of information request submitted to colleges and further education providers local to Harrow and Brent.

Who is this report for?

We hope that this report will be a useful reference guide for professionals working with young people who may be facing exclusion due to their involvement with the youth justice system, and for education providers to improve understanding of the issues involved. We have included a number of practical resources at the end of the report to assist professionals to reflect on their practice and to trouble shoot situations in order to improve referrals of young people to advice organisations who may be able to help them to challenge an unfair or an unlawful exclusion.

Key findings from Freedom of Information requests submitted to institutions in Harrow and Brent:

In February 2021, Harrow Law Centre submitted freedom of information requests to 38 sixth forms, colleges and further education providers in the Harrow and Brent areas.¹ The aim of the request was to try to get a snapshot of the use of exclusions in the context of involvement with the youth justice system.

We received substantive responses from 24 providers. The questions focused on the academic years 2017/18, 2018/19 and 2019/20 and focused on decisions to exclude, unenroll or refuse admission. We did not request information about managed moves.

The results showed that a mixture of internal exclusions, fixed term exclusions, permanent exclusions, unenrolment and refusal of admissions are used in Harrow and Brent. There appears to have been a heavy reliance on the use of unenrolment.

Summary of the overall use of exclusions or decisions to unenroll or refuse admission (not limited to those linked to youth justice)			
	2017/18	2018/19	2019/20
Internal Exclusion	108	220	132
Fixed Term Exclusion	167	172	126
Permanent Exclusion	267	254	161
Unenrolled	1489	1417	1273
Refused Admission	5	0	0

None of the respondents reported specifically excluding a young person due to a criminal conviction, however some respondents reported refusing admission on this basis.

Refused admission due to disclosure of a criminal conviction		
2017/18	2018/19	2019/20
8 refused admission ²	12 refused admission	2 refused admission

One provider commented that they do not exclude for this reason because the criminal conviction is sanction enough – we would suggest that this is a good approach and that children and young people should not be excluded solely because they have a criminal conviction.

Two providers indicated that action had been taken to either exclude,³ or arrange a managed

¹ Harrow College, St Dominic's Sixth Form College, Stanmore College, Bentley wood Sixth Form, Canons High School, Harrow High School, Hatch End High School, Nower Hill High School, Park High School, Pinner High School, Rooks Heath School, Whitmore High School, Whitefriars School Sixth Form, Avanti House Secondary School, The Sacred Heart Language College, St Gregory's Catholic Science College, Salvatorian College, College of Northwest London, City of Westminster College, Westminster Kingsway, Barnet and Southgate, West Herts College Group, West Thames College London, Ark Academy, Middlesex University, Alperton Community School, Ark Elvin Academy, Capital City Academy, Claremont High School, Convent of Jesus and Mary Language College, The Crest Academy, JFS, Kingsbury High School, Michaela Community School, Newman Catholic College, Preston Manor School, Queen's Park Community School, Wembley High Technology College.

² 1 from Avanti House Secondary School, the rest of the statistics in this table relate to West Herts College Group

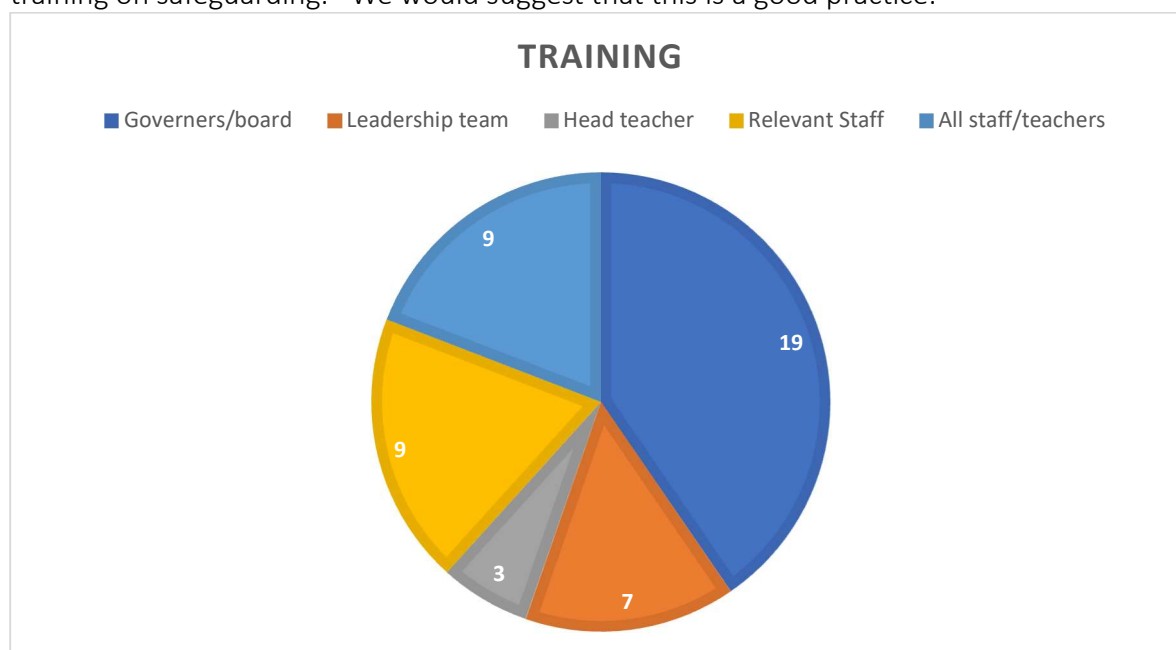
³ Rooks Heath

move,⁴ in relation to alleged criminal behaviour outside of school. Several providers indicated that some students had been excluded or “denied access” due to safeguarding concerns posed to other students.

Exclusions due to safeguarding concerns		
2017/18	2018/19	2019/20
3 ⁵	16 ⁶	21 ⁷

We would suggest that where there are safeguarding concerns education providers should consider what reasonable adjustments can be made before resorting to an exclusion due to the negative and long-lasting effects this can have on the young person.

Out of 24 respondents, 19 specified that training was provided to school governors/board members. We would suggest that all governors and board members should receive training on the provider’s exclusion policy and procedure to ensure effective oversight of how this is used. Two respondents indicated that training on exclusions was delivered in conjunction with training on safeguarding. We would suggest that this is a good practice.



Fifteen institutions provided substantive responses when asked about reasonable adjustments made. Four institutions referred to the use of internal exclusion/supervision as a way of providing extra supervision and avoiding fixed term exclusions. Four institutions referred to the use of managed moves. Three referred to the use of ‘respite’ placements, fourteen referred to the use of alternative provisions such as the Jubilee Academy.

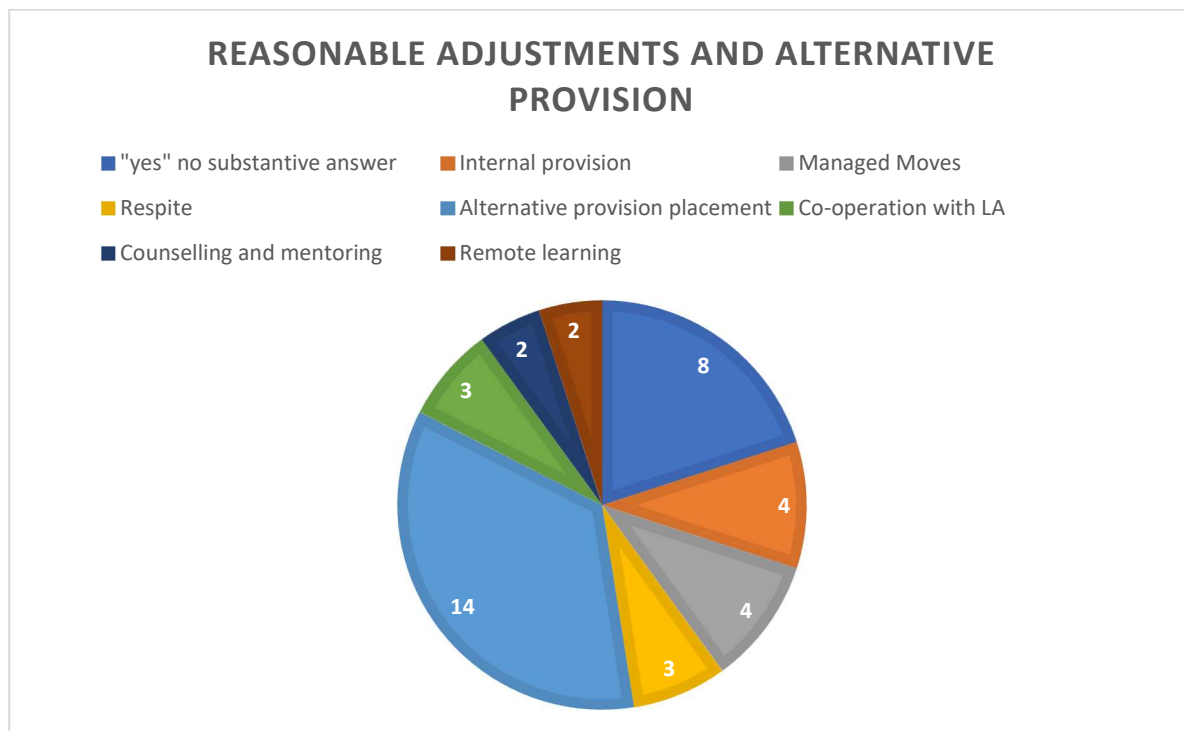
⁴ Hatch End

⁵ West Herts College Group, Claremont High School, Queen’s Park Community School

⁶ Rooks Heath School, St Gregory’s Catholic Science College, West Herts College Group, West Thames College London, Claremont High School, Queen’s Park Community School.

⁷ City of Westminster College, West Herts College Group, Alperton Community School, Claremont High School, Queen’s Park Community School

Very few referred to efforts to co-operate and co-ordinate with the local authority and other relevant services, including the local safeguarding board and local youth justice services, or to the use of counselling, mentoring and pastoral support to address challenging behaviours. Two respondents reported making reasonable adjustments such as the provision of online and evening learning and considerations to adapt responses to a young person's medical or behavioural needs.



The intersection between the right to access education and involvement with the Youth Criminal Justice System:

- *When can a school / college refuse to admit a young person?*

With regards to admissions, schools and academies that are maintained are subject to the School Admissions code and regional Fair Access Protocols which will be set out by each borough. The School Admissions Code applies to all maintained schools including academies. This includes Academy Schools, (including those that are Free Schools), University Technical Colleges and Studio Schools. In accordance with the code, every local authority must have a Fair Access Protocol, agreed with the majority of its schools, in which all schools (including Academies) must participate since it is binding on all schools. The effect of the code and fair access protocol is that children of a compulsory school age who have difficulty securing a place in school, including children involved in the youth justice system, must be admitted into schools. Therefore, institutions to which the code or protocols apply cannot refuse to admit young people solely on the basis of their involvement in the youth justice system and in fact local authorities can oblige them to admit such a young person.

However, not every college, sixth form or education provider for the age group we are considering will be bound to the school admissions code or fair access protocol, in which case the remedies to challenge a decision not to admit them can be very limited. If the provider is publicly funded or attached to a school, the code and protocols will apply. If they do not apply, the organisation may be regulated by the Office of the Independent Adjudicator (a regulator for higher education). If they are members, students may have recourse to challenge an admissions decision with the Office of the Independent Adjudicator.

- *When can a college / sixth form withdraw a place from a young person involved in the youth justice system? Do they have to follow a particular procedure?*

With regards to exclusion from school, the statutory guidance applies (*Exclusion from maintained schools, academies and pupil referral units in England*, September 2017). Except where specifically stated, this statutory guidance applies to all maintained schools, academy schools (including Free Schools but not 16-19 Academies), alternative provision academies (including AP Free Schools), and PRUs. Unfortunately, the guidance **does not** apply to independent schools (other than the Academies listed above), city technology colleges, city colleges for the technology of the arts, sixth form colleges, or 16 – 19 academies, all of which have separate exclusion procedures. If a sixth form is attached to a school and considered part of it, the statutory guidance may still apply. This will need to be determined for each specific sixth form.

Education providers to which the statutory guidance does not apply, will have their own behaviour and exclusion policies. Such policies are subject to the Equalities Act 2010 and judicial review principles (procedural fairness, natural justice and lawfulness). However, this does not mean that a judicial review can be lodged in every case.

We have produced a flow chart to help you assess the most appropriate course of action to help a young person to challenge an unfair exclusion.

- *What are the rights of the young person to challenge the decision to withdraw a place / ask them to leave a college / sixth form?*

In terms of challenging a school exclusion, if the statutory guidance applies, the exclusion can be challenged through the normal procedure: bringing a challenge before the governing body and subsequently before an independent review panel. However, for most further education providers the statutory guidance does not apply. Therefore, the student will have to challenge the exclusion in accordance with the specific institution's disciplinary policy. Generally, such policies will outline a behaviour code and specify which breaches of the code can lead to exclusions. The policy will also outline the procedure for appeal.

Colleges and universities are not considered public bodies and therefore are not subject to judicial review. Therefore, if an appeal of an exclusion is unsuccessful at institution level, there is no scope for a judicial review challenge of the decision. However, when challenging the exclusion using the internal procedure of the institution, judicial review principles can be cited.

If an education provider is a member of the Office of the Independent Adjudicator (OIA), a regulator for higher education, a student can challenge a decision there. The OIA is a public body, and its decisions can be challenged by way of judicial review. Therefore, while a judicial review cannot be lodged against a college, the decision can be challenged at OIA level and the OIA decision can be judicially reviewed.

- *What information does a young person have to disclose to a college / sixth form?*

There is no general legal obligation for a person to tell a university or college about their criminal record. Generally, people only need to disclose their criminal record if they are asked about it. Similarly, for most courses, there is no legal obligation on education providers to ask about criminal records.

Colleges are subject to the Rehabilitation of Offenders Act 1974 which means that a young person does not have to disclose an offence unless it is unspent or a specified offence. The exception to this is where the course is for a regulated profession to which the ROA does not apply.

Professions that are exceptions to the ROA are listed in the Exceptions Order. The jobs and activities listed in the Exceptions Order mainly relate to particularly sensitive areas such as work with children, regulated activity such as social work, healthcare and medical work, national security employment, legal professions, court and justice work, law enforcement, prison and probation services and work in the financial services. Exceptions also apply to certain certificates and licences (such as a firearms certificate) and to certain proceedings (such as those connected with admission to certain regulated professions).

Even for these roles, protected spent cautions and convictions do not need to be disclosed, however for specific professions that are regarded as “of the utmost integrity”, these will still need to be disclosed. These are generally jobs or activities relating to national security, police constables, judicial appointments and firearms certificates and will require full disclosure. Thus, educational courses and training for such professions will require some disclosure.

If someone discloses a spent criminal record, universities are legally obliged to disregard it for most courses. This is a requirement of section 4 of the Rehabilitation of Offenders Act 1974. In May 2018, UCAS announced that they would no longer require all applicants to declare unspent criminal convictions as part of the application from the 2019 entry cycle onwards. Instead, UCAS will only request a criminal record declaration from applicants to courses that require an enhanced criminal record check to study or where completion of the course includes rights of entry to a profession that involves such a check.

Types of Criminal record checks

There are currently four main forms of criminal record checks: Basic, Standard, Enhanced, and Enhanced and barred Disclosures.

1. Basic Disclosures disclose only ‘unspent’ convictions. All employers are entitled to request details of ‘unspent’ convictions and are therefore entitled to request applicants to undergo a Basic Disclosure, which can only be obtained from the DBS for employers in England and Wales.
2. Standard Disclosures disclose ‘spent’ and ‘unspent’ convictions, cautions, reprimands and final warnings that are not eligible to be filtered. If an employer is recruiting for a position that is ‘exempt’ from the ROA, they are entitled – as a minimum – to request a Standard Disclosure.
3. Enhanced Disclosures disclose ‘spent’ and ‘unspent’ convictions, cautions, reprimands and final warnings that are not eligible to be filtered. The police also have the opportunity to disclose any other information that they feel might be relevant for the employer to consider when deciding your suitability for the role that you have applied for. This can include arrests, non-recordable offences, allegations and not-guilty verdicts. Very few Enhanced Disclosures reveal this type of police intelligence. Enhanced Disclosures may also be requested where the employer is recruiting for a position that is ‘exempt’ from the ROA.
4. Enhanced and barred Disclosures disclose the same information as an Enhanced Disclosure but will also reveal whether the applicant has been barred from working with children, adults or both, if this information is requested. Enhanced and barred Disclosures are eligible only for roles that involve ‘regulated activity’ with children or adults.

There have been changes to the DBS system that came into force as of November 2020. As a result, certain records will no longer be disclosed for a standard or enhanced DBS check.

The following table summarises records that will be included in a standard or enhanced DBS check:

Caution or conviction	Age when sentenced	Time elapsed since sentencing
Caution for a specified offence	18 or over	Any time
Caution for a non-specified offence	18 or over	Less than 6 years
Conviction for a specified offence	Any age	Any time
Conviction resulting in a custodial sentence over 4 years (see separate table for custodial sentences)	Any age	Any time
Conviction for a non-specified offence		Less than 11 years if 18 or over/ less than 5.5 years if under 18

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed.

Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which is known as the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

The 'buffer periods' are halved for those who are under 18 at date of conviction (save for custodial sentences of six months or less where the 'buffer period' is 18 months). The rehabilitation periods for sentences with additional "buffer periods" which run from the end date of the sentence are shown in the table below:

Sentence/ disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up	7 years	3.5 years

to and including 48 months (4 years)		
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order	1 year	6 months

Reprimands, final warnings and youth cautions (including conditional cautions) received when under the age of 18 will be removed from standard and enhanced checks immediately, regardless of the offence. This means that even if the caution was for a specified offence it would still be removed.

Adult cautions will be removed from standard and enhanced checks if 6 years have passed since the date of issue, providing it is not for a specified offence.

These rules apply no matter how many cautions a person has. Cautions will be removed even if the person has others which are not removed (for example where others are for a specified offence or they are too recent).

Convictions received when 18 or over will be removed from standard and enhanced checks if, 11 years have passed since the date of conviction, they did not result in a prison sentence (or suspended sentence), or they were not for a specified offence.

The rules apply no matter how many convictions a person has. They will be removed even if the person has others which are not removed (for example where others are for specified offences or they are too recent).

For a conviction received when under 18, the same rules apply as for adult convictions, except that the elapsed time period is 5.5 years.

Examples of offences that are specified and therefore not subject to filtering are assault occasioning actual body harm, assault of a child or vulnerable adult, safeguarding offences, sexual offences, robbery and aggravated burglary. Examples of offences that will be removed in filtering are common assault, drunk and disorderly behaviour, soliciting, drug possession and theft where there is no violence involved.

- *Why is it a problem to ask for a DBS check when it is not required by the law?*

An employer or college is potentially liable if they do a higher level check that is not permitted by law. Obtaining information about cautions and spent convictions for non-excepted roles is a breach of the Rehabilitation of Offenders Act 1974, and knowingly requesting a higher level of

check than permitted is a criminal offence under the Police Act.

Section 123(2) of the Police Act states:

123(2) A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part.

The maximum penalty on conviction is six months' imprisonment, or a fine, or both.

The same would apply for a college.

To date, there has not been a single prosecution for breach of the Police Act, there is no mechanism for ineligible checks to be referred to the Information Commissioner's Office, nor for notifying the Ministry of Justice. There is no remedy for breach of the ROA, in any case.

Possessing information acquired from an ineligible check would be in breach of GDPR and the Data Protection Act 2018.

The DBS Code of Practice sets out employers' obligations in respect of the use of information obtained through standard and enhanced checks. A failure to comply with these provisions and performing ineligible checks beyond the scope of the Exceptions Order could lead to de-registration of registered bodies.

Unfortunately, "knowingly requesting an ineligible DBS check" is difficult to prove. Moreover, individuals are usually unwilling to approach an employer or education provider about these matters. Therefore, there is hardly any legal recourse or remedy.

A check can only be carried out with the consent of the individual, yet they cannot challenge a check until it has been submitted to the DBS. This creates a dilemma, as the individual must consent to a check that they believe is unlawful and then attempt to stop it afterwards.

- *Risk assessments for education providers regarding young people with convictions:*

In terms of young people recently released from prison, those serving community sentences or those released on license and the risk they would allegedly pose, it is important to bear in mind this has been assessed by the criminal justice system. The criminal justice system (prisons and probation) has a statutory responsibility to both the individual and the wider public, and universities and colleges should be clear that it is not necessary or proportionate for them to try to duplicate this responsibility.

Prison and probation staff are trained in risk assessments and use tools and techniques that are regularly evaluated and updated. Those applying to study on day release from prison (known as 'released on temporary licence', or ROTL) will have been subject to stringent risk assessment by prison and probation staff before being allowed to apply. Everyone who has been in prison is supervised in the community for at least 12 months after they are released. By the time someone applies to colleges or university, risk assessments will have already been carried out

by professionals who have access to a range of information about the applicant. If an individual is subject to specific restrictions, there is a requirement on them to follow them and consequences for not doing so.

People serving a community sentence (or those released from prison on licence) are expected to meet their supervisor regularly and required to notify them of any work or education that they apply for or undertake, in part so the supervisor can manage their attendance. Depending on their circumstances, there may be other specific restrictions in place- although this will not apply in most cases. Probation would then take a view as to what, if any, contact they need to make with other organisations. Failure to comply with supervisory conditions can result in a return to court or recall to prison.

People convicted of sexual offences may be on the sex offenders' register. There are certain requirements imposed on individuals in this situation – known as 'reporting requirements'- including keeping the police informed about their address. Failure to comply with these reporting requirements can result in a fine or a prison sentence.

Therefore, a higher education provider can trust the risk assessment taken by the justice system with regards to a young person and should liaise with the young person's support worker or probation officer if they have any concerns or questions about a young person.

Key messages and conclusions:

Young people and children in the justice system are not treated in the same way as adults. When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:

- the principal aim of the youth justice system (to prevent offending by children and young people); and
- the welfare of the child or young person.

So what does this mean for education providers?

- An education provider owes a duty of care to all young people enrolled in the institution, including those who get into trouble with the police.
- The aim of any action taken to withdraw a place / exclude a young person from college / sixth form / further education institution should be to safeguard the other young people in the institution and to safeguard the young person subject to the measure. It should not be to penalise the young person. Therefore, any action taken should be proportionate to the aims pursued and adapted to the risks (if any) that the young person poses to the other pupils. It is important to avoid double jeopardy for the young person, i.e. punishing them twice. It is worthy to note that if a young person has been found to have committed a crime, they may be subject to an order and supervision by the Youth Offending Team – meaning that their behaviour would be monitored and any breaches of the order would result in further action. Education providers can contact the young person's youth justice support worker or probation officer to discuss the measures in place for the young person and the potential safeguards that should be implemented to help that young person to achieve their educational potential.
- The Criminal Justice system is built on the presumption of innocence. The Education system should not depart from this principle. This means that a young person should not be excluded from an educational institution simply because they have been arrested, or because they are under investigation. Not all investigations or arrests result in a charge and not every charge or prosecution results in a conviction.
- Not all criminal justice orders / disposals mean that the young person has committed a crime / been found guilty / accepted their guilt. (See explanation below of terms.)
- Even where a young person has been found to have committed a crime, the principal aims of youth sentencing as outlined in the [national statutory guidance](#)⁸ are to prevent reoffending and to uphold the young person's welfare- rather than to punish them. These aims are in place to avoid the unnecessary criminalisation of young people and to encourage them instead to re-integrate into society and move on from crime. Excluding a young person from school will in many cases go against this aim by ostracising the young person from their access to the standard educational environments where they can move on, integrate and detach from the stigma of criminalisation. This is to be viewed in light of the fact that young people are generally

⁸ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

understood to be less mature, susceptible to poor decision making and negative influences and need to be afforded with a genuine opportunity to change their behaviour as they mature and grow out of childlike indiscretions.

- Young people involved in criminal activities may themselves be victims of crimes such as criminal exploitation. The police are duty bound to consider whether there are any indicators that the young person they have encountered may be a victim of exploitation. In practice, this does not always happen. Some young people have been prosecuted, only to have later been found to be exploitation victims that should not have been prosecuted. It is fundamental that schools do not prematurely do away with these possibilities either. Schools and colleges must uphold their own duty of care towards the young person by seeking to identify any potential indicators of exploitation.
- Schools / colleges should consider making reasonable adjustments. There are alternatives to withdrawing a place / excluding a young person. Protections and safeguards that can be put in place to ensure that any safeguarding concerns are addressed. Proportionality is the key consideration. It is likely that it would only be proportionate to exclude or refuse admissions for vocational courses that are an exception to the ROA.

Glossary of key terms

Terms	Does this mean the CYP has done something wrong / is guilty of something / is a potential safeguarding concern to other students?	What does this mean for the school / college / FE institution?
Voluntary Interview at a police station	The young person is not under arrest and can leave at any time unless arrested. They must however be interviewed under cautioned.	It would probably be disproportionate to take any action against the young person at this stage.
Interview under caution	The point of cautioning someone being interviewed is to inform them that what is said in the interview may be used as evidence. Being cautioned by the police in the context of questioning is not necessarily linked to a notion of culpability, it is a safeguard.	
Stop and search of person	This does not necessarily mean that the young person has done something wrong. The police have powers to stop and search people when they have "reasonable grounds" but there are also occasions where police can stop and search people within a certain area regardless of whether or not they have "reasonable grounds". Police must follow the correct procedure otherwise a stop and search may be considered unlawful.	
Investigation	This is the procedure through which the police gather evidence. If someone is under investigation this does not mean they are guilty of an offence. The presumption of innocence applies to the suspect throughout the investigation and any subsequent trial.	
Arrest	An arrest without a warrant can only be made if a constable has "reasonable grounds", it does not necessarily mean that a person is guilty of an offence. An arrest may result in the person being released without charge, released after	In the vast majority of cases it would be disproportionate to exclude a young person at this stage based solely on the fact that they have been arrested / charged /bailed, it may be

	charge (with or without bail) or remanded in custody.	proportionate for the education provider to take some safeguarding measures if the young person is in contact with children or vulnerable adults or if the offending was some way connected to the educational institution. There may be bail conditions imposed to address these concerns, in which case the education providers should provide support to the young person to comply with their bail conditions.
Charge	This is a decision to formally “accuse” a person of committing a criminal offence. The presumption of innocence still applies at this stage unless the person charged pleads guilty, which means they admit the offence.	
Bail	Essentially this refers to the release of someone suspected of having committed a crime under certain conditions which might include things like reporting to a police station, residence at a particular address or electronic monitoring (tagging). There are different types of bail that may be imposed at different stages of the investigation and trial.	
Remanded in custody	The young person will be detained until they stand trial or the charge is otherwise disposed of.	The education of the young person becomes the responsibility of the YOI
Prosecution	The person is being accused of having committed an offence. The Crown Prosecution Service will now have to prove beyond reasonable doubt that the person committed an offence. They are presumed innocent unless proven guilty.	In the vast majority of cases it wouldn’t be proportionate to exclude at this stage solely on the basis of the arrest / charge /bail, it may be proportionate for the education provider to take some safeguarding measures if the young person is in contact with children or vulnerable adults.
Acquittal	This means that the prosecution have not proved that the person accused of committing an offence is guilty to the criminal standard (beyond reasonable doubt).	The educational institution should not exclude or take any disciplinary action towards a child or young person who has been acquitted.
Conviction	The person has been convicted of an offence in a court of law.	Any action taken by the school/ college/ FE institution would need to be proportionate to the safeguarding aims pursued and the severity of the offence.

Key notions / terms relevant to DBS checks		
Sentence	Once a person has been convicted of an offence they are sentenced. A key aim of the youth justice system is rehabilitation . A court must take the young person's welfare into account and impose a sentence in accordance with the aim of preventing offending by children and young people.	Any action taken by the school/ college/ FE institution would need to be proportionate to the safeguarding aims pursued and the severity of the offence. If the young person has been sentenced they will generally be under the supervision of the youth justice service (formerly YOT), education providers should try to coordinate any action taken in response to the young person's offending with their youth justice service officer.
Rehabilitation Period	The Rehabilitation of Offenders Act 1974 lists the time periods that must elapse for a person to become rehabilitated. Once a person has become a rehabilitated person they shall be treated in law as a person who has not committed, or been charged with or prosecuted or convicted or sentenced for the offence.	
Spent convictions	A conviction is treated as spent after a certain number of months or years under the Rehabilitation of Offenders Act 1974. Some convictions are excluded from the operation of this Act and do not become spent. Once a conviction is spent the person becomes a <i>rehabilitated person</i> and is treated in law as a person who has not committed/been charged with or prosecuted for / been convicted for or sentenced for the offence.	
Custodial sentence	The person will be detained to serve their sentence. Children (under 18) are held in young offender institutions, secure training centres or secure children's homes	

Caution / Conditional Caution	This is a formal out-of-court disposal that can be used as an alternative to prosecution of young offenders. They are intended to provide a proportionate response to offending behaviour and have replaced Reprimands and warnings. If there are conditions attached then failure to comply with the conditions may result in prosecution for the original offence.	
Fine / Compensation Order	Requires the young person to pay compensation for the harm caused.	
Referral Order	The young person enters into a contract with the youth offender panel, this order may be extended if the young person is sentenced for an offence committed after the order was made.	
Reparation order	Requires the young person to make up for the harm caused by the crime such as repairing any damage done to the victim's property.	
Community or Youth rehabilitation order	This is a community sentence which may include certain requirements which must be completed within a period of 3 years (such as to complete an activity or programme or to undergo mental health or drug treatment).	
Filtering	Refers to the removal of certain offences from standard and enhanced DBS checks after a specified time period has elapsed.	If a DBS check is necessary for a specific course or qualification, Education providers should take care to ensure that they request the right level of DBS check to avoid committing an offence under the Police Act and to avoid re-criminalising the young person.
Barring	Inclusion on the adult and or children's barred lists, which prevents a person from engaging in a regulated activity with adults or children or both. Relevant law: Safeguarding Vulnerable Groups Act 2006	

Useful websites:

- www.nacro.org.uk/criminal-record-support-service/support-for-individuals/disclosing-criminal-records/disclosing-criminal-records-applying-college/
- hub.unlock.org.uk/knowledgebase/filtering-cautions-convictions
- www.gov.uk/tell-employer-or-college-about-criminal-record

What adjustments can you make?

Concerns / Fears

I have to report everyday but I'm really bad at writing

I have to wear an electronic tag but this goes against the college's uniform requirements and I'm really embarrassed because I don't want to be stigmatised by my friends.

I have a conviction related to a sexual offence but my course requires me to do some work experience in a school setting.

I have a criminal record which will follow me around forever.

I know I've made a mistake but I don't want to have to keep talking about it, I'm trying really hard to move on and make good decisions.

I've disclosed that I have a criminal record, now everybody will know and I bet all of my teachers will be judging me.

Practical solutions

Make a voice recording of the report and play it to the teacher / supervisor when you report.

Is it possible to adjust clothing to make the tag less visible? Would it work to wear football socks pulled up over the tag so that it was not visible?

Can the young person complete their work experience within your educational institution or in a setting where they are not required to work with children or vulnerable adults?

Help the young person to understand that some convictions become spent and don't need to be disclosed systematically, refer them to an advice service if you or they are unsure about whether their conviction is spent.

Listen to the young person, if they don't want to talk in detail about their offending can you contact a support worker instead to get the information you need?

Explain to the young person exactly who will need to be informed about their record and why. Tell them who they can go to if they feel that they are being treated unfairly due to their record.

Checklist for Education Providers

Is the welfare of the child or young person enrolled in my institution my primary consideration?

A young person has disclosed that they have been involved with the youth justice system, what stage are they at? Are they under investigation (presumed innocent) or has there been a conviction/caution or order?

Is it proportionate to take action based on this young person's disclosure of their criminal record or of on-going involvement with the youth justice system?

Would the action proposed by my institution contribute to prevent the young person from reoffending and uphold their welfare?

Can I link into other statutory services involved with the young person? Can I contact the Youth Offending Team or probation worker to understand any measures or safeguards already in place to help the young person and address any safeguarding concerns for others?

Is there a risk that the young person may have been exploited or groomed into offending? Are there any additional safeguarding concerns to protect them from being a victim of crime and being re-groomed into re-offending?

Before deciding to exclude or otherwise remove the young person from their course have I considered any reasonable adjustments or practical safeguards that would protect them and others and allow the young person to remain in education?

Do the policies in place in my educational institution contribute to prevent reoffending and uphold the young person's welfare or do they need to be updated?

Useful websites:

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- hub.unlock.org.uk/knowledgebase/filtering-cautions-convictions
- www.gov.uk/tell-employer-or-college-about-criminal-record

Caught a young person carrying drugs or a knife? Maybe they are the victim

Warning signs:

Changes in behaviour:

- Withdrawn / isolated/ on edge or aggressive?
- Loss of interest in school?
- Drop in school performance?
- Self-harm / unexplained injuries?
- Hanging around with or being met after school by older people who are not family?
- Skipping school or going missing?
- Unexplained travel to other cities / countries?



Don't assume the young person is an offender:

Is this young person afraid of someone or in danger?

Is there a risk this young person is being groomed, tricked or forced into this behaviour?

What can I do to protect this young person?

Who do I need to alert about my concerns?

Has the young person's parent/guardian raised any concerns?

Unexplained Possessions:

- More than one phone?
- Receiving excessive calls or texts?
- Carrying a knife or drugs?
- Unexplained cash or expensive possessions?



**If you have a concern act now,
you might be the difference
between safeguarding or
criminalisation.**

Challenging an exclusion from college/sixth form

What type of school or college does the
young person attend?

Maintained school? Independent School? Alternative Provision? City
Technical College? Pupil Referral Unit? Sixth Form College? 16-19 Academy?

Which framework applies?

Maintained schools, alternative
provision and pupil referral
units

Independent school, city
technical college, sixth form
college, 16-19 academies



Schools Code and Fair Access
Protocol apply
Statutory Guidance on School
Exclusions applies

Check provider's individual
exclusion policy

Procedure to challenge exclusion?



- Governor's meeting
- Independent Review Panel

- Institution's procedure
- Remedies for breach of
contract (fee paying
schools)

You can also consider making a complaint, contacting the Ombudsman or
seek legal advice about further legal remedies available