

**Expulsion:** Independent Schools

1. Derives entirely from the contract between the school and the fee payer normally the parents.

Contrast the maintained sector where there is detailed procedural guidance and decisions are subject to judicial review.

2. Contractual nature of the right will itself be dependant on
  - (i) the express terms of the contract, and
  - (ii) terms that may be implied or inferred,
  - (iii) those in turn will rely on the position that the right to expel for the reasons that have been given have been incorporated into the contract.
3. Rules that apply would be the school contract and the relevant disciplinary and behaviour policies for the school. The school would by its terms include matters entitling it to expel a pupil on grounds where:-
  - (i) there is a parental breach of contract (i.e. failure to pay school fees),
  - (ii) there is a parent causing serious or repeated nuisance on school premises, or
  - (iii) there is a serious disagreement with or contravention of the school's policies on social inclusion diversity or equality, or
  - (iv) a failure to meet the required academic standards
    - this is where a pupil has failed to reach a satisfactory standard perhaps in an exam

- consequence may be that the parents counterclaims for breach. It then becomes an issue of fact as to whether the blame for poor exam results lies with the school or with the pupil.
4. Expulsion is a grave step; one which all heads take after great deliberation; and each case is fact sensitive; by which I mean dependant on its own facts. To a certain extent the reasons justifying expulsion move with the times – thus bullying and drugs have become a greater issue now than in the past.
  5. The consequence of getting the decision and the procedure in reaching that decision wrong is a breach of contract claim leading to damages or perhaps reinstatement if that is practical. Damages in any event could be limited to the period over which the school would have been able to terminate the contract lawfully together perhaps with psychiatric damage and loss of opportunity.

Should be read in conjunction with the Education (Independent School Standards) (England) Regulations 2010. They require a written policy to promote good behaviour amongst pupils and to set out the sanctions for misbehaviour. They also require information to be given as to the school's ethos.

#### The Anatomy of the contract

A school contract with parents normally contains standard clauses along the following lines:-

- (a) behavioural policy which attaches great importance to such matters as respect, courtesy, integrity and good discipline and encourages hard work and good behaviour, and
- (b) informs the parents of what constitutes good behaviour and what the ethos of the school is, and
- (c) notifies the parents that the head is responsible for the imposition of sanctions – including exclusions and expulsions, and

- (d) provides policies relating to admissions, discipline and exclusions, and academic performance, and
- (e) additionally, there are terms relating to poor performance including reporting and consulting with parents over concerns, and reporting on progress through consultations, assessments and reports.

These documents are the important background for heads should a head need to contemplate the expulsion of a pupil.

The contract will go on to state:-

Firstly – that the head will require a pupil to be removed where after consultation the head is of the opinion that

- the conduct of the pupil is unsatisfactory, or
- in the head's judgment the pupil is unwilling or unable to profit from the educational opportunities offered.

This is a subjective opinion albeit it is required to be based on reasonable grounds.

Secondly – the removal is considered to be warranted.

The contract inevitably sets out what conduct will result in exclusion. That conduct being normally expressed in general as where (1) it is prejudicial to good order or school discipline or (2) to the school's reputation and (3) grave.

Finally, the decision will be at the sole discretion of the head albeit that discretion will be fettered by contractual terms whether express or implied that

- (1) the head should act fairly, and
- (2) in accordance with the procedures of natural justice.

And give the pupils a right of appeal by way of a review or rehearing.

What is a fair procedure? Natural justice requires a number of principles to be followed. Where they are not expressly stated they will as I have said be implied as a term of the contract. The important ones relate to the rationality of the decision i.e.

1. There has to be a sufficient investigation of the facts to justify the decision
  - a significant number of appeals especially in the maintained sector have succeeded on the basis that a proper investigation did not identify the main issue and hence the relevant facts were not ascertained, and/or a reasonably thorough investigation into those facts was not carried out.
2. the pupil should know the nature of the accusation that is being made against him or her. That means getting the letter notifying the grounds of the exclusion right which grounds should correlate with the facts that were being investigated.
3. Where there are conflicting accounts of the events leading up to the expulsion and the decision is based on the statement of an "informer" it is as well to let the pupil have a copy of a written statement and not to rely on oral testimony of the informer and to seek corroborative evidence.

Indeed, in the maintained sector the department's guidance is that all written witness statements must be attributed and signed and dated and states that as a general principle an accused person is entitled to know the substance and source of the accusation so should have all such statements made available to him or her.

In the private sector, the terms of the parent contract sometimes contain a provision along the lines that the head or staff are not required in any circumstances to divulge to parents or others any confidential information or the identities of students or others who have given information which led to the decision. This has been put in to protect confidentiality and contractually override the principle that the accused needs to know what is being said against him. In my view it is dangerous and should only be relied on as a last resort as it does not appear to be justified.

Sometimes the accusation is that admissions as to conduct by a pupil have been obtained oppressively. To control such accusations it would be best to have another person present when interviewing pupils about issues of conduct carried out by a group – e.g. bullying or spreading malicious rumours about a member of staff or another pupil.

#### 4. The pupil has the right to a fair hearing

Effectively this means that he is given the opportunity to state his case – again if the accused is starved of information about the case against him that could lead to the implied terms of fairness being breached by an assertion of procedural impropriety.

#### Proportionality

This is in reality answering the question in the affirmative that the offence/conduct was sufficiently grave to merit the sanction of expulsion. Moreover, if there are a number of pupils involved in the same incident different treatment of those pupils has to be objectively justified on the facts that have been ascertained by the investigation.

#### Right of Review

1. Has to be one, and
2. A review can be either by way of a rehearing – which is a wide ranging hearing before a body of governors in which all of the merits of the case are considered. The benefit is that it will give the governing body an opportunity to correct any procedural defects albeit it would open the decision to a more adversarial type of hearing, or

Review – which can be limited to the fairness of the investigation, and the sanction that is imposed, and could be more limited in scope.

#### What about poor performance

- (1) The principles again demonstrate that the school are obliged to consult and

- (2) to notify the parents as to the effect the lack of performance will have on the pupil remaining at the school
- (3) and have the overriding need to consider all the circumstances
- (4) to hear the pupil and parents on the issues which may have given rise to the performance being unacceptable so as to ensure that everything has been considered.

### Afterwards

1. Withdraw/expulsion
2. Parents will be concerned about
  - (i) Future prejudice – confirmation of course
  - (ii) Announcements – what will the school say
  - (iii) Pupils file – how will the reason for leaving be dealt with
  - (iv) References – how will the school respond
  - (v) Fresh start – what assistance will the school and staff be willing to give
  - (vi) Course and project work – continuity – partially completed work
  - (vii) Financial aspects – payment in lieu

(viii) Future access to school – old boys association, etc

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