



Department  
for Education

# **Exclusion from maintained schools, Academies and pupil referral units in England**

**A guide for those with legal  
responsibilities in relation to  
exclusion**

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# Exclusion from maintained schools, Academies and pupil referral units in England

## A guide for those with legal responsibilities in relation to exclusion

### 1. About this guide

- This document from the Department for Education provides a guide to the legislation that will govern the exclusion of pupils from: maintained schools; Academy schools / Free Schools; Alternative Provision Academies / Free Schools; and pupil referral units in England from 1 September 2012.
- It also provides statutory guidance to which: head teachers; governing bodies; local authorities; Academy Trusts; independent review panel members; independent review panel clerks; and special educational needs experts must have regard when carrying out their functions in relation to exclusions.
- The phrase 'must have regard', when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.
- Where relevant, this document references other guidance in areas such as: behaviour; special educational needs; and equality, but it is not intended to provide detailed guidance on these issues.
- This document will replace *Improving behaviour and attendance: guidance on exclusion for schools and Pupil Referral Units* (September 2008) for schools in England.

### What legislation does this guide relate to?

The principal legislation to which this guidance relates is:

- The Education Act 2002, as amended by the Education Act 2011;
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- The Education and Inspections Act 2006; and
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

### Who is this guide for?

- Head teachers; governing bodies; local authorities; Academy Trusts; independent review panel members; independent review panel clerks; and individuals appointed as a special educational needs expert.
- The term 'head teacher' in this document applies equally to the teacher in charge at a pupil referral unit (PRU) and principals of Academies.
- The term 'governing body' applies to PRU management committees. In respect of Academies, references to the 'governing body' should be read to mean the board of directors or the directors of the Academy Trust company.

- Except where specifically stated, this guide applies to all: maintained schools; Academy Schools (including Free Schools but not 16-19 Academies); Alternative Provision Academies (including AP Free Schools); and PRUs. The term 'school' in this document is used to describe any school to which the guidance applies. Where the term 'Academy' is used it refers to any category of Academy to which the guidance applies.
- Except in relation to pupils in PRUs, or where stated, the requirements of the guide apply in relation to all pupils, including those who may be below or above compulsory school age, such as those attending nursery classes or sixth forms.
- This guide 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. Local authorities, however, are required to arrange educational provision for excluded pupils of compulsory school age from all institutions from the sixth day of a permanent exclusion.

### **Definition of 'parent' within this guidance**

- The definition of a parent for the purposes of the Education Act is broadly drawn. In addition to the child's birth parents, references to parents in this guidance include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives.
- The exclusion regulations give clarity and certainty to schools, local authorities, Academy Trusts and review panels, in terms of how they discharge their obligations to parents. Obligations are to the "relevant person" – a parent or the pupil, where 18 or over. This guidance refers to "parents" throughout and where practicable it is expected that all those with parental responsibility should be engaged with the exclusions process.

### **Definition of 'term' within this guidance**

- Where a school's academic year consists of 3 terms or fewer, a reference to a 'term' in this guidance means one of those terms. Where a school's academic year consists of more than 3 terms, then a reference to 'term' means the period falling between: 31 December to Easter Monday; Easter Monday to 31 July; or 31 July to 31 December.

## 2. Key points

- Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. The Government supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation schools should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs.
- Schools should have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing their future behaviour.
- All children have a right to an education. Schools should take reasonable steps to set and mark work for pupils during the first five school days of an exclusion, and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after an exclusion.
- Where parents (or excluded pupil, if aged 18 or over) dispute the decision of a governing body not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination).
- An independent review panel does not have the power to direct a governing body to reinstate an excluded pupil. However, where a panel decides that a governing body's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing body to reconsider its decision. If the governing body does not subsequently offer to reinstate a pupil, the panel will be expected to order that the school makes an additional payment of £4,000. This payment will go to the local authority towards the costs of providing alternative provision.
- Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.
- Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding.

### 3. The head teacher's power to exclude

#### A guide to the law<sup>1</sup>

1. Only the head teacher<sup>2</sup> of a school can exclude a pupil and this must be on disciplinary grounds. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed period exclusion does not have to be for a continuous period. In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion.

2. Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. In such cases the legal requirements in relation to exclusion, such as the head teacher's duty to notify parents, still apply. Lunchtime exclusions are counted as half a school day for statistical purposes and in determining whether a governing body meeting is triggered.

3. The behaviour of pupils outside school can be considered as grounds for exclusion<sup>3</sup>. This will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy.

4. The head teacher may withdraw an exclusion that has not been reviewed by the governing body.

5. Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights); rational; reasonable; fair; and proportionate.

6. Head teachers must take account of their legal duty of care when sending a pupil home following an exclusion.

7. When establishing the facts in relation to an exclusion decision the head teacher must apply the civil standard of proof, i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt'.

8. Under the Equality Act 2010 ("the Equality Act") schools must not discriminate against, harass or victimise pupils because of their: sex; race; disability; religion or belief; sexual orientation; because of a pregnancy / maternity; or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices.

9. In carrying out their functions under the Equality Act, the public sector equality duty means schools must also have due regard to the need to:

- eliminate discrimination and other conduct that is prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and

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<sup>1</sup> Section 51A Education Act 2002 and regulations made under that section.

<sup>2</sup> 'Head teacher' includes acting head teacher by virtue of section 579(1) of the Education Act 1996.

<sup>3</sup> Section 89(5) of the Education and Inspections Act 2006. Non-statutory advice on maintained schools' powers to discipline outside of the school are set out in *Behaviour and Discipline in Schools – A Guide for Head teachers and School Staff (2012)*.

- foster good relations across all characteristics – between people who share a protected characteristic and people who do not share it.

10. These duties need to be taken into account when deciding whether to exclude a pupil. Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues<sup>4</sup>.

11. Head teachers and governing bodies must take account of their statutory duties in relation to special educational needs (SEN) when administering the exclusion process. This includes having regard to the SEN Code of Practice.

12. It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment / ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated. Pupils who repeatedly disobey their teachers' academic instructions could, however, be subject to exclusion.

13. 'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

14. Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour<sup>5</sup>. A pupil can also transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

### **Statutory guidance on factors that a head teacher should take into account before taking the decision to exclude**

15. A decision to exclude a pupil permanently should only be taken:

- in response to a serious breach, or persistent breaches, of the school's behaviour policy; and
- where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

16. The decision on whether to exclude is for a head teacher to take. However, where practical, head teachers should give pupils an opportunity to present their case before taking the decision to exclude.

17. Whilst an exclusion may still be an appropriate sanction, head teachers should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying.

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<sup>4</sup> Non-statutory advice from the Department for Education is available to help schools to understand how the Equality Act affects them and how to fulfil their duties under the Act. [Guidance on the Equality Act](#).

<sup>5</sup>Section 29A of the Education Act 2002. Statutory guidance on the use of this power is to be issued shortly. With parents' agreement Academies can place a pupil either full-time or part-time in another educational setting.

18. Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems<sup>6</sup>.

19. Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, head teachers should consider whether exclusion is providing an effective sanction.

### **Statutory guidance to head teachers on the exclusion of pupils from groups with disproportionately high rates of exclusion**

20. The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for Free School Meals; looked after children<sup>7</sup>; and pupils from certain ethnic groups. The ethnic groups with the highest rates of exclusion are: Gypsy / Roma; Travellers of Irish Heritage; and Black Caribbean communities.

21. In addition to the approaches on early intervention set out above, head teachers should consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion. For example, schools might draw on the support of Traveller Education Services, or other professionals, to help build trust when engaging with families from Traveller communities.

### **Statutory guidance to head teachers on the exclusion of pupils with statements of SEN and looked after children**

22. As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with statements of special educational needs (SEN) and looked after children. Head teachers should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or a looked after child.

23. Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs. In relation to looked after children, schools should co-operate proactively with foster carers or children's home workers and the local authority that looks after the child.

24. Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review.

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<sup>6</sup> Non-statutory advice for head teachers of maintained schools on the place of multi-agency assessments within a school's behaviour policy is provided by, *Behaviour and Discipline in Schools – A Guide for Head teachers and School Staff* (2012).

<sup>7</sup> As defined in section 22 of the Children Act 1989.



## 4. The head teacher's duty to inform parties about an exclusion

### 4.1 The head teacher's duty to inform parents about an exclusion

#### A guide to the law<sup>8</sup>

25. Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reasons for it.

26. They must also, without delay, provide parents with the following information in writing:

- the reasons for the exclusion;
- the period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing body (in line with the requirements set out in paragraphs 50 to 57) and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing body to consider the exclusion, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend.

27. Written notification of the information in paragraph 26 can be provided by: delivering it directly to the parents; leaving it at their last known address; or by posting it to this address.

28. Where an excluded pupil is of compulsory school age the head teacher must also notify parents without delay, and by the end of the afternoon session<sup>9</sup>:

- that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so.

29. If alternative provision is being arranged then the following information must be included with this notice where it can reasonably be found out within the timescale:

- the start date for any provision of full-time education that has been arranged for the pupil during the exclusion;
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;
- the address at which the provision will take place; and
- any information required by the pupil to identify the person he / she should report to on the first day.

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<sup>8</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>9</sup> Sections 103 and 104 Education and Inspections Act 2006 and regulations made under these sections.

30. Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session it may be provided in a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

31. The information in paragraphs 28 and 29 must be provided in writing but can be provided by any effective method (paragraph 35 provides guidance on this issue).

32. The failure of a head teacher to give notice of the information in paragraphs 28 and 29 by the required time does not relieve the head of the duty to serve the notice. A notice is not made invalid solely because it has not been given by the required time.

33. Parents must be informed where a fixed period exclusion has been extended or converted to a permanent exclusion. In such cases the head teacher must write again to the parents explaining the reasons for the change and providing any additional information required.

## **4.2 Statutory guidance to head teachers on informing parents about an exclusion**

34. When notifying parents about an exclusion, the head teacher should set out what arrangements have been made to enable the pupil to continue his / her education prior to the start of any alternative provision or the pupil's return to school, in line with the guidance in paragraphs 48 and 49.

35. For notifications under paragraphs 28 and 29, effective methods for providing the information may include email or text message; giving the notice directly to the parents; or sending the information home with the excluded pupil. Where information is sent home with a pupil, head teachers should consider sending a duplicate copy by an alternative method or confirming that the information has been received.

36. When notifying parents about an exclusion head teachers should draw attention to relevant sources of free and impartial information. This information should include:

- a link to this statutory guidance on exclusions: [exclusions guidance](#)
- a link to the Coram Children's Legal Centre: [www.childrenslegalcentre.com](http://www.childrenslegalcentre.com) 08088 020 008; and
- where considered relevant by the head teacher, links to local services, such as Traveller Education Services or the local parent partnership ([www.parentpartnership.org.uk](http://www.parentpartnership.org.uk)).

37. Head teachers should ensure that information provided to parents is clear and easily understood. Where the parents' first language is not English consideration should be given, where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and parents' right to make representations to the governing body have been understood.

## 4.3 The head teacher's duty to inform the governing body and the local authority about an exclusion

### A guide to the law<sup>10</sup>

38. The head teacher must, without delay, notify the governing body and the local authority of:

- a permanent exclusion (including where a fixed period exclusion is made permanent);
- exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
- exclusions which would result in the pupil missing a public examination or national curriculum test.

39. For all other exclusions the head teacher must notify the local authority and governing body once a term.

40. Notifications must include the reasons for the exclusion and the duration of any fixed period exclusion

41. In addition, within 14 days of a request, governing bodies must provide to the Secretary of State and (in the case of maintained schools and PRUs) the local authority, information about any exclusions within the last 12 months.<sup>11</sup>

42. For a permanent exclusion, if the pupil lives outside the local authority in which the school is located, the head teacher must also advise the pupil's 'home authority' of the exclusion without delay.

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<sup>10</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>11</sup> As set out in The Education (Information About Individual Pupils) (England) Regulations 2006.

## 5. The governing body's and local authority's duties to arrange education for excluded pupils

### A guide to the law<sup>12</sup>

43. For a fixed period exclusion of more than five school days, the governing body (or local authority in relation to a pupil excluded from a pupil referral unit) must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth day of the exclusion.

44. For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin no later than the sixth day of the exclusion. This will be the pupil's 'home authority' in cases where the school is maintained by (or located within) a different local authority.

45. In addition, where a pupil has a statement of SEN, the local authority must ensure that an appropriate full-time placement is identified in consultation with the parents, who retain their rights to express a preference for a school that they wish their child to attend, or make representations for a placement in any other school<sup>13</sup>.

46. Local authorities must have regard to the statutory guidance, *Promoting the Educational Achievement of Looked After Children: Statutory Guidance for Local Authorities* when carrying out their duties in relation to the education of looked after children.

47. Provision does not have to be arranged by either the school or local authority for pupils in the final year of compulsory education who do not have any further public examinations to sit.

### Statutory guidance on the education of pupils prior to the sixth day of an exclusion

48. It is important for schools to help minimise the disruption that exclusion can cause to an excluded pupil's education. Whilst the statutory duty on governing bodies or local authorities is to provide full-time education from the sixth day of an exclusion, there is an obvious benefit in starting this provision as soon as possible. In particular, in the case of a looked after child, schools and local authorities should work together to arrange alternative provision from the first day following the exclusion.

49. Where it is not possible, or appropriate, to arrange alternative provision during the first five school days of an exclusion, schools should take reasonable steps to set and mark work for pupils. Work that is provided should be accessible and achievable by pupils outside of school.

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<sup>12</sup> Section 100 and 101 of the Education and Inspections Act 2006.

<sup>13</sup> Schedule 27 of the Education Act 1996.

## 6. The governing body's duty to consider an exclusion

### 6.1 The requirements on a governing body to consider an exclusion

#### A guide to the law<sup>14</sup>

50. The governing body has a duty to consider parents' representations about an exclusion. The requirements on a governing body to consider an exclusion depend upon a number of factors (these requirements are illustrated by the diagram in Annex A of this guidance, *A summary of the governing body's duties to review the head teacher's exclusion decision*).

51. The governing body may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

52. The governing body must consider the reinstatement of an excluded pupil within 15 school days<sup>15</sup> of receiving notice of the exclusion if:

- the exclusion is permanent;
- it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
- it would result in a pupil missing a public examination or national curriculum test.

53. If requested to do so by the parents, the governing body must consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if a pupil would be excluded from school for more than five school days, but not more than 15, in a single term.

54. Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a governing body, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil<sup>16</sup>. These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the governing body and must be made aware of this right.

55. The following parties must be invited to a meeting of the governing body and allowed to make representations:

- parents;
- the head teacher; and
- a representative of the local authority (in the case of a maintained school or PRU)<sup>17</sup>.

56. The governing body must make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory

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<sup>14</sup> Section 51A Education Act 2002 and regulations made under this section, as well as the School Governance (Procedures)(England) Regulations 2003.

<sup>15</sup> Governing bodies are no longer prevented from meeting within the 5 school days after an exclusion.

<sup>16</sup> Where the chair is unable to make this consideration then the vice-chair may do so instead.

<sup>17</sup> A parent may invite a representative of the local authority to attend a meeting of an Academy's governing body as an observer; that representative may only make representations with the governing body's consent.

time limits set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

57. In the case of a fixed period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

### **Statutory guidance to governing bodies in preparing for the consideration of an exclusion decision**

58. Where the governing body is legally required to consider the decision of a head teacher to exclude a pupil they should:

- not discuss the exclusion with any party outside of the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school, such as those relating to a pupil's SEN).
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing body should first seek parental consent and invite the parents to accompany their child to the meeting);
- have regard to their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding<sup>18</sup>; or how the excluded pupil may feed in his / her views by other means if attending the exclusion meeting is not possible.

### **Statutory guidance to governing bodies on exclusions that would result in a pupil missing a public examination or national curriculum test**

59. Whilst there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing body should consider whether it would be appropriate to exercise their discretion to allow an excluded pupil on the premises for the sole purpose of taking the examination or test.

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<sup>18</sup> Under section 176 of the Education Act 2002 schools are required to have regard to statutory guidance on pupil voice. This is provided by *Working Together: Listening to the voices of children and young people*.

## 6.2 The requirements on a governing body when considering the reinstatement of an excluded pupil

### A guide to the law<sup>19</sup>

60. Where the governing body is legally required to consider an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

61. The governing body must also consider any representations made by:

- parents;
- the head teacher; and
- a representative of the local authority (in the case of a maintained school or PRU)<sup>20</sup>.

62. When establishing the facts in relation to an exclusion decision the governing body must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the governing body can either:

- uphold an exclusion; or
- direct reinstatement of the pupil immediately or on a particular date.

63. Where reinstatement is not practical because for example, the pupil has already returned to school following the expiry of a fixed period exclusion or the parents make clear they do not want their child reinstated, the governing body must, in any event, consider whether the head teacher's decision to exclude the child was justified based on the evidence.

### Statutory guidance to governing bodies on the consideration of an exclusion decision

64. The governing body should identify the steps they will take to ensure all parties will be supported to participate in their consideration and have their views properly heard. This is particularly important where pupils under 18 are speaking about their own exclusion or giving evidence to the governing body.

65. The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by governing body. These minutes should be made available to all parties on request.

66. The governing body should ask all parties to withdraw before making a decision. Where, present a clerk may stay to help the governing body by reference to his / her notes of the meeting and with the wording of the decision letter.

67. In reaching a decision on whether or not to reinstate a pupil, the governing body should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties.

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<sup>19</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>20</sup> A parent may invite a representative of the local authority to attend a meeting of an Academy's governing body as an observer; that representative may only make representations with the governing body's consent.

68. The governing body should note the outcome of their consideration on the pupil's educational record, along with copies of relevant papers for future reference.

69. In cases where the governing body considers parents' representations but does not have the power to direct a pupil's reinstatement, they should consider whether it would be appropriate to place a note of their findings on the pupil's educational record.

70. Claims of discrimination to the First-tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

## **6.3 The governing body's duty to notify people after their consideration of an exclusion**

### **A guide to the law<sup>21</sup>**

71. Where legally required to consider an exclusion, the governing body must notify parents, the head teacher and the local authority of their decision, and the reasons for their decision, in writing and without delay. Where the pupil resides in a different local authority from the one that maintains the school, the governing body must also inform the pupil's 'home authority'.

72. In the case of a permanent exclusion the governing body's notification must also include the information below.

- The fact that it is permanent.
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
  - a) the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents – see paragraph 74);
  - b) the name and address to whom an application for a review (and any written evidence) should be submitted;
  - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion;
  - d) that, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the local authority / Academy Trust to appoint an SEN expert to attend the review;
  - e) details of the role of the SEN expert and that there would be no cost to parents for this appointment;
  - f) that parents must make clear if they wish for a SEN expert to be appointed in any application for a review; and

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<sup>21</sup> Section 51A Education Act 2002 and regulations made under this section.



- g) that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.
- That, in addition to the right to apply for an independent review panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.
  - That a claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place, e.g. the day on which the pupil was excluded.

73. The governing body may provide the information in paragraphs 71 and 72 by: delivering it directly to parents; leaving it at their last known address; or by posting it to this address.

74. Notice is deemed to have been given on the same day if it is delivered directly, or on the second working day after posting if it is sent by first class mail.

### **Statutory guidance to governing bodies on providing information to parents following their consideration of an exclusion**

75. The governing body should set out the reasons for their decision in sufficient detail to enable all parties to understand why the decision was made.

76. Where relevant, it will be for schools to confirm the details of where the parents' application for an independent review panel should be sent. This is normally the clerk of the independent review panel.

77. In providing details of the role of the SEN expert, the governing body should refer to the statutory guidance provided to SEN experts in paragraphs 155 to 158.

78. Where the governing body decides to uphold an exclusion they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include:

- a link to this statutory guidance on exclusions: [exclusion guidance](#);
- a link to guidance on making a claim of discrimination to the First-tier Tribunal <http://www.justice.gov.uk/tribunals/send/appeals>;
- a link to the Coram Children's Legal Centre: [www.childrenslegalcentre.com](http://www.childrenslegalcentre.com) 08088 020 008; and,
- where considered relevant by the governing body, links to local services, such as Traveller Education Services or the local parent partnership ([www.parentpartnership.org.uk](http://www.parentpartnership.org.uk)).

## 7. The head teacher's duty to remove a permanently excluded pupil's name from the school register

### A guide to the law<sup>22</sup>

79. The head teacher must remove a pupil's name from the school admissions register if:

- 15 school days have passed since the parents were notified of the governing body's decision to uphold a permanent exclusion and no application has been made for an independent review panel; or
- the parents have stated in writing that they will not be applying for an independent review panel.

80. Where an application for an independent review panel has been made within 15 school days, the head teacher must wait until the review has been determined, or abandoned, before removing a pupil's name from the register.

81. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the pupil should be reinstated.

### Statutory guidance to schools on marking attendance registers following exclusion

82. Whilst an excluded pupil's name remains on a school's admissions register the pupil should be marked using the appropriate attendance code. Where alternative provision has been made that meets the requirements of the pupil registration regulations, and the pupil attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration), should be used. Where pupils are not attending alternative provision they should be marked absent using Code E.

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<sup>22</sup> The Education (Pupil Registration)(England) Regulations 2006

## 8. The local authority's / Academy Trust's duty to arrange an independent review panel

### 8.1 Arranging a date and venue

#### A guide to the law<sup>23</sup>

83. If applied for by parents within the legal time frame, the local authority or (in the case of an Academy) the Academy Trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing body not to reinstate a permanently excluded pupil.

84. The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the governing body of their decision to uphold a permanent exclusion (in accordance with the requirements in paragraph 74); or
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion<sup>24</sup>.

85. Any application made outside of the legal time frame must be rejected by the local authority / Academy Trust.

86. The local authority / Academy Trust must not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court<sup>25</sup>.

87. Parents may request an independent review panel even if they did not make a case to, or attend, the meeting at which the governing body considered the exclusion.

88. The local authority / Academy Trust must take reasonable steps to identify a date for the review that all parties are able to attend. However, the review must begin within 15 school days of the day on which the local authority / Academy Trust received the parent's application for a review (panels have the power to adjourn a hearing if required).

89. The local authority / Academy Trust must arrange a venue for hearing the review, which must be in private unless the panel directs otherwise.

90. Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

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<sup>23</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>24</sup> The First-tier Tribunal (Special Educational Needs and Disability) and County Court have the jurisdiction to hear claims of discrimination under the Equality Act 2010 which relate to exclusions.

<sup>25</sup> In such circumstances, the Tribunal or Court may decide to delay their consideration until after the independent review panel process has been completed.

## Statutory guidance to local authorities and Academy Trusts on arranging a date and venue for a review

91. Local authorities / Academy Trusts must take all reasonable steps to ensure the venue for the review is appropriate, accessible to the parties, and has a suitable area for the parties to wait separately from the panel before the review.

92. Where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews the local authority / Academy Trust should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

## 8.2 Appointing panel members

### A guide to the law<sup>26</sup>

93. The local authority / Academy Trust must constitute the panel with either three or five members (as decided by the local authority / Academy Trust) representing each of the three categories below. A five member panel must be constituted with two members from each of the categories of school governors and head teachers<sup>27</sup>.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
- School governors who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or head teachers during this time.
- Head teachers or individuals who have been a head teacher within the last five years.

94. A person may not serve as a member of a review panel if they:

- are a member / director of the local authority / Academy Trust or governing body of the excluding school;
- are the head teacher of the excluding school or anyone who has held this position in the last five years;
- are an employee of the local authority / Academy Trust, or the governing body, of the excluding school (unless they are employed as a head teacher at another school);
- have, or at any time have had, any connection with the local authority / Academy Trust; school; parents or pupil; or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are a head teacher at another school); or
- have not had the required training within the last two years (see paragraph 116).

95. In relation to panel members appointed by local authorities, sections 173(4) and 174(1) of Local Government Act 1972 apply when determining allowances for financial loss, travel or

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<sup>26</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>27</sup> Head teachers / Principals / teachers in charge of a PRU and governors / management committee members of maintained schools, pupil referral units and Academies are eligible to be members of independent review panels considering an exclusion from any type of school covered by this guidance.

subsistence. It is for Academy Trusts to determine their own payment arrangements for panel members.

96. The local authority / Academy trust must make arrangements to indemnify panel members against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review which are taken in good faith.

### **Statutory guidance to local authorities and Academy Trusts on appointing independent review panel members**

97. Every care should be taken to avoid bias or an appearance of bias. The local authority / Academy Trust should request that prospective panel members declare any conflict of interest at the earliest opportunity.

98. Where possible, panel members who are governors or head teachers should reflect the phase of education (primary / secondary) and type of school from which the pupil was excluded, for example: special school; boarding school; PRU; Academy or maintained school.

99. The local authority / Academy Trust should consider whether the chair should be someone with a legal qualification or other legal experience. This is particularly important where a clerk will not be providing legal expertise to the panel.

100. In order to meet their duties within the statutory time frame, local authorities / Academy Trusts should identify a number of eligible individuals in each of the different categories required to constitute an independent review panel in advance of an application for a review.

## **8.3 Appointing a clerk and the clerk's role**

### **A guide to the law<sup>28</sup>**

101. The local authority / Academy Trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, legislation and statutory guidance on exclusions.

102. Where appointed the clerk must perform the following additional functions.

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend and make oral representations to the panel; be represented; and (in the case of a parent), to bring a friend:
  - a) the parents;
  - b) the head teacher (where an excluding head teacher has left the school, the panel may use its discretion in deciding whether also to invite this person to make representations);
  - c) the governing body; and
  - d) the local authority (in the case of a maintained school or pupil referral unit).

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<sup>28</sup> Section 51A Education Act 2002 and regulations made under this section.

- Make reasonable efforts to circulate to all parties, including to panel members and the SEN expert, copies of relevant papers 5 school days in advance of the review. These papers must include:
  - a) the governing body's decision;
  - b) the parents' application for a review; and
  - c) any policies or documents that the governing body was required to have regard to in making their decision.
- Give all parties details of those attending and their role, once the position is clear.
- Attend the review and ensure that minutes are produced in accordance with instructions from the panel.

103. Where a clerk is not appointed the functions in paragraph 102 become the responsibility of the local authority / Academy Trust.

### **Statutory guidance to local authorities on appointing an independent review panel clerk**

104. The clerk should not have served as clerk to the governing body meeting.

105. In addition to the training required by law, clerks should have an up-to-date understanding of developments in case law, legislation and guidance which are relevant to exclusion.

106. Where a clerk is not appointed, the local authority / Academy Trust should consider what additional steps it may need to take to ensure that the independent review panel is administered properly.

### **Statutory guidance to the clerk on preparing for an independent review**

107. The clerk should identify in advance of the meeting whether the pupil will be attending. Where an excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his / her participation. If the excluded pupil is not attending it should be made clear that he / she may feed in their views through a representative or by submitting a written statement.

108. In order to review the governing body's decision the panel will generally need to hear from those involved in the incident, or incidents, leading to the exclusion. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement.

109. In the case of witnesses who are pupils of the school it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parents' consent. In such cases, that pupil's parents should be invited to attend the meeting in support of their child.

110. Where character witnesses are proposed the clerk should seek the agreement of the panel, but this should be allowed unless there is good reason to refuse.

111. All written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion.

112. Parties attending the hearing have the right to be represented. Representatives may make written or oral representations to the panel. If any of the parties wish to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the review. However, all parents may attend, if they wish to do so, and each can make representations and be represented.

113. In addition to written witness statements, the clerk should request written evidence from the school in order to circulate it in advance of the meeting, such as policies and documents of the school which the governing body would reasonably have been expected to take account of in reaching their decision on the exclusion.

114. Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements should be used.

115. The clerk should notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing.

## **8.4 Ensuring that panel members and clerks are trained**

### **A guide to the law<sup>29</sup>**

116. The local authority / Academy Trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This training must have covered:

- the requirements of the primary legislation, regulations and statutory guidance governing exclusions (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making);
- the need for the panel to observe procedural fairness and the rules of natural justice;
- the role of the chair of a review panel;
- the role of the clerk to a review panel;
- the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
- the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

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<sup>29</sup> Section 51A Education Act 2002 and regulations made under this section.

## 8.5 Appointing an SEN expert

### A guide to the law<sup>30</sup>

117. If requested by parents in their application for an independent review panel, the local authority / Academy Trust must appoint a SEN expert to attend the panel and cover the associated costs of this appointment.

118. The local authority / Academy trust must make arrangements to indemnify the SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

119. Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the school recognises that their child has SEN.

120. The SEN expert's role is set out in paragraphs 155 to 158.

121. Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the local authority, Academy Trust, school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual is not taken to have such a connection solely because he / she is an employee of the local authority / Academy Trust.

### Statutory guidance to local authorities and Academy Trusts on appointing a SEN expert

122. The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN and disability. Examples of suitable individuals might include educational psychologists; specialist SEN teachers; special educational needs coordinators (SENCOs); and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role, though the local authority / Academy Trust would need to assure themselves that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEN.

123. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a local authority or Academy Trust, they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The local authority / Academy Trust should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.

124. The final decision on the appointment of an SEN expert is for the local authority / Academy Trust to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert. In order to meet its duties within the statutory time frame, the local authority / Academy Trust should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.

125. It is for the local authority / Academy Trust to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel and subsistence allowances.

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<sup>30</sup> Section 51A Education Act 2002 and regulations made under this section.



## 9. The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel

### A guide to the law<sup>31</sup>

126. Panel members and, if appointed, the SEN expert must declare any known conflict of interest before the start of the review.

127. The role of the panel is to review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

128. The panel must apply the civil standard of proof, (i.e. 'on the balance of probabilities' it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.

129. Following its review the panel can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision, or
- quash the decision and direct that the governing body considers the exclusion again.

130. The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.

131. The independent review panel's decision is binding on the: pupil; parents; governing body; head teacher; local authority; and (in the case of an Academy) Academy Trust.

132. The panel may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review (statutory guidance on this consideration is provided by paragraphs 148 to 151).

133. New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion and panels must disregard any new reasons that are introduced.

134. In deciding whether the governing body's decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the governing body at the time of making their decision. This includes any evidence which the panel considers would, or should, have been available to the governing body if they had been acting reasonably.

135. If evidence is presented that the panel considers is unreasonable to have expected the governing body to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the governing body reconsider their decision.

136. Where present, the panel must seek and have regard to the SEN expert's view of how SEN might be relevant to the pupil's exclusion. Where a SEN expert has been requested but

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<sup>31</sup> Section 51A Education Act 2002 and regulations made under this section.

is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.

137. The jurisdiction of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to hear claims of discrimination relating to a permanent exclusion does not preclude an independent review panel from considering issues of discrimination in reaching its decision.

138. Where a panel directs a governing body to reconsider an exclusion it has the power to order that a readjustment of the school's budget must be made or (in the case of an Academy) that the school must make an equivalent payment to the local authority if the governing body does not offer to reinstate the pupil within 10 school days of receiving notice of the panel's decision. The sum of this adjustment / payment must be £4,000 and would be in addition to any funding that would normally follow an excluded pupil (paragraphs 152 to 154 provide statutory guidance to panels on the only circumstances under which this payment should not be ordered).

139. The panel does not have the power to order a readjustment or payment in circumstances where it has only recommended that the governing body reconsiders their decision.

140. The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and any victim.

141. A review cannot continue if the panel no longer has representation from each of the three categories of members required (see paragraph 93). In this event, the panel must be adjourned until the number can be restored.

142. Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of member are still represented.

143. Following the review, the panel must issue written notification to all parties without delay. This notification must include:

- the panel's decision and the reasons for it;
- where relevant, details of any financial readjustment / payment to be made if a governing body subsequently decides not to offer to reinstate a pupil; and
- any information that must be recorded on the pupil's educational record to reflect the decision (in particular, where a governing body does not decide to reinstate a pupil following a direction to reconsider, it must be noted that the exclusion will not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, that the governing body may appeal against the decision of the local authority as the admission authority to admit the child).

## **Statutory guidance to independent review panel members on the conduct of an independent review panel**

144. The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school, the local authority or (in the case of an Academy) the Academy Trust.

145. The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, non-threatening and non-adversarial manner.

146. It is for the panel to decide whether any witnesses should stay for the rest of the review, but they should not be present before giving evidence.

147. In the interests of propriety, care should be taken to ensure that no party, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask all parties, apart from the clerk, to withdraw before making a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

## **Statutory guidance to independent review panel members on coming to a decision**

148. When considering the governing body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- Illegality – did the head teacher and / or governing body act outside the scope of their legal powers in taking the decision to exclude?
- Irrationality – was the decision of the governing body not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- Procedural impropriety – was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

149. Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the governing body making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether to uphold the exclusion).

150. Where the criteria for quashing a decision have not been met the panel should consider whether it would be appropriate to recommend that a governing body reconsiders their decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the panel believe justify a reconsideration of the governing body's decision.

151. In all other cases the panel should uphold the exclusion.

## **Statutory guidance to independent review panel members on the financial readjustment / payment**

152. In the case of a maintained school or PRU, where a panel has quashed the governing body's decision and directed that they reconsider, the panel should order that a readjustment must be made to the school's budget, unless the governing body subsequently offers to reinstate the pupil. The only exception to this is where a school does not have a delegated or separate budget from the local authority from which the readjustment can be made.

153. In the case of an Academy, where the panel has quashed the governing body's decision, the panel should order that the Academy must make a payment directly to the local authority in which the Academy is located, unless the governing body offer to reinstate the pupil.

154. The panel should order that the readjustment or (in the case of an Academy) payment is due automatically if the governing body has not offered to reinstate the excluded pupil within 10 school days of being notified of a direction to reconsider. The panel does not have to reconvene to issue this order.

## **Statutory guidance to SEN experts on their conduct during an independent review panel**

155. The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

156. The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair (in line with the explanations in paragraph 148). If the SEN expert believes that this was not the case he / she should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

157. Where the school does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether he / she believes the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

158. The SEN expert should not criticise a school's policies or actions simply because he / she believes a different approach should have been followed or because another school might have taken a different approach.

## **Statutory guidance to the clerk and local authority / Academy Trust on the record of the proceedings of a review panel**

159. The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.

160. The minutes are not public documents but should be retained by the local authority / Academy Trust for a period of at least five years, as they may need to be seen by a court or (in the case of maintained school) by the Local Government Ombudsman. Local authorities /

Academy Trusts should be aware of their duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

### **Statutory guidance to the independent review panel and clerk on notifying parties of the outcome of the review**

161. If the panel upholds the permanent exclusion, the clerk should immediately report this to the local authority. If the pupil lives outside the local authority in which the school is located, the clerk should make sure that the 'home authority' is also informed in writing without delay of the outcome of the review. This includes any situation where parents withdraw or abandon their application for a review.

## 10. The governing body's duty to reconsider an exclusion decision following a review

### A guide to the law<sup>32</sup>

162. Where the panel directs or recommends that the governing body reconsiders their decision, the governing body must reconvene to do so within 10 school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

163. If, following a direction to reconsider, the governing body does not offer to reinstate the pupil within 10 school days of being notified of the panel's decision, an adjustment may be made to the schools budget in the sum of £4,000. In the case of an Academy, the school would be required to make an equivalent payment directly to the local authority in which the school is located. This payment will be in addition to any funding that would normally follow an excluded pupil.

164. If the governing body offers to reinstate the pupil within the specified timescale but this is declined by the parents, no readjustment may be made to the school's budget. The governing body must comply with any direction of the panel to place a note on the pupil's educational record. This includes noting that, where a pupil is not reinstated following a direction to reconsider, the exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the local authority as the admission authority to admit the child.

165. In the case of either a recommended or directed reconsideration, the governing body must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the head teacher;
- the local authority and, where relevant, the 'home authority'.

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<sup>32</sup> Section 51A Education Act 2002 and regulations made under this section.

## **11. The local authority's role in overseeing the financial readjustment / payment<sup>33</sup>**

### **Statutory guidance to local authorities on claiming the financial readjustment / payment**

166. Local authorities will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets in circumstances where a panel has ordered a financial adjustment (see paragraph 152).

167. This financial readjustment should be made within 28 days of notification of a direction from the panel. Academies should be expected to make payment within the same timescale.

168. If an Academy fails to comply with its legal requirement to pay following a direction from an independent review panel then the local authority will be responsible for enforcing this requirement. However, the local authority should also inform the Education Funding Agency.

169. If an excluded pupil has been found a place at another school by the time the governing body has reconsidered and decided not to reinstate the pupil, the local authority may, if it chooses, pass the amount of the financial readjustment to the pupil's new school.

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<sup>33</sup> Section 51A Education Act 2002 and regulations made under this section. The requirements for the transfer of funding following an exclusion from a maintained schools or pupil referral unit are set out in The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999. Academy funding agreements may require an Academy to enter into a similar agreement with the local authority.

## **12. Statutory guidance to head teachers, governing bodies, independent review panel members and clerks on police involvement and parallel criminal proceedings**

170. Head teachers need not postpone taking a decision on an exclusion solely because a police investigation is underway and / or any criminal proceedings may be brought. In such circumstances, head teachers will need to take a decision on the evidence available to them at the time.

171. Where the evidence is limited by a police investigation or criminal proceedings, head teachers should give particular consideration to ensuring that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.

172. Where the governing body is required to consider a head teacher's decision in these circumstances they cannot postpone their meeting and must decide whether or not to reinstate the pupil on the evidence available.

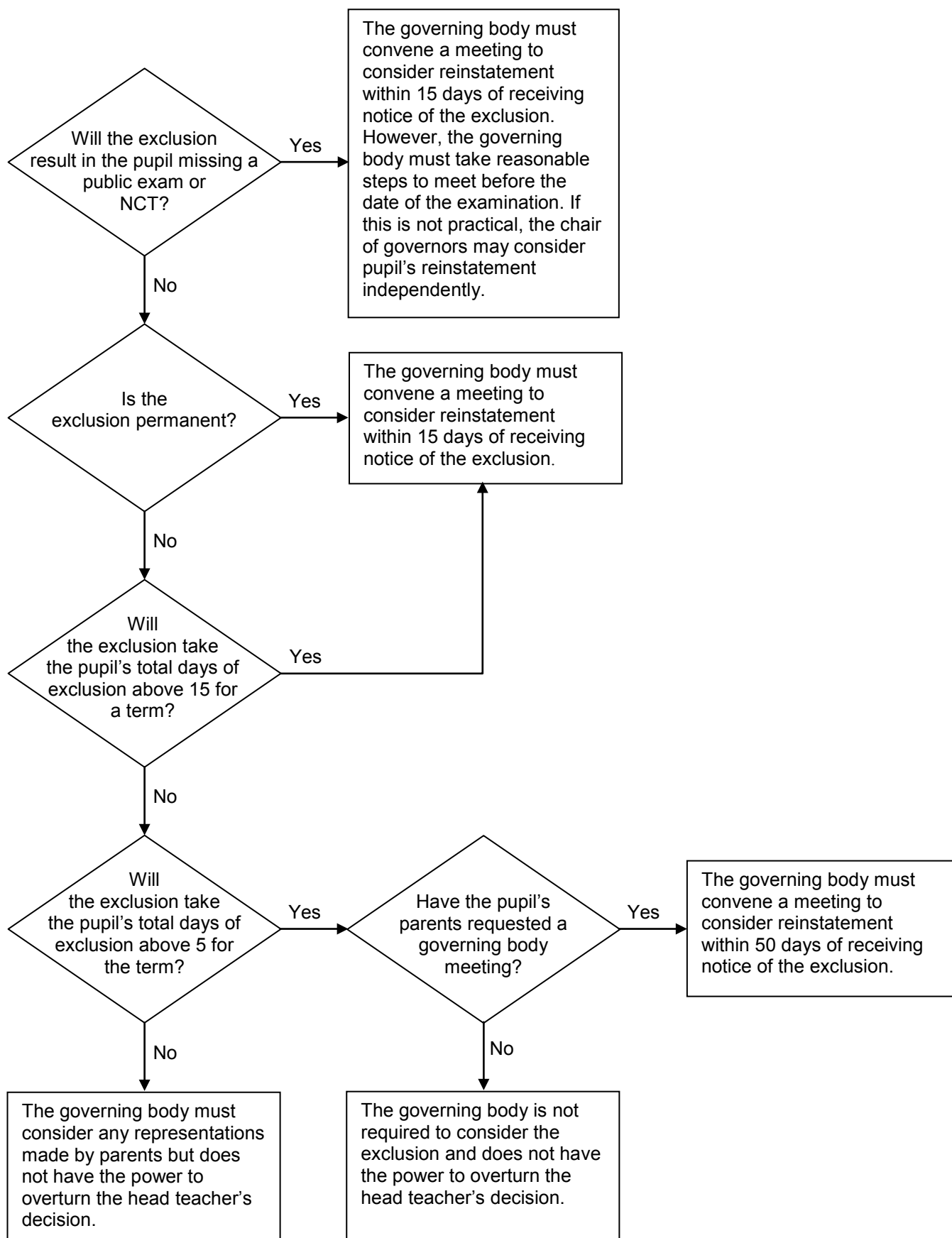
173. The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

- whether any charge has been brought against the pupil and, if so, what the charge is;
- whether relevant witnesses and documents are available;
- the likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- whether an adjournment or declining to adjourn, might result in injustice.

174. Where a panel decides to adjourn, the clerk (or local authority / Academy Trust where a clerk is not appointed) will be responsible for monitoring the progress of any police investigation and / or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once (in line with the requirements in paragraph 140).



## Annex A – A summary of the governing body’s duties to review the head teacher’s exclusion decision



The governing body may delegate its functions to consider an exclusion to a designated sub-committee. References to days mean 'school days'.



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