

# **Exclusion from schools and pupil referral units in England**

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

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# Exclusion from schools and pupil referral units in England

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

### About this guide

- This document from the Department for Education provides a guide to the legislation that will govern the exclusion of pupils from schools in England which occur after 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.
- 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 Education and Inspections Act 2006;
- The School Discipline (Pupil Exclusions and Reviews) (Maintained Schools) (England) Regulations 2012;
- The School Discipline (Pupil Exclusions and Reviews) (Pupil Referral Units) (England) Regulations 2012; and
- The School Discipline (Pupil Exclusions and Reviews) (Academies) (England) Regulations 2012<sup>1</sup>.

### 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.
- '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' is used to apply to a pupil referral unit management committee or an Academy governing body and 'governor' to a member of a management committee or a governor of an Academy.
- Except where specifically stated, this guide applies to all maintained schools, Academy Schools (including Free Schools), Alternative Provision Academies (including AP Free Schools) and PRUs. The term 'schools' will be used to refer to all categories of school to which the guidance applies.

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<sup>1</sup> Regulations for pupil referral units and Academies will be based upon those for maintained schools

- Except in PRUs, the requirements of the guide apply to all pupils at the above schools, including pupils 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 academies), city technology colleges, city colleges for the technology of the arts, sixth form colleges or 16 – 19 Academies 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.

## Key Points

- When children behave badly and disrupt teaching in a school, exclusion can help to preserve the right to education of the other pupils. Government supports head teachers in using this sanction where it is warranted. However, permanent exclusion should only be a last resort, used where bad behaviour has escalated to unacceptable levels despite the best efforts of staff to manage it, or in response to a serious incident of the very worst behaviour.
- The decision to exclude a pupil needs to be robust, fair and defensible. 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.
- Underlying factors can contribute towards poor behaviour. Where a pupil displays continuous disruptive behaviour, schools 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.
- All children have a right to an education. Alternative provision must be arranged from the sixth day of an exclusion. However, there are obvious benefits in arranging alternative provision to begin as soon as possible after an exclusion and schools should take reasonable steps to set and mark work for pupils during the first five days of an exclusion.
- Where a parent (or excluded pupil, if aged 18 or over) disputes a decision of a governing body to uphold a permanent exclusion, they can ask for this decision to be reviewed by an independent review panel. In addition, parents can now take a case to the First-tier Tribunal (for allegations of disability discrimination). This replaces the previous system of independent appeal panels. As currently, cases involving allegations of discrimination on non-disability grounds can be taken to a County Court.
- 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 in light of the principles applicable in a 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 direct 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 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 met its legal duties in relation to SEN when excluding the pupil.

- Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, where appropriate, taking into account their age and understanding.

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

The definition of a parent for the purposes of the Education Acts is broadly drawn. In addition to the child's birth parents, references to parent in this guidance include any person who has parental responsibility (which includes the local authority where they have a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives.

Furthermore, where an excluded pupil is aged 18 or over they have the right to challenge their own exclusion. Accordingly, where the pupil is aged 18 or over the duties of a head teacher, governing body, local authority and independent review panel in respect of the excluded pupil's parents should be read as duties in respect of the pupil and the rights of parents in respect of the exclusion should be interpreted as the rights of the pupil.

# 1. The head teacher's power to exclude

## A guide to the law<sup>2</sup>

1. Only the head teacher 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 school year), or permanently. In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion. In such cases the head teacher must write to the parents explaining the reasons for the change. The head teacher may withdraw an exclusion that has not been reviewed by the governing body.

2. It would be unlawful to exclude, or to increase the severity of an exclusion for a non-disciplinary reason, such as academic attainment / ability, the actions of a pupil's parent 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.

3. A fixed period exclusion does not have to be for a continuous period. For example, where provision is being made for a pupil to attend another provider for part of the week, this provision can continue at the discretion of the excluding head teacher. In these circumstances the days on which the pupil attended the alternative provider would not be counted towards the exclusion.

4. 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 legislative 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 when triggering a governing body meeting.

5. The behaviour of pupils outside school can be considered as grounds for exclusion. This will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy. Further clarification of maintained schools' powers to discipline outside of the school are set out in the Department's guidance, *Behaviour and Discipline in Schools – A Guide for Head teachers and School Staff* (2011).

6. When deciding whether to exclude a pupil the head teacher should apply the 'balance of probabilities' standard of proof; i.e. whether it is more likely than not that the pupil did what he / she is accused of doing (this is not the same as requiring the criminal standard of 'beyond reasonable doubt' to be applied).

7. 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.

8. Under the Equality Act 2010 (the 2010 Act) schools must not discriminate against, harass or victimise pupils because of their sex, race, disability, religion or belief, sexual orientation or because of a pregnancy / maternity. In carrying out their functions under the 2010 Act, the public sector equality duty requires schools to have due regard to the need to:

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<sup>2</sup> Section 51A Education Act 2002 inserted by section 4 of the Education Act 2011 and regulations made under that section.

- eliminate discrimination and other conduct that is prohibited by the 2010 Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations across all characteristics - between people who share a protected characteristic and people who do not share it.

9. These duties need be taken into account when taking a decision on whether to exclude a pupil, but schools must also ensure that their policies, such as their behaviour policy, do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act 2010 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.

10. Head teachers and governing bodies should take account of their statutory responsibilities under the Education Act 1996 in relation to SEN when administering the exclusion process. This includes having regard to the SEN Code of Practice. It is unlawful to exclude a pupil simply because they have additional needs that the school feels they are unable to meet.

11. 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. If pupils are sent home in response to poor behaviour, even for short periods of time, this must be formally recorded as an exclusion. The 'managed move' of a pupil to another school can only be carried out with the full consent of the pupil's parent. The threat of exclusion must never be used in order to influence a parent to remove their child from the school.

12. When taking the decision to exclude a pupil, a head teacher must have regard to guidance issued by the Secretary of State. Paragraphs 13 to 21 provide this guidance.

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

13. The decision to exclude a pupil is not one that should be taken lightly. A decision to exclude a pupil permanently should only be taken:

- in response to serious 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.

14. 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.

15. 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.

16. Managed moves may be appropriate for pupils who are at risk of exclusion by providing them with a fresh start. However, in line with the statutory requirement that managed moves can only take place with a parent's consent (paragraph 11), head teachers should ensure that parents and pupils are properly informed of the basis on which the move is being considered.

## **Statutory guidance to head teachers on the exclusion of pupils with special educational needs (SEN), disabilities or other additional needs**

17. Early intervention to identify and address any underlying causes of disruptive behaviour can help prevent behavioural problems escalating to the point where exclusion is necessary. For example, where a child with SEN demonstrates persistent or serious poor behaviour a school should consider whether alternative or additional support is required. Intervention strategies should include engaging with pupils' parents and other appropriate sources of support, such as the local authority.

18. As set out in Department for Education's guidance, *Behaviour and Discipline in Schools – A Guide for Head teachers and School Staff*, head teachers should 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 to cover, for example, mental health or family problems.

19. Head teachers should, as far as possible, avoid excluding permanently any pupil with a statement of SEN. Where a school is considering the permanent exclusion of a pupil with a statement they should begin a dialogue with the responsible local authority, highlighting their concerns about the placement of the pupil in the school and the possible need for additional support or an alternative placement. This could include a request that the local authority arranges an early annual review or interim / emergency review.

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

20. The national exclusion rates for certain ethnic groups are consistently higher than average. The highest rates of exclusion are for pupils from: Gypsy / Roma; Travellers of Irish Heritage; and Black Caribbean communities. Head teachers should consider what additional support could help identify and address the needs of pupils from these communities 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 looked after children**

21. Schools should proactively support and co-operate with foster carers and the local authority as a corporate parent in doing everything possible to avoid excluding a looked after child<sup>3</sup>. Where a school is considering the permanent exclusion of a looked after pupil they should begin a dialogue with the responsible local authority, highlighting their concerns about the placement of the pupil in the school and the possible need for additional support or an alternative placement.

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<sup>3</sup> As defined in section 22 of the Children Act 1989.

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

### A guide to the law<sup>4</sup>

22. 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.

23. 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 a different local authority. The 'home' authority must be notified by a school when they take the decision to permanently exclude a pupil (see paragraph 44).

24. In addition, where a pupil has a statement of SEN the local authority needs to ensure that an appropriate full-time placement is identified in consultation with the parents who retain their rights to express a preference for a maintained school that they wish their child to attend, or make representations for a placement in any other school<sup>5</sup>.

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

26. 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.

### Best practice on the education of pupils prior to the sixth day of an exclusion

27. It is important for schools to help minimise the disruption that exclusion can cause to a 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 try and put in place alternative provision from the first day following the exclusion.

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

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<sup>4</sup> Section 100 and 101 of the Education and Inspections Act 2006

<sup>5</sup> Schedule 27 of the Education Act 1996

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

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

##### A guide to the law<sup>6</sup>

29. Whenever a head teacher excludes a pupil they must, without delay, notify the parent<sup>7</sup> of the exclusion. The following information must also be provided to the parent in writing and without delay:

- the reasons for the exclusion;
- the period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
- the parent's right to make representations about the exclusion to the governing body (in line with the requirements set out in paragraphs 46 to 50) and how the pupil may be involved in this;
- the person who should be contacted if they wish to make such representations and the means by which such representations should be made; and
- where there is a right or obligation for the governing body to meet to consider the exclusion, that the parent has a right to be represented at this meeting (at his / her own expense) and to bring a friend.

30. The head teacher may provide this information:

- by delivering it to the parents, or
- by leaving it at the parents' usual or last known place of residence, or
- by sending it in a prepaid letter addressed to the parent at that place of residence.

31. In cases where a looked after child or young person is excluded, anyone who is legally defined as a parent has the right to make representations and to appeal (see the definition of 'parent' at the beginning of this document).

32. Where an excluded pupil is of compulsory school age the head teacher must also notify the parents in writing without delay of the following information<sup>8</sup>:

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

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<sup>6</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>7</sup> Where an excluded pupil is aged 18 or over the head teacher's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, a parent's rights in respect of the exclusion should be read as the pupil's rights.

<sup>8</sup> Sections 103 and 104 Education and Inspections Act 2006 and regulations made under these sections. The requirements of when this information must be provided reflect proposed changes to these regulations.

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

33. Where required, the information in bullets b. to e. must be provided within 48 hours of the start of the provision.

34. The information in paragraph 32 can be provided with details of the exclusion or by any other effective method.

35. 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 in paragraphs 29 and 32.

36. When providing information to pupils and parents about an exclusion a head teacher must have regard to guidance issued by the Secretary of State. Paragraphs 37 to 40 provide this guidance.

### **Statutory guidance to head teachers on additional information that should be provided to parents following an exclusion**

37. The letter notifying parents about an exclusion should set out what arrangements have been made to enable the pupil to continue his or her education during the first five school days of an exclusion, in line with the guidance in paragraphs 27 and 28.

38. There is no longer a legal requirement to conduct a reintegration interview for pupils returning from a fixed period exclusion<sup>9</sup>. However, head teachers should consider whether one would be appropriate as part of their strategy for managing an excluded pupil's future behaviour. Where a reintegration interview is to take place, reasonable efforts should be made to arrange it for a time that is convenient for the parents and give sufficient notice of the time, date and location of the interview. The pupil should attend for at least part of the interview.

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

- a link to this statutory guidance on exclusions **[link to be inserted following final publication]**;
- 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 specific local services, such as Traveller Education Services.

40. Head teachers should ensure that information provided to parents is clear and easily understood. Where a parent's first language is not English consideration should be given,

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<sup>9</sup> It is intended to revoke regulations made under section 102 Education and Inspections Act 2006 : the Education (Reintegration Interview)(England) Regulations 2007 SI 1868

where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and their right to make representations to the governing body have been understood.

## **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>**

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

- a permanent exclusion (including any decision to make a fixed term exclusion permanent);
- exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in any one term; and
- exclusions which would result in the pupil missing a public examination.

42. For all other exclusions a head teacher must notify the local authority once a term. Where a school has more than three terms a year they must agree with the local authority three terms in which the information will be provided.

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

44. 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 so that they can make arrangements for the pupil's full-time education from the sixth school day of exclusion.

45. Maintained schools must also provide the following information in relation to exclusions within 14 days of a request by either the local authority or Secretary of State<sup>11</sup>.

- The name, age, gender and ethnicity of any excluded pupils.
- The length of, and reason, for any exclusion.
- Whether any excluded pupil had a statement of SEN, was being assessed for such a statement, or was on School Action or School Action Plus.
- Whether the pupil was looked after (as defined in section 22 of the Children Act 1989).
- For fixed period exclusions of more than five school days involving pupils of compulsory school age, what alternative provision was put in place for the pupil.

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<sup>10</sup> New section 51A (3)(a) Education Act 2002 and regulations made under that section

<sup>11</sup> The Education (Information About Individual Pupils) (England) Regulations 2006

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

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

#### A guide to the law

46. The requirements on a governing body to consider an exclusion depend upon a number of different factors. These requirements are illustrated by **[link to be inserted following final publication - diagram at the end of this document]**. The governing body may delegate its functions with respect to the consideration of an exclusion decision to a designated sub-committee of the governing body<sup>12</sup>.

47. The governing body must convene a meeting to consider the reinstatement of an excluded pupil within 15 school days 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 days of exclusion to more than 15 in one term; or
- it would result in a pupil missing a public examination.

48. Where an exclusion would result in a pupil missing a public examination there is a further requirement for a governing body, so far as is reasonably practicable, to meet before the date of the examination. If this is not practical, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil. These are the only circumstances in which the chair can review an exclusion alone. In such cases the parents<sup>13</sup> still have the right to make oral representations to the governing body and must be made aware of this right.

49. In the case of a fixed period exclusion of more than five days, which does not bring the pupil's total number of days of exclusion to more than fifteen in one term, the governing body must convene a meeting to review a head teacher's decision to exclude a pupil within 50 days of receiving notice of the exclusion, if requested to do so by a parent.

50. 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 one term, the governing body must consider any representations made by a parent, but they cannot direct reinstatement and are not required to arrange a meeting with parents.

51. The following parties must be invited to the governing body's meeting to consider an exclusion and allowed to make representations:

- a parent<sup>12</sup>;
- the head teacher; and
- (in the case of a maintained school or pupil referral unit) a local authority officer<sup>14</sup>.

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<sup>12</sup> Regulation 16 of the School Governance (Procedures)(England) Regulations 2003

<sup>13</sup> Where an excluded pupil is aged 18 or over the governing body's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, a parent's rights in respect of the exclusion should be read as the pupil's rights.

<sup>14</sup>The governing body of an Academy or Free School is not expected to seek the advice of a local authority officer when considering an exclusion, but one may attend the meeting at the invitation of a parent.

52. 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 time limits set out above. However, their decision will not be invalid simply on the grounds that it was made out of time.

53. When preparing to consider an exclusion, a governing body must have regard to guidance issued by the Secretary of State. Paragraphs 54 to 56 provide this guidance.

### **Statutory guidance to governing bodies on preparing for a meeting to consider reinstatement**

54. Where a governing body is meeting to consider the reinstatement of an excluded 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 any relevant information held by the school which relates to the pupil's special educational needs (SEN), such as a statement of SEN or latest annual review);
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five 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 has a disability in relation to mobility or communication that impacts upon their ability to attend the review or to make representation); and
- consider what steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (including providing accessible information or allowing them to bring a friend), taking into account their age and understanding<sup>15</sup>; or
- identify how they might enable the excluded pupil to feed in his or her views by other means if attending the exclusion meeting is not possible.

55. In cases where a governing body considers a parent's 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 school record.

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

56. There is no automatic right for any excluded pupil to take a public examination on the excluding school's premises. However, the governing body should consider whether it would be appropriate to exercise its discretion to allow an excluded pupil on the premises for the sole purpose of taking a public examination.

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<sup>15</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*.

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

## A guide to the law

57. When considering whether or not a pupil should be reinstated a governing body must consider the circumstances in which the pupil was excluded and any representations made by:

- a parent<sup>16</sup>;
- the head teacher; and
- (in the case of a maintained school or pupil referral unit) a local authority officer.

58. In doing so governing bodies must apply the 'balance of probabilities' standard of proof; i.e. whether it is more likely than not that the pupil did what he / she is accused of (this is not the same as requiring the criminal standard of 'beyond reasonable doubt' to be applied).

59. 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.

60. When considering whether an excluded pupil should be reinstated a governing body must have regard to guidance issued by the Secretary of State. Paragraphs 61 to 65 provide this guidance.

## Statutory guidance to governing bodies on conducting a meeting to consider the reinstatement of an excluded pupil

61. The governing body should consider how all parties will be supported to participate in its consideration and have their views properly heard. This is particularly important where a pupil aged under 18 is speaking about their own exclusion or giving evidence to the governing body.

62. The governing body should ask all parties, apart from the clerk, to withdraw before making a decision. The clerk may stay to help the governing body by reference to the notes and with the wording of the decision letter.

63. 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 robust, fair and defensible, taking account of the head teacher's legislative duties (including their need to have regard to this guidance) and any relevant information about a pupil's SEN; and

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

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

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<sup>16</sup> Where an excluded pupil is aged 18 or over the governing body's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, a parent's rights in respect of the exclusion should be read as the pupil's rights.

# The governing body's duty to notify people after considering the reinstatement of an excluded pupil

## A guide to the law

66. After considering the reinstatement of an excluded pupil the governing body must notify the parents, the head teacher and the local authority of its decision, and the reasons for its decision, in writing 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.

67. Notice is deemed to have been given on the same day if it is delivered directly to the parents' address, or on the second working day after it is sent if it is posted by first class mail.

68. 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 the parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
  - a) the date by which claims for a review panel 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 the parents;
  - b) the name and address to whom a request for a review, and any written evidence, should be submitted;
  - c) that any request should set out the grounds on which it is being made and that, where relevant, 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, a parent has a right to require that the local authority or Academy Trust appoint an SEN expert to attend the review;
  - e) details of the role of the SEN expert in respect of the review;
  - f) that parents should make clear if they wish for a SEN expert to be appointed when making a request for a review and that there would be no cost to parents for this appointment; and
  - g) that parents have the right, at their own expense, to appoint his / her own expert to submit evidence or represent them at the review and that they can also bring a friend to the meeting.
- That, in addition to the right to request an independent review panel, if a parent believes 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 case alleging 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.
- When informing parents about their decision on an exclusion, a governing body must have regard to statutory guidance issued by the Secretary of State. Paragraphs 69 to 72 provide this guidance.

## **Statutory guidance to governing bodies on providing information to parents about their options following a decision to uphold a permanent exclusion**

69. Governing bodies should set out the reasons for their decision in as much detail as possible so that all parties can understand why the decision was made.

70. It will be for schools to confirm the details of where a parent's request for an independent review panel should be sent. This is normally the clerk of the independent review panel.

71. In providing details of the role of the SEN expert in their notification to parents, governing bodies should refer to the statutory guidance provided to SEN experts in paragraphs 149 to 151.

72. Where the governing body decides to uphold an exclusion they should draw the attention of parents to 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 a parent of a decision to uphold an exclusion and should include:

- a link to this statutory guidance on exclusions **[link to be inserted following final publication]**;
- a link to guidance on making an application to the First-tier tribunal **[link to be inserted following final publication]**;
- a link to the Coram Children's Legal Centre: [www.childrenslegalcentre.com](http://www.childrenslegalcentre.com) - 08088 020 008; and, where it is considered relevant by the governing body,
- links to specific local services, such as Traveller Education Services.

## 5. The head teacher's power to remove a permanently excluded pupil from the school register

### A guide to the law<sup>17</sup>

73. The head teacher must remove the 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 request has been made for an independent review panel or claim alleging discrimination based on the exclusion; or
- the parents have stated in writing that they will not be seeking a review of the decision or pursuing a claim on discrimination grounds.

74. Where a request for a review has been made within 15 school days to an independent review panel or a discrimination claim has been made, the head teacher must wait until the review and / or discrimination claim have determined that reinstatement will not take place, or until these claims have been abandoned, before removing a pupil from the register.

75. Where a pupil is removed from the school register and the exclusion is subsequently subject to a discrimination claim, the Tribunal or a County Court has the power to direct the reinstatement of the pupil. A parent may also ask for an independent review panel to review the exclusion following the conclusion of a discrimination case, if they have not previously done so.

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

76. Whilst an excluded pupil remains on a school's admissions register they 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>17</sup> The Education (Pupil Registration)(England) Regulations 2006

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

### A guide to the law

77. Parents<sup>18</sup> may request an independent review panel to review the decision of a governing body to uphold a permanent exclusion even if they did not make a case to, or attend, a meeting at which the governing body considered the exclusion.

78. This request must be made within 15 school days of notice being given by the governing body of its decision to uphold an exclusion. Alternatively, where a parent has pursued a discrimination case under the Equality Act 2010 via the Tribunal or a County Court, a request for an independent review panel may be made within 15 school days of the date on which the discrimination case has been finally determined. Any request after this time must be rejected by the local authority<sup>19</sup>.

79. If requested by a parent within the legal time frame, the local authority must arrange for an independent review panel hearing. The local authority must take reasonable steps to identify a date for the review that all parties are able to attend. However, this hearing must take place within 15 school days of the day on which the local authority received the parents' review request.

80. Arrangements for the review must include the attendance of a SEN expert, if requested by the parent prior to the review, and a suitable venue for hearing the review in private (the excluding school would not be regarded as a suitable venue).

81. If necessary, the review panel may decide to adjourn the hearing. This might include circumstances where more information is awaited or a parent requests a later hearing date. The panel may adjourn on more than one occasion, if necessary, but consideration should be given to the effect of adjournment on the parties to the review, the excluded pupil and any victim.

82. The local authority must constitute the review panel with either three or five members (as decided by the local authority) 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>20</sup>.

- A lay member to chair the panel. This must be someone who has not worked in a school in any paid capacity, although they may be (or have been) a school governor or work (or have worked) in a school as a volunteer.
- School governors who have served as a governor of a school 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.

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<sup>18</sup> Where an excluded pupil is aged 18 or over the local authority's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, the parents' rights in respect of the exclusion should be read as the pupil's rights.

<sup>19</sup> In this section references to the local authority should be taken to read Academy Trust in relation to exclusions from an Academy / Free School.

<sup>20</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.

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

- are a member of the local authority, Academy sponsor or governing body of the excluding school;
- the head teacher of the school in question or anyone who has held this position in the last five years;
- are an employee of the local authority, Academy sponsor or of the governing body of the school in question, unless they are employed as a head teacher in another school in the same local authority;
- have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially; or
- have not had the required training within the last two years (see paragraph 107).

84. The local authority may also appoint a clerk to provide an independent source of advice on procedure for all parties.

85. When appointing independent review panel members and clerks the local authority must have regard to statutory guidance issued by the Secretary of State. Paragraphs 86 to 94 provide this guidance. Where a clerk has not been appointed, statutory guidance referring to the clerk should be taken to apply to the members of the independent review panel.

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

86. Every care should be taken to avoid bias or an appearance of bias. Local authorities should request that prospective panel members declare any conflict of interest at the earliest opportunity.

87. 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; pupil referral unit; Academy or maintained school.

88. Local authorities 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.

89. In order to meet their duties within the statutory time frame, local authorities should identify a number of eligible individuals in each of the different categories required by an independent review panel in advance of a request.

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

90. For a clerk to perform their role effectively they should have an up-to-date understanding of developments in case law, legislation and guidance relating to exclusions. Local authorities should take account of this when appointing and training people for this position.

91. The clerk should not have served as clerk to the governing body hearing.

92. Where a clerk is not appointed, the local authority should consider what additional steps they may need to take to ensure that the independent review panel is administered properly. The independent review panel will not be discharged of its duties because the local authority has not appointed a clerk.

## **Statutory guidance to local authorities on combining multiple exclusion reviews**

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

94. Where the issues raised by two or more requests for review are the same, or connected but the panel does not combine the reviews the local authority should take reasonable steps to avoid unfairness and inconsistency. It is recommended that, where possible, the same panel members hear all related reviews.

## **The local authority's duty to appoint a SEN expert**

### **A guide to the law**

95. If requested by a parent, local authorities must appoint a SEN expert to attend an independent review panel and cover the associated costs of this appointment.

96. Parents have a right to request the attendance of this expert at a review, regardless of whether or not the school recognises that their child has SEN (the governing body has a duty to inform parents of this right in writing when it upholds a permanent exclusion, as set out in paragraph 68).

97. If a parent requests the attendance of a SEN expert but one is not present at the review, they are entitled to ask for the review to be adjourned so that the SEN expert is able to attend.

98. The SEN expert's role is to provide impartial advice to the panel about how SEN might be relevant to a pupil's exclusion. The expert's role does not include making an assessment of the pupil's SEN.

99. The SEN expert will attend the review in an advisory capacity and does not have the power to vote.

100. A person may not serve as a SEN expert if they have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially.

101. When appointing a SEN expert the local authority must have regard to guidance issued by the Secretary of State. Paragraphs 102 to 106 provide this guidance.

## **Statutory guidance to local authorities on appointing a SEN expert**

102. It is expected that the SEN expert will be a professional with suitable expertise and experience of the requirements on schools in relation to identifying and supporting special

educational needs and disability, for example: an educational psychologist; a specialist SEN teacher; or a behaviour support teacher.

103. In order to meet their duties within the statutory time frame, local authorities should identify a number of individuals capable of performing the role of SEN expert in advance of a request.

104. Local authorities should give consideration to ensuring that parents have confidence in the independence and capability of the SEN expert. This should include taking reasonable steps to offer a choice of SEN expert, for example by identifying a number of individuals capable of performing the role. Where a choice of SEN expert is being offered local authorities should provide parents with sufficient information and time in order to make an informed decision.

105. The appointment of a SEN expert does not affect the right of parents to be represented by an expert or professional of their choice at the review panel, or have them make written representation to the panel if they prefer. However, parents would have to meet any costs of such representation.

106. Local authorities should ensure that SEN experts are clear about their role, as set out in paragraphs 149 to 151.

## **The local authority's duty to provide training for review panel members and clerks**

### **A guide to the law**

107. Local authorities 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 on head teachers, governing bodies and independent review panels (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making);
- the duties of head teachers, governing bodies and the review panel under the Equality Act 2010;
- 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;
- the need for the panel to observe procedural fairness and the rules of natural justice;
- the role of the chair of a review panel; and
- the role of the clerk to a review panel.

## 7. The responsibilities of independent review panel members, clerks and SEN experts

### Preparing for an independent review panel

#### A guide to the law

108. Panel members must declare any conflict of interest before the start of the review.

109. The panel must make reasonable efforts to inform the following people that they are entitled to make written representations, to attend and to make oral representations to the panel, to be represented (including legally) and to bring a friend:

- the parent<sup>21</sup>;
- the head teacher (where an excluding head teacher has left the school, the review panel may use its discretion in deciding whether to invite him / her to make representations);
- the governing body; and
- the local authority.

110. A SEN expert must be present to make oral representations if requested by a parent in their application for an independent review panel. Where a SEN expert has been requested but is not present, the parents have the right to request that the review is adjourned until such time as a SEN expert can attend.

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

112. The panel must ensure that reasonable efforts are made to circulate any papers, including all written evidence, five days in advance of the review to all parties, including to panel members and the SEN expert. These papers must include :

- the governing body's decision;
- the parents' request for a review;
- any policies or documents that the governing body was required to have regard to by law (or by virtue of a funding agreement) in making their decision; and
- any other relevant documents.

113. When the position is clear, the panel must give all parties details of those attending and their role.

114. When preparing for an independent review panel, panel members and the clerk must have regard to guidance issued by the Secretary of State. Paragraphs 115 to 126 provide this guidance.

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<sup>21</sup> Where an excluded pupil is aged 18 or over the review panel's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, a parent's rights in respect of the exclusion should be read as the pupil's rights.

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

115. Excluded pupils should be encouraged to attend the review and to speak on their own behalf, taking into account their age and understanding. Review panels should identify how they might enable excluded pupils to feed in their views by other means if attending the review is not possible.

116. Where an excluded pupil is attending a meeting, consideration should be given as to what steps should be taken to support their participation. This should include allowing the excluded pupil to bring a friend, or other representative, and making reasonable efforts to provide information and conduct discussions in an accessible way. It should be made clear to excluded pupils that they may submit a written statement, if they wish to do so.

117. To reach a decision, the panel will generally need to hear from those directly or indirectly involved. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review, either in person, through a representative or by submitting a written statement.

118. 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, the pupil's parents should be invited to attend the meeting in support of their child. Other relevant witnesses may include a teacher who investigated the incident and interviewed pupils.

119. All written witness statements should be attributed and signed and dated, unless the school has good reason to wish to protect the anonymity of pupils, in which case they should at least be dated. The general principle remains that an excluded pupil is entitled to know the substance behind the reason for their exclusion. The panel should consider what weight to attach to written statements, as against oral evidence, as a written statement may not encompass all the relevant issues, nor can the author be questioned.

120. The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse.

121. 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.

122. The clerk should ask the parties if they intend to raise matters or produce documents at the review that are not covered by the statement of decision or the request for review. If they do they should be asked by the clerk to submit these in good time before the review, although there is no statutory time limit for submitting evidence.

123. The policies and documents of the school which should be circulated in advance of the review should include those relating to: behaviour, special educational needs, disability equality, race equality, gender equality, and exclusion.

124. Where a pupil has identified SEN, the clerk should request and circulate information held by the school in relation to their assessment and management of the excluded pupil's SEN, such as a statement of SEN or their latest annual review. The clerk should also request the outcome of any multi-agency assessment carried out in relation to the excluded pupil.

125. Where a clerk has requested documents that have not been provided, the panel should take a decision on whether to adjourn the hearing.

126. 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 oral representations and be represented.

## Conducting an independent review panel

### A guide to the law

127. Having reviewed all the evidence, the review panel must reach its own conclusions in relation to the governing body's decision to uphold the exclusion. In making this decision the panel must take account of the interests of the excluded pupil and those of the wider school community, particularly those involved in any incident that led to the exclusion.

128. 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.

129. The panel can decide to:

- uphold an exclusion;
- recommend that the governing body reconsiders its decision, taking account of the findings of the panel, or
- quash the decision and direct that the governing body considers the exclusion again.

130. The panel can only quash the decision where it considers that it was flawed in light of the principles applicable in an application for judicial review, the key principles of which are summarised below.

- Illegality – whether the head teacher and / or governing body acted outside the scope of their legal powers.
- Irrationality – whether the decision was unreasonable and not one that a sensible person could have made.
- Procedural impropriety – whether the exclusion process was fair, followed the correct procedure and was in line with the rules of 'natural justice'.

131. Where a panel directs a governing body to reconsider an exclusion and the governing body decides not to reinstate the pupil, the panel has the power to direct a financial readjustment of the school's budget or, in the case of an Academy, that the school makes an equivalent payment to the local authority. The sum of this adjustment / payment would be £4,000 and would be in addition to funding that would normally follow an excluded pupil.

132. The independent review panel's decision is binding on the parent (or pupil if aged 18 or over) the governing body, the head teacher and the local authority.

133. A review cannot continue if the panel no longer has representation from each of the three categories of members required (paragraph 82). In this event, the panel must be adjourned until the number can be restored.

134. 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 will have to be constituted. 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.

135. In conducting a review, independent review panel members, clerks and SEN experts must have regard to statutory guidance issued by the Secretary of State. Paragraphs 136 to 148 provide this guidance.

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

136. The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school and the local authority. The chair should explain that the panel must have regard to this guidance in its conduct and in reaching its decision. This should include an explanation of the options open to the panel in coming to a decision.

137. A panel may recommend that a governing body reconsiders its decision where it identifies that minor procedural flaws have occurred but the criteria for a directed reconsideration have not been met. In these circumstances no financial readjustment would be required should the governing body decide not to reinstate the pupil following a recommendation to reconsider the exclusion.

138. In the interests of propriety, care should be taken to ensure that no party to the review is present alone with the review panel in the absence of the other parties.

139. Consideration should be given to supporting all parties to participate in the review and for ensuring that their views are properly heard. This is particularly important where pupils aged under 18 are speaking on their own behalf or are giving evidence to the panel. It is important for the independent review panel to be conducted in a non-threatening and non-adversarial manner.

140. The panel should consider the governing body's decision in the light of the schools relevant statutory or required policies. These should have been provided by the school in advance of the review.

141. All parties may put forward new evidence about the event that led to the exclusion, including evidence that was not available to the head teacher or the governing body. All parties should be given the opportunity to respond to any new evidence which has been put forward. However, the school may not introduce new reasons for the exclusion and panels should disregard any new reasons that are introduced.

142. 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.

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

143. The panel should direct the readjustment of a maintained school's budget in cases where it quashes a governing body's decision and directs it to reconsider that decision but the governing body subsequently does not offer to reinstate the pupil. The only exception to this would be where a school does not have a delegated or separate budget from the local authority with which to make the readjustment. The panel should direct Academies and Free

Schools to make an equivalent payment directly to the pupil's home local authority (the local authority's responsibility to oversee the readjustment / payment is set out in paragraphs 160 to 168).

144. The panel should direct that the readjustment payment is made 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 direction.

145. As set out in paragraph 131, the sum of the financial readjustment is fixed at £4,000.

### **Statutory guidance to independent review panel members on police involvement and parallel criminal proceedings**

146. The panel will need to consider whether it can proceed to determine the review or whether to adjourn the review pending the outcome of any police investigation and / or any criminal proceedings that may be brought. The fact that parallel criminal proceedings are in progress should not directly determine whether the review should be adjourned.

147. 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, their parents, any victim or the school; and
- whether an adjournment or declining to adjourn, might result in injustice.

148. If the panel does decide to adjourn, the clerk will be responsible for monitoring the progress of any police investigation and / or criminal proceedings and for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once. The same panel members should reconvene on each occasion or a new panel may have to be constituted.

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

149. The SEN expert's role is one of expert witness, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. In particular, whether the school's policies, or their application in relation to the excluded pupil, could be construed as unlawful, unreasonable, irrational or disproportional insofar as SEN and / or disability are concerned. This could include advising the panel on the steps taken by the school to identify and / or address any special educational needs or disabilities that the pupil may have.

150. All parties should be allowed to ask questions of the expert. However, in line with the decision that the panel must make, the SEN expert should contain their advice to the statutory requirements on a school in relation to special educational needs. They should not express judgements on a school's policies or actions, simply because they believe a different approach should have been followed or because another school might have taken a different approach.

151. The SEN expert's role does not include making an assessment of the pupil's educational needs.

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

152. 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, in a format approved by the local authority.

153. The minutes are not public documents but should be retained by the local authority for a period of at least five years, as they may need to be seen by a court or by the Local Government Ombudsman. Local authorities should be aware of their duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

## **Informing parties of the panel's decision**

### **A guide to the law**

154. Following the review the panel must issue a decision letter to all parties without delay.

155. The decision letter must include:

- the panel's decision and the reasons for it;
- if the panel is directing a governing body to reconsider its decision, the timescale for this decision (within 10 school days of receiving the review panel's decision) and details of any financial readjustment / payment to be made if it chooses not to reinstate the pupil; and
- any information that must be recorded on the pupil's record to reflect the decision (for example, where a governing body does not decide to reinstate a pupil following a direction, 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).

156. When informing parties of a decision, independent review panel members and clerks must have regard to statutory guidance issued by the Secretary of State. Paragraphs 157 to 159 provide this guidance.

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

157. The review panel should set out the reasons for its decision in as much detail as possible so that the parties can understand why the decision was made.

158. Where relevant, the panel should set out the details of the financial readjustment / payment that may be required, including that it may be required automatically if the governing body does not offer to reinstate the pupil within the 10 days of receiving notification of the panel's decision.

159. If the review panel upholds the permanent exclusion, the clerk should immediately report this to the local authority that maintains the school. If the pupil lives outside the area of the local authority maintaining the school, 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 the parents withdraw or abandon their request for a review.

## **8. The local authority's duty to oversee the financial readjustment / payment**

### **A guide to the law**

160. Where an independent review panel quashes an exclusion decision and, after reconsideration, the governing body decides not to reinstate the pupil, the independent review panel may direct the local authority to make an adjustment of a maintained school's budget share, in accordance with the statutory guidance provided in paragraphs 143 to 145

161. The sum of any financial readjustment is fixed at £4,000.

162. Academies must make arrangements to transfer an equivalent amount of funding to the local authority when directed to do so by an independent review panel<sup>22</sup>.

163. If the governing body offers reinstatement but it is declined by the parent, the financial readjustment / payment will not be required of the school.

164. In overseeing a financial readjustment / payment local authorities must have regard to statutory guidance issued by the Secretary of State. Paragraphs 165 to 168 provide this guidance.

### **Statutory guidance to local authorities on claiming the financial readjustment from maintained schools or PRUs**

165. Local authorities will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets (the financial readjustment will not be required of PRUs who do not have delegated budgets).

166. This financial readjustment should be transferred within 28 days of notification of a direction from the panel. The panel should direct the local authority to apply the financial readjustment automatically if a governing body does not offer to reinstate the pupil within 10 school days of receiving a direction from an independent review panel to reconsider an exclusion.

167. If an excluded pupil has been found a place at another maintained school by the time that the governing body has reconsidered and decided not to reinstate the pupil, the local authority may pass the amount of the financial readjustment to the pupil's new school by adjustment of both schools' budget shares.

### **Statutory guidance to local authorities on claiming the financial readjustment from an Academy**

168. If an Academy or Free School fails to comply with their legal requirement to transfer funding following a direction from an independent review panel, the local authority should inform the Secretary of State.

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<sup>22</sup> It is our intention to set out this requirement in regulations.

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

### A guide to the law

169. Where the review panel directs or recommends that the governing body reconsiders its decision, the governing body must reconvene to do so within ten school days of receiving notification of the panel's decision.

170. If, on reconsideration, the governing body does not agree to the reinstatement of the pupil then an adjustment may be made to the schools budget to the sum of £4,000. Alternatively, in the case of an Academy / Free School, the school will be required to make this payment directly to the local authority. This payment will be in addition to the funding that would normally follow an excluded pupil and will go to the local authority towards the general costs of providing alternative provision.

171. If the governing body offers reinstatement but it is declined by the parent<sup>23</sup>, no readjustment may be ordered to the school's budget.

172. The governing body must comply with any direction of the panel to place a note on the pupil's record. This includes the fact 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.

173. In the case of either recommended or directed reconsideration, governing bodies must notify parents of the outcome of their reconsideration in writing without delay. This notification must give the governing body's reasons for its decision.

174. The governing body must also report the outcome without delay to the local authority that maintains the school and, if the pupil lives outside the area of the local authority maintaining the school, to the 'home' authority. This will enable the local authority to adjust the school budget share, or oversee a payment by an Academy or Free School, if reinstatement was not the outcome of directed reconsideration.

175. When informing parties of their reconsideration governing bodies must have regard to statutory guidance issued by the Secretary of State. Paragraph 176 provides this guidance.

### Statutory guidance to governing bodies on notifying parties of the outcome of their reconsideration

176. The governing body should set out the reasons for its decision in as much detail as possible so that all parties can understand why the decision was made.

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<sup>23</sup> Where an excluded pupil is aged 18 or over the governing body's duties towards the pupil's parents should be read as duties towards the pupil. Additionally, a parent's rights in respect of the exclusion should be read as the pupil's rights.

## 10. Making a complaint about an exclusion decision or review

177. If the exclusion review process has been exhausted and a party is unhappy about how the process was handled, or the final decision, there are a number of routes of complaint open to them.

### Complaints about maladministration of an independent review panel

178. Complaints about maladministration of an independent review panel (for example procedural issues such as papers not being delivered in time for the review) should be raised with the Local Government Ombudsman (LGO) for panels organised by local authorities, or the Secretary of State for panels organised by Academies. Further details about the LGO process can be found on their website: [www.lgo.org.uk](http://www.lgo.org.uk). A complaint to the Secretary of State can be made via the Department for Education's website ([www.education.gov.uk](http://www.education.gov.uk)) or by writing to:

The Department for Education  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

### Complaints about the decision of the independent review panel

179. A complainant has the right to seek a Judicial Review of the decision of the governing body or the independent review panel. This application must be made within three months of the date of the decision being challenged.

### Wider complaints about a school

180. If a complaint relates to the wider actions of the school (for example where it is felt that the exclusion was justified but the case has been badly handled), then a complaint should be raised through the school's official complaints process. This is a separate process from the review of the exclusion decision. A copy of the school's complaints procedure must be made available on request. If the complainant has exhausted a maintained school's complaints process and is unhappy with the outcome, they may wish to raise the complaint with the local authority. Most local authorities will look at complaints about a school, though they are not under a legal obligation to do so.

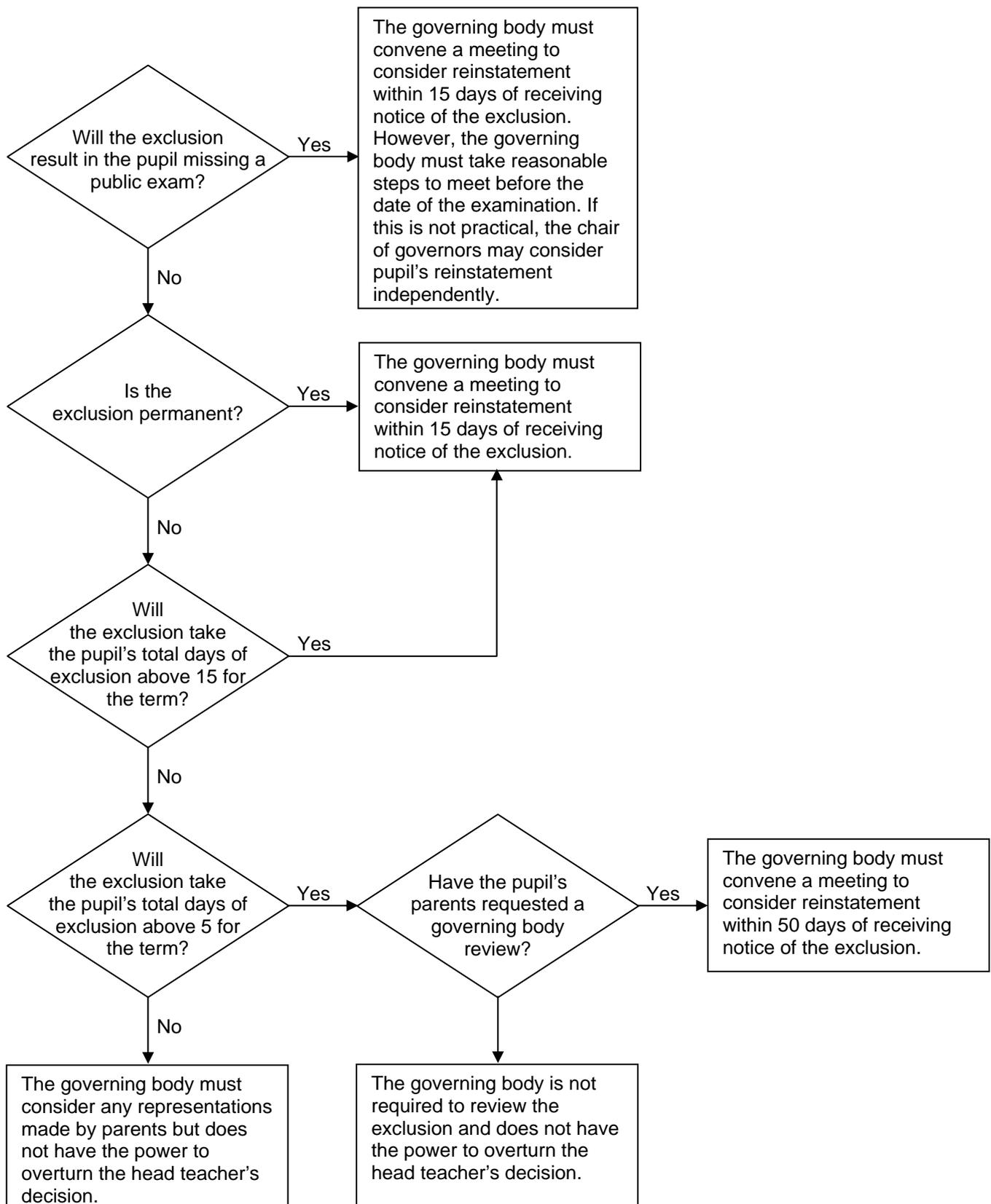
181. The Secretary of State for Education also has the power to investigate an allegation that a local authority or governing body of a maintained school have either:

- acted, or are proposing to act, unreasonably in respect of any of its powers or the performance of any of its duties under the Education Acts;
- failed to discharge a duty imposed on it by the Education Acts.

182. It should be noted in this context that 'unreasonable' means acting (or proposing to act) in a way in which no reasonable governing body would act and this is a high legal threshold to establish. In deciding whether to issue a direction to a school the Secretary of State must also establish whether it is expedient to do so.

183. Ofsted's role does not extend to investigating or resolving individual disputes between a school and a parent, which would include complaints about a specific exclusion. However, where any party feels that an exclusion gives rise to wider concerns about a school which fall within Ofsted's powers to investigate, such as a school's leadership and management, or pupils' behaviour and safety, they can raise these concerns with Ofsted. Ofsted's powers normally require a complainant to have made efforts to resolve a concern through the local complaints process before it considers a complaint, but they have the discretion to waive this requirement where they feel that this is appropriate. More information on Ofsted's complaints process can be found on their website: [www.Ofsted.gov.uk](http://www.Ofsted.gov.uk) or by calling 0300 123 4666.

## 11. A summary of the governing body's duties to review the head teacher's exclusion decision



The governing body may delegate its functions to review an exclusion to a designated sub-committee.

You can download this booklet online at: <http://www.education.gov.uk/consultations>

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