

How to review suspensions and exclusions

Deliberation by the Exclusion Review Panel

Please note

The approach in this document is not intended to provide definitive legal advice as to the law and practice relating to permanent exclusions and should not be relied upon as such. Instead, it is intended to provide a useful approach to help panel members consider whether or not to uphold a permanent exclusion or direct reinstatement.

The overarching question for the panel

The DfE guidance and administrative law (which means that decisions must be rational and proportionate) require the panel to answer the following question:

“Was the decision to exclude the pupil **lawful, reasonable and procedurally fair**, taking account of the head teacher’s legal duties and any evidence that was presented to the governing board in relation to the decision to exclude?”

However the DfE guidance does not provide an approach as to how the panel should address the question. The approach below is designed to help.

1. Familiarise yourself with the three stage ‘judicial method’ approach



2. Apply the ‘judicial method’ approach to exclusions

Step 1: What are the facts?

The panel will be required to establish the facts by:

1. Scrutinising the evidence provided in the bundle (for information on what this should include see Evidence Pack document)
2. Asking questions of those present at the review meeting

The panel must ask itself the following questions:

- Is there enough evidence for the panel to be confident that, on the balance of

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probabilities, what it is being told happened, did actually happen?

- Is there enough evidence for the panel to be confident that the pupil does not possess a protected characteristic, does not have SEND or is not otherwise vulnerable; or if they do possess any of these, is it clear which one(s), and how policies protect and support the pupil?
- Is there enough evidence for the panel to be confident that there has been no discrimination brought to bear against the pupil and that all other avenues have been explored and exclusion is really the last resort?
- Is there enough evidence for the panel to be confident that by remaining in school, there is the potential for serious harm to the pupil or others?
- Is there enough evidence for the panel to be confident that the behaviour and other policies and procedures have been followed correctly?

Step 2: Do the facts as found at Step 1 constitute a breach of the school's behaviour policy?

The panel must be confident that:

- It is clear which part of the behaviour policy was breached.
- With a serious breach, the policy makes clear what might constitute a serious breach.
- With persistent breaches, the policy makes clear what constitutes persistent breaches.

If there is not enough evidence for the panel to be confident that the behaviour policy was breached, then the panel should consider directing reinstatement of the pupil immediately or on a particular date.

Step 3: Was the headteacher's decision to exclude appropriate?

The panel will be required to make a judgement if the decision to exclude really does constitute the **last resort** because it is **the only sanction that protects the education or welfare of the pupil or others in the school**.

For the panel to be confident it is making the right decision, it should ask itself the following seven questions:

1. Was exclusion the last resort (i.e. there was no other reasonable alternative)?

In other words all mitigating factors were considered such as:

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- a. The behaviour being in response to a violent incident, the likelihood of repeat behaviour, the pupil's recognition of the seriousness of the incident(s), their remorse, any apologies given and/or offers to make reparation.
- b. Any threats to the pupil's welfare and safety that might arise from being out of school such as revenge attacks or likelihood of resorting to gang membership.
- c. All alternatives to exclusion have been considered: a systematic approach is to work through the available sanctions, starting from the most minor sanction, and 'climbing the ladder' to the most serious sanction and last resort of exclusion.

2. Would allowing the pupil to remain in school seriously harm the education or welfare of pupils or others in the school?

In other words **there is a likelihood of repeat behaviour** which poses the threat of serious harm to the education or welfare of the pupil or others in the school.

3. If the pupil has protected characteristics the exclusion decision and the school's policies, practices and procedures on which it was based are compliant with the Equality Act 2010 and the public sector duty.

In other words are they:

- a. Free from discrimination, harassment or victimisation of the pupil because of: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment.
- b. Compliant with the public sector duty in that they had regard to the need to:
 - i. eliminate discrimination, harassment, victimisation, and other conduct that is prohibited by the Equality Act;
 - ii. advance equality of opportunity between people who share a protected characteristic and people who do not; and
 - iii. foster good relations between people who share a protected characteristic and people who do not share it.

4. If the pupil has special educational needs or is disabled, did the school make reasonable adjustments to policies and practices and the provision of auxiliary aids.

In other words:

- a. The specific needs and circumstances of the pupil were taken into account before the decision was made to exclude them.
- b. Professional advice was sought from those with specific expertise and

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knowledge such as the SENDCO or inclusion manager, or third parties such as the LA professionals or medical experts.

- c. There is evidence of the school intervening and supporting the excluded pupil to prevent serious and/or persistent breaches of the school's behaviour policy.

5. If the pupil has protected characteristics and/or special educational needs can the school show that school policies, practices, and procedures did not discriminate against the pupil by unfairly increasing their risk of exclusion?

In other words:

- a. School policies are made readily available to pupils, parents and staff eg on the school's website
- b. Pupils are made aware of key policies when they join the school and at the beginning of each academic year and the implications if there is a breach of policy (it is especially important if the pupil has SEND or is otherwise vulnerable)
- c. Senior staff review policies regularly
- d. The governing board receives data on behaviour breaches, sanctions and trends, and consider if they constitute inconsistency of application or discrimination

6. Were procedures followed correctly through the exclusion process up to the point at which the exclusion was notified to the governing board?

In other words, the decision was made by the headteacher or acting headteacher so designated and authorised, and full consideration was given to the advice and guidance on the lawfulness and reasonableness of the exclusion.

7. Did the school apply the relevant policies fairly and proportionately?

In other words the headteacher has considered all relevant matters AND disregarded all irrelevant matters and permanent exclusion (a serious and far reaching consequence in the life of a pupil) is a proportionate response to the course of behaviour about which the school is concerned.

The panel must be confident that all seven questions above can be answered YES before upholding the decision to exclude. If the answer to any of the questions is NO then the panel should consider directing reinstatement of the pupil immediately or on a particular date.