

Report of the Accounting Officer
To the All Consilium LGB

The Trust's Duty to Arrange an Independent Review Panel
In the event of a request for a decision to
Permanently Exclude a Pupil to be reviewed

1.0 Purpose of report

The purpose of this report is to request the Trust Board to approve a series of recommendations to establish an Independent Review Panel (IRP) to consider a request or review from parents and carers following the Local Governing Body upholding a decision to permanently exclude a pupil from a Trust Academy.

The establishment of an IRP is a statutory requirement under S51 of the Education Act 2002 and is covered in guidance by the DFE (see below and appendix A).

2.0 Recommendations

Local Governing Bodies are requested

Agreed THAT:

R1 the IRP consist of a 5 Member Panel to be drawn from

- All Headteachers in Academy's *
- All Chairs of Local Governing Bodies *

(*Excluding in individual each case, the school at which the exclusion has occurred)

R2 the Chief Executive and Accounting Officer be delegated to identify and appoint an Independent Chair of the IRP

R3 the Clerk to the Trust be appointed as Clerk to the IRP

R4 the Clerk arrange for any training to be undertaken and the cost of which be borne by the Trust

R5 the SEND representative be drawn from All SENCO in Trust Schools be appointed to the potential Panel of membership any one of which will be asked to attend the IRP
(*Excluding in individual each case, the school at which the exclusion occurred)

R6 the Trust make arrangements to Indemnify the IRP Members and SEND representatives in respect of any legal action regarding a decision of an IRP

R7 the Trust Attendance Policy apply to IRP Hearings

R8 All items marked P below be adopted as Trust Policy

R9 the COO and the Clerk to the Trust arrange to Circulate the Report to all LGB, Headteachers and SENCO's in Trust Schools

R10 the Appendices A and B be noted.

3.0 Details

3.1 The DFE Guidance “**Exclusion from Maintained Schools, Academies and Pupil Referral Units in England**” 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.

3.2 It also provides statutory guidance to which: Headteachers; Local Governing Bodies; Local Authorities; Academy Trusts; Independent Review Panel (IRP) members; Independent Review Panel Clerks; and Special Educational Needs and Disability (SEND) 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.

3.3 The full details of the Guidance as they relate to the Trust are attached at Appendix A.

Activity	Key Points
Arranging a Date and Venue	<ul style="list-style-type: none"> • IRP must be held within 15 days of receipt of application by the parent. • The venue must be accessible to the Exclude Pupil, family and Witnesses • The hearing could be combined if the appellants and families are agreeable
Section B Appointing Panel members	<ul style="list-style-type: none"> • 3 or 5 member panel • Directors not eligible to sit on panel • Independent chair • Categories of panel members must be maintained throughout the panel hearing • All Panel Members must have undertaken training in the last two years
Section C/D Appointment of Clerk	<ul style="list-style-type: none"> • Trust must appoint a Clerk • Clerk must have experience of quasi-Judicial meetings • If this is not the case, the Chair must be from a legal background.
Section E Appointment of Send	<ul style="list-style-type: none"> • Must have up to date knowledge of SEND assessment policies and procedures



The Academy Trust's Duty to Arrange an Independent Review Panel
In the Event of a request for a review against a Decision of an LGB to
Permanently Exclude a Pupil

A. Arranging a Date and Venue for an IRP

1. Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

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 that relate to exclusions.

In such circumstances, the Tribunal or Court **may decide to delay their consideration until after the Independent Review Panel process has been completed.**

If applied for by Parents/ Carers within the legal period, the Academy Trust must, at their own expense, arrange for an Independent Review Panel hearing to review the decision of a Local Governing Body not to reinstate a permanently excluded pupil.

The legal timeframe for an application for Review is:

- Within **15** school days of notice being given to the parents by the local governing body of their decision to uphold a permanent exclusion; or
- Where an application has not been made within this period, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.

Any application made outside of the legal period must be rejected by the Academy Trust.

The Academy Trust **must not** delay or postpone arranging an independent review panel where Parents/Carers 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

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

The 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 Academy Trust received the parent's application.**

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

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.

2 Statutory Guidance to Academy Trusts on Arranging a Date and Venue for a Review

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.

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 Academy Trust should take reasonable steps to ensure fairness and consistency. **Where possible, the same panel members should hear all related reviews.**

B Appointing Panel Members

1. Guide to Law

Section 51A Education Act 2002 and regulations made under this section.

Headteachers / 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.

The Academy Trust **must constitute the panel with either three or five members** (as decided by the 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 headteachers.

- A lay member to Chair the panel who has not worked in any Trust 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 Headteachers during this time. *Headteachers or individuals who have been a within the last five years.

A person may not serve as a member of an Independent Review Panel (IRP) if they:

- are a Member / Director of the Academy Trust or serve on the Local Governing Body of the Excluding school,
- The Headteacher of the Excluding School or anyone who has held this position in the last five years;
- an employee of the Academy Trust, or the governing body, of the excluding school (unless they are employed as a Headteacher at another school);

have, or at any time have had, any connection with the 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);

- Any person who has not had the required training within the last two years.

In relation to IRP 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 subsistence. **It is for Academy Trusts to determine their own payment arrangements for panel members.** The Academy Trust must arrange to indemnify panel members against any legal costs and expenses reasonably incurred because of any decisions or actions connected to the review that are taken in good faith.

3 Statutory Guidance to Academy Trusts on Appointing IRP Members.

Every care should be taken to avoid bias or an appearance of bias.

The Academy Trust should request that prospective panel members declare any conflict of interest at the earliest opportunity. Where possible, IRP members who are Governors or Headteachers 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.

The 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. In order to meet their duties within the statutory period, the Academy Trusts should identify a number of eligible individuals in each of the different categories required to constitute an IRP in advance of an application for a review.

C Appointing a Clerk and the Clerk's Role

1 A Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

The 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.

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:
 - the parents/ carers
 - the Headteacher (where an excluding Headteacher has left the school, the panel may use its discretion in deciding whether also to invite this person to make representations);
 - The Local Governing Body
 - The Local Authority (in the case of a maintained school or pupil referral unit).

The Clerk must

- Make reasonable efforts to circulate to all parties, including to IRP Members and
- The SEN expert,
- Provide copies of relevant papers 5 school days in advance of the review.
- These papers must include:
 - the LGB's decision;
 - the parents' application for a review and
 - Any policies or documents that the Local Governing Body was required to have regarded to in making their decision.

The Clerk must

- 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 IRP.

Where a Clerk is not appointed the functions, become the responsibility of the Academy Trust.

2 Statutory Guidance to Academy Trust on Appointing an IRP Clerk

The Clerk **should not** have served as Clerk to the Local Governing Body meeting. 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

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

3 Statutory Guidance to the Clerk on preparing for an IRP

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.

In order to review the Local Governing Body's decision, the IRP will generally need to hear from all those involved in the incident, or incidents, leading to the exclusion.

The Clerk **must try to ascertain whether an alleged victim**, if there is one. Who wishes to be given a voice at the review?

This could be in person, through a representative or by submitting a written statement.

In the case of witnesses who are pupils of the school, it will **normally be more appropriate for the IRP 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.

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.

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.

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.

- In addition to written witness statements, the Clerk should
- Request written evidence from the school in order to circulate it 5 days in advance of the meeting,
- Including such policies and documents of the school that the Local Governing Body would reasonably have been expected to take account of in reaching their decision on the exclusion.

- 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.

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

D Ensuring that IRP Members and Clerks are trained

1 A Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

The 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)
- 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

E Appointing an SEND Expert

1 A Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

If requested by parents / carers in their application for an IRP, the Academy Trust **must appoint a SEND expert** to attend the panel and cover the associated costs of this appointment.

The Academy Trust must make arrangements **to indemnify the SEND Expert** against any legal costs and expenses reasonably incurred because of any decisions or actions connected to the review and which are taken in good faith.

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

The SEND expert's role is set out in below.

Individuals **may not serve as a SEND Expert** if they have, or at any time have had, any connection with the 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 Academy Trust.**

2 Statutory Guidance Academy Trusts on Appointing a SEND Expert

The SEND Expert should be a professional with first-hand experience of the assessment and support of SEND, as well as an understanding of the legal requirements on schools in relation to SEND

Examples of suitable individuals might include:

- Educational Psychologists; Specialist SEND teachers; special educational needs coordinators (SENCOs); and behaviour support teachers.
- Recently retired individuals **are not** precluded from fulfilling this role, though the Academy Trust would need to be assured that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEND.
- Whilst individuals **are not** automatically taken to be partial simply because they are an employee of, or contracted by Academy Trust, they **should not** have had any previous involvement in the assessment or support of SEND for the excluded pupil, or siblings of the excluded pupil.
- The Academy Trust should request that prospective SEND Experts declare any conflict of interest at the earliest opportunity.
- The final decision on the appointment of an SEND Expert is for the Academy Trust to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEND Expert.
- Where possible, this may include offering parents a choice of SEND Expert.
- In order to meet its duties within the statutory period, the Academy Trust should consider maintaining a list of individuals capable of performing the role of SEND expert in advance of a request.
- It is for the Academy Trust to determine the amount of any payment in relation to the appointment of the SEND Expert, such as financial loss, travel and subsistence allowances

F The Duties of IRP Members, the Clerk and the SEND Expert in the Conduct of an IRP

1 A Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

- IRP Members and, if appointed, the SEND Expert must declare any known conflict of interest before the start of the review.
- The role of the IRP is to review the Local 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.
- 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'.

Following its review the panel can decide to:

1 Uphold the decision to exclude the pupil.

2 Recommend that the Local Governing Body reconsiders their decision, or

3 Quash the decision to exclude and direct that the Local Governing Body consider the exclusion again.

- The IRP 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 a second and casting vote after casting their first vote**
- The IRP decision is binding on the Pupil, Parents/ Carers, Local Governing Body; Headteacher; and the Academy Trust.
- The IRP **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**

Illegality	Did the HT/LGB act in” Ultra Vires” manner (beyond the scope of legal powers) in taking the decision to exclude the Pupil.
Irrationality	Was the decision of the LGB 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 LGB consideration so “unfair and flawed” that “Justice” was not seen to be done.

- New evidence may be presented to the panel, **though the school may not introduce new reasons for the exclusion**. The IRP **must disregard** any new reasons that are introduced.
- In deciding whether the LGB decision was flawed, and therefore whether to **quash** the decision, the IRP **must only** take account of the evidence that was available to the LGB at the time of making their decision. **This includes any evidence which the panel considers would, or should, have been available to the LGB if they had been acting reasonably.**
- If evidence is presented that, the IRP considers it is **unreasonable to have expected the LGB to be aware of at the time of their decision**, the IRP can take account of the evidence when deciding whether to recommend that the LGB **reconsider their decision**.
- Where present, the IRP **must seek and have regard to the SEND Expert’s view** of how SEND might be relevant to the pupil’s exclusion.
- **Where a SEND Expert has been requested but is not present, the Chair of the IRP should make parents aware of their right to request that the review be adjourned until such time as an SEN expert can attend.**

- 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.
- Where a panel directs a LGB 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 LGB 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
- The panel does not have the power to order a readjustment or payment in circumstances where it has only recommended that the governing body reconsider their decision.
- The IRP **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.
- A review cannot continue if the panel no longer has representation from each of the three categories of members required. In this event, the panel must be adjourned until the number can be restored.
- Once a review has commenced, a new member for any reason may substitute no panel member. 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.

Following the review, the panel must issue written notification to all parties immediately. 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 LGB 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 LGB 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).

G Statutory Guidance to IRP Members on the Conduct of an Independent Review Panel

1 The Chair should outline the procedure to be followed and explain to all parties that the panel is independent of the Academy Trust.

- 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.
- 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.
- 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 IRP 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.

2 Statutory Guidance for IRP Members in Reaching a Decision

When considering the LGB's decision in light of the principles applicable in an application for judicial review, the panel should the following tests:

- **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 LGB 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 Headteacher who took the decision to exclude were also to vote on whether to uphold the exclusion)

Where the criteria for quashing a decision have not been met the panel should consider whether it **would be appropriate to recommend** that the LGB 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 LGB's decision.

In all other cases the panel should uphold the exclusion.

H Statutory Guidance to Independent Review Panel Members on the Financial Readjustment / Payment

In the case of an Academy, where the panel has quashed the Local Governing Body's decision to exclude, the Review Panel should order that the Academy must make a payment directly to the local authority in which the Academy is located, unless the LGB offer to reinstate the pupil.

The panel should order that the readjustment or (in the case of an Academy) payment is due automatically if the Local 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.

I Statutory Guidance to SEND experts on Conduct during an IRP

The SEND 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 SEND Expert should base their advice on the evidence provided to the panel. The SEND Expert's role **does not** include assessing the pupil's special educational needs.

The focus of the SEND 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 of the Guidance)

If the SEND 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.

Where the school does not recognise that a pupil has SEND, the SEND Expert should advise the IRP 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.

The SEND 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.**

J Statutory Guidance to the Clerk and Academy Trust on the record of the Proceedings of a Review panel

The Clerk to a review panel **MUST** ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.

The minutes are not public documents but should be retained by the 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. Academy Trusts should be

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

K Statutory Guidance to the independent Review Panel and Clerk on Notifying Parties of the Outcome of the IRP

If the IRP 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.

L The Local Governing Body's Duty to Reconsider an Exclusion Decision Following a Review

1 A Guide to the Law

Section 51A Education Act 2002 and regulations made under this section.

Where the IRP directs or recommends that the Local Governing Body reconsider their decision, the LGB 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.

- If, following a direction to reconsider, the LGB **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.
- If the LGB 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 LGB 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.
- In the case of either a recommended or directed reconsideration, the LGB must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:
 - the parents;
 - the Headteacher;
 - the local authority and, where relevant, the 'home authority'.

M. The Local Authority's role in overseeing the financial readjustment / payment

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

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

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

If an excluded pupil has been found a place at another school by the time the Local 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.

N. Statutory guidance to Headteachers, Local Governing Bodies, independent Review Panel Members and Clerks on Police involvement and parallel Criminal proceedings

Headteachers **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, Headteachers will need to take a decision on the evidence available to them at the time.

Where the evidence is limited by a police investigation or criminal proceedings, Headteachers should consider ensuring that the decision to exclude is fair. **However, the final decision on whether to exclude is for the Headteacher to make.**

Where the LGB is required to consider a Headteachers decision in these circumstances they cannot postpone their meeting and **must decide whether to reinstate the pupil on the evidence available.**

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 should 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
- Whether an adjournment or declining to adjourn, might result in injustice.

Where a panel decides to adjourn, the Clerk (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 of the Guidance)

Appendix B

Procedural Guidance Note for the Independent Chair

1. The School, Excluded Pupil and Representatives enter the Room for the Hearing at the same time, escorted in by the Clerk. The Clerk has arranged to keep the parties separate at the arrival at the venue.
2. The Chair of the IRP introduces the Panel and person is present and explains that the purpose of the Hearing is to consider an appeal against a Decision of a LGB to dismiss a pupil from Xxxx School.
3. The Chair invites evidence to be submitted as follows:
 4. The Headteacher/ LGB submit their case including any witnesses'
 5. The Excluded Pupil and Representatives may ask any questions of the HT/ LGB and any individual witnesses
 6. The IRP Members may ask questions of the HT/LGB and any individual witnesses.
 7. The Excluded Pupil / Representatives submit their case including any individual witnesses
 8. The HT/LGB may ask any questions of the Excluded Pupil and any individual witnesses
 9. The IRP Members may ask questions of the HT/LGB and any individual witnesses.
 10. The School sum up their case without introducing any new evidence
 11. The Excluded Pupil / Representatives sum up their case without introducing any new evidence.
 12. The Clerks confirms with all parties present that they are satisfied in the way in which the proceedings have been carried out.
 13. The Clerk indicates that all parties will receive notification of the outcome within 10 school days.
 14. All parties excluding the IRP Members and the Clerk leave the meeting

