EXCLUSION POLICY

THIS POLICY APPLIES TO THE HOPE TRUST BOARD, ALL TRUST SCHOOLS/ACADEMIES AND THE EBORHOPE TEACHING SCHOOL ALLIANCE. IT IS TO BE READ IN CONJUNCTION WITH THE SCHOOL'S/ACADEMY'S BEHAVIOUR POLICY.

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Policy updates

Date	Page	Policy updates
01.02.2021	p16, item 13.6 p17, item 14.9	Correction made to item 13.6 and 14.9 and approved by Chair's Action on 1st February 2021
23.03.2021	Appendix B	Appendix B has been updated in line with DfE guidance

Important coronavirus (COVID-19) information

This policy has been written in line with the current guidance from the UK government. We have included an amendment to this policy in Appendix B, which provides information about the changes to the exclusion process during the pandemic. Please have due regard for the stipulations within this amendment.

Statement of Intent

Hope Learning Trust, York is committed to a safe, welcoming and inclusive learning environment, in which all our pupils are happy, can flourish and will thrive, to live life in all its fullness. Every child is revered and respected as a member of our community. At Hope Learning Trust we understand that good behaviour and discipline is essential for promoting a high-quality education, so that all within the school community have the opportunity to thrive.

Amongst other disciplinary sanctions, **Burton Green Primary School** recognises that exclusion of pupils may be necessary where there has been a serious breach, or consistent breaches, of the school's Behavioural Policy. Excluding a pupil may also be required in instances where allowing the pupil to remain in school would be damaging to the education and welfare of themselves or others; in all cases, excluding pupils should only be used as a means of last resort.

The Trust has created this policy to clearly define the legal responsibilities of the Headteacher/Principal, the Local Governing Committee (LGC) and the Local Authority (LA) when responding to pupil exclusions, to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance.

This policy also aims to secure a pupil's right to an education despite having been excluded, by ensuring that appropriate arrangements are in place.

Signed by:

_____ Headteacher/Principal Date: _____

_____ Chair of Governors Date: _____

1. Legal framework

1.1. This policy has due regard to the related statutory legislation including, but not limited to, the following:

- Education Act 2002
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- Education and Inspections Act 2006
- Education Act 1996
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007
- The European Convention on Human Rights (ECHR)
- Equality Act 2010

1.2. This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:

- DfE (2017) 'Exclusion from maintained schools, academies and pupil referral units in England'
- DfE (2016) 'Behaviour and discipline in schools'
- DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'
- DfE (2018) 'Mental health and behaviour in schools'

1.3. This policy will be implemented in conjunction with the following Trust/school policies and procedures:

- Behavioural Policy *(school policy)*
- Anti-Bullying Policy *(Trust-wide policy)*
- Special Educational Needs and Disabilities (SEND) Policy *(Trust-wide policy)*
- Safeguarding and Child Protection Policy *(Trust-wide policy)*

2. Roles and responsibilities

2.1. The LA is responsible for:

- Having due regard to the relevant statutory guidance when carrying out its duties in relation to the education of Looked after Children (LAC).
- Arranging suitable full-time education for any pupil of compulsory school age excluded permanently, in coordination with the school/academy.
- Reviewing and reassessing pupils' needs in consultation with their parents where they have an Education Health Care (EHC) plan and are excluded permanently, with a view to identifying a new placement.

2.2. The Trust Board is responsible for:

- Arranging for an independent review panel hearing to review the decision of the Local Governing Committee (LGC) representatives not to reinstate a permanently excluded pupil where required.

- Arranging the hearing without delay at a time, date and venue convenient for all parties.
- Ensuring the independent review panel consists of three or five members as appropriate, which represent the required categories.
- Appointing a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.
- Ensuring all panel members and the clerk have received training within the two years prior to the date of the review.
- If requested by parents, appointing a SEND expert to attend the panel and covering the associated costs of this appointment.

2.3. A Local Governing Committee are responsible for:

- Providing information to the Secretary of State and LA about any exclusions within the last 12 months.
- Arranging suitable full-time education for any pupil of compulsory school age excluded on a fixed-term basis, from the sixth day.
- In accordance with the Trust's Scheme of Delegation item D 23, the LGC is responsible for reviewing exclusion decisions and considering reinstatement. A sub-committee of at least three Local Governing Committee members must be convened to conduct Exclusion Hearings. These members can come from across the Trust. Henceforth, this sub-committee will be referred to as the 'LGC representatives'. Where permitted by the Exclusions Code these responsibilities can be delegated to the Chair of the LGC.
- Considering parents' representations about exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- Where an exclusion would result in a pupil missing a public examination or test, considering the exclusion before this date.
- Considering whether it would be appropriate for a pupil to be permitted onto the school premises to sit the public examination or test.
- Arranging the representation meeting at a time and date convenient to all parties, but in compliance with the statutory time limits.
- Adhering to its responsibilities to consider the reinstatement of pupils.
- Considering the interests and circumstances of the excluded pupil, including the circumstances in which they were excluded, and have due regard to the interests of others at the school/academy.
- Using the civil standard of proof (based on the 'balance of probabilities', it is more than likely that the fact is true) when establishing the facts relating to an exclusion.
- Ensuring clear minutes are taken of the representation meeting.
- Noting the outcome of the representation meeting on the pupil's education record, along with copies of relevant papers for future reference.
- Notifying the pupil's parents, the Headteacher/Principal and LA of its decision and the reasons for it, without delay.
- Where appropriate, informing parents of where to apply for an independent review panel.
- Informing parents of relevant sources of information.

- Ensuring a pupil's name is removed from the school admissions register, where appropriate.
- Reconvening within 10 school days to reconsider reinstatement of a pupil where directed to do so by the exclusions review panel.

2.4. The Headteacher/Principal will arrange for a Clerk from the Governance Service to clerk the exclusion review. If the Governance Service is unable to provide a Clerk, an appropriate person from within the school/academy should be asked to clerk the review, supported by the Governance Service. The clerk to the exclusions review panel is responsible for:

- Making reasonable efforts to inform the appropriate individuals that they are entitled to:
  - Make written representations to the panel.
  - Attend the hearing and make oral representations to the panel.
  - Be represented.
- Making reasonable efforts to circulate copies of relevant papers at least five school days before the review to all parties.
- Giving all parties details of those attending and their role, once the position is clear.
- Attending the review and ensuring that minutes are produced in accordance with instructions from the panel.

2.5. The Headteacher/Principal is responsible for:

- Implementing good levels of discipline to ensure all pupils can benefit from the opportunities provided by education and to minimise potential exclusions.
- Applying the civil standard of proof when establishing the facts in relation to an exclusion.
- Complying with their statutory duties in relation to pupils with SEND when administering the exclusion process, as outlined in the Trust's Special Educational Needs and Disabilities (SEND) Policy.
- Considering any contributing factors that are identified after an incident of poor behaviour has occurred, e.g. if a pupil has suffered bereavement, bullying or has a mental health issue.
- Considering the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour.
- Reviewing the effectiveness of exclusions as a sanction, e.g. if a pupil has received multiple exclusions or is approaching the legal limit for exclusions in an academic year.
- Considering what extra support may be needed to identify and address the needs of individual pupils, particularly those with SEND, eligible for free school meals (FSM), LAC and those from certain ethnic groups.
- Engaging effectively with parents in supporting the behaviour of pupils with additional needs.
- Determining whether a pupil will be excluded on disciplinary grounds.
- Withdrawing any exclusions that have not been reviewed by the LGC representatives, where appropriate.
- Ensuring any decision to exclude is lawful, rational, reasonable, fair and proportionate.

- Complying with the requirements of the Equality Act 2010 when deciding whether to exclude a pupil.
- Ensuring they have considered their legal duty of care when sending a pupil home following an exclusion.
- Making the decision to exclude based on the evidence available at the time, regardless of any Police investigation and/or criminal proceedings.
- Notifying a pupil's parents without delay where the decision is taken to exclude the pupil, including the days on which the parents must ensure the pupil is not present in a public place at any time during school hours, as well as any other necessary information statutorily required.
- Ensuring that all information provided to parents is clear and easily understood.
- Notifying the LGC and LA of their decision to exclude a pupil where appropriate, as well as the pupil's home authority if required.
- Notifying the LGC once per term of any exclusions, exceeding 5 days, not already notified.
- Organising suitable work for excluded pupils where alternative provision cannot be arranged.

3. Grounds for exclusion

3.1. The school will only exclude a pupil where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the school's/academy's Behavioural Policy, have failed to be successful.

3.2. The following examples of behaviour may underline the school's decision to exclude a pupil:

- Any incident which poses a risk to other pupils or members of staff, e.g. bringing a weapon onto the premises
- Any incident which breaches the law
- Persistent and severe bullying
- Verbal and physical abuse
- Constant disruption
- A single, serious and major incident, e.g. serious assault on another individual leading to injury

3.3. Pupils can be excluded on a fixed-period basis, i.e. up to 45 school days within a year, or permanently. Similarly, pupils can be permanently excluded following a fixed-period exclusion, where further evidence is presented.

3.4. In all cases, the Headteacher/Principal, will decide which exclusion period a pupil will be subject to, depending on what the circumstances warrant.

4. The Headteacher's power to exclude

4.1. Only the Headteacher/Principal, has the power to exclude a pupil from the school, and is able

to decide whether this is on a fixed-period or permanent basis. All exclusions will only be issued on disciplinary grounds.

4.2. The Headteacher/Principal is able to exclude pupils from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day.

4.3. The Headteacher/Principal is able to consider a pupil's disruptive behaviour outside of the school premises as grounds for exclusion, in accordance with the school's/academy's Behavioural Policy.

4.4. Any decision made to exclude a pupil will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the school's wider legal duties, including the ECHR.

4.5. All exclusions will be formally recorded on the pupil information system.

4.6. When sending a pupil home following any exclusion, the Headteacher/Principal will ensure that they exercise their duty of care at all times and will always inform the parents.

4.7. The Headteacher/Principal will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.

4.8. The Headteacher/Principal may withdraw any exclusion that has not already been reviewed by the LGC.

4.9. At all times, the Headteacher/Principal will take into account their legal duties under the Equality Act 2010 and the 'Special educational needs and disability code of practice: 0 to 25 years', ensuring that they do not discriminate on any grounds, e.g. race, sex, disability, and will not increase the severity of a pupil's exclusion on these grounds.

4.10. The Headteacher/Principal will not issue any 'informal' or 'unofficial' exclusions, e.g. sending a pupil home to 'cool-off', regardless of whether or not the parents have agreed to this.

4.11. The Headteacher/Principal will not use the threat of exclusion as a means of instructing parents to remove their child from the premises.

5. Factors to consider when excluding a pupil

5.1. When considering the exclusion of a pupil, the Headteacher/Principal will:

- Allow the pupil the opportunity to present their case.
- Take into account any contributing factors that are identified after a case of poor behaviour has occurred, e.g. if the pupil's wellbeing has been compromised, or they have been subjected to bullying.
- Take into consideration whether the pupil has received multiple exclusions or is approaching the legal limit of 45 excluded days per school year, and whether exclusion is serving as an effective sanction.

- Consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess pupils who demonstrate consistently poor behaviour.

5.2. The Headteacher/Principal will consider what extra support may be available for vulnerable pupil groups whose exclusion rates are higher, to reduce their risk of exclusion, including the following:

- Looked After Children and previously Looked After Children
- Pupils eligible for FSM
- Pupils with SEND
- Certain ethnic groups

5.3. The Headteacher/Principal will consider avoiding permanently excluding LAC pupils, those with diagnosed SEMH or pupils with an EHC plan.

5.4. Where any member of staff has concerns about vulnerable pupil groups and their behaviour, they will report this using the schools pastoral monitoring system. The **Headteacher/ Principal/SLT Designate/SENCo** will instigate a multi-agency assessment to determine whether the behavioural issues might be a result of educational, mental health or other needs and vulnerabilities.

5.5. In accordance with the Equality Act 2010, under no circumstances will a pupil with identified SEND or diagnosed SEMH issues be excluded without reasonable adjustments being considered.

5.6. Where a pupil with SEND or diagnosed SEMH issues is permanently excluded because of a SEND- or SEMH-related need that could not be met at the school/academy, detailed records will be kept highlighting that these pupils are closely tracked and showing that the school/ academy has a close relationship with the pupil's next destination.

5.7. The Headteacher/Principal/SLT Designate/SENCo will work in conjunction with the parents of any pupil with additional needs to establish the most effective support mechanisms.

6. Duty to inform parents

6.1. Following the Headteacher's/Principal's decision to exclude a pupil, parents will be immediately informed, in person or by telephone, of the period of the exclusion and the reasons behind this.

6.2. The Headteacher/Principal will inform the parents in writing (electronically if written permission has been received from the parents for notices to be sent this way) of the following:

- The reason(s) for the exclusion
- The length of the fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent
- Their right to raise any representations about the exclusion to the LGC, including how the pupil will be involved in this and how the representations will be made

- Their right to attend a meeting where there is a legal requirement for the LGC to consider the exclusion, and the fact that they are able to bring an accompanying individual
- The arrangements that have been made for the pupil to continue their education prior to the organisation of any alternative provision, or the pupil's return to school
- Relevant sources of free, impartial information

6.3. Where the pupil is of compulsory school age, the Headteacher/Principal/SLT Designate will inform the parents by the end of the afternoon session that:

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

6.4. Where the Headteacher/Principal/SLT Designate has arranged alternative provision, they will also inform the parents of the following:

- The start and end date for any provision of full-time education
- The address at which the provision will take place
- Any information necessary for the pupil to identify the person they should report to on the starting date

6.5. Where the Headteacher/Principal/SLT Designate is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the pupil beginning the provision.

6.6. If the alternative provision is due to begin before the sixth day of the exclusion, the Headteacher/Principal/SLT Designate is able to give less than 48 hours of notice, with parental consent.

6.7. If the Headteacher/Principal has decided to exclude the pupil for a further fixed period following their original exclusion, or to permanently exclude them, they will notify the parents without delay and issue a new exclusion notice to parents.

7. Duty to inform the LGC and LA

7.1. The Headteacher/Principal/SLT Designate will inform the LGC and LA, without delay, of the following:

- Any permanent exclusions (including where a fixed-period exclusion is followed by a decision to permanently exclude the pupil)
- Any exclusions which would result in the pupil being excluded for more than five school days in a term (or more than 10 lunchtimes)
- Any exclusions which would result in the pupil being absent from an examination or national curriculum test

7.2. For any exclusions, other than those above, the Headteacher/Principal/SLT Designate will notify the LGC and LA once per term.

7.3. All notifications to the LGC and LA will include the reasons for exclusion and the duration of any fixed-period exclusion.

7.4. If the pupil who is excluded lives outside the LA in which the school/academy is located, the Headteacher/Principal/SLT Designate will notify the pupil's 'home authority'.

8. Arranging education for excluded pupils

8.1. For any fixed-period exclusions of more than five school days, the LGC will ensure that the school/academy arrange suitable full-time education for the pupil, which will begin no later than the sixth day of exclusion.

8.2. Where a pupil receives consecutive fixed-period exclusions, these will be regarded as cumulative, and full-time education will still have to be provided from the sixth day of exclusion.

8.3. For permanent exclusions, full-time education will also be provided for the pupil from the sixth day of exclusion.

8.4. The LGC will not ask the school to arrange full-time education for any pupil who is currently in their final year of compulsory education, and who does not have any further public examinations to sit.

8.5. The LGC is aware that it is beneficial to excluded pupils to begin their alternative education arrangements before the sixth day of exclusion. The LGC will ensure that the school/academy always attempt to arrange alternative provision before the sixth day of exclusion.

8.6. Where it is not possible to arrange alternative provision during the first five days of exclusion, the school/academy will ensure that they take reasonable steps to set and mark work for the excluded pupil.

8.7. If a pupil with SEND has been excluded, the LGC will ensure that:

- Any alternative provision is arranged in consultation with the pupil's parents, who are able to request preferences.
- When identifying alternative provision, any EHC plan is reviewed or the pupil's needs are reassessed, in consultation with the pupil's parents.

9. Considering exclusions

9.1. The LGC representatives will consider any representations made by parents in regard to exclusions.

9.2. Parents and, where requested, a friend or representative and the Headteacher/Principal will be invited to attend any consideration of exclusions and will be able to make

representations. The Headteacher/Principal may also invite other members of staff to attend. The school/academy does not have to invite a representative from the LA to the exclusion review, but they can choose to do so.

9.3. Any meeting to consider reinstatement of a pupil will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.

9.4. The LGC representatives will consider the reinstatement of an excluded pupil, where:

- The exclusion is permanent.
- The exclusion is fixed-period, and would bring the pupil's total number of excluded school days to more than 15 in any given term.
- The exclusion would result in the pupil missing a public examination.

9.5. In the case of a fixed-period exclusion where the pupil's total number of excluded days is more than 5 but less than 15 school days within a term, if requested by the parents, the LGC representatives will consider exclusions within 50 school days of receiving notification.

9.6. In the case of a fixed period exclusion, where the pupil's total number of excluded school days does not amount to more than five, in the absence of any such representations, the LGC is not required to meet and cannot direct the reinstatement of the pupil.

9.7. Where exclusion would result in a pupil missing a public examination, the LGC will consider the exclusion before the test to decide whether the pupil should be reinstated in time to take the examination. If it is not practicable for a sufficient number of governors to consider the decision before the examination, a smaller sub-committee will consider the exclusion and decide whether or not to reinstate the pupil. In light of the above, the LGC will also consider whether it would be appropriate to allow the excluded pupil to enter the premises to take the examination.

9.8. When considering the reinstatement of an excluded pupil, the LGC representatives will:

- Only discuss the exclusion with the parties present at the meeting.
- Ask for any written evidence prior to the meeting.
- Circulate any written evidence and information to all parties, at least five school days in advance of the meeting.
- Allow pupils and parents to be accompanied by a person of their choice to the meeting.
- Consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting.
- Identify the steps needed to enable and encourage the excluded pupil to attend the meeting and speak on their behalf, or how they may contribute personal views by other means if attendance is not possible.
- Consider the interests and circumstances of the excluded pupil, including the grounds for exclusion.

10. Reaching a decision

10.1. After considering exclusions, the LGC representatives will either:

- Decline to reinstate the pupil.
- Direct the reinstatement of the pupil immediately, or on a specified date.

10.2. If reinstatement would make no practical difference, e.g. if the pupil has already returned to school following a fixed-period exclusion or the parents make clear they do not want their child reinstated, the LGC representatives will still consider whether the pupil should be officially reinstated, and whether the Headteacher/Principal's decision to exclude the pupil was fair, lawful and proportionate, based on the evidence presented.

10.3. The LGC representatives will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that on the 'balance of probabilities' it is more likely than not that the facts are true.

10.4. To reach a decision, the LGC representatives will:

- Identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views.
- Ensure that minutes are taken of the meeting as a record of the evidence that was considered.
- Ask all parties to withdraw from the meeting before concluding their decision.
- Consider whether the exclusion of the pupil was lawful, proportionate and fair, taking into account the Headteacher/Principal's legal duties and any evidence that was presented to the LGC representatives in relation to the decision to exclude.
- Record the outcome of the decision on the pupil's educational records, along with copies, which will be kept for at least six months.
- Make a note of their findings, where they have considered an exclusion but cannot reinstate the pupil.

11. Notification of considered exclusions

11.1. The LGC representatives will notify the parents of the excluded pupil, the Headteacher/Principal and the LA of their decision following the consideration of an exclusion, in writing and without delay.

11.2. In the case of a permanent exclusion, where the LGC representatives decides not to reinstate the pupil, they will notify the parents:

- That it is permanent, and their right for it to be reviewed by an independent review panel.
- Of the date by which an application for review must be made.
- Of the name and address of whom the review application should be submitted to.

- That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a pupil's SEND is considered relevant to the exclusion.
- That, regardless of whether a pupil has been identified as having SEND, the parents have a right to require the LGC to ensure a SEND expert attends the review.
- Of the role of the SEND expert that will attend the review, and that the parents will not be charged for this.
- That they are required to make it clear if they wish for a SEND expert to attend the review.
- That they may appoint someone at their own expense to make representations to the panel.

11.3. The LGC representatives will also notify parents that, if they believe an exclusion has been issued as a result of discrimination, then they are required to make a claim under the Equality Act 2010 to the First-tier Tribunal (SEND), and that this should be within six months of when the discrimination allegedly took place.

11.4. After any conclusion, the LGC representatives will notify the parents, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

12. Removing permanently excluded pupils from the school register

12.1. The Headteacher/Principal will remove pupils from the school register if:

- 15 school days have passed since the parents were notified of the LGC representatives' decision not to reinstate the pupil and no application for an independent panel review has been received.
- The parents have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.

12.2. If an application for an independent panel review has been made within 15 school days, the Headteacher/Principal will wait until the review has been determined, or abandoned, and until the LGC representatives has completed any reconsideration that the panel recommended or directed it to carry out, before removing the pupil from the school register.

12.3. If a pupil's name is to be removed from the register, the Headteacher/Principal will make a return to the LA, which will include:

- All the particulars which were entered in the register.
- The address of any parent with whom the pupil normally resides.
- The grounds upon which the pupil's name is to be removed from the register.

12.4. Any return to the LA will be made as soon as the grounds for removal are met and no later than the date in which the pupil's name was removed.

12.5. If a pupil's name has been removed from the register and a discrimination claim is made, the pupil may be reinstated following a decision made by the First-tier Tribunal (SEND) or County Court.

12.6. Whilst a pupil's name remains on the admissions register, the appropriate code will be used to mark the pupil's attendance:

- Code B: Education off-site
- Code D: Dual registration
- Code E: Absent and not attending alternative provision

13. Independent review panel

13.1. The Trust Board will review the LGC representatives' decision not to reinstate a permanently excluded pupil if the parents submit their application for this within the required time frame.

13.2. The Trust Board is responsible for establishing an independent appeals panel, in line with statutory guidance on exclusions. Advice and support should be sought from the Governance Service. The Trust Board will constitute an independent review panel of three or five members that represent the following categories:

- A lay member to chair the panel. This individual will not have worked in any school in a paid capacity.
- A current or former school governor who has served for at least 12 consecutive months in the last 5 years.
- A Headteacher/Principal or individual who has been a Headteacher/Principal within the last 5 years.

13.3. Parents are required to submit their applications within:

- 15 school days of the LGC representatives' notification of their decision.
- 15 school days of the final determination of a discriminatory claim made under the Equality Act 2010.

13.4. Any application made outside of this timeframe will not be reviewed.

13.5. Parents are able to request an independent panel review even if they did not make a case to, or attend, the LGC representatives' initial consideration of the exclusion.

13.6. The Trust Board will adhere to all statutory guidelines when conducting an independent panel review, as outlined in the DfE's statutory guidance document 'Exclusion from maintained schools, academies and pupil referral units in England' 2017.

14. Appointing a SEND expert

14.1. If requested by parents in their application for an independent review panel, the Trust Board will appoint a SEND expert to attend the panel and covers the associated costs of this appointment.

14.2. The Trust Board will make arrangements to indemnify the SEND expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

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

14.4. The SEND expert's role is set out in section 15 of this policy.

14.5. An individual will not serve as a SEND expert if they have, or at any time have had, any connection with the Trust Board, school/academy, 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 they are an employee of the Trust Board.

14.6. The SEND expert will 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, SENCOs and behaviour support teachers.

14.7. Recently retired individuals are not precluded from fulfilling this role; however, during interview, the Trust Board will assess the knowledge of such individuals in order to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

14.8. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the Trust Board, they will not have had any previous involvement in the assessment or support of SEND for the excluded pupil, or siblings of the excluded pupil. The Trust Board will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.

14.9. The final decision on the appointment of a SEND expert is for the Trust Board to make, but it will take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents a choice of SEND expert.

14.10. The Trust Board will determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel and subsistence allowances.

15. The role of a SEND expert

15.1. The SEND expert's role is analogous to an expert witness, providing (orally and/or written) impartial advice to the panel on how SEND might be relevant to the exclusion. The SEND expert will base their advice on the evidence provided to the panel. The SEND expert's role does not include making an assessment of the pupil's SEND.

15.2. The focus of the SEND expert's advice will be on whether the school's policies which relate to SEND, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEND expert believes that this was not the case, they will, where possible, advise the panel on the possible contribution this could have made to the circumstances of the pupil's exclusion.

15.3. Where the school does not recognise that a pupil has SEND, the SEND expert will advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEND that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

15.4. The SEND expert will not criticise 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.

16. Appointing a clerk

16.1. The Trust Board will decide whether to appoint a clerk to the independent review panel, or to make alternative arrangements to administer the panel.

16.2. Where a clerk is appointed the Trust Board will ensure that the clerk did not serve as clerk to the LGC representatives when the decision was made not to reinstate the pupil.

17. The role of a clerk

17.1. The clerk's role is to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

17.2. The clerk will:

- Identify, in advance of the meeting, whether the excluded pupil wishes to attend the panel hearing, taking reasonable steps to enable the pupil to feedback their views, irrespective of their attendance.
- Identify, in advance of the meeting, whether any alleged victims of the incident(s) leading up to the exclusion wish to attend the panel hearing, taking reasonable steps to enable them to feedback their views, irrespective of their attendance.
- Ensure that the panel is able to hear from any witnesses to the incident(s) leading to the exclusion, taking into account the fact that some of these people may be pupils at the school/academy. Pupils under 18 will not be allowed to appear in person without parental consent.
- Inform the parents, Headteacher/Principal, LGC and the Trust Board, that they are entitled to make oral and written representations to the panel, attend the hearing, and be represented.
- Ensure that all parties are:
  - Provided with copies of relevant papers at least five school days before the review, notifying the panel if any requested documents have not been provided in case the panel wishes to adjourn until a later date.
  - Informed about who is attending the meeting, and what their roles are.
- Attend the review and ensure that minutes are produced in accordance with instructions from the independent review panel.

17.3. Where a clerk is not appointed, the Trust Board will undertake the functions outlined in paragraphs 16.1 and 16.2 of this policy.

18. The duties of independent review panel members in the conduct of a review panel

18.1. The role of the panel is to review the LGC representatives' decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel will 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/ academy.

18.2. The panel will apply the civil standard of proof, rather than the criminal standard of 'beyond reasonable doubt'.

18.3. Following the review, the panel will do one of the following:

- Uphold the decision.
- Recommend that the LGC reconsiders reinstatement.
- Quash the decision and direct that the LGC reconsiders reinstatement.

18.4. The panel's decision does not have to be unanimous and can be decided by a majority vote. It is binding on the pupil, parents, the LGC, Headteacher/Principal and the Trust Board.

19. Reconsidering reinstatement following a review

19.1. Where the independent review panel instructs the LGC to reconsider their decision not to reinstate a pupil, they will do so within 10 school days of being given notice of the review panel's decision.

19.2. The school/academy is aware that if, following an instruction to reconsider, the LGC does not offer to reinstate the pupil, then the school/academy will be required to make a payment of £4,000 directly to the LA area in which the school/academy is located.

19.3. Where the independent review panel recommends that the LGC should reconsider their decision not to reinstate a pupil, they will do so within 10 school days of being given notice of the review panel's decision.

19.4. The school/academy is aware that if, following a recommendation to reconsider, the LGC does not offer to reinstate the pupil, it will not be subject to a financial adjustment.

19.5. If, following reconsideration, the LGC offers to reinstate the pupil but the parents decline, no adjustment will be made to the school's/academy's budget.

19.6. Following reconsideration, the LGC will notify the parents, the Headteacher/ Principal and the LA of their reconsidered decision and the reasons for this.

20. Criminal investigations

20.1. The Headteacher/Principal will not postpone taking a decision to exclude a pupil due to a Police investigation being underway, or any criminal proceedings that are in place.

20.2. The Headteacher/Principal will give particular consideration when deciding to exclude a pupil where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

20.3. If the LGC is required to consider the Headteacher/Principal's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.

21. Training requirements

21.1. The Trust Board will ensure that all independent review panel members and clerks have received training within the two years prior to the date of the review.

21.2. Training will cover:

- The requirements of the legislation, regulations and statutory guidance governing exclusions.
- 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 Headteachers/Principals, LGC and the panel under the Equality Act 2010.
- The effect of section 6 of the Human Rights Act 1998 and the need to act in a manner compatible with human rights protected by that Act.

21.3. Clerks will also have an up-to-date understanding on developments in case law which are relevant to exclusion.

22. Monitoring and review

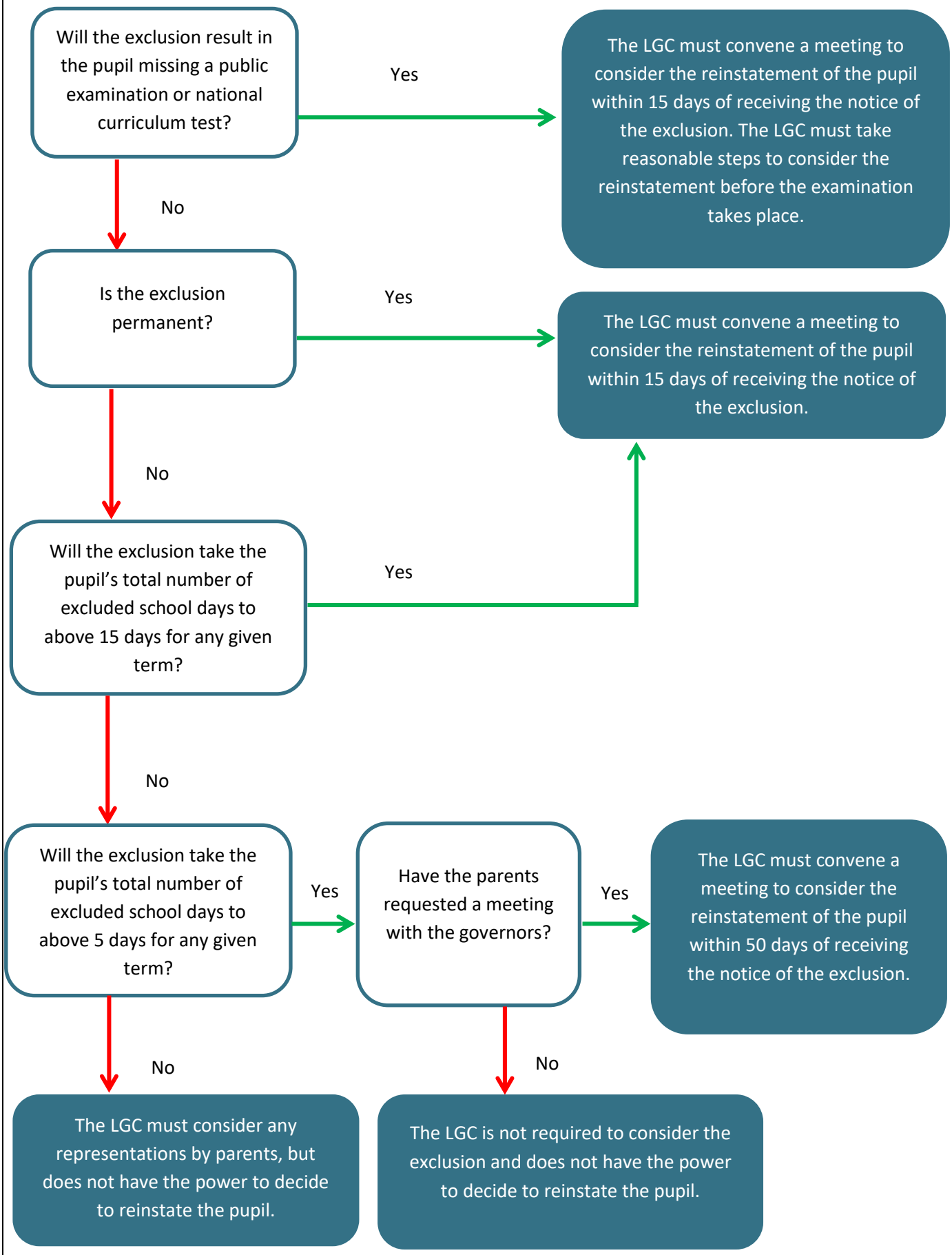
22.1. This policy will be reviewed annually by the Local Governing Committee, supported by advice and guidance from the Headteacher/Principal.

22.2. The next scheduled review date for this policy is listed on the cover page.

22.3. All members of staff will be required to familiarise themselves with this policy as part of their induction programme.

Reviewing the Headteacher/Principal's Exclusion Decision

APPENDIX A



APPENDIX B

Changes to the exclusion process during the coronavirus (COVID-19) pandemic

The government has introduced new regulations that change some of the procedures that must be followed in relation to an exclusion, to give greater flexibility to schools, parents and LAs during the coronavirus (COVID-19) outbreak. They apply to all maintained schools, academies (including alternative provision academies, but excluding 16-19 academies) and PRUs.

Please note that 'LGC' is used in this appendix to include the management committee of a PRU or academy trust.

Some temporary changes have been made to the school exclusion process due to the coronavirus (COVID-19) pandemic. The arrangements and procedures that must follow a decision to exclude on disciplinary grounds, as set out in our wider Exclusion Policy above, remain unchanged unless noted within this appendix. This appendix sets out what these changes are and what this means for our exclusion procedures in practice.

1. Legal framework

1.1. This appendix has due regard to the related legislation and statutory guidance including, but not limited to, the following:

- The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020
- DfE (2020) 'Changes to the school exclusion process during the coronavirus (COVID-19) outbreak'

2. Application of arrangements

2.1. All exclusions occurring between 25 September 2020 and 24 September 2021 (inclusive of those dates) are subject to amended arrangements with regards to:

- The use of remote access technology (for example, video conferencing or telephone conferencing software) for meetings of governing boards/ LGC representatives' or independent review panels.
- The deadline for applications for an independent review.
- Timescale amendments, under certain circumstances.

2.2. Meetings relating to exclusions occurring between 25 September 2020 and 24 September 2021 will take place within the normal timescales set out in the main body of this policy (please note this period may be extended).

2.3. The Trust Board as the arranging authority for independent review panels (IRPs) will take all reasonable steps to meet the normal timescales for exclusions occurring after 24 September 2020. In doing this, they will:

- Consider the DfE's 'Guidance for full opening: schools'.
- Consider the actions for schools during the coronavirus (COVID-19) outbreak.
- Facilitate remote access meetings where it is not reasonably practicable to meet in person.

2.4. If deadlines are missed due to the coronavirus pandemic, the meeting will be held as soon as it becomes reasonably practicable to meet either in person or via remote access (respecting the conditions for such a meeting).

2.5. Any exclusions covered by these arrangements will continue to be subject to them until the procedures for scrutiny of the exclusion have been exhausted.

2.6. For the purpose of this appendix, an exclusion will be taken as having 'occurred' on the first day of the exclusion, not the date when the decision to exclude was made or communicated.

3. Deciding whether a meeting should be held remotely

3.1. For exclusions occurring between 25 September 2020 and 24 September 2021 (inclusive), meetings of the LGC or IRP will be held via remote access if:

- It is not reasonably practicable for the meeting to take place in person, within the usual timescales, due to coronavirus.
- The LGC (or arranging authority if the meeting is an IRP) is satisfied that:
  - All the participants agree to the use of remote access.
  - All the participants have access to the technology that will allow them to hear and speak throughout the meeting, and to see and be seen if a video call is used.
  - All the participants will be able to put across their point of view or fulfil their function.
  - The meeting can be held fairly and transparently via remote access.

3.2. The LGC (or Trust Board as the arranging authority if the meeting is an IRP) will be responsible for ensuring these conditions are met before a meeting takes place. Those who have no intention of taking part in the meeting should not be treated as 'participants' for the purposes of the conditions.

3.3. When determining whether it would be reasonably practicable to meet in person, the LGC or Trust Board as the arranging authority will assess:

- The facts of the case.
- The circumstances in which a meeting could be expected to take place.
- The needs of the intended participants, as far as this possible.

- The latest public health guidance, including the actions for schools during the coronavirus (COVID-19) outbreak.

4. Arranging a remote access meeting

4.1. The LGC or Trust Board as the arranging authority will explain the technology they propose to use to participants and will ensure that the participants (particularly pupils and their parents) know that they do not have to agree to a meeting being held via remote access.

4.2. Pupils and parents involved in meetings will be made aware that if they do not consent to a remote access meeting, the meeting is likely to be delayed.

4.3. Where a parent or pupil has consented to a remote access meeting, all other participants will make reasonable efforts to accommodate that preference unless there is a clear reason not to.

4.4. The normal requirements for who must be invited to a meeting (as set out in the wider policy) remain in place; however, those who have no intention of taking part in the meeting will not be treated as 'participants' for the purpose of the arrangements in this appendix.

4.5. The LGC or Trust Board as the arranging authorities and panel members must:

- Comply with equalities legislation.
- Recognise that some participants may find it difficult to participate in a remote access meeting, e.g. if they have SEND or English as an Additional Language.
- Take reasonable steps to facilitate a parent, child or young persons' access to the technology required.
- If a governor, trustee, panel member or other participant requires support to access or use remote access technology, the governing board/ LGC or arranging authority should facilitate this to ensure the meeting can be held promptly.

4.6 If the LGC or Trust Board is not satisfied that a meeting can be held fairly and transparently via remote access, they should consider using reasonable adjustments to overcome this. They should consult with parents and pupils to take account of their wishes.

4.7 In rare cases, the LGC or Trust Board may conclude that a remote meeting would not be fair and transparent, even if the participants have given their consent for a remote access meeting. In such cases, the LGC or Trust Board should explain to the parent and the pupil why they have taken this decision.

4.8. The chair of the meeting will check that the participants understand the proceedings and can engage with them, to ensure the meeting is conducted fairly.

4.9. Once the meeting starts, if it cannot proceed fairly (e.g. if a participant cannot access it), the meeting will be adjourned.

4.10. The use of remote access will not alter any other procedural requirements that apply during the meeting. For example:

- If a parent requests the appointment of a special educational needs (SEN) expert to advise a review panel, the arranging authority must appoint one and cover the cost as normal.
- Parents may be joined by a friend or representative, as normal.

4.11. Though written representations will be considered, solely paper-based meetings will not be permitted.

4.12. As long as the conditions for a remote access meeting are met, it will be possible for some participants to attend a meeting in person and for others to join via remote access. All the participants must have access to technology which will allow them to hear and be heard by others throughout (and to see and be seen throughout, if a live link is used).

4.13. To help meetings run smoothly and ensure they are accessible for participants, the LGC or the arranging authority will:

- Provide clear instructions to participants about how to join the meeting virtually, and distribute the relevant papers in a timely manner ahead of the meeting.
- Indicate a named person who participants can contact to discuss any questions they may have before the meeting.
- Ensure the chair is prepared to explain the agenda at the start of the meeting, and to provide clear guidance on how the meeting will be run, for example:
    - How participants should indicate they wish to speak.
    - How any 'chat' functions should be used.
    - Whether there will be any breaks in proceedings.
    - How participants can access advocacy services during the meeting.
- Consider holding a pre-meeting with participants to check that the available technology is suitable and that all participants understand how to access the meeting.

5. Applications for independent reviews of exclusions

This section applies to all exclusions occurring between 25 September 2020 and 24 September 2021 (inclusive).

5.1 The deadline for applications for an independent review in relation to exclusions occurring between the 25 September 2020 and 24 September 2021 will be 25 school days from the date on which notice of the LGC's decisions is given in writing to parents, or directly to the pupil if they are 18 or above.

5.2. Where the LGC representatives declines to reinstate a pupil who has been permanently excluded, their parents (or the pupil if they are 18 or over) can apply for a review of this decision.

5.3. For exclusions covered under these arrangements (as set out in 2.1 and 2.2 of this appendix), the deadline for applications will be increased to 25 school days from the date on which notice in writing of the LGC representatives' decision was given to parents (or the pupil if they are aged 18 or over).

5.4. The school/academy will wait for the extended period of 25 school days to pass without an application having been made before deleting the name of the permanently excluded pupil from the admissions register. This is in accordance with the Education (Pupil Registration) (England) Regulations 2006 as amended.

6. Meetings of independent review panels to consider permanent exclusions

This section applies to all exclusions occurring between 1 June and 24 September (inclusive).

6.1. If it has not be reasonably practicable for a review panel to meet in person within 15 school days due to coronavirus and it has not been possible to hold a remote meeting, the limit will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus.

6.2. The arranging authority will arrange for overdue meetings to take place via remote access, if the conditions can be met, or in person as soon as it is safe and practicable to do so.

7. Meetings to consider permanent and fixed-term exclusions

This section applies to all exclusions occurring between 1 June and 24 September (inclusive).

7.1. If a pupil is permanently excluded or received a fixed-term exclusion which results in them having been excluded for 16 or more days in a term, the LGC representatives will try to meet to discuss reinstatement within 15 school days.

7.2. If it has not been reasonably practicable for the LGC representatives to meet in person within 15 school days due to coronavirus, and it has not been possible to hold a remote meeting, the limit will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus.

7.3. If a pupil receives a fixed-term exclusion which results in them having been excluded for at least 6 school days in a term but not more than 15 school days in that term, and the parent (or pupil if they are 18 or over) chooses to make representations about the exclusion, the LGC will meet to discuss reinstatement within 50 school days.

7.4. If it has not been reasonably practicable for the LGC to meet in person within 50 school days due to coronavirus, and it has not been possible to hold a remote meeting, the limit will be extended to 60 days, or as long as reasonably necessary for a reason related to coronavirus.

8. Exclusions occurring between 25 September 2020 and 24 September 2021

The arrangements within this section apply to exclusions occurring between 25 September 2020 and 24 September 2021 (inclusive).

8.1. LGC meetings and independent review panel meetings will take place within the normal timescales set out in the DfE's 'Exclusion from maintained schools, academies and pupil referral units in England' guidance, other than the deadline for the application of an independent review.

8.2. The LGC and arranging authorities for independent review panels will take all reasonable steps to meet the normal deadlines for exclusions occurring after 24 September 2020.

8.3. The LGC and arranging authorities will:

- Consider the guidance on protective measures for the full opening of schools
- Facilitate remote access meetings where it is not reasonably practicable to meet in person

8.4. If deadlines are missed because of coronavirus, meetings will be held as soon as it becomes either reasonably practicable to meet in person or via remote access (respecting the conditions for such a meeting).

9. Monitoring and review

9.1. The arrangements in this appendix will be reviewed when there are any changes to government guidance.

9.2. Any changes to the arrangements in this appendix will be communicated to all stakeholders.