

# Governors' Exclusion Review Deliberations Checklist

## The Facts

- Has the school properly and fully presented a case for the exclusion? This involves a two-part test: establishing a serious breach OR persistent breaches of the behaviour policy AND showing that the pupil remaining in school would seriously harm either the pupil or others.
- Part 1 of two-part test: If the facts are disputed, on the balance of probabilities (i.e. more likely than not), did they occur as alleged by the school?
- Was the decision based on a breach of the behaviour policy? Are governors satisfied that the child knew, or ought reasonably to have known, that his/her behaviour breached the behaviour policy?
- Part 2 of two-part test: Are governors satisfied that the pupil's return would 'seriously harm' either the pupil or others? Has the school sufficiently articulated the risk presented to either the pupil themselves or others?

## The Process

- Have the pupil and his/her family been properly notified of the exclusion and the hearing and had an adequate opportunity to represent themselves?
- Did the school provide the pupil with an opportunity to provide a statement? If no statement was obtained, has the school satisfactorily explained why not?
- Has the school provided statements from witnesses, rather than relying on hear-say? Were the statements credible (i.e. taken in the proper way, signed, dated)?
- Have governors been given sufficient information and opportunity to make the right decision? Both written submissions and oral testimony made at the hearing constitute evidence and may be taken into consideration.
- Has the school provided work for the first five days of the exclusion and had it marked?
- Has the Local Authority been advised of the permanent exclusion and put in place educational provision from Day 6 of the exclusion?

## **Discrimination and Intervention**

- Have governors (and headteacher) considered any other relevant school policies, including SEND?
- Are governors satisfied that the exclusion was not based on any element of discrimination? If a pupil is from an at-risk ethnic or social background (e.g. Black Caribbean, Gypsy/Roma, Traveller, LAC), was this given additional scrutiny?
- Has the school properly considered whether the child has Special Educational Needs? Have they considered that disruptive or impulsive behaviour might constitute a social, emotional or mental health need under the SEN Code of Practice?
- If the pupil has an EHCP, did the school conduct an emergency annual review?
- If the pupil is a Looked-After Child, has the school accessed all the resources available from the council?
- In a case of persistent breaches, has the school attempted to identify underlying causes and address them through interventions and support? Have governors received sufficient evidence of this?

## **The Headteacher's decision - Natural principles of justice**

- Is the decision lawful? An example of an unlawful decision might be where the Headteacher has applied the wrong legal standard or has exceeded his/her powers.
- Was the decision fair? An example of unfair decision might be when one pupil is permanently excluded for the same offence as a pupil who was not, where there are no other differences between the pupils to explain this.
- Is the sanction proportionate? Proportionality means that it is the minimum sanction available effectively to achieve the ends required by the school.
- Linked to the above, is the decision a last resort? Did the Headteacher consider alternatives (e.g. managed move) and if rejected, has this been explained? Has the school explained why no other sanction would suffice? Did the school do all it could to mitigate against exclusion or has it satisfactorily argued that the behaviour could not have been foreseen?

- Is the decision rational and reasonable? An irrational decision is one that no ordinary and objective person would reasonably make. An example of an unreasonable decision might be one that is unreasoned – for example, if the Headteacher could not give reasons for his/her decision.

### **Considering reinstatement**

- Would reinstatement seriously harm the education or wellbeing of the child or others in the school community? 'Would' requires a higher level of certainty than 'might', 'could', 'is likely to'. 'Serious harm' requires a higher level of impact than 'detriment' – the impact cannot merely be negative, it must be intolerable to governors.
- Having considered the child's or parents' evidence, are governors satisfied that any mitigating factors do not excuse/explain the behaviour? This includes bereavement, divorce, family discord, bullying at school, etc.? Did the Headteacher take these mitigating factors into account?
- How large a negative impact will the exclusion have on the pupil's education and wellbeing (e.g. Year 8 vs. Year 11)? Are governors satisfied that this negative impact is justified in the circumstances?

**If any of these questions cannot be answered with a 'yes', governors must give due consideration to reinstatement. If governors choose not to reinstate, they must clearly explain their decision despite the school's failure to meet these thresholds.**