

**A PARENTS' GUIDE TO
EXCLUSION APPEALS**

22.3.2004

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Introduction

This guidance explains how the appeals process works and will help you to prepare for the appeal hearing.

Below are the most frequently asked questions that will help you to:

- understand the process;
- know what will happen at an appeal hearing;
- understand how Independent Appeal Panels make their decisions.

1. Who will be at the Appeal Hearing?

- You and your partner; friend; supporter; representative or legal adviser; and, if you wish, your son/daughter
- The Independent Appeal Panel (3 or 5 members)
- The Clerk to the Appeal Panel
- If attending, the legal or other representative of the Governing Body
- The Headteacher of your son's/daughter's school
- Any witnesses called by either the school or by you
- If attending, the Education Officer from the LEA
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the appeal hearing

Sometimes there is also an observer. This may be a member of the LEA i.e. a County Councillor; or someone from the Council on Tribunals, the body that has a supervisory role in appeals; or it may be someone who is training to be an Appeal Panel member or Appeal Clerk.

The representative of the **Council on Tribunals has a legal right to be present**; otherwise you will be asked if you object to an observer being present for any part of your appeal hearing.

2. Who are the Independent Appeal Panel members?

The IAP will have 3 or 5 members and:

- One (or 2) member must be, or have been within the previous five years, a Headteacher of a maintained school;
- One (or 2) member must be, or have been, a governor of a maintained school, provided that they have served as a governor for at least twelve consecutive months within the last six years, and they have not been teachers or Headteachers in the last five years;
- One member must be a lay person, that is, someone without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a school governor or in any other voluntary capacity).

NOTE

The Lay member must be the Chairperson of the Panel.

3. Is anyone disqualified from sitting on the Appeal Panel?

Yes. The following people cannot sit on the Appeal Panel:

- any member of the authority or of the governing body of the school in question;
- the current or a former Headteacher of the excluding school;
- any person employed by the authority other than as a Headteacher;
- any person who has, or at any time has had, any connection with –
 - (i) the authority or the school, or with any person within the above point, or
 - (ii) the pupil in question or the incident leading to his/her exclusion,of a kind which might reasonably be taken to raise doubts about his/her ability to act impartially

No member of the IAP will have any connection with the excluding school or any school which your son/daughter might attend if he/she is not reinstated.

4. What powers does the Appeal Panel have?

The Appeal Panel may:

- uphold the exclusion i.e. refuse your appeal;
- direct that your son/daughter be reinstated (either immediately or by a date specified by the Appeal Panel); or
- decide that because of exceptional circumstances or for other reasons it is not practical to give a direction requiring that your son/daughter be reinstated, but that it would otherwise have been appropriate to give such a direction.

IMPORTANT

The Appeal Panel **cannot attach any conditions** to the reinstatement of a pupil.

5. What is the role of the Clerk to the Appeal Panel?

The Clerk is there to ensure that the hearing is fair and that both sides are able to put their case and will help you if you have any difficulty.

The Clerk does not have any say at all in the Appeal Panel's decision but is there to:

- explain the basic procedure and deal with any questions about the process
- ensure the relevant facts are established
- make sure each party is heard in turn
- be an independent source of advice on the law and procedure
- record the proceedings, decisions and reasons
- after the appeal, notify all concerned of the Appeal Panel's decision

6. What is the role of the representative of the school's Governing Body at the appeal hearing?

The GB representative is responsible for presenting the case for the school stating why your son/daughter was permanently excluded and answering any questions raised by you and the IAP members.

The Governing Body's (GB) representative is **not** involved with the decision making process of the IAP appeal hearing in any way.

Also, in the same way that you can ask the GB representative questions about the GB's case, to ensure a fair hearing, (s)he may ask you questions about your case.

7. What is the role of the LEA officer at the appeal hearing?

The LEA officer's role is to give the LEA's view on the appropriateness of the exclusion but (s)he cannot make a specific recommendation as to whether or not the pupil should be reinstated.

The LEA officer is **not** involved with the decision making process of the IAP appeal hearing in any way.

8. Should I attend the appeal hearing?

Yes, if at all possible! You are the best person to tell the Appeal Panel why you think your son/daughter should not have been permanently excluded and you will be able to provide information to help the IAP make an informed decision.

9. Can I bring someone with me to help me present my case?

Yes. You may bring a member of your family, a friend, a neighbour, a PPS parental supporter, or a representative along with you, either to help you say what you want or to speak for you or to simply give you support.

You may be represented by a legal or other representative but as this is not a court of law the IAP aim to keep the appeal hearing as informal as possible.

Please note that any legal costs incurred by you are not recoverable in any event.

10. Can I bring my son/daughter to the appeal hearing?

Yes. Your son/daughter should normally be allowed to attend the hearing and to speak on his/her own behalf if he/she wishes to do so and you agree.

11. What happens if I do not attend the hearing?

If at all possible, you should attend and the appeal date is normally arranged so that you are able to attend.

However, if at the last moment you cannot attend the hearing for a genuine reason, the IAP will meet and try to adjourn to another date wherever possible.

It is important that you **contact the Clerk to the Appeal Panel as soon as possible** to let the Clerk know if you have any problems.

IMPORTANT

If you, or someone who can put your case, cannot attend and another date cannot be arranged, your case will be heard in your absence and your appeal will be decided on the information that is available at the hearing.

12. Will I have any information about the Governing Body's case before the appeal hearing?

Where possible in the given time scales, you will normally be sent a set of papers five working days before the appeal hearing, which will include:

- The statement of decision of the GB;
- Your appeal form or letter;
- Any papers you have supplied to support your grounds for appeal;
- Relevant correspondence between yourself and the school;
- Any witness statements;
- Any documentation to support the school's case;

- Any relevant school policy e.g. the school discipline/behaviour policy, race equality policy, bullying policy, drug policy, SEN policy;
- If submitted, a written representation from the Headteacher, and/or the Governing Body, and/or the LEA; and
- Any other relevant documentation

Please note that it may also include a written statement from the alleged victim or their representative – see also Question 24.

NOTE

The set of documents you receive will also be sent to the Appeal Panel and its Clerk, the Governing Body representative, the LEA representative, and the Headteacher.

13. How can I prepare for the appeal hearing?

You are responsible for presenting your case, for deciding what you would like to say at the appeal hearing.

So before the appeal hearing you are advised to:

- **Contact ACE** &/or Parent Partnership Service (see Appendix 1)
- Send any additional evidence to the Clerk to the Panel as soon as possible
- Familiarise yourself with the order of the hearing (see Appendix 3)
- Make a note of any questions you may have about your appeal
- Make sure you have looked at the Governing Body's (GB) case papers before the appeal hearing
- Make a note of any questions you would like to ask the GB representative about the exclusion
- Spend some time deciding what you would like to say when the IAP invites you to explain your reasons for appealing – it might be helpful to make a note of the main points e.g. any special educational needs and/or medical factors, any extenuating or mitigating circumstances, any claims of disability or racial discrimination; any factors which you believe the Headteacher or Governing Body did not consider properly; and

- On the day of the appeal hearing, bring with you to the appeal: the appeal papers sent to you (normally) five working days before the appeal; any additional documents which you have not been able to submit earlier; any notes of questions you may have; and this guidance.

14. How long does an appeal hearing take?

It is difficult to say exactly but it can normally be at least the morning and often continues in the afternoon because it is a new hearing and the IAP will look at all the evidence and the circumstances of your son's/daughter's case,

NOTE

You are advised to **arrive at least 15 minutes before the time shown** on your letter as the Clerk will speak to you before your appeal starts in case you have any last minute queries about anything at all.

15. What will happen at the appeal hearing?

We try to make appeal hearings as informal as possible and, to ensure that both sides have the **same** opportunity to speak, the IAP will normally follow the order of hearing shown on Appendix 3

IMPORTANT

No party attending the hearing will be present alone with the Appeal Panel in the absence of the other party.

16. Does the Appeal Panel ever adjourn the appeal hearing?

Yes. The IAP may adjourn the appeal hearing to later in the same day or another day in the following circumstances:

- If substantial new issues are raised for the first time at the hearing it may be necessary to adjourn to allow any party taken by surprise to consider the issues; or

- If a lot of additional information is submitted on the day of the hearing and it is in the best interests of both parties that the IAP ensures it gives full consideration to the new information before it; or
- If the IAP requires further information to be obtained; or
- If it takes longer than anticipated to deal with the case, the Appeal Panel may have to adjourn the appeal to another day; or
- If an IAP member is ill or absent; or
- Where there are parallel criminal proceedings, the IAP may adjourn the hearing – for more information see next question; or
- For any other appropriate reason.

Please note that, if necessary, the IAP may adjourn more than once.

17. Why would the Appeal Panel adjourn the appeal hearing if there were parallel criminal proceedings?

Where a school related incident is also the subject of a police investigation which may result in criminal proceedings, the evidence available to the IAP may be very limited. For example:

- They may not be able to hear evidence from relevant witnesses; or
- They may not be able to consider relevant material; or
- It may not be known whether a criminal charge is to be brought; or
- If a charge has been brought, the eventual outcome may be uncertain.

Therefore, at the hearing the IAP must consider, taking into account any representations made by you and the other parties and on the advice of the Clerk, whether or not the IAP can hear the appeal or whether it should adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought.

The fact that parallel criminal proceedings are in progress will not necessarily mean that the appeal hearing will be adjourned, therefore the IAP will consider the relevant factors.

Relevant factors for the IAP to consider are:

- (i) whether it would be helpful to know what charge, if any, is to be brought against your son/daughter;

Please note - If there is no charge it may help your child's case or, if a charge is brought, your son/daughter may be inhibited in presenting his/her case.

- (ii) whether relevant witnesses and documents are available;
- (iii) the likelihood of delay if the hearing were adjourned and the effect it may have on any alleged victim, your son/daughter or the school itself;
- (iv) whether an adjournment or, as the case may be, declining to adjourn, might result in an injustice.

18. What happens next if the IAP adjourns the appeal hearing because of parallel criminal proceedings?

- (i) The LEA should take steps to ensure your son's/daughter's continuing education pending the hearing.
- (ii) The IAP's Clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for reconvening the IAP at the earliest opportunity.

19. Once the criminal proceedings have been disposed of, what account does the IAP have to take of them when deciding on the appeal?

The IAP should have regard to any information about the criminal proceedings that are relevant to the issues the IAP has to decide upon.

NOTE

Even if your son/daughter has been acquitted of any charge relating to the behaviour for which he/she was excluded, the acquittal may be due to a legal technicality or the stricter standard of proof in a criminal court. It will not necessarily mean that your son/daughter did not do what he/she was alleged to have done.

20. What can I say at the appeal hearing?

It is very important that you, or your representative, tell the IAP everything that is relevant to your case. The appeal is confidential so please feel free to say whatever you need to.

The members of the IAP and the Clerk want to be certain that you do not leave your appeal thinking that things have been left unsaid.

The members of the IAP have to make their decision on what information they have been given; so make sure you tell them what is relevant and important about your case.

21. Can I bring any witnesses?

Yes you can, subject to the following:

- (i) If your witness is a pupil at the school they may only attend if they do so voluntarily and with their parent's consent. It will normally be more appropriate for the IAP to rely on written statements.
- (ii) If you want character witnesses, it is at the discretion of the IAP but will normally be allowed unless there is good reason to refuse.

Please note that:

- any witnesses who attend the appeal must be prepared to answer any questions; and
- it is for the IAP to decide whether any witnesses should stay for the rest of the hearing.

22. Will the Governing Body bring any witnesses?

The GB may wish to call witnesses who saw the incident that gave rise to the exclusion. They may include any alleged victim(s)*, any witness(es) to the alleged incident(s), or any teacher, other than the Headteacher, who investigated the incident and interviewed pupils. (* See next question)

IMPORTANT

- In the case of witnesses who are pupils of the school, they may only attend if they do so voluntarily and with their parent's consent. It will normally be more appropriate for the IAP to rely on written statements;
- Although you or the IAP may request that witnesses attend, the IAP cannot make witnesses attend the hearing;
- Any witnesses who attend the appeal must be prepared to answer any questions; and
- It is for the IAP to decide whether any witnesses should stay for the rest of the hearing.

23. Can the alleged victim, or his/her representative, attend the appeal hearing?

If they do not attend as a GB witness, (s)he, or his/her representative, may attend to tell the IAP about the impact the incident has had on them. They may be asked questions. Alternatively, they may submit a written statement.

24. What evidence does the GB produce at the IAP hearing?

Where the GB's case rests largely or solely on physical evidence, and where you dispute the facts, then if practicable the physical evidence should have been retained by the school and be available to the IAP.

Where there have been difficulties in retaining physical evidence, photographs, or signed witness statements are acceptable.

All written witness statements must be attributed and signed, unless the school has good reason to protect the anonymity of pupils.

IMPORTANT

The general principle is that an accused person is entitled to know the substance and source of the accusation.

25. What consideration must the IAP give to written statements?

The IAP must consider:

- what weight to attach to written statements, whether made by pupils or adults, as against oral evidence; and
- that a written statement may not include all the relevant issues nor can the person be questioned about what they have written.

26. Can new evidence be put forward?

All parties may put forward new evidence about the event that led to the exclusion. This may include evidence that was not previously available to the Headteacher or the GB.

IMPORTANT

The school may not introduce **new reasons** for the exclusion.

27. How does the IAP consider my appeal if I believe that my son/daughter has been excluded for a reason related to his/her disability?

In considering these appeals, the IAP must take into account the Disability Rights Commission's Code of Practice for Schools.

28. How does the IAP consider my appeal if I believe that my son/daughter has been discriminated against in his/her exclusion on racial grounds?

In considering these appeals, the IAP must take into account the Commission for Racial Equality's statutory Code of Practice on the Duty to Promote Race Equality and its (non-statutory) Guide for Schools.

29. Why does the Chairperson or Clerk ask if we have had a fair opportunity to put our case?

The members of the IAP and the Clerk want to be sure that you and the GB representative feel that you have had the opportunity to present your case in the way you wanted to. They also want to be sure that you both feel you have been treated fairly and that the IAP has listened to you.

If you do not think that this is the case, please tell the Chairperson so that it can be put right immediately. It is very important that you leave the room satisfied you have said everything and feeling that you have been treated fairly.

30. What does the IAP have to take into account in coming to its decision about my appeal?

The law requires the IAP to have regard to any guidance given by the Secretary of State for the Department of Education and Skills. However, the Court of Appeal has clarified that the IAP must not slavishly follow that guidance where there is good reason not to.

The IAP will take into account:

- whether the Headteacher and GB complied with the law and had regard to the Secretary of State's guidance on exclusion. Procedural issues would be relevant if there were evidence that the process was so flawed that important factors were not considered or justice was clearly not done; and
- the school's published discipline/behaviour policy, equal opportunities policy and, where relevant, anti-bullying policy, drug policy, special educational needs policy, and race equality policy and any other appropriate policy; and
- where relevant, the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident; and

- both the interests of the excluded pupil and the interests of other pupils and people working at the school (including people working at the school voluntarily), and
- if you have made a claim alleging **disability discrimination**, whether your son/daughter is disabled and whether there has been discrimination within the meaning of the Disability Discrimination Act; and
- if you have made a claim alleging **racial discrimination**, whether your son/daughter has been discriminated against either directly, indirectly or victimised on racial grounds within the meaning of the Race Relations Act.

PLEASE NOTE

The IAP must balance the interests of your son/daughter against the interests of all the other members of the school community.

31. How does the IAP decide whether to allow or refuse my appeal?

The IAP will make its decision in the following way:

FIRST:

- 1 **The IAP has to decide, on the balance of probabilities, whether your son/daughter has done what he/she is alleged to have done.** If more than one incident of misconduct is alleged, the IAP must decide on each incident.

IMPORTANT

The IAP must apply the Civil Law standard of proof i.e. on the balance of probabilities. However, where the alleged incident is serious, case law requires that proof should not be on the ordinary balance of probabilities, but that it should be distinctly more probable than not that the child has done what has been alleged.

THEN:

- 2 If not satisfied that your son/daughter has done what has been alleged, the IAP will normally direct reinstatement and specify that either your son/daughter be reinstated immediately or at some future date which must be reasonable in the circumstances. However, the IAP may then consider whether reinstatement is a practical way forward - see 6.

OR

- 3 **If satisfied** that your son/daughter has done what has been alleged and taking into account the factors in the Question 30, **the IAP will then decide whether or not your son/daughter should be reinstated.**
- 4 If the IAP decides that your son/daughter should not be reinstated, your appeal will be refused.

HOWEVER:

- 5 If it decides that your son/daughter should be reinstated, the IAP may then consider whether reinstatement is a practical way forward – see 6.
- 6 In some cases it will not be practical for the IAP to direct reinstatement, which may be because, for example:
 - you make it clear that you do not want your son/daughter to return to the school; or
 - your son/daughter has become too old to return to the school; or
 - there may be **exceptional cases** where the IAP considers that your son/daughter should be reinstated but that reinstatement to the excluding school is not a practical way forward in the best interests of all concerned.

These exceptional cases may include where there has been an irretrievable breakdown in relations between:

- the pupil and the teachers; or
- the pupil and other pupils involved in the exclusion or appeal process.

In these cases, the IAP will consider representations from the GB, the Headteacher and the parent concerning reinstatement **before** they meet in private to make its decisions.

NOTE

Where the IAP decides that reinstatement would have been justified but is not practical, this will be indicated in the decision letter and the letter will also give the details of the circumstances that made the IAP decide not to direct reinstatement.

Please also see Appendix 2 – “How the decision is made”

32. How will I find out the outcome of my appeal?

The Clerk will send you a letter that sets out the reasons for the IAP's decision, which will be sent by the end of the second working day after the conclusion of the hearing of the appeal.

33. Is the IAP's decision binding on anybody?

Yes. You, the Governing Body, the Headteacher and the LEA are bound by the IAP's decision.

34. What should I do after the Clerk informs me of the decision?

It depends on whether or not the IAP has directed that your child be reinstated:

- If your appeal has been allowed and the IAP has directed that your child be reinstated you should contact the Headteacher as soon as possible.
- However, if your appeal has been allowed but the IAP has decided that, **reinstatement is not a practical way forward** you should contact the LEA officer as soon as possible so that (s)he can make other arrangements for your child's education.
- Also, if your appeal has been refused you should contact the LEA officer as soon as possible so that (s)he can make other arrangements for your child's education.

35. What can I do if I am unhappy about the appeal process?

If you think that the proper procedures have not been followed you can ask the Local Government Ombudsman (LGO) to investigate. This is **not a right of appeal** as the LGO can only investigate written complaints about maladministration on the part of the IAP.

Maladministration means that there has been a fault in the way something has been done or not done. It has to relate to issues, such as, you believe the IAP has not been properly set up or has not followed procedures correctly. On the other hand, the LGO would not criticise the decision of a IAP, which fairly took into account all the evidence presented by both the parents and other parties to the appeal, just because the parents disagreed with the decision reached.

If, following investigations, the LGO finds there has been maladministration that might have caused you an injustice, one of the remedies sometimes suggested is that there should be a fresh appeal hearing with different Appeal Panel members.

36. What is the role of the Secretary of State for Education and Skills (DfES)?

The Secretary of State provides guidance on exclusions and can consider complaints about the Governing Body Committee's operation of the exclusion procedure.

However, (s)he has no power to consider complaints about the decision of an Independent Appeal Panel.

37. What if I think that the decision of the Appeal Panel was wrong in law?

If you or the Governing Body, consider that the decision of the IAP is legally in error, either of you could apply for a judicial review.

If a judicial review were granted, the Court would consider the lawfulness of the IAP's decision. If it found the IAP's decision to be unlawful or unreasonable (irrational or perverse in the legal sense), it could overturn the decision, or it could order that a fresh appeal hearing be set up with **new** Appeal Panel members.

IMPORTANT

If any party to the appeal wishes to consider this course of action they should take independent legal advice **as soon as possible** as normally there is a time limit

APPENDIX 1: Useful addresses

Enquiries about this Guidance and the appeals process in Oxfordshire should be addressed to:

Clerk to the Appeal Panel

Address

Tel:

Fax:

E-mail:

OTHER USEFUL ADDRESSES:

Advisory Centre for Education can be contacted at:

ACE

1c Aberdeen Studios

22 Highbury Grove

London N5 2DQ

Tel: 0207 704 9822 (Mon – Fri 2-5pm)

Website: www.ace-ed.org.uk

Enquiries about the Parent Partnership Service should be addressed to:

PPA Service

Address

Tel:

Disability Rights Commission can be contacted at:

DRC Helpline

FREEPOST

MID02164

Stratford upon Avon

CV37 9BR

Telephone: 08457 622 633

Textphone: 08457 622 644

Email: enquiry@drc-gb.org

Website: www.drc-gb.org

The Commission for Racial Equality can be contacted at:

St Dunstan's House
201-211 Borough High Street
London
SE1 1GZ

Telephone: 0207 939 0000

Website: www.cre.gov.uk

The Secretary of State for Education and Skills can be contacted at:

Department for Education and Skills (DfES)
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Public Enquiry Unit:

Tel: 0870 000 2288

Email: info@dfes.gsi.gov.uk

Useful websites:

www.dfes.gsi.gov.uk

www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance

DfES publications:

Tel: 0845 602 2260

Email: dfes@prolog.uk.com

The Local Government Ombudsman can be contacted at:

Address

Tel:

Fax:

Website: www.lgo.org.uk

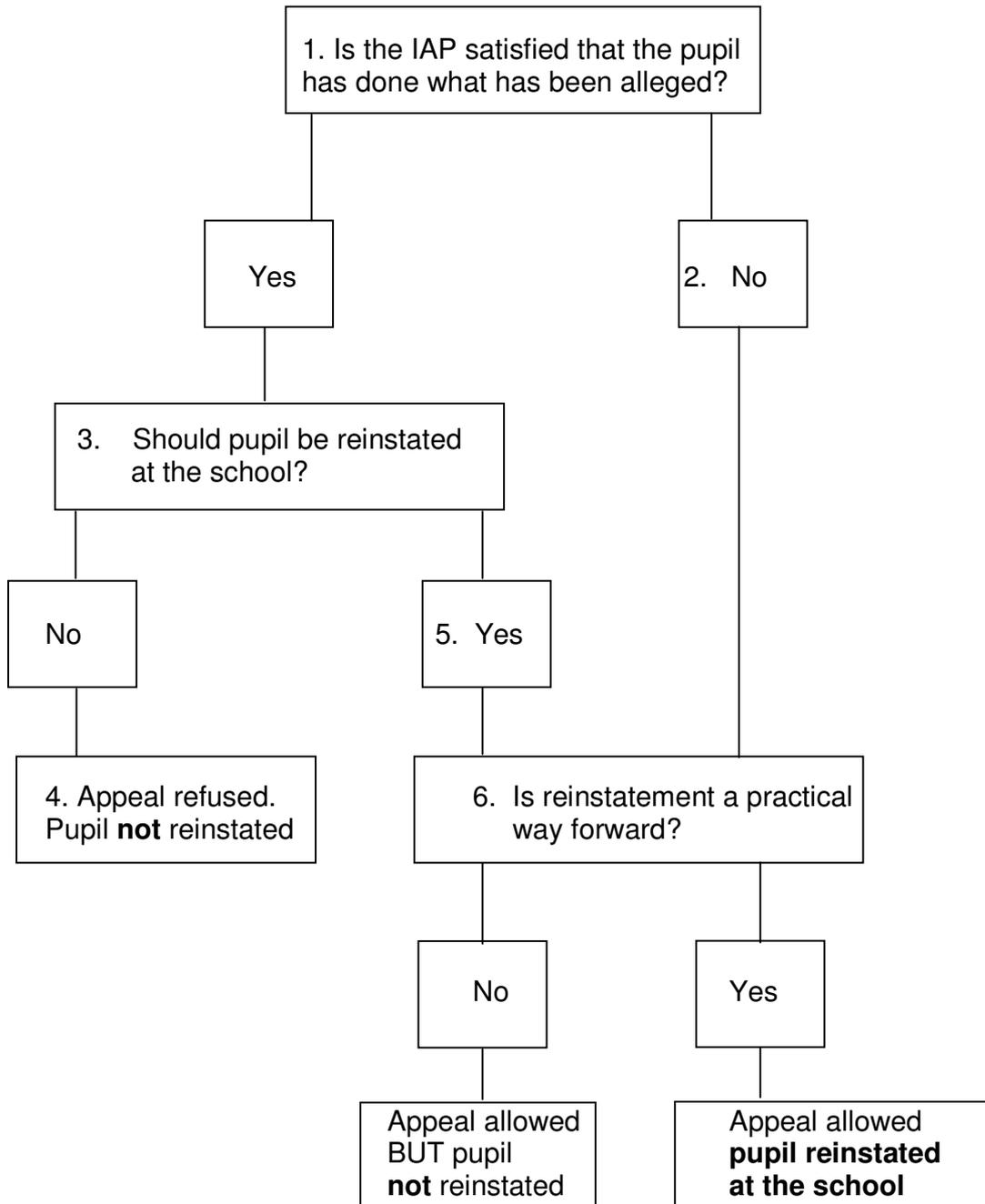
Her Majesty's Stationery Office:

The Stationery Office Ltd
PO Box 29
Norwich NR3 1GN

Tel: 0870 600 5522

Website: www.legislation.hmso.gov.uk

APPENDIX 2: How the Decision is Made – see Question 31



APPENDIX 3: Order of Hearing

- Clerk introduces the Appeal Panel and outlines the procedure to be followed and how the Appeal Panel will make its decision.

- **Case for the School**

The Governing Body's representative will present the case for the school.

The Governing Body may wish to call witnesses who saw the incident or behaviour which gave rise to the exclusion. They may include the Head Teacher, any alleged victim(s), any witness(es), or any teacher (other than the Head Teacher) who investigated the incident and interviewed pupils.

- **Questions**

- **Alleged Victim (where not called as a Governing Body witness)**

If attending in person, the alleged victim (or representative) will solely talk about what impact the incident has had on them OR the written representation will be read out by Clerk.

- **Questions**

- **LEA**

If attending, the nominated LEA officer will give the LEA's view on the appropriateness of the exclusion or if they do not attend any written representation will be read out by the Clerk.

- **Questions**

- **Case for your son/daughter**

You, or your representative, will present your case. You may wish to call any witnesses who have come to support your case. If present, your child may also speak on his/her own behalf at this stage.

- **Questions**

- **Summing Up – Governing Body's case**

Main points of the case summarised
NB If new issues are raised – go back to questions

- **Summing Up – Your case**

Main points of the case summarised.
NB If new issues are raised – go back to questions