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Independent Review Panel and First-tier Tribunal Exclusion Appeals systems

Research report

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**Claire Wolstenholme, Mike Coldwell and Bernadette
Stiell – Sheffield Hallam University Centre for
Education and Inclusion Research**

Contents

List of tables	5
Acknowledgements	6
Executive Summary	7
Introduction	7
Methods	7
Key Findings	8
Motivations to appeal	8
Preparation for the appeal	8
Experience of the appeal	9
Special educational needs and disabilities	9
Conclusions and Recommendations	9
1. Introduction	11
1.1 Policy context of the research	11
1.2 Aims and Objectives	12
2. Methodology	13
2.1 Sampling and recruitment of participants	13
2.1.1 Sampling and recruitment methods	13
2.1.2 Characteristics of participants and linked cases	15
2.1.3 Contacting participants	17
2.2 Interviews	18
2.3 Analysis	18
3. Motivation to appeal	20
3.1 Reasons for permanent exclusions	20
3.2 Decision to act	21
3.3 Desired outcome of the IRP/FTT	24

3.4 Support, information and guidance	25
3.5 Choice of appeal route	30
4. Preparation for an appeal	32
4.1 Requesting an appeal	32
4.2 Preparing for the appeal	33
4.3 Cost of the Appeal	35
5. Experience of appeal	37
5.1 Location of appeal	37
5.2 Fairness of appeal	38
5.3 Organisation of the appeal	41
5.4 Views on panel members	42
5.5 Outcome of the appeal and final decisions	45
5.5.1 Timing	45
5.5.2 Outcomes	46
5.5.3 Governors' roles in decision making	46
6. Special Educational Needs and Disabilities	48
7. Conclusions and recommendations	51
7.1 Concluding discussion	51
7.2 Recommendations	53
7.2.1 Recommendations for schools (including academies)	53
7.2.2 Recommendations for IRP members	54
7.2.3 Recommendations for government	54
Appendices	55
Appendix one: Comparison of IRP and FTT	55
Appendix two: Participant Information Sheet	57
Appendix three: Interview Schedules	59
IRP and FTT Exclusions Appeals Systems - Parent/carer interview schedule.	59

IRP and FTT Exclusions Appeals Systems - Young people interview schedule.	62
IRP and FTT Exclusions Appeals Systems - Headteacher Interview Schedule	64
IRP and FTT Exclusions Appeals Systems - Governor Interview Schedule	66

List of tables

Table 1 Achieved samples	13
Table 2 Types of schools attended by pupils involved in IRPs/FTTs	15
Table 3 Distribution of interviewees involved in IRPs/FTTs by former Government Office region	16
Table 4 SEND of pupils involved in IRPs/FTTs	16
Table 5 SEND categorisations of pupils involved in IRPs/FTTs	17

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Executive Summary

Introduction

September 2012 brought changes to the way parents are able to challenge their child's permanent exclusion from school. There are now two new routes to do this; the Independent Review Panel (IRP) which replaces the previous Independent Appeals Panel, and the First-tier Tribunal (Special Educational Needs and Disability) which is specifically for parents of pupils who feel the exclusion was based on discrimination against their child's disability¹. Sheffield Hallam University's Centre for Education and Inclusion Research (CEIR) was commissioned by the Department for Education to undertake a research study to compare the processes of these routes to challenging a permanent exclusion. During the course of the study it became apparent that numbers of parents opting for a First-tier Tribunal (FTT) were too low to be able to make any meaningful comparisons, so the study was redesigned primarily to look at the processes of the IRP.

The main aims of the research were to:

- explore the motivations and experiences of parents and pupils prior to, and during the IRP / FTT process;
- investigate the experiences and perceptions of the different parties (parents, pupils and schools – including academies) involved in IRPs and the FTTs;
- explore the consideration of Special Educational Needs and Disabilities (SEND) under the different routes, including the use of the SEN expert² in relation to IRPs; and
- investigate the (real or perceived) financial costs involved in holding IRPs and FTTs.

Methods

Interviews were used to gather data, both face to face for parents and pupils and telephone interviews for headteachers and governors. Initial intentions were for a sample size of 30 parents, (and their child in up to eight cases), 20 headteachers and 10 governors. These were to be split with roughly half the participants having undertaken an IRP and half who had been through a FTT. However, by the end of the data gathering stage of the research, only five FTTs had taken place throughout the country. The low numbers had become apparent earlier in the fieldwork period, so IRP participants were oversampled. The interviews conducted therefore were: 21 with parents (with one being a FTT parent), six with young people, 16 with headteachers (with one being FTT), and seven with governors.

¹ Pupils with SEND have higher levels of permanent exclusion than their peers. In 2011/12, pupils with a statement of SEN were eight times more likely to receive a permanent exclusion than pupils with no identified SEN. For those with SEN *but without statements* (those on School Action and School Action Plus), this rises to 11 times more likely DfE (2013) [Permanent and fixed period exclusions from schools and exclusion appeals in England, 2011/12](#), SFR 29/13

² The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion, for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.

Key Findings

Motivations to appeal

- In around two thirds of cases parents' decisions to challenge their child's permanent exclusion were not due to a desire to have their child reinstated into the school, but were based on their feeling that the permanent exclusion was unfair in some way. Parents were more interested in having the exclusion removed from their child's record or simply for their child to be vindicated through the appeal process.
- Around a third of headteachers felt that parents were misguided or ill advised in making appeals and felt that the process was unnecessary and unhelpful.
- Parents were self-motivated to appeal but often looked for support and guidance in going through the process. This support typically came from the parent partnership service,³ the local authority, or Coram⁴, as well as local parent organisations in a small number of cases. Some parents found the support invaluable whilst others felt that they had not been provided with as much help as they needed. Around a quarter of parents complained of a lack of any support which they felt had made the process far more difficult.
- When deciding which appeal route to use, parents had chosen the IRP over the FTT for a number of different reasons. Six of the 21 parents stated they did not know that the FTT was a possible route, and in five cases it was not appropriate since SEND were not apparent. Of the remaining parents, six said they would have considered following up with a FTT if the IRP was unsuccessful.

Preparation for the appeal

- Making an appeal request was said to be straightforward by 16 out of the 21 parents.
- Extensive preparation was made in some cases, and all participants had prepared in some way. For parents, this had sometimes taken up a great deal of their time, with some stating they had taken time off work to prepare. For schools, this often involved a number of staff members spending time preparing, sometimes to the detriment of their other school work. For example, in one school a day and a half was taken by the headteacher, two days by the SENCO and a day by the governor.
- Financial costs to parents and schools were relatively low in most cases. Academy schools had higher costs due to having to pay for the IRP (although the funding for academies reflects such responsibilities).

³ Parent partnership services are statutory services set up to provide information, advice and support to parents and carers of children and young people with SEN.

⁴ Coram Children's Legal Centre is a charity that "provides free legal information, advice and representation to children, young people, their families, carers and professionals, as well as international consultancy on child law and children's rights" ([CCLC website](#)).

Experience of the appeal

- On the whole the IRPs were described as fair in terms of the process on the day. Where parents raised issues about unfairness or potential bias this was because they felt that the process did not allow them their desired outcome. Conversely, school participants felt processes were fair, but the school was much more harshly scrutinised than the family.
- In the main, participants felt they were given the opportunity to have their say and to fully put their case across. However a minority of participants (mainly parents) said they felt they were not as free to speak as they would have liked, being told that they must stick to the grounds of the case and not make comments on what had been said.
- Panel members were said by most to have been professional and suitable individuals, again with a small number of exceptions.
- The role of some key local authority members of staff were called into question by some parents and headteachers in relation to their impartiality and involvement in IRPs.

Special educational needs and disabilities

- Parents are given the opportunity to request an SEN expert to be present at an IRP regardless of whether or not their child has identified SEND. Most parents had an SEN expert present at the IRP.
- Opinions were mixed as to the extent to which SEN experts had been helpful in the IRP but parents were more likely than headteachers or governors to have found them to play a significant part in the IRP.
- Where SEND had been seen to be relevant to the exclusion or the appeal, half of parents felt that SEND issues had not been discussed as fully as they would have liked during the appeal.

Conclusions and Recommendations

Consideration of the issues raised in the report leads to a set of recommendations.

For schools (including academies):

- to review their processes and documentation to ensure they make clear reference to the two routes, and signpost support available to parents; and
- to consider providing training and guidance for members of the governing bodies on the IRP route.

For IRP panels:

- to ensure schools and parents are aware of the role and responsibilities of the SEN expert; and
- to ensure that parents' wishes in relation to reinstatement of their child do not influence the decision on whether or not to quash an appeal.

For government:

- to provide guidance on the role of the local authority (LA) representative in relation to the IRP;
- to consider further evidence gathering on the extent to which guidance on exclusion notifications is followed;
- to examine how best to ensure that parents are provided with information on the potential outcomes of each route; and
- to consider reviewing guidance on the location of IRPs.

1. Introduction

1.1 Policy context of the research

The Schools White Paper *The Importance of Teaching* (2010) outlined proposals to change the way permanent exclusions could be challenged. The changes included replacing the system of Independent Appeal Panels (IAPs), with a new system: Independent Review Panels (IRPs). Under the previous system the IAP could direct a school to reinstate a permanently excluded pupil, whereas the new system (the IRP) provides independent scrutiny of a school's exclusion decision, but gives the school the final say on whether a permanently excluded pupil can return to the school.

Alongside the introduction of IRPs, the government made changes to the remit of the First-tier Tribunal (Special Educational Needs and Disability) in relation to exclusion. Its previous role in considering claims of disability discrimination relating to fixed period exclusions was extended to include permanent exclusions.

These proposals were taken forward in the Education Act 2011 and the changes took effect from September 2012. This effectively gave parents/carers (hereafter referred to as parents) two potential routes to challenge their child's permanent exclusion from school - the IRP, and, where the parent suspects discrimination on the basis of SEND⁵, the First-tier Tribunal (FTT)⁶.

The exclusion process

Under the new arrangements, a headteacher can exclude a pupil for a fixed period or permanently. The exclusion must be on disciplinary grounds. In the case of all permanent exclusions, the governing body must decide whether to uphold the exclusion or reinstate the pupil. Parents have the opportunity to make representations to the governing body about the exclusion.

Where the governing body decides to uphold a permanent exclusion, the pupil's parents have the right to request that an IRP reviews the exclusion decision. Where parents believe that the exclusion constitutes disability discrimination under the Equality Act 2010, they may make a claim to the First-tier Tribunal. A claim to the Tribunal may be in addition to, or as an alternative to, a request for an IRP.

The governing body must notify the parents of their right to ask for an IRP and their right to request that an SEN expert is appointed to attend the review. (The role of the SEN expert is to provide impartial advice to the review panel on the relevance of SEN to the exclusion). The governing body must also notify parents of their right to make a claim to the First-tier Tribunal on the grounds of disability discrimination.

⁵ Pupils with SEND have higher levels of permanent exclusion than their peers. In 2011/12, pupils with a statement of SEN were eight times more likely to receive a permanent exclusion than pupils with no identified SEN. For those with SEN *but without statements* (those on School Action and School Action Plus), this rises to 11 times more likely DfE (2013) [Permanent and fixed period exclusions from schools and exclusion appeals in England, 2011/12](#), SFR 29/13.

⁶ Parents can make a claim to a County Court where they believe that an exclusion constitutes discrimination (other than disability discrimination) under the Equality Act 2010. This process is not considered as part of this study.

In addition, the statutory guidance states that the governing body should draw parents' attention to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision, which should include links to:

- the statutory guidance on exclusions;
- guidance on making a claim of discrimination to the First-tier Tribunal;
- the Coram Children's Legal Centre; and
- where considered relevant by the governing body, links to local services, such as traveller education services or the local parent partnership.

1.2 Aims and Objectives

Originally, this research was intended to understand and compare the experiences of the parents, schools and pupils who pursued the new IRPs / FTTs.

The aims were to:

- explore the motivations and experiences of parents and pupils prior to, and during the IRP / FTT process;
- investigate the experiences and perceptions of the different parties (parents, pupils and schools – including academies) involved in IRPs and the FTTs;
- explore the consideration of Special Educational Needs and Disabilities (SEND) under the different routes, including the use of the SEN expert in relation to IRPs; and
- investigate the (real or perceived) financial costs involved in holding IRPs and FTTs.

However, during the course of this research, it emerged that only five parents had undertaken an FTT nationally (during the data collection period from January 2013 to mid-July 2013), and only one of these parents and the headteacher involved agreed to take part in the research. As a result, this research focused on the IRP route but with coverage throughout of the one FTT case. This case is highlighted and intentionally given particular emphasis in places, particularly in the SEND chapter, in order to give some insight into the FTT process. It is important to note however that this is just one FTT case and therefore no inferences can be made to the process of the tribunal more widely from the data presented. Another key implication is that the research team were not aware of the very low numbers of FTTs taking place early in the data collection period. Therefore it was not known that parents' choice of appeal route would be of key significance.

2. Methodology

The research consisted of three main strands of semi-structured interviews: face to face interviews with parents and in some cases their excluded child; telephone interviews with headteachers, and telephone interviews with governors. The aim was to link cases where possible, by interviewing the parent, pupil, headteacher and governor in a case when this was appropriate. However, given the sensitive nature of the topic, and the difficulties identifying and recruiting participants, most cases are not matched in this way. Where cases are matched this is presented in the data where meaningful comparisons can be made.

2.1 Sampling and recruitment of participants

Owing to the change in focus, the originally intended sampling frame and strategy was changed to oversample those who had taken the IRP route.

Table 1 Achieved samples

Participant interviews	Achieved sample
Parents (face to face)	20 IRP 1 FTT
Pupils (face to face)	6 IRP
Headteachers (telephone)	15 IRP 1 FTT
Governors (telephone)	7 IRP
Total	48 IRP 2 FTT

2.1.1 Sampling and recruitment methods

Given the small numbers of permanent exclusion appeals nationally⁷, and the lack of any 'live' data on exclusions⁸, we utilised a range of methods to identify and recruit the sample. Initially Pupil Level Annual School Census (PLASC) data was used to purposively target the local authorities (LAs) with the highest numbers of exclusions in the most recent published data available at the time (2010/11), as this was a possible indicator of future sources of appeals. In these LAs, contact was made with officers with responsibility for co-ordinating the appeals process. The relationship between these key officers and the research team was maintained throughout the 2012/13 academic year as this was critical to identifying and recruiting participants.

⁷ In the period 2011/2012 there were 420 appeals lodged and 400 appeals heard (not including academy schools).

⁸ Data for the period of study 2012/2013 was not available until 2014.

The officers were sent information sheets with details of the research, including the request to take part (see Appendix two) which was forwarded to schools and parents upon the decision to appeal. Over the course of the academic year the list of LAs was increased to around 100, to ensure that the maximum numbers of possible appellants were made aware of the research. The recruitment phase of the research continued until mid-July 2013.

Whilst LAs facilitated the recruitment of the majority of the sample, other possible recruitment routes were also explored. Contact was made with HM Courts and Tribunal Service in order to track the numbers of FTTs happening throughout the country. Valuable assistance was also sought from the National Parent Partnerships Network (NPPN)⁹ at both national and local levels, as they support parents of children with SEND, including through the appeals process. Lastly a small number of local parent organisations were contacted for assistance. These additional routes enabled us to recruit a further five interviews with parents. Schools were also recruited through the above methods.

There were some difficulties with recruitment of participants due to the low numbers of appeals taking place throughout the country at any one time, coupled with the process of locating and recruiting those involved indirectly (through the LA or other organisations). Therefore, an opportunistic approach to sampling was used. During the recruitment phase it became clear that few parents were pursuing the FTT route nationally. Following consultation with the Department for Education the fieldwork period was extended by six weeks to reach the end of the school term in July in order to maximise the opportunity to recruit FTT participants. Therefore the fieldwork period was six and a half months in total, from January 2013 to mid-July 2013. Through contact with HMCTS we were able to ascertain that only five FTTs had taken place or were scheduled to take place in the academic year 2012/13. Information packs, including personalised letters with requests to take part in the research were sent out to HMCTS to be passed onto all five parents and schools (where this was deemed appropriate). This, however, yielded very little response and we were only able to secure interviews with one parent and one headteacher who had taken the FTT route. Governors were not present at FTTs and therefore it was not possible to gain governors views within the FTT case. Owing to such low recruitment numbers from the FTT route, no significant inferences can be drawn from the FTT data presented in this report.

As with most qualitative research the purpose was to provide a rich, in-depth understanding of parents, pupils, headteachers and governors rather than being fully representative across the population. Owing to this, the sample is not statistically representative and therefore extrapolation cannot be made to the whole population. However within the achieved sample there is a spread of school level, governance arrangement and children with different or no SEND. A diverse range of issues were raised and the strength to which these were present across the sample varied. Those voiced by all/or almost all of the participants we can say were strongly present, those by a considerable proportion we can say were moderately present, and those that were voiced by a small minority we can say were weakly present. In the analysis we have used verbal terms and sometimes indicate the actual numbers to help the reader gauge the strength of an issue raised within the sample. However at no point are we claiming statistical significance of these issues.

⁹ Parent partnership services are statutory services set up to provide information, advice and support to parents and carers of children and young people with SEN.

The presence of these issues, together with some understanding of the reasons, warranted drawing tentative but useful conclusions about the research questions and tentative recommendations, however, they must be used with caution and sensitivity and further evidence as to their veracity constantly looked for. In other words the project has gained reasonable plausibility but not certainty.

Most of the exclusion cases examined in the research were not linked and it was therefore not always possible to check for differences apparent in evidence from parents and schools relating to the same case. The study was designed to research participants' experiences, and it was not built into the design to cross-check factual claims for accuracy. This should be borne in mind in interpreting the findings here where they relate to such claims. However, of course, we have no reason to think that participants are misrepresenting the facts.

2.1.2 Characteristics of participants and linked cases

The achieved sample of IRP and FTT interviewees included:

- 21 parent interviews (18 with mothers, one with a father, and two interviews with both parents);
- six pupils (two boys, four girls. Five pupils were from secondary schools; one from a primary school);
- 16 headteachers (one primary and 15 secondary headteachers representing 10 LA maintained schools, five academies, and one foundation school); and
- seven governors (one primary and six secondary representing five LA maintained schools and two academies, all linked to the headteacher schools).

The tables below provide further information on the characteristics of the sample of interviewees.

The pupils involved in the IRPs mainly attended maintained secondary schools as indicated in Table 2:

Table 2 Types of schools attended by pupils involved in IRPs/FTTs

School Type	Parent	Headteacher	Total cases ¹⁰
Primary (maintained)	4	1	4
Secondary (maintained)	10	10	16
Secondary (academy)	7	5	11
<i>Total</i>	<i>21</i>	<i>16</i>	<i>31</i>

The sample had representation from all nine former Government Office regions as indicated in Table 3.

¹⁰ Total cases - this includes some matched cases (where a parent and a head teacher were interviewed about the same appeal).

Table 3 Distribution of interviewees involved in IRPs/FTTs by former Government Office region

Region	Parent	Headteacher	Total cases
East of England	1	-	1
East Midlands	1	1	1
London	3	3	5
North East	-	1	1
North West	2	2	4
South East	3	2	5
South West	5	3	7
West Midlands	3	2	4
Yorkshire and Humber	3	2	3
<i>Total</i>	<i>21</i>	<i>16</i>	<i>31</i>

The picture regarding SEND is complex. As Table 4 below indicates, whilst four pupils involved in the research had statements, numerous other pupils were considered by parents to have SEND, although these were not always a view shared by their schools. It was not possible in all cases to determine if the pupil was receiving specific SEND support by the schools as this was not directly asked in interviews with headteachers (see Appendix 3 for interview schedules). It is further complicated as some parents discussed their child's emotional difficulties but did not always say whether or not they felt this classed them as having a SEND.

Table 4 SEND of pupils involved in IRPs/FTTs

SEND	Parent	Headteacher	Total cases
None	8	7	13
Without a statement ¹¹	9	7	13
With statement	4	2	5
<i>Total</i>	<i>21</i>	<i>16</i>	<i>31</i>

The SEND that were declared by parents were almost all related to emotional and behavioural issues as indicated in Table 5.

¹¹ SEND perceived by parent - may or may not have received SEND support by the school.

Table 5 SEND categorisations of pupils involved in IRPs/FTTs

SEND	Parent	Headteacher	Total cases
Attention deficit hyperactivity disorder (ADHD)	3	1	3
ADHD, Asperger's & physical disability	1	-	1
ADHD, autism & dyspraxia	1	-	1
Autism	1	-	1
Dyslexia & emotional behavioural	1	1	1
Emotional behavioural	6	3	7
SEND type undisclosed	-	4	4
None	8	7	13
<i>Total</i>	<i>21</i>	<i>16</i>	<i>31</i>

SEN experts were present at 21 of the 31 IRPs.

Finally, in relation to linked cases, in the sample:

- there were four complete cases where there is a linked parent, headteacher and governor interview;
- there were two further cases where the parents and headteacher are linked to the same school;
- all seven governors were linked to the headteacher schools;
- all six pupils were linked to parent interviews; and
- fourteen parent interviews did not have a school (headteacher or governor) perspective.

2.1.3 Contacting participants

Parents who replied and returned the form indicating their willingness to participate were contacted by phone. Further details of the research were outlined and discussed with the parent, including assuring them of confidentiality. Arrangements were then made for a face to face interview at their home after the IRP/FTT had taken place (since, in most cases, the final outcome was also known at the time of the interview). If the child had taken part in the process or decision making in some way, and the parent felt it appropriate, the inclusion of the child in the research was also discussed and confirmed, taking into account any special needs the child may have.

Following up information from the LA or other sources, headteachers were also contacted, given information about the research and asked to take part in a telephone interview of about 30 minutes. Headteachers make the ultimate decision on exclusions and are likely to be present at the IRP/FTT, but in some cases a nominated senior lead from the school who was involved in the case was recruited. Contact details were also sought for the inclusion of the chair of governors or another nominated governor with responsibility for exclusions, or who represented the school at

the IRP/FTT. Where this was permitted, the governor was then contacted and asked to take part in a separate 30 minute telephone interview.

2.2 Interviews

Semi-structured interview schedules were designed and piloted for all groups of participants, and amendments made in terms of the suitability of the questions (see Appendix three). Parent and pupil interviews were conducted between January and July 2013. Headteacher and governor interviews were carried out between February and July 2013.

Parents and pupils were interviewed face to face in their homes due to the sensitivity of the issues likely to arise in the interview. Where both parent and child were present for the interview, researchers checked with parents whether they wanted their child to be present during all/part of their interview. In four cases the child was interviewed with the parent present in the room and the other two were interviewed separately. Interviews with children ranged from 10 minutes to around half an hour. Interviews with parents generally took between one and two hours, depending on the depth and range of issues raised. Although the focus and emphasis of the questions was on the process of the appeal, parents often had much more to say on the reasons for the exclusion which they were given space to express.

Headteachers and governors were interviewed by phone to reduce the time commitment and therefore burden on senior staff in schools. The duration of the headteacher and governor interviews were usually between 30 and 60 minutes – again, depending on the additional issues the participant wanted to raise.

2.3 Analysis

All interviews were digitally recorded, anonymised and partially transcribed, noting key themes and issues as well as selective verbatim quotes where appropriate. A systematic thematic analysis of transcripts was conducted, including analytical discussions across the fieldwork team. Similarities and differences, particularly in relation to the experiences of the IRP process (rather than between the IRP and FTT processes as initially planned) were analysed. Emerging themes, subthemes and issues were highlighted using CEIR's analysis framework¹².

Several comparative analyses were undertaken. In linked cases, parent, pupil and school data were compared and analysed. Even where direct comparisons were not possible, experiences of the different parties were compared at an overarching level. Comparisons across school phase were made for parent responses only since there was only one school interviewee representing a primary school. Comparisons were made between academies and LA schools. Where these comparative analyses revealed apparent differences, these are picked out in the report.

¹² An analysis matrix is developed where interview data is imputed into in order to cross reference between interviews and between topics and interview questions. Analysis is undertaken utilising this matrix to uncover themes emergent from the data.

Throughout the report (within each chapter) we have added relevant extracts from the Department for Education's statutory guidance on exclusions¹³ in order to contextualise participants' experiences. This guidance also informs the conclusions and recommendations section of the report.

¹³ Department for Education (2012) [Exclusion from maintained schools, academies and pupils referral units in England: A guide for those with legal responsibilities in relation to exclusion](#)

3. Motivation to appeal

This chapter looks at the motivations and rationales for making an appeal, predominantly using data from the twenty one parents and six pupils interviewed. Some of the data however is cross referenced with interviews from the headteachers. This chapter first describes the reasons for the permanent exclusions (as described by parents and headteachers), before exploring the decisions to challenge the exclusions. It looks at how parents choose between the IRP and FTT routes, the desired outcomes of these and the support, information and guidance that parents received when navigating the process. This chapter also explores any legal support that either party may have employed to support them at the panel/tribunal.

Key findings

- Most parents decided to appeal due to feeling the exclusion was unfair. Only seven of the twenty one parents wanted reinstatement as a final outcome, most parents wanted the exclusion removed from their child's record or simply wanted justice for what they perceived to be an unfair decision, i.e. demonstrating the school acted wrongly.
- Around seven of the sixteen headteachers struggled to understand parents' reasons for making an appeal as they felt that the exclusion decision was clearly justified.
- Support for making an appeal typically came from parent partnership services, the local authority, or Coram children's legal services. Parents differed in their views of how helpful this support was. Some parents felt that no support was available to them.
- Parents opted for the IRP over the FTT for a number of reasons including where SEND were not an issue, lack of awareness of the FTT route or feeling that the IRP had to be completed in the first instance. The parent who opted for the FTT appeal did so out of what she considered to be a lack of clear guidance on the two separate routes.

3.1 Reasons for permanent exclusions

Box 1: DfE statutory guidance in relation to permanent exclusions from school

A decision to exclude a pupil permanently should only be taken:

- in response to a serious breach, or persistent breaches, of the school's behaviour policy; and
- where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

(DfE 2012: 6)

From the parent interview data, the reasons for the permanent exclusion have been categorised for the purpose of this study into five groups. Firstly five permanent exclusions (all in secondary schools) involved drugs; in each case the drug involved was marijuana. Offences related to bringing the substance onto the school premises, smoking it, or selling a small amount to another pupil. At least another six (including all four primary school pupils) were classed as persistent disruptive behaviour. Five pupils were permanently excluded for what is categorised as violent behaviour, including fighting and assaults or attacks on other pupils or on teachers. Two pupils (both in secondary education) had either brought a weapon into school or used a weapon in a way

perceived to be threatening. Finally three were characterised as other behavioural infringements including swearing at a teacher, and a non-violent act which contravened school rules.

Headteachers interviewed were also asked about the reasons for the permanent exclusion. As stated in chapter 2 most interviewees were not matched cases (parents and headteachers) and therefore what follows often refers to different exclusion cases. Nine exclusions were said to be based on persistent disruptive behaviour, five were for physical assaults or verbal assaults on other pupils and one was a drugs related issue.

3.2 Decision to act

Box 2: DfE statutory guidance on permanent exclusions from school and the involvement of pupils in the exclusion process

Whilst an exclusion may still be an appropriate sanction, headteachers should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement has mental health issues or has been subject to bullying.

(DfE 2012: 6)

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Headteachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems.

Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review.

(DfE 2012: 7)

Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding.

(DfE 2012: 4)

Parents tended to be motivated to appeal due to feeling that the exclusion was unfair or unjust in some way. In many cases they did not necessarily disagree that their child had committed a serious offence or had persistently behaved poorly, but felt that the school had not put the processes or support in place beforehand to attempt to better manage the escalating difficulties. Therefore, in the parents' eyes, the school had not taken appropriate responsibility for the situation and consequently should be held to account. Examples included where the school's behavioural policies were perceived to be unclear and therefore parents felt that pupils were not given enough prior warning of the severe consequences of specific behaviours. Schools are expected to intervene and arrange support for pupils at risk of exclusion (as set out in box 2 above). However, fourteen parents felt the school had not made reasonable adjustments for their child's needs. For

eight of these this referred specifically to SEND (four of the pupils had statements, the other four were perceived by the parent to have SEND but not necessarily by the school). These parents felt that their child's SEND was not taken into account when the exclusion decision was made, or that the school had not put sufficient support in place to deal with these needs prior to the incident(s):

'Had they addressed his SEND, the behaviour may have been greatly less and we would have had a clear picture whether or not the support was working'. (FTT parent 21)

In some cases parents felt that the school had broken promises about the support they would put in place to deal with SEND issues, for example:

'The school let him down in so many ways. He had counselling from someone who wasn't trained in it... He wasn't referred to a SENCO (special educational needs coordinator); he was under CAMHS (Child and Adolescent Mental Health Service) twice but given no pastoral support plan¹⁴ or individual education programme¹⁵.' (Parent 15)

While headteachers are expected to take extenuating circumstances into account when making a decision to exclude a child, six parents felt that these were not taken into account or dealt with by the school, such as bullying, a death in the family or other personal issues which were considered to be relevant to the case.

One of the pupils we spoke with also felt that the circumstances surrounding what had happened had been ignored by the school. This pupil felt the school wanted to make an example through the exclusion:

'I did (want to appeal) but it was scary, straight away we wanted to appeal, we didn't think it was fair, all my friends and all their moms thought it was unfair, nobody agreed with it...'
(Pupil 5)

Similarly seven parents simply felt that the permanent exclusion was too severe a punishment. Sometimes it was explicitly stated that the punishment was felt to be disproportionately strong for the incident, particularly where a one-off incident had led to the exclusion.

In contrast, headteachers interviewed sometimes struggled to understand why a parent made the independent appeal, and in some cases felt they may have been ill-advised in doing so. A number of headteachers discussed how their decision to permanently exclude was not one which they had taken lightly and felt that they had put in place every possible measure to prevent this from happening. Some also felt the severity of the incident(s) which had led to the exclusion meant that their decision was correct and that the parents had little or no chance of winning the appeal.

Five of the sixteen headteachers voiced their concerns that parents may have been given advice that they perceived to be unprofessional, advising parents to go through a potentially stressful and time consuming process that would not achieve what they wanted:

¹⁴ (PSP) a school based programme aimed at helping a child to improve their social, emotional and behavioural skills.

¹⁵ (IEP) is a plan or programme for children with SEN to inform teachers and others working with the child of specific targets for the

'I was flabbergasted that the parents took it to appeal. Who advised the parent to appeal? I am more than happy to go to appeal if it's a marginal decision. I think he had been ill-advised. It's getting the right balance and who is giving the advice.' (Headteacher 9)

A small number of these headteachers specifically mentioned that they felt the local authority or parent partnership had given the allegedly misleading advice. One of these headteachers felt very strongly that the local authority was not a neutral party and in fact had a vested interest in getting the child to be reinstated in the school due to funding arrangements for pupils with SEND:

'She was being wound up by the LA and parent partnership. I feel she was exploited... my anger is the bodies that should have known better advised her this way... Our SENCO (special educational needs coordinator) was trying to get provision for him and was batted back constantly by people in the LA who have a limited resource, but we know it's about purse strings and their incitement of the mother to appeal was also about purse string and resource because they would have to provide it if the exclusion is upheld.' (Headteacher 15)

In just under half of the interviews the pupil was said by parents to have been involved in the decision to appeal. The parents had explained that their child felt strongly that the decision to exclude them was unfair and on some occasions their child was keen to be reinstated into the school:

'We all agreed it was a one-off incident and we should try and fight for my place back.'
(Pupil 2)

Where the child was not involved it was sometimes stated by parents that their child had become uninterested by the point of making an appeal. None of the parents of primary age pupils had involved their children in the decision, this was for age related reasons, i.e. the child being too young to be able to fully appreciate the implications of an exclusion, or to make a decision about whether they wanted to be reinstated in the school or not.

Other individuals or groups mentioned as being involved or influential in the decision by a small number of parents were: the parent partnership service, a family support worker, an exclusions officer, and legal advisors. In most cases however it appeared that the parents had made the decision to appeal before seeking out advice and guidance and therefore the initial decision had come predominantly from them.

3.3 Desired outcome of the IRP/FTT

Box 3: DfE statutory guidance in relation to possible IRP outcomes

Following an independent review, the panel can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision, or
- quash the decision and direct that the governing body considers the exclusion again.

(DfE 2012: 24)

Following the review, the panel must issue written notification to all parties without delay. This notification must include:

- Any information that must be recorded on the pupil's educational record to reflect the decision (in particular, where a governing body 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).

(DfE 2012: 25)

If the governing body 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 governing body 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.

(DfE 2012: 29)

Perhaps surprisingly only seven of the twenty one parents wanted their child to be reinstated in the school (the main intended purpose of the appeal process). The majority of parents and pupils interviewed (fourteen) were not looking for the final outcome to result in reinstatement. This was often due to a breakdown in relationship with the school or having found their child a place at another school by the time of the IRP:

'We decided pretty soon after the governors [appeal] that we were so unimpressed by how it was handled we wanted to fight it to get her record clear, she had started at a school and was enjoying it.' (Parent 3)

The IRP process does allow for a child's record to be amended to reflect the outcome of the panel, including referencing, where appropriate, that the exclusion decision has been quashed by the panel (see guidance in box 3 above). However, ten parents were hoping to remove the exclusion from their child's record entirely. The reason for this was the concern that having the permanent exclusion on record would negatively impact on their child's future prospects, including getting them a place at another mainstream school. Similarly a further four parents felt that the exclusion was simply unjustified and thus wanted to right a perceived wrong. For the parent who pursued the FTT route, this course was taken to push the school to acknowledge what she perceived to be their role in her child's escalating behavioural problems:

'By that point I just wanted the school to be held to account for not supporting him with his SEND. So I could have had his record clear on paper, but that wasn't making the school sit up and say we could have done more.' (FTT parent 21)

Where the parent did not want their child reinstated but did want the exclusion stricken from the record, it was noted by one parent that there is not an option for this outcome given to schools by the IRP:

'The whole process doesn't allow you to say: take this off my son's record... you are not allowed that choice as a parent and that's the worst thing about it, and it would allow the school to save face as well. The fact that there is no middle ground, it's either reinstate him or not.' (Parent 15)

This parent was successful at the IRP and the school were instructed to reconsider, however she felt it was difficult for the school to make a decision as well as 'saving face' as they were aware that she did not want reinstatement.

Some headteachers were aware that the parent did not want reinstatement and therefore felt that the process was needless as the parents were not able to gain their desired outcome from appealing.

3.4 Support, information and guidance

Box 4: DfE statutory guidance in relation to support, information and guidance

When notifying parents about an exclusion headteachers should draw attention to relevant sources of free and impartial information. This information should include:

- a link to this statutory guidance on exclusions,
- a link to the Coram Children's Legal Centre; and
- where considered relevant by the headteacher, links to local services, such as Traveller Education Services or the local parent partnership.

(DfE 2012: 9)

Where the governing body decides to uphold an exclusion they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include (all the above and):

- a link to guidance on making a claim of discrimination to the First-tier Tribunal.

(DfE 2012: 16)

The governing body's notification must also include that parents may at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.

(DfE 2012: 16)

Support and guidance for choosing to appeal and which route to take typically came from the Parent Partnership Service (PPS), the local authority and Coram Children's Legal Centre, and in a

small number of interviews other local organisations were mentioned as giving advice, for example one parent spoke of a family support worker being in touch every week which was valued support. Other less formal support and information came from friends, family members and the internet. Over half (twelve) of participants had been in touch with the PPS in order to obtain support with the process. Almost all parents had found the PPS to be supportive but to differing extents. Around half of these said they had been very helpful, and in some cases had been instrumental in helping them to pursue the IRP:

'The adviser helped us see that had the school been dealing with his issues properly, it wouldn't have come to this. She gave us confidence to appeal' (Parent 16)

Examples of support given were: providing information and direction to relevant websites, helping with preparing paperwork, and answering any questions. Some parents spoke of advisors always being available on the phone and in some cases making several visits to their home to talk through and prepare for the appeal. However other parents had found that the PPS was only able to provide more generic advice or *'top tips'* but not help with their individual case, which they had found to be disheartening. One parent commented that they were *'amazing but their hands are tied'*. This parent felt that the PPS should be able to do more to support parents including representing them at the review. There was a similar picture with staff from the local authority; with some parents describing them as *'amazing'* and others remarking that staff were *'very unhelpful'* or always unavailable. As we go on to discuss, this role of the LA representative is problematic.

Five parents specifically mentioned that they felt there was no support available to them and a further six alluded to the lack of support. Some parents spoke of feeling incredibly isolated and having to go through what they considered to be a difficult and often bewildering process alone:

'I was disappointed with the lack of support; I thought at times my God if there's a parent who hasn't got the ability to do this, what would they do? I did a lot of the time feel thoroughly on my own...very isolated, very distressed. I still had to do a full time job and be a single mum...I just wish there had been someone there who said right this is the procedure, this is what happens, we'll find you this information out.' (Parent 5)

Five parents called the numbers given out by the school and found them to be out of date or were told that due to full caseloads/funding cuts they were unable to take on any new cases. For one of these parents, the reason given was that the organisations existed only for parents of children with SEND and therefore were not able to help in her case. It appears that the most confident/proactive parents were sometimes able to access the available support whilst some of the less confident parents found accessing support much more difficult.

One parent had found the support she received from both the local authority and the PPS extremely helpful, but talked about the length of time and effort that it had taken to receive this causing a lot of additional stress:

Vignette 1: Difficulties in seeking support (Parent 11)

This parent was proactive in pursuing any available support and guidance but was having difficulties in locating this:

'I had tried to get support from all kinds of avenues. I was struggling to get the support that I needed, I did a lot of research.'

One of the issues for this parent was that the contact details for support given to her by the school were not up to date:

'One had gone into administration, phone numbers and emails weren't valid, it wasn't helpful, I was distraught about that at the time.'

She was given the PPS number by the liaison officer at the council; however she was not given this at the point of the exclusion, stating that it took six weeks for her to be made aware that there was this support service available. This meant that the parent was well into the IRP process before she met with someone from the PPS:

'I didn't have any support up until the end really... The parent partnership was brilliant and I very much valued his support but he couldn't really tell me anything that I didn't already know. I was really frustrated.'

Similarly she had difficulties in accessing any available help from the council:

'I was very happy with the support from the council but to speak to the right people was quite a process, it took a while, we felt quite alone, any support was me seeking it and waiting long periods to get back to me.'

Finally, this parent felt that there needed to be more clarity on the extent to which the council were able to support her through the IRP process:

'I was told I could have someone from the council at the IRP, but nobody from the council was prepared to come, I was told there was no reason for them to be there, they couldn't speak because it was an academy, that was extremely unclear from the guidance.'

Six parents had legal support. The reasons for seeking out this support included having additional support to help put their case forward and to have, as one parent put it, *'someone less emotionally involved'*. Parents wanted to feel represented in some way and feel that they were not going through the process alone. One parent stated that she needed legal support in order to identify the grounds on which her case was being made. Three of these parents used Coram, two used another legal service and one parent was able to use a trainee solicitor for free. This parent was the only one to be actually represented at the IRP by the trainee solicitor and had found the help she received invaluable:

'If I hadn't had that I would not have known what to do because I don't like getting up in front of a load of people and speaking... She was absolutely fantastic.... She did all the speaking for me. She put forward our whole case. They [the review panel] asked me a couple of little questions about him [son] but most of it she did; she was able to provide this whole thing. It's amazing what she did.' (Parent 6)

The parents had all found the legal support they received helpful in terms of giving advice, writing the appeal request, including the grounds for the appeal, and dealing with paperwork. However some parents found that the advice received was quite general and non-specific, or less useful because the support didn't include representation at the IRP itself for example:

'I contacted Coram legal service, they gave me a lot of support but not local support, very generalised advice... they said they couldn't comment on specific cases. I rang them numerous times.' (Parent 11)

The remaining fifteen parents did not use legal services, most commonly due to the high costs involved (six parents). Other reasons for not employing legal services were not feeling it was needed and not knowing it was available:

'I would have had to have paid for legal representation...I definitely would have done it if I was able to. I don't think that anybody in this position would expect that they would need legal representation but if I knew anyone who was financially able to get it, I would recommend it now that I have been through it and seen how formal it is, I think it would go a lot better.' (Parent 2)

For the FTT case it was made explicit in the documentation that legal support was usually not necessary. Two of the sixteen schools had appointed external legal representation. One of these felt it was necessary to deal with complex issues, including those related to SEND:

Vignette 2: Experience of legal representation (Headteacher 15)

'The IRP was a lot to do with the SEN issues it was for this reason that I got legal representation.'

This school was also an academy and the headteacher said the ambiguity of the LA role in relation to the school was also a contributing factor in the school seeking legal representation. This representation was said to have been useful in the preparation for the review:

'Some unreasonable requests and accusations were thrown at me from parent partnership in getting ready for the appeal and I got advice about that.'

The legal representation was also described as being helpful during the IRP proceedings in a number of ways, firstly for structuring the schools argument:

'[He was] able to think of things that I wouldn't necessarily have because they were legally trained which was very helpful.'

But also in supporting and briefing the team members whom attended the review:

'Our SENCO was very upset saying have I let you down? Her work was under attack; equally the head of year has worked very closely with the parent and the child and finds it very difficult to step into that different role. Right up to the point of a permanent exclusion you are in trying mode, you are being positive with the student trying to find strategies to help the child and parent. But then you have to step out of that, I am more used to that. I was talking to the SENCO while he [legal representative] was talking to my head of year during a recess.'

This headteacher's only criticism is that the legal representative may have gone slightly too far in the schools defence:

'There was a point where I felt our legal rep was grandstanding a bit and I was a bit uncomfortable with it. He may have been right but you feel it's the sledgehammer to crack the nut, the appellant didn't have high levels of literacy or confidence and I felt he went a bit over the top, but maybe it's because I still wanted to support and help the parent, he could perceive it and made sure I could speak at the end.'

The other school had been involved in both an IRP and FTT [for the same parent] and found legal representation more useful in the IRP as the solicitor was able to tell the panel what they could and could not do at the IRP. The headteacher also said it *'makes the process more structured'*.

Of the remaining fourteen headteachers, six drew attention to the legal support provided by LA legal staff. Some of them indicated this support benefited both parents and schools, for example being able to clarify protocol on what was being asked.

The main reason headteachers gave for choosing not to employ additional legal services was that they felt it would not be necessary. These headteachers felt that they had followed the school

procedures correctly in making the exclusion and therefore had not acted in a way that would warrant the need for legal support:

'We felt our case was water tight, we spent a lot of time going through the first process, we don't take the decisions lightly, we had acted appropriately and come to a reasonable decision.' (Headteacher 12)

Other reasons were schools not realising they could have had such representation (two cases), the cost was the reason in one case, and being unsure how to access this support in another. One headteacher, however, indicated they might use legal representation if they went through an IRP again after feeling the process had been more '*rigorous*' than expected.

3.5 Choice of appeal route

Box 5: DfE statutory guidance in relation to appeal routes

In the case of a permanent exclusion the governing body's notification must include notice of parents' right to ask for the decision to be reviewed by an independent review panel [and] that, in addition to the right to apply for an independent review panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.

(DfE 2012: 15-16)

As discussed in chapter one, very few parents followed the tribunal route, therefore when the participants were asked about how they made their choice between appeal routes, it is particularly interesting to note the reasons that parents had decided upon the IRP route or decided against the FTT. Firstly it is important to note that the FTT is specifically for parents who feel the permanent exclusion was a form of discrimination on the basis of their child's SEND (see Appendix one for differences between the IRP and FTT route). Eight of the twenty one parents we spoke to did not feel their child had SEND, and therefore the FTT route was not relevant. The remaining thirteen parents felt their child had some kind of SEND or emotional need which they believed was relevant to the exclusion; four of these had a child with a statement of SEND.

While schools are required to notify parents that they may make a claim to the FTT where they believe their child's exclusion relates to disability discrimination, at least six participants, including two of the four parents of children in primary schools, stated that they had not been made aware of the FTT route. The reasons for parents' lack of understanding about the two differing routes are hard to ascertain, due to a lack of information on the part of some parents. However two parents explicitly stated that they had been told that the IRP was their only option:

'The school told me the only step was the IRP, they never told us of any other option. I rang a solicitor for any other options but I couldn't afford the advice. I certainly didn't know it was an option, I know nothing about it.' (Parent 11)

The apparent low level of awareness of FTTs suggests that there may be inconsistencies in the amount and quality of information received by parents about both routes. One parent commented

that although she knew of the FTT route, she had not been made fully aware of the differences in outcomes of the two routes. This parent stated she would have chosen the FTT route had she known that the IRP was unable to enforce reinstatement:

'I don't think people are aware of it [FTT] because if I had known it was an option that carried more weight in the first place I wouldn't have bothered with the independent panel, they didn't have the power to overturn the decision anyway, I could have just bypassed that and put my energy into [FTT]' (Parent 8).

Just over a quarter of parents interviewed said that they were aware of the two different routes, but at the time had seen the FTT as '*the next stage*' or a last resort, something that they would have considered if they did not get the desired outcome from the IRP. This was due to the time deadlines of the IRP, often making it more pressing to complete first (an IRP application needs to be made within 15 days of an exclusion, whilst a FTT can be made up to 6 months after - see Appendix one for further differences between the IRP and the FTT):

'The person from [local parent support group] advised us that the FTT is a much harder and lengthy process which can take up to two months, we didn't know the difference between the two that much we were just taking it one step at a time.' (Parent 7)

Similarly, another parent said that the PPS had advised them against going through both processes at the same time, stating that it was more pressing to complete the IRP first. One parent, who had been through the IRP process and believed that the IRP would quash the appeal, had (at the time of interview) submitted the paperwork for the FTT. Some of the parents however said that by the time they had got through the IRP they felt too emotionally drained to be able to go through another appeal process, and moreover had concerns about the length of time it would take to complete a further appeal (see Appendix one for timings related to an FTT), possibly jeopardising/disrupting their child's education in the meantime:

'The governors' panel takes a couple of weeks, the IRP takes a couple of months and you have to do that first so by the time it gets round to FTT... you just think do I have to go through it all again? It was so stressful... maybe if they could be done in conjunction with each other?' (Parent 15)

One parent chose the IRP specifically because she did not want reinstatement and therefore felt it would be a '*simpler and quicker*' route. Sometimes parents had stated that their child had emotional issues, but they did not necessarily recognise these as being SEND and so felt (rightly or wrongly) that the FTT would not apply to them.

The parent who had chosen the FTT felt that she also had not received information on the two routes to appeal, and came across the FTT route by researching what to do independently.

4. Preparation for an appeal

This chapter looks at how parents experienced the process of requesting an appeal, including the administrative procedures involved. It then describes the work that schools and parents undertook in order to prepare for the appeal day. Lastly, it looks at whether schools and parents incurred any financial costs as a result of the process.

Key findings

- The process of requesting an appeal was found to be straightforward by the majority of parents.
- All parents prepared for the appeal, with some spending a great deal of time and energy on preparation. Schools prepared extensively; sometimes a number of members of staff were involved in preparations.
- Financial costs were reported to be relatively small for most parents and schools but with some exceptions. Other 'costs' were emphasised including emotional stress for parents and staff time for schools.

4.1 Requesting an appeal

Box 6: DfE statutory guidance in relation to parents right to a review

In the case of a permanent exclusion the governing body's notification must also include:

- the date by which the review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents);
- the name and address to whom an application for a review (and any written evidence) should be submitted;
- that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion.

(DfE 2012: 15)

Almost all parents involved in the study found the process of requesting an appeal straightforward, submitting requests in writing or in a few cases by email. For the parent who made an FTT appeal, this was also said to be '*very easy, and very quick*' involving a phone call and a posted claim form. A few parents received support from the LA in understanding the process, one was supported by a solicitor and two had help from Coram Children's Legal Centre.

One parent noted the importance of the letter requesting the IRP, and felt that in hindsight this should have been as detailed as possible in order to help her case on the day of the hearing:

'I didn't realise that the points I raised in the letter were the points for the appeal and you couldn't add more points after, if I had been aware I would have raised more points.'

(Parent 8)

Two parents found that requesting an IRP was not straightforward. One parent described putting the request in writing as '*daunting*'. The other parent found the whole process difficult due to not knowing who she needed to send the paperwork to after a change in roles meant the person's name she had no longer dealt with IRPs.

4.2 Preparing for the appeal

All of the parents prepared extensively for the panel hearings, in some cases spending many days on preparation, and sometimes going to extreme lengths as was the case in this example:

'I'd put my heart and soul into it. I nearly lost my job through it and I was spending a lot of time out of work to do it. I was doing it at two/three o'clock in the morning and what I don't know about government school guidelines isn't worth knowing. It was like a whole new job I took on. I got all my evidence out and there were piles and piles.' (Parent 5)

The level of preparation required took its toll on a small number of parents, with some noting how they had found the experience stressful or difficult; this was particularly the case for one parent with literacy difficulties.

The types of preparation focussed on three broad areas. Firstly, the majority of parents spent time gathering a very wide range of information, documentation and evidence, such as school policies, records held by the school in relation to their child's behaviour and in some cases gathering statements from others, as in this case:

'I obtained all the policies from the school... all her school records, her attendance records, the character reference from [a sports coach]... My case was all around statements from other pupils and the schools statements.... I looked at the DfE exclusion guidelines.' (Parent 11)

Secondly, a number of parents then used this information to prepare written submissions to the panel. Thirdly, many parents prepared for the IRP by preparing what they might say or pre-empting questions that might be asked. At least one parent regretted not having done this, for example:

'I'd done a huge amount of work and communications. Probably not enough, I didn't realise they would want me to go through all the detail of it, I am not the best at explaining myself, I should have prepared a full statement of all my points.' (Parent 10)

In general, the amount of work prior to the review was also extensive for schools. On average, headteachers estimated that the preparation for the independent review took about an extra day's preparation on top of the several days' work in preparation for the appeal to the board of governors¹⁶. This work included reading through and collating paperwork and sometimes meeting with the chair of governors.

¹⁶ As noted in Chapter 1, the appeal process involved parents appealing to the Board of Governors. If their child was not reinstated at this point, parents could choose to go to an IRP.

At least three headteachers, however, suggested it took far longer than this. For example one deputy head (who was involved in both an FTT and an IRP) stated that he was '*nonstop working*' on the appeal to the detriment of the school:

'I focussed on nothing else for 5-6 weeks. The heads PA worked flat out. It put my school development work on hold for a few months... We had put in place a large amount of support on file anyway but we had to produce a pack to the board of governors to justify the reason for the exclusion, it's probably 3 inches thick.' (FTT Deputy head 16)

This case is an extreme example, and as the quote shows a lot of the preparation time was prior to the board of governors appeal. This case involved persistent disruptive behaviour over a number of weeks and months. One headteacher suggested that one-off incidents were less time consuming to deal with. The preparation often involved a number of members of staff. This could include the headteacher, senior leaders, administrative staff, and the special educational needs coordinator (SENCO). Schools that employed a solicitor may have had additional preparation, for example:

'Preparing the material for the solicitor and the IRP took several days of staff time - maybe a day and a half of my time, two days for the SENCO and a day for the governor, plus admin time to copy and compile all the paperwork. We had detailed references to the 200 page file of evidence which the panel were also given. It took a lot of time and emotional energy.' (Headteacher 4)

For governors, the preparation was much less onerous. In most cases, this involved reading through the written documentation about the specific case and the IRP process, and in some cases a meeting with the headteacher and perhaps other members of staff to discuss the case in advance as well:

'I had all the documentation, read through everything and looked online. I was reading 30-40 pages of information so it took a few hours. Bearing in mind you have quite an influence on a pupil's life it seemed reasonable at the time. I had not done it before so I needed to familiarise myself with the paperwork.' (Governor 5)

One governor of a school that had recently become an academy had been through training on both the board of governor appeal and the new IRP process. This training was delivered by the LA legal team who were clerking the case, and covered the possible outcomes of the process, the timescales involved, and the powers of the Department for Education. This governor had found this to be very useful. The issue of training for governors is discussed later in the report in section 5.5.3.

It seems clear from this evidence that it matters a great deal to schools and to parents to win the appeal. There are strong motivations from both parties for this. For schools this is likely to be related to the undermining of authority that may come from the appeal going against them. This could relate to a number of audiences; the parent and pupil involved, other school staff and governors and other pupils in the school. There are also the potential financial implications of losing the appeal. For the parents this is both a pragmatic wish not to have the permanent blemish on their child's record as well a strong sense of fairness or a sense of duty to their child.

4.3 Cost of the Appeal

Direct financial costs to the school and to parents seemed in the main to be relatively small, with some exceptions. Twelve parents had taken time off from work for preparation and therefore had lost earnings or had sacrificed holiday time. Other costs mentioned included travel costs and photocopying. In one case a parent incurred much higher costs than she expected, which she estimated to be around £750 - £1000. These costs included lost earnings due to taking time off work to prepare, and hiring private tuition that she felt she needed to educate her daughter due to feeling that the PRU was unsuitable. She had also paid a solicitor's fee to ask a question which she thought may help her case at the IRP:

'Massively significant financial implications... I'm a single parent and it isn't easy to fund all those things... Absolutely no idea I would have to incur these costs. Christmas was cancelled, it was awful. It's not reasonable in the fact that I am a single mum trying to support my two girls. Part of the costs were down to lack of support; the majority of the costs I guess, if there was a support structure we wouldn't have needed to ask those questions...' (Parent 11)

Parents stressed that their 'costs' were related to emotional and opportunity costs of spending so much time preparing for the appeal. Although most parents did not experience a direct financial loss, around half did feel the appeal had led to other significant costs:

'It's probably been one of the worst periods of my life...it would break a lot of people and you do feel like you are fighting authorities...I went on anti-depressants. I've never been on them before in my life but I just had so much to deal with!' (Parent 5)

Some headteachers also mentioned that either themselves or their staff members involved in the exclusion and review had found the process a difficult and stressful time. Headteachers found it difficult to give what they considered to be an accurate estimation of costs. Almost all commented that their main cost was staff time, including their own time to attend the appeal, which in many cases lasted a full day. Headteachers' opinions differed around how reasonable these costs were. For example, one headteacher thought costs were reasonable stating it was *'very important for that individual student to make sure that they get a fair hearing'*. In contrast, another felt that it was not value for money and thought the process could be done in *'a much more time effective way'*.

In the case of an academy, the academy trust, rather than the local authority, is responsible for arranging the IRP, which incurs additional costs to the school. Academies' funding takes account of additional responsibilities that are no longer provided for them by the local authority, including arranging IRPs. One headteacher from an academy paid fees of around £4000. Although this was an extreme example, and most academy school headteachers stated a lower cost, this headteacher and governor were concerned that this could impede the school from excluding pupils in future which they felt could be highly detrimental to the school:

'What would happen to a school that hasn't got the resources to fund such a hearing? It seems wrong to me. There is one school here that now doesn't permanently exclude pupils because they don't want to go down this road of paying out the money. There must be a cheaper way of doing it; some schools couldn't afford to do that.' (Governor 6)

One academy head resented the school being made to pay for the IRP and felt it should be the parents who covered the cost (through their own means where possible or legal aid). Others however stated that the cost of the IRP was justified if they were to get the outcome they felt was correct:

'It was a few thousand pounds; we weighed that against if the panel had directed a reinstatement fine of £4000. I would rather pay money to be successful than be fined £4000 and have staff and governors demoralised and feel that we got something wrong. I was confident that we had done all that we could to support the child.' (Headteacher 15)

5. Experience of appeal

This chapter discusses participants' (schools' and families') perceptions of the appeal day itself. It covers the location of the IRP/FTT and experiences on the day, including views on the panel members and the length of time it took to get the outcome of the appeal. Participants were asked to give their views of the process regardless of the outcome.

Key findings

- Most participants felt the hearings were conducted fairly and that they were given time and space to put their case across, however there were a number of participants who raised issues around fairness. Similarly, appeals were generally said to be well organised, however there were some mistakes made at times for example, with timings or equipment needed.
- The majority of participants were satisfied with panel members' conduct as well as their suitability to sit on the panel.
- There was some questioning of the role and neutrality of local authority members.
- Most participants were satisfied with the length of time it took to receive the outcome of the appeal. However there were some concerns raised about the length of time the appeal takes from the exclusion to the outcome.

5.1 Location of appeal

Box 7: DfE statutory guidance on the venue for an IRP

Local authorities / 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.

(DfE 2012: 19)

The statutory guidance states that the location of an IRP should be appropriate but does not include examples of appropriate and inappropriate locations. Interviewees were broadly happy with the location of the appeal. In the majority of instances the IRP took place in a local authority building in a town or city centre. Other venues included private premises such as leisure centres or golf clubs, and in a small number of IRPs a school was used. Families and school representatives on the whole had found the buildings easy to access. The FTT took place in a tribunal or court building house in a nearby town or city.

Around a quarter of parents were not satisfied with the venue. For some this was because they felt the building was not a neutral location, particularly in the minority of cases where the review panel was held at the pupil's school or a local school (which was more common for IRPs relating to academies than for those related to LA maintained schools). Other parents stated that they had found the location either difficult to get to or overwhelming due to the nature of the building, with one parent described *'turning up to a big building'* as causing stress.

There were also a few negative views about location from headteachers and governors. A small number commented that they felt the location may be very daunting for parents due to the formal nature. A small number felt that the venue was too far away and therefore difficult to access, and a couple mentioned how expensive the chosen venue had been.

Another issue relating to the venue which emerged from a relatively small number of interviewees (but all involved in different appeal cases) was that on some occasions, parents and the school party had to wait in an area together before entering the hearing room. There were comments from parents, headteachers and governors about the inappropriateness of this:

'It's horrible, when you arrive you are placed in the same room as the school while you wait, it was so awkward, you should have separate waiting rooms.' (Parent 17)

While statutory guidance states that venues should have a suitable area for the parties to wait separately from the panel, it does not specify that the parties themselves should be able to wait separately from each other (see box 7 above).

5.2 Fairness of appeal

Box 8: DfE statutory guidance for panel members

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.

(DfE 2012: 26)

Most participants were able to separate the outcome from the process of the appeal, and discuss fairness in terms of the way the appeal was conducted on the day. A positive finding was that the majority of all participants felt that procedurally the hearings had been conducted fairly overall:

'It was definitely fair, I felt like I was equal to the school.' (Pupil 2)

For parents, fourteen were able to say that the process was conducted fairly. One parent was unsure and six stated that they felt the process was unfair. However there were a number of caveats added by participants when discussing fairness. Even where parents said the appeal had been conducted fairly, this was in relation to the process on the day; however there were other, sometimes wider issues that they did not feel were fair. For at least six parents and in one case the pupil, a central issue was that they felt the process did not allow them their desired outcome, i.e. they felt they were unable to 'win' the appeal. This was because the school ultimately makes the final decision about reinstatement and can decide not to offer to reinstate a pupil even where the review panel quashes the exclusion and directs the school to reconsider (see box 3 for possible outcomes of an IRP). The below quote is from a parent who said that the process was fair:

'But all they have the jurisdiction to do is send it back to the board of governors, but that is not an independent space, even if the headteacher has done something illegal it can't be

quashed, they can only send it back to the board of governors. It shows you the ridiculousness of it.' (Parent 2)

One of the pupils we spoke to was also aware of these potential outcomes and felt this impacted on his view of fairness:

'They said that there isn't actually a way for the people on the panel to change the decision and let me back in the school, all they could do is uphold it or ask them to rethink it, but they would have just said no again... [It would be fairer] if there were more options at the end of the appeal, if they could actually overturn the decision.' (Pupil 1)

These parents sometimes said that they had predicted that the outcome would be negative for them. This was particularly the case for two parents who were not looking for reinstatement and felt that this somehow impacted on the decision made by the panel:

'I knew when I said I didn't want him to go back to the school that I had lost the decision.' (Parent 10)

The vignette below illustrates one of these parents' views:

Vignette 3: Complexity of perceptions of fairness within appeals (Parent 5).

'They [appeal panel] more or less said in a way that for us to not have him return to [The high school] then we've got to uphold the exclusion. So I was in a no win situation really'

This parent described the process as being 'fair' in that she was able to put her evidence forward, with time to speak and present her case thoroughly. However she felt it was 'unfair' in terms of feeling she knew what the outcome would be before the completion of the IRP. This parent felt that she didn't have 'any weighting' despite presenting the best case she could:

'There was a lot more substance to our case than there was for the headteacher but I still had the underlying feeling that it was going to be upheld anyway....we were there for 3 hours and it was a complete waste of time... even [Exclusions Officer] said I couldn't have done anymore'

The parent said despite knowing what the outcome would be she was determined to appeal in order to highlight what she considered to be the schools failings.

The parent taking the FTT route was frustrated at the appeal as she felt the panel had made the decision prior to the start of the tribunal. She felt this to be an unfair approach which also raised her expectations and was not time efficient:

'If they felt he didn't have the medical problems that he should have had [to be at FTT] I would have thought I would have found out when I made the application. So they had the evidence, it felt like a waste of time, dragging me over there giving me the impression that it's all going to go ahead. I was cross. I could have avoided wasting everybody's time. That is the only criticism I have,' (FTT parent 21)

Another criticism from a small number of parents was their inability to be able to offer any comments on the evidence put forward by the school, although most participants did feel they had opportunities to make their case fully with sufficient time to speak uninterrupted:

'They never said "that's enough from you. Move on." Over and over again they said "have you got anything else to say" all the way through'. (Parent 4)

At least two parents discussed how they were told by panel members that they could not make comments on what was being said by the school representatives, but only ask direct questions at a later stage. These parents struggled with this, feeling that they were not allowed to speak as freely as they wanted during certain aspects of the process:

'When it was our turn you had to stick to the grounds, you were not allowed to comment on anything they had said... we could not have our point of view at all, they kept saying stick to the ground or the direct questions. The school were allowed to speak freely, it was completely different.' (Parent 17)

A minority of other interviewees (parents, headteachers and governors) similarly felt that on some occasions they were not given full time to speak uninterrupted due to the way the IRP was conducted or chaired:

'We didn't have any comeback after the SEN expert had spoken, so we couldn't address her criticisms directly.' (Governor 7)

'The headteacher interrupted quite a bit but we weren't allowed to interrupt.' (Parent 15)

There were unprompted comments from parents, headteachers and most governors that the appeal felt like a very formal and legal process which was a surprise to some interviewees. This led to feelings of intimidation and stress in some participants, mostly to parents and pupils. One pupil, for example, said it had been difficult to talk in front of so many adults in such a formal setting:

'They were all just staring; it was quite scary to have to say it all' (Pupil 5)

The parent who had been through the FTT route raised an issue about the power imbalance between herself and the school in regards to legal costs, since she did not have the financial means to access the same type of legal representation as the school:

'The hearing itself is cost free so I don't think it's unreasonable what I had to pay out... What is unreasonable is that a school is allowed to employ a legal service as high as a barrister when the parent isn't able to, that is unfair, and we should have equal footing.' (FTT parent 21)

There were two parent interviews where it was explained that the school had appointed legal representation. In both cases this had caused some upset to the parents (and the pupil involved in one):

'He was horrible; the main panel member had to tell him to stop talking because I was crying so much.' (Pupil 5)

'I didn't worry about it, until I started getting letters from a barristers firm. I could understand why they needed it at the court but they continued to use it at the IRP when there is already an LA legal representative there, I didn't stand a chance and I don't think for one minute I would have lost if they hadn't have had a barrister.' (FTT parent 21)

When asked to talk about fairness of the process most headteachers (nine of the fifteen) and a number of parents agreed that the onus was on the school to defend their actions, and the process of the IRP was about questioning the headteacher's and governors' professional decisions. Headteachers commented that they were scrutinised much more closely than the parents:

'I was pressed very firmly, I'm not saying there was bias but there was not equal drilling down into people's positions.' (Headteacher 1)

Some of these headteachers went on to say that they felt that the review panel was dealing only with the school's handling of the exclusions, the processes and procedures they followed and whether these were done correctly, and not about the incident(s) which led to the exclusion:

'It seems to be that they are reviewing the process rather than reviewing the reason why that child has been permanently excluded. I think there needs to be a redressing of the balance, because both are important.' (Headteacher 7)

This led four headteachers to say that they would tighten up on their procedures or even reconsider excluding a pupil in the future:

'It would absolutely make us think twice about excluding somebody. If there was an incident and I wasn't 100% confident that everything was in place I would not consider going through an IRP now because the energy, the resource, the time taken to make everything water tight could push me towards another solution.' (Headteacher 14)

Five headteachers said they felt that there should be more of a balance here and parents should be jointly held to account for their child's actions, for example exploring what parents could have done to prevent the permanent exclusion (despite this not being consistent with the purpose of the IRP). However, others (both parents and headteachers) felt that this was the correct way for the IRP to be conducted and that it was right that the school's decision was called into question. For example, one headteacher commented that the IRP had the '*right emphasis*' in challenging the school as it '*makes the school think hard about the decision.*' Some parents agreed, for example commenting that it is the schools judgements that are being questioned and therefore it '*is appropriate to ask them lots of questions*'.

5.3 Organisation of the appeal

Most participants felt that the day had been well organised, the process had run smoothly and the panel members were well prepared, having clearly read through the information prior to the appeal. There were a small number of cases where this was not the case and certain events which occurred prior to or on the day of the appeal led the interviewee to feel that the appeal was badly organised. For example, one headteacher commented on a lack of clarity of information in

the appeals guidance about what would happen on the day, saying he felt that there was '*a lot of interpretation in the document*'.

Another headteacher and governor commented that the panel had not had the correct equipment to show DVD evidence despite having known about this two weeks prior to the IRP - this was said to have led to uncomfortable delays.

5.4 Views on panel members

Box 9: DfE statutory guidance to local authorities on appointing independent review panel members

Every care should be taken to avoid bias or an appearance of bias. The local authority / Academy Trust should request that prospective panel members declare any conflict of interest at the earliest opportunity.

Where possible, panel 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 local authority / Academy Trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review.

(DfE 2012: 20-22)

For the most part, participants felt satisfied with the panel members' suitability and qualification to be on the panel. Positive comments on panel members included: '*professional*', '*competent*', '*engaged*', '*polite*', '*fair*', and '*pleasant*'. Participants also made reference to the level of preparation of the panel members evident during the appeal, which was appreciated:

'They were incredibly well prepared, they had clearly scrutinised the paperwork in great detail.' (Headteacher 14)

However, in a minority of cases, interviewees talked about the panel members' lack of preparation, and the frustrations this caused. For example (two headteachers, one governor and one parent) commented on where it was apparent that the panel members had not read through the documentation prior to the hearing. A headteacher remarked that the panel members were asking questions that had been explained thoroughly in the documentation and described this as '*quite embarrassing*', '*infuriating*' and '*not very professional*'.

The make-up of the panel for the review typically consisted of a former headteacher, a governor of a different school and a chair. There was often a 'lay' person, for example a professional in the local community, and sometimes a legal expert from the LA was also present. Although guidance states that where possible panel members should reflect the phase of education from which the pupil was excluded (see box 9 above) there were some concerns raised from at least two headteachers and one governor that panel members were not fully representative of the school phases. For example, some felt unease at having panel representatives only from primary schools when the school involved was a secondary and one governor stated that the panel members were '*not necessarily secondary school appropriate*'. The quote below from a headteacher explains why this was an issue for him:

'The head [panel member] was from a primary and it's a very big difference in terms of your pupil contact being the head of a small primary in comparison to a large secondary, which may or may not colour your judgement.' (Headteacher 7)

Similarly at the FTT, the parent felt the panel members (a judge, and two panel members - one being an SEN expert) were suitable but thought that there should have been a medical professional included when making the decision of this magnitude:

'I think having somebody qualified in the area, if they are going to tell me he is not SEN then I would like to be told that by somebody who is medically qualified to know that. They are making such an important decision and it's their opinion.' (FTT parent 21)

Three parents and one pupil spoke of particular panel members making them feel more at ease by being particularly polite and speaking sympathetically to them, which was particularly appreciated given the stressful nature of the IRP:

'The main governor was so nice; he kept smiling at me to make me think it was better than it was.' (Pupil 5)

This was echoed by at least three headteachers who were sometimes pleased to see panel members making parents feel more relaxed.

Panel members are expected to be impartial and fair, and the majority of interviewees felt that their experiences reflected this. There were a few cases however, where an interviewee felt that panel members appeared to be biased towards one party or the other, based on the types of questions that were asked or questions being put more forcefully to one party or the other.

Two parents and a pupil interviewed felt the hearing panel were linked to the school in some way, and this undermined their confidence in the process. For example, in one case a headteacher of a feeder school sat on the panel:

'One of them was a headteacher of a primary school and it's a feeder school for [Pupil's school]... It would have been fairer if they were all from different places... not from a feeder primary... All three of them seemed nice but if you look at it now, it was obvious that we were never going to win.' (Pupil 1)

A recurring issue that emerged during interviews was the role of the local authority or LA advisors in the appeal process. A number of parents and headteachers questioned whether members of staff from the LA (who often attended the appeals) were impartial. Two headteachers, for example, felt very strongly that there appeared to be a conflict of interest where the LA was concerned. The main issue here was that there may be a vested interest from the LA as they would be responsible for an excluded child if the exclusion is upheld:

'I was told in no uncertain terms they are neutral. But they are not neutral, if they are assisting the appellant, informing her, incorrectly if you look at what the verdict was, that the school has not done the right thing, knowing that if they had won then there would be a fine on the school which would then go to the local authority, they would get that £4000.... You are working with them as a partner in some respects but they are also looking for ways to trip you up, to catch you out, overturn your decision so they don't have responsibility for the child.' (Headteacher 15)

Concerns about the neutrality of the LA representative were also shared by a small number of some parents, who on the contrary, felt that the LA advisor was perhaps on the schools side:

'The inclusion officer was sat with them, surely he should be impartial.' (Parent 13)

'The guy from the council turned up saying he wanted to talk through our options with us and to tell us we had to remove him off roll, I had been given advice so I knew not to take him off roll but he kept pushing for us to'. (Parent 17)

This suggests that there is a need for some clear guidance around the roles of the local authority staff members. This will be discussed further in the conclusion and discussion chapter.

5.5 Outcome of the appeal and final decisions

5.5.1 Timing

Box 10: DfE statutory guidance on timings of notifications following a permanent exclusion and educational arrangements for excluded pupils

The headteacher must, without delay, notify the governing body and the local authority of a permanent exclusion.

(DfE 2012: 10)

The local authority must arrange suitable full-time education for the pupil to begin no later than the sixth day of the exclusion.

(DfE 2012: 11)

The governing body must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the [permanent] exclusion.

(DfE 2012: 12)

Where legally required to consider an exclusion, the governing body must notify parents, the headteacher and the local authority of their decision, and the reasons for their decision, in writing and without delay.

(DfE 2012: 15)

The governing body's notification must also include: notice of parents' right to ask for the decision to be reviewed by an independent review panel and the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents).

(DfE 2012: 15-16)

The local authority / 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 local authority / Academy Trust received the parent's application for a review (panels have the power to adjourn a hearing if required).

(DfE 2012: 18)

Following the review, the panel must issue written notification to all parties without delay.

(DfE 2012: 25)

Where the panel directs or recommends that the governing body reconsiders their decision, the governing body must reconvene to do so within 10 school days of being given notice of the panel's decision.

(DfE 2012: 29)

In the case of either a recommended or directed reconsideration, the governing body must notify [all parties] of their reconsidered decision, and the reasons for it, in writing and without delay.

(DfE 2012: 29)

As box 10 shows, the review panel should notify all parties of the decision 'without delay'.

Fourteen parents received the outcome of the IRP within a few days of it taking place, with most of these receiving the outcome on the day or the day after. The remaining six parents said they were made aware of the outcome within a week or two. The delays were sometimes due to school

holidays. Most parents were happy with the length of time it took to hear about the outcome, regardless of how long it had taken.

Similarly, ten headteachers said they found out the decision within a few days. However there were a few who had to wait longer than this and some were disappointed at the time lag. One headteacher for example said he felt that the timing of the outcome decision was '*extremely badly organised*' owing to him being told he would find out a day after the review panel but instead having to chase up the decision over a week later.

When asked about the time it took to go through the appeal process in its entirety, some parents were less pleased, with one parent describing the four months it had taken as '*totally unacceptable*' and another parent commented that the appeal took six months when it should have taken six weeks. Suitable full-time education must be provided for all pupils who are permanently excluded from the sixth day of the exclusion. In many cases this will be at a PRU or other alternative provider. Some parents found the length of the IRP difficult to deal with as they felt it hindered them in making plans in relation to their child's future education.

5.5.2 Outcomes

It appeared that most parents were clear on the outcomes of the IRPs¹⁷, however for a small number of parents and pupils there was some confusion around the outcome of the appeal. One family for example had been successful in the IRP and the school had been directed to reconsider, however the family were unclear as to what this meant and what would happen next:

'Afterwards it was all a bit confusing, nobody really knew what was going on, we had been told it was quashed so we wondered if I was 'unexcluded' but then we found out they had to have another meeting within 10 days and rethink the decision. If there were any improvements it would be to go over the three outcomes at the beginning.' (Pupil 2)

Another parent thought that because the IRP had quashed the school's decision to permanently exclude, that her son would automatically be reinstated into the school the following Monday and was not aware that the board of governors had to reconsider this decision. A headteacher also commented that outcomes should be made clear to parents as he felt that parents are not always aware of the powers of the IRP:

'The bottom line is that the panel could not direct us to take him back anyway... I don't think she really understood that. She thought that we would just let him come back... There is a whole issue of equality and who is going to support the parents' (Headteacher 6)

5.5.3 Governors' roles in decision making

Governors are in a position of power in terms of making decisions about whether or not to uphold a headteacher's exclusion decision; they must then be able to justify their reasons for this at an IRP. Reflecting on the outcome of the review, a small number of participants mentioned that

¹⁷ For information on outcomes, please see the guidance in box 3

training for governors to ensure they are fully aware of all aspects of the exclusion review process would have been very useful:

'I got the impression that the man from the governors thought it was just a day out. He was bemused; he didn't know why he was there... The outcome was that the school was asked to reconsider, not directed to reconsider, the reason being was that the governor had not been given enough information at the board of governors appeal to make a valid judgement... and yet he still supported the headteacher's decision.' (Parent 15)

One governor commented that it may be difficult for some members of the governing body to remain impartial when making a decision, due to their personal interest in the school, which may link to governor training needs. For example where a governor is also a parent and has a child in the school they may have a vested interest in excluding a pupil whom they consider to be disruptive:

'Most governors are not in any way professionally trained. So the position that they assume in those panels, generally speaking, I don't really think they are equipped to do it... I think there's lots of potential there for pupils to go through a system which is not protecting their interests sufficiently.' (Governor 2)

6. Special Educational Needs and Disabilities

This chapter looks at the way that SEND was taken into account during the appeals. It covers whether or not parents requested an SEN expert and where this was the case, how helpful these experts were from the point of view of parents, headteachers and governors.

Key findings

- Most parents had an SEN expert present at the IRP.
- Parents were more likely than headteachers or governors to find the SEN expert helpful.
- Where relevant, only half of parents felt that SEND had been taken into account fully enough at the appeal.

Box 11: DfE statutory guidance on the right to require an SEN expert and the role of the SEN expert

The governing body's notification must also include:

- that regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the local authority / Academy Trust to appoint an SEN expert to attend the review;
- details of the role of the SEN expert and that there would be no cost to parents for this appointment.

(DfE 2012: 15)

The SEN 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 SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

The focus of the SEN 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. If the SEN 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 SEN, the SEN expert should advise the panel 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 SEN 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.

(DfE 2012: 27)

Thirteen parents, including those of all four primary aged pupils and all but one of the parents of pupils in academies, considered their child to have SEND that were relevant to the appeal (see section 2.4.2). As discussed in chapter one, the types of SEND were nearly all behavioural or emotional. Of the parent cases, fourteen (including three of the four primary age pupils, and all but

one of those in academies) had either requested an SEN expert or had one provided for them. While governing bodies are required to notify parents of their right to request that an SEN expert attend the IRP, a minority of parents stated that they had not been made aware that they were able to request an SEN expert. Nine headteachers reported an SEN expert being present at their IRP.

Where they were present, opinions were mixed as to the usefulness of the SEN expert. Overall, parents found the SEN expert more helpful than the headteachers or governors did. Of the fourteen parents who had requested an SEN expert, six found them to be very helpful. Some parents believed that they had put forward a strong case highlighting their child's individual needs and in some cases where the school had failed to meet these, for example:

'She had prepared a lengthy statement and she had done a lot of preparation, we were extremely impressed with the SEN expert, she presented a comprehensive statement on my daughter's personality.' (Parent 11)

A further five parents felt the SEN expert had been somewhat helpful. Where there were concerns, this was sometimes the parents feeling that the review panel were not giving the SEN expert sufficient opportunity to put their case forward. For example, one parent felt the SEN expert had not been given time to say everything he had wanted and had only been asked five or six questions. Others felt the SEN expert had only been allowed to speak in general terms and not be specific about the needs of the pupil involved. For example, one parent commented of the SEN expert that *'his hands were tied'* saying that he was only able to speculate on the needs of her child but not talk specifically about her as an individual child:

'He was helpful but every time they shot him down, it was difficult for him; they kept saying you can't say that, you can't say that, so he said what am I here for? All he could do was say what a person with her needs might be like.' (Parent 7)

This appears to indicate a lack of understanding of the role of the SEN expert as laid out in box 11 above.

Two parents felt the SEN expert was not qualified to make the judgements they had made due to either not being an expert (in the parent's opinion) or through not having done enough background research on the individual case:

'It all went on the evidence of the SEN expert and I found that flawed, she wasn't an expert, she knew nothing about my child, they need to know more about the child or the disability. They are not trained, they are not experts. She said the school had been very fair and the school had every right to exclude him which is ridiculous. The panel made her look very stupid; she didn't understand the questions they were asking her.' (Parent 9)

Headteachers and governors were more likely to say that the SEN expert had not been helpful in the IRP. For example, there were comments from one headteacher that the SEN expert was not objective:

'The SEN expert didn't give a fair and unbiased opinion, it wasn't balanced at all...It seemed to me that she was there to support the parent as opposed to giving her unbiased opinion of what she has heard... I assume she should be impartial? I don't 100% know her role.' (Headteacher 12)

Most headteachers who hadn't found the SEN expert helpful said that they felt that the SEN expert was not qualified sufficiently to be able to make judgements and therefore did not contribute usefully to the proceedings. One headteacher said that the SEN expert was raising issues that were not pertinent to the case, another said that they had been inaccurate on some of the points they had raised. Similarly governors felt that the SEN expert had added little to the evidence presented. One governor felt that the SEN expert was *'nit picking at minor issues'* due to being in a position where she had to say something but had little to say.

A small number of headteachers felt that the SEN expert should have done more to prepare for the IRP in terms of looking into the schools SEND policies and procedures and the child's record:

'To have an SEN expert make judgements based just on paperwork - what she said was totally misjudged, it showed an absolute lack of understanding about the boy in question. It was a superficial assessment; they needed to have a pre-meeting with the boy. They did a cracking job for the family. There was no consideration of our context. No broader understanding of the way a school operates.' (Headteacher 14)

As with parents, this indicates a misunderstanding of the SEN expert's role as laid out in box 11 amongst some headteachers.

Of the fourteen parent cases where parents felt their child had SEND or an SEN expert was present, half felt that SEND were not taken into account enough at the appeal. A further four felt that this was partially taken into account, and only three parents felt that SEND were discussed fully. Reasons given by parents for their view that SEND were not fully taken into account included: the SEN expert making general points about the relevant SEND rather than commenting knowledgeably on their child's needs; the SEN expert not being afforded enough opportunity to give his/her views on the case; and not being able to materially affect the final decision made by the panel members:

'I don't think there was any chance that it could have been [taken into account enough], I don't think they had the jurisdiction to take into account the SEN, the mitigation was not taken into account, I believe they engaged and appreciated it but they did not have the jurisdiction on that basis to overturn anything.' (Parent 2)

As previously stated, parents who attend a FTT are not able to request an SEN expert.

7. Conclusions and recommendations

7.1 Concluding discussion

In this section, we draw out some of the most important findings, and provide a number of related suggestions for policy makers drawing on the discussion and evidence presented in this report.

Parents took the decision to go to appeal because they felt the permanent exclusion was unfair for two main reasons. Firstly, eleven (of the twenty one) parents felt that the school had some degree of responsibility for the exclusion: either they had not put in place measures to prevent an exclusion from happening or had not taken into consideration extenuating circumstances.

Secondly, ten parents felt a sense of injustice; for example, some parents felt that a permanent exclusion was too harsh a punishment for the offence committed. In contrast, seven of the sixteen headteachers struggled to understand why a parent had made an appeal, given that their decision had not been taken lightly; appropriate early intervention was in place; and the exclusion reflected the severity of the incident.

Parents' sense of injustice meant that a number of parents did not necessarily appeal in order to get their child's place back at the school. In many cases the relationship had broken down, or time had moved on. Many expressed a wish for the removal of the exclusion from their child's record, although this is not a direct outcome of an IRP (see box 3 on guidance of possible outcomes of IRPs), and others wanted what they perceived as justice, i.e. for the school to be told, and accept, they had not done all they could for the pupil. In fact, a minority of parents were aiming for their child to be reinstated - at least by this stage of the process where another school may have been found, or the relationship with the school felt irrevocably broken. Schools themselves found it hard to understand these perspectives. From many headteachers' viewpoints, the purpose of the appeal was to get a child reinstated and some felt that it was not a valid use of resource to have to go through an appeal process where this either was not likely to happen, or was not even an outcome the parents wished for.

The decision to appeal and then to go through the process was not taken lightly by parents, and was not straightforward. Support for making an appeal was highlighted as an issue for a number of parents, with some complaints by parents that they had very little or no support and felt alone in making the appeal (see box 4 for statutory guidance on support and information available to parents). Five parents were particularly frustrated that the numbers they called for help (which had been provided by the school) were no longer in use or the organisations were unable to help them. This could be due to cut backs and funding issues but is likely to also be due to information not being kept fully up to date. Those parents who had received support had mostly found this very helpful, although some felt that organisations should be able to do more to support them. However, once the decision was made, requesting the appeal was not seen as a difficult task for most parents.

Of course deciding to appeal is not the only decision parents had to make: they also had to decide which route to take. The fact that only a handful of parents opted for the FTT route is of particular interest. In the current study, parents opted for the IRP route for a number of reasons. Some of these are to be expected, such as where SEND were not relevant to the case (see Appendix one for differences in the IRP and FTT route) or where parents felt that the IRP would be a quicker

route to undertake first. However one reason given by a small number of parents is of more concern. Some parents said they had not been made aware of the FTT route or that they felt that there had not been enough information about the differences between the two routes, including what the possible outcomes for each could be. This is despite there being a requirement on schools to notify parents of this route, and parents having received support from advisory bodies. Moreover the parent who had opted for the FTT route did so out of what she considered to be a lack of clear information about the two routes to appeal.

Preparing for the appeal was time consuming for most parents and headteachers. Preparations varied between participants, and many prepared thoroughly. Most parents and schools did not employ legal support for the appeal. Parents had often considered it but were put off by the cost; headteachers in the main felt that it would not be necessary. There were however some disparities, in particular where the school employed a solicitor but the parent did not. The financial costs associated with appealing were not an area of concern for the majority of parents; however the cost to their and their child's education and wellbeing was highlighted. Parents often commented that the appeal process had been highly stressful. For headteachers and governors the main costs were their time spent preparing for, and appearing at, the appeal which meant time away from their work. Where the school involved was an academy the cost of the appeal was higher as they had to pay for the appeal to take place, in a minority of cases costs became very high¹⁸.

The location of the IRP tended to be in local authority buildings in a nearby town or city. There were some exceptions that proved to be difficult for parents, and in particular where IRPs happened in a school this was not experienced as neutral by parents. There were also concerns expressed by some parents that buildings chosen were too formal or difficult to get to. When asked about whether the appeal had been conducted fairly, participants mainly answered yes. A variety of issues were however raised in relation to fairness. Some parents felt that they were unable to 'win' the appeal due to the way the process/outcomes were set up (which relates to the hoped for outcomes and aims of the appeal identified above). The parent who had taken the FTT route felt that the decision had been made by the panel members prior to the day of the appeal. Some parents also felt intimidated and that they were in a position of weakness as individuals challenging an organisation. Conversely, a number of headteachers felt that they were '*in the firing line*' and under pressure at IRPs to justify their decisions. Perspectives on this differed: some headteachers felt that this was fair as their decision was being questioned. Others, however, felt there should be equal examination of the parent and pupil involved. In the main, all groups of participants broadly agreed that they had the chance to put their case forward as fully as they would have liked.

Appeal days seemed to be well organised, however some issues were highlighted which include waiting periods for attendees and occasions where the school and family were expected to wait in a room together for hearings to begin.

¹⁸ Academies receive funding to meet their additional responsibilities - including conducting IRP's - that are no longer provided for them by the local authority.

The majority of participants had been satisfied that members of the panel were suitably qualified to sit on the panel. Statutory guidance (see box 9) says where possible, panel members who are governors or headteachers should reflect the phase of education and type of school from which the pupil was excluded. There were some cases where this was not the case, and headteachers voiced their opinion that panel members should be representative of the school level involved, e.g. where a secondary school was involved, one of the members should have experience in a secondary school. Where it was clear that panel members were well versed in the details of the case ahead of the appeal, this was appreciated by all; however the reverse was true were members appeared to be ill-prepared. The panel members were often praised, particularly by parents for making them feel at ease during the appeal day.

A point of contention raised by some was the role of some local authority staff members, incidents had occurred which had led parents, headteachers and governors to call into question whether or not the LA are a neutral party in the appeals process. This calls into question whether the role is clear and whether there is sufficient guidance on that role.

Participants were relatively happy with the time it took to receive the outcome of the appeal hearings; usually from one day to around 2 weeks after. There were some concerns raised about the length of the entire process of the appeal, this was felt by some to be very long. LAs have a duty to arrange suitable full-time education for permanently excluded pupils from the sixth day of the exclusion, and parents are responsible for ensuring that their child attends this provision or making alternative arrangements, such as home education. Parents were not always happy with the alternative provision provided or were not in a position to home educate, and wanted the appeal concluded quickly so they could make other plans in relation to their child's future education.

In line with national data, many of the young people involved in this research were described as having some type of special educational need or disability. The SEND issues were usually related to emotional or behavioural problems. Most parents had requested a SEN expert to be present at their IRP. Despite there being a right for all parents to request that a SEN expert attend the IRP some parents reported that they were unaware that they had this option. SEN experts received mixed reviews, but parents were more likely to praise the helpfulness of the SEN expert at the IRP than headteachers and governors were. Where relevant only half of parents felt that SEND had been taken into account fully enough at the appeal. The reasons for this are not entirely clear.

7.2 Recommendations

Drawing together this discussion, then, there were a number of themes running through the study: issues around differing perspectives of schools and parents; around fairness and the roles of participants in the appeal; and around the support received and needed. We address these issues in a set of recommendations for schools, policy makers and those supporting parents.

7.2.1 Recommendations for schools (including academies)

1. Some parents seemed unclear or unaware of the two possible routes to challenge their child's exclusion, and in some cases unclear about sources of support. We recommend that governing

bodies review their processes and documentation to ensure they make clear reference to the two routes and include up to date information on available support in their letters to parents.

2. Given that governors have a great deal of responsibility within the exclusion process, schools should consider whether they need to source/provide training and guidance for members of the governing bodies in relation to (for example):

- their role in reviewing the headteacher's decision to permanently exclude a pupil, including the need to be well versed on the school's procedures and policies in order to be sure these have been followed correctly before they make a decision and potentially have to defend this at an appeal hearing;
- their role in relation to an IRP hearing including the need to declare any vested interests in an appeal case.

7.2.2 Recommendations for IRP members

3. Panels and other parties should ensure parents and schools are clear about the role and responsibilities of the SEN expert, as laid out in guidance.

4. Some parents felt that not wanting their child reinstated would cause the panel to decide against quashing the exclusion. Appeals panels should not take into account whether or not the parent wishes for their child to be reinstated when making their decision and this should be made clear in guidance for panels.

7.2.3 Recommendations for government

5. The role of the local authority representative at the IRP is currently unclear. We recommend that guidance on the role of LAs in relation to the IRP is provided.

6. Some of the comments from participants raise questions as to whether the guidance is always being followed, especially in relation to information provided in notification letters to parents. We recommend that the Department for Education should consider gathering further evidence on this.

7. Parents were not always clear about the potential outcome of each route. The Department for Education should examine how best to ensure that parents are provided with this information.

8. The Department for Education should consider reviewing guidance on the location of IRPs.

Appendices

Appendix one: Comparison of IRP and FTT

The table below provides an overview comparison between the IRP and First-tier Tribunal systems:

	IRP	First-tier Tribunal
Status	Non-judicial	Judicial
Guidance	Statutory guidance ¹⁹ is published by the Department for Education, covering the exclusion process, including IRPs. The Coram Children’s Legal Centre publishes guidance on the exclusion process aimed at parents ²⁰ .	Guidance published online and in booklets. Upper Tribunal issues binding decisions.
Remit	An IRP can review any permanent exclusion decision from a maintained school, pupil referral unit (PRU) or academy. This can include cases where it is alleged that the exclusion constitutes disability discrimination.	The First-tier Tribunal hears cases where it is alleged that the exclusion constitutes disability discrimination.
Timing of request / claim	Parents must make their request for an IRP within 15 school days of being notified that the governing body has upheld the exclusion or within 15 school days of the outcome of a First-tier Tribunal hearing.	A claim to the First-tier Tribunal can be made up to six months after the discrimination is alleged to have occurred. If parents request an IRP and make a claim to the Tribunal concurrently, the Tribunal will put the case on hold until the IRP is determined.
Arrangement of panel / hearing	For maintained schools, the local authority arranges the IRP. For academies, this role is performed by the academy trust.	Appointments from list of trained specialist Judges and members who are initially appointed by the Judicial Appointments Commission
Timing of hearing / outcome	An IRP must begin within 15 school days of the parent’s application for a review.	The outcome of a claim to the First-tier Tribunal should be reached within six weeks.
Panel / Tribunal members and advisers	IRPs comprise specifically trained and impartial school governors, headteachers and a lay chair. A clerk may be appointed to provide procedural and legal advice to the panel. An SEN expert may be appointed to provide advice to the panel.	1 judge and 2 members appointed to SEN + disability discrimination training in compliance to Senior Presidents practice statement on composition.

¹⁹ <http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

²⁰ http://www.childrenslegalcentre.com/index.php?page=school_exclusions

	IRP	First-tier Tribunal
Status	Non-judicial	Judicial
Attendance; oral and written representations	The following may attend and make representations to an IRP: The parents; the pupil; the headteacher; representatives from the governing body; representatives from the local authority (in the case of an academy the parents may invite a representative from the local authority to attend as an observer. The representative can however make representations with the academy trust's consent). Parties attending the hearing have the right to be represented or have a friend attend. Witnesses may attend or provide written representations.	Right to oral hearing governed by procedure rules and principles of natural justice.
Powers / outcome	The IRP can uphold the exclusion; recommend that the governing body reconsiders the exclusion; or direct the governing body to reconsider the exclusion. The IRP can only direct the governing body to reconsider where it finds the exclusion to be illegal, irrational or so procedurally flawed that justice clearly has not been done. If, following a direction to reconsider, the governing body decides not to offer to reinstate the pupil; the school may be required to pay £4,000 to the local authority, which may be used towards the cost of alternative provision for the pupil.	May direct reinstatement. No authority to issue monetary penalties.

Appendix two: Participant Information Sheet

Project information sheet

Research into: Independent Review Panel and First Tier Tribunal Exclusions Appeal Systems.

What is the research about and who has commissioned it?

The Department for Education (DfE) has commissioned independent researchers at the Centre for Education and Inclusion Research (CEIR) at Sheffield Hallam University to conduct an investigation into the two appeals routes against permanent exclusions from school: Independent Review Panels (IRPs) and First Tier Tribunals (FTT).

Aims

The aim of the research is to find out what it was like for those involved to go through the independent Review Panel and the First Tier Tribunal.

What will the research involve?

Participation is voluntary. Data collected from parents/carers, pupils and schools will be confidential and anonymous, so that no individuals will be identifiable at any point (including in any reports) to DfE or to anyone else. Researchers will be conducting:

- **30 face to face interviews with parents** (and in some cases the pupil) who have been through either the IRP or FTT appeal process since September 2012. The interview will ask about experiences of the appeal route taken. Interviews are expected to last **no more than one hour**.
- **20 telephone interviews with head teachers** who have been involved in an appeal route since September 2012. The interviews will take around **30 minutes**. The purpose will be to understand how head teachers prepared for and experienced the appeals process.
- **10 telephone interviews with governors** from schools involved in an appeal route since September 2012. These interviews will be broadly similar to those with head teachers.

What will participation involve?

If you agree to be contacted about this research please fill in the attached form and post back using the pre-paid envelope, you will be contacted by a researcher from Sheffield Hallam University who will go through more details of the research and check that you are happy to take part. A convenient time for a researcher to come and interview you at your home/conduct a telephone interview with you will then be arranged. You will be able to withdraw from the research at any time including withdrawing any interview data after the interview has taken place.

When will the report be published?

A final report will be submitted to DfE and is expected to be published in autumn 2013.

For any enquiries please contact: Project Manager: Claire Wolstenholme
c.e.wolstenholme@shu.ac.uk Tel: 0114 225 6058

Centre for Education and Inclusion Research (CEIR) Sheffield Hallam University

Please fill in the fields below and return in the prepaid envelope.

I would like to be contacted about participation in this research

Name.....

Phone number.....

Email.....

Are you a: Parent/carer Head teacher Governor

Appendix three: Interview Schedules

IRP and FTT Exclusions Appeals Systems - Parent/carer interview schedule.

Introduction

Researcher outlines the wider project and gives the project information sheet. Explain the purpose and the content of the interview as well as what will happen to the data. Interviewer stresses that we are independent and impartial and that the interview will in no way impact upon the outcome of the appeal. Explains confidentiality and anonymity and seeks permission to record the interview. Asks if there are any questions and then takes consent for parent and young person if applicable. **Lastly explains that this interview seeks to gain perceptions of the process of the appeal regardless of the outcome.**

1) I understand the appeals process you were involved in was through the IRP/ FTT? (Delete as appropriate) Is the process completed?

- **If yes** – what was the outcome?
- **If not** - why is this? When do you estimate it will be?

Motivations and experiences prior to the IRP /Tribunal

2) What were your reasons for deciding to challenge the permanent exclusion by going through an independent appeal?

- Who was involved in making the decision? E.g. your son/daughter involved?
- Did you seek out or receive support or information/guidance?
- **If yes**- where was this support/guidance from? (e.g. parent support groups, internet, friends/family ,other) In what ways did this influence your decision?
- **If no** - In hindsight do you feel this would have been helpful/influenced your decision?

3) (From above either **IRP or FTT**)- How did you decide to use this route to appeal?

- Was it a consideration of SEND?
- Who was involved in making the decision? E.g. your son/daughter involved?
- Did you seek out or receive support or information/guidance?
- **If yes**- where was this support/guidance from? (e.g. parent support groups, internet, friends/family, other) In what ways did this influence your decision?
- **If no** - In hindsight do you feel this would have been helpful/influenced your decision?

4) How did you request the appeal? Can you explain the process you went through?

- How did you find the process of requesting an appeal? Was it easy/difficult? How long did it take?
- Did you receive support in making the request for an appeal? If so who from? What support did you receive? How helpful was the support?

5) Did you do any preparation for the appeal day?

- **If yes** - What did you do? [detail]
- Was this different from the preparation for the appeal with the board of governors?
- Did you receive any support in preparing? Who by? How much? Was it helpful?
- **If no** - In hindsight, do you think this would have helped?

6) Did you bring legal representation to the appeal?

- **If yes** - what was the reason for this? Did you find this helpful? In what ways/why not?
- **If no**- In hindsight, do you feel this would have been helpful?

Perceived cost of IRPs and First-tier Tribunals

7) Did you incur any financial costs as a result of the process?

- **If yes -What were they? What was the reason for these costs?**
- Can you estimate the cost?
- Did you feel these were reasonable costs? Why/why not?
- Where you aware about these costs before you appealed?
- What (if any) impact did the costs have?
- Is there anything that could have helped to reduce these costs?

Experiences and perceptions of the process

8) Where was the IAP/FTT appeal held?

- What did you think of where it was held? e.g. Do you feel it was appropriate and easy to access? Any problems?

9) Putting aside the outcome of the appeal, what was your experience of the appeal (IRP/FTT?)

- What happened on the day?
- Did you feel it was fair/unfair? In what ways?
- Did you feel it was well organised? In what ways?
- Was there anything that stopped you from being able to make your case? e.g. Was it intimidating in any way? How/why?

10) Again setting aside the outcome, how did you view the panel?

- Did you feel the members were suitable? I.e. were they qualified, impartial and fair, polite and respectful? [detail] Any other comments on the panel?

Consideration of SEND and the SEN expert

11) (If not covered earlier) do you consider your child to have Special Educational Needs or a Disability (SEND)?

- Was this relevant to the appeal?
- **If yes** -Could you describe the nature of this?

12) **(For IRP only)** did you request an SEN expert?

- **If yes** to what extent did you find them qualified and helpful?
- **If no** - were you/ your child aware that you could request the inclusion of an LA/Academy Trust-appointed SEN expert to provide advice to an IRP?

13) **(For FTT or IRP where SEN is relevant)** Do you feel that SEND was taken into account/discussed enough in the appeal?

- What are your reasons for saying this?

14) How long did it take to get a final decision after the appeal?

- How long was it in total from the date of application to the final decision?
- What are your views on this?

15) Is there anything else that we have not covered that you wanted to mention?

Thank you for your time

IRP and FTT Exclusions Appeals Systems - Young people interview schedule.

Introduction

Researcher outlines the wider project and gives the project information sheet. Explain the purpose and the content of the interview as well as what will happen to the data. Interviewer stresses that we are independent and impartial and that the interview will in no way impact upon the outcome of the appeal. Explains confidentiality and anonymity and seeks permission to record the interview. Asks if there are any questions and then takes consent. **Lastly explains that this interview seeks to gain perceptions of the process of the appeal regardless of the outcome.**

Preparing for the appeal

1) Were/How were you involved in deciding to appeal?

- What did you think about the decision to appeal? Did you want to? Why?/Why not?
- Did you talk to anyone about it?

2) (From above either IRP or FTT) Were/How were you involved in choosing the appeal route?

- What did you think about the route chosen?

3) Did you attend the appeal?

- Why/why not?
- Who made the decision?
- Do you feel it was the right decision?

If yes go to Q4

If no go to Q9

4) Did you do anything to prepare for the appeal day?

- **If yes** - What did you do? [detail]
- Did you get any support in preparing? Who by? How much? Was it helpful?
- **If no** - Looking back now, do you think this would have helped?

Your views on what happened during the appeal

5) Where was the IAP/FTT appeal held?

- What did you think of where it was held? E.g. easy to get to?

6) Trying not to think about the outcome of the appeal, what did you think about the appeal (IRP/FTT?)

- What happened on the day?
- Did you get the chance to talk?
- How did you feel about it?

- Did you feel it was fair/unfair? In what ways?
- Did you feel it was well organised? In what ways?
- Was there anything that stopped you from being able to say what you wanted to? E.g. Was it scary in any way? How/why?

7) Again setting aside the outcome, how did you view the panel?

- Did you feel the members were suitable? I.e. were they fair? Were they polite? *[detail]* Any other thoughts on the panel?

8) **(For IRP only- If applicable - Find out name of SEN expert from parent)** what did you think about [name of the SEN expert]?

- Was he/she helpful? Why/ why not- in what ways?

9) **(For FTT or IRP where SEN is relevant- speak to parents first about the feasibility of discussing any SEND issues the YP may have with the YP)**

Do you feel that [any SEND issues] was taken into account/discussed enough in the appeal?

- What are your reasons for saying this?

10) Overall putting aside the outcome of the appeal. Do you think the appeal was a good thing to do or not?

- What are your reasons for saying that?

11) Is there anything else that we have not covered that you wanted to mention?

Thank you for your time

IRP and FTT Exclusions Appeals Systems - Headteacher Interview Schedule

Introduction

Researcher outlines the project, and explains the purpose and the content of the interview. Asks if there are any questions and then takes consent. Explains confidentiality and anonymity and seeks permission to record the interview. **Lastly explains that this interview seeks to gain perceptions of the process of the appeal regardless of the outcome.**

Interviewees job role:

1) I understand the appeals process you were involved in was through the IRP/ FTT? (Delete as appropriate) Is the process completed?

- **If yes** – what was the outcome? When was it completed?
- **If not** - Why is this? When do you estimate it will be completed?

- Did you represent the school at the appeal?
- Did you take a governor/anyone else?
- Are you an academy?!

2) Can you tell me a bit about the appeal the school was involved in?

- What was the reason for the exclusion and independent appeal?

Preparation for the process

3) Did the school undertake any work in order to prepare for the IRP/Tribunal?

- **If yes** – What work was it? How many staff hours, on average, and at which grade/level were involved in preparing for an appeal?

Perceived cost of IRPs and First-tier Tribunals

4) Did the school incur any financial costs as a result of the process (preparing for and attending)?

- **If yes** - What were they and what was the reason for these? Can you estimate the cost?
- Do you feel these were reasonable / acceptable? Can you explain why?

5) Did the school have legal representation?

- **If yes** - What was the reason for this? How useful did you find it?
- Were there any additional costs from this?
- **If no** - Why not? In hindsight do you think this would have been useful?

Experiences and perceptions of the process

6) Where was the appeal held?

- What did you think of where it was held? (Prompt: e.g. Do you feel it was appropriate and easy to access for all participants?)

7) What was your experience of the IRP/FTT?

- Whatever you think of the outcome, what do you think of the way it was conducted?

Prompts:

- Do you think it was conducted fairly or unfairly? In what ways?
- Did you feel it was well organised? (efficient/inefficient) In what ways?
- Was there anything that inhibited you or anyone else from making their case? E.g. did anybody in any way feel more or less intimidated than others or did everybody feel OK? How/why?

8) Again putting aside the outcome of the appeal, how did you view the panel?

- Did you feel the members were suitable? I.e. were they qualified, impartial and fair, polite and respectful?

(Consideration of SEND and the SEN expert)

9) (For IRP only) was an SEN expert present?

- **If yes-** what were your experiences of the SEN expert? How did they contribute to the process? In what ways were they helpful/unhelpful?

10) Did you feel you were able to put forward your case as well as possible? Were there enough opportunities to be involved in the process?

- What opportunities were there to speak and/or put forward evidence? Was this sufficient for you to feel you had said everything necessary?

11) How long did it take to get a final decision after the appeal?

- How long was it in total from the date of application to the final decision?
- What are your views on this?

12) When the appeal panel's decision was returned to you how was this considered?

13) Is there anything else that you wanted to say?

Thank you for your time.

IRP and FTT Exclusions Appeals Systems - Governor Interview Schedule

Introduction

Researcher outlines the project, and explains the purpose and the content of the interview. Asks if there are any questions and then takes consent. Explains confidentiality and anonymity and seeks permission to record the interview. **Lastly explains that this interview seeks to gain perceptions of the process of the appeal regardless of the outcome.**

Interviewees job role:

1) I understand the appeals process you were involved in was through the IRP/ FTT? (Delete as appropriate) Is the process completed?

- **If yes** – what was the outcome? When was it completed?
- **If not** - Why is this? When do you estimate it will be completed?
- (check) Did you attend the appeal?

2) Can you tell me a bit about the independent appeal the school was involved in?

- What was the reason for the exclusion and independent appeal?
- During the appeal to the board of governors, to what extent were you considering the parents making an independent appeal through either IRP or FTT?

Preparation for the process

3) Were you involved in any work (with the school or independently) in order to prepare for the IRP/Tribunal?

- **If yes** – What work was it? How much time did you spend on it?
- Why did you decide to do this?

Perceived cost of IRPs and First-tier Tribunals

4) Do you know if the school incurred any financial costs as a result of the process (preparing for and attending)?

- **If yes** -what were they and what was the reason for these?
- What are your views on this? Do you feel these were reasonable / acceptable? Can you explain why?

5) Did the school have legal representation?

- **If yes** - What was the reason for this? How useful did you find it?
- Were there any additional costs from this?
- **If no** - Why not? In hindsight do you think this would have been useful?

Experiences and perceptions of the process

6) Where was the appeal held?

- What did you think of where it was held? (Prompt: e.g. Do you feel it was appropriate and easy to access for all participants?)

7) What was your experience of the IRP/FTT?

- Whatever you think of the outcome, what do you think of the way it was conducted?

Prompts:

- Do you think it was conducted fairly or unfairly? In what ways?
- Did you feel it was well organised? (efficient/inefficient) In what ways?
- Was there anything that inhibited you or anyone else from making their case? E.g. did anybody in any way feel more or less intimidated than others or did everybody feel OK? How/why?

8) Again putting aside the outcome of the appeal, how did you view the panel?

- Did you feel the members were suitable? I.e. were they qualified, impartial and fair, polite and respectful?

(Consideration of SEND and the SEN expert)

9) **(For IRP only)** was an SEN expert present?

- **If yes-** what were your experiences of the SEN expert? How did they contribute to the process? In what ways were they helpful/unhelpful?

10) Did you feel you were able to put forward your case as well as possible? Were there enough opportunities to be involved in the process?

- What opportunities were there to speak and/or put forward evidence? Was this sufficient for you to feel you had said everything necessary?

11) How long did it take to get a final decision after the appeal?

- How long was it in total from the date of application to the final decision?
- What are your views on this?

12) When the appeal panel's decision was returned to you how was this considered?

13) Is there anything else that you wanted to say?

Thank you for your time.



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Any enquiries regarding this publication should be sent to us at:

christopher.price@education.gsi.gov.uk or www.education.gov.uk/contactus

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Sheffield Hallam University

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WOLSTENHOLME, Claire <<http://orcid.org/0000-0002-6660-6385>>, COLDWELL, Michael <<http://orcid.org/0000-0002-7385-3077>> and STIELL, Bernadette <<http://orcid.org/0000-0001-8784-6989>>

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