



North Northamptonshire Schools Forum: 4 November 2021

Agenda Item 8

2021-22 Permanent Exclusion Clawback Policy

Appendix F

1 Background

- 1.1 To update the local policy in relation to permanent exclusion clawback. This new policy will replace the previous NCC policy position so that the new council is following the legislation and guidance in calculating clawback.
- 1.2 It is the responsibility of the LA to clawback funding from schools and academies that permanently exclude pupils. Previous NCC policy was to clawback a fixed fee of £3,000 and a pro-rata amount of the AWPU (pro-rata based on LA financial year). The mechanism for clawing back is to reduce monthly transfer payments unless an invoice is requested.
- 1.3 The previous NCC policy was a general method of arriving at the clawback value and had the advantage that it didn't involve the need for specific child level data and time consuming calculation. It also removed the "temptation" for a school or academy to manage the date on which they permanently excluded a pupil for financial reasons. As a new council we will move to a more literal interpretation of the legislation following feedback from schools.
- 1.4 In some cases this is likely to mean a higher clawback and in others a lower clawback, depending on whether the pupil would have generated budget for the school through: FSM, FSMever6, IDACI, low prior attainment, ESOL and pupil premium grants. It is also dependent on the time in the year when the pupil is excluded.
- 1.5 This budget clawback is separate to, and may be in addition to, a review panel ordering a financial adjustment of £4,000 to a school or academy budget share if a permanent exclusion is over turned.
- 1.6 This paper is brought to the Schools Forum to raise awareness and for consultation. As a LA we are constrained by the legislation.

2 Legislation

2.1 *Exclusion from maintained schools, academies and pupil referral units in England Statutory guidance for those with legal responsibilities in relation to exclusion, DFE, 2017*

The Government have produced a summary of the legislation for permanent exclusions which is available on gov.uk the following are extracts from that document:

181 The local authority cannot require a maintained school or academy to make any additional payments following a permanent exclusion, other than the budget share

deductions set out in regulations, or the payments which an academy has to make under its funding agreement.

183 A local authority may ask an academy trust to enter into an arrangement for the transfer of funding for a pupil who has been permanently excluded, on the same basis as if the academy were a maintained school. The academy trust may be obliged under its funding agreement to comply with such a request.

2.2 Pupils permanently excluded from, or leaving, maintained schools

[The School and Early Years Finance \(England\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

CHAPTER 2

Adjustments, Correction of Errors, and Alternative Arrangements Authorised by the Secretary of State

Pupils permanently excluded from, or leaving, maintained schools

29.—(1) Where a pupil is permanently excluded from a school maintained by a local authority (other than a special school, a pupil referral unit, or a place which the authority has reserved for children with special educational needs) (“the excluding school”) the authority must redetermine the excluding school’s budget share in accordance with paragraph (2).

(2) The excluding school’s budget share must be reduced by $A \times (B / 52) + C$ where—

- (a) *A* is the amount determined by the authority in accordance with this Part that would be attributable to a pupil of the same age and personal circumstances as the pupil in question at primary or secondary schools maintained by the authority for the full funding period;
- (b) *B* is either—
 - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
 - (ii) where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date; and
- (c) *C* is the amount of the adjustment made to the school’s budget share under a financial adjustment order.

(3) Where a pupil has been permanently excluded from the excluding school and is admitted to another school maintained by a local authority (other than a special school, a pupil referral unit, or to a place which the authority has reserved for children with special educational needs) (“the admitting school”) in the funding period, the authority must redetermine the admitting school’s budget share in accordance with paragraphs (4) and (5).

(4) The admitting school’s budget share must be increased by an amount which is not less than $D \times (E / F)$ where—

- (a) *D* is the amount by which the authority reduced the budget share of the excluding school, or would have reduced the budget share if that school had been maintained by the authority, except that any reduction in the excluding school’s budget share made under a financial adjustment order must not be taken into account for these purposes;
- (b) *E* is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c) *F* is the number of complete weeks remaining in the funding period calculated from the relevant date.

(5) In redetermining the admitting school's budget share, the authority may increase it by any amount up to the amount of the adjustment made to the excluding school's budget share under a financial adjustment order.

(6) Where a permanently excluded pupil is subsequently reinstated by the governing body of the school, the school's budget share must be increased by an amount which is no less than $G \times (H / I)$ where—

- (a) G is the amount by which the authority reduced the school's budget share under paragraph (2);
- (b) H is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c) I is the number of complete weeks remaining in the funding period calculated from the relevant date.

(7) Paragraphs (1) and (2) also apply where a pupil leaves a maintained school (other than a special school, a pupil referral unit, or a place which the authority has reserved for children with special educational needs) for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(8) For the purposes of paragraph (2)(a), the amount attributable to a pupil is the sum of the amounts determined in accordance with the authority's formula, by reference to pupil numbers rather than by reference to any other factor or criterion not dependent on pupil numbers (except that where a sixth form grant is payable in respect of the pupil in question, the amount attributable to that pupil is £4,188 for the funding period).

(9) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority ("the excluding school"), the local authority must redetermine the excluding school's budget share in accordance with paragraph (10).

(10) The excluding school's budget share must be reduced by $J \times (K / 52)$ where—

- (a) J is the amount of the pupil premium allocated to the excluding school for the funding period in respect of that child; and
- (b) K is either—
 - (i) the number of complete weeks remaining in the funding period calculated from the relevant date; or
 - (ii) where the permanent exclusion takes effect on or after 1st April in a school year at the end of which pupils of the same age, or age group, as the pupil in question normally leave that school before being admitted to another school with a different pupil age range, the number of complete weeks remaining in that school year calculated from the relevant date.

(11) Where a pupil in respect of whom a pupil premium is payable has been permanently excluded from a school maintained by a local authority and admitted to another school maintained by a local authority ("the admitting school") in the funding period, the authority must redetermine the budget share of the admitting school in accordance with paragraph (12).

(12) The admitting school's budget share must be increased by an amount which is not less than $L \times (M / N)$ where—

- (a) L is the amount by which the authority reduced the budget share of the excluding school or would have reduced the budget share had that school been maintained by the authority;
- (b) M is the number of complete weeks remaining in the funding period during which the pupil is a pupil at the admitting school; and
- (c) N is the number of complete weeks remaining in the funding period calculated from the relevant date.

(13) Where a permanently excluded pupil in respect of whom a pupil premium is payable is subsequently reinstated by the governing body of the school, the school's budget share must be increased by an amount which is no less than $O \times (P / Q)$ where—

- (a) O is the amount by which the authority reduced the school's budget share under paragraph (10);
- (b) P is the number of complete weeks remaining in the funding period during which the pupil is reinstated; and
- (c) Q is the number of complete weeks remaining in the funding period calculated from the relevant date.

(14) Paragraphs (9) and (10) also apply where a pupil in respect of whom a pupil premium is payable leaves a maintained school for reasons other than permanent exclusion and is receiving education funded by a local authority other than at a school which is maintained by that authority.

(15) For the purposes of this regulation—

- (a) "the relevant date" is the sixth school day following the date on which the pupil has been permanently excluded; and
- (b) "a financial adjustment order" means an order for the adjustment of a school's budget share made under regulation 25(5)(b) of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012(57) in respect of the exclusion of the pupil from the excluding school.

3 Future options

3.1 Proposed Policy

- a) The clawback of funding from schools and academies will be based on the per pupil funding formula that the individual excluded pupil would have generated for the school's budget share and pupil premium grants, (whether they were present on census day or not).

- b) The clawback will be pro-rata based on 52 weeks from 1st April to 31st March (unless the pupil is in their final year, then pro-rata from 1st April to 31st August).
- c) The mechanism of clawback will default to a reduction in monthly transfers unless the value is large and/or the school or academy request an invoice.

4. Recommendations for Schools Forum

Schools Forum are asked to approve the policy shift as stated in this paper.

A full policy document will be circulated to all schools in line with this proposal should the Schools Forum agree to the proposal.

5. Next steps

- a) To include the proposal in the schools’ consultation to be considered at the schools forum in December following responses from schools.
- b) For Schools Forum to vote on the acceptance of the policy.

6. Financial implications

6.1 It is difficult to predict the financial value as the general rule is that there will be higher value clawbacks from the new policy from schools’ budgets where:

- excluded pupils are generating a large budget share through characteristics other than the AWP. For example, FSM, FSM6, IDACI, Low Prior Attainment, ESOL and the pupil premium grants and
- excluded pupils are excluded soon after 1st April reducing (to almost £0) as it reaches 31st of March.

6.2 Table 1 shows the old policy calculation of the clawback as compared to the proposed policy that will bring the LA back in line with the legislation.

Table 1 – The proposed policy compared to NCC policy for clawback for permanent exclusion

Phase	OLD Policy Maximum Clawback	OLD Policy Minimum Clawback	NEW Policy Maximum Clawback	New Policy Minimum Clawback
Primary	$£3,133.24 + £3,000 = £6,133.24$	£3,000	£9,630	£0
Sec – KS3	$£4,418.45 + £3,000 = £7,418.45$	£3,000	£11,995	£0
Sec – KS4	$£4,979.28 + £3,000 = £7,979.28$	£3,000	£12,556	£0

6.3 Table 2 shows the value of each formula factor that can be clawed back through the new policy

Table 2: Formula Factors that have to be included in the calculation of the clawback based on latest modelling for 2022-23 schools' formula budgets (subject to change). Pupil Premium Grant gives 2021-22 rate

Funding Formula Factor	Primary	Secondary KS3	Secondary KS4
AWPU	£3,133.24	£4,418.45	£4,979.28
FSM	£461.51	£461.51	£461.51
FSM6	£576.89	£842.76	£842.76
IDACI band A	£622.03	£867.84	£867.84
EAL	£551.80	£1,489.87	£1,489.87
Mobility	£902.95	£1,294.23	£1,294.23
Low Prior Attainment	£1,098.59	£1,665.44	£1,665.44
Pupil Premium FSM	£1,345.00	£955.00	£955.00

6.4 Income from clawbacks has been falling as the high needs service work with schools to look at alternative arrangements

	Northamptonshire County Council			NNC
	2018-19	2019-20	2020-21	2021-22
Income Budget from clawbacks	£450k	£450k	£0	£0
Income achieved/ <i>estimated</i>	£306k	£683k	£310k	£70k est
Variance	-£144k	£233k	£310k	£70k est

7 Legal implications

7.1 Legal implications are discussed above as this paper seeks to align practises within legislative requirements for permanent exclusion budget clawbacks.

8 Risks

8.1 If the proposed changes to the policy are not approved by Schools Forum, the LA is not adhering with legislative requirements.

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