

West Northants Schools Forum: 19 October 2021

Agenda Item: 7a

Permanent Exclusion Clawback Policy

Appendix D – Permanent Exclusion Clawback Policy

1 Background

- 1.1 To update the local policy in relation to permanent exclusion clawback. This new policy would replace the previous NCC policy position so that the new councils are 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 transfers payments unless an invoice is requested.
- 1.3 This policy was a general method of arriving at the clawback value and has the advantage that it doesn't involve the need for specific personal 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. However, West Northamptonshire Council (WNC) would like to move to a more literal interpretation of the legislation.
- 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 and is also dependent on the point 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 academies budget share if a permanent exclusion is over turned.
- 1.6 This paper is brought into the schools consultation to ask for schools views and to raise awareness of the issue but ultimately as an LA we are constrained to follow the legislation.

2 Main report section or sections

2.1 Legislation

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.

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)

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 re-determine 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 re-determine 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 re-determining 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 re-determine 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.

3. Future options

Proposed Policy

- 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).
- The clawback will be pro-rata based on 52 weeks from 1 April to 31 March (unless the pupil is in their final year, then pro-rata from 1st April to 31st August).
- 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

4.1 To support this report and the officer suggested de-delegation rate for redundancy funding for inclusion in the Schools Funding Consultation and to be aware that a vote will be required by Maintained School Members in December's forum meeting.

5. Next steps

- To include in schools consultation and to seek the view of schools, to be reported to schools forum in December.
- For schools forum to vote on the acceptance of the policy to communicate their view on the policy. Ultimately though, the LA has to follow the legislation.

6. Financial implications

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

- excluded pupils are generating a large budget share through characteristics other than the AWPU. For example, FSM, FSM6, IDACI, Low Prior Attainment, ESOL and the pupil premium grants and;
- that are excluded soon after 1 April as it will reduce to almost nothing as it reaches 31 March.

6.2 Table 1 shows the old policy calculation of the clawback as compared to the policy that will bring in line with the legislation and Table 2 shows the value of each formula factor that can be clawed back through the new policy.

Table 1: NCC policy for clawback for Permanent Exclusion as compared to the new policy that follows the legislation

Phase	OLD Policy Maximum Clawback	OLD Policy Minimum Clawback	NEW Policy Maximum Clawback	New Policy Minimum Clawback
Primary	£3,228+ £3,000 = £6,228	£3000	£8,908	£0
Sec – KS3	£4,550+ £3,000 = £7,550	£3000	£12,302	£0
Sec – KS4	£5,129 + £3,000 = £8,129	£3000	£12,902	£0

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.

Formula Factor	Primary £	Secondary KS3 £	Secondary KS4 £
AWPU	3,228	4,550	5,129
FSM	472	472	472
FSMe6	592	868	868
IDACI band A	642	893	893
EAL	567	1,535	1,535
Mobility	928	1,334	1,334
Low Prior Attainment	1,134	1,716	1,716
Pupil Premium FSM	1,345	955	955
Total	8,908	12,323	12,902

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

Northamptonshire County Council				WNC
	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 is about aligning practices with the legislation for permanent exclusion budget clawbacks from schools and academies.

8. Risks

8.1 The main risks arising should schools forum not agree with the change in policy. The LA would not be able to implement a policy that is not in line with legislation.

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