

PARENTAL COMPLAINTS PANEL: FREQUENTLY ASKED QUESTIONS

Parental Complaints Panel: FAQs

The ISBA has worked in conjunction with HCR Law on the following guidance note.

This note relates to panels convened to deal with parental complaints under Stage 3 of the School's complaints procedure. Schools should always ensure that Panel hearing processes are consistent with their complaints procedure and any instructions and communications sent to individuals involved in the process, including those tasked with investigating complaints, the parents and Panel members at Stage 3.

The ISI Commentary on the Regulatory Requirements (March 2023) was withdrawn with effect from September 2023 and replaced by the ISI Inspection Framework ('Framework') and ISI Inspection Handbook ('Handbook'). Schools are expected to be guided by the Framework and the Handbook from September 2023 onwards (and by any other further resources and/or guidance notes ISI may produce from time to time). To the extent the Commentary has not been contradicted or expressly overturned by the provisions within the Framework or the Handbook, we continue to regard the contents of the Commentary as evidence of historically accepted good practice and an indication of ISI's likely interpretation of the regulatory requirements. The Framework and Handbook contain very little substantive commentary on Part 7 of Schedule 1 of the ISS Regulations relating to parental complaints; the information it does include has been referenced and taken into account in this document.

Although the focus of these FAQs is on panels convened to deal with parental complaints, we have added a question in relation to appeals against exclusions and required removals. The question is 'What should we consider before holding a Panel hearing relating to an appeal against an exclusion or required removal?'. This can be found at page 13 below.

There are specific considerations around complaints that involve data protection issues. Please see the guidance note to the Model Complaints Procedure for more information.

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BEFORE THE HEARING

How can parents invoke a Complaints Panel hearing?

Part 7 of the Education (Independent School Standards) Regulations 2014 (ISS Regulations) references an entitlement to a Panel hearing “where the parent is **not satisfied** with the response to the complaint made in accordance with sub-paragraph (e)” (sub-paragraph (e) being the Stage 2 decision). Therefore, any written expression of dissatisfaction with the Stage 2 decision made by the parents will require schools to make provisions for a Panel hearing under the ISS Regulations, although practically this will only be required if the parents have stated that they wish to continue to Stage 3. Parents cannot move directly to Stage 3; they must first go through the Stage 2 process.

Schools should include in their Complaints Procedure detail on how an appeal to Stage 3 can be requested, and who it must be addressed to (and this will commonly be to the clerk to the Chair of Governors), but schools should be mindful that dissatisfied parents who do not follow these procedural requirements should not be prevented from accessing Stage 3. Policies should also be clear about time limits for parents to bring or escalate their complaints to the next stage, in order to avoid the process being indefinitely open-ended or for arguments about this issue to be made. However, in setting time limits the ISI has commented in the past that flexibility should be allowed for extenuating circumstances which might have impeded the parent from taking action. Any timescales set should be realistic.

Do parents need to provide new grounds of appeal for a Panel hearing?

There is no reference in the ISS Regulations to parents having to provide a new ground on which an appeal is being raised. ISI has indicated in the past that perceived attempts to limit matters to be dealt with under a school complaints procedure can put policies at risk of not meeting the fundamental requirement of the standard, namely, to deal with complaints. In the past, inspectors have considered, for example, whether relevant wording in the Complaints Procedure is there to provide helpful clarification to parents about the most appropriate dispute resolution process within the school procedures or whether the true purpose of such wording could be to limit the availability of the statutory complaints process to parents. Limitations

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should be confined to issues for which there are other dispute resolution processes within the school in accordance with the standards.

Schools should be mindful that they do not seek to curtail the ability of parents to access the entirety of the Complaints Procedure, for example by insisting that parents must have provided new grounds of appeal in order to progress to Stage 3. This also means that a school is unable to ask a parent to 'shorten' a complaint or to be more concise. However, there may be circumstances where it is appropriate for the School to ask the parents to confirm and clarify the scope of their complaint, for example, where the complaint has been articulated differently at different times (for example across a number of emails, letters and/or conversations) or where the complaint is unclear and/or contains matters that appear to be duplicative. It is a matter for the school to determine how to respond and to identify the various elements of the complaint. Schools may wish to seek the parents' assistance if this proves difficult although the parents cannot be required to do so.

What should schools do if parents have threatened or initiated legal proceedings?

The Department for Education ('DfE') guidance on *The Independent School Standards: guidance for independent schools* ('DfE Guidance') is clear that parents' right to request and attend a Panel is not forfeited because they have threatened or initiated legal proceedings. School insurers cannot require their insured schools to default on their legal obligations as a condition of cover and insurers should be challenged on any attempt to do so. Inspectors have previously been advised not to accept the involvement of insurers as relevant to this issue.

How should schools acknowledge a Stage 3 complaint?

A school must set out in their Complaints Procedure detail on how, when and by whom an appeal to a Panel hearing is to be acknowledged, which should be done without undue delay. The school must include a timeframe in accordance with the school's Complaints Procedure. The ISI has previously indicated that timescales must be clear from the point of view of the complainant. Some policies often use words such as 'normally' to introduce flexibility during school holiday periods however, any deviation from the 'normal' timescales would usually need to be exceptional and wherever possible, agreed with the parent(s).

When acknowledging the appeal, schools may wish to give parents the following guidance on what to do before the Panel hearing and what to expect at the hearing:

Guidance for parents on the conduct of the Panel hearing¹

¹ Schools should ensure that this guidance is consistent with what is set out in their Complaints Procedure and any instructions sent to Panel members on their appointment. REMOVE WHEN ISSUING TO PARENTS.

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- i. The Panel will adopt whatever procedure it considers most appropriate bearing in mind all relevant factors including the nature of your complaint. While observing the solemnity appropriate to the nature of the hearing it will endeavour to make it as friendly and informal as practicable.
- ii. Parents have the option of being accompanied by one other person. This may be a relative, teacher or friend. The Stage 2 decision-taker is also entitled to bring a companion should they so wish. This may be a relative, teacher or friend. If a companion is to attend the hearing the Panel must be notified of his or her name and relationship with the Parents as soon as possible, and no later than **[two working days]**² in advance of the hearing. As the intention is to make the hearing as informal as practicable, legal representation will not be appropriate and the companion (for the Parents or the Stage 2 decision-taker) should not be a lawyer. The Panel will decide whether it would be helpful for witnesses to attend.
- iii. The Panel will afford reasonable opportunity to the Parents and any companion, provided they are permitted to attend, to explain their complaint and make representations. Companions may not answer questions on behalf of the Parents.
- iv. The Panel will conduct the hearing fairly and carefully. The hearing does not form part of any formal legal proceedings but is an internal school process and the Panel will not be bound by the strict rules of evidence and will reach its decision on the civil standard of proof, namely the balance of probabilities. It will give such weight as it considers appropriate to the evidence in whatever form it is tendered.
- v. It is expected that Parents will provide any relevant information and evidence on which they wish to rely along with their Stage 3 complaint. Relevant papers will be submitted to the Panel and circulated to all participants **[five working days]**³ in advance of the hearing. If the Parents have any additional information relevant to their complaint they would like the Panel to consider, they must provide this to **[insert name of convenor or clerk to the Panel]** as soon as possible. The Panel will have discretion as to whether further information will be taken into account. It should be noted that any documentation which is submitted late may result in a delay in the Panel reaching their decision. **[Please note that correspondence between you and the school to date in relation to your complaint will be circulated to all participants.]**
- vi. The Panel may, for any reason it considers appropriate, adjourn the hearing at any time; but if it does so it shall reconvene as soon as practicable. In exercising its

² The period by which parents should notify the school of any person accompanying them at the hearing may be stated in the school's Complaints Procedure and, if not, the deadline given should be reasonable in the circumstances. REMOVE WHEN ISSUING TO PARENTS.

³ This period may be stated in the school's Complaints Procedure. REMOVE WHEN ISSUING TO PARENTS.

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discretion under this paragraph, the Panel will give full consideration to any reasonable request made on behalf of the Parents.

- vii. After due consideration of the merits of the complaint and all facts they consider relevant, the Panel will make findings. If the Panel concludes that the Stage 2 decision in relation to the complaint was a reasonable decision to take in the circumstances, it will dismiss the complaint in whole or in part. If the Panel concludes that the Stage 2 decision was unreasonable it will uphold the complaint in whole or in part. The Panel may also recommend appropriate action to resolve the complaint or make recommendations to change or review the School's systems or procedures. The Panel cannot require that any financial compensation is paid to Parents or otherwise obligate the School to take particular steps.
- viii. The Panel's decision, which is final, will be communicated to Parents in writing within **[five working days]**⁴ of the hearing. Additional time may be required if the complaint is complex and/or it is necessary to carry out further investigations following the hearing. Parents will be kept informed when more time is required.

Should we appoint a Chair of the Panel?

We would recommend appointing a Chair of the Panel and this is often seen in complaints procedures. The Chair could then be responsible for: how, and confirm the way in which, the hearing will be run; communicate, on behalf of the Panel, with the relevant parties; oversee the decision-making process (both the final decision in relation to the complaint and any other decisions that may need to be taken, for example whether to require further particularisation of the complaint); whether to allow anonymisation of witness evidence; and whether additional investigation is required, etc.

Who should be on the Panel?

Part 7 of the ISS Regulations states that the panel must be appointed by or on behalf of the proprietor of the school and should consist of at least three people who were not directly involved in the matters detailed in the complaint. Aside from these directions and the requirement that the panel must include an individual who is independent of the management and running of the school (as described at below), Part 7 does not specify who should sit as the other panel members.

Usually existing governors will qualify for the other places on the Panel provided they have not been directly involved in the matters detailed in the complaint (a prerequisite for any Panel member). In the event the Head was not the decision-taker at Stage 2, there may be

⁴ This period may be stated in the school's Complaints Procedure. REMOVE WHEN ISSUING TO PARENTS.
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circumstances where it is appropriate for the Head to be included as a panel member. Including the Head on a Stage 3 panel is unlikely to be a common arrangement and careful thought should always be given to the identity of the decision-taker at each stage of the Complaints Procedure in light of the requirements of Part 7, the principles of natural justice and the particular circumstances of each case.

When selecting Panel members (including governors) schools should consider other factors which may compromise, or be seen to compromise, their impartiality. Some governors may have a close relationship with the complainants perhaps because they are also parents (or former parents), or they may have a significant albeit indirect involvement in matters detailed in the complaint. Where there is a real risk that a complaint may be extended in the course of the complaints process to directly involve the Head or a governor, he or she should not be appointed to avoid them becoming ineligible at a later stage.

There are also practical considerations in terms of selecting Panel members that are willing and able to attend the hearing; have the time to respond to any procedural matters prior to the hearing (especially if they are the Chair of the Panel); be involved in deliberations after the hearing; and assist in drafting or reviewing the decision/outcome letter before it is sent to the parents.

Where the school's own complaints process provides for governor involvement at more than one stage of the required three-stage process (for example, in the case of a complaint against the Head), the school should make sure its arrangements ensure the independence of each stage. The creation of separate sub-committees of governors/trustees will assist in this regard.

Who can be an independent Panel member?

The ISS Regulations state that one member on the Panel hearing the complaint must be independent of the management and running of the school. DfE Guidance states that an independent Panel member should not only be outside the school's workforce, and not a member of the Governing or Proprietary Body, but also should not be otherwise involved with the management of the school – for example, this might well be the case with a solicitor who regularly acts for a school. DfE advice on the selection "of an independent panel member" for involvement at the final stage of the complaints procedure also states that:

Our general view is that people who have held a position of responsibility and are used to analysing evidence and putting forward balanced arguments would be suitable. Examples of persons likely to be suitable are serving or retired business people, civil servants, heads or senior members of staff at other schools, people with a legal background and retired members of the Police Force might be considered.

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Former governors or staff of the school, could be appointed as the independent panel member provided they are "independent of the management and running of the school". However, schools should bear in mind that they may be subject to criticism, particularly if former governors or staff have recently resigned from those roles, that such people are too close to the school and may not be truly independent.

Are we allowed to pay an independent Panel member for their services?

Parents may raise concerns over the independence of a Panel member that is paid by the school for their role. Such concerns should be considered on a case-by-case basis having regard to the ISS Regulations.

In principle, an individual can be paid to be an independent panel member provided the school remains compliant with the ISS Regulations, i.e. they are not involved in the running or management of the school. If the individual is simply being paid for providing a service to the school by undertaking the role of an independent panel member, and they are not involved in the running or management of the school, then this would be sufficient to satisfy the ISS Regulations. Care should always be taken to ensure that the paid independent panel member can remain impartial and free of bias throughout the Stage 3 process, and that at all times they act within the remit of the Panel hearing as decided by the Chair of Governors. The school should make clear in any instructions or appointment letter that the individual is being appointed as the independent member of the Panel and are instructed to consider the complaint in a fair and impartial manner.

A useful (but not identical) comparator is that of a mediator appointed in a civil dispute. A mediator can be selected via a word-of-mouth recommendation and they will still be paid for their services despite having been recommended by one of the parties. The payment for the mediator to attend a mediation would not in itself create bias of any kind or impact their ability to hear the complaint impartially.

If a parent's concern raises reasonable doubts as to whether the school is complying with its legal obligations to, for example, appoint a truly independent Panel member under the ISS Regulations, the Panel should address any representations made and consider whether it is appropriate to appoint a new independent Panel member. Similarly, if the Panel considers a parent's concern is without merit, it may still wish to select a new independent panel member for the purposes of being seen to be fair and impartial and to maintain the trust and confidence of the parents. That said, schools should not feel 'forced' by parents into making changes to Panel members where they consider it unnecessary or unhelpful to do so.

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Which governors should be Panel members?

It is assumed that existing governors will, in the normal course of events, qualify for the other places on the Panel provided they have not been directly involved in the matters detailed in the complaint so far and they are more senior than the decision-taker at Stage 2 - a prerequisite for any Panel member.

For more information on choosing governors for a Panel, please see the answer to the question 'Who should be on the Panel?' above.

What if parents raise concerns regarding the composition of the Panel?

It is possible that parents may raise concerns over the composition of the Panel once it is made known to them. Their concerns should be considered on a case-by-case basis having regard to the ISS Regulations and the need to conduct the Panel hearing fairly and impartially. If the concern raises reasonable doubts as to whether the school is complying with its legal obligations to, for example, appoint a truly independent Panel member under the ISS Regulations, the Panel should address any representations made and consider whether it is appropriate to appoint a new independent Panel member. Similarly, if the Panel considers the concern is without merit, it may still wish to make changes to the composition of the Panel, for the purposes of being seen to be fair and to maintain the trust and confidence of the parents. That said, schools should not feel 'forced' by parents into making changes to Panel members where they consider it unnecessary or unhelpful to do so.

What if parents raise concerns about the diversity or experience (or lack thereof) of the Panel?

Issues in society are frequently reflected in schools and the topic of equality, diversity and inclusion (EDI) is no exception. A lack of apparent diversity or relevant experience/knowledge within the Panel is a parental concern that appears to be becoming increasingly common with more parents seeking to ensure that the Panel reflects a wide range of backgrounds and has relevant knowledge in the subject-matter of their complaint.

Schools may see concerns raised in relation to, for instance, the sex, race, age, experience and education of the Panel. When composing the Panel schools should consider the circumstances of the complaint to identify any steps that could be taken, at this stage, to avoid any perceived disadvantage or bias caused by a lack of diversity as it relates to the subject-matter of the complaint. This also has the benefit of reducing the likelihood of a challenge by the parents on this basis which may result in changes to the composition of the panel at a later stage. Again, although in such circumstances the parents cannot force the school to change Panel members, the school may wish to do so to ensure that the process is seen as fair.

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Can a Panel hear more than one complaint (at the same time)?

The ISI has indicated in the past that where several parental complaints arise from a common issue, it is feasible that the common point could be heard jointly as long as the other parts of the ISS Regulations relating to complaints are met for all complainants. For instance, each parent will be entitled to be accompanied at the hearing in line with a school's complaints procedure. Although this discretion in hearing common points of a complaint is welcome schools may still wish to have entirely separate hearings even where there are multiple complaints relating to the same or a similar issue, both for logistical and other reasons. In this situation schools may still have one Panel that deals with all such complaints.

Can parents request a change to the Panel hearing date and/or time?

The ISI has previously commented that arrangements for the Panel hearing should be reasonable in order to facilitate the parents exercising the right of attendance. Schools should endeavour to give as much notice as possible to parents of the time and date of the Panel hearing and give the opportunity for parents to raise any reasonable requests to change timings to accommodate their existing commitments. For instance, it would be reasonable for schools to accommodate working parents by arranging for the hearing to take place "out of hours" either earlier or later in the day. Panel hearings may also take place during school holiday periods, subject to the availability of those required to attend.

On the other hand, if a parent's request is not genuine and there is clear evidence that it is solely made to cause difficulty or disruption for a school, or to harass a member of staff, the Panel may wish to consider these requests as unreasonable having explained this to the parents and given them an opportunity to respond.

Schools may also be able to offer a remote/virtual hearing particularly if this may assist parents to attend the hearing. It is possible that parents may still refuse or not be able to attend a Panel hearing either remotely or in person within a reasonable timescale. Having given parents the choice of either route the Panel may decide that a Panel hearing should go ahead without the parents attending. Parents should be made aware of this in advance of the hearing and the hearing should still proceed in line with the Complaints Procedure. In our view this is likely to be a reasonable course of action provided steps have been taken to listen to and address their reasonable requests and concerns.

Should we delay a Panel hearing until we respond to a DSAR made by the parents?

It is increasingly common for parents to make a Data Subject Access Request (DSAR) alongside their complaint. Parents can make a DSAR for their own but also for their child's personal data (with their consent, if required). The information subsequently disclosed by schools can then be reviewed by parents and in this context is often used to support their

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complaint. DSARs are entirely separate from the complaints procedure and are governed by data protection law and the school's data protection policy. Parents may, however, request to delay a Panel hearing until disclosure of information requested under their DSAR. Under data protection law schools normally have up to one calendar month to respond to a DSAR. Schools should follow their DSAR or data protection policy which may set out a separate process to be followed. It is unlikely that the DSAR timescale and process will fit neatly into the complaints procedure, and the Panel is not obliged to delay a Panel hearing (or indeed other stages or parts of the procedure) until a DSAR is responded to. It may unnecessarily delay the complaints procedure especially if the school requires more than one month to respond and has extended the DSAR by up to three months in total due to its complexity.

That said, there are benefits to dovetailing the separate processes as far as this is practical. For instance, schools may wish to give parents additional time before submitting their grounds of appeal (etc) at Stage 3 to review information disclosed under their DSAR. If different staff are handling the DSAR this will need to be carefully coordinated and relevant staff will need to keep each other updated. Schools will also need to be clear with parents about any revised timescales and changes to them. Offering this flexibility is not mandatory but ensures that (i) parents feel more able to engage in the process, and (ii) it reduces the chances that parents try to introduce 'new' information late in the day, i.e., once they have received the DSAR disclosure.

Schools should be aware that a DSAR can be received at any time before or during the complaints process and once it has concluded at the end of Stage 3 (which may cover a request for correspondence exchanged between the school and Panel members and between Panel members themselves). There may be exemptions under data protection law which entitle the school to withhold some or all of this information but all involved should be reminded to only record what they would be prepared to stand by should it be disclosed to the parents in response to a DSAR.

Should we carry out investigations before a Panel hearing?

The Panel should not feel under any obligation to require an investigation of any or all of the grounds of appeal, even when parents are insisting on it. When considering the grounds of appeal, and any requests for further investigation, the Panel should determine which grounds of appeal (if any) may need further investigation in order to be able to determine its validity. The extent of any investigation should be proportionate to the magnitude of the complaint and should take into account what information is already available. Specific requests made by parents for searches or interviews to be conducted, for instance, need not be conducted unless there is a realistic prospect that they will provide relevant information that will assist the Panel in its deliberations. Requests for investigations which are excessive can also be refused. It is helpful if reasons are provided to show fairness and that any such request has been

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considered. From a practical perspective it is unlikely that the Panel members will carry out any further investigation themselves. They are likely to request that an appropriate staff member collates and shares with the Panel the further information sought.

Schools should be careful not to give assurances of anonymity or absolute confidentiality to parents or others spoken to as part of a complaint investigation. Parental complaints are confidential processes, but this does not mean that information cannot be shared externally or internally as appropriate and on a "need to know" basis. For example, with other parties to the investigation so they have a fair opportunity to respond to particular points raised, with the Stage 3 Panel, as part of a DSAR, with external agencies, as required etc.

Do we need to prepare and circulate a hearing bundle?

Schools should provide detail on the preparation and circulation of hearing bundles in their Complaints Procedure. A hearing bundle is typically prepared by the Clerk or Secretary to the Panel in advance of the hearing. It would normally contain all documents relied on by the parents, the grounds of appeal, the paperwork (including correspondence, evidence and minutes of meetings) associated with Stages 1 and 2 of the complaints process such as the decision-making process and any completed complaint form (if used by the school), and any further evidence or information following further school investigations prior to the Panel hearing. It should also include pertinent policies depending on the subject matter of the complaint, and a copy of the Complaints Procedure. Ideally the bundle should be paginated or at least indexed. It may also be helpful to divide it into sections, but duplication should be avoided where possible. It should be circulated to all parties, i.e., the parents and Panel members, in a secure manner and returned (if the bundle is in hardcopy) for secure shredding and disposal by the Secretary/Clerk to the Panel once the Stage 3 process has concluded. Electronic copies should not be retained, and parties should be asked to delete them.

Parents should be advised to provide any information they wish to have included in the hearing bundle as soon as possible and ideally at the same time as the submission of their Stage 3 complaint. This ensures that the Clerk or Secretary to the Panel has enough time to collate and distribute the bundle in advance. It is not always appropriate (usually for reasons of data protection and/or confidentiality) to include the full investigation report in the bundle; schools will need to consider this on a case-by-case basis. If that is the case, a school may wish to provide a summary or redacted version of the investigation report (or any other documents that may contain sensitive and/or confidential information) instead. Wording has been added to the Model Template Complaints Procedure to flag that it will not always be possible and appropriate for the School to share everything with the complaining parent/s. If adopted by schools, this wording should hopefully manage parental expectations and provide something for schools to point to, should a parent/s question why the School has not shared more.

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Should Panel members meet before a hearing?

Panel members often find it helpful to meet before a hearing takes place, either on the same day as the hearing or, more usually, in the days leading up to it. This may be by way of a telephone call or via Zoom/ Microsoft Teams (or similar video conference facility) once the Panel members have received the hearing bundle and had time to read it. At the pre-meeting Panel members can agree the structure/agenda of the hearing, how it is to be conducted and other practical matters such as whether the Panel wish to hear from the parents without the Stage 2 decision taker being present or if they wish the parents and Stage 2 decision taker to be in the same room. In this regard, Panel members may find it helpful to be given a copy of the ISBA Model Parental Complaints Panel Hearing Process which can be adopted or revised as appropriate. They may also wish to discuss the grounds of appeal and any questions they may wish to ask the parents and Stage 2 decision taker and whether any further information might be helpful. The Panel should bear in mind that any correspondence between them or documents created by them in the course of the preparation for and conduct of the hearing could be disclosable to the parents.

What should we consider before holding a Panel hearing relating to an appeal against an exclusion or required removal?

A school's Complaints Procedure does not necessarily need to cover appeals against exclusions / required removals, provided that schools have a separate process for dealing with these. Schools will need to consider in advance of publishing any policies what approach they wish to take. We anticipate that some schools will deal with appeals against exclusions under the final stage of their Complaints Procedure (i.e. Stage 3 of the Model Complaints Procedure) rather than providing for a separate procedure for such appeals, in which case it should be made clear to parents in correspondence (and, ideally, in the Discipline, Exclusions and Required Removal Policy) that an appeal against exclusion will be dealt with under the final stage of the Complaints Procedure (i.e. the full, three stage process is not available if the complaint is in fact an appeal against exclusion). This also needs to be consistent with what is said in the School's Terms and Conditions (Parent Contract) about a review of a decision taken under the clause enabling the School to exclude / require the removal of a pupil.

If appeals against exclusion are dealt with under the final stage of the Complaints Procedure, then schools should endeavour to complete this process as quickly as reasonably practicable, as the risk of lost schooling means that time will be of the essence. There may be circumstances (when a Panel is looking at an appeal of an exclusion / required removal) where it is practical and beneficial to deviate from the prescribed procedure for Stage 3 complaints. For example, because the school is unable to identify two governor panel members or an independent member. This can sometimes arise when the School has a number of appeals and / or Stage 3 Panels happening at one time and limited governor capacity. Although the school will still need to follow a fair process in respect of the appeal process in an exclusion and required removal context, the ISBA Model Complaints Procedure gives schools some

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flexibility to deviate from the strict provisions of the Stage 3 procedure where it may be pragmatic and appropriate to do so.

If, on the other hand, appeals against exclusion are dealt with under the Discipline, Exclusions and Required Removal Policy, that policy should make it clear that an appeal decision will be final. This should help schools avoid having to deal with the same complaint twice, under different procedures. See the ISBA model Discipline, Exclusions and Required Removal Policy for further commentary on this.

DURING THE HEARING

Can parents (and the Stage 2 decision taker) be accompanied when they attend the Panel hearing?

The ISS Regulations require schools to allow parents to attend the Panel hearing and be accompanied at the hearing if they wish. This can be remotely via Zoom/ Microsoft Teams (or similar) if preferred by the parents and agreed by the Panel. If parents are accompanied, it is typically a friend or family member who is there to provide support, but not to speak on their behalf. The DfE Guidance on this requirement states that it does not confer a right on a parent to have a legal representative to make representations on their behalf at the hearing, although the school can allow this if it wishes. Should parents insist on having legal representation, schools can decline to accede to this request as long as school policies do not contradict this. Where the school policy does not permit the parents to have legal representation, there may be cases where deviating from this position and allowing legal representation would be appropriate, but these cases will be very rare and exceptional.

Stage 2 decision takers can also be accompanied when they attend the Panel hearing, if they wish. The ISBA Model Complaints Procedure expressly gives Stage 2 decision takers this right which, if adopted within their own Complaints Procedure, schools can point parents to if they challenge this.

Can pupils attend the Panel hearing?

Pupils are usually present for hearings and appeals of decisions to permanently exclude them. For schools that consider appeals against exclusion decisions via Stage 3 of their Complaints Procedure, the Panel in these circumstances will need to consider how to conduct the hearing in a manner that is appropriate to the age of the pupil attending.

It is not standard practice for pupils to attend Stage 3 Panel hearings in relation to a parental complaint that was not resolved at Stage 2, even if the proposal is that they attend as the person accompanying the parents. If the parents insist on their child attending the Panel hearing it is for the Panel to decide whether to agree to this request. If the Panel have concerns that, for example, having the pupil present may impact on future relations between the school

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and pupil or may not be appropriate given the age, particular vulnerability of the pupil or the nature of the subject matter to be discussed, they may wish to explain this to the parents and give them an opportunity to respond to it. Ultimately the Panel are entitled to reach the conclusion, supported with reasons, that the pupil is not allowed to attend.

If the reason the parents would like their child to attend the hearing is to give evidence to the Panel, the Panel may consider that this evidence can be given in writing instead, in which case the child would not need to attend the hearing. Alternatively, or in addition, the Panel may agree that the pupil can sit in a waiting area (not in the room where the hearing is being conducted) and be called in to speak to the Panel, if needed. This would be entirely a matter for the Panel.

Can the Panel meet with the Stage 2 decision taker, staff and/ or other witnesses separately?

The Stage 2 decision taker should have the opportunity to respond to the points the parents raise in their appeal and there may be a need to consider/hear evidence from others too. There is no prescribed format for a Panel hearing. The Panel may either meet with the parents and the Stage 2 decision taker in the same meeting or meet with the parents first, and if they wish, then meet separately with the Stage 2 decision taker. The format is a matter for the Chair of the Panel and may be decided on a case-by-case basis, depending on the circumstances of the complaint and what is deemed appropriate by the Chair of the Panel at the time. This may form part of any pre-meeting discussion (see above). It would be unusual to have a pupil present in a Panel hearing (unless the Stage 3 Panel hearing is an appeal against an exclusion or required removal) as this is a complaint by the parent(s).

In conjunction with HCR Law, the ISBA has produced a separate Model Parental Complaints Panel Hearing Process which can be found in the Reference Library. This process presumes that the Stage 2 decision taker is present in the room as part of the Panel hearing with the parents in attendance at all times but it can be amended as necessary. Schools should always ensure that the Panel hearing process is consistent with: 1) their Complaints Procedure, 2) any instructions sent to Panel members on their appointment or subsequently, and 3) communications between the Panel Secretary/Clerk and parents in respect of the Panel hearing process.

Does the remit of the Panel hearing extend to the merits of the complaint (not merely a check that process was followed at Stage 2)?

The ISI has previously stated that Stage 3 should be a full-merits hearing of the complaint, not merely a check that the process was followed. The ISBA Model Complaints Procedure states that the Panel hearing is conducted at the discretion of the Panel and the remit of the Panel hearing is at the discretion of the Chair of Governors. This gives some flexibility in the

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procedure for the Chair of Governors or the Panel members (in consultation with the Chair of Governors) to decide the nature and extent of their review at Stage 3, e.g. if they felt the facts of a particular case warranted a full re-hearing of the complaint itself. Schools and Panels should seek legal advice if in doubt as to the scope of their review, which will depend on the circumstances of the particular complaint.

Can parents insist that the hearing is recorded and transcribed?

Schools should always ensure that there is a note-taker present at the hearing. The note-taker's role is not to take a verbatim note but to accurately record what was discussed. Minutes of the hearing should then be prepared following the hearing and circulated to all parties including the parents. Parents are not entitled to record the hearing or require the school to record the hearing unless a school's Complaints Procedure states otherwise. Neither is it a requirement to produce and circulate a transcript of any recorded hearing that may be requested by parents. (This is usually a very time intensive task and may take several days if not weeks for a school to complete.) This is because the minutes prepared by the note taker are the official record of what was discussed, and they can be reviewed and challenged by the parents (see below).

That being said, in some circumstances it is in the interests of both the school and the parents for the hearing to be recorded (and transcribed). It could also be considered a reasonable adjustment to record a hearing. The ISBA Model Parental Complaints Panel Hearing Process, if adopted, permits the Chair of the Panel to agree that recording (and transcription) of the hearing can take place. This is at the Chair's discretion. It is advisable that a school makes its own arrangement for the recording rather than relying on the parents to do so. Panels that agree to recordings should be very clear with attendees from the outset of the hearing that it will be recorded and may be shared with the parents.

What if a parent withdraws their complaint or does not attend the Panel hearing?

Where the parent is not satisfied with the school's response to their complaint at Stage 2 and indicates a wish to continue to Stage 3, a Panel hearing should take place unless the parent later indicates that they are now satisfied and do not wish to proceed further. A record should be kept of any withdrawal by a parent of their complaint.

On the other hand, if a parent proceeds with their complaint but does not exercise the right to attend a Panel hearing (see above), this does not remove the school's obligation to hold the hearing in line with its Complaints Procedure. The school's arrangements for the Panel hearing should be reasonable in order to facilitate the parent(s) exercising the right of attendance.

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Do the Panel have to consider new information parents provide at the hearing (or shortly before the hearing)?

It is at the Panel's discretion as to whether they accept and consider new information provided to them outside any timescales set by the school in its Complaints Procedure or otherwise during the course of the Stage 3 complaint process. This decision should be based on what the Panel considers to be fair and just in the circumstances.

If it is genuinely 'new' information that has only been recently received, and could not have been provided within the timescales, the Panel may consider it fair and just to consider it. Refusing to consider this information may give rise to accusations of being high-handed and, at worst, for highly relevant information, a real risk that a different outcome may have been reached by the Panel.

On the other hand, if it is a repeat of information already provided, or appears to be very similar to information already provided, the Panel may decide that they will not accept this information or consider it all. However, caution should be exercised before making a decision to refuse to accept or consider 'new' information, as it may be difficult to establish whether or not it is 'new' until it is reviewed. If in any doubt as to whether information provided late could be relevant, it may be prudent for Panels to consider it and either adjourn the hearing (which may involve further investigation if required) or consider the information during its deliberations after the hearing has ended.

AFTER THE HEARING

How does the Panel deliberate its decision?

At the end of the hearing Panel members will usually retire to consider their decision which will be notified to the parties in writing shortly afterwards. The Complaints Procedure will set out the timeframe for when the decision should be provided which should be realistic but not excessive. If, during these deliberations, the Panel consider it necessary to undertake further investigation or to seek expert guidance on any matters that have arisen, it may take longer for a decision to be made and the parents should be updated accordingly.

The Panel deliberations are in private attended only by the Panel. Where the Panel communicates in confidence with a lawyer for the purpose of receiving legal advice these communications may be legally privileged and not subject to disclosure to the parents or others. Legal privilege can be a complex issue and schools should seek advice if in any doubt on whether it will apply.

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What if the parents dispute the minutes of the Panel hearing?

Schools should make arrangements for a minute-taker to be present at Panel hearings. Minutes should be prepared following the meeting and provided to the parents as soon as practicable after the hearing.

It is not uncommon for parents to review the minutes and raise concerns with them. Whether schools should act on these concerns and amend the minutes will depend on the concern they have raised. The key issue being their accuracy.

If the parents are disputing the accuracy of the minutes in a significant way, e.g., stating that they did not say what is being attributed to them, and the school establishes that it is an error on the minute-taker's part, it would be prudent for the school to amend the minutes accordingly, so that there is an accurate (and agreed) record of what was discussed. It should be made clear that the final content of the minutes will be a matter for the Panel Chair to determine.

However, if the parents are clarifying what they said, or adding to it, then this is not a dispute over its accuracy and their concerns can be noted for the record without amendments being made to the minutes.

If the Panel members and the minute-taker are not sure if what the parents are disputing in the minutes are correct or not but consider that it might have been said or omitted, schools may wish to give parents the benefit of the doubt and include it but make sure that it is clear that these are the parents' additions. Alternatively, schools can append the parents' amendments to the minutes behind the school's version and advise the parents that together these will be taken as a record of what was discussed.

What record keeping requirements are there?

The ISS Regulations require schools to keep a written record of complaints made in writing under the formal part of the procedure (i.e. Stage 2 onwards), whether they are resolved at the first formal stage or proceed to a panel hearing and of any action taken by the School as a result of a formal complaint (whether or not the complaint is upheld).

The National Minimum Standards for Boarding Schools (September 2022) also require boarding schools to identify, in their written record of complaints, those complaints relating to boarding provision, to keep a record of complaints made but later withdrawn and to keep under review any emerging patterns arising from complaints. All schools may be asked, during inspections, to demonstrate that they look beyond the immediate complaint to ensure it does not represent a deeper problem that needs to be addressed.

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Though the period for keeping records is not prescribed, the DfE has advised that complaints with no safeguarding implications should be retained for a minimum of 7 years. Where, however, there are safeguarding implications, the records must be preserved at least until the accused has reached normal pension age or for 10 years from the date of the allegation if longer.

If parents are litigating the issue which forms part of the subject of the complaint or litigation is 'in contemplation' (e.g. the parents have threatened to take the matter to court), schools have a duty to the court to retain materials (including paper and electronic documents) relevant to the issues in dispute. If this is the case, schools should not delete or destroy such materials.

There is also an express requirement under the ISS Regulations that the Complaints Procedure provides that correspondence, statements and records relating to individual complaints are to be kept confidential except where the Secretary of State or a body conducting an inspection under section 109 of the Education and Skills Act 2008 requests access to them.

Schools should be mindful that this does not mean that the only circumstance in which correspondence, statements and records can be released is where they are requested by the Secretary of State or a body conducting an inspection. There may be other circumstances where disclosure of the substance of a complaint or particular confidential records relating to it is required, for example, where there is a legal, regulatory, safeguarding or data protection obligation (e.g., in response to a DSAR) which prevails over the requirement to maintain the records as confidential.