

BARNSELY MBC

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and Wider Borough Services**

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**EXCLUSION PROCEDURE
SUMMARY OF GUIDANCE ON
EXCLUSION FROM
SCHOOLS**

CONTENTS

How to use this summary	4
National Standard List of Reasons for Exclusions	5
Introduction	8
Key Points	9
Section 1: The Use of Exclusion	11
What are the types of exclusion?	11
Informal exclusion	11
Removal of pupils from school in exceptional Circumstances	11
Removal of Pupils on Health and Safety Grounds	12
Considerations following a Fixed term Exclusion and continuing education.	12
Reintegration Interviews	13
Parenting Orders and Contracts	13
Parental Cooperation	13
Strategies for pupils at risk of exclusion	14
The Decision to exclude	15
LA advice	15
When is exclusion inappropriate?	15
Section 2: The Role of the Headteacher	
Who can exclude?	16
Who should the head inform and when?	16
Informing the governing body and LA	16
Section 3: Responsibilities of the Governing Body	
The Governing Body	17
How many members sit on the Committee?	17
What is the quorum?	17
What is the function of the Pupil Discipline Committee?	17
Does the Pupil Discipline Committee meet for exclusions of between one and five days?	17
When does the Pupil Discipline Committee need to meet?	17
How are meetings arranged?	17
Who should clerk the meeting?	18
What documentation should be circulated?	18
What procedures should be followed?	18
What are the resolutions that can be arrived at?	18
What needs to be done after the meeting?	18
Does the parent have a right of an independent review against the Pupil Discipline Committee's decision to uphold an exclusion?	18

Section 4:	The Role of the LA at Pupil Discipline Committee meetings	19
	What role does the LA have at the Pupil Discipline Committee meeting?	19
	Does an LA representative attend the meeting?	19
Section 5:	The Independent Appeal Panel	20
	What is the function of the panel?	20
	How many members sit on the panel?	20
	What procedures should be followed?	20
	Who may attend the meeting?	20
	What may the panel decide?	20
	What happens after the meeting?	20
	Is the review panel's decision binding?	20
Section 6:	The LA or Academy Trusts Role at the Independent Review	21
	Who arranges the Independent review following the Pupil Discipline Committee's decision to uphold the permanent decision?	21
	Does the LA representative attend the Independent Review Panel Hearing?	21
	What is the role of the LA representative?	21
Section 7:	Reintegration of permanently excluded pupils	22
	What are the LA's responsibilities?	22
	How does the LA provide education for permanently excluded pupils?	22
	Useful Contacts	23
Appendix 1:	Exclusion Pack – documentation to support the process:	
	▪ Permanent exclusion	
Appendix 2:	Exclusion Pack – documentation to support the process:	
	▪ Fixed term exclusion;	
Appendix 3:	Exclusion Pack – documentation to support the process:	
	▪ Lunchtime exclusion.	

HOW TO USE THIS SUMMARY

This guide has been produced to give an easy reference to many of the questions asked by schools relating to the exclusion process.

For further detail, readers are advised to refer to the DFE statutory guidance “Exclusion from Maintained Schools, Academies and Pupil Referral Units in England”.

References are made throughout the text to the relevant sections and paragraphs in the guidance.

Included in the appendix (Exclusion Pack) are copies of standard exclusion forms and relevant paperwork for use by schools, and clerks to Pupil Discipline Committees.

In addition, flow charts for procedures to be followed prior to, and after exclusion, have been included for easy reference.

The Department for Education, standard list of reasons for exclusions has been incorporated into the exclusion forms (see below).

National Standard List of Reasons for Exclusions

This list provides descriptors of reasons for exclusions and the main reason for exclusion should be used on the electronic reporting form. The 12 categories should cover the main reasons for exclusions and the "other" category should be used sparingly. The further detail suggesting what the descriptors cover should be used as a guide and this list is not intended to be used as a tick list for exclusions. In reaching a decision on whether to exclude head teachers need to refer to the Department's guidance revised in September 2007, entitled "Improving Behaviour and Attendance: Guidance on Exclusion from School and Pupil Referral Units".

Physical assault against pupil

Includes:

- Fighting
- violent behaviour
- Wounding
- obstruction and jostling

Physical assault against adult

Includes:

- Violent behaviour
- Wounding
- Obstruction and jostling

Verbal abuse / threatening behaviour against pupil

Includes:

- Threatened violence
- Aggressive behaviour
- Swearing
- Homophobic abuse and harassment
- Verbal intimidation
- Carrying an offensive weapon

Verbal abuse / threatening behaviour against adult

Includes:

- Threatened violence
- Aggressive behaviour
- Swearing
- Homophobic abuse and harassment
- Verbal intimidation
- Carrying an offensive weapon

Bullying

Includes:

- Verbal
- Physical
- Homophobic bullying
- Racist bullying

Racist abuse

Includes:

- Racist taunting and harassment
- Derogatory racist statements
- Swearing that can be attributed to racist characteristics
- Racist bullying
- Racist graffiti

Sexual misconduct

Includes:

- Sexual abuse
- Sexual assault
- Sexual harassment
- Lewd behaviour
- Sexual bullying
- Sexual graffiti

Drug or alcohol related

Includes:

- Possession of illegal drugs
- Inappropriate use of prescribed drugs
- Drug dealing
- Smoking
- Alcohol abuse
- Substance abuse

Damage

Includes damage to school or personal property belonging to any member of the school community:

- Vandalism
- Arson
- Graffiti

Theft

Includes:

- Stealing school property
- Stealing personal property (pupil or adult)
- Stealing from local shops on a school outing
- Selling and dealing in stolen property

Persistent disruptive behaviour

Includes:

- Challenging behaviour
- Disobedience
- Persistent violation of school rules

Other

Includes incidents which are not covered by the categories above but this category should be used sparingly.

INTRODUCTION

The Department for Education has revised and published new statutory guidance for maintained schools, Academy schools/Free schools, Alternative Provision Academies and Pupil Referral Units about the procedures and strategies it expects to be followed to achieve the Government's aims.

Principles/Head teachers, teachers in charge of an Alternative Academies/Pupil Referral Units (PRU), governing bodies, Local Authorities (LA's) and Independent Review Panels must by law have regard to the guidance on Exclusions from schools and Pupil Referral Units when making decisions on exclusions and administering the exclusions procedure. This means that whilst the guidance does not have the force of statute, there is an expectation that it will be followed unless there is good reason to depart from it. The guidance is not exhaustive and judgements will need to take account of the circumstances of individual cases

The procedures apply to all maintained schools, Academies/Free schools and Alternative Academies/Pupil Referral Units and all pupils in them, including pupils who may fall below or above statutory school age. They also apply to maintained nursery schools.

Academies, by virtue of their funding agreements, must have exclusion procedures which are consistent with those set out in this guidance. This means that the procedures followed by academies should not depart from those in the guidance without good reason.

Where parents of an excluded pupil do not speak, or have a good understanding of, English, correspondence and documentation relating to the exclusion should be translated into their mother tongue. In such cases the school and/or LA should arrange for an interpreter to be present at any meetings with the parent about the exclusion.

The guidance outlines the implications when excluding particular groups of pupils. Head teachers need to be aware of these and pay particular attention to paragraphs 20 - 24.

This is statutory guidance, and is underpinned by the School Standards and Framework Act 1998. Essentially this means that all parties must have regard to the guidance, and therefore, if any alternative action is taken, this must be equally as beneficial for the pupil as that specified in the guidance.

The principle legislation to which this guidance relates is:

- The Education Act 2002 as amended by the Education Act 2011;
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- The Educations and Inspections Act 2006;
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) regulations 2007

Key points

- Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. The Government supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, 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.
- The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation schools should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs.
- Schools should have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing their future behaviour.
- All children have a right to an education. Schools should take reasonable steps to set and mark work for pupils during the first five school days of exclusion, and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after exclusion.
- Where parents (or excluded pupil, if aged 18 or over) dispute the decision of a governing body not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination).
- An independent review panel does not have the power to direct a governing body to reinstate an excluded pupil. However, where a panel decides that a governing body's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing body to reconsider its decision. If the governing body does not subsequently offer to reinstate a pupil, the panel will be expected to order that the school makes an additional payment of £4,000. This payment will go to the local authority towards the costs of providing alternative provision.
- Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. 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.

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

Children with Statements of Special Educational Needs and Children in Care

Other than in the most exceptional circumstances, schools should avoid excluding pupils with statements. They should make every effort to avoid excluding pupils who are being supported at school action or school action plus. Schools should try every practicable means to maintain the pupil in school, including seeking LA and other professional advice.

Children in Care as a group are no less able than their peers but they often underachieve. They can fall behind through missing school and are more likely to be at risk of exclusion. Permanent exclusion from school can place great strain on care placements resulting in even more disruption in their lives. That is why it is vital that schools and social workers work together in partnership with other professionals and try every practicable means to maintain them in school and to exclude them only in the most exceptional circumstances.

What are the types of exclusion?

There are three forms of exclusion available to the headteacher:

1. Lunch time exclusion (equal to one half day fixed term);
2. Fixed term (up to 45 school days in an academic year);
3. Permanent (will result in the pupil being removed from the school roll after statutory procedures completed).

Informal exclusion?

If the headteacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and the pupil is being removed from the school site for that reason, formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents carers.

Whilst this is frequently done in the perceived best interests of the child it may ultimately have the effect of denying the child the specialist help which is available both in school and from external agencies. In addition, the parent will not be given the opportunity to make representations to the Pupil Discipline Committee, as is their right.

Removal of pupils from school in exceptional circumstances

There may be exceptional circumstances where a headteacher needs to remove a pupil from the school site when exclusion would be illegal. An example is where a pupil is accused of committing a serious criminal offence which took place outside the headteachers jurisdiction (during a weekend or school holiday and off site) which wouldn't warrant exclusion.

However, there may be compelling reasons for removing that pupil from school premises pending the outcome of police investigation. A head teacher can authorise leave of absence for a fixed period with parents agreement or by exercising powers delegated by the governing body under section 29(3) of the Education Act 2002 can arrange for the pupil to be educated elsewhere (without parental approval, although parents should be notified). In these circumstances the school must ensure that the pupils full time education continues while off site

Removal of pupils on health and safety grounds

Head teachers may send pupils' home, after consultation with parents and a health professional (for example a school nurse) where a diagnosed illness such as a notifiable disease and the pupil poses an immediate and serious risk to the health and safety of other pupils and staff. This is not exclusion and should be for the shortest time possible. If further difficulties persist, the headteacher should seek medical advice.

Considerations following a fixed term exclusion and continuing education

The schools obligation to provide education continues and must be met during a fixed period exclusion. If the exclusion is for six days or more the school has a duty to arrange suitable full time educational provision from and including the sixth day school day.

Good practice guidance on this can be found on the DFE website

During the first five days work must be sent home for the pupil to complete and it must be marked, unless the school has made full time provision for the first five days of exclusion.

In this period the parents of the excluded pupil must ensure that he or she is not found in a public place during normal school hours without reasonable justification. Parents are subject to a fixed penalty notice if they fail to do this.

When planning for suitable full time provision it should normally be off-site. A school can make provision on site where arrangements have been made jointly with another school. Parents must be fully informed of the days on which pupils must attend alternative provision and of any sanctions that may be imposed for non-attendance.

Reintegration interviews

It is good practice to arrange a reintegration interview following any fixed term exclusion.

The purpose of this is to assist the reintegration and promote the improvement of his or her behaviour. This meeting may also be used to discuss the possibility of a parenting contract.

Normally the meeting should take place on the day the pupil returns to school. The exclusion must not be extended because parents can't or won't attend a meeting.

Parenting Contracts and Orders

A parenting contract may be offered as an early intervention to deal with emerging behaviour problems or after an exclusion of any duration.

A parenting contract is a written voluntary agreement between the school governing body or the authority and the parent.

If the parent refuses or fails to engage with the school or local authority in attempting to improve his or her child's behaviour the school or authority may consider applying to the magistrates' court for a parenting order. Further guidance on this can be found in the Local Authorities policy on Parenting Contracts and Orders.

Parental Cooperation

If a parent does not comply with an exclusion, for example by sending the excluded pupil to school, or by refusing to collect them at lunchtime, the school must have due regard for the pupils safety in deciding what action to take.

An exclusion should not be enforced if doing so would put the pupil at risk. If efforts to resolve the issue are unsuccessful then school should contact the local authority to seek advice.

Strategies for pupils at risk of exclusion

Restorative Justice	This enables the offender to redress the harm that has been done to the victim.
Mediation	This is done through a third party usually a trained mediator. This is done when there has been conflict between two parties.
Working with parents	A written action plan agreed with parents.
Learning Support Units	Alternative support within the school..
Mentoring	Support and role modelling from older pupils/staff, learning mentors and outside agencies.
Curricular Flexibility	Disapplication, extended work experience, college placements etc.
School Based Assessment	Special educational needs assessment procedures.
Pastoral Support Programme	School based multi-agency intervention.
Parenting Contract	A voluntary agreement between parent/carers, school and the LEA
Parenting Order	Applied for through the Magistrate's Court for parent/carers, who will not engage with voluntary measures.
Referral to the Behaviour Support Service	Alternative provision, advice and support in schools.
A Managed Move through the Fair Access/BAP protocol	This will enable the pupil to have a fresh start in a new school. This must be done with the full cooperation of all parties.

The decision to exclude

It is the Secretary of State's view that a decision to exclude a child should be taken only:

- in response to serious breaches of a school's discipline policy, and
- if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or of others in the school.

Before excluding a child, **in most cases** a range of alternative strategies should be tried. This is not meant to prevent immediate action to protect pupils and staff, including fixed period exclusion.

A permanent exclusion can be given for a first offence, for example involving violence, but only when the headteacher has had further opportunity (not in the heat of the moment) to consider the incident in question and when all the alternatives to exclusion have been considered .

LA advice

In such cases it would be advisable to issue a short fixed term exclusion to allow time to further investigate the incident, which may then be converted to a permanent exclusion or alternative provision if appropriate.

When is exclusion inappropriate?

- ❖ Minor incidents such as failure to do homework or to bring dinner money.
- ❖ Poor academic performance.
- ❖ Lateness or truancy.
- ❖ Pregnancy.
- ❖ Breaches of the school's uniform policy including hairstyle or the wearing of jewellery (except where these are persistent and in open defiance of such rules).
- ❖ Punishing pupils for the behaviour of the parents, for example, by extending a fixed period exclusion until the parents agree to attend a meeting.

Who can exclude?

Only the principle, head teacher or teacher in charge of a Pupil Referral Unit or alternative provision can exclude a pupil from school.

In the absence of the head teacher the power rests with the most senior teacher who should make clear that they are acting in the head's absence. Exclusion should not be decided in the heat of the moment unless there is an immediate risk to the safety of others in the school or the pupil concerned.

Who should the Head inform and when?

Parents/Guardians/LA/Social Services/Children's Resource Centres.

A headteacher who excludes a pupil should make sure the parents are notified immediately, ideally by telephone, and that the telephone call is followed with exclusion letter (see appendix 1, 2 and 3 for specimen letters and exclusion forms) and form within one school day. **An exclusion should normally begin on the next school day.**

Informing the Governing Body and LEA

Within one school day the head teacher must inform the governing body and LA of

- a) Permanent exclusions;
- b) Exclusions which would result in the pupil being excluded for more than five school days (or more than 10 lunchtimes) in any one term;
- c) Exclusions which would result in the pupil missing a public examination

Fixed period exclusions totalling five or fewer school days or fewer than 10 lunchtimes can be placed in the weekly internal post. This will assist the LA in producing up to date statistics as when required.

In exceptional circumstances, where the headteacher feels it is essential that the pupil be required to leave the school premises immediately, the headteacher should check with the parent to ensure that the pupil is not left unsupervised.

In these circumstances, there may be practical difficulties in completing the exclusion form and this may have to be undertaken on the following school day.

Where a pupil is excluded from school with immediate effect during the morning session, this counts as an exclusion of a full school day for the purposes of determining the length of the exclusion.

Where the pupil is excluded during the afternoon session this should be recorded as a half day.

SECTION 3**Responsibilities of the Governing Body****The Governing Body**

The governing body must review certain exclusions and must consider any representations about an exclusion made by parents of the excluded pupil. Some or all of this function can be delegated to a committee of at least three governors. The LA recommends that the committee be called the Pupil Discipline Committee.

How many members sit on the committee?

Three or more governors may sit on the committee. The LA has issued a model constitution and terms of reference, which suggests that three to five governors is the appropriate number.

What is the quorum?

The quorum is three (if the committee consists of five, and one member does not arrive, the chairperson has the casting vote).

What is the function of the Committee?

To review the use of exclusion within the school. To confirm permanent exclusions, and fixed term exclusions with a cumulative total of more than five school days in a term, or where the pupil may lose the opportunity to sit a public examination (not including SATs).

Does the Committee meet for exclusions of between one and five days?

A parent may make written representations only to the Committee. This could be included for consideration on the next available agenda. The Committee cannot direct reinstatement, but should attach a record of their views to the pupil's school record.

When does the Committee need to meet?**Permanent Exclusion**

Between six and fifteen school days following the start of the exclusion.

Fixed Term Exclusion

For an exclusion of more than five but not more than fifteen school days in a term: meet within fifty school days following the start of the exclusion **if the parent requests a meeting.**

For an exclusion of more than fifteen school days in a term, meet within fifteen school days following the exclusion.

How are the meetings arranged?

The committee must appoint a clerk who should prepare calling notices for parents, headteacher, and members of the Committee to meet at a time convenient to all parties as far as possible, and within the timescales. Approximately seven days notice should be given.

Who should clerk the meeting?

The clerk should be in a position to take the minutes of the meeting, and to also advise the Committee on the Guidance on Exclusion form Maintained Schools, Academies and Pupil Referral Units in England.

What documentation should be circulated?

Any written statements and evidence to be used at the meeting should be circulated to all parties prior to the meeting, ensuring the identity of pupils is concealed.

What procedures should be followed?

The LA has issued procedures and guidance for Committee meetings (appendix 1 and 2).

What resolutions can be arrived at?

Permanent Exclusions

The pupil be reinstated.

The pupil not be reinstated.

Fixed Term Exclusions (if the pupil is still out of school)

The pupil be reinstated.

The pupil not be reinstated.

Fixed Term Exclusions (if the pupil has returned to school)

The head teacher's decision to exclude be upheld.

The head teacher's decision to exclude not be upheld.

What needs to be done after the meeting?

The clerk should write to the parent and the LA within one day informing them of the decision. A Notice of Appeal form must be included for parents only following confirmation of a permanent exclusion.

In the case of a permanent exclusion, the letter should be faxed to the LA immediately, as it includes the final date for appeal needed for the LA letter to parents.

Minutes of the meeting need to be sent to Governor Services.

Place a copy of the letter to parents informing them of the Pupil Discipline Committee decision on the pupil record together with a copy of the exclusion papers.

Does the parent have a right of an independent review against the Committee's decision to uphold exclusion?

There is no right of an independent review against fixed term exclusions of any duration.

However, parents may request an Independent review against a permanent exclusion using the Notice of Independent Review form sent following the Pupil Discipline Committee meeting (appendix 1).

The review is against the decision of the Pupil Discipline Committee to uphold the permanent exclusion, and is arranged by the Borough Secretary's Department.

**What role does the
LA have at the
Committee meeting?**

The LA can give their view on the appropriateness of the exclusion.

For permanent, and for fixed term exclusions which total more than fifteen school days in a term, schools are required to send to the LA details which will be used at the Pupil Discipline Committee meeting.

The LA must receive this information no later than five days before the meeting.

**Does an LA
representative attend
the Committee
meeting?**

No representative is available to attend Pupil Discipline Committee meetings for exclusions which total less than fifteen school days in a term due to the frequency of such meetings.

The LA representative can attend all Pupil Discipline Committee meetings for permanent exclusions unless prior commitments prevent them doing so. If the LA cannot attend a written report will be sent to the Clerk of the Committee.

For exclusions of more than fifteen days an LA Representative will attend if it is a particularly difficult case or evidence provided to the LA prior to the meeting raises cause for concern.

What is the function of the panel?	The role of the panel is to review the governing bodies' decision not to reinstate a permanently excluded pupil.
How many members sit on the panel?	The panel must have three or five members, and is clerked by a member of the Borough Secretary's Department.
What procedures should be followed?	Procedures and guidance for the meeting are circulated to all parties prior to the meeting.
Who may attend the meeting?	<p>The following are entitled to attend the meeting:</p> <ul style="list-style-type: none">▪ the parent (who may be represented by a legal or other representative)▪ the headteacher▪ a nominated member from the Committee who considered the exclusion▪ a nominated LA officer▪ a legal or other representative of the Governing Body
What may the panel decide?	<ol style="list-style-type: none">1. Uphold the exclusion decision;2. Recommend that the governing body reconsiders their decision3. Quash the decision and direct that the governing body reconsiders the exclusion again.
What happens after the meeting?	The clerk must let all parties know the appeal panel's decision by the end of the second school day after the hearing.
Is the Review Panels decision binding?	<p>Yes.</p> <p>However, the parent may complain to the Local Government Ombudsman about maladministration by the panel, which may, if appropriate, recommend a fresh hearing.</p> <p>All parties may apply for a judicial review if the panel's decision was legally flawed.</p>

Who arranges the Independent review following the Pupil Discipline Committee's decision to uphold the permanent exclusion?

The LA or Academy Trust must set up the Independent Review Panel, appoint the members and a clerk, and choose the chair at their own expense.

The Borough Secretary's Department undertakes the responsibility for these arrangements.

Does an LA representative attend the Independent Appeal Panel hearing?

Yes if it is a LA maintained school

The LA will take a view on the exclusion based on the evidence provided by the school prior to the Pupil Discipline Committee meeting and on oral submissions made at the review.

What is the role of the LA representative?

The LA representative is entitled to present their case, expressing a view on the appropriateness of the permanent exclusion.

What are the LA's responsibilities?

The LA has a responsibility toward all permanently excluded pupils to provide suitable full time education and reintegrate pupils as quickly as possible, where practical into a suitable mainstream school.

How does the LA provide education for permanently excluded pupils?

Schools are responsible for setting and marking work for the first five school days of the exclusion.

1. The pupil will be referred to the Behaviour Support Service prior to the Pupil Discipline Committee meeting.
2. The Behaviour Support Service will provide full time education from the sixth day in partnership with other LA services. Following an assessment a referral will be made to the Behaviour and Attendance Partnership for discussion and a decision on appropriate education provision.

USEFUL CONTACTS

BARNSELY SUPPORT SERVICES

BOROUGH SERVICES	Dave Whitaker	01226 291133
Springwell Learning Community	Jenny Davis	01226 291133
	Julie Rushforth	01226 327070

EDUCATION WELFARE	Keren Harben	01226 773542
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ADMISSIONS	Principal Admissions Officer Bev Sadler	01226 773506
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SPECIAL EDUCATIONAL NEEDS	Assessment, Monitoring and Review Service.	01226 775952
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FUTURE DIRECTIONS	Social Worker	01226 770902
LOOKED AFTER CHILDREN	Karen Harkness	

YOUTH OFFENDING TEAM	Ben Finley	01226 774963
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EXTERNAL AGENCIES

THE CHILDRENS LEGAL CENTRE		0808 802 008
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