

# Hearings and Appeals Policy & Procedure

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## **1.1 Introduction**

1.2 This policy is intended to be used in conjunction with all other HR policies and guidance which include a potential hearing and / or right of appeal. This includes, but is not limited to;

- Attendance management
- Capability
- Disciplinary
- Flexible Working
- Resolving Issues at Work
- Restructure, Redundancy and Redeployment

1.3 The Governing Body have adopted this policy as the statement of their commitment, and their processes, regarding hearings and appeals.

## **2.1 Scope**

2.2 This policy applies to all employees of the school.

2.3 School leaders are responsible for arranging and facilitating hearings and appeals in line with this policy and procedure.

2.4 Employees are responsible for adhering to the hearing and appeals policy and procedure and for bringing any issues to the attention of their line manager.

## **3.1 Procedure**

3.2 Throughout all hearings and appeals, the school will ensure that the employee is treated fairly and that the process and any communications are clear and transparent.

3.3 Any hearings and appeals arranged by the school will follow the procedure outlined in this document, unless there are any mutually agreed variations to the process agreed by all parties.

3.4 Decision makers in respect of hearing and appeal panels will be appointed on the basis that they are independent and have had no prior involvement in the matter or case in question. It is recommended that panel members access appropriate training or development in advance of fulfilling the role.

3.5 Advice will be sought from HR. Their role during the Hearing or Appeal is to offer advice to panels on the Policy and Procedure and relevant points of employment law. The HR Adviser will normally be present for panel deliberations but is not a member of the panel for the purposes of making or influencing decisions. HR will also offer advice as to the content of the outcome letter, drafted by the panel chair representing the decision of the panel.

3.6 In line with the School Staffing Regulations for maintained schools, the Director of CYPs (or a representative) is entitled to attend and offer advice at all proceedings relating to the possible dismissal of any employee and schools must consider such advice when reaching a decision. This also applies to appeal hearings. As such, the school has a duty to inform NYES HR of any hearings or appeals which may involve a decision relating to dismissal.

- 3.7 In Aided/Foundation schools the Director of CYPS (or a representative) may be invited to attend and offer advice at all proceedings relating to the possible dismissal of any employee and, if they do so, schools must consider such advice when reaching a decision. This also applies to appeal hearings.
- 3.8 Hearings and appeals may be convened in-person or via virtual meeting and the school will determine which is the most appropriate method on a case by case basis.
- 3.9 Copies of documents and records relating to hearings and appeals will be held confidentially on the employee's personal file in line with GDPR.

#### **4.1 Recording of Hearings and Appeals**

- 4.2 It is strongly recommended to have an independent note taker present at hearings and appeals. It is also recommended that the Chair of the Panel should produce a summary Action Note of the outcome of any hearing.
- 4.3 Records will be made and retained of Hearings and Appeals. Voice recordings or recordings of virtual hearings or appeals will not normally be made but may, exceptionally, be agreed by the parties involved and Chair of the proceedings, using equipment determined by the school. Where a recording is made, copies of the recording will not be produced as standard but will be given to the employee if requested. A copy of the recording will be retained by the school. The recording will not usually be transcribed but will be relied upon should there be a need to clarify exactly what was said on particular points. The school will arrange for the recording to be transcribed if the case progresses to appeal, and the notes of the hearing (as transcribed) will form part of the bundle of documents. No other voice recording is permitted.

#### **5.1 Chair of the Panel**

- 5.2 Where a panel is involved, they will appoint a Chairperson. Ideally, all members of the panel will have received appropriate training to act as a panel member, but this is particularly relevant for the chair of the panel, who should be appointed based on their experience to fulfil this role.
- 5.3 The Chair is responsible for ensuring the hearing or appeal follows the correct process, for ensuring that all parties are able to present their case forward, ask appropriate questions and respond to questions asked of them. The Chair must ensure that the employee is treated fairly, bearing in mind that the employee's knowledge of proceedings may not be as comprehensive as the other parties involved.
- 5.4 The chair of a hearing may also be responsible for presenting the management case at any subsequent appeal.
- 5.5 During the Chair's introduction at the commencement of the process, they should:
- Outline the nature of the Hearing/Appeal and the HR policy/process it relates to
  - Ask all of those present to introduce themselves and explain their roles in the Hearing/Appeal
  - Explain that the Hearing/Appeal will be carried out in accordance with this policy and procedure and confirm that everyone present is aware of the process to be followed

- Check that the employee was informed of the right to be accompanied by a work colleague or recognised Trade Union representative or work colleague.
- Explain that the accompanying representative has a statutory right to address the Hearing/Appeal but no statutory right to answer questions on the employee's behalf.
- Explain that an adjournment can be requested at any point during the Hearing/Appeal.
- (where relevant) Indicate that witnesses will only be present when giving evidence and answering questions.
- Confirm how the Hearing/Appeal will be recorded.
- Explain that they are responsible for drafting and issuing a letter confirming the outcome of the hearing or appeal to the employee upon conclusion of the process.

## **6.1 Hearings:**

6.2 The Governing Body may choose to delegate authority to take disciplinary, capability, probation and attendance action up to and including dismissal to

- the Headteacher;
- the Headteacher and one or more Governors;
- one or more Governors.

6.3 In most cases where dismissal is a possible outcome of a hearing, a panel of non-staff governors will be convened to hear the case. Ideally, the panel should be constituted of three governors, although two is permissible.

## **7.1 Sequence of a Hearing**

7.2 Management present their case including a description of the issue(s), findings of the investigation and facts referring to supporting evidence. Any witness evidence can be presented as appropriate, which may include witness statements or witnesses being called to the hearing to give evidence. Where witnesses are present, consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall after their evidence has been heard.

7.3 The Employee (or their representative) has an opportunity to ask questions or seek clarification of points relating to the Management case and any witnesses called.

7.4 The Panel have an opportunity to ask questions or seek clarification of points relating to the Management case and any witnesses called.

7.5 Management has the opportunity to clarify any points that have arisen during the questions raised by the Employee (or their representative) or the Panel.

7.6 The Employee (or representative on their behalf) presents their case including their response to the issue(s) and management case, referring to supporting evidence. Any witness evidence can be presented as appropriate, which may include witness statements or witnesses being called to the hearing to give evidence. Where witnesses are present, consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall after their evidence has been heard.

7.7 Management have an opportunity to ask questions or seek clarification of points relating to the Employee's case and any witnesses called. The employee is expected to respond

to questions personally, their representative has no statutory right to answer on the employee's behalf.

- 7.8 The Panel have an opportunity to ask questions or seek clarification of points relating to the Employee's case and any witnesses called. The employee is expected to respond to questions personally, their representative has no statutory right to answer on the employee's behalf.
- 7.9 The Employee (or their representative) has the opportunity to clarify any points that have arisen during the questions raised by Management or the Panel.
- 7.10 The Chair will provide Management with an opportunity to briefly summarise their case.
- 7.11 The Chair will provide the Employee (or their representative) with an opportunity to briefly summarise their case.
- 7.12 The Chair will ask whether both parties are satisfied with the conduct of the Hearing.
- 7.13 The Chair will ask both parties to withdraw to allow the Panel to consider the evidence presented to them. Although unlikely, if the Panel wish to recall one of the parties (to seek clarification or additional information), both parties must be called back into the Hearing.

## **8.1 Appeals**

- 8.2 Appeals must be heard by a panel of governors. These should be constituted of at least two non-staff governors but be not fewer in number than the number of governors on the Hearing panel.
- 8.3 Where a Hearing has preceded the Appeal, the Appeal is not normally intended to be a rehearing of the case presented at the Hearing. In this event, it may not be necessary to call witnesses to the Appeal. Where a decision has been taken that it is appropriate for the Appeal to act as a rehearing, the process may need to be adjusted. However, any adjustment to the process will need to be determined on a case-by-case basis and should be agreed by all parties in advance of the proceedings.

## **9.1 Sequence of an Appeal Hearing**

- 9.2 The Employee (or their representative) presents their case including the issue(s) and relevant facts. *They should cover the grounds for their Appeal, the reasons for which may include;*
- the facts of the case and/or;
  - the decision taken/sanction imposed and/or;
  - a procedural fault(s) and/or;
  - new evidence has emerged and/or;
  - alleged unfair selection (in a Redundancy Dismissal Appeal) or;
  - the proposed resolution of an issue (in a Resolving Issues at Work Appeal)
- 9.3 *They should elaborate on the facts of the case which are in dispute, and/or reasons for challenging the sanction/decision, and/or procedural fault(s).*
- 9.4 Any witness evidence can be presented as appropriate, which may include witness statements or witnesses being called to the Appeal to give evidence. Where witnesses are

present, consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall after their evidence has been heard.

- 9.5 Management have an opportunity to ask questions or seek clarification of points relating to the Employee's case and any witnesses called. The employee is expected to respond to questions personally, their representative has no statutory right to answer on the employee's behalf.
- 9.6 The Panel have an opportunity to ask questions or seek clarification of points relating to the Employee's case and any witnesses called. The employee is expected to respond to questions personally, their representative has no statutory right to answer on the employee's behalf.
- 9.7 The Employee (or their representative) has the opportunity to clarify any points that have arisen during the questions raised by Management or the Panel.
- 9.8 Management present their case in response to the appeal, focussing on the original decision taken and the grounds for appeal. Any witness evidence can be presented as appropriate, which may include witness statements or witnesses being called to the Appeal to give evidence. Where witnesses are present, consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall after their evidence has been heard.
- 9.9 The Employee (or their representative) has an opportunity to ask questions or seek clarification of points relating to the Management case and any witnesses called.
- 9.10 The Panel have an opportunity to ask questions or seek clarification of points relating to the Management case and any witnesses called.
- 9.11 Management has the opportunity to clarify any points that have arisen during the questions raised by the Employee (or their representative) or the Panel.
- 9.12 The Chair will provide the Employee (or their representative) with an opportunity to briefly summarise their case.
- 9.13 The Chair will provide Management with an opportunity to briefly summarise their case.
- 9.14 The Chair will ask whether both parties are satisfied with the conduct of the Appeal Hearing.
- 9.15 The Chair will ask both parties to withdraw to allow the Panel to consider the evidence presented to them. Although unlikely, if the Panel wish to recall one of the parties (to seek clarification or additional information), both parties must be called back into the Appeal Hearing.

## **10.1 Communicating the outcome**

- 10.2 For both Hearings and Appeals, the decision of the panel may be delivered on the day or in writing, normally within five working days. The panel will determine which is most appropriate and will confirm this to the employee during the panel. Any decision conveyed verbally must also be confirmed in writing, normally within five working days of the date of the Hearing/Appeal.

## **11.1 Further actions after the Hearing or Appeal**

- 11.2 It is the Chair of the Panel's responsibility to ensure an appropriate record of the process, including the decision taken and the rationale, is saved confidentially with the school's case file along with any other papers associated with the hearing.
- 11.3 The Chair of the panel is also responsible for ensuring any further actions are taken, or are allocated as appropriate for other individuals to take, in respect of any outcomes. This may include administering any payroll actions, further discussion with the LADO in cases involving safeguarding allegations.
- 11.4 Maintained schools only: In cases where dismissal is the outcome, the Chair must request that the Headteacher write to the Local Authority immediately, requesting that the LA formally give notice to the employee to terminate their employment.