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# Conduct of Hearing Policy

**The New Horizons  
Learning Centre**

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**Signed by:** Donna Portingale

**Position:** Chair of Governors

# **GUIDELINES FOR THE CONDUCT OF HEARINGS AND APPEALS**

## **1. Introduction**

There may be a variety of reasons for requiring a formal hearing or appeal and due regard will need to be given to any specific requirements of the particular procedure being followed (e.g. disciplinary, grievance, redundancy). However, there are common principles that can be generally applied and these are set out below.

## **2. Delegation of Decision Making Powers**

It is the responsibility of the full Governing Body to decide upon the level of delegation to the Executive Headteacher, particularly in relation to initial decisions on staff dismissal. It is likely that, in order to meet the requirements of natural justice, most formal hearings will be conducted by a panel of 3 Governors nominated by the Full Governing Body and that the appeal hearing will be conducted by a panel of at least the same number of different Governors. Smaller numbers may only be used in exceptional circumstances and the appeal panel must always have at least the same number of members as dealt with the original hearing.

Members of panel(s) must have no financial or personal interest in the outcome of the case under consideration.

Panels established to deal with staffing matters under the staffing regulations through the Education Act 2002, will have delegated authority to take decisions up to and including dismissal. Similarly the appeal panel has delegated authority to uphold, vary or overturn the decision previously taken.

Only in exceptional circumstances will a panel refer back to the Full Governing Body before making a decision. For example, if the resolution of a potential redundancy situation required the Full Governing Body to approve a significant change to the original staffing intentions (ie a 'policy' decision, rather than consideration of an individual's case)

In cases where the Executive Headteacher is exercising his/her delegated powers to conduct a hearing it is important that there is similar regard to the procedural guidance which follows.

### **3. Confidentiality**

Hearings and appeals regarding individual staff matters must not be conducted in public and those participating must respect the confidential nature of the matter under consideration.

Governors must exercise caution over discussion of the case either prior to or after the hearing / appeal. It is important to demonstrate objectivity and, so far as it is reasonably possible, Governors should not have had previous personal involvement in the matter under consideration.

In some cases (eg. if there is a pecuniary interest or the matter involves a spouse or family member) a Governor may need to withdraw from any involvement in the matter.

It is quite appropriate for the Full Governing Body to be made aware in general terms of the nature of any hearing being held (and this may often occur when the necessary panel(s) is being established). The Full Governing Body will also be notified of the outcome of any hearing/appeal. However, there must be no general discussion of the detail of the case and any report must be treated as a confidential item by the full governing body.

### **4. Timing and Venue of Meetings**

Notice periods for hearings and appeals are normally set out within the relevant staffing procedures but in any event notice of such a meeting should never be less than 5 working days, unless mutually agreed otherwise.

When setting up meetings it is advisable for proposed dates and timings to be discussed with the employee or his/her representative with a view to ensuring the availability of all relevant parties, including witnesses (if appropriate).

Wherever possible, meetings should be held during normal school hours but some flexibility may be necessary to meet particular circumstances on either side.

Where the proposed date of a meeting is not acceptable to the employee and there is good reason for this (e.g. due to the non-availability of their union representative) an alternative date should be offered. This should not result in unreasonable delay to the matter being resolved. Sometimes there may be a difficulty due to health factors and these will need to be considered in the context of particular circumstances. Advice should be sought from Schools' Personnel.

The venue for a meeting will normally be within the school concerned. It is important to provide a suitable sized room to accommodate the participants and on occasions it will be necessary to provide another smaller room(s) for witness to wait in or for relevant parties to withdraw to during any adjournment.

The meeting room should provide for confidentiality to be maintained and not be in a place where there may be interruptions or intrusions from staff, pupils or others. This may require any telephones in the room to be diverted or switched off.

On occasions, it may be necessary to obtain a venue off the school site. Any costs involved will normally be met from the school's delegated budget.

For some complex cases it may sometimes be necessary to set aside a full day or longer to deal with the matter thoroughly. Refreshments should be arranged accordingly.

It is important to ensure that any arrangements for a panel hearing do not disadvantage employees with disabilities and take into account any special needs. This may include consideration of factors such as the accessibility of the venue and the format of information or materials to be referred to at the hearing. The same consideration should be applied to any witness or panel members who will be attending.

## **5. Notification Arrangements**

The notification of the meeting to the employee must make clear what is the purpose of the hearing and, if dismissal is a possible outcome, this should be explained. As well as providing details of the time and venue, the notification should include a list of others attending the meeting (eg governors, LA, or Diocesan advisers, witnesses being called). The employee must also receive copies of any documentation to be referred to or considered at the hearing. This will include any witness statements.

The notification should also request that the employee provides copies of any documentation that he / she wishes to submit for consideration and provide a date by which any documentation is to be provided. For more complex cases, where there may be substantial documentary requirements, it is recommended that a 'bundle' of relevant papers is agreed between the two sides. This will then be assembled and distributed prior to the hearing.

A copy of all relevant documentation must be provided to the panel members and to any LA adviser who will be attending the hearing. Such documentation must be treated confidentially and is not for wider distribution or discussion.

All the relevant documentation should normally be available in advance of the hearing to all those attending. In exceptional circumstances, (eg. where there are late items or documents it has not been possible to copy) time should be provided for reading prior to the hearing.

## **6. The Employee's Right to be Accompanied**

Employees who are the subject of a hearing or appeal have the right to be accompanied by a trade union representative or workplace colleague. In certain cases (eg. when considering possible dismissal arising from long term sickness) the employee may prefer to make written representations / or to authorise their trades union representative to present the case in their absence.

In any event, where the employee has exercised his/her right to be accompanied at the hearing, that person (in most cases a trades union representative) is entitled to take an active role in proceedings and will often present the employee's case.

Sometimes the employee may wish to be accompanied by someone other than a union representative or workplace colleague. Such requests will need to be considered in relation to the context of the hearing.

Occasionally the employee may ask to be accompanied by a second 'friend' to make notes. This is a reasonable request and should not be refused. The second 'friend' is not permitted to participate more fully in the meeting or to act as a witness.

## **7. Record of Meetings**

Anyone attending a hearing may take personal notes for their own use. In formal proceedings, however, the Governors will need to arrange for a competent record to be kept of the hearing. This is particularly important if it appears likely that there could be a referral to a subsequent appeal or perhaps to an Employment Tribunal. This is the Governors' record and there is no need to agree it with the employee's side although if it is quoted at a subsequent stage it may be challenged. Governors will need to decide whether they wish to provide the member of staff with a copy and note any comments without necessarily agreeing with them or amending the record.

When Governors deliberate in private at the end of a hearing no record of their discussion is required but they will need to put their decision, together with the reasons for it, in writing and send this to the employee concerned.

In the case of any hearing for which there is a provision for a subsequent appeal, the Governors' Panel should ensure that one member of the Panel is nominated to attend the appeal meeting in order to provide any relevant information that may be sought in respect of the earlier hearing.

## **8. Witnesses**

Either side may produce witnesses in support of their case/defence. In making arrangements for the hearing it is essential that the names of witnesses are notified to the Governors in advance. Each side is responsible for notifying its witnesses of the date, time and place of the hearing.

Each side has the right to ask for copies of any written statements made by witnesses. These will normally be provided as part of the documentation for the hearing.

The question of meeting the expense of witnesses may arise. There is no right for expenses to be met nor any financial provision for this purpose.

Other than in exceptional circumstances, pupils or other children should not be expected to attend hearings as witnesses. In the greater majority of cases it will be more appropriate to rely upon written statements or perhaps the transcript from a video interview. Parents/carers should be made aware of how any statement provided by their child is to be used in a formal hearing.

## **9. Role of the Executive Headteacher**

The Executive Headteacher's role may vary depending on the nature of the matter under consideration. In many cases the Executive Headteacher will be presenting the case to a panel of Governors and will not therefore, be able to contribute to the Panel's subsequent deliberations.

In certain cases the Executive Headteacher may be exercising delegated authority to make an initial disciplinary or dismissal decision and will rely upon another senior manager to be presenting the case.

Where the Executive Headteacher is not directly involved as above, he / she has a right to attend the hearing and may be called upon to give professional advice to a panel of governors.

In all cases it is essential that the Executive Headteacher is clear about his / her role in proceedings and does not compromise the requirement to demonstrate objectivity in the decision making process.

The Executive Headteacher may sometimes be the subject of the hearing and he / she will then have the same right of accompaniment as any other employee.

## **10. Role of the LA representative**

A LA representative may be present in the role of adviser at the governors' panel (or to the Executive Headteacher if exercising delegated powers to consider an initial dismissal decision). The LA representative has no voting rights but may assist with procedural matters associated with the conduct of the hearing and provide guidance during the subsequent deliberations.

In most cases the LA representative will be an appropriate Personnel Officer but this role may sometimes be taken on by other officers. For example, if a Personnel Officer has taken the role of presenting officer, it will be necessary to provide another officer to advise the panel. This could be an officer from Legal Services in complex cases.

The LA representative has no right to veto the decision of the governor's panel but may ask that particular points be considered. Sometimes it may be necessary to point out the consequences of taking a particular decision, especially if this may incur financial costs that the LA would be unwilling to meet or if the decision is liable to challenge or Employment Tribunal.

## **11. Conduct of Meetings**

The over-riding requirement for all hearings and appeals is that both sides are treated reasonably and fairly. There must be adequate opportunity for the relevant cases to be made, provided that this is not obscured or abused by the introduction of irrelevant material.

The proceedings will be controlled by the Chair of the Governors Panel, unless the hearing is being conducted by the Executive Headteacher. Advice or procedural guidance may be requested from or given by LA representative.

Requests from either side relating to the conduct of the meeting should be accommodated so far as it is reasonable and practical to do so, eg. requests for adjustments or changes to the order of witnesses. In some cases it may be appropriate to seek the views of the 'other' side, before making a ruling. Failure to meet reasonable requests may result in procedural challenges at a later stage.

Written documentation should normally have been provided and circulated prior to the meeting commencing. Where either side wishes to introduce additional documentation this must be considered by the Chair of the Panel and, if necessary, an adjournment granted for any relevant response to be considered.

It is recommended that the conduct of meetings for hearing or appeals will normally be as follows. The Executive Headteacher will need to be substituted for the Chair of panel or panel in appropriate cases.

- i) The Chair of the Panel should ensure in opening remarks that all present understand the purpose of the meeting, whom everyone is and who they represent and that everyone has copies of relevant papers. The Chair should also ascertain the attendance of any witnesses to be called but no witnesses are present at this stage.
- ii) The person bringing the case is invited to present it first. This will most commonly be the management case against the employee. but in grievances or any appeal this will normally be the employee's side.
- iii) When this presentation is completed, the respondent may ask questions about it, followed by any questions from the Panel.
- iv) The presenter may refer to written evidence or call in witnesses to support the case.
- v) Where witnesses are called the other side has the right to question them. Panel members may also ask questions of witnesses.
- vi) Witnesses will be called in one at a time and must withdraw as soon as questions to them are concluded. It may be necessary to recall them, otherwise they may be released.
- vii) The respondent then presents his/her case. This presentation may be made on behalf of the respondent by his/her representative. Again written evidence or witnesses may be called upon to support the case.
- viii) The presenter of the case and then the Panel members may ask questions of the respondent or of any witnesses produced by the respondent.
- ix) The Chair of the Panel checks with both sides that all relevant information has been provided and in appropriate circumstances, should provide an adjournment for each side to prepare their summing up.
- x) Each side is then given the opportunity to sum up, the respondent speaking last. No new material should be introduced at this stage.
- xi) If the Panel feels that it cannot reach a conclusion without further material information or evidence, the hearing must be resumed with all parties present.



- xii) Once the Panel has reached a conclusion this should, wherever possible, be announced orally in the presence of all parties (excluding witnesses) together with reasons. In any case, this must be put into writing and sent to both sides at the earliest opportunity.
- xiii) The decision will be reported as a confidential item to the full Governing Body.

In the case of grievances or appeals, it should be noted that the respondent to the initial case will normally make the first presentation and this will set out the grounds for grievance/appeal. An appeal may not involve a full re-run of the first hearing but must be constructed to allow a proper review of the initial decision. In some situations on the other hand it will be necessary to provide for a full re-run of the hearing (eg. if it seems that the conduct of the first hearing was significantly flawed).

It will be necessary for the appeal panel to have access to all documentation from the first hearing and it will often be necessary for the Chair or other representative of the initial Panel to be available to respond to the appeal submission.

It is recommended that the format of the appeal hearing is clarified by the relevant parties prior to its commencement in order to avoid subsequent concerns over the procedures to be followed.