
SCHOOL DISMISSAL AND APPEAL POLICY AND PROCEDURE

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1. Policy statement

- 1.1. The purpose of this policy is to outline the dismissal and dismissal appeal process, the reasons a dismissal could occur, and the roles and responsibilities of those involved in making decisions about dismissal and dismissal appeals.
 - 1.2. The procedure aims to ensure that all staff dismissals, and appeals against dismissal, are carried out fairly and consistently.
 - 1.3. This policy and procedure should be read in conjunction with the relevant school HR procedure (i.e. disciplinary, capability, absence and ill-health management, organisational change, probation for support staff, or statutory induction for teachers).
2. This policy was adopted by the Governing Body of Fairisle Junior School on 1st October 2019.

3. Application

- 3.1. This procedure applies to all staff directly employed by the school, including the headteacher, teachers in their statutory induction period, and support employees who are within their probationary period;
- 3.2. This procedure does not apply to staff employed on a genuine short notice (supply or casual) basis¹.
- 3.3. This procedure will be used when it becomes necessary to consider the termination of employment for an employee in the following circumstances;
 - **Redundancy** – where the need for employees to perform work of a particular kind has ceased or diminished or the workplace is closed
 - **Capability** – where the employee's performance is unsatisfactory due to lack of skill, aptitude or competence
 - **Capability** – where the employee's attendance or performance is adversely affected by ill-health
 - **Conduct** – where there is repeated misconduct with a current final written warning in place, or an allegation of gross misconduct
 - **Legal requirement** – where it would be illegal to continue to employ the employee
 - **Some other substantial reason** not covered above.
- 3.4. Dismissal will normally be with notice, in accordance with the contractual or statutory notice period, but will be without notice (summary dismissal) in cases of gross misconduct.

4. Responsibility for dismissal and dismissal appeal decisions

¹ Headteachers should check with their HR provider if considering terminating the engagement of a casual or supply employee, as continuous engagement during term time for two or more years may confer employment rights

- 4.1. The governing body is ultimately responsible for making decisions about the termination of employment of employees of the school. It may choose to delegate dismissal decisions, and will do so as follows;
- 4.2. In most circumstances, the headteacher will be responsible for taking the decision to dismiss an employee in conjunction with one or more governors.
- 4.3. Where the headteacher has been involved in earlier stages of a procedure which has led to consideration of dismissal (or there are other reasons why it would not be appropriate for the headteacher to be the decision maker) the decision will be taken by governors.
- 4.4. Where the dismissal of the headteacher is under consideration, the decision will be taken by a panel of three governors that will include either the chair or vice chair of governors..
- 4.5. Appeals against dismissal will be heard by a panel of three governors. The panel will include either the chair or the vice-chair of governors. No governor who has had any involvement in matters leading to the decision to dismiss should be a member of the appeal panel.
- 4.6. The term 'decision-maker' is used through the rest of this document to mean whichever of the above individuals or panels is to make the decision on dismissal or appeal.

5. Right to be accompanied

- 5.1. Employees have a legal right to be accompanied by an accredited trade union representative or a work colleague of their choice at a hearing convened to consider their dismissal or appeal against dismissal.
- 5.2. The employee must notify the decision-maker in advance of any hearing of their wish to be accompanied, and the name and role of their chosen companion.
- 5.3. The companion should be allowed to address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the manager from explaining their case.

6. The role of the local authority

- 6.1. A representative of the authority may attend and offer advice at all proceedings relating to the dismissal of any teacher, where the Council is the employer.
- 6.2. The authority may offer advice to the governing body in relation to the dismissal of any teacher in a voluntary aided or foundation school, where the school has a written agreement with the authority to this effect.
- 6.3. The governing body must consider any advice offered by the authority in these circumstances.

6.4. The headteacher or clerk to the governing body will be responsible for ensuring that the Service Lead for Education is made aware of any hearing convened to consider the dismissal of an employee at the school.

7. Referral to External Organisations

7.1. Where it is required to do so (i.e. for some conduct and capability issues), the school will notify the appropriate external professional, public and statutory bodies of the dismissal of an employee and the reasons for it. This includes referrals to the Disclosure and Barring Service and/or the Teaching Regulation Agency in relevant circumstances.

8. Review

8.1. This policy and procedure will be reviewed regularly to ensure that it complies with current employment legislation and the requirements of the school.

8.2. Any future amendments to this policy will be consulted upon and negotiated with the recognised trade unions.

DISMISSAL AND DISMISSAL APPEAL PROCEDURE FOR SCHOOLS

9. Notification of dismissal hearing

9.1. The employee will be notified in writing at least **10 working days** before the dismissal hearing of:

- The date, time and place of the hearing and the requirement to attend
- Who will be conducting the hearing (see 3 above)
- Who will be presenting the management case for dismissal
- The reasons why dismissal is being considered (see 2.3 above)
- The right to be accompanied/represented
- The right to call witnesses and to submit documentary evidence
- That dismissal is a potential outcome of the hearing

9.2. The letter will give a date (**usually 5 working days** prior to the hearing) for copies of any written evidence to be presented at the hearing to be exchanged.

9.3. If the employee or their chosen companion is unable to attend the hearing on the notified date and informs the decision-maker of this, the hearing will be rearranged within a reasonable time frame.

10. Non-attendance at a dismissal hearing

10.1. If the employee fails to attend a rescheduled hearing, only under exceptional circumstances will a further date be agreed. Failure to attend a rescheduled hearing will result in the decision-maker making a decision on the evidence available, in the employee's absence.

10.2. In some cases it may be reasonable for the employee to decide not to attend the dismissal hearing, after they have had an opportunity to discuss the circumstances with the headteacher and take further advice if they wish. Such circumstances may include;

- Redundancy (especially where the redundancy is voluntary)
- Lack of capability due to ill-health (especially where their health would make it difficult to attend a hearing)

10.3. An employee who is unable to attend due to poor health or other unavoidable circumstances, may submit evidence and/or may ask a trade union representative or work colleague to attend to make representations on their behalf.

11. The dismissal hearing

10.1 The dismissal hearing will be conducted in accordance with the procedure set out in appendix 1.

12. Confirmation of outcome

11.1 The decision-maker will hold a short adjournment and, if possible, a decision will be given verbally at the end of the hearing to the employee and the manager presenting the case for dismissal.

11.2 If a longer adjournment is required to enable all the evidence to be properly considered, the hearing will be concluded and arrangements made to notify the employee (in person or by telephone) of the outcome within **five working days**.

11.3 In either case, the outcome will be confirmed in writing to the employee, along with the right of appeal, within **10 working days** of the hearing.

11.4 If the decision is that the employment should be terminated then the employee will be notified of either;

- Dismissal with notice; or
- In the case of gross misconduct, summary dismissal without notice (immediate, without pay in lieu)

11.5 The written confirmation of dismissal will include;

- the date of the end of the contract;
- details of any notice period;
- the reasons for the decision; and
- the employee's right of appeal.

11.6 In the case of community or voluntary controlled schools, the headteacher/chair of the panel will, on behalf of the governing body, write to the Service Lead for Education asking that notice of dismissal be issued to the employee within 14 days of the date of dismissal hearing (or in the case of gross misconduct, that dismissal takes place with effect from the date of the dismissal hearing).

11.7 The headteacher must formally report any instances of dismissal to the governing body (and to the Council where it is the employer). Such a report is limited to a notification of the decision only. Should an appeal be lodged it is important that members of the governing body have no detailed prior knowledge of the disciplinary case itself so that they can ensure an unbiased appeal hearing.

13. Appeal

12.1 Any appeal against dismissal must be made in writing to the Clerk to the Governing Body setting out the grounds for the appeal and must be received within 10 working days of the employee being notified of the outcome.

- 12.2 The appeal must set out the specific grounds and supporting evidence for appeal, and be accompanied by copies of any relevant documents.
- 12.3 In the event that new evidence has been identified that may influence the outcome of the appeal, it must be submitted to the clerk to governors with the appeal request and an explanation as to why this information was not available at the original dismissal meeting. This evidence will be included in the appeal panel meeting pack and the chair of the panel will decide and confirm whether or not to allow it to be considered.
- 12.4 An appeal hearing will be arranged without unreasonable delay and normally within **20 working days** of receiving the notice of appeal.
- 12.5 The employee will be notified in writing at least **10 working days** before the dismissal hearing of:
- The date, time and place of the appeal hearing and the requirement to attend
 - Who will be on the panel conducting the appeal hearing
 - Who will be presenting the management case for the decision to dismiss (normally the headteacher or chair of the dismissal panel)
 - The right to be accompanied/represented
 - The right to call witnesses and to submit documentary evidence

14. The appeal hearing

- 13.1 The appeal hearing will be conducted by the governing body appeals panel in accordance with the procedure set out in appendix 2.

14 Appeal outcome

- 14.1 The outcome of the appeal will be confirmed in writing to the employee within **10 working days** of the hearing.
- 14.2 There will be no further internal right of appeal. The appeal decision may be:
- To confirm the decision to dismiss the employee; or
 - To overturn the dismissal and impose a lesser sanction; or
 - To overturn the dismissal without any sanction.
- 14.3 If the dismissal decision is overturned, the employee will be reinstated, effective from the original dismissal date, with continuous service preserved.

15 CONFIDENTIALITY CLAUSE:

As part of dismissal and appeal processes those involved may have access to information that is of a personal, confidential, sensitive and/or proprietary nature, for the purpose of fulfilling procedural obligations. For example: personal information

related to staff such as names, e-mail addresses, salaries, employment information, and/or service issues, data, financial information ("confidential information").

All involved with any application of the disciplinary policy/procedure must:

- Hold all confidential information in trust and strict confidence and agree that it shall be used only for the purposes required to fulfil employment obligations, and shall not be used for any other purpose, or disclosed to any third party.
- Keep any confidential Information in a physically secure location
- Maintain the absolute confidentiality of personal and confidential information in recognition of the privacy rights of others at all times, and in both professional and social situations.
- Comply with all privacy laws and regulations, which apply to the collection, use and disclosure of personal information
- At the conclusion of any discussions, or upon demand by management, return all confidential information, including prototypes, code, written notes, photographs, sketches, notes taken, to Council possession and the responsible manager/director.
- Not disclose confidential, personal and/or proprietary information to any employee, consultant or third party unless they agree to execute and be bound by the terms of this agreement and have been approved by the school / Council / Trade Union in an official, legal capacity.

A breach of confidentiality or misuse of information could result in disciplinary action up to and including termination of employment.

Appendix 1 – Procedure for a Dismissal Hearing

The following people will attend the meeting;

- The headteacher or a dismissal panel of governors will hear the case. A governor panel will appoint a chair to conduct the hearing. They may be supported by an HR adviser.
- The manager² will present the case for dismissal and may be supported by an HR adviser.
- The employee will attend and be given the opportunity to present their case. They are entitled to be accompanied by a companion who is a trade union representative or work colleague.
- Witnesses for either party will wait separately and will attend the hearing only to present evidence and be questioned by the other party and the headteacher/panel.
- A representative from the local authority may attend to advise on proceedings (see paragraph 5 of the Dismissal and Dismissal Appeal policy).

PROCEDURE FOR DISMISSAL HEARING

1. The headteacher/panel chair will explain the process, and ensure that introductions are made and that all parties have the relevant documentation.
2. The manager will outline the case for dismissal and call any witnesses.
3. The employee (or their companion) may question the manager and the witnesses.
4. The headteacher/panel and their HR adviser may question the manager and the witnesses.
5. The employee (or their companion) will respond to the management case and may call witnesses.
6. The manager may question the employee (or their companion) and the witnesses.
7. The headteacher/panel and the HR adviser may question the employee (or their companion) and the witnesses.
8. The manager will sum up the case against the employee.

² This is the manager who has collated the case and written the report for consideration of dismissal. In a conduct case this will normally be the investigating officer. In a redundancy case this will be the senior manager or headteacher who made the selection decision.

9. The employee (or their companion) will sum up the response.
10. The headteacher/panel will adjourn to consider the evidence and make their decision.
11. The employee will be advised of the decision verbally at the conclusion of the hearing, or within five working days of the hearing.
12. The decision will be confirmed to the employee and the investigating officer in writing within 10 working days.

Appendix 2 – Procedure for a Dismissal Appeal Hearing

The following people will attend the meeting;

- The appeal panel comprising at least three governors (one of whom should be the chair or vice chair of governors) will hear the appeal. The panel will appoint a chair to conduct the hearing. They may be supported by a HR adviser.
- The dismissal decision-maker (the headteacher or the chair of the disciplinary panel of governors who took the decision to issue the disciplinary warning or to dismiss) will present the management case for that decision. They may be supported by a HR adviser.
- The manager (who presented the management case at the dismissal hearing) may be called as a witness by the headteacher/chair of the disciplinary panel.
- The employee will attend and be given the opportunity to present their case for appeal. They are entitled to be accompanied by a companion who is a trade union representative or work colleague.
- Witnesses for either party will wait separately and will attend the hearing only to present evidence and be questioned by the other party and the appeal panel.
- A representative from the local authority may attend to advise on proceedings (see paragraph 5 of the Dismissal and Dismissal Appeal Policy).

PROCEDURE FOR APPEAL HEARING

1. The procedure for the Appeal hearing will be at the discretion of the Chair of the Panel and shall include deciding on the need for any adjournment. Consideration of new evidence is at the discretion of the Chair of the Panel.
2. The chair will decide in which order to hear presentations from the employee and from the dismissal decision-maker. The procedure below involves the employee presenting their appeal case first; *this may be reversed depending on the reason for dismissal and the nature of the case.*
3. The chair of the appeal panel will explain the process, and ensure that introductions are made and that all parties have the relevant documentation.
4. The employee (or their companion) will explain their case for appeal and may call witnesses.
5. The decision-maker may question the employee (or their companion) and their witnesses.
6. The appeal panel and their HR adviser may question the employee (or their companion) and their witnesses.

7. The decision-maker will outline the case for the decision to dismiss. They will call witnesses as required, normally including the manager who presented the case at the dismissal hearing.
8. The employee (or their companion) may question the decision-maker and any witnesses.
9. The appeal panel and their HR adviser may question the decision-maker, and any other witnesses.
10. The employee (or their companion) will sum up their case.
11. The decision-maker will sum up their case.
12. The appeal panel, together with their HR adviser will adjourn to consider the appeal decision.
13. The appeal decision will be given verbally at the conclusion of the appeal hearing or within five working days of the appeal hearing.
14. The decision will be confirmed in writing to the employee and the disciplinary decision-maker within 10 working days.