

## Hearing and Appeals – Policy, Procedure and Guidance

### Document Status

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The following procedures will apply when cases are referred to Hearings and Appeals;

Contents	Page
Hearings	1
Appeals	1
The role of HR	1
The role of the chair	1-2
Recording of hearings	2
Sequence of Hearings and Appeals	2-3
Communication of Decision	3
Follow up actions	3-4
Record of Disciplinary/Appeal hearing template	5
Record of Safeguarding case Disciplinary/Appeal hearing template	6-8

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### Academy Hearings:

The Governing Body/Board of Trustees may choose to delegate authority to take disciplinary, capability and attendance action up to and including dismissal to the Headteacher/Principal; the Headteacher/Principal and one or more Governors/Trustees; one or more Governors/Trustees. Where a panel is involved, they will appoint a Chairperson.

Where authority is delegated to one or more Governors/Trustees, the Headteacher/Principal may attend to offer advice at all relevant proceedings (unless he/she presents the case or is a witness) and such advice should be considered by the Governor(s)/Trustee(s) to whom the delegation has been made.

A representative of the Academy's Human Resources provider may be invited to attend and offer advice at disciplinary hearings and, if they do so, academies should consider such advice when reaching a decision (this also applies to appeal hearings).

It is recommended that where dismissal is a possible outcome, academies arrange for a panel of non-staff governors/trustees to hear the case. Ideally, the panel should be constituted of three governors, although two is permissible.

### Academy Appeals

Appeals should be heard by a panel of Governor(s)/Trustee(s). These should be constituted of at least two non-staff Governor(s)/Trustee(s) but be not fewer in number than the number of Hearing panel members.

Governor(s)/Trustee(s) who have had prior involvement in the case as part of a Hearing panel must not sit on the Appeals panel..

Appeals are not normally intended to be a rehearing of the case presented at the first Hearing. Where it is not a re-hearing it may not be necessary to call witnesses, other than the Chair of the first Hearing. The process outlined below relates to a full re-hearing of the case and may therefore be adjusted, dependent upon the format of each particular Appeal Hearing.

### What is the role of HR in Hearings and Appeals?

A Human Resources adviser may be present at Hearings & Appeals. Their role is to advise panels on Procedure/employment law. The Human Resources Adviser will normally be present during panel deliberations in an advisory capacity but will not take part in decision making.

### What is the role of the Chair?

The Chair is responsible for ensuring the hearing or appeal follows the correct process (see section on Hearing/Appeal sequence),

The Chair should cover the following during their introduction:

- 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 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 / Professional Association representative.
- 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.
- indicate that witnesses will only be present when giving evidence and answering questions.
- confirm how the Hearing/Appeal will be recorded. It should be noted that no individual participant may make a voice recording of the hearing, though they may make their own notes.

### When and how are Hearings and Appeals recorded?

It is strongly recommended to have a note taker present at employee hearings. It is also recommended that the Chair of the Panel should produce a summary Action Note of the outcome of any hearing. This summary Action Note can be hand written or typed and should be completed using the template Action Note. Action notes should be saved with the case file along with any other papers associated with the hearing. No voice recording of hearings and appeals is permitted unless agreed by all parties in advance.

### What is the sequence of the Hearing or Appeal?

For an Appeal Hearing only, the first step is for the Employee or representative to briefly explain the grounds on which the appeal has been submitted i.e. whether;

- on the facts of the case and/or;
- on the decision taken/sanction imposed and/or;
- due to procedural fault(s) and/or;
- new evidence has emerged and/or;
- alleged unfair selection (in a Redundancy Dismissal Appeal) or;
- a proposed resolution of an issue (in a Resolving Issues at Work Appeal)

From there, all hearings follow the same process:

1. management present their case including a description of the issue(s) and details of any investigation, referring to supporting evidence. *In Appeal Hearings, the management case will focus on the basis for the original decision and the grounds of appeal. Witnesses can be called as appropriate; however a written statement may be sufficient. A written statement should support witness testimony. Consideration will be given by the panel to the need for witnesses to remain available (but outside the Hearing) for possible recall.*
2. the employee or representative can then question (or seek clarification) of Management and any witnesses called by Management.
3. the Chair or Panel can ask questions (or seek clarification) of Management and/or any management witnesses.

4. management has the opportunity of clarifying any points that have arisen in the questions raised by the employee or representative or the Chair/Panel.
5. the employee or representative presents their case following the same procedure as in paragraph 1. *In Appeal Hearings they should cover the grounds for their appeal by elaborating on the facts of the case which are in dispute, and/or reasons for challenging the sanction/decision, and/or procedural fault(s).* Witnesses can be called as appropriate, but written statements may be sufficient. A written statement should support witness testimony. Consideration will be given to the need for witnesses to remain available (but outside the Hearing) for possible recall.
6. management can then question (or seek clarification of) the employee or representative and any witnesses.
7. the Chair, or Panel, can ask questions (or seek clarification) of the employee or representative and any witnesses.
8. the employee or representative then has the opportunity of clarifying anything that has arisen in the questions raised by management or the Chair/Panel.
9. management should then be asked if they wish to briefly summarise their case.
10. the employee or representative should then be asked if they wish to briefly summarise their case.
11. the Chairperson should then ask that both parties are satisfied with the conduct of the Hearing/ Appeal.
12. both parties will then be asked to withdraw to allow the Chair/Panel to consider the evidence presented to them. Should the Chair or Panel wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Hearing/Appeal.

**How and when is the decision communicated and recorded?**

The final decision may be delivered on the day and where that is the case both parties should be called back into the room and the Chair will announce the decision. This must also be confirmed in writing, normally within 5 working days of the date of the Hearing/Appeal.

Alternatively the Chair may wish to write to the respective parties to outline the panel's decision, normally within 5 working days of the date of the Hearing/Appeal.

The Chair of the Panel will produce and send the outcome letter to the employee, with support from the Human Resources Adviser to the panel. A copy of the letter should be forwarded to the Investigating Officer who must ensure it is placed on the employee's personal file.

**What other actions are taken after the Hearing or Appeal and who is responsible for this?**

It is the Chair of the Panel's responsibility to ensure the summary Action Note is saved with the academy's case file along with any other papers associated with the hearing.

In cases where safeguarding issues / procedures have been considered, the Chair is also responsible for completing the Safeguarding Disciplinary Case Record of Hearing. This document not only details the decision making process, but also ensures all necessary follow up actions take place.

In cases of dismissal, the Chair is responsible for liaising with the Headteacher/Principal to ensure that dismissal with or without notice (as appropriate) is effected and the appropriate notification and administrative measures taken.

Record of Hearing (Template Action Note) should be used to record the outcome of Hearings and Appeals – To be completed by the Chair of the Panel

<p><b>Type of Hearing (<i>which procedure</i>):</b></p> <p><b>Hearing/Appeal (<i>Please delete</i>)</b></p> <p><b>Date of the Hearing:</b></p>	<p><b>Name of employee:</b></p>	<p><b>Name of manager presenting case:</b></p>
<p><b>Summary of manager’s case:</b>          (To include key points made by the presenting manager, could include reference to policy, decisions taken and reasons for bringing the case to a hearing)</p>		
<p><b>Summary of employee’s case:</b>          (To include key points made by the employees, could include reference to mitigation, issues with managers case and/or explanations given)</p>		
<p><b>Summary of Decision taken by panel:</b>          (This should include a summary of the reasons for making a decision and any points of mitigation taken into consideration)</p>		
<p><b>Recorded outcome of hearing:</b> (e.g. level of warning)</p>		
<p><b>Signed:</b></p> <p><b>Date:</b></p>		

## Safeguarding Disciplinary Cases – Record of Hearing

To be completed by the Chair of the Panel to support decision making process and on-going risk management

<b>Type of hearing:</b>	<b>Name of employee:</b>	<b>Panel members:</b>
<b>Date of hearing:</b>		
<b>Allegation(s):</b>		
<b>Seriousness of allegation(s):</b> <ul style="list-style-type: none"><li>• vulnerability of the individual</li><li>• nature and seriousness of the safeguarding issue</li><li>• length of time over which the abuse occurred</li><li>• impact on the individual / others</li><li>• can the situation be monitored</li></ul>		
<b>Likelihood of re-occurrence:</b> <ul style="list-style-type: none"><li>• what is the history</li><li>• intent – deliberate / lack of awareness</li><li>• pre-disposing factors or triggers</li><li>• possibility of supportive measures</li><li>• can the situation be monitored</li></ul>		
<b>Assessing overall risk:</b> <ul style="list-style-type: none"><li>• evidence provided</li></ul>		

<ul style="list-style-type: none"> <li>• identified risks</li> <li>• what is required as follow up to mitigate any further risk</li> </ul>	
<p><b>Sanction and next steps:</b></p> <ul style="list-style-type: none"> <li>• Dismissal – Chair to: <ul style="list-style-type: none"> <li>○ complete written instruction stating who is responsible for completing the employment reference</li> <li>○ complete written instruction clearly stating who is responsible for making required referrals to regulatory / professional bodies. This is typically the line manager with support from NYHR.</li> </ul> </li> <li>• Warning with redeployment – Chair to: <ul style="list-style-type: none"> <li>○ liaise with Headteacher/Principal re possible roles</li> <li>○ prepare written instruction regarding detailed handover to receiving manager</li> <li>○ include written instructions clearly stating follow up required by receiving manager</li> </ul> </li> <li>• Warning with follow up – Chair to: <ul style="list-style-type: none"> <li>○ prepare written instruction and liaise with Headteacher/Principal to ensure implementation</li> </ul> </li> <li>• No further action</li> </ul>	



**Confirming sanction:**

- Chair to:
  - confirm in writing within 5 working days of the Hearing to the employee
  - copy manager with instruction to file in personal file
  - ensure **all** written instructions detailed above are filed in the academy case file
  - where appeal received, inform supporting NYHR Adviser