

**Managing Appeals**

**Toolkit**

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**Managing Appeals Toolkit**

# Introduction

An important final part of any process and aligned to the principles of natural justice is the right to appeal. Employees have the right to appeal where formal sanctions have been applied to them, or they have been dismissed. The **Appeals Policy** is to be used to appeal against sanctions issued under the Disciplinary Policy; or if an employee is dismissed from employment by the School on the grounds of capability or following the end of a fixed term contract. This toolkit is intended to be read alongside the Schools Appeals Policy.

It is important that the panels are made up of the appropriate people in accordance with the Appeals Policy. Before proceeding ensure you are familiar with the other panel members. It is recommended all participants in the appeal hearing review the following guidelines and are familiar with the policy and process, not just the Appeal Chair.

HR will be involved in any Appeals process and can provide any additional advice, especially with regard to more complex cases.

**Appeal Process**

* Employees are advised, in an outcome letter, of their right to appeal against formal action the School has deemed appropriate through the various employee policies and processes.
* Employees will submit an appeal to the Chair of Governors/Head Teacher within 10 working days of receiving their outcome letter. Employees are required to stipulate in the letter the grounds of their appeal, which need to be one of the following:
* there was a defect in the procedure applied;

**NB**: In circumstances of redundancy this may include a defect in the selection criteria, or application of the criteria (including a challenge to the scoring where there is evidence to substantiate this) leading to unfair selection. The appeal itself will not be a re-hearing of any selection interview, and any challenge to the scoring must be based on reasonable grounds.

* the decision was taken without all relevant evidence being considered;
* the sanction/decision was too severe;
* new evidence has come to light since the last sanction / decision was determined.
* The purpose of any appeal is to consider the specific points of appeal the employee has raised, not to review the case in its entirety, or to rehear it.
* If the grounds of an appeal relate to a defect in the original hearing process or procedure, the Chair of Governors *may* in exceptional circumstances advise that a rehearing is held in place of the appeal hearing. If this is the case, the hearing will follow the original hearing procedure and all parties and witnesses will be invited. The panel and possible outcomes will be consistent with the appeal hearing procedure.

The outcomes that may be reached are:

* + Uphold the case against the employee and confirm the original sanction;
	+ Uphold the case against the employee however, if deemed appropriate, impose a reduced sanction;
	+ Uphold the appeal, and thereby not uphold the case against the employee, and withdraw the sanction imposed.

The appeals stage is final and there is no further right of appeal. The person hearing the appeal should not have been involved in the original process to help ensure that a fair and impartial hearing is held.

The employee has the right to be accompanied by a School work colleague or Trade Union representative, or Trade Union official at the hearing.

# Preparing for the Appeal Hearing

**Who will hear the appeal?**

Where an individual has appealed against a **warning / sanction or dismissal** issued under the disciplinary policy, capability policy, sickness absence policy, or end of fixed term contract policy, the appeal will be heard by a panel of three Governors accompanied by an HR representative and note-taker will attend also. The HR representative attends to advise the panel on policy and procedure.

The decision at the end of the hearing is the responsibility of the appeal panel chair, taking into account the case / argument presented by the employee and their representative, and any procedural and policy advice from the HR representative.

**Preparing for the appeal hearing:**

* Ensure you have read and understood all of the documents from the original meetings and process in advance of the hearing.
* Review the employee’s ground for appeal.
* Consider whether there is further information required e.g. if you need to meet with any witnesses yourself or obtain further reports / data. The employee may submit additional documentation as part of their appeal or reference documents which you will need to have read prior to the hearing.
* Prepare any questions that you wish to ask the employee in the hearing.

# Who will be present at the Hearing

The employee who has submitted the appeal, will attend the hearing, with their representative if they choose, and will present their appeal case.

The Head Teacher/Chair of the first panel will attend to present the management case, outlining the reasons why they reached the decision they did, based on what information and evidence, and any other relevant factors.

The purpose of the appeal hearing is to determine if the original decision was fair and sound based on the information and evidence to hand. It is not a re-hearing and therefore witnesses that may have had earlier involvement will not typically be required to attend the appeal hearing expect in circumstances where a witness has **new** information and/or a witness can provide clarity on significant factors which was not previously given at the first panel.

# Appeal Hearing Structure

This is an outline script for an appeal panel. This does not have to be spoken word for word, but helps to illustrate how to conduct the hearing:

|  |  |
| --- | --- |
| Structure | Sample talking points |
| Introduce those present to the employee (and their companion/representative) and roles | **Opening:** Thank you for attending, my name is… It is the Panel’s role to review the points of appeal, consider the evidence and determine the appeal outcome. With me on the panel today are….**Employee Representative:** You were aware of your right to be accompanied to the meeting and {name} is here as your representative / or you have chosen not to be accompanied.**NB:** If the employee is unaccompanied, checks that the employee is happy to proceed without representation and makes a note to that effect. **Note taker:** {Name} is here to take notes of the hearing but will not be involved in the decision process, also whilst we endeavour to capture full notes and key action points, notes will not be verbatim. |
| Explain recording authority for hearing  | I would like to start by reminding you that electronic, audio or video recording by any device of the hearing will not be permitted. Are there any questions before I commence? |
| Confirm that the employee understands why they are here | **Outline grounds for appeal:** The purpose of the meeting is to discuss the specific points of appeal you have raised following the decision to take formal action / to dismiss you. The purpose is not to reconsider the case in its entirety. It is to determine whether or not the original decision was a reasonable outcome based on the facts and evidence presented and conclude whether or not it was a fair and sound decision. |
| Confirm the employee was able to familiarise themselves with the policy | **Policy:** A copy of the Appeals Policy was enclosed with your appeal hearing invite letter. Do you have questions relating to this before we proceed? |
| Clarify the potential outcomes of the meeting | Following the hearing a decision will be made as to whether or not to uphold your appeal. This could result in the outcome of the original process being upheld, reduced or withdrawn. |
| Explain the role of the companion/representative (if present) |  I note that you have brought {name} with you as your companion. Thank you for joining us, I would just like to take a moment to clarify your role in these proceedings. You are allowed to address the hearing; to put and sum up [employee’s} case; respond on behalf of {employee} to any views expressed in the meeting and confer with {employee} during the hearing.You will not, however, have the right to answer questions on {employee’s} behalf, address the hearing if {employee} does not wish it or be able to prevent {employee} from explaining their case.Please note that both parties will have a right to request an adjournment during the hearing..NB: If the employee is unaccompanied, checks that the employee is happy to proceed without representation and makes a note to that effect.  |
| Explain how the meeting will be conducted | **Outline:** As Chair, I will invite you to address each point of appeal you have raised in turn. You will be provided with an opportunity to discuss each of these and all parties may also raise questions when invited to do so, in accordance with the running order. .Following the hearing: We will adjourn and will confirm the decision of the panel as soon as possible. |
| Explain confidentiality obligations | **Clarify:** I must make you aware that all information discussed as part of this meeting must be treated confidentially and you are only able to discuss details of the meeting with your appointed representative. Equally we will not share any information we discuss with anyone other than those who are involved in the process. |

# Appeal Hearing Procedure

1. Management representative, employee or representative enter together
2. The Panel Chair outlines the procedure. Any procedural questions are resolved at this point
3. The appellant and/or representative present case based on the grounds specified when submitting the appeal. The appellant can refer to documentation and call witnesses
4. The management representative may ask questions of the appellant and/or representative and any witnesses
5. Panel members and the HR provider may ask questions of the appellant and/or representative and any witnesses
6. The management representative responds to appellant's presentation and may call any witnesses in connection with the grounds for appeal
7. The appellant and/or representative may ask questions of the management representative and any witnesses
8. Panel members and HR provider may ask questions the management representative and any witnesses
9. The appellant and/or representative summarises and concludes
10. The management representative summarises and concludes
11. The management representative, appellant and representative withdraw whilst the Committee advised by the HR provider consider the appeal
12. All parties return and the decision is announced.

**The Decision:**

The panel considers the employee's case, the related evidence and any relevant policies and procedures.

NB: If the panel wishes to put further questions to either party, both parties will be recalled even if the question is to be directed at one party only. At no time should the panel be alone with either the employee/representative or with their management representative.

The panel make the final decision on the outcome, and the panel chair completes a summary of the decision and related action (where appropriate) on the Appeal Hearing Decision Record.

Once a decision is reached, all parties are recalled and the chair gives the panel's verbal decision. This will be confirmed in writing to the employee following the hearing.

The chair brings the hearing to a close.

# Letters and Forms

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# TEMPLATE LETTERS

## Template Letter 1 - Notification Of The Appeal Hearing

PRIVATE & CONFIDENTIAL

<Addressee>

<Address>

<Date>

Dear <Addressee>

**Notification of the Intention to Hold an Appeal Hearing**

I write in response to your letter dated <date of Appeal notification> in order to formally advise you that a hearing has been arranged to hear your grounds of appeal as detailed below:

Date:

Time:

Venue:

You have the right to be accompanied by a School work colleague or a recognised trade union representative or a trade union official. You are required to confirm to me in advance of the hearing who you will be accompanied by.

If you are unable to attend the hearing due to ill health or some other reasonable reason, or your representative is unable to attend, please notify me in order that an alternative date for the hearing can be arranged, within the following 5 days. I would remind you that the hearing may proceed in your absence should you or your representative fail to attend without advance notification to me and without good reason. If you are unable to attend the re-arranged hearing then your case may be considered based on any written documentation and/or any representations by your trade union representative or fellow work colleague.

The hearing will be conducted by a Panel consisting of <name and title> Panel Chair <name and title> panel members and <name> HR representative. <name> will also attend as a note-taker. The management case will be presented by <name>.

Your appeal is in respect of:

Decision

<Insert decision(s)>

You have stated that the grounds of your appeal are:

<Insert grounds from employee's letter>

The panel will consider the grounds of your appeal and any information you have submitted and will have a range of outcomes that may be concluded:

1. The case against you is upheld (in whole or part); the sanction will then be the same or lesser penalty.
2. The case against you is not upheld, the case is dismissed.

During the course of the hearing you will have the right to present your statement specifying the grounds of your appeal and hear and question evidence presented in response. A copy of all documents to be presented at the hearing has been enclosed.

Please note that electronic, audio or video recording by any device of the hearing will not be permitted.

The above is in accordance with the Appeals Policy, a copy of which was previously forwarded to you. As stated in the Policy, following the hearing you will have no further right of appeal to the School.

Please acknowledge receipt of this letter by signing the attached copy and returning it to me. A copy of this letter has been forwarded to your representative [if applicable].

Yours sincerely

<Name>

HR Representative

Encl.

cc: <Representative/ Union>

I acknowledge receipt of this letter inviting me to an appeal hearing at <Venue> on <Day> <Date> <Time> and confirm I will be attending.

SIGNED…………………………………………… DATE…………………………..

NAME (Print)………………………………………

I intend to be accompanied by:

Name--------------------------------------- Title-----------------------------------

Delete as appropriate: I do not intend to call witnesses/I intend to call the following witnesses

Name--------------------------------------- Title-----------------------------------

Name--------------------------------------- Title-----------------------------------

## Template Letter 2 – Notification of Rehearing

PRIVATE & CONFIDENTIAL

<Addressee>

<Address>

<Date>

Dear <Addressee>

**Notification of the Intention to Hold a Rehearing**

I write in response to your letter dated <date of Appeal notification> in order to formally advise you that a rehearing has been arranged to hear your case as detailed below:

Date:

Time:

Venue:

You have the right to be accompanied by a School work colleague or a recognised trade union representative or a trade union official. You are required to confirm to me in advance of the hearing who you will be accompanied by.

If you are unable to attend the re-hearing due to ill health or some other reasonable reason, or your representative is unable to attend, please notify me in order that an alternative date for the re-hearing can be arranged, within the following 5 days. I would remind you that the re-hearing may proceed in your absence should you or your representative fail to attend without advance notification to me and without good reason. If you are unable to attend the re-arranged hearing, then your case may be considered based on any written documentation and/or any representations by your trade union representative or fellow work colleague.

The hearing will be conducted by a Panel consisting of <name and title> Panel Chair <name and title> panel member and <name> HR representative. <name> will also attend as a note-taker. The management case will be presented by <name>.

Your appeal is in respect of:

Decision

<Insert decision(s)>

You have stated that the grounds of your appeal are:

<Insert grounds from employee's letter>

The Panel will consider your whole case in order to remedy any defect in the previous hearing and will have a range of outcomes they will consider:

1. The case against you is upheld (in whole or part); the sanction/decision will then be the same or lesser penalty.
2. The case against you is not upheld, the case is dismissed.

During the course of the hearing you will have the right to hear and question all evidence presented covering the case and to provide a statement of your own behalf.

A copy of all documents to be presented at the hearing has been enclosed.

Please note that electronic, audio or video recording by any device of the hearing will not be permitted.

The above is in accordance with the Appeals Policy, a copy of which is enclosed. As stated in the procedure, following the hearing you will have no further right of appeal to the School.

Please acknowledge receipt of this letter by signing the attached copy and returning it to me. A copy of this letter has been forwarded to your representative [if applicable].

Yours sincerely

<Name>

 Chair of Governors

Encl.

cc: <Representative/ Union> <HR Representative>

I acknowledge receipt of this letter inviting me to rehearing at <Venue> on <Day> <Date> <Time> and confirm I will be attending.

SIGNED…………………………………………… DATE…………………………..

NAME (Print)………………………………………

Delete as appropriate: I do not intend to call witnesses

I intend to call the following witnesses

Name--------------------------------------- Title-----------------------------------

Name--------------------------------------- Title-----------------------------------

## Template Letter 3 – Appeal Hearing / Rehearing Decision

PRIVATE & CONFIDENTIAL

<Addressee>

<Address>

<Date>

Dear <Addressee>

**Appeal Hearing**

I write further to the Appeal Hearing/Rehearing held on <date> which considered the following grounds of appeal:

<Insert grounds of appeal>

The panel took into account all the evidence provided at the hearing and considered any mitigating circumstances before delivering their decision on the sanction awarded.

This letter serves as confirmation of the decision that <decision upheld or outcome decided> in accordance with Appeals Policy.

<Confirmation of warning, dismissal notice or reinstatement as appropriate>

You have no further right of appeal against this decision to the School (if appropriate).

Yours sincerely

<Name>

Panel Chair

## Template Letter 4 – Confirmation of Receipt of Appeal

PRIVATE & CONFIDENTIAL

<Addressee>

<Address>

<Date>

Dear <Addressee>

**Notification of Appeal**

I write in response to your letter dated <date of Appeal notification> in order to formally confirm receipt of your notification that you wish to lodge an appeal.

Arrangements are being made for your appeal to be heard in accordance with the School's Appeals Policy, a copy of which was provided to you in earlier correspondence.

Yours sincerely

<Name>

HR Representative

cc: <Representative/Union>

## Template Letter 5 – Confirmation of Grounds of Appeal

PRIVATE & CONFIDENTIAL

<Addressee>

<Address>

<Date>

Dear <Addressee>

**Confirmation of Grounds of Appeal against dismissal**

I write in response to your request to appeal against:

Decision

<Insert decision>

The School's policy allows appeals on the following grounds:

* there was a defect in the procedure applied;

**NB**: In circumstances of redundancy this may include a defect in the selection criteria, or application of the criteria (including a challenge to the scoring where there is evidence to substantiate this) leading to unfair selection. The appeal itself will not be a re-hearing of any selection interview, and any challenge to the scoring must be based on reasonable grounds.

* the decision was taken without all relevant evidence being considered;
* the sanction/decision was too severe;
* new evidence has come to light since the last sanction / decision was determined.

I should be grateful if you would formally confirm in writing on which grounds you wish to appeal and your reasons for doing so.

Yours sincerely

<Name>

cc: <Representative/Union>

# TEMPLATE FORMS

## APPEAL HEARING – DISCIPLINARY – EXAMPLE MANAGEMENT CASE

**This can be used as a guide by the Governor (or in very rare cases the Head Teacher) who chaired the original disciplinary hearing, when putting together their management case to be presented at an appeal hearing. The relevant details of the case will need to be inserted where indicated.**

* **Introduction – constitution and set up of Disciplinary Hearing**

As a Governor of SCHOOL NAME, I was asked to Chair a Disciplinary Hearing in respect of EMPLOYEE NAME. I was joined on the panel by two other members of the Governing Body.

PROVIDE DETAILS OF WHEN AND HOW THE HEARING TOOK PLACE

Prior to the hearing, I familiarised myself with the School's Disciplinary Policy.

As prescribed, I commenced the hearing, making introductions to all parties in attendance. I advised that no audio or electronic devices were permitted and phones must be switched off. I also confirmed that everyone had copies of all the paperwork needed and advised the employee that if they needed a break at any time, an adjournment could be facilitated.

ADVISE WHETHER THE EMPLOYEE HAD SUBMITTED ANY DOCUMENTS PRIOR TO THE HEARING AND IF SO THAT THESE WERE CIRCULATED TO ALL PRESENT AT THE HEARING IN ADVANCE. ALTERNATIVELY, ADVISE IF THERE WAS ANY LATE SUBMISSION OF PAPERWORK AND WHETHER OR NOT THIS WAS ACCEPTED.

I confirmed the procedure to be followed at the hearing and EMPLOYEE NAME confirmed they were ready to proceed. I then asked the Investigating Officer to present their Investigation Report.

* **Investigating Officer**

PROVIDE A SUMMARY OF THE PRESENTATION PROVIDED BY THE INVESTIGATOR. INCLUDE WHETHER ISSUES WERE CLEAR OR WHETHER THERE WERE ANY UNRESOLVED ISSUES. SUMMARISE KEY AREAS OF QUESTIONS TO THE INVESTIGATOR AND HIS/HER RESPONSES.

* **Management Case**

The hearing proceeded to the Management case delivered by NAME.

HIGHLIGHT WHETHER THERE WERE ANY POINTS RAISED IN THE MANAGEMENT CASE THAT WERE RELIED ON IN THE PANEL DELIBERATIONS.

* **Employee Statement**

<EMPLOYEE NAME> was then invited to present their responses – see NOTES of hearing.

IF APPROPRIATE, REFER TO ANY POINTS OF CLARIFICATION WHICH WERE SOUGHT BY THE PANEL/ MANAGEMENT REP. EXPLAIN ANY MITIGATING FACTORS THAT WERE PARTICULARLY REFERRED TO IN THE DELIBERATIONS OF THE PANEL.

* **Witnesses**

REFER TO ANY POINTS FROM THE NOTES OF THE HEARING IN RELATION TO EMPLOYEE OR MANAGEMENT WITNESSES THAT YOU WOULD WANT TO HIGHLIGHT.

* **Factors taken into consideration**

LCC guidance on conducting a hearing states that the Disciplinary Panel members should satisfy themselves of the following points which I will address in turn:

1. ***Has there been as much investigation as is reasonable in the circumstances?***

WERE THE PANEL SATISFIED THAT THE INVESTIGATION WAS THOROUGH AND INCLUDED INTERVIEWS WITH ALL APPROPRIATE PARTIES?

1. ***Have the requirements of the disciplinary procedure been properly complied with up to this point?***

WERE THE PANEL SATISFIED THAT A FULL AND FAIR PROCESS AND HEARING HAD BEEN CONDUCTED?

1. ***Has sufficient regard been paid to any explanation put forward by or on behalf of the employee?***

INCLUDE ANY INFORMATION WITH REGARDS TO MITIGATION THAT THE PANEL CONSIDERED DURING DELIBERATIONS

1. **I*s there a genuine belief that the employee has******committed the misconduct******alleged?***

WHAT WERE THE OUTCOMES/ FINDINGS OF THE INVESTIGATION AND WERE THE PANEL SATISFIED THAT THERE WAS SUFFICIENT EVIDENCE AVAILABLE TO MAKE THIS CONCLUSION (INCLUDING THEIR STATEMENTS AT THE HEARING)

1. ***Are there reasonable grounds on which to sustain that belief on the balance of probabilities (i.e. is it more likely than less that the employee did******what is alleged)?***

PLEASE REFER TO THE EMPLOYEE STATEMENTS, ANSWERS IN THE HEARING AND OTHER EVIDENCE AVAILABLE THAT MAY HAVE LED THE PANEL TO CONCLUDE REASONABLE GROUNDS TO SUSTAIN THE BELIEF

1. ***Is******the misconduct sufficiently serious to justify the disciplinary action being contemplated?***

WHAT WERE YOUR CONSIDERATIONS AS A PANEL?

WERE YOU SATISFIED THAT YOU HAD ALL OF THE NECESSARY INFORMATION?

WERE YOU ADVISED ACCORDINGLY IN TERMS OF POLICY AND PROCEDURE?

WERE THERE PREVIOUS LIVE WARNINGS TO TAKE INTO ACCOUNT WHEN DETERMINING THE OUTCOME?

1. ***Has regard been given to any mitigating circumstances put forward by or on behalf of the employee?***

PLEASE REFER TO MITIGATION AND HOW THIS WAS CONSIDERED AND OUTLINE THE IMPACT OF THIS ON THE OUTCOME

1. ***Is******the decision within the band of reasonable responses of a reasonable employer in the circumstances?***

PLEASE OUTLINE BRIEFLY THE CONSIDERATIONS OF THE PANEL WHEN DECIDING ON THE OUTCOME AND EXPLAIN WHY THE SANCTION GIVEN WAS THE CORRECT SANCTION e.g. WHAT POLICY WAS BREACHED, HOW SERIOUS WAS THIS AND WHAT IMPACT DID THIS HAVE/COULD THIS HAVE HAD ON THE SCHOOL.

1. ***If dismissal is the only option, have alternative sanctions been considered.***

WERE ALTERNATIVE SANCTIONS CONSIDERED AND WHY WERE THESE DEEMED NOT APPROPRIATE.

<EMPLOYEE NAME> was then invited to re-join the hearing together with the management representative and Notetaker. I read the hearing determination to <EMPLOYEE NAME> and advised of the Panel's decision. (INSERT SANCTION GIVEN).

Confirmation of the outcome in writing was emailed/posted on (INSERT DATE). The letter advised the employee of their right to appeal.

As Chair of the Disciplinary Panel, I consider that <EMPLOYEE NAME> has received a fair hearing and that the outcome was reasonable and proportionate.

That concludes the Management Case.

## APPEAL HEARING DECISION RECORD

**STRICTLY CONFIDENTIAL**

**Appeal Hearing Decision Record**

Name of Employee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Appeal Hearing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of TU or Employee Rep:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Names of Panel Members: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DECISION OF THE PANEL

The purpose of the hearing was to consider and seek explanation in respect of the following allegation(s) matter(s) (delete as appropriate)

Having taken into account all of the evidence presented at the hearing, the findings in relation to this/these allegation(s) matter(s) (delete as appropriate) are:

The decision of the panel therefore is that:

The following action points are to be implemented:

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Chair of Panel

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_