



## Procedure for Handling Impaired Capability on Grounds of Ill Health

Staff in Langley Park Learning Trust

Owner (job role):	Director of HR
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## 1 Introduction

- 1.1 As part of their day-to-day responsibilities Senior Managers and supervisors will have to make arrangements to cover an employee's absence on account of ill health. This procedure is designed to cover those cases where an employee's performance or attendance is so significantly below the required standards as a result of ill-health or injury (physical and/or mental) that formal action is judged necessary because of the effects the absence or medical condition is having on the job, other members of staff and the Langley Park Learning Trust.
- 1.2 Matters relating to the health of employees require sensitive handling with due thought and consideration for the individual. Ultimately, an employee's inability to perform his or her contract of employment satisfactorily because of ill-health or injury is a ground for fair dismissal but only after an equitable and reasonable procedure has been followed.
- 1.3 Each case must be given individual consideration having regard to the particular circumstances and Academies are strongly advised to discuss specific cases with their Personnel Provider whenever the need for guidance arises.

## 2 Scope and purpose

- 2.1 This procedure applies to all staff employed within the Langley Park Learning Trust other than those under a probationary or statutory induction period and casual employees. It is designed to ensure that unsatisfactory performance and attendance on account of ill-health and/or injury is dealt with fairly, reasonably and consistently.
- 2.2 In accordance with the provisions of the school staffing (England) Regulations 2003, the Governing Body may delegate its power to dismiss any member of staff to the Head Teacher, an individual Governor or group of Governors with or without the Head Teacher.
- 2.3 The Head Teacher is normally expected to lead in all initial staff dismissal processes.
- 2.4 The Head Teacher may involve other Governors in dismissal processes (ie investigations) but where responsibility for staff dismissal has been delegated to the Head Teacher, the final decision on whether to terminate an individual's employment rests with the Head Teacher. However if the Head Teacher has been extensively involved in the individual case he/she may refer the dismissal to the relevant committee.
- 2.5 Where the Governing Body has delegated responsibility for staff dismissal to a relevant committee, the provisions below regarding the constitution of such a committee shall apply.

## 3 Definitions

- 3.1 The following definitions will apply throughout this procedure.

Supervisor - anyone who has been delegated supervisory responsibilities who can be defined as the employee's immediate supervisor/line manager.

- Senior Manager - Head Teacher, or any Line Manager with specific delegated power. Where the person subject to the procedure is the Head Teacher, the Senior Manager will be the Chair of Governors.
- Committees and Appeal Committees - Committees established by the Governing Body to deal with matters in accordance with the provisions of the Instruments of Government of the school, as amended, and the Education (School Government) (England) Regulations 1999. The Governing Body may establish the Committees it thinks necessary to deal with a particular function. The 1999 Regulations provide for Governing Bodies to establish a Staff Dismissal Committee and a Staff Dismissal Appeal Committee.
- The Ill-Health Committee and the Staff Dismissal Committee may be the same body. Appeals against dismissal must be heard by the Staff Dismissal Appeal Committee which must be a separate body and should only consist of governors who have taken no part in the original decision against which the appeal is made
- Days - Working days or consecutive days if it is necessary and appropriate to progress matters outside term time

#### 4 Rights of representation

- 4.1 Employees have the right to be accompanied at all formal stages of this procedure. They may be accompanied by a trade union representative, a work colleague or friend of their choice.
- 4.2 Senior Managers also have the right to be accompanied at all stages of the formal procedure.
- 4.3 Any other appropriate professional adviser may attend at any stage of the procedure to give advice or assist in the operation of this procedure, as required at the request of the Senior Manager or Governors' Committee.
- 4.4 Reference in this procedure to the Supervisor, Senior Manager, Chair of Governors or employee shall include their personal representatives as appropriate.

#### 5 Absence on account of ill-health

Absences on account of ill-health fall within two categories:

- (a) Persistent short-term absence.
- (b) Long-term sickness.

## 6 Persistent short-term absence

### 6.1 Preamble

- 6.1.1 Persistent short-term absences should be dealt with promptly, firmly and consistently.
- 6.1.2 Head Teachers must ensure that records are kept showing the reason and duration of all sickness absence (including lateness) so that problems can be identified and addressed at an early stage. Employees must be asked to give an explanation for all absences and certificates produced where appropriate. (Appendix 1).
- 6.1.3 Records may show persistent short-term absence for a single known genuine health problem or may cover a variety of seemingly unrelated reasons which may not show a regular pattern; both eventualities are covered by this procedure. The extent to which absence causes difficulties for the establishment needs to be taken into account when considering whether to take action under this procedure.
- 6.1.4 If, after investigation, it would appear that there is no good reason for any absence, medical or otherwise, then the matter may need to be dealt with under the disciplinary procedure. In the event of absence on account of ill-health the procedure below will be followed.

### 6.2 Informal Stage

- 6.2.1 Before commencing any formal proceedings the supervisor will provide the employee with details of his/her absence record and talk the situation over with the employee advising him or her that attendance is causing concern and inviting an explanation. It might be that matters such as personal problems, working relationships or working conditions are contributing to or causing the problem and a temporary or permanent solution may be found without the need to progress further at this stage.
- 6.2.2 As part of this informal process the employee will be told that a failure to improve attendance over a reasonable period of time is likely to result in formal action being taken which could ultimately lead to the termination of his/her contract of employment. This would not constitute a formal caution at this stage.

### 6.3 Formal stage

- 6.3.1 If informal counselling fails to achieve an improvement in attendance, or where the investigation of unsatisfactory attendance reveals possible health problems, the employee should be referred to the Langley Park Learning Trust's Occupational Health Physician who will establish whether there is an underlying cause for the absence which requires medical treatment and whether the absence is work related. For this purpose a medical referral must be made, in writing.
- 6.3.2 In the case of all referrals to the Occupational Health Physician, the Senior Manager will inform the employee of the purpose of the referral and that he/she will be required to attend an appointment with the Occupational Health Physician. This must be confirmed in writing.
- 6.3.3 A copy of the Occupational Health Physician's report will be forwarded to the Senior Manager who should then hold an interview with the employee to discuss the implications of its contents. At least five working days or seven consecutive days' notice of the meeting must be given in writing and the employee advised of his/her entitlement to be accompanied by a recognised trade union

representative, work colleague or friend of his/her choice. If the employee has not already been given a copy of this procedure, then s/he should be sent one at this stage.

6.3.4 As part of the interview, if appropriate, the Senior Manager will caution the employee that the absences cannot continue indefinitely and that an appropriate level of improvement is required within a given period of time. The improvement required within the timescale given must be reasonable having regard to the particular circumstances of the case including:

- comments or recommendations in the Occupational Health Physician's report(s) including whether the timescale is related to specific treatment
- any representations made by the employee;
- the effect of the absence on the Langley Park Learning Trust including any effect on colleagues and the need to provide cover;
- the frequency of the absences;
- the age, length of service and performance of the employee;
- whether or not the illness or injury is job-related, and if so whether alternative employment or alternative working arrangements are available and appropriate and for how long;
- whether or not it is possible to make adjustments to the premises or the working hours or the way in which the employee performs his/her duties to enable these duties to be carried out satisfactorily;
- whether any reasonable support can be given to bring about an improvement (eg temporary release from some duties or shorter working hours on a temporary or permanent basis).

6.3.5 The employee will also be advised as to the possible consequences of a lack of improvement in attendance.

6.3.6 The caution, the improvement required within the timescale given, the possible consequences of a failure to improve, and any other relevant considerations (such as an agreed temporary alteration to contractual obligations) must be confirmed in writing within five working or seven consecutive days of the interview taking place.

6.3.7 Where the Occupational Health Physician indicates that absence is unlikely to improve since it is as a result of a medical condition which necessitates absence as per the pattern established, the Senior Manager will have to consider whether the illness/injury creates an untenable situation which it is not reasonable for the Langley Park Learning Trust to have to tolerate. However, particular care must be exercised in dealing with such cases and due regard made to the provisions of the Equality Act 2010.

6.3.8 In reaching any decision the Senior Manager will have regard to the relevant points itemised above, and any other professional advice received. Should the Senior Manager decide to recommend dismissal the procedure detailed in the paragraph entitled 'Determination by Staff Dismissal Committee/Head Teacher' will be followed.

6.3.9 If the employee does not show an acceptable and sustained improvement within the timescale given the Senior Manager will interview the employee again giving him or her the opportunity to respond. At least five working or seven consecutive days' notice of such an interview will be given

to the employee in writing and he/she is entitled to be accompanied by a trade union representative or work colleague of his or her choice.

- 6.3.10 During the interview the Senior Manager will consider whether a further medical referral is appropriate having regard to the representations of the employee, the particular circumstances of the case, and anything previously reported by the Occupational Health Physician. Should further investigation be unnecessary and alternative action inappropriate the employee should be given a further caution that the level of absence is more than it is reasonable to expect and either previous targets for improvement re-stated, or new ones established having regard to the circumstances.
- 6.3.11 The employee will also be advised that subsequent failure to meet the required standard of attendance may result in the termination of his/her contract of employment. In any event the outcome of the meeting will be confirmed in writing within five days of it taking place.
- 6.3.12 At least two cautions must be given and confirmed in writing to an employee when seeking to bring about an improvement in excessive intermittent absence on account of ill-health. Such cautions must also be at appropriate intervals following on from each other and not, for example, at isolated unrelated instances over several years.
- 6.3.13 If the Senior Manager considers that, in spite of having followed a fair and reasonable procedure as outlined above, the problems caused by the absenteeism cannot be tolerated any longer, then, having considered all the alternatives he/she will convene a meeting of the Staff Dismissal Committee of the Academy Trust Governing Body (paragraph 9 below) and recommend that consideration be given to the termination of employment. Where responsibility for Staff Dismissal has been delegated to the Head Teacher, the Head Teacher will convene a meeting.

## 7 Long-term sickness

- 7.1 The Supervisor and/or Senior Manager must keep in regular contact with an employee (eg home visits, telephone contact, letter) throughout a period of long-term sickness both out of concern for the individual and to ensure senior management and the Governing Body are kept informed of the reasons for absence and prognosis. All communications with the employee must be handled sensitively. Where appropriate, the employee will also be informed, in writing, of the expiry date of his/her full and half-pay entitlement.
- 7.2 Self-certification is appropriate for the first week of incapacity. Thereafter, a doctor's certificate must be provided throughout the period of absence, including during Langley Park Learning Trust closure. (Please refer to Appendix 1.)
- 7.3 Where the circumstances of the absence warrant a referral (e.g. stress related absences), the employee has been, or will be, absent from work for some time (e.g. six weeks) the Senior Manager will need to arrange for him/her to be referred to the Occupational Health Physician so as to obtain an informed medical opinion about the employee's condition and future prospects of returning to work. The timing of this referral must depend on the individual circumstances of the case having regard to:
- (i) whether he/she is a key worker fundamental to the Langley Park Learning Trust or
  - (ii) whether a temporary re-organisation or replacement can be arranged which will lessen the effects of the absence on the establishment and other employees and make a longer period of absence more tolerable. The size and resources of the Langley Park Learning Trust will obviously be a crucial factor in this respect

- 7.4 The Senior Manager must advise the employee that a referral to the Occupational Health Physician is taking place and why; wherever possible this should be done verbally and confirmed in writing. Where not already so advised the employee will be sensitively made aware of the problems his/her absence is causing and that the long term prospects for his/her future employment must be considered.
- 7.5 If the employee refuses to see the Doctor he/she may be in breach of his/her employment contract. In any event he/she will be reminded of the purpose of the referral, in writing, and advised that any decisions regarding his/her future employment will have to be made on the basis of the information available even if this does not include an informed medical opinion.
- 7.6 In the event that the Occupational Health Physician considers the employee permanently unfit to undertake the duties for which he/she is employed a "certificate of ill health" will be issued following which the employee should not be allowed to recommence or resume work at the Langley Park Learning Trust, and the procedure detailed in the paragraph entitled "Determination by Staff Dismissal Committee/Head Teacher" will apply.
- 7.7 Upon receipt of the medical report the Senior Manager will discuss future employment implications with the employee. This will require sensitive handling whatever the outcome. The employee is entitled to be represented throughout the discussions if he/she wishes and, having regard to the circumstances, it may be necessary to agree a mutually convenient venue outside the Langley Park Learning Trust - perhaps even in the employee's own home.
- 7.8 The particular circumstances concerning an employee's absence on long-term sickness may warrant a number of reviews over a given period. (For example, a progressive return to good health may be envisaged, perhaps involving a course of treatment or a period of hospitalisation and recuperation.)
- 7.9 It is, therefore, important to obtain a realistic and informed medical opinion at each stage, and guidance in this respect will often form part of the Occupational Health Physician's report. Each review will involve a meeting with the employee to discuss the circumstances of the absence and the prospects of a return to work; where targets or future review intervals are set these should be made clear to the employee, confirmed in writing and the implications of these not being met discussed.
- 7.10 At each stage the Senior Manager will need to decide upon the appropriate course of action having regard to the particular circumstances including:
- comments or recommendations in the Occupational Health Physician's report(s) including the timescale and prospects for recovery and whether it is related to specific treatment;
  - any representations made by the employee;
  - the effect of the absence in the Langley Park Learning Trust and for how long it can reasonably be tolerated having regard to the effect on colleagues, the need to provide cover and the resources available;



- the age, length of service, attendance and performance of the employee;
- any considerations in respect of the requirements of the Equality Act 2010;
- whether on the advice of the Occupational Health Physician, any support can be given to facilitate a full recovery (eg reduced working hours or a temporary release from particular duties).

7.11 The Senior Manager's decision must be based on an assessment of all the available information and confirmed to the employee in writing together with an explanation as to how the particular conclusion has been reached. Alternative options must also be given careful consideration, such options must include the possible availability of alternative employment within the employee's capability, or early retirement on health grounds where the appropriate pension regulations so provide.

7.12 Ultimately, the Senior Manager may decide after hearing the employee's representations and considering all the alternatives that he/she has no option other than to recommend that the Staff Dismissal Committee/Head Teacher consider the termination of employment where either the absence can no longer be tolerated or where a certificate of ill-health has been issued.

7.13 In these circumstances the employee must be provided with at least five working or seven consecutive days written notice of the meeting along with copies of all appropriate documentation. This will include a further copy of this procedure

## 8 Inadequate performance

8.1 There may be occasions when incapability is specifically caused by ill-health or injury even though the employee does not absent himself or herself on sick leave beyond a tolerable level.

8.2 The Occupational Health Physician will advise whether ill-health is actually the cause of a capability problem, or whether it is indirectly caused by stresses associated with inadequate performance issues. This will enable the Senior Manager to assess the appropriateness of the procedure to follow. It remains, however, that the employee is not performing his/her duties to the required standard and the Supervisor or Senior Manager needs to resolve the problem.

8.3 Where performance gives cause for concern the Supervisor should hold an informal discussion with the employee to establish the reason(s) before commencing any formal proceedings. Where during the informal discussion performance problems are found to be caused by an employee's health a similar procedure to that in the "Persistent Short-Term Absence" sections above will be followed substituting 'unsatisfactory performance' or 'performance' for 'absence' or 'attendance' as appropriate.

8.4 As part of this informal process the individual will be advised that a failure to improve the level of his/her performance is likely to result in formal action being taken which could ultimately lead to

the termination of his/her contract of employment. At this stage bringing this to the employee's attention would not constitute a formal caution.

- 8.5 Exceptionally, there may be circumstances in which a Senior Manager considers there is a risk to students or pupils or other members of staff as a result of an employee's medical condition, or where the employee is obviously unfit to perform his or her duties and to continue at work will only exacerbate the problem. On such occasions the Senior Manager should instruct the employee to see his/her GP with a view to commencing a period of sick leave. In exceptional cases formal suspension may need to be considered. In such instances the employee will be required to submit the necessary medical certificates and the provisions of the appropriate occupational sick pay scheme will apply.
- 8.6 At all stages of the procedure the employee must be made aware of the shortfall between his/her performance and the required standard, and targets for improvement set within a given period of time having regard to the particular circumstances, the representations of the individual and the content of any report obtained from the Occupational Health Physician. The employee must be made aware of the possible consequences of a failure to improve his/her standard of performance
- 8.7 Following a prolonged period of absence, confirmation as to the employee's fitness to return will be sought from the Langley Park Learning Trust's Occupational Health Physician. Particular thought must be given to the provision of additional support for the employee having regard to any recommendations of the Occupational Health Physician. Each case must be given individual consideration having regard to the circumstances and the effect of the incapability on the operation of the Langley Park Learning Trust generally.
- 8.8 In some cases the Occupational Health Physician may consider that an employee is unlikely to be able to fulfil the requirements of his/her contract of employment for the foreseeable future on account of a particular health problem even though the condition does not necessitate unreasonable absence from work. In such circumstances he/she will issue a "certificate of ill health" and the procedure detailed below in Section 9 should be followed in the event that suitable alternative employment is unavailable.

## 9 Determination by staff dismissal committee/head teacher

- 9.1 The dismissal of any member of staff on the Langley Park Learning Trust complement can be delegated to either the Head Teacher or the Staff Dismissal Committee comprising of at least three members of the Academy Trust Governing Body appointed with delegated responsibility for decisions on dismissal. It is not appropriate that the matter be considered by the full Academy Trust Governing Body since the right of appeal must be to a Dismissal Appeal Committee consisting of at least as many members of the Academy Trust Governing Body as took the initial decision, none of whom should have taken part in the decision against which the appeal is made.
- 9.2 The Senior Manager will advise the employee whenever it is necessary to convene a meeting of the Staff Dismissal Committee of the Academy Trust Governing Body to consider his/her recommendation that the termination of employment be considered. Where responsibility for Staff Dismissal has been delegated to the Head Teacher the Head Teacher will convene a meeting.

9.3 The Senior Manager must also ascertain whether the employee wishes to make representations to the Staff Dismissal Committee/Head Teacher and if so whether:

- he/she is able and wishes to attend in person accompanied by a representative if he/she so chooses; or
- he/she wishes to send a representative but not attend in person; or
- he/she wishes to send a written statement but does not intend to be represented or attend in person; or
- he/she wishes to make oral representations to a person appointed by the Academy Trust Governing Body who will visit him/her at home or meet him/her at a mutually agreeable venue for this purpose.

9.4 The procedure to be followed by the Staff Dismissal Committee/Head Teacher must be conducted as sensitively as possible affording the Senior Manager and the employee the opportunity of presenting their cases, making representations and asking questions of each other and any witnesses. Any advisory officer present shall also be entitled to ask questions or offer guidance if he/she so wishes. The procedure to be conducted at formal stage hearings before the Staff Dismissal Committee/Head Teacher is enclosed with this document.

9.5 It is good practice to agree a mutually convenient date for the hearing with the employee and their representative. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend the date proposed, the employee can offer an alternative date and time so long as it is reasonable and falls before the period of five working or seven consecutive days beginning with the first day after the day proposed by management. The employee must have regard to the availability of the managers involved in the case. The location and timing of any alternative hearing should be convenient to both the employee and management.

9.6 All Governors' Committee meetings must be clerked. It is the responsibility of the Academy to make the necessary arrangements for this.

9.7 The Staff Dismissal Committee's decision will be conveyed to the employee and the Senior Manager at the conclusion of the meeting or as soon as possible thereafter confirmed in writing, together with the employee's right of appeal in the event that the Governors/Head Teacher determine that he/she be dismissed.

9.8 In any event the Staff Dismissal Committee's/Head Teacher's decision should be confirmed in writing within five working or seven consecutive days of the meeting taking place and a copy retained on the personal file. The letter will include:

- the Staff Dismissal Committee's/Head Teacher's decision;
- an explanation of how the decision was reached;
- the opportunity to seek clarification;
- the employee's right of appeal.

9.9 If the Staff Dismissal Committee/Head Teacher decides that a further or final caution is appropriate having regard to all the circumstances then details of targets, timescales, arrangements for assistance and consequences of a failure to meet the given criteria will also be included.

## 10 Appeals

10.1 An employee is entitled to appeal against the Staff Dismissal Committee's/Head Teacher's decision to terminate his/her employment. Any appeal shall be made in writing to the Senior Manager to be received not later than five working or seven consecutive days after receipt of written notification of the decision against which the appeal is made.

10.2 Before convening a meeting of the Staff Dismissal Appeal Committee the Senior Manager will consider whether there is a need to ensure that an independent medical examination takes place and an independent report provided for the Staff Dismissal Appeal Committee for consideration. The provision of such an examination/report will be undertaken by a registered medical practitioner mutually agreeable to both parties only in circumstances where the employee's appeal is against the recommendation of the Occupational Health Physician.

10.3 The appeal will be heard by the Staff Dismissal Appeal Committee. At least five working or seven consecutive days' notice will be given of the appeal hearing in writing which shall normally take place not later than 10 working or 14 consecutive days after receipt by the Senior Manager of the written notice of appeal.

10.4 The procedure to be followed by the Staff Dismissal Appeal Committee is enclosed with this document and will be conducted as sensitively as possible affording the employee the same options of representation. Both sides will be given the opportunity to present their cases, ask questions of each other (and any witnesses) and make representations before the Staff Dismissal Appeal Committee deliberates in private and makes its decision.

10.5 The Staff Dismissal Appeal Committee's decisions will normally be conveyed to both sides personally at the conclusion of the hearing or as soon as possible, in writing, thereafter. There is no further internal right of appeal. The decision will, in any case, be confirmed in writing within five working or seven consecutive days of the hearing taking place together with an indication of how the decision was reached. A copy will be retained on the personal file. If the Committee overturns the decision of the Staff Dismissal Committee/Head Teacher to dismiss, the termination notice may be rescinded.

## 11 Termination of employment

11.1 Written confirmation of the Staff Dismissal Committee's/Head Teacher's or Dismissal Appeal Committee's decision to dismiss will also include written notice of the termination of the employee's contract of employment in accordance with the provisions therein.

11.2 Both teaching and support staff are entitled to full pay during the statutory notice period.

## APPENDIX A

### ABSENCE REPORTING

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On your first day of absence you should notify your supervisor and give an indication of the nature and probable duration of your illness.

If your sickness extends beyond three calendar days, you must, on the 4th calendar day of sickness, notify your supervisor of the reasons for your continued absence.

If your sickness exceeds three calendar days but not seven calendar days, you must complete a self-certification form immediately upon your return to work and hand it to your supervisor.

If your doctor gives you a medical certificate during your first seven calendar days of sickness covering you from the first day of sickness, it must be sent immediately to your supervisor unless you have submitted a certificate from your doctor to cover this period. Where this applies there is no need to submit a self-certification form.

Where your sickness exceeds seven calendar days, you must:

- (i) complete form (PER1) in respect of the first seven days, which must be received in the Payroll Section not later than the 9th day from commencement of sickness;
- (ii) obtain a medical certificate from your doctor covering you from the 8th calendar day of sickness.

The medical certificate (and any others obtained subsequently) must be received by the Academy not later than the fourth working day after the date the medical certificate is signed.

You must also complete form PER1 for absences due to sickness of less than four days where in special circumstances you have been informed that you are required to submit statements to support absences of three days or less.

#### PLEASE NOTE:

If you fail to meet any of the requirements of the sickness absence reporting procedure outlined above you may lose pay for the period involved.

## APPENDIX B

### PROCEDURE FOR CONDUCTING FORMAL HEARINGS BEFORE THE STAFF DISMISSAL COMMITTEE/ HEADTEACHER

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Once a decision has been made to hold a formal hearing, the employee will be sent a letter notifying him/her of the hearing (with a duplicate copy for his/her representative) to be received not less than **five working or seven consecutive days** before the hearing itself.

Reference to the Supervisor, the employee and the Senior Manager shall include their personal representative as appropriate. In certain circumstances (eg small Academies), the Supervisor and Senior Manager will be the same person.

1. The Senior Manager's report shall be submitted to the hearing setting out the specific concerns, together with any written statement made by the employee. Copies of the written statement(s) and any other relevant documents shall be sent to the employee and members of the panel at the same time as the notice of the date and time of the meeting. The employee shall be entitled to attend the hearing and to be represented by his/her Trade Union or a fellow employee or friend of his/her choice and to call witnesses and produce documents relevant to his/her case.
2. If the employee or his/her representative fails to turn up at the hearing, consideration will be given to:
  - (i) the employee's difficulty in obtaining a representative;
  - (ii) any difficulties and costs which may arise from reconvening the meeting;
  - (iii) the employee's medical condition.

The Senior Manager will already have determined whether the employee wishes to make representations to the Governors' Committee/Head Teacher and whether s/he wishes to attend in person or send a representative or make an oral representation (see paragraph 9 of the Model Procedure).

3. Aspects of (2) above should be considered if a witness(es) fails to attend. This would include how important that witness(es) is to the case.
4. If a Committee member fails to turn up (either at the first hearing or following an adjournment) the Committee will need to consider whether it can continue with a reduced number or whether a new Committee member will need to be appointed in accordance with adopted procedures. Where a dismissal is being considered, a minimum of three Governors (two in exceptional circumstances) must hear the case and be convened as the Staff Dismissal Committee. Where responsibility for staff dismissal has been delegated, the case may be heard by the Head Teacher.
5. The Chair of the Committee/Head Teacher hearing the case will introduce those present,

explain the purpose of the hearing and the procedure to be followed.

6. The Chair/Head Teacher will establish whether witnesses are to be called by either side.
7. The evidence will be presented by the Senior Manager ensuring that the employee and his/her representative are made aware of the content of any witnesses' statements or relevant records and documents. In presenting the case, witnesses may be called as appropriate. Each witness will leave the room after giving evidence.
8. The employee may question the evidence and witnesses called by the Senior Manager.
9. The employee will present his/her evidence and call any witnesses.
10. The Senior Manager may question the evidence presented by the employee and witnesses.
11. The Committee/Head Teacher and any advisory officer(s) present will have the opportunity to ask questions of both sides and witnesses at any time during the proceedings outlined in paragraphs 8-10 inclusive. Late evidence can only be admitted with the agreement of the Committee/Head Teacher.
12. After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.
13. The Committee/Head Teacher may request an adjournment at any stage in order to seek clarification.
14. The Senior Manager will then sum up his/her case.
15. The employee or his/her representative will then sum up his/her case.
16. The Senior Manager, the employee and their representatives will then withdraw.
17. The Committee/Head Teacher will then deliberate in private together with the Clerk and any advisory officer(s) present to give advice as to law and procedure as required. If it is necessary to clear any points of uncertainty on the evidence already given both sides are to be recalled together even if only one is concerned with the point giving rise to doubt. If further investigations are necessary it may be appropriate to adjourn the hearing at this stage, in which case both parties are to return and be advised accordingly by the Chair/Head Teacher.
18. At the conclusion of the deliberations all parties shall return and the Chair/Head Teacher will announce the Committee's/his/her decision and/or recommendation to both sides personally and/or in writing as appropriate. The employee will be informed of any action which will be taken and of his/her rights of appeal as appropriate. The findings shall in any case be confirmed in writing within **five working or seven consecutive days** together with the employee's right of appeal.

## APPENDIX C

### PROCEDURE FOR CONDUCTING STAFF DISMISSAL APPEAL COMMITTEE HEARINGS

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Reference to the Senior Manager and employee shall include their personal representatives as appropriate.

- (i) The employee should write to the Senior Manager requesting an appeal within **five working or seven consecutive days** of receiving a formal letter notifying the decision of the Staff Dismissal Committee/Head Teacher and any action to be taken under the Procedure.
- (ii) The Staff Dismissal Appeal Committee will consist of members appointed by the full Trust Board excluding those Governors who have been part of a Committee which has already heard the case.
- (iii) The Hearing will be arranged as soon as practicable. The employee will be sent a letter (with a copy for his/her representative) to be received at least **five working or seven consecutive days** before the date of the appeal hearing itself.
- (iv) The employee may be accompanied by his/her trade union or a work colleague. Witnesses may be called and documents produced at the hearing by both sides.
- (v) If the employee or his/her representative fails to turn up at the hearing, consideration will be given to:
  - (a) the employee's difficulty in obtaining a representative;
  - (b) any difficulties and costs which may arise from reconvening the meeting;
  - (c) the employee's medical condition.
- (vi) Aspects of (v) above will also be considered if a witness(es) fails to attend. This would include how important that witness(es) is to the case.
- (vii) If a Committee member fails to turn up (either at the first hearing or following an adjournment) the Committee will need to consider whether it can continue with a reduced number or whether a new panel member will need to be appointed in accordance with adopted procedures. In any case, no fewer Governors than that comprising the Staff Dismissal Committee may hear the case.
- (viii) The Chair of the Committee hearing the case will introduce those present, explain the purpose of the hearing, and the procedure to be followed.
- (ix) The Chair will establish whether witnesses are to be called by either side.



- (x) The employee will put his/her case in the presence of the Senior Manager and will call any witnesses.
- (xi) The Senior Manager may then ask questions of the employee and witnesses (if any).
- (xii) The Senior Manager will put the management's case in the presence of the employee and will call any witnesses.
- (xiii) The employee may ask questions of the Senior Manager and witnesses (if any).
- (xiv) The Staff Dismissal Appeal Committee and any advisory officer(s) present shall be entitled to ask questions of the Senior Manager, the employee and the witnesses at any time during the proceedings outlined in paragraphs (x) to (xiii) inclusive.
- (xv) After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.
- (xvi) The Staff Dismissal Appeal Committee may request an adjournment at any stage in order to seek clarification.
- (xvii) The employee or his/her representative will then sum up his/her case.
- (xviii) The Senior Manager will then sum up his/her case.
- (xix) The Senior Manager and the employee and their representatives will then withdraw.
- (xx) The Staff Dismissal Appeal Committee, with a Clerk in attendance and any advisory officer(s) present, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point giving rise to doubt.
- (xxi) The Staff Dismissal Appeal Committee will give their decision to the Senior Manager and employee and/or representative personally and/or in writing as appropriate, and their findings shall in any event be confirmed in writing, together with reasons for any formal action taken within **five working or seven consecutive days**.