

## *Senior Post Holders Disciplinary*

### **1 Introduction**

- 1.1** This policy provides guidance on disciplinary issues concerning senior post holders for the Heart of Mercia Multi Academy Trust (HoM).

The Trust is committed to the avoidance of formal disciplinary procedures wherever possible by addressing problems as soon as they arise. As well as a guide to imposing sanctions, the disciplinary procedure should also be viewed as a means of encouraging and promoting professional conduct.

- 1.2** Guidance from the ACAS Code of Practice (Disciplinary & Grievance) has been taken into consideration in drafting this procedure. This can be found at [Disciplinary and grievance procedures | Acas](#).

This policy does not form part of terms and conditions of employment.

### **2 Aims & Objectives**

- 2.1** The procedure applies to:

- HoM Chief Executive
- The Director of Governance
- Other senior post holders of the Trust.

Senior post holders of HoM are:

- The Chief Executive
- Deputy Chief Executive
- Director of Governance
- Principal - WSFC
- Principal - HSFC
- Principal – KEVI
- Head - The Chantry School
- Head - John Kyrle High School
- HoM Chief Financial Officer
- Whomever the Trust may decide, from time to time, in accordance with the Scheme of Delegation.

- 2.2** If this procedure is instigated in relation to the Director of Governance, an appropriate person shall be appointed to fulfil the tasks of the Director of Governance under the relevant sections of this procedure.

- 2.3** The purpose of this procedure is:

- To help and encourage senior post holders to achieve and maintain acceptable standards of behaviour and conduct.
- To ensure that fair, consistent, and reasonable action is taken where acceptable standards of conduct are not maintained.

- To ensure consistent and fair treatment for senior post holders in relation to any disciplinary action taken by the Trust in response to unacceptable conduct from its employees.

### 3 General Principles

- 3.1** These rules and procedures will be reviewed regularly, considering developments in employment legislation, best practice and current guidance provided by appropriate bodies.
- 3.2** Every effort will be made to avoid the use of disciplinary action where alternatives are appropriate. Where the matter is not resolved informally or is of a serious nature, this procedure will be implemented.
- 3.3** The Trust is committed to resolving each stage of the procedure as soon as reasonably possible, whilst recognising the need to investigate any alleged misconduct fairly and adequately.
- 3.4** The senior post holder may be accompanied at all formal stages of this procedure, including an investigatory meeting, by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 1). Any such exception must be approved in advance of the meeting.

The senior post holder should notify the Director of Governance if they are to be represented/accompanied and provide name and contact details as soon as possible, and no later than three days before the meeting.

- 3.5** In circumstances where a disciplinary hearing has been arranged but the trade union representative or workplace colleague is unable to attend the proposed hearing, the hearing may be postponed if both the senior post holder and the selected companion can offer an alternative date and time so long as it is reasonable and is no more than five working days later than the day originally proposed by the Trust.
- 3.6** A workplace colleague chosen to accompany a senior post holder (or any other member of staff attending) at a disciplinary hearing will be permitted to take paid time off during working hours to attend the hearing.
- 3.7** No senior post holder will be dismissed for a first breach of discipline except in the case of serious or gross misconduct.

In circumstances of gross or serious misconduct, the sanction will normally be dismissal without notice and without payment in lieu of notice.

Before imposing any disciplinary sanction, all relevant factors will be considered including the extent to which standards have been breached; the employee's general record, position and length of service and any special circumstances which might make it appropriate to adjust the severity of the sanction.

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- 3.8** At every stage of the formal procedure a senior post holder will be advised in writing of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- 3.9** If a senior post holder fails to attend without good reason a disciplinary (or appeal) hearing which he or she has been instructed to attend, the hearing will take place and a decision will be made notwithstanding his or her absence.
- 3.10** Accurate, timely and agreed records must be kept of all meetings and all correspondence. In accordance with ACAS guidance, where a management instruction is given, a note of this will be kept on personnel file for future reference.
- 3.11** All reasonable steps will be taken to maintain confidentiality and written records of any disciplinary proceedings shall be kept and maintained by the Trust in accordance with the General Data Protection Regulation (2018) and the Trust's Data Protection and Data Retention policies.

## 4 Establishing the immediate facts of the case

- 4.1** No disciplinary action will be taken against a senior post-holder until the matter has been investigated by an individual nominated by the Board of Trustees.
- 4.2** Where there is a suspected breach of discipline or an allegation is made relating to misconduct, initial enquiries will be made by an individual nominated by the Board of Trustees. The nominated individual will be required to undertake an initial fact-finding exercise. This will be carried out promptly and without delay. The purpose of initial fact finding is to establish the circumstances of the alleged misconduct and to determine whether a formal investigation is required.

The fact finding will involve:

- Establishing the immediate facts of the case and nature of allegations.
- Speaking to the member of staff concerned to explain that they are subject to an allegation.
- Describe the nature of the breach of discipline or allegation.
- Obtain an initial response from the employee.
- Briefly summarise the facts of the allegation/alleged breach of conduct.

The nominated individual will present the facts to the Chair of the Board of Trustees, or in the Chair's absence, the Vice Chair, to decide if a formal investigation is required.

- 4.3** If appropriate the Chair, or in the Chair's absence, the Vice Chair, may decide to suspend the senior post holder in accordance with section 5 of this policy, if deemed necessary.
- 4.4** The Chair or, in the Chair's absence, the Vice Chair, may decide based on the facts that there is no case to answer and no further action will be taken. If no further action is to be taken, no records will be kept.

- 4.5** Where there is no dispute to the facts of the case and the senior post holder agrees that allegations of misconduct were correctly reported, it may be necessary to go straight to a disciplinary hearing.
- 4.6** If it is determined by the Chair or, in the Chair's absence, the Vice Chair, that there is a case to answer, they will appoint an investigating officer, who could be an appropriate senior post holder of the Trust, or an appropriate external person. The investigating officer will then hold an investigatory meeting.
- 4.7** An investigatory meeting is not a formal disciplinary hearing. If, following an investigation, the Trust believes that there may be a case to answer, a formal disciplinary hearing will be arranged in accordance with this procedure.
- 4.8** If appropriate, the Board of Trustees, or the Chief Executive where the power to suspend has been delegated by the Board, may suspend a senior post holder in accordance with Section 5, if deemed necessary.
- 4.9** Disciplinary action should be dealt with in a confidential manner to respect the privacy of all parties and to ensure the matter is dealt with sensitively, fairly, and effectively. Confidentiality will be maintained throughout the process wherever possible. Breaches of confidentiality may result in disciplinary action under the HoM Senior Post Holders Disciplinary Policy against those concerned.

## 5 Suspensions

At any point after the initial fact finding has been concluded (section 4), i.e., prior to or during a formal investigation, the Chair of the Board of Trustees or in the Chair's absence, the Vice Chair, should consider whether suspension on full pay is necessary, pending further investigation for allegations of serious or gross misconduct and their resolution. Careful consideration should be given to the circumstances of the case, and the Chair of the Board of Trustees or in the Chair's absence, the Vice Chair, should consider alternatives to suspension, such as working from a different location, or modifying job duties.

If the Senior Postholder is so suspended, the Chair or in the Chair's absence, the Vice Chair will give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken, and inviting that person to a meeting to discuss the issues.

Suspension is a neutral act and not a disciplinary sanction.

## 6 Informal Action

- 6.1** If appropriate, before taking formal disciplinary action, reasonable effort will be made to resolve matters by informal discussion with the senior post holder. This will be dealt with either by the Chief Executive or, if the Chief Executive is the senior post holder concerned, by the Chair of the Board of Trustees, or in his or her absence the Vice Chair of the Board of Trustees.
- 6.2** Many minor disciplinary matters can and will be resolved through informal advice or counselling. Minor disciplinary matters may also result in a management instruction being issued. Advice

given in this way is not part of the formal disciplinary procedure and is not subject to appeal, but, in accordance with ACAS guidance, a note should be kept on personnel file for future reference.

**6.3** If despite an informal discussion and/or the issuing of a management instruction,

- a senior post holder's conduct does not meet acceptable standards;
- there are further allegations of misconduct;
- or if informal action would not be appropriate;

the formal procedure set out in section 7 should be used.

This must be confirmed in writing with the senior post holder. The Chair of the Board of Trustees must be informed that the formal procedure has begun.

## **7 Formal Investigation**

**7.1** This section applies in circumstances where the Trust is considering taking formal disciplinary action against a senior post holder.

Before a disciplinary hearing can be convened there will be an investigation into the circumstances of the alleged misconduct. The investigation will be completed in a confidential manner. The purpose of the investigation is to prepare an investigation report establishing the full details of the case including making a recommendation if, on the balance of probabilities, there is a case to answer, or if there is no case to answer.

If the investigation report concludes that there is a case to answer, a disciplinary hearing will take place to consider the recommendations of the investigation report and any disciplinary sanction.

**7.2** In the investigation, the following procedures must be followed:

- The Investigating Officer will be required to gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer.
- The senior post holder will be informed in writing of any allegation and that an investigation to establish the facts will be undertaken by an appointed investigating officer.
- The investigative interview (s) will take place as soon as possible after the member of staff has been informed of the investigation.
- The role of the Investigating Officer will be to ensure that all relevant facts and witness statements are obtained in relation to the allegation(s).
- The senior post holder may submit a written statement in response to the allegation for consideration prior to the investigative interview taking place.
- The senior post holder may be accompanied at the investigative interview by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 1). Any such exception must be approved in advance of the meeting by the Investigating Officer.

- The Investigative Officer may be required to interview witnesses as part of the investigation, this can be in the form of a signed statement or a witness interview.
- The senior post holder under investigation will have the opportunity to review the notes of the investigative interview.
- Confidentiality, as established in Point 4.9, will be observed by all parties involved in the investigation.

**7.3** In instances where serious or gross misconduct is alleged, the Chair of the Board of Trustees or in the Chair's absence, the Vice Chair, should consider whether suspension of the Senior Postholder on full pay is necessary pending completion of the formal process (see section 5).

Gross misconduct is misconduct at work or outside work serious enough to destroy the employment contract and make any further working relationship and trust impossible. The following is a non-exhaustive list of offences of serious or gross misconduct which are normally regarded as grounds for dismissal:

- theft, or unauthorised possession of any property or facilities belonging to the Trust, or to any member of staff or any student;
- deliberate action or gross negligence which results in significant damage to Trust property;
- deliberate falsification of Trust registers, reports, accounts, expense claims, self-certification forms or records;
- bribery or corruption;
- refusal to carry out duties or reasonable instructions or to comply with academy or Trust rules;
- serious acts of insubordination;
- serious incapability as a result of being intoxicated by reason of alcohol or drugs;
- violent, dangerous or intimidatory conduct;
- violation of the Trust's rules and procedures concerning health and safety at work;
- any act of discrimination, victimisation, or harassment against another member of staff, a student or a third party relating to race, ethnic origin, sex, sexual orientation, marital status, religion, disability, or age;
- 'offensive behaviour (discrimination; harassment including sexual harassment; bullying including cyber-bullying)'.
- Deliberately accessing Internet sites containing pornographic, offensive or obscene material, or the forwarding on of emails containing these.
- Bringing the Trust/academy into serious disrepute.
- a criminal offence, which may (whether it is committed during or outside a senior post holder's hour of work for the Trust) adversely affect the Academy and/or Trust's reputation, the senior post holder's suitability for the type of work he or she is employed by the Trust to perform, or his or her acceptability to other members of staff or to students;
- a serious breach of confidentiality (including a failure to maintain confidentiality in an investigation relating to a complaint of harassment) but subject to the Public Interest

(Disclosure) Act 1998;

- serious or repeated breaches of Trust policies, procedures, regulations, or rules in force from time to time.

## 8 Disciplinary Action

**8.1** The panel of trustees for the disciplinary hearing (See point 9.2) will determine the appropriate level of sanction. In determining the appropriate level of action, the panel will consider if there are any live warnings already and overall assess the gravity of the case.

The following disciplinary sanctions may be deemed appropriate at a disciplinary hearing (see also Appendix 2).

Formal disciplinary	Maximum time limits for disciplinary warning
Oral warning	Confidential note kept on personnel record.
Written warning, confirmed in writing.	Minimum 12 months
Final written warning, confirmed in writing	Minimum 18 months
Dismissal	N/A

**8.2** In the case of serious or gross misconduct being alleged and established on the balance of probabilities, the senior post holder will be liable to summary dismissal by the Board of Trustees.

**8.3** Any disciplinary action related to safeguarding, live, or spent will be disclosed for safeguarding purposes.

**8.4** Further breaches of misconduct committed during the period of any live warning will result in further disciplinary action against the senior post holder.

**8.5** Nothing in this procedure is intended to remove the right of an appropriate person to give an employee informal advice and instruction as to expectations of their future conduct as outlined in Section 6.

## 9 Disciplinary hearing

**9.1** If the investigation report concludes that there is a case to answer, a disciplinary hearing will take place to consider the recommendations of the investigation report and any disciplinary sanction.

**9.2** A disciplinary hearing should be conducted by a panel consisting members of the HoM Board of Trustees as determined by the Board, excluding the Chief Executive.

The role of chair of the disciplinary hearing will be assigned by the Chair of the Board of Trustees, or in the Chair's absence, the Vice-Chair, in consultation with the Chief Executive, the Director of Governance and/or the HoM HR Director as appropriate.

The senior post holder will be advised in writing of the nature of the alleged case against him or her, including the employee's alleged conduct, or characteristics, or other circumstances, which lead the Trust to contemplate taking disciplinary action against him or her.

The senior postholder will be given a minimum of 7 calendar days' advanced notice of the hearing and may be accompanied at the hearing by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 1). Any such exception must be approved in advance of the meeting by the appointed Chair.

The management case / bundle of evidence should be forwarded to the senior post holder at the same time.

The senior post holder should forward to the dedicated HR contact all paperwork they wish to be considered at the hearing, a minimum of 3 calendar days before the date of the hearing.

**9.3** At any disciplinary hearing, the senior post holder will be given an opportunity to state his or her case and will have the right to be accompanied as set out in Appendix 1.

**9.4** Where the case is upheld, and the misconduct is found to be minor, an oral warning may be issued. In line with ACAS Guidance, a confidential note should be kept on the individual's personnel file for future reference (see Appendix 2).

**9.5** If the issue is more serious or a further offence occurs there could be a written warning, or even a final written warning, setting out the nature of the offence, the improvement required, the timescale allowed for this and the likely consequences of further offences (see Appendix 2).

Details of such disciplinary action should be given in writing within 7 working days to the Senior Postholder and if desired to her/his trade union representative or workplace colleague. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken.

**9.6** Where there is a further suspected breach of discipline or there is a failure to improve within the timescale given for improvement following a formal or final written warning, the procedure set out in Sections 4-9 will be repeated.

**9.7** Where the case of a further breach of discipline is upheld a further formal warning or final written warning may be issued.

**9.8** If conduct is still unsatisfactory and the Senior Postholder still fails to reach the prescribed standards this will result in further disciplinary action the outcome of which may be dismissal.

**9.9** The panel at a disciplinary may decide to dismiss the holder of a senior post with immediate effect, without any need for prior notice, where the circumstances are such that the panel is entitled to do so by reason of the serious or gross misconduct of the senior post holder having



been proven on the balance of probabilities at the hearing.

Any such decision to dismiss will be given in writing, with the reasons for it explained, the effective date of termination and notification of the right to appeal given.

**9.10** Such a dismissal will be without notice or payment in lieu of notice.

**9.11** The senior post holder may appeal against the decision to dismiss him or her, and such appeal shall be made in accordance with Section 10.

## **10 Appeals**

**10.1** The ACAS Code of Practice 1: Disciplinary and Grievance Procedures provides for an appeal against any formal disciplinary action which should, where practical, be to a higher authority.

**10.2** A senior post holder may appeal against any oral warning, written warning, final written warning, or dismissal under the formal procedure by writing to the Director of Governance within ten working days of the date of receipt of the decision against which the appeal is to be made, setting out in a written statement the grounds on which the appeal is based. In the conduct of any appeal, the Trust shall have regard to, but not necessarily be bound to follow all of the provisions of, the Appeals Committee - Terms of Reference for Senior Post Holder Appeals (See Appendix 4).

**10.3** The appeal will be heard by a committee of the Board of Trustees (the Staffing Appeals Committee) consisting of three members of the Board, excluding the Chief Executive, and, unless not reasonably practicable, any other members investigating or chairing a disciplinary hearing earlier in the procedure.

**10.4** The appeal hearing will be conducted as soon as reasonably possible after receipt of the written statement containing the appeal. The senior post holder will be given at least five working days' notice of the appeal hearing.

**10.5** The appeal hearing will be limited to consideration of the grounds of appeal unless the Appeals Committee considers that a full hearing is appropriate, in which case the relevant parties will be provided with reasonable prior warning. In any event, the senior post holder will be given the opportunity at the appeal hearing to state his or her case and will have the right to be accompanied as set out in Appendix 1.

**10.6** The Committee may review any disciplinary sanction imposed, but it cannot be increased. The Committee's decision will be notified in writing by the Director of Governance to the senior post holder within ten working days of the appeal hearing.

If it is not possible for a decision to be reached within this period, the Clerk will write to the senior post holder on behalf of the Committee with an explanation for the delay and when the written decision can be expected.

The Committee's decision will be final.

## **11 Equality Impact**

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The Trust's responsibilities towards promoting equality, diversity and inclusion have been considered when drafting this policy.

Date of review	Date agreed	LGBs	MAT Board	Review date	Comments
February 2025	February 2025	Summer 2025	April 2025	March 2026	

## Appendix 1

### THE RIGHT TO BE ACCOMPANIED AND THE ROLE OF THE COMPANION

#### **(1) The right to be accompanied.**

Employees of the Heart of Mercia Multi Academy Trust (HoM) have the right to be accompanied by a colleague or a trade union representative at a disciplinary hearing as established in Section 10 of the Employment Relations Act 1999.

The Trust also recognises its legal obligations under the Equality Act 2010 and will make reasonable adjustments here for disabled employees of the Trust.

In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting by:

- the Investigating officer for an investigative interview.
- the Chair of the disciplinary hearing.
- the Chair of the appeal hearing.

As the statutory right to be accompanied does not extend to legal representatives, friends, or family members, any decision to allow this remains at the discretion of the Trust.

If a HoM employee would like someone other than a trade union representative or workplace colleague to accompany them, they should make a request to the Trust in writing, explaining why this person is suitable and why it is reasonable for that person to accompany them. Please address any such request to the Heart of Mercia Trust HR Director at [anna.meade@heartofmerciamultiacademytrust.org.uk](mailto:anna.meade@heartofmerciamultiacademytrust.org.uk)

The person accompanying an employee is known as a companion.

If a HoM employee makes a request to be accompanied, he or she should do so reasonably. For example:

- it may not be reasonable to choose a companion who is in geographically remote location when a suitable person is available at the place of work.
- It would also not be reasonable to choose a companion whose presence would prejudice a hearing or who has a conflict of interest.

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If the employee's chosen companion cannot attend on the hearing date proposed, the employee can propose an alternative time and date, so long as it is reasonable and is no more than five working days later than the date originally proposed by the Trust.

### **(2) The role of the companion**

The role of the companion in a disciplinary hearing is limited.

Section 10, of the Employment Relations Act 1999, and the Employment Relations Act 2004 state that the companion can:

- put forward the employee's case;
- sum up the case;
- respond on the employee's behalf to any view expressed at the hearing;
- and confer with the employee during the hearing.

However, the companion cannot:

- answer questions on the employee's behalf;
- address the hearing if the worker indicates at it that he does not wish his companion to do so;
- or act in a way that prevents the Trust explaining and addressing its case.

## **Appendix 2**

### **Disciplinary sanctions short of dismissal for senior post holders of the Trust**

#### **1. Oral warning.**

If at a disciplinary hearing it is found that, on the balance of probabilities, the senior post holder's conduct does not meet acceptable standards, the senior post holder will normally be given a formal oral warning.

The senior post holder will be advised of the reason for the warning, and, in appropriate cases, the improvement required and the time scale for improvement. It will also warn that further disciplinary action will be considered if there is no satisfactory improvement, or any repetition of misconduct. The senior post holder will also be advised of his or her right of appeal.

A brief note of this warning will be kept on the senior post holder's personnel file but will be disregarded for disciplinary purposes after six months (or any longer period specified at the time) provided that the Trust is satisfied with the senior post holder's conduct.

#### **2. Written warning.**

If further misconduct of any kind occurs or if the misconduct is sufficiently serious to warrant a written warning, but not serious enough to justify a final written warning, the senior post holder will normally be given a written warning.

This written warning will give details of the complaint against the senior post holder and, in appropriate cases, will state the improvement required and the time scale for improvement. It will also warn that further disciplinary action will be considered if there is no satisfactory improvement, or any repetition of misconduct. The senior post holder will also be advised of his or her right of appeal.

A copy of this written warning will be kept on the senior post holder's personnel file but will be disregarded for disciplinary purposes after twelve months (or any longer period specified in the written warning) provided that the Trust is satisfied with the senior post holder's conduct.

#### **3. Final written warning.**

If further misconduct of any kind occurs or if the misconduct is sufficiently serious to warrant only one written warning, but not serious enough to justify dismissal, the senior post holder will normally be given a final written warning.

This final written warning will give details of the complaint against the senior post holder and, in appropriate cases, will state the improvement required and the time scale for improvement. It will also warn that further disciplinary action in accordance with section 6 of this procedure will be considered if there is no satisfactory improvement, or any repetition of misconduct. The senior post holder will also be advised of his or her right of appeal.

A copy of this final written warning will be kept on the senior post holder's personnel file but will be disregarded for disciplinary purposes after eighteen months (or any longer period specified in the final written warning) provided that the Trust is satisfied with the senior post holder's conduct.

## Appendix 3

### DISCIPLINARY HEARING

The employee /respondent will be given a minimum of 7 calendar days' advanced notice of the hearing and may be accompanied at the hearing by a workplace colleague of their choosing or their trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee (see Appendix 1). Any such exception must be approved in advance of the meeting by the appointed Chair.

The management case / bundle of evidence should be forwarded to the employee at the same time. The employee should forward to the relevant HR department all paperwork they wish to be considered at the hearing, a minimum of 3 calendar days before the date of the hearing.

Order of hearing to follow at the Disciplinary Hearing

- 1 The Chair of the hearing can have an appropriate advisor /note taker present at the hearing. The role of the advisor will be to provide guidance on the procedure to follow and take any notes.
- 2 The Chair will introduce all parties present and confirm the order of hearing /procedure to follow. They will explain the role of the companion (see Appendix 1) if a companion is in attendance.
- 3 The investigating officer will outline the management case.
- 4 The investigating officer will have the opportunity to call any witnesses.
- 5 The employee/ respondent can ask questions of the investigating officer and their witnesses.
- 6 The Chair can ask questions of the investigating officer and witnesses.
- 7 The investigating officer's witnesses to withdraw from proceedings, (if applicable).
- 8 Employee/ respondent to state their case.
- 9 The employee/ respondent will call any witnesses (if applicable).
- 10 The investigating officer to ask questions of the respondent's witness (s).
- 11 The Chair can ask questions of the employees/ respondent's witness.  
*(All witnesses should leave the hearing at this stage).*
- 12 The investigating officer will summarise their case.

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- 13 The employee/ respondent will summarise their case.
- 14 The Chair should call for an adjournment for deliberation at this stage.
- 15 After all parties have summarised their cases, the Chair of the hearing should have a stated period of adjournment.

This time will be spent to deliberate the case, or to establish if a decision can be made within a reasonable amount of time in order to call all parties back to the hearing to communicate an outcome. If, after a period of adjournment, the Chair has determined that it is not possible to reach a decision within a reasonable period of time, the employee/ respondent will be informed that a decision will be communicated to them in writing within a period of 7 calendar days.

- 16 The decision of the Chair will be one of the following:
  - a No action to be taken. On the balance of probabilities, the allegations against the employee/ respondent cannot be proven. The employee/ respondent will be exonerated.
  - b The alleged breach of discipline / allegation (s) is proven on the balance of probabilities in whole or part and one of the disciplinary sanctions open to the Chair will be imposed.

NB - If the employee's chosen companion is unable to attend the date of any formal meeting, the meeting can be rescheduled once.

## **Appendix 4**

### **Appeals Committee - Terms of Reference for Senior Post Holder Appeals**

#### **Membership**

- 1.1 The Committee shall comprise at least three members of the Trust Board.
- 1.2 The Chief Executive and Director of Governance may not sit on the Committee. In addition, no person may sit on the Committee who has any interest in its findings or who has been involved in any way in an investigation or other disciplinary action leading up to the reference of the particular matter to the Committee unless it is reasonably impracticable to avoid.
- 1.3 The Chair of the Committee will be the Chair of the Trust Board, unless they are unavailable, when the members of the committee who are present shall choose one of their number to act as Chair for that meeting.
- 1.4 The quorum for meetings of the Committee shall be three members.
- 1.5 The Committee shall convene a meeting as soon as practicable after a reference to it and shall give the appellant at least 5 working days' notice of the meeting.
- 1.6 The Director of Governance shall act as Clerk to the Committee.

#### **2. Terms of Reference**

2.1 To consider and determine appeal(s) against:

- grievance decisions;
- disciplinary decisions;
- dismissal decisions;
- selection for redundancy or redeployment,

and to make recommendations to the Trust Board as the Committee considers fit.



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2.3 To give the appellant the right to make representations. The representations, which may be made in writing, may also be made orally, for which purpose the complainant may be accompanied by one other representative or friend.

2.4 The Committee will follow the procedures approved by the Trust Board.

### **3. Delegated Powers**

3.1 Authority to determine an appeal(s) against:

- grievance decisions;
- disciplinary decisions;
- dismissal decisions;
- selection for redundancy or redeployment.

3.2 Authority to make recommendations to the Trust Board if appropriate.

### **4. Appeals Hearing Procedure**

4.1 Following receipt of the employment decision letter, the appellant or their representative shall notify the Trust in writing within ten working days if they wish to appeal the decision.

4.2 Appeals against an employment decision made in writing addressed to the Director of Governance will be acknowledged within ten working days of receipt.

4.3 The Trust shall set a date and time for the appeal hearing within five working days of receipt of the written request for an appeal hearing.

4.4 The appellant or his/her representative will be given five working days' notice of the date and time when the appeal will be heard and where it will take place. With the agreement of the appellant or his/her representative the appeal can be held earlier. At their request it can be deferred by up to one week.

4.5 The names of those who are to present evidence to the Committee or represent either side shall be notified to the other party no later than three days before the hearing is held. The appellant must attend the hearing.

4.6 The Chair shall determine which witnesses, if any, shall give evidence. If the presence of a witness

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is requested, then their attendance will be voluntary accepting that written evidence will always be admissible instead. Written evidence must be signed and dated by the person providing it.

4.7 All documentation to be considered by the Committee shall be made available to the other party no later than three working days before the hearing is held. The Chair shall determine the admissibility of papers presented at the hearing.

4.8 The Chair shall call in both parties, introduce them and state the purpose of the hearing. The Chair will remind both parties that the proceedings shall remain confidential until a final decision has been taken.

4.9 The appeal case will be presented in the presence of the Trust staff. The appellant and their representatives will have the opportunity to ask questions of the Trust staff. Members of the Committee may also ask questions of the Trust staff.

4.10 The Trust staff will present their case in the presence of the appellant. Trust staff will have the opportunity to ask questions of the appellant and their representatives. Members of the Committee may also ask questions of the appellant and their representatives.

4.11 Each side in turn will have the opportunity to sum up their cases if they so wish.

4.12 The Chair will then ask both the Trust staff and the appellant and their representatives to withdraw. The Committee will consider the case in private.

4.13 The Committee shall determine matters of fact 'on the balance of probabilities' based upon the information provided to them at the hearing.

4.14 The Committee may determine the appeal in whole or in part and make recommendations to the Trust Board as appropriate.

4.15 The Committee may confirm, vary, or dismiss the decision that has given rise to the appeal.

4.16 The Committee will announce its decision to the parties in writing within ten working days.

4.17 The Chair has the right to exclude from the proceedings any of those participating in the hearing if they behave unreasonably or disregard the instructions of the Chair.

4.18 The notification times identified in these procedures are for guidance. Where either party cannot adhere to the times identified, variations can be agreed with recourse to a ruling by the Chair if there is no agreement.

4.19 Legal representation will not usually be permitted at appeal hearings. It can be granted exceptionally at the discretion of the Chair, if the Chair feels that any of the following factors are compelling:

- the seriousness of the complaint;
- whether any points of law are likely to arise;
- the capacity of the complainant/appellant to present the case;
- procedural complexities, such as the need to interview and cross-examine witnesses;
- the need for reasonable speed in making the adjudication; and
- the need for fairness as between the parties.