

Pott Shrigley and Bollington St John's
Church of England Primary Schools



Sharing our Gifts and Growing our Talents Together

Acting Head Teacher: Mrs M. Walker
Head of Teaching and Learning: Mrs E. Watson

DISMISSAL POLICY

A49 DISMISSAL PROCEDURE (OTHER THAN DISCIPLINE OR CAPABILITY)

THIS SECTION APPLIES TO ALL CATEGORIES OF EMPLOYEES

Why is this important?

Since 1 October 2004, there has been a statutory obligation for employers to adopt and apply a dismissal procedure.

Examples of instances where the procedure must be applied are –

- Redundancy
- Expiry of a fixed term or temporary contract
- Some other substantial reason (e.g. an employee covering for maternity leave of another employee)

Cheshire East Standard

Each governing body must adopt and apply a dismissal procedure that complies with the legal requirements. The procedure must be fair, and be applied with sensitivity and consistency.

Status of this Section

The procedure in this Section, which meets the requirements of legality and fairness, is commended to governing bodies for adoption.



STAFF DISMISSAL PROCEDURE & POLICY

(OTHER THAN DISCIPLINE OR CAPABILITY)

There are four documents relating to this section:

1. [Model Staff Dismissal Procedure for Schools](#)
 2. [Management Commentary](#)
 3. [How to carry out a staff dismissal \(other than discipline or capability\)](#)
 4. [Model Letters](#)
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- (i) The Employment Act 2002 requires all employers to have a staff dismissal procedure (it also requires employers to have disciplinary and grievance procedures). It is important to note that the dismissal procedure does NOT apply where dismissal takes place under the disciplinary or capability procedures.
 - (ii) The procedure meets the statutory requirements and it may be applied to all categories of school employees.
 - (iii) The purpose of the procedure is to ensure that employees are advised of the reason for the ending of their contract, have the opportunity to discuss this with their Headteacher/manager/Chair of Governors, and have the right of appeal if they consider they have been unfairly treated.
 - (iv) It will apply when employees are dismissed by the school/Council in circumstances where either other procedures (such as discipline and capability) do not apply or where the dismissal is not exempt under the Employment Act 2002 (e.g. constructive dismissal or where the dismissal is because continued employment would contravene a legal duty or requirement).
 - (v) Non-adherence to the dismissal procedure will automatically incur a payment for a dismissed employee who brings an unfair dismissal claim to Employment Tribunal.
 - (vi) In the vast majority of cases, the employee will be aware of the nature of their contract and accept the fairness of the dismissal.

ACTION BY SCHOOLS:

Headteachers are advised to –

- a) submit the procedure to their Governing Bodies for formal adoption;
- b) notify staff that the new procedure has been adopted; and
- c) make the documents available to staff.

Schools are strongly urged to seek guidance from their personnel service providers in more complex cases.

CHESHIRE EAST BOROUGH COUNCIL

MODEL STAFF DISMISSAL PROCEDURE FOR SCHOOLS

(vii) 1 PURPOSE AND SCOPE

- 1.1 This procedure may be applied to all school employees.
- 1.2 The purpose of the procedure is to ensure that employees are advised of the reason for the ending of their contract, have the opportunity to discuss this with their Headteacher/manager/Chair of Governors, and have the right of appeal if they consider they have been unfairly treated.
- 1.3 It will apply when employees are dismissed by the school/Council in circumstances where either other procedures (such as Discipline and Capability) do not apply or where the dismissal is not exempt under the Employment Act 2002 (e.g. constructive dismissal or where the dismissal is because continued employment would contravene a legal duty or requirement).

(viii) 2 TERMS/DEFINITIONS

- Manager - The Manager carries out Steps 1 and 2. S/he is –
- a) a senior member of the school’s staff; or
 - b) the Headteacher, where a senior member of staff is the subject of the Procedure or no senior member of staff is available; or
 - c) the Chair of Governors, where the Headteacher is the subject of the procedure.
- Appeal Group - The Appeal Group carries out Step 3 and should be –
- a) the Headteacher, where Steps 1 and 2 were carried out by a senior member of the school’s staff; or
 - b) a committee or group of school governors, excluding the Chair of Governors and any member of the school staff, where Steps 1 and 2 were carried out by the Chair of Governors.
- Working day - in the case of a teacher, a “working day” is one of the 195 days in the school year on which a teacher is required to be available for work. Where a process cannot be completed before a school closure, it will resume in the following term, unless the parties agree otherwise. In the case of support staff, a “working day” is a day on which s/he is contracted to be



available for work.

(ix) 3 PROCEDURE

3.1 STEP 1

The Manager will write to the employee detailing the circumstances that may result in their dismissal (e.g. the end of a temporary contract). The Manager will invite the employee to a meeting to discuss this and advise them that they may be represented by their trade union or other representative of their choice at that meeting.

3.2 STEP 2

The meeting will provide the opportunity for an open discussion about the potential dismissal and the employee will be given the opportunity to state why they feel the dismissal may be unfair. The Manager will listen to the arguments and confirm any decision in writing, advising the employee of their right of appeal.

If they wish to appeal, the employee must write to the Manager informing them of their intention to appeal against the decision to dismiss within 10 working days of receipt of the formal notification of this decision.

3.3 STEP 3

The Appeal Group will arrange to hear the appeal within 20 working days of receipt of the notification from the employee that they wish to appeal.

The decision of the Appeal Group be final and will be communicated to the employee within 5 working days of the appeal hearing.

Termination of employment will not be delayed pending an appeal. However, if as a result of an appeal, or for any other reason, the dismissal is withdrawn, the reinstatement of the employee will be backdated to the point of the dismissal and continuity of service will be maintained.

(x) 4 TIMESCALES

4.1 Timescales may exceptionally be extended by mutual agreement.

MANAGEMENT COMMENTARY

1. INTRODUCTION

The Council is committed to ensuring that it meets its statutory obligations in respect of dismissals (as outlined in the Employment Act 2002). The Council also acknowledges its responsibility for ensuring that Headteachers/managers who are looking to dismiss an employee, or who are contemplating taking some action short of dismissal, do so in a fair and reasonable way. The Dismissal Procedure facilitates this and encompasses employee's rights within that process.

Schools should ensure that all their staff are aware that the procedure will apply to them where they have the necessary service (one or more years continuous employment with the Council – this includes service with a Cheshire voluntary aided or foundation school) and they are dismissed for one of the reasons set out in 2 below. Even where staff have less than one year's service, schools are advised to act cautiously when dismissing them to avoid discrimination claims.

Non-adherence to the Dismissal Procedure will automatically incur a payment for a dismissed employee who brings an unfair dismissal claim to Employment Tribunal, of up to 4 weeks pay plus an increase of between 10 and 50% on any additional awards if the dismissal itself is deemed unfair.

In the vast majority of cases, the employee will be aware of the nature of their contract and accept the fairness of the dismissal. In more complex cases, however, schools are strongly urged to seek guidance from their personnel service providers.

2. APPLICATION

2.1 The Dismissal Procedure applies to dismissals which occur for the following reasons:-

- Redundancy
- Expiry of Fixed Term Contracts
- Dismissals for 'some other substantial reason'

2.2 Dismissals on grounds of performance are incorporated into the Capability Procedures (teachers and support staff), and dismissals on grounds of conduct are incorporated in the Disciplinary Procedure.

2.3 Dismissals of support staff that occur during the Probationary Period are covered in a separate document.

2.3 The Dismissal Procedure does **not** apply to the following dismissals:



- collective dismissals - as the individual characteristics of the employee do not form the basis of the decision to dismiss;
- collective redundancies – as separate statutory provision exist within the Trade Union & Labour Relations (Consolidation) Act 1992;
- dismissals then re-engagement – as long as re-engagement is offered before or on termination of the existing contract;
- industrial action dismissals – as these are covered by different statutory provisions (Employment Relations Act 1999);
- constructive dismissals – as the employee would need to raise a grievance in such circumstances;
- dismissals attributable to the ceasing of business – i.e. where it would be impractical to apply the Dismissal Procedure;
- dismissals where continued employment would contravene a legal duty or restriction.

3. DEFINITION

A dismissal usually occurs when the contract of an employee is terminated by an employer (in schools with local management, the Governing Body has the power to instruct the LA to dismiss an employee of the school). In order for this to be fair there must be a valid reason for the dismissal and the employer must have acted reasonably.

The reasons can be:-

- a reason related to the employee's conduct
- a reason related to the employee's capability or qualifications for the job
- redundancy (i.e. where the employers need for employees to do certain work has ceased or diminished, or is expected to do so).
- where there is a statutory restriction on either the employer or employee which prevents the employment being continued
- some other substantial reason which could justify the dismissal

4. PRINCIPLES

The purpose of the Dismissal Procedure is to ensure that dismissals are handled appropriately and that the employee concerned is clear about what is happening and the reasons for it.

The employee has the following rights:

- to be accompanied by their trade union or other representative of their choice at meetings
- to have access to relevant information (see Freedom of Information Act and Data Protection Act)
- to have an opportunity to explain their position

- have a right of appeal against any outcomes to a more senior manager or the Governing Body, as appropriate.
- to be given clear written reasons for the dismissal.

Each step and action within the procedure must be fully undertaken without undue delay and the timing and location of meetings must be reasonable.

5. SITUATIONS WHERE THE PROCEDURE APPLIES

The following gives guidance on applying the procedure in the situations outlined in para 2.

5.1 Redundancy

Usually, when a redundancy situation is identified, Headteachers/managers would have communicated this to the employee/s affected at an early stage. Headteachers/managers must ensure that the Dismissal Procedure is adhered to in such circumstances and that the sufficient time is given for the procedure to be followed in full.

5.2 Expiry of a Fixed Term or Temporary Contract

Fixed term employees have the right not to be treated less favourably than comparable permanent employees. Consequently, any dismissal must follow the process applied to the school's/Council's permanent employees. Fixed term contracts include:

- seasonal/casual work – contracts for a short period or task that ends when the period expires or a task is complete
- contracts to cover peaks in demand which end when demand goes back to the normal level
- contracts which expire when a specific task is completed

Where the contract is of less than one year's duration there is no requirement to follow the formal Dismissal Procedure. However, Headteachers/managers are advised to act cautiously in such cases as an employee may have accrued previous continuous service totalling more than one year with the Council. In such circumstances, Headteachers/managers are advised to be as pragmatic as possible in ensuring adherence to the Dismissal Procedure.

Headteachers/managers should anticipate timescales and ensure that adequate time is given to allow the full application of the procedure. This is particularly important when the fixed term employee is on a period of maternity leave or sick leave and their contract expires during that period.



5.3 Some other Substantial Reason

Situations may arise where there is good reason for dismissing an employee which is for reasons other than those already mentioned. This can include dismissal of a replacement employee who has been covering for maternity or sickness absence, when the original employee returns to work.

Again, in circumstances where the contract is of less than one year's duration there is no requirement to follow the formal Dismissal Procedure. However, Headteachers/managers are advised to act cautiously in such cases as an employee may have accrued previous continuous service totalling more than one year with the Council, which would therefore require the application of the Dismissal Procedure. In addition, Headteachers/managers are advised to follow the Dismissal Procedure in such situations to avoid the potential for discrimination claims from employees on fixed term contracts.

Date: January 2016