



The Castle Partnership Trust

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The Castle School
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Staff Appeals Procedure January 2021

CEO: Sarah Watson

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Due for review: Autumn Term 2021

This is a policy/procedure from Somerset County Council which has been subject to consultation and agreement with recognised Somerset schools' trade unions.

1. **General**

The Appeals Committee of the Board of Directors hears appeals by employees against the following:

- a decision taken as a result of a disciplinary hearing involving a sanction imposed under the disciplinary procedure including dismissal. See paragraph 4.13 of Section 16 Disciplinary Procedure regarding grievances raised in the course of a disciplinary investigation or hearing;
- the last stage of appeal in the Grievance Procedure;
- dismissal due to redundancy;
- warning or dismissal due to capability (including ill-health);
- dismissal due to some other substantial reason;
- dismissal during the probationary period (support staff);
- dismissal as a result of expiry of a fixed-term contract;
- a decision of the Pay Committee of the Board of Directors, or a decision of the Headteacher in relation to a Threshold / pay progression application;
- a decision taken in accordance with the Leave of Absence Provisions;
- a decision taken in response to a request for flexible working.
- A decision taken in relation to a Premature Retirement application.

NB: A decision taken as a result of a staff disciplinary hearing involving a sanction imposed under the disciplinary procedure including dismissal will be dealt with separately under the provisions of the Staff Disciplinary Policy.

2. **Grounds for Appeal**

The grounds on which an employee can appeal if they are dissatisfied with the outcome are;

- They have evidence to support the original outcome was unfair; and/or
- They have evidence to support, there were flaws in procedural fairness.

The purpose of the appeal hearing is to provide the employee with the opportunity to set out the grounds for their appeal and state their case as to why they think the outcome, or the procedure was unfair.

There is no automatic right for the employee to have their case reheard or reinvestigated. However, this may be a decision taken by the panel if they decide the outcome was either unfair or there were flaws in the procedural fairness.

3 Membership

The Appeals' Committee should consist of no fewer than three Directors/Governors and, in any event, not less than the number who comprised the initial panel or committee, (see paragraph 10.1 of the Trust's Disciplinary Procedure) none of whom should be directors/governors or employees of the Trust who have a direct or indirect financial interest in the outcome of the appeal.

4 Administration

The Committee will be given professional advice and guidance as to process by the respective Business Managers, HR Adviser or a solicitor*.

* Where the appeal is against an initial dismissal decision.

5 Powers

The Appeals Committee can:-

- (a) uphold the appeal;
- (b) in disciplinary and capability issues, substitute a lower warning and/or reduce the currency of the warning or delete the warning;
- (c) dismiss the appeal and uphold the initial decision.

6 Methods of Operation

- Strict confidentiality will be observed with regard to the hearing and all related documentation.
- The rules of "natural justice" will be applied as far as is possible for appeal hearings. Accordingly, the appellant can arrange to be represented or supported by a professional association/trade union representative or work colleague; call witnesses and submit documents to the Committee.

- Hearings are conducted as informally as possible within the guidelines set out in paragraph 3 below.

7. **Action Prior to the Appeal**

On receipt of the notification of appeal the Clerk to the Governors will:-

- except for appeals where a statutory time limit is specified, arrange for the appeal to be heard within 15 working days of it being lodged, if possible.
- if this is not possible, inform the appellant of the reasons.
- give all parties to the appeal at least 5 working days' notice, in writing, of the time and place of the hearing.
- invite brief written statements in support of their respective cases from the appellant and the Chair of the initial hearing indicating that the Clerk will circulate these to all parties plus *any relevant* documentation* used at the initial hearing with the agenda at least 5 working days before the appeal hearing.
- table at the hearing any late documents received, subject to the agreement of all parties. However, this should be avoided at all costs as it may lead to lengthy recess to consider the impact of any such documents.

* The adviser to the Appeals Committee will contact the representatives of both parties in order to agree what documents from the initial hearing are to be included. Where there is disagreement, any disputed documents will be available separately at the Appeal Hearing and the Chair of the Appeals Committee will determine whether or not any such documents are admitted or referred to. Only agreed documents will be circulated prior to the hearing.

8. **The Appeal Hearing**

The conduct of any meetings held under the scope of this procedure will be as follows:-

Preliminaries

- Confirm who will Chair the Hearing and that the Committee is eligible to hear the case in accordance with the Disciplinary and Appeals Procedure.

- Invite both parties (the appellant and the Chair of the first Panel or Committee and the person who put the case to the first Panel or Committee) and their advisers/representatives to enter the meeting.
- After introduction, ask both parties which of their representatives will be their chief spokesperson. The Chair will explain the purpose of the hearing, how it will be conducted, the role of the advisers, the powers of the committee and that either of the parties may request an adjournment at any time.
- After explaining the procedure and securing their agreement to it, ask if either party has any preliminary comments before making their opening statements and presenting their cases.

The Procedure

- Invite the appellant or their representative to make their opening statement setting out the grounds for their appeal and call witnesses if appropriate.
- Where no witness has been called, the manager (Chair of the original panel) may question the appellant or their representative on their case, or parts of it, once it has been presented.
- Where a witness has been called and given evidence, the manager may cross-examine the witness. The appellant or their representative has a right to re-examine and ask questions on any matter, and only any matter arising from the cross-examination. The Committee may ask questions of the appellant or their representative and their witness. The manager has a right to re-examine and ask questions on any matter, and only any matter, arising from the Committee's questions.
- Invite the presenting manager to make their opening statement and to call witnesses, if appropriate.
- Where no witness has been called, the appellant or their representative, may question the manager on their case, or parts of it, once it has been presented.
- Where a witness has been called and given evidence, the appellant or their representative may cross-examine the witness. The manager has the right to ask questions on any matter arising from the appellant's questions.
- The Committee may ask questions of the manager and their witnesses. The appellant or their representative has a right to re-

examine and ask questions on any matter, and only any matter, arising from the Committee's questions.

- Witnesses will leave the room after having given, or having been cross-examined on, their evidence. Whilst witnesses are normally only required to be present whilst giving evidence witnesses may remain throughout the hearing at the discretion of the committee e.g. where it is felt this may assist either party in the presentation of their case to the hearing. However, due care will be taken by the committee to ensure that any use of this discretion does not comprise or impede either side's case or any individual witness evidence.
- There should be no discussion on the case or associated matters between the witnesses before or after giving evidence.
- At the discretion of the Chair of the Hearing, further questions by one party or the other may be permitted if, in the view of the Chair, it would assist in clarifying the relevant issues or eliciting further evidence.
- Invite the presenting manager to make their closing statement.
- Invite the appellant or their representative to make their closing statement.
- The Committee may ask further questions of the manager and/or the appellant or their representative.
- The Appeals Committee will pay particular attention to any new evidence that has been introduced, consider it carefully and ensure that both parties have had a full opportunity to comment upon any such new evidence before any decision is taken.
- The meeting will be adjourned and both parties will leave the room to allow the Appeals Committee to reach their decision in private. The Appeals Committee can recall either party to clarify any points of uncertainty on evidence already given. If such a recall is necessary, both parties will be asked to return, even if only one party is concerned with the point requiring clarification.
- Both parties to be invited back to hear the Committee's decision.
- No further discussion or debate will take place.
- The decision will be confirmed in writing within 5 working days.

9. **The Decision**

- (a) The Appeals' Committee will examine all of the issues fully before reaching a decision.

- (b) The Appeals' Committee will not use new information coming to light at the appeal hearing to justify a new reason for the initial sanction in substitution for the original one.
- (c) Following the adjournment, the Chair of the Committee will inform both parties of the decision reached. This will be confirmed in writing by the Clerk to the Governors.
- (d) The Appeals' Committee's decision is final and, therefore, there is no further appeal process except where the matter that is the subject of the appeal is one where a further and final stage of appeal to another Board of Directors' Committee is provided for. The Chair of the Appeal Committee will make it clear, at the outset if this is the case.

Template Invite Letter to Appeal Meeting

Dear []

XXX Appeal Hearing

I am writing to you following the receipt of your appeal dated *[date]* in relation to the xxx held with you on *[date]*, the outcome of which was sent to you on *[date]*.

In accordance with the appeals procedure, I now invite you to attend a meeting to discuss your appeal. The meeting has been arranged for *[date]* and will begin at *[time]*. The meeting will be held at *[location]*.

Your appeal will be heard by *(names)* (the Appeal Panel) *(name)* will also be in attendance to respond to your appeal and *(name)* will be present to take notes. You are entitled to be accompanied at the meeting by a work colleague or trade union representative, if you choose. Please inform me as soon as possible if you are being accompanied so if required, I can then make the necessary arrangements to allow them to attend.

The purpose of the meeting is to allow you to explain the grounds for your appeal and why you think the outcome, or the procedure was unfair.

If you are unable to attend the meeting, under the terms of the procedure you must inform us of this fact as soon as possible and no later than *(date)* (*allow 5 working days*).

Should you have any queries about this process or questions about what the appeal meeting will involve, please let me know and I will be happy to discuss the arrangements with you in detail.

Yours sincerely