



CHESHIRE WEST AND CHESTER COUNCIL – CHILDREN AND YOUNG PEOPLE'S SERVICE

MODEL STAFF DISMISSAL PROCEDURE FOR SCHOOLS

MANAGEMENT COMMENTARY

1. INTRODUCTION

The purpose of this procedure is to ensure that Headteachers/ managers/ governors 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 school / CWAC Council) 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.

Failure to follow a fair procedure can be automatically unfair and incur a payment for a dismissed employee who brings an unfair dismissal claim to Employment Tribunal.

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 Schools HR.

2. APPLICATION

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

- Redundancy
- Expiry of Fixed Term or Temporary 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 should follow that procedure.

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 local authority 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 a work colleague 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.

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