



**THE LEARNING PARTNERSHIP**

## **Dismissal Policy**

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| <b>Next review date:</b>   | December 2022                         |
| <b>Approval needed by:</b> | <b>Finance and Staffing Committee</b> |

The policy applies to all employees of The Learning Alliance.

## Scope

This policy covers procedures for dismissal where disciplinary and capability procedures do not apply.

It is applicable in situations where an employee's contract is to be terminated due to redundancy, expiry of a fixed term/temporary contract or some other substantial reason (e.g. an employee covering for maternity leave of another employee).

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.

## Definition of Dismissal

A dismissal usually occurs when the contract of an employee is terminated by the employer. 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 (including attendance at work) or qualifications for the job;
- redundancy, i.e. where the employer's 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; or
- some other substantial reason which could justify the dismissal.

## Situations where this Procedure does NOT apply

- 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 and Labour Relations (Consolidation) Act 1992.
- Dismissals then re-engagement, as long as the 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 Acts 1999).
- Constructive dismissals – as the employee would need to raise a grievance in such circumstances.
- Dismissals attributed 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.
- Dismissals that occur during the probationary period (applicable to Support Staff) are covered in a separate document.
- Dismissals on the grounds of performance are incorporated into the Capability Procedure.
- Dismissals on the grounds of conduct are incorporated in the Disciplinary Procedure.

- Dismissals on the grounds of ill health are incorporated into the Attendance Management Procedure.

### **Situations where this Procedure applies:**

#### **Redundancy**

Usually, when a redundancy situation is identified, head teachers/managers would have communicated this to the employee/s affected at an early stage. Head teachers/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.

#### **Expiry of fixed term or temporary contract**

Fixed term and temporary 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 permanent employees.

Where employees have less than two year's continuous service, there is no legal requirement for managers to follow a formal Dismissal Procedure. However, best practice would be to apply such a procedure in all dismissal cases, i.e. including cases where the employee appears to have less than two year's continuous service.

Head teachers/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 or sick leave and the contract expires during that period.

#### **Dismissals for Some Other Substantial Reason (SOSR)**

Situations may arise where there is substantial 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, and the original employee returns to work.

Again, where employees have less than two year's continuous service, there is no legal requirement to follow a formal Dismissal Procedure. However, best practice would be to apply such a procedure.

## **DISMISSAL PROCEDURE**

### **Employee rights**

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 a work colleague of their choice or by their Trade Union representative 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;
- to be given clear written reasons for the dismissal; and
- have a right of appeal against any outcomes to a more senior manager or the Governing Body, as appropriate.

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

### **Termination of contracts for reasons other than redundancy**

#### **Procedure**

Step One: The Manager will write to the employee detailing the circumstances which may result in their dismissal, such as the end of a temporary contract. The employee will be invited to a meeting with the Manager, at which they may be accompanied by an appropriate work colleague or a representative from a recognised trade union.

Step Two: The meeting will make possible an open discussion about the potential dismissal and any possible alternative employment. The employee will be given an opportunity to offer reasons why they feel it unfair if this is the case and suggest any alternatives to dismissal. The Manager will listen to any views offered and confirm any decision in writing, advising the employee of a right to appeal. Any appeal must be sent to the Manager within 10 working days of receipt of the formal notification of this decision, outlining the grounds of the appeal.

*The Manager carrying out Steps 1 and 2 is a senior member of staff at the school, the head teacher (where a senior member of staff is the subject of the procedure or no senior member is available) or the Chair of Governors (where the head teacher is the subject of the procedure).*

Step Three: If the employee raises an appeal, an 'appeal group' of Governors will arrange to hear the appeal within 20 working days of receipt. The decision of the group will be final and the employee be notified within 5 working days. Termination of employment will not be delayed by the appeal hearing. If the appeal is upheld, however, reinstatement of the employee will be backdated to the point of dismissal and continuity of service will be maintained.

There is no further right of appeal.

*The Appeal Group carries out Step 3 and should be the head teacher (where Steps 1 and 2 were carried out by a senior member of the school's staff) or a committee/group of school governors (where Steps 1 and 2 were carried out by the Chair of Governors). The committee/group of school governors acting as the Appeal Group must exclude the Chair of Governors and any member of the school staff.*

### **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.

### **Timescales**

Timescales may exceptionally be extended by mutual agreement.

### **Notice periods**

Where the employer gives notice of the termination of employment, notice will be given in accordance with the Termination of Employment Policy for the relevant staff group, or in accordance with the notice period specified in the Statement of Written Particulars (Contract of Employment), e.g. where an employee who has been covering for maternity or sickness absence.

### **Dismissals of support staff during the probationary period**

All support staff will serve 6 months' probationary period, which can be extended for a further 3 months before their permanent appointment is confirmed. This will be a period of planned induction, management support and appropriate on the job training, during which time performance and conduct will be monitored. Any concerns will be shared openly by line managers and, where necessary, clear objectives set to improve performance and timescales identified.

The review process will be as outlined below:

- Review meetings will be held at 2, 4 and 6 months, these being carefully documented and agreed conclusions recorded.
- By 4 months it is expected that employees will be working to a good standard. If this is not the case employees should be made aware by their line manager that without improvement their probationary period may be extended or their employment may not be confirmed.
- At 6 months, if performance is satisfactory employment will be formally confirmed in writing. If it is felt that an extension of the probationary period would enable the employee to reach the required level of competence, then this will be agreed at the meeting. If performance is not satisfactory, the employee will be advised that a formal review will take place.
- The Executive Principal or appropriate member of the Leadership Team will write to the employee inviting them to the meeting: the letter will make clear a possible outcome could be non-confirmation of employment
- The letter will state that the employee has the right to be accompanied by a Trade Union representative or work colleague. The parameters under which the representative or colleague operate are established in the Trust's Disciplinary Policy.
- At least 5 days' notice of the meeting will be given.
- In the meeting the manager in consultation with the Executive Principal or appropriate member of the Leadership Team will outline why s/he believes the employee has not demonstrated suitability for the post and the employee will have the opportunity to respond. The meeting will

be adjourned while the manager reaches a decision. If the decision is not to confirm appointment this will be communicated orally, and in writing within 5 days, employees being advised of the notice period and their right to appeal.

- If the decision is to allow an extension this too will be confirmed orally, and in writing within 5 days, along with an agreed action plan, timescale and review date. This will be the final review after which employment will be either confirmed or not.
- The total period of probation will not exceed 10 months.
- Any appeal must be sent to the Executive Principal within 10 working days of receipt of the outcome letter. The appeal will be heard by the Chair of Governors or a panel of governors without unreasonable delay, giving at least 7 days' notice to the employee. The outcome of the hearing will be notified in writing without unreasonable delay. There is no further right of appeal. Termination of employment will not be delayed by an appeal. If the appeal is successful, reinstatement will be backdated to the point of dismissal and continuity of service maintained.

## **Termination of contracts for reasons of redundancy**

It is our intention to manage the Trust in a manner which results in secure employment for our employees. We will always try to avoid the need for compulsory redundancies but sometimes these may be necessary. The pattern or volume of our work may change and requirements for employees may reduce.

This policy only applies to employees of the Trust who have greater than two years' continuous service with the Trust. It does not form part of any employee's terms and conditions of employment with the Trust and is not intended to have contractual effect. It is provided for guidance purposes only and the Trust reserves the right to amend this policy at any time.

### **The purpose of the policy**

The purpose of this policy is to ensure that whenever a reduction in employee numbers becomes necessary:

- we communicate clearly with all affected employees and ensure that they are treated fairly;
- we try to find ways of avoiding compulsory redundancies;
- we consult with employees and with recognised trade unions and/or employee representatives where applicable; and
- any selection for compulsory redundancy is undertaken fairly and reasonably.

## **Compulsory redundancies**

### **Avoiding compulsory redundancies**

Where we are proposing to make redundancies we will enter into consultation with all affected employees on an individual basis and, where appropriate, also with recognised trade unions and or employee representatives.

In the first instance we will consider steps that might, depending on the circumstances, be taken to avoid the need for compulsory redundancies.

Examples of such steps include:

- Reviewing the use of agency staff, self-employed contractors and consultants;
- Restricting recruitment in affected categories of employee and in those areas into which affected employees might be redeployed;
- Reducing overtime in affected departments or service areas to that needed to meet contractual commitments or provide essential services;
- Considering the introduction of short-time working, job-sharing or other flexible working arrangements, where these are practicable;
- Identifying suitable alternative work with us that might be offered to potentially redundant employees;
- Inviting applications for early retirement or voluntary redundancy. In all cases the acceptance of a volunteer for redundancy will be a matter of our discretion and we reserve the right not to offer voluntary redundancy terms or to refuse an application where it is not in the interests of the Trust to do so.

Any measures adopted must not adversely affect the Trust schools or its ability to deliver educational services and pastoral/support services to our students.

## **Procedure**

When it is not possible to avoid potential compulsory redundancies, all affected employees and, where appropriate, recognised trade unions and/or employee representatives, will be advised and consulted on the procedure that will then be followed and the criteria that will be applied. Criteria will, in general terms, relate to:

- The requirements of the Trust in delivering the curriculum and meeting the broader needs of students
- Skills or experience
- Standard of work performance or aptitude for work
- Support for the aims and policies of the Trust
- Attendance record (Attendance should only be included as a criterion if disability related absence or absence related to maternity/paternity leave is discounted)
- Disciplinary record

The precise criteria used to select those employees who will potentially be made redundant will be objective, transparent, fair and based on the skills required to meet the Trust's existing and anticipated needs. Criteria will be consistent with good practice guidance from ACAS.

Those employees who have been provisionally selected for redundancy will be consulted with individually.

Where selection for redundancy is confirmed, employees selected for redundancy will be given notice of termination of employment in accordance with their contracts and written confirmation of the payments that they will receive. Payments will be at the statutory minimum. Employees will be given the opportunity to appeal against this decision to a group of Governors.

The Trust will continue to look for alternative employment for any redundant employee and inform him or her of any vacancies that it has until his or her termination date. The manner in which redundant employees will be invited to apply for and be interviewed for vacancies will be organised depending

on the circumstances existing at the time. Alternative employment may be offered subject to a trial period where appropriate.

Employees under notice of redundancy will be entitled to take a reasonable amount of paid time off work to look for alternative employment or to arrange training for future employment.

### **Re-employment following redundancy**

- Payment of the redundancy payment is conditional upon the employee not taking up an appointment in the public sector within **four** weeks of the termination of employment. Employees who start another role within the public sector will be required to repay the redundancy payment.
- Employees who are made redundant will not be permitted to be re-employed in the same position within the school.