



BIRMINGHAM CITY UNIVERSITY ACADEMIES TRUST

PROCEDURES FOR DEALING WITH MATTERS THAT COULD LEAD TO DISMISSAL OF STAFF FOR REASONS OTHER THAN MATTERS OF DISCIPLINE

1. Introduction

- 1.1 This policy explains the procedures for dismissals other than for disciplinary reasons or reasons of misconduct.

2. Background

- 2.1 A dismissal can occur for a variety of reasons. Reasons for dismissal include a breakdown of discipline, the termination of a fixed term contract, redundancy, failure of competence, ill health or failure of a probationary period.
- 2.2 The Trust Board have considered the policy they wish to follow in relation to dealing with all dismissals.
- 2.3 The Board has confirmed that it will continue to provide the opportunity for an appeal to the Local Advisory Board (LAB), in the event of a member of staff, either full-time or part-time, being dismissed from their post as a result of a disciplinary offence related to misconduct. The initial decision to dismiss, in accordance with the disciplinary procedure, will be taken by the a senior member of staff designated by the Trust Board for that purpose. The appeal will be heard by a three-member Appeal Committee.
- 2.4 For dismissals connected with: redundancy, failure of probationary period, ill-health or failure of competence, the decision will be taken by a senior member of staff designated for the purpose by the Trust Board. The Trust will ensure that it complies fully with the Code of Practice in respect of Disciplinary and Grievance Procedures. The appeal against a decision to dismiss will be heard by the panel convened for that purpose.

3. Statement of Principles

- 3.1 In the case of dismissal for reasons other than discipline, these are the principles that will be adopted.

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- 3.1.1 You will be supplied with clear reasons for the potential dismissal at the earliest opportunity.
- 3.1.2 You will be provided with the opportunity to respond to the reasons provided for the potential dismissal at an interview.
- 3.1.3 You will be given adequate notice of the interview to enable you to prepare a response.
- 3.1.4 You will be informed of any decision or of progress made in your case.
- 3.1.5 At all stages of your case, you have the right to be accompanied, advised or represented by a friend, colleague or trade union official.
- 3.1.6 All proceedings are strictly confidential and fully documented.

4. Redundancy

- 4.1 A redundancy occurs if the dismissal of an employee is attributable wholly or mainly to the fact that:
 - 4.1.1 The Trust has ceased, or intends to cease: to carry on the business for the purpose of which the employee was employed; or to carry on the business in the place where the employee is employed; or
 - 4.1.2 The requirements of the Trust for employees to carry out work of a particular kind in the place the employee is so employed has ceased or diminished, or are expected to cease or diminish.
 - 4.1.3 The termination of a fixed-term contract, other than for disciplinary reasons. The Trust will deal with the matters in accordance with the procedures outlined in Annex Two.
 - 4.1.4 However, where there are 20 or more employees subject to a redundancy situation, please refer to the Procedure for Handling Redundancies, which will be applied in such circumstances.

5. Failure of Probationary Period

- 5.1 The purpose of a probationary period is to provide you with the opportunity to confirm your suitability and applicability to the post to which you have been appointed. By virtue of the application you submitted, your interview, satisfactory references and your success at any other aspect of the application procedure, you have indicated to the Trust that you have the ability to be successful in the role offered. Therefore, during this initial 6 month period of employment, it is reasonable to regard the burden of proof as to suitability as resting with you rather than the

Trust.

- 5.2 During a probationary period it is essential that advice and guidance on the standard of performance that is expected in the post is provided to you. The advice and guidance should be provided in good time for you to be able to respond in a positive manner. If, at any time, it is thought that you are not achieving the appropriate standard of performance, it is essential that the failure be brought to your attention and documented. You will be provided with a reasonable opportunity to correct any failings that have occurred. It may also be appropriate, if failings have been identified, for additional training and support to be given. Naturally, this depends on the nature of the problem that has been experienced.
- 5.3 A probationary report will be completed after 3 months of employment. You will be asked to sign the report to indicate acceptance of the contents.
- 5.4 At the end of the probationary period your Line Manager will be obliged to certify that the probationary period has been satisfactorily completed. The certification process will take into account the standard of work, as well as more routine matters such as reasonable time keeping and attendance. If there is concern about aspects of the work, your probationary period may be extended to allow a further period of time for the appropriate standard to be achieved. It may, however, be necessary to terminate your probationary period using the provisions in the contract of employment. The Trust will ensure that it complies fully with the Code of Practice in respect of Disciplinary and Grievance Procedures for staff who have less than 2 years' service.
- 5.5 In the event of a failure of your probationary period and the contract then being terminated, there is a right of appeal to the Local Advisory Board (LAB) against the decision. The grounds for such an appeal are for example that:
 - 5.5.1 there was a material procedural irregularity, or
 - 5.5.2 there were mitigating circumstances that could not have been known at the time the decision was taken.
- 5.6 In assessing whether the decision is reasonable or the appeal is successful, the Trust Board will seek to determine whether:
 - 5.6.1 clear standards of performance have been set and you have understood them;
 - 5.6.2 any failings have been brought to your attention sufficiently early for performance to be improved;
 - 5.6.3 appropriate additional support has been given, in terms of extra training or supervision;

- 5.6.4 an extension of your probationary period would resolve the problem;
- 5.6.5 termination of employment is a reasonable decision in the circumstances given that the possibility exists of an extension to your probationary period.
- 5.7 An appeal is for reinstatement as it may occur after the dismissal has taken place. Reinstatement following a successful appeal will be back-dated to the date of termination.

6. Ill-Health

- 6.1 The existing provisions for dealing with ill-health are reasonable and for long serving employees provide for six months absence on full pay and six months absence on half pay. After a year of receiving sick pay, no pay is available except at the discretion of the Trust. This discretion is exercised occasionally on a case by case basis depending on circumstances.
- 6.2 The Trust will not consider termination of employment on ill-health grounds, other than at your request, until the period of zero pay has been reached. The Human Resources Department will deal with all matters relating to possibility of termination of employment on grounds of ill-health.
- 6.3 The procedure to be adopted in the case of ill-health is as follows:
 - 6.3.1 Dependent upon the reasons provided by your Doctor, the Human Resources Department will contact you, prior to your receiving half pay, to discuss the likely duration of the illness. It is important for this dialogue to commence at this point to ensure that there is sufficient time to consider all options before reaching the position of receiving no pay. The Trust does not wish staff who are suffering with health problems to have any unnecessary pressures, which may result in them making inappropriate decisions due to difficult financial circumstances. You are advised to enter such discussions in a positive manner to ensure that any action taken is appropriate to your circumstances.
 - 6.3.2 You may be asked to attend a medical examination with the Trust's Occupational Health Adviser at any stage during an absence. The purpose of this medical examination is to determine the likely duration of the absence or illness. The medical advisor may also consider making recommendations to enable you to continue to conduct your current duties and assist in identifying other suitable alternative work. Your own Medical Advisers will also be asked to contribute to the report. In these circumstances you will be asked to complete a medical consent form.
 - 6.3.3 The circumstances surrounding cases of this nature may require additional questions to be asked of the Occupational Health Adviser. You will be advised of any additional questions to be asked of the Occupational Health Adviser.

- 6.3.4 You will receive a copy of the Trust's Occupational Health Adviser's report. You will then be invited to meet with a representative of the Human Resources Department and your Line Manager. At this meeting you can comment on the report, and discuss the contents and the implications the report may have on your employment.
- 6.3.5 You may enter into these discussions directly or be accompanied, advised or represented by a friend, colleague or trade union official.
- 6.3.6 If the report indicates that it may not be possible for you to continue working for the Trust, you will be advised of the benefits of retiring under ill-health retirement schemes operated by the appropriate Occupational Pension Schemes. Every assistance will be provided to help you apply for retirement on these grounds.
- 6.4 You may not wish, or may be unable for some other technical reason, to make an application for premature retirement on the grounds of ill-health. In these circumstances, the Trust Board will nominate a senior member of staff to review the case and determine whether your employment should be terminated with the appropriate notice contained in the contract of employment.
- 6.5 If a decision is made to terminate your employment, you will have the right to appeal to the LAB. The grounds for such an appeal are for example that:
 - 6.5.1 there was a material procedural irregularity, or
 - 6.5.2 there were mitigating circumstances that could not have been known at the time the decision was taken.
- 6.6 An appeal is for reinstatement as it may occur after the dismissal has taken place. Reinstatement following a successful appeal will be back-dated to the date of termination.

7. Competence

- 7.1 It is unusual for an issue of competence to be sufficiently significant to lead to the possibility of dismissal. In such cases, consideration is given prior to action being taken as to whether the failure of competence is due to a deliberate decision of yours not to achieve the appropriate standard of performance; or to your inability to achieve the standard required.
- 7.2 If the failure of competence is due to your deliberate decision not to achieve the appropriate standard of work, then this is a disciplinary matter and will be progressed through the disciplinary procedure.
- 7.3 If the failure of competence is due to your inability to achieve an appropriate standard of work then the Trust will ensure that it complies fully with the Code of

Practice in respect of Disciplinary and Grievance procedures.

7.4 It is essential that:

7.4.1 Clear standards of performance have been set and that you have understood them;

7.4.2 Your failings in terms of competence and standards have been brought to your attention and sufficient time has been allowed for your performance to improve.

7.4.3 If appropriate, additional support has been given to you in terms of extra training or supervision.

7.4.4 The possibility of alternative work that is within your competence has been considered.

7.5 A principal source of evidence of failures of competence will be your appraisal appraisal records. It will be difficult to sustain a case of failure of competence or standards in the absence of consistent evidence in the appraisal documents. If you do not accept the content of the appraisal documents you may seek a review with your reviewer's reviewer. If this does not result in you being satisfied with the report you may invoke the Grievance Procedure.

7.6 As cases of failure of competence are unusual, it is essential that your Line Manager seeks the advice of the Human Resources Department at an early stage. The decision to dismiss in a case of failure of competence will be delegated to a senior member of staff designated for the purpose by the Trust Board. The grounds for such an appeal are that for example that:

7.6.1 there was a material procedural irregularity, or

7.6.1 there were mitigating circumstances that could not have been known at the time the decision was taken.

7.7 An appeal is for reinstatement as it may occur after the dismissal has taken place. Reinstatement following a successful appeal will be back-dated to the date of termination.