

Guidance Notes for Governors' Complaints Review Panel

(NB These notes have been prepared to assist Panel members in conducting a complaint review. They do not form part of the School's Complaints Procedure.)

It is up to each Panel to decide on the procedure that it wishes to follow, subject always to the Panel following the requirements of the School's Complaints Procedure. The procedure followed may vary depending on the nature of the complaint raised. However, the following notes are intended to assist Panel members in deciding how to organise and conduct a review.

The Governors' Complaints Review Panel is the third and final stage in the School's Complaints Procedure and takes place on written application by the parents, only if the complaint cannot be resolved either at:

- the initial informal stage (by the staff concerned or involving relevant senior members of staff); or
- the second formal stage in which a written complaint is made to the Head Teacher/Principal.

Timetable

The Panel must follow the timetable set out in the Complaints Procedure.

- The Complainant has 10 working school days from receipt of the Head Teacher/Principal written response to the formal complaint to apply in writing to the Clerk to the Governors to have the matter referred to the Governors' Complaints Review Panel.
- The Panel hearing must be held within 20 working school days from the receipt of the application.
- Panel findings and recommendations must be provided to the complainant (and others) within 14 working school days of the Panel hearing.

This is a very tight timetable given the need to appoint a Panel, decide on procedure, obtain evidence and agree a date for a hearing that is convenient to all parties. It is therefore important for the initial steps of appointing the Panel and the Panel preliminary meeting (to decide on its procedure) to take place as soon as possible after receipt of the application.

Panel members

In order to speed up the appointment of a Panel it is suggested that the Chair of Governors should identify in advance a number of Governors and one or two other persons (who are independent of the management and running of the School) who would be suitable to act as Panel members. It is suggested that at least the Chair of the Panel should have a legal background.

Each Panel must consist of at least three people who are not involved in the matter that is the subject of the complaint. At least one member of the Panel must be independent of the management and running of the School i.e. not a governor or member of staff.

Any governor who has been involved in an earlier stage of the complaint or who has prior knowledge of the issues or is connected in some way to the Complainant or the subject of the complaint cannot sit on the Panel. It is therefore important that the Head Teacher/Principal does not share details of the complaint widely with governors in order to avoid disqualifying them from sitting on the Panel.

Consider the background of potential Panel members to ensure that the composition of the Panel cannot be challenged as potentially biased in favour of the School.

The Chair of Governors should appoint the Panel members and select the Chair as soon as possible after receipt of the reference.

It is suggested that the Chair of Governors should not, as a general rule, sit on the Panel since he will have a role in liaising with the Head Teacher/Principal in implementing any recommendations from the Panel.

Clerk to the Governors

Since the complaint is about the School, members of the School staff should not generally be involved in the arrangements for the Review except as requested by the Panel Chair. However, the Panel is likely to need some administrative assistance and this should be provided by the Clerk to the Governors.

The Clerk to the Governors should be responsible for making the arrangement for the hearing and corresponding with the Complainant and the Panel members, including:

- Notify the Chair of Governors immediately on receipt of an application for a Panel Review.
- Write to the Complainant acknowledging receipt of their application saying that he (the Clerk) will be in touch with them about arrangements for the hearing shortly.
- Keep the tone of the correspondence with the Complainant friendly and not too formal.
- As soon as the Panel has been appointed contact the Panel members and forward copies of the original written complaint, the Head Teacher's/Principal's response and the application for the reference to the Panel.
- Liaise with the Panel members to fix a date for a preliminary meeting of the Panel members to discuss the procedure they wish to follow. This preliminary meeting (which should focus on administrative and procedural matters) should take place as soon as possible after the application is received to allow maximum time to obtain and circulate evidence and make arrangements for the hearing.

- Copy and collate documents required for the hearing.
- When requested by the Panel Chair, contact the Complainant, relevant members of staff and Panel members to agree a date for the Panel hearing. If possible give the Complainant a choice of dates.
- Make the administrative arrangements for the hearing including arrangements to conduct the Complainant to the hearing room. Use a neutral location for the hearing i.e. not the Head Teacher's/Principal's office.

Nature of the Panel's review

The Panel needs to consider whether its purpose is:

- to review the procedure and decisions taken to date and to determine whether they were reasonable; or
- to conduct a rehearing of all relevant evidence, make its own findings of fact and reach its own decision.

This will depend in part on the nature of the complaint and on the feasibility and appropriateness of trying to re-examine the original facts.

It is generally undesirable to ask children to attend hearing so it is often not practical to investigate anew incidents involving pupils but the Panel can review notes that teachers took of the event. Teachers should be reminded of the importance of taking contemporaneous notes of investigations they carry out.

Evidence

The Panel should consider what evidence it wishes to see. This may be documentary evidence, or it may wish to ask questions of individuals.

The Panel should ask the School and the Complainant to produce any written materials that they consider to be relevant, but the Panel should also consider whether there is any other evidence that it wishes to see.

The Clerk to the Governors should collate and supply to the school, the Complainant and the Panel members an indexed bundle of relevant documents well in advance of the hearing.

The Panel will need to consider how extensive a search should be conducted by the School for relevant documents.

The Complainant should be asked for any documents they wish to produce.

The gathering and collation of this material may take some time, so it is important that this material is gathered as quickly as possible.

Bear in mind:

- The need to avoid sharing personal data of third parties. It may be desirable to refer to other children involved as pupil A, B etc.
- It may be necessary to redact non-relevant sensitive information.
- Legal advice to the school is generally covered by legal professional privilege and therefore does not need to be disclosed but it would be advisable to take legal advice before deciding to withhold any relevant documents.
- Contemporaneous notes made by members of staff should be included.
- The Panel should consider which members of staff it wishes to attend at the hearing.
- Remember that all relevant documents (including those that are not helpful to the school's position) must also be produced and included in the bundle.
- As a general rule it is not desirable for the Panel to receive evidence from one party which that party is not willing to have made available to all other parties at the hearing.
- Remind Panel members that documents are confidential and should be returned to school after appeal is over for shredding.
- Bear in mind security of papers –do not send papers containing personal information in the post.

If the School or the Complainant has any concerns about the disclosure of documents, this should be discussed with the Chair of the Panel in advance (and preferably without the document concerned being disclosed until agreement has been reached as to whether and if so in what form it can be disclosed to other parties). It may be possible to submit evidence with names redacted. If necessary, take legal advice.

Once the file of documents has been collated it may be helpful for one of the Panel members to prepare a chronology by reference to the documents.

Subject Access Request and data protection legislation

Parental complaints often involve a request for documents relating to the child. Treat this as a Subject Access Request under data protection legislation.

The School has obligations under the General Data Protection Regulations to make information that it holds about a pupil available to that pupil (or its parents on its behalf) if so requested.

Children do have a right to request their records and can agree to the documents being provided to their parents.

The School also has obligations to protect personal data that it holds about other individuals.

If the School has been asked to produce all the documents that it has relating to the pupil it needs to consider whether it is necessary to provide them all to the Panel members given the data protection constraints. Not all of a pupil's file may be relevant to the appeal.

Communications with the parties

As soon as the Panel has had its preliminary meeting and decided on its procedure the Chair of the Panel should write to the Complainant to:

- Confirm the date, time and place of the hearing (having given them a choice of dates where ever possible).
- Confirm the names of the Panel members and provide brief CVs for the Panel members.
- Confirm who else will be attending from the School and their positions.
- Confirm to the Complainant that they can be accompanied at the hearing and ask them to let the Clerk to the Governors know who will be attending with them.
- Explain briefly the process to be followed at the hearing (including, if relevant, that they will be invited to set out their position briefly at the outset and that they will be sent in advance a set of relevant papers).
- Ask them to submit to the Clerk of Governors as soon as possible any papers they wish to rely on for inclusion in the bundle.

Procedure at the hearing

It is up to the Panel to determine the process it wishes to follow.

Points to consider:

- It is suggested that the hearing starts with all present introducing themselves.
- Chair of Panel should explain briefly the process he intends to follow in the hearing.
- The Complainant should be asked to set out their concerns briefly and what they would like to get out of the hearing at the beginning of the hearing.
- The Head Teacher/Principal should then be asked to reply briefly.
- Indicate that cross examination by either parents or Head Teacher/Principal is not allowed and all questions should come from the Panel.
- Avoid framing the hearing in a legalistic manner.

- The Complainant cannot compel third parties (e.g. other parents or pupils) to attend as witnesses.
- It is desirable to avoid the Complainant raising new issues in the course of the hearing which were not in their written complaint.
- The role of the Chair of the Panel is key to ensuring that all sides feel that they have an opportunity to explain their position, but the hearing is not an opportunity for the Complainant to cross examine the School or vice versa;
- At the end of the hearing the Chair should ask the Complainant and the Head Teacher/Principal whether they have any final points they wish to make.
- Consideration should be given to the number of individuals attending the hearing and steps taken to avoid the Complainant feeling outnumbered.
- To keep the hearing to a reasonable time it is suggested that it will not normally be necessary to go page by page through any documentary evidence and that the hearing should be primarily an opportunity for the Panel to seek clarification from the Complainant and the School.
- Consider whether to organise a transcript to be taken.
- Should witnesses sit in on the full hearing or attend individually? Generally, it is likely to speed matters up if all parties are present throughout the hearing, but this may not always be appropriate.

Decision of the Panel

The Panel must reach findings of fact and produce a written decision which sets out a reasoned basis for its decision and where appropriate contains its recommendations.

Do not say anything in the written report about any decision on disciplinary action against staff since this could be said to prejudice any subsequent disciplinary proceedings against that staff member.

The decision should be marked confidential.

A copy of the decision should be sent by the Chair of the Panel to the Complainant within 14 working school days of the hearing. A copy will also be provided to the person complained of (where relevant) and the Head Teacher/Principal and Chair of Governors.

A copy of the decision must be kept by the Head Teacher/Principal for inspection.

An Appendix to the School's Complaints Procedure must be prepared and kept up to date by the Head Teacher which lists the number of formal received each year and whether they

proceeded to a Panel Hearing. This should be made available to parents and others on request.

Litigation

Whilst there is no right of appeal against a governors' appeal, parents may launch litigation against the School or complain to ISI/Ofsted or DfE.

Launching litigation is quick and cheap. In small claims cases the winning party does not recoup its costs.

If there is litigation:

- Check whether costs and claim is covered by insurance
- Vital to identify and preserve all relevant documents
- Damages for stress and inconvenience are not generally available
- Identify early what is an acceptable outcome and keep this at the forefront of your mind as matters proceed
- Litigation is expensive and the outcomes uncertain-especially in small claims.
- Close it down early if you can

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