

Governor Support Service

Managing Hearings for Clerks

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Session Objectives



- Gain an understanding about the different types of hearings and the role the Clerk plays in these before, during and after.
- Learn about the different characters around the table and the parts they play in the hearing.
- Top tips for running a hearing.

The general principles of clerking hearings

Clerks may be asked to set up a hearing, source governors and put a document bundle (information pack) together.

Different types of hearings

- **Complaints** – could lead to appeals to the LA/DfE/EFA
- **Disciplinary** – could lead to appeals and Employment Tribunals (ETs)
- **Exclusions** – could lead to appeals and Independent Review Panels (IRPs)
- **Formal Grievance/Capability Review Hearing/Managing Attendance** (contract review hearings)
- **Appeals** – as above

The Characters Around the Table

- The Clerk
- Panel of Three Governors
- Advisor to the panel (in case of HR matters)
- Investigating Officer/Person representing school/Advisor
- Complainant/Member of Staff/Appellant
- Companion/Representative/Interpreter
- Witnesses
- In the case of an exclusion – possibly pupil/parent/LA representative/SEN expert/interpreter

What is expected of the Clerk?

- The Clerk may be required to organise the meeting and the distribution of papers. First question is what is your role? Are you clerking the meeting only or taking a coordination lead?
- Agree who should be responsible for coordinating the sometimes considerable photocopying of bundle or any papers submitted on the day.
- Everyone has to have the same documents in the bundle and receive them at the same time.

What is expected of the Clerk?

- Everything that is sent to employee should be sent recorded delivery. If it is not necessarily postable, then someone needs to be there to collect or receive it.
- Document bundles needs to be securely retained in case they are required for an appeal. At least the Clerk and Chair of Panel should keep hold of a set in case of an Appeal.

What is expected of the Clerk?

- Venue – consider using a neutral venue and the need for separate break out rooms for the different parties.
- Consider car parking arrangements, directions, opening up, locking up (in the case of a neutral venue), WiFi access and the disability requirements of anyone attending the hearing.
- Provide water and a box of tissues on the table (hearings can be very emotional).
- The panel members, clerk and advisors may be in the room at all times; other parties to be invited in at the same time, and to leave at the same time if someone calls for an adjournment.

What is expected of the Clerk?

- Check if anyone has any time restraints such as childcare arrangements as to when the hearing/deliberations need to end by.
- Decide on who sits where beforehand. As Clerk, sit as far away from complainant/member of staff in hearing as seeing and hearing someone note taking can be off-putting for them.
- Stay in the meeting at all times, ensure there is fair play, ask for silence/no communication as people get up for adjournments. Ask people to take their belongings with them (to avoid any recording devices being left in the room). Don't leave anyone alone with the panel.

What is expected of the Clerk?

- If it is a long hearing, consider housekeeping arrangements: break arrangements, points of contact on the day, consider prayer conditions, lunch arrangements.
- If a voice recorder is used then it needs to have the consent of everybody.

What's expected of the Clerk?

- **Minutes** - bear in mind this may not be their final resting place and they may be scrutinised in an appeal/ET.
- **Quality of minutes:** please be aware that some employees have been exonerated because of the quality of minutes in previous cases.
- When you create your minutes template, use a header such as 'Private and Confidential – Restricted Circulation' and the rider 'These notes are not verbatim and should not be read as such'.

What's expected of the Clerk?

- After the hearing the minutes are sent to the panel and HR advisor for approval in an agreed timescale. You may be asked to help with writing the outcome letter.
- The outcome letter and minutes are sent to the complainant/member of staff. If the complainant/member of staff disagrees with the minutes and corrects them, then both versions should be filed together.
- When sourcing a panel, the chair needs to be aware that they would be expected to present at a subsequent appeal and beyond if required.

Discussion

What would be your key points in letter to an employee inviting them to a disciplinary hearing?

The Role of the Panel

- The role of the panel is to hear the case and ask questions during the hearing of anyone to seek clarification and reach a decision based on the 'balance of probability'.
- The Panel Chair leads the panel and chairs the hearing.
- Be aware of local procedures in place – academies have more flexibility.
- Check out any conflicts of interest, the panel should not be tainted with previous knowledge of the case.

The Role of the Panel

- For any appeal the school would need a different set of panel of three; this can be difficult to source. Do not use staff governors; parent governors may be used depending on what the case is (and if their child is not in the same year group).
- It can leave GBs short of support. Take back to your GB whether they want to consider which schools they can network with locally to have a bigger pool of governors to draw from.
- Agree this before Unions pick up any element of challenge. Put in minutes of FGB so it is recognised in the public domain that, for example, a cluster of schools have agreed to share a pool of governors.

The Role of Advisors

- HR advisors help to advise the panel and coordinate the meeting and it is important to keep them in the loop with any developments.
- The majority of their advice is given during the deliberations or with regard to process during a hearing. The majority of their work is done prior to the hearing and in interim meetings.
- A pre meeting with the Clerk and Advisor is generally standard. The Clerk can lift the 'running order' of the hearing from the school's policy and use this as both an aide memoire to the panel and to form the minutes template. At the pre meeting the panel can ask questions around procedure and draw out common questions/themes they would like to raise in the hearing.

The Role of Advisors

- Copies of the running order should also be made available to all parties attending the hearing.
- At the start of the hearing, the chair needs to make it clear that the Advisor is there to advise on technical elements and does not take part of the decision making.
- There isn't always an advisor to the Investigating Officer. They may seek advice as part of the investigative process.

Witnesses

- These can be called by either side. They should only be in the room for the time they are giving evidence. Consider where to put witnesses.
- It is useful to have someone to help with meet and greet – HR/Clerk? Give consideration to how you will manage this.
- You will need to have a separate room for witnesses and break out rooms for the other parties.

Employee

- Will be there as part of case and will need to be reminded about the confidentiality of the case from the outset.
- The employee should submit their case at least 3 days before the hearing and names of any witnesses they wish to call and the name of their companion.

Companion/union rep

- Can be a partner, family member, work colleague. For HR related hearings, check with your school policy and HR advisor whether they allow legal representation at a hearing.
- Exclusion and Admission Appeals – parents might bring legal companion.
- In the case of an exclusion there might also be representation from the LA/SEN Advisor and the requirement for an interpreter.

Discussion



Who sits where around the table?

Do's and Don'ts ...

Do

- Ensure the school's policies are easily found on the school's website, are robust, in review date and timeframes are adhered to.
- **Arrive early** to meet with panel and run through case with the advisor if there is one.
- Facilitate the agreement by the panel to appoint a chair.

Do's and Don'ts ...

Do ...

In the **running order guidance for the panel**, in the introduction, chair to:-

- Make introductions around the table
- Emphasise the need for confidentiality of the hearing
- State that all parties can call for breaks at any time
- That recording of the hearing by other means is not permitted
- That the clerk is there to record the substance of the meeting but not verbatim minutes and will take no part in the decision making.
- That the advisor (if there is one) is there to advise the panel on process and procedure and will take no part in the decision making.

Do's and Don'ts ...

Do ...

At the end of the hearing it is important for the chair to ask the employee/complainant/parent if they feel they have had a fair hearing and for their response to be minuted.

Do's and Don'ts ...

Do ...

- **Break Out Rooms** – employee/companion/Union rep need to have a separate area/room to wait before the hearing and for breaks. So does the Investigation Officer and their advisor and so does any witnesses.
- Ensure everyone comes in and goes out of room together separate from the panel – avoid the situation of being in a room alone with employee/complainant/parent.

Do's and Don'ts ...

- When everyone but the panel leaves, try and instigate a slight staggered leaving time, e.g. in the case of a complaint, for any members of staff and the complainant etc. to avoid them walking out of the room together and any potential confrontations or awkwardness in corridors, signing out or going into the car park.
- Break out rooms could be used for this (it is worth just suggesting to staff to hold back just for a bit).

Do's and Don'ts ...

Room lay out

- If you are typing, sit furthest away from employee/complainant as it may be a distraction for them.
- In the example of a Disciplinary Hearing, arrange panel members on one side of the table with the Chair in the middle, advisor to the panel at one end, clerk at the other end, employee, companion, investigating officer, their advisor and any witnesses opposite the panel.
- Have a sign on room saying 'Meeting in progress'.

Do's and Don'ts ...

Do ...

- Be impartial and professional. It is a stressful situation for all, especially the employee/complainant/parent. Do expect people to be flustered, tearful and for tempers to fray and need to be contained.
- Expect the hearing not to start on time/run on/go beyond people's expectations of a finish time. Be prepared to stay on if necessary or reconvene to finish the hearing.
- In extremely complex cases with several allegations they may be looked at in stages.

Do's and Don'ts ...

Do ...

- The panel deliberations should be separated out and sent only to the panel and the HR Advisor if there is one.
- Minutes to go out with letter drafted by yourself/HR Advisor and signed by the Chair of Panel.
- The outcome letter should substantially outline the reasons why the panel came to the decision that it did.
- You may find that the panel may wish to write separately to the school with their findings/lessons learned and recommendations.

Do's and Don'ts ...

Do ...

- Password protect documents for security.
- Consider whether the school should have a separate email address for complaints and who will monitor this – Chair of Governors/Clerk?

Do's and Don'ts ...

Don'ts ...

- More for panel members – but in a disciplinary hearing, don't refer to employee as 'the accused'!! This could lead to 'unconscious bias'.
- **Don't** give out your home email address or phone numbers to complainants and employees – ask HR advisor/school office to be a conduit for information.

Disciplinary Hearing

- A disciplinary hearing may not always require a panel hearing; the procedure does allow for HT to hear case of their own if low level misconduct. Check your disciplinary policy or ask your HR provider for advice.
- Where there is the potential of a dismissal, always advise to have a panel and an HR advisor present.

Permanent Exclusions

Before a Permanent Exclusion Hearing

- As with any hearing, the panel should not discuss the case with any party outside of the meeting
- The panel members should let the clerk know in advance if they could be accused of bias.
- Ensure the hearing is set for a time of day that the parents/carers are able to attend.
- The process can be very daunting for parents/carers and they often don't know how best they can be an advocate for their son/daughter. As Clerk you could contact them to offer them reassurance and talk them through the process.

Permanent Exclusions

Document Bundle should include:

- The School Behaviour Policy
- The SEND Policy (if applicable)
- DfE Exclusion Guidance

The panel need to:

- Identify steps to ensure all parties are able to participate and have their views heard.
- Expect to see **evidence** to support statements made.
- Test the evidence. Check that there is **evidence** of the support having been put in place.

It's all in the planning – but where can it go wrong?

CASE STUDY – Parental Complaint Hearing

(Out of borough - I was asked to clerk the hearing but not co-ordinate)

The Document Bundle was incomplete

- *It did not include the original complaint, the School's Complaints Policy or the School's Behaviour Policy or any of the other policies referred to in the IO report. It wasn't in any particular order, with no index and no cover page. Just normal postage with no return address and no 'Private and Confidential' on the envelope.*

It's all in the planning – but where can it go wrong?

CASE STUDY – Parental Complaint Hearing

Parent submitted further evidence the day before the hearing

Giving no time for school to respond or panel to make a considered decision. The timeframe for submitting paperwork was not stipulated in the School Complaints Policy.

Headteacher wanting the opportunity to respond to evidence before the hearing

At what point do you say no? What if the parent then wants to respond to Headteacher's response? At what point would you draw a line and save discussion for the hearing?

It's all in the planning – but where can it go wrong?

CASE STUDY – Parental Complaint Hearing

An assumption that the Investigating Officer was not required at the hearing as they have submitted their report

It did not say in the Complaints Policy that the IO will present their report. With them not being there, there is a diminished opportunity for the panel, complainant and headteacher to question them on their findings.

The IO was referred to as a 'stranger' in the letter to the Complainant rather than someone independent! Phrasing is very important.

It's all in the planning – but where can it go wrong?

CASE STUDY – Parental Complaint Hearing

Inference of Conflict of Interest

- *The parent was unhappy that the Investigating Officer and Chair of Governors were known to each other and used to work together and has inferred as such in his response.*
- *How far do you take a perceived Conflict of Interest?*

All the above has resulted in a Postponement of the Hearing

Questions?





**Governor Support Service
Based in Hillingdon and
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throughout the borough and beyond**

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The screenshot shows the homepage of the Governor Support Service website. The header features the GSS logo. On the left, there is a 'Log In' section with fields for 'Username' and 'Password', a 'Remember Me' checkbox, and a 'Log In' button. Below this is a section for 'Governor and Clerk Vacancies' with a brief description and a link to 'Log In'. The main content area on the right has a 'Home' breadcrumb, a 'Welcome to the Governor Support Service' heading, a paragraph of introductory text, a 'More' link, and a group photo of five people. Below the photo is a section titled 'Our services' with a sub-heading 'Advice & Guidance' and a paragraph of text.