

# APPEALS POLICY

This document applies to all Council employees except:

- All school based employees
- Chief Executive
- Chief Officers

*This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.*

<b>Last Review</b>	June 2016
<b>Next Scheduled Review</b>	
<b>Last Updated</b>	September 2020

## Temporary Changes to Policies During Covid 19

There are temporary changes to employment policies during the coronavirus pandemic Please refer to the FAQ's/guidance on George which refer to :-

- Arranging meetings remotely

Where policies refer to meetings/hearings these will generally be conducted via video conference, however, in some circumstances face to face meetings may be appropriate, or hybrids of both face to face and video conference. Please see guidance on George

Please contact HR if you have any queries on the above

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Appendix 2: Hearing Procedure for Members' Appeal

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## **INTRODUCTION**

The Council ensures that it has fair and effective arrangements for dealing with appeals against formal action within the Discipline and Capability policies.

An employee who has been dismissed has the right of appeal to a panel of elected members.

All other appeals are heard by Senior Officers of the Council

All appeals should be heard without undue delay.

This policy does not apply to appeals against dismissal as a result of unsuccessful completion of a probationary period for which separate procedures exist.

## **OBJECTIVES**

The objective of this policy is to:

- ensure that the Council is a fair employer, meeting all relevant legal requirements regarding any formal action or dismissal decisions it may take in relation to any employee
- ensure that lawful, non-discriminatory, and effective arrangements exist for dealing with appeal hearings
- ensure that all employees are treated in a fair and consistent manner.

## **RESPONSIBILITIES**

### **CHIEF EXECUTIVE**

Ensuring that the appeals procedure is followed and applied consistently across the Council.

### **DIRECTOR AND ASSISTANT DIRECTOR LEVEL**

Implementing the procedure.

Designating managers to whom formal powers to chair Appeal Hearings have been delegated.

Ensuring appropriate progress is made on receipt of appeals for action short of dismissal.

### **MANAGERS**

Applying the Council's appeals procedure.

### **SERVICE MANAGER - PEOPLE MANAGEMENT**

Reviewing and revising this policy.

Advising the Chief Executive in ensuring the procedure is followed and applied consistently across the Council.

Ensuring the procedures are followed on receipt of appeals against dismissal and appropriate progress is made.

Allocating a senior member of People Management to provide advice to Democratic Services and to Members at an Appeal Hearing.

### **SENIOR MEMBER OF PEOPLE MANAGEMENT**

Working with Democratic Services to produce the letter to the appellant notifying them of the hearing.

.Working with Legal Services to deal with any issues that arise prior to an appeal against dismissal and providing the employee, their representative and the employing manager a written notification of the decision of the Appeal Committee.

Advising Members at an Appeal Hearing against dismissal

### **DEMOCRATIC SERVICES**

Ensuring that the appeals process to elected members against dismissal is followed in accordance with the procedure.

Ensuring that appeals are heard without undue delay.

### **LEGAL SERVICES**

Preparing for, advising on and representing management on appeals to elected members.

In exceptional circumstances, legal services may present the management case at a hearing, including appeal hearings against action short of dismissal.

Electronically recording of the entire hearing at Member Appeals, other than the consideration by Members.

Storing the file and confidential papers securely after the appeal has been heard.

# **APPEALS PROCEDURE**

## **GENERAL**

### **The Right of Appeal**

An employee will have the right of appeal against any formal action taken against them under the disciplinary or capability procedures or any other dismissal. If the employee wishes to appeal they must do so in writing (including by E- mail) within 10 working days of receipt of written confirmation of the decision. Receipt of a letter will be deemed to have taken place two days after posting if sent by first class post.

This procedure will not apply to appeals against dismissal as a result of unsuccessful completion of a probationary period for which separate procedures exist.

### **Grounds of Appeal**

The employee must outline one or more of the following reasons upon which they seek to appeal and provide the rationale/evidence in respect of this. The reasons for appeal may be:

- There was a defect in the procedure.
- NB In circumstances of redundancy this may include a defect in the selection criteria, or application of the criteria (including a challenge to the scoring where there is evidence to substantiate this) leading to unfair selection. The appeal itself will not be a re-hearing of the selection interview and any challenge to the scoring must be based on reasonable grounds.
- Not all evidence was considered.
- The sanction/decision was too severe.
- New evidence has come to light since the last hearing.

### **New Evidence**

New evidence may be considered in the Appeal Hearing subject to the requirement that any evidence to be presented is included in the documents submitted before the hearing. Any late new evidence will only be admitted with the agreement of the Appeal Panel.

Where new evidence is to be submitted the employee should state clearly what the evidence is and why it is believed that it would alter the original decision and why it was not included at the previous hearing.

### **Rehearing**

If the grounds of the appeal relate to a defect in the original hearing process or procedure, the Head of People Management may advise that a rehearing is held in place of the Appeal Hearing. If this is the case the meeting will follow the original hearing procedure and all parties and witnesses will be invited. The panel and possible outcomes will be consistent with the Appeal Hearing procedure.

### **Attendance at a Hearing/Rehearing**

If an employee fails to attend the Appeal Hearing/Rehearing without giving a reason it will go ahead in their absence and this will be included in any letter inviting them to the hearing.

If the employee wishes to attend the Appeal Hearing/Rehearing but has notified the Panel that they are unable to do so due to ill health or some other reasonable reason, or their representative is unable to attend, the hearing will be postponed and re-arranged for another date. The employee should be notified of the date in writing and should be informed that if they are not able to attend on the revised date, then their case will be considered based on their written documentation and/or any representations by their trade union representative or fellow work colleague.

If the employee wishes to call any witnesses they must inform the panel beforehand. The employee is responsible for inviting any witnesses they wish to attend. However, the Council's procedures do not stipulate that a Council employee is obliged to attend as a witness for a fellow employee should they not wish to do so. Therefore, in the event that an employee wishes to call other Council employees as witnesses it will be for the individuals concerned to decide whether or not they wish to attend the hearing in this capacity.

## **APPEALS AGAINST ACTION SHORT OF DISMISSAL**

### **Lodging an Appeal against Action Short of Dismissal**

An employee who wishes to appeal against action short of dismissal should do so in writing (including by E-mail) to the appropriate HR Adviser. The letter of appeal should give one of the reasons contained in the paragraph, Grounds of Appeal, and provide any new statements and documentation including that of any witnesses. Following this notification an Appeal Hearing will be arranged by an appropriate HR Adviser who will confirm the arrangements in writing, giving at least seven working days notice.

The notice of the hearing will include:

- A clear statement of the decision which has led to the appeal.
- The date, time and location of the hearing.
- The names of the chair and panel members.
- The name of the person who will present the management position and any witnesses they intend to call.
- The employee's right to seek representation by his/her recognised trade union representative or recognised trade union officer or Council work colleague.
- There is no further right of appeal within the Council.
- The fact that the hearing may go ahead in the employee's absence if they fail to attend without reasonable explanation and that, if they do not attend a revised date, that it will go ahead in any case.
- A full pack of the documentation to be considered in the hearing including any new statements from the presenting manager in response to any new evidence including that of any witnesses.

### **The Appeal Hearing Panel**

The appeal hearing will be conducted by the following three officers:

#### **Panel Chair**

A senior manager from the Director area concerned, who has the authority to agree the outcome. Where possible, the manager chairing the appeal will be more senior than the Chair of the initial panel.

### **A Second Manager**

Another senior manager, who is, wherever practicable, of at least equivalent status to the chair.

### **An HR Representative**

His/her prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. He/she will participate fully in any discussions about the case but will not contribute to the final decision.

Members of the panel should not have played any previous part in any aspect of the case.

Also present will be a Note Taker who will be arranged by the Chair of the Appeals Panel. The Note Taker will ensure that comprehensive notes are taken throughout proceedings. However they will not be verbatim. The complete history and background of a case may be requested at an Employment Tribunal. It is therefore essential that comprehensive records are made of any level of disciplinary action.

The management position will normally be presented by the employee's manager. However depending on the grounds for appeal it may be appropriate for the Chair of the initial decision making panel to present the case. If this person does not present the case they may be called as a witness by the presenting manager. In exceptional circumstances, legal services may present the management case.

The detailed arrangements for conducting the hearing are set out in Appendix 1 below.

### **Documents**

All parties at the hearing will have available all the documents presented to the original hearing and the following:

- The record of the original hearing.
- The letter confirming the outcome of the original hearing.
- The letter of appeal and information submitted by the employee.
- A statement from the original presenting manager in response to the grounds of appeal.
- The Appeal Panel will reach findings based on documentation and the submissions from the parties.

### **Possible Outcomes**

The outcome will be either:

- The case against the employee is upheld (in whole or part); the sanction will then be the same or the panel may consider that the penalty imposed was unduly harsh and impose a lesser penalty.
- The case against the employee is not upheld and the case is dismissed.

## **APPEALS AGAINST DISMISSAL**

### **Lodging an Appeal against Dismissal**

An employee who wishes to appeal against dismissal should do so in writing (including by E-mail) to an appropriate HR Adviser who will prepare a file of all of the paperwork used for the initial hearing and forward this to Democratic Services within 5 working days of receipt of the appeal, using the Data Capture Form. The HR

Adviser will acknowledge receipt of the appeal using the draft letter attached and also notify the Head of People Management of the appeal, who will allocate a Senior Member of People Management to work with Democratic Services and to advise the panel. The HR Adviser will also notify Legal Services of receipt of the appeal so that they can prepare the management presentation.

The arrangements for a hearing will be made by Democratic Services. Appeals should be heard without undue delay and at least 10 working days notice should be given to the appellant.

### **The Members Appeal Hearing Panel**

An appeal against dismissal will be heard by a panel of three elected Members, one of whom will chair the meeting.

The panel will be advised by a Senior Member of the People Management Team (LCC or provider) who will not participate in the decision.

Elected members who participate should have completed the member induction programme. They should also have received sufficient theoretical and practical training to ensure that they meet the requirements of a person specification for Appeal Panel members. It is a requirement where possible that the members of the Appeal Panel should be politically proportionately representative.

Democratic Services will arrange the Members Appeal Panel at an early, convenient date. In consultation with the Senior Member of People Management they will issue a letter to the appellant, giving at least 10 working days notice. This will include:

- A clear statement of the decision which has led to the appeal.
- The date, time and location of the hearing.
- The names of the panel members.
- The name of the person who will present the management position and of any witnesses.
- The employee's right to seek representation by his/her recognised trade union representative or recognised trade union officer or Council work colleague.
- That there is no further right of appeal within the Council.
- The fact that the hearing may go ahead in the employee's absence if they fail to attend without reasonable explanation and that, if they do not attend a revised date, that it will go ahead in any case.
- A full pack of the documentation to be considered in the hearing including that of any witnesses and a statement of management case prepared by Legal Services.

If the appellant has indicated that they are to be represented, Democratic Services will ensure that a copy of the full pack is sent to the representative.

Democratic Services will also ensure that Members have all relevant paperwork at least 5 working days before the hearing date. This will include a summary of management's case prepared by Legal Services.

A member of Legal Services will present the case at the hearing, calling those witnesses who have previously been notified to all parties concerned. Legal Services will also electronically record the entire hearing, other than the consideration by Members and securely retain all papers after the Hearing.

The Senior Member of People Management will provide the employee, their representative and the employing manager with a written notification of the decision of the Appeal Committee. Where practicable this should be sent on the same day as the decision is made.

### **The Appeal Hearing Panel**

The appeal hearing will include the following:

#### **Three Elected Members one of whom will Chair the Hearing**

Three elected members who have received appropriate training and are politically representative.

#### **A Senior Member of People Management**

Allocated by the Head of People Management who will advise the Members on procedural issues, relevant policies and employment law matters but will not contribute to the final decision.

#### **A Legal Services Representative**

His/her role will be to present the management case to the Appeal Panel and to record the proceedings.

#### **The Employee or their Representative**

The employee who has appealed along with their trade union officer, trade union representative or fellow work colleague.

The detailed arrangements for conducting the hearing are set out in [Appendix 2](#).

### **Successful Appeal against Dismissal**

An employee whose appeal against dismissal is successful may be reinstated in his/her previous position where this still exists.

In certain circumstances, for example if the previous working relationship appears to have broken down, it may be more appropriate for the employee to be reinstated in a different position of comparable status and pay. This will take place only after full discussion with the employee and/or his/her representative.

In redundancy circumstances, if the employee's previous position no longer exists the Council will actively consider whether suitable alternative employment exists.

In all cases there will be no loss of continuity of service or associated rights. If the dismissed employee's notice has already expired, and he/she has left the Council's employment, he/she will receive the appropriate amount of back pay for the period between the effective date of termination of employment and the day of reinstatement to his/her previous position or a suitable alternative position.

There is no further right of appeal within the Council. An employee who has been dismissed may have the right of application to an Employment Tribunal.