

PROCEDURE TO BE FOLLOWED AT A HEARING OF AN APPEAL REFERRED TO THE OFFICER APPEALS COMMITTEE

1. GENERAL

The Officer Appeals Committee of the Council hears appeals by employees against their dismissal or against action short of dismissal [see 1.3 below]. It is a formal Committee of the Council.

1.1 Membership

The full Committee comprises 6 members of which 3 are chosen to hear the appeal by the Monitoring Officer in consultation with the Director of HR & OD. Care must be taken to ensure that the Committee members chosen do not have a conflict of interests as a result of either

- having a close association to, or responsibility for, the Service in which the Appellant is employed; or
- a personal relationship with the Appellant.

1.2 Administration

Advice and assistance to the Committee will be provided as set out below.

- (a) The County Solicitor (or their nominated representative) will advise on procedural and legal issues. They will attend the hearing to give professional advice as required.
- (b) The Director of Human Resources (HR) & Organisational Development (OD) (or their nominated representative) will:
 - advise on management issues. This includes being present throughout an appeal hearing to advise unless the Appellant is an employee of the HR Service whereupon another Senior Leadership Team (SLT) Manager or their nominated representative may be asked to perform this role.
 - ensure that the papers in respect of the appeal are circulated to all relevant parties in advance of the meeting and in accordance with 2 below.
 - provide a note taker for the hearing.

- prepare the letter detailing the Committee's decision after the conclusion of the process and following consultation with the Committee's Chair and the County Solicitor (or their nominated representative).
 - prepare a set of public minutes setting out the Committee's decision for publication on the Council's website having obtained confirmation of their accuracy from the members of the Committee. As the public record of the outcome, the minutes will exclude exempt information.
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- (c) The Democratic Services Team will organise the appeal hearing in accordance with legal requirements.
- (d) On occasion it may be necessary for an additional adviser to be present from the respondent Department to advise on any professional/technical issues arising during the appeal.

1.3 Powers

The Committee has delegated authority from the Council in respect of appeals against dismissal and action short of dismissal to:-

- (a) uphold the appeal and reinstate the Appellant; or
- (b) dismiss the appeal and confirm the dismissal; or
- (c) impose one of the lesser sanctions outlined in the Council's Disciplinary Procedure, in preference to confirming the dismissal.

1.4 Methods of Operation

- (a) As a formal Council committee, the Committee's meetings are subject to the Local Government Act 1972 requirements and are public meetings unless the Committee members decide to exclude the press and public because of the likelihood of the release of exempt information as defined under the Act. In reality because of the nature of the Committee's business it is expected that the appeal documentation will contain exempt information as defined in the Act and will not therefore be published or made available to the public as part of the hearing process. This means that the Committee will agree that strict confidentiality is applied to the hearing, all documentation relating to the appeal, and the outcome of the process.
- (b) Care must be taken to ensure that the hearing takes place in accordance with the principles of natural justice.
- (c) Subject to (d) below, the Appellant may:

- arrange to be *represented*¹ or *supported*² by a union representative or work colleague of their choice at the hearing;
 - call witnesses and/or submit documents to be considered by the Committee.
- (d) The Appellant is required to give a minimum of 2 days notice in advance of the hearing to the Director of HR&OD (or their designated representative) of the name of any person(s) attending the hearing under the provisions of paragraph 1.4(c). Similarly, if the Appellant wishes to circulate any late papers relevant to their appeal (which were not previously available to be circulated as part of the papers for the meeting) for consideration by the Committee then these must be sent to the Director of HR&OD (or their designated representative) at least 2 days in advance of the hearing to allow time for all of those attending to be notified and for the papers to be circulated.

Note:

- (e) Statements made by a representative or a witness on behalf of the Appellant at a hearing must be relevant to the grounds of the appeal.
- (e) Similarly, if the Director of HR&OD (or their designated representative) wishes to have any late papers relevant to the appeal (and not available to be circulated as part of the papers for the meeting) considered by the Committee then these must be circulated to all of those attending at least 2 days in advance of the hearing.
- (f) Hearings are conducted as informally as possible within the guidelines set out later in Section 3.

2. ACTION PRIOR TO THE APPEAL

2.1 A timeline for the consideration of an appeal is attached as Appendix A. This sets out the responsibilities of all involved for clarity. The process for lodging an appeal is set out in the Council's disciplinary procedure.

2.2 When an appeal is lodged the Director of HR&OD (or their designated representative) will notify Democratic Services who will make the arrangements for the appeal to be heard by the Committee.

2.3 Democratic Services will:

- Arrange for the appeal to be heard by the Committee, if possible within 28 days of it being lodged.

¹ Under (c) the term 'represented' is defined as a person who present the Appellants case.

² The term 'supported' is defined as any person chosen by the Appellant to accompany them to the hearing but without playing an active part in the consideration of the appeal.

Note: To help ensure that appeals are heard in a timely manner, 6 meeting dates per annum are reserved in advance in members' and officers' diaries. Every effort will be made to have the hearing on one of these pre-arranged dates. This will ensure that the Appellant and all participants are given as much notice as possible of the date and time of the hearing. The legal requirement is that 8 days notice of the meeting must be given to the Committee members and to the public. Irrespective of the legal requirements for notice Democratic Services will ensure that all participants have at least 10 days notice of the meeting to allow them to take necessary steps to prepare for it.

- Inform the Committee members and relevant officers of the date of the Committee meeting to hear the appeal except for the Appellant and his/her representative (where appropriate) – see 2.4 below.
- Ensure that Access to Information requirements are met in relation to the Committee's meeting including giving formal public notice of the meeting and publishing the agenda and papers that do not contain exempt information.
Note: Hearings can take place at any time between 9am and 9pm on the date selected and all participants will be expected to ensure their attendance over this period.

2.4 The Director of HR&OD will:

- Contact relevant officers to agree a timetable and confirm their availability to attend the appeal hearing, within the framework of this procedure (see Notes 1 and 2).
- Contact the Appellant (and their representative, where appropriate) to inform them of the date of the Committee meeting and ensure that they can attend (see Notes 1 and 2). This notification will be sent as soon as possible and at the same time as the Committee members are formally notified. The notification will be sent to the Appellant in writing, and by Recorded Post (see Note 3).
- Collate all documentation relevant to the appeal. The resulting pack of information relating to the appeal needs to be finalised at least 2 days prior to the circulation of the agenda, i.e. at least 10 days before the hearing, to allow circulation to all parties (see Note 4);
- Circulate the information relating to the appeal 8 days in advance of the Committee's meeting to coincide with the publication/circulation of the agenda for the Committee's meeting.

2.5 Important notes for all parties to the appeal:

- Note 1. If either side want an extension of the 28 day deadline, then written permission must be obtained from the Director of HR &OD. Once a hearing

date has been notified to all parties an extension of the 28 day deadline will only be agreed if there are exceptional and extenuating circumstances. The final decision on the application of the 28 day deadline will be made by the Director of HR &OD having taken advice from officers.

- Note 2. In the event of difficulties over agreeing a date for the hearing, preference will be given to the Committee Members diaries even if it means an evening meeting; the remainder of the participants will be expected to attend at the time chosen. Notice will be taken of any special needs that the Appellant may have.
- Note 3. Appellants will be asked whether they will attend the hearing. Where the Appellant indicates that he/she will attend, and then fails to attend, the appeal will normally be heard in their absence unless the Committee is notified of extenuating circumstances and a postponement has been requested.
- Note 4. The Committee has discretion whether to accept any late papers received after agenda despatch.

3. THE HEARING FOR APPEALS AGAINST DISMISSALS AND ACTION SHORT OF DISMISSAL

3.1 The Committee will agree its own procedure but should as far as practicable observe the following:-

- (a) As the first item of business the members selected for the hearing shall appoint a Chair from within their membership for the duration of the consideration of the appeal.
- (b) Before considering the appeal, the Committee will be asked to agree the exempt information clause in accordance with the Local Government Access to Information Act 1985.
- (c) Before considering the appeal, the Chair will: introduce all those present; explain the purpose of the hearing; how it will be conducted; the role of the advisers; and the powers of the Committee. The Chair will also clarify the grounds of the appeal, as required.
- (d) The Appellant (or his/her representative) will then be asked to set out their grounds for the appeal in the presence of the Council's representative and call witnesses to give evidence, if appropriate.

(NB: Normally, witnesses are only required to be present whilst giving evidence, although the Committee may ask key witnesses such as the representative of the respondent Department to remain throughout the duration of the hearing).

- (e) The Council's representative will then be given the opportunity to ask questions of the Appellant and his/her witnesses.
- (f) The Committee members may ask questions of the Appellant and his/her witnesses.
- (g) The Appellant or his/her representative will then have the opportunity to ask any supplementary questions of witnesses.
- (h) The Council's representative will present the management case in the presence of the Appellant and his/her representative and may call appropriate witnesses to give evidence.
- (i) The Appellant (or his/her representative if the Appellant wishes) will be given the opportunity to ask questions of the Council's representative and any management witnesses.
- (j) The Committee members may ask questions of the Council's representative and the management witnesses.
- (k) The Council's representative will then have the opportunity to ask any supplementary questions of witnesses.
- (l) The Committee members, the Council's representative and the Appellant (or his/her representative) may then ask any further supplementary questions of the participants which are relevant to the hearing.
- (m) The Council's representative, followed by the Appellant (or his/her representative) will sum up their respective cases.

Comment [TW1]: Usually appeals procedure requires the appellant to go first. This approach allows the appellant to lead and frame the scope of the hearing rather than having to react to the management's case – this is a fairer approach given the relative power of the parties and the fact that the management representative ought to have conducted the disciplinary in such a way that they are able to respond to the appellant's grounds of appeal.

Once satisfied that the relevant issues have been fully explored the Chair will adjourn the meeting to allow the Committee, with the support and advice of the County Solicitor and the Director of HR & OD (or their nominated representatives), to reach their decision in private. The Committee may recall the Council's representative and/or the Appellant and their representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will be asked to return, even if only one party is concerned with the point giving rise to doubt.

3.2 The Decision

- The Committee will examine all of the issues fully before reaching a decision.
- The Committee may not use new information coming to light during the Appeal process to justify a new reason for dismissal in substitution for the original one.
- Following the adjournment, the Chair will reconvene the hearing and inform both parties of the Committee's decision.

- The Committee's decision will be confirmed in writing to the Appellant by the County Solicitor within 10 working days of the hearing. The decision letter will represent the formal confidential record of the Committee's decision.
- The Committee's decision is final and therefore there is no further appeal process.

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Date	Action	To be taken by
-28 days	<ul style="list-style-type: none"> Appellant gives formal notice of appeal with reasons to the Director of HR&OD 	Appellant
-28 days	<ul style="list-style-type: none"> Director of HR&OD or nominated representative informs Democratic Services that an appeal has been lodged, provides details of Appellant's service area and acknowledges receipt of the appeal Monitoring Officer chooses 3 members to hear the appeal 	Director of HR&OD Monitoring Officer
Between - 28 days and - 8 days	<ul style="list-style-type: none"> Democratic Services arrange date of committee meeting, inform members and Director of HR&OD and make all necessary meeting arrangements Director of HR&OD to inform Appellant (and their representative) of the date of the hearing and the arrangements Director of HR&OD to arrange for relevant officers to attend the hearing 	Democratic Services Director of HR&OD Director of HR&OD
- 10 days	<ul style="list-style-type: none"> f HR&OD team finalises appeal documents pack 	HR&OD
- 8 days	<ul style="list-style-type: none"> Democratic Services publish the Committee agenda and non-exempt papers on the Council's website HR&OD circulates papers for the appeal to all participants HR&OD organises note taker for the hearing 	Democratic Services HR&OD HR&OD
- 2 days	<ul style="list-style-type: none"> Final date for Appellant to advise HR&OD of the name of any supporter or representative attending the hearing with them and provide any late papers for consideration at the hearing HR&OD to circulate any late papers for the hearing from the Appellant / management to all participants 	Appellant HR&OD
Hearing day	<p>In attendance</p> <ul style="list-style-type: none"> Committee members 	All to note

	<ul style="list-style-type: none"> • Appellant • Appellant’s representative (optional) • Appellant’s support (optional) • Director of HR&OD (or representative) • County Solicitor (or representative) • Witnesses • Notetaker 	
<p>+ 10 working days</p>	<ul style="list-style-type: none"> • HR&OD writes to Appellant to confirm the Committee’s decision as the formal confidential record • County Solicitor to prepare public minutes as the formal public record, seek agreement from the Committee members as to accuracy. • Committee Chair signs the minutes as a correct record • County Solicitor sends signed minutes to Democratic Services • Democratic Services publishes minutes on SCC’s website 	<p>HROD County Solicitor</p> <p>Committee Chair</p> <p>County Solicitor</p> <p>Democratic Services</p>