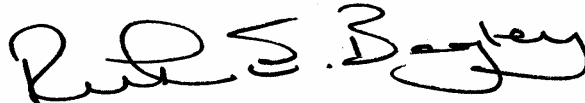


Date of issue: Tuesday 19th May 2009

MEETING	EMPLOYMENT APPEALS SUB-COMMITTEE (Councillors Dodds and Rasib and one vacancy) Membership to be confirmed at the Meeting of the Employment & Appeals Committee on Tuesday 19 th May 2009.
DATE AND TIME:	THURSDAY, 28TH MAY, 2009 AT 10.00 AM
VENUE:	JUPITER SUITE 2, ST MARTINS PLACE, 51 BATH ROAD, SLOUGH, BERKSHIRE
DEMOCRATIC SERVICES OFFICER: (for all enquiries)	CATHERINE MEEK 01753 875011

NOTICE OF MEETING

You are requested to attend the above Meeting at the time and date indicated to deal with the business set out in the following agenda.



RUTH BAGLEY
Chief Executive

NOTE TO MEMBERS

This meeting is an approved duty for the payment of travel expenses.

AGENDA

PART 1

AGENDA
ITEM

REPORT TITLE

PAGE

WARD

Apologies for absence.



CONSTITUTIONAL MATTERS

1. Election of Chair
2. Declarations of Interest

(Members are reminded of their duty to declare personal and personal prejudicial interests in matters coming before this meeting as set out in the Local Code of Conduct)
3. Minutes of the Meeting held on Thursday 5th February, 2009 1 - 2
4. Employment and Appeals Sub-Committee Procedure 3 - 8
5. EXCLUSION OF THE PRESS AND PUBLIC

It is recommended that the Press and Public be excluded from the meeting during consideration of the item in Part II of the agenda, as it involves the likely disclosure of exempt information relating to an individual as defined in Paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972 (as amended).

PART II

6. Appeal Against Dismissal 9 - 170
 - (a) Appellant Case 9 – 99
 - (b) Management Case 100 - 170

Press and Public

You are welcome to attend this meeting which is open to the press and public, as an observer. You will however be asked to leave before the Committee considers any items in the Part II agenda. Special facilities may be made available for disabled or non-English speaking persons. Please contact the Democratic Services Officer shown above for further details.

Employment Appeals Sub-Committee – Meeting held on Thursday, 5th February, 2009.

Present:- Councillors Dodds and Hewitt.

Apologies for Absence:- Councillor Rasib.

PART I

7. Election of Chair

Resolved – That Councillor Dodds be elected Chair of the Sub-Committee.

(Councillor Dodds in the Chair).

8. Declarations of Interest

Councillor Dodds advised that her partner was the Head of the GMB Union. She was advised that she did not need to declare this as a personal interest.

9. Minutes

The minutes of the meeting of the Sub-Committee held on 26th September, 2008 were approved as a correct record.

10. Employment and Appeals Sub-Committee Procedure

The procedure was noted.

11. Exclusion of the Press and Public

Resolved – That the press and public be excluded from the remainder of the meeting as the business to be transacted contains exempt information relating to an individual as defined in paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972 (as amended).

PART II

(The following is a summary of the matter considered in Part II of the meeting).

12. Appeal Against Dismissal

The Sub-Committee considered an appeal from an employee against their dismissal from the Council. The appellant was present and was accompanied by a Union representative. The management case was presented by the Strategic Director of Resources who called one witness.

Employment Appeals Sub-Committee - 05.02.09

The Sub-Committee carefully considered the grounds of the appeal, the written evidence submitted by all parties and the submissions made at the hearing. The Sub-Committee upheld the appeal.

Resolved – That this appeal be upheld.

Chair

(Note: The Meeting opened at 10.00 a.m. and closed at 2.45 p.m.)

EMPLOYMENT APPEALS SUB-COMMITTEE PROCEDURE

TERMS OF REFERENCE

1. The terms of reference of the Employment Appeals Sub-Committee are to consider and determine appeals against dismissals arising from the Council's employment procedures (e.g. disciplinary, capability, redundancy selection, sickness absence etc). These procedures apply to all employees other than those who are covered by any special provisions of their terms and conditions or who are employed in schools under the control of governing bodies.

CONSTITUTION

2. The Employment Appeals Sub-Committee consists of three elected Members and is appointed by the Employment and Appeals Committee. Each Member on the Sub-Committee can have two named deputies appointed by the Employment and Appeals Committee who can deputise for them if they are unable to make the meeting or have a conflict of interest. The Sub-Committee will be quorate if two Members are present to hear the appeal. Meetings of the Sub-Committee are subject to Local Government (Access to Information) Act 1985. The press and public will need to be excluded from the meeting as an appeal is a confidential employee matter.

PROCEDURE

Lodging the Appeal

3. If an employee wishes to appeal against dismissal arising from a hearing conducted under one of the Council's employment procedures this must be lodged by the employee writing a letter to the relevant Director. The letter must be received from the employee within ten working days of the date of receipt of the letter informing him or her of the notification of dismissal. The letter of appeal must state the detailed reasons for the appeal. If the Director does not receive a letter of appeal within the ten working days then this will be construed as a waiver of the employee's right of appeal.

Convening the Appeal Hearing

4. The Director will advise Human Resources that an appeal has been received so that the necessary arrangements can be made through Committee and Member Services for a meeting of the Sub-Committee to be convened.
5. The appeal hearing should be convened as soon as possible; this should normally be within 25 working days of the receipt of the employee's letter of appeal but will be subject to availability of the Members.

Notifying the Employee

6. The appellant will be given at least 15 working days written notice of the date of the appeal hearing. The letter of notification will include the following:
- A statement that the hearing forms part of the Council's formal employment procedures and will specify the relevant procedure;
 - The date, time and place of the hearing;
 - The appellant's right to be accompanied/represented by a trade union representative or a work colleague;
 - The names of the Members of the Sub-Committee hearing the appeal;
 - The name of the manager presenting the management case;
 - A copy of the Sub-Committee procedure;
 - A notification of the appellant's right to present a written submission including witness statements which must be supplied to Committee and Member Services at least ten working days prior to the hearing;
 - The right of the appellant to arrange to call witnesses – a list of these with all the accompanying witness statements should also be supplied to Committee and Member Services.

Provision of Documents

7. The appellant's written submission with any witness statements and the management report with the witness statements will be exchanged between the parties at least seven working days prior to the hearing. These papers will be attached to the Sub-Committee agenda. All papers should be regarded as strictly confidential.

Attendance at the Hearing

8. The appellant must attend in person. If the appellant fails to attend the hearing without just cause the Sub-Committee may decide to proceed in his or her absence. It is important for the appellant to notify Committee and Member Services if he or she cannot attend, giving the reasons for non-attendance as soon as possible prior to the commencement of the hearing. Only legitimate reasons for non-attendance will be accepted such as sickness supported by a medical certificate.
9. All Members of the Sub-Committee must be present throughout the hearing.

Advice & Support at the Hearing

10. The Sub-Committee will be advised by the Director of Law and Corporate Governance and/or the Director of Human Resources or their representative(s). A representative of Finance Services will also attend where there are fiduciary implications covered by financial regulations or standing orders. None of the

advisors in attendance at the hearing will have had any previous involvement in the case.

11. An officer from Committee and Member Services will attend to take confidential notes of the hearing. These notes will not be verbatim but will provide a record of the evidence submitted at the hearing and the Sub-Committee's final decision. No audio recording of the hearing will be allowed. The notes are for the Council's records only and will not be produced to the appellant.

Matters the Appeals Sub-Committee Can Consider

12. The Sub-Committee should normally confine itself to considering the specific grounds of the appeal and the evidence presented by both sides. It will not normally reconsider the whole case but this is not precluded if the Sub-Committee feels it is necessary for a fair hearing.
13. In exceptional circumstances, new evidence that may only have become available after the formal hearing can be presented either by management or the appellant provided it relates to the original allegations. The Sub-Committee should decide in the light of this new evidence whether it wishes to refer the case back to the original Panel or to continue to hear the appeal. If the new evidence is available prior to the hearing the HR and Legal advisors will confer with the Sub-Committee prior to the hearing to ascertain whether there is a need for the case to be referred back to the original Panel.

Witness Evidence

14. There is no requirement on either side to call witnesses to attend the Sub-Committee as witness statements can be presented in their written submissions. Witnesses, if they are called, should appear before the Sub-Committee one at a time and should only be present while they are giving evidence or being questioned. Witnesses will be warned that they should keep matters confidential and should not collude with any other witnesses. Generally, witnesses only need to be called if their witness statements are contested by either side.

Prior to the Hearing

15. Members of the Sub-Committee will read both the appellant's and management's submissions prior to the hearing so that they are prepared for the hearing itself. Both the appellant and the management side should have regard to this in presenting their cases at the hearing.

Conduct of the Hearing

16. A short pre-meeting will be necessary at the commencement of the hearing so that a Chair can be elected and that the Sub-Committee members are clear about the procedure to be followed. This pre-meeting will be attended by the Sub-Committee Members, the advisors and the Committee Administrator referred to in paragraphs 10 and 11 above. Members of the Sub-Committee should not discuss the issues prior to the hearing with either the manager presenting the case, the appellant or with anyone else.
17. The hearing procedure for the Appeals Sub-Committee is shown at Appendix A.

Decisions

18. The Sub-Committee can take one of the following forms of action at the end of the hearing:
 - Uphold the appeal;
 - Dismiss the appeal;
 - Substitute a different outcome providing this is not more severe than the original one;
 - In exceptional circumstances, refer the case back to the original Panel.

There is no further internal right of appeal against the decision of the Sub-Committee.

Actions for Management

19. In their deliberations the Sub-Committee may wish to highlight any areas of concern about management issues, policies, procedures and practice and make recommendations for review.

Employment Appeals Sub-Committee Hearing Procedure

1. The Chair of the Appeals Sub-Committee will invite the appellant and his/her trade union representative or work colleague and the Manager into the hearing room together.
2. The Chair will open the hearing by introducing all those present and to confirm the purpose of the hearing under the appropriate employment procedure.
3. The Chair will state the grounds for the appeal and ask the appellant whether these are correct. If there is a need for clarity, the Chair should ask the appellant to give further amplification on any points.
4. The appellant and/or his/her representative will present the appeal and call witnesses as necessary. Witnesses will appear one at a time and will only be present while they are giving evidence or being questioned.
5. The Manager may ask questions of the appellant and/or his/her representative and any witnesses. Members of the Appeals Sub-Committee and the advisors present may also ask questions relating to the evidence submitted to the hearing.
6. The appellant and/or his/her representative will be given the opportunity to re-examine witnesses, if this is necessary, but must not introduce any new evidence at this stage.
7. The Manager will present the Council's case including calling witnesses as necessary. Witnesses will appear one at a time and will only be present while they are giving evidence or being questioned.
8. The appellant and/or his/her representative may ask questions of the Manager and any witnesses. Members of the Appeals Sub-Committee and the advisors present may also ask questions relating to the evidence submitted to the hearing.
9. The Manager will be given the opportunity to re-examine his or her witnesses if this is necessary, but must not introduce any new evidence at this stage.
10. The Manager should then summarise the Council's case but should not include the introduction of any new evidence.
11. The appellant and/or his/her representative should then summarise the appellant's case but should not include the introduction of any new evidence.
12. Either party is entitled to request an adjournment at any stage in the proceedings to consider its position. The Chair will decide on such requests including the length of the adjournment.
13. All parties should withdraw from the room while the Appeals Sub-Committee considers the evidence and comes to a decision. The advisors and the Committee Administrator should remain in the room to give appropriate advice but will not be involved in the decision making.

14. If, as part of the deliberations, it is necessary to recall either party or any witnesses for further questioning then all parties must be present.
15. Where it is evident that further information is required before reaching a decision the appeal hearing should be adjourned with a view to being reconvened once the necessary information has been obtained.
16. Wherever possible, the decision should be communicated orally to both parties at the end of the hearing. If the Appeals Sub-Committee is likely to deliberate for some time this may not be possible and both parties will be informed of the decision as soon as practicable. This will be confirmed in writing within 5 working days of the hearing.

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

AGENDA ITEM 6

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of the Local Government Act 1972.

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