

## **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 Appeals Sub Committee can have two named deputies appointed by the Employment Appeals Committee who can deputise for them if they are unable to make the meeting or have a conflict of interest. The Appeals Sub-Committee will be quorate if 2 Members are present to hear the appeal. The meetings of the Appeals Sub-Committee are subject to Local Government (Access to Information) Act 1985. The press and public will need to be excluded from the meeting for the first item of business 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 10 working days from 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 10 working days of receipt 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 Employment Appeals 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 Appeals Sub-Committee.

#### **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 on the Employment Appeals Sub-Committee;
- The name of the Manager presenting the management case;
- A copy of the Employment Appeals 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 10 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 7 working days prior to the hearing. These papers will be attached to the agenda for the Employment Appeals Sub-Committee. 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 Appeals 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 Appeals Sub-Committee must be present throughout the hearing.

### **Advice & Support at the Hearing**

10. The Appeals 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 Appeals 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 Appeals 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 Appeals Sub-Committee feels it is necessary for a fair hearing.
13. In exceptional circumstances, new evidence which 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 Appeals 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 Appeals 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 Appeals Sub-Committee as witness statements can be presented in their submissions to the Appeals Sub-Committee. Witnesses, if they are called, should appear before the Appeals Sub-Committee one at a time and 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 Appeals 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 Appeals Sub-Committee members are clear about the procedure to be followed. This pre-meeting will be attended by the Appeals Sub-Committee members, the advisors and Committee Administrator referred to in paragraphs 10 and 11 above. Members of the Appeals 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 Appeals Sub-Committee can take one of the following forms of action at the end of the hearing:

- To uphold the appeal;
- To dismiss the appeal;
- To substitute a different outcome providing this is not more severe than the original one;
- In exceptional circumstances, to refer the case back to the original Panel.

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

## **Actions for Management**

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