



Epping Forest District Council

STAFF APPEALS PANEL **Monday, 1st February, 2010**

Place:	Civic Offices, High Street, Epping
Room:	Committee Room 2
Time:	1.00 pm
Democratic Services Officer	Adrian Hendry – Office of the Chief Executive Email: ahendry@eppingforestdc.gov.uk Tel: 01992 564246

Members:

Councillors J M Whitehouse (Chairman), K Chana (Vice-Chairman), P Gode, B Sandler and J Wyatt

1. APOLOGIES FOR ABSENCE

2. SUBSTITUTE MEMBERS

(Assistant to the Chief Executive) To report the appointment of any substitute members for the meeting.

3. DECLARATIONS OF INTEREST

To declare interests on any item on the agenda.

4. MINUTES (Pages 5 - 12)

To confirm the minutes of the last meeting of the Panel held on 7 August 2009 (attached).

5. STAFF APPEALS PROCEDURE (Pages 13 - 20)

To note the procedure for determining staff appeals (attached).

6. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
7	Staff Appeal No.2 – 2009/10	1

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

7. STAFF APPEAL NO. 2 - 2009/10

To consider a restricted report and case papers (circulated separately).

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EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Staff Appeals Panel **Date:** Friday, 7 August 2009

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 1.00 - 4.00 pm

Members Present: J M Whitehouse (Chairman), K Chana (Vice-Chairman), P Gode, B Sandler and J Wyatt

Other Councillors:

Apologies:

Officers Present: P Maginnis (Assistant Director (Human Resources)) and G Lunnun (Assistant Director (Democratic Services))

1. SUBSTITUTE MEMBERS

There were no substitute members present at the meeting.

It was reported that since the agenda for this meeting had been prepared the Council had appointed Councillor K Chana as a member of this Panel in place of Councillor B Rolfe.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made pursuant to the Council's Code of Member Conduct.

3. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 2 November 2007 be taken as read and signed by the Chairman as a correct record.

4. STAFF APPEALS PANEL PROCEDURE

The Panel noted the agreed procedure for its conduct in determination of Staff Appeals.

5. EXCLUSION OF PUBLIC AND PRESS**RESOLVED:**

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the item of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraph Number
7	Staff Appeal No 1-2009/10	1

6. STAFF APPEAL NUMBER 1 - 2009/10

The Panel considered an appeal by an employee of the Housing Directorate against a decision to dismiss her made by the Director of Finance and ICT acting under delegated authority.

The appellant was in attendance accompanied by her husband. The appellant's husband advised that he would be presenting his wife's case. Ms C O'Boyle, Director of Corporate Support Services and Solicitor to the Council, attended the meeting to present the Council's case. Ms P Maginnis, Assistant Director – Corporate Support Services (HR), attended the meeting to advise the Panel as required on details of employment law and policies relevant to the appeal. Mr G Lunnun, Assistant Director Democratic Services, attended the meeting as secretary to the Panel.

The Chairman welcomed the appellant and her husband to the meeting and introduced the Panel and officers present.

The appellant's husband requested confirmation in writing that Ms P Maginnis had no input whatsoever in referring this case to the Panel. The Chairman pointed out that at this stage of the meeting he was simply outlining the procedure to be adopted and that there would be an opportunity for the appellant and her husband to ask questions at a later stage. However, he allowed Ms Maginnis to answer the question. Ms Maginnis advised that her only previous involvement in this case had been to advise the Director of Finance and ICT in relation to the Sickness Absence Hearing held on 2 July 2009. She added that she had not been involved in compiling the Council's case for this meeting.

The Chairman advised that it was not clear from the appellant's written statement the extent to which she contested or accepted the findings of the Sickness Absence Hearing. It had been assumed, therefore, that she wished to challenge the findings and as a result this meeting would take the form of a complete rehearing of the evidence heard at the Sickness Absence Hearing together with some additional evidence arising from the earlier Hearing. The Chairman sought clarification from the appellant that she was seeking reinstatement to her former position with the Council. The appellant's husband confirmed that this was the appellant's wish.

The Chairman sought confirmation from the appellant that she had received the agenda and the file of documents for this meeting comprising the written statement of

the Council's case, 23 appendices to that statement and the appellant's letter of appeal to the Panel. The appellant's husband confirmed that he was in receipt of all of the papers. The Chairman advised that Ms O'Boyle had given notice that she intended to call two witnesses, Mrs S Lindsay, Housing Resources Manager, and Mr R Palmer, Director of Finance and ICT. He asked the appellant to confirm that she did not wish to call any witnesses. The appellant's husband confirmed that no witnesses were to be called in support of the appellant's case.

Ms C O'Boyle advised that since the papers for this meeting had been dispatched a further letter had been received from the Council's Occupational Health provider dated 6 August 2009. She stated that the letter was relevant to ground of appeal (1) and sought approval for the letter to be admitted to the meeting. She pointed out that as the letter had only been received on 6 August 2009 it had not been available to the Director of Finance and ICT at the Sickness Absence Hearing. The Chairman agreed to the admission of the letter and copies were handed to the appellant and members of the Panel. The Chairman allowed the appellant an opportunity to read the letter before continuing with the proceedings.

The appellant's husband stated that he had expected Ms L Austin, H R Operations Manager to be present at this meeting. The Chairman pointed out that neither the Council nor the appellant had requested the presence of Ms Austin as a witness. The appellant's husband stated that he had expected Ms Austin to be present so that he could question her on the minutes of the Sickness Absence Hearing. The Chairman advised that the Panel had not seen the minutes of that Hearing and would not be taking them into account. He reiterated that this meeting would comprise a complete re-hearing of the evidence heard at the Sickness Absence Hearing together with some additional evidence arising from the earlier Hearing.

The Chairman invited the appellant to present her case.

The appellant's husband stated that he was not challenging the legality of the Council's actions but was questioning its moral justification for the steps taken. He submitted that Council officers had shown his wife no compassion or support during the period of her sickness absence. As an example he cited the failure to commence the Sickness Absence Hearing on time for which no apology had been made. He also referred to references in the Council's papers to a Disciplinary Hearing instead of a Sickness Absence Hearing.

The appellant's husband advised that whilst his wife was still not fit for work her health was much improved since the Sickness Absence Hearing and that she would be attending hospital as a day patient on 21 August 2009 for an injection following which he hoped that she would be able to return to work shortly thereafter.

He stated that the Council had referred to the strain on other officers covering the work in his wife's absence but submitted this should not be an issue because he had been told there was a freeze on employing staff and as a result those officers would have to continue to cover the duties. He submitted that if his wife's post was not filled she should be entitled to a redundancy payment. He suggested that in view of his wife's age she would find it very difficult to obtain other employment.

The appellant's husband claimed that his wife's condition had been made worse by the medical treatment she had received and he claimed that the Council had to accept some responsibility for his wife's length of absence from work.

In answer to questions from Ms O'Boyle, the appellant's husband confirmed that he was not medically qualified and that he was not in a position to present evidence of

the forthcoming hospital appointment or from a qualified medical practitioner about the likely effects of the injection. He stated that his comments regarding a freeze on employment was based on what had been said at the Sickness Absence Hearing. He replied that his submissions about his wife's medical treatment were based on discussions with numerous doctors who had spoken to him informally but were not prepared to submit formal evidence. The appellant's husband confirmed that his wife would not be giving evidence herself. The appellant confirmed that she endorsed all of the evidence being given on her behalf.

The appellant's husband answered questions of members of the Panel. He stated that the improvement in his wife's health since the Sickness Absence Hearing could be seen from the way she walked and the way she stood. In support of his claim that Management had shown no compassion or support for his wife he referred to several comments made in the submitted papers. He stated that his wife was now able to drive an automatic vehicle again and that he thought his wife might be able to return to work whether or not the injection on 21 August was successful

Ms C O'Boyle presented the Council's case. She stated that she did not intend to read the submitted written statement in full but would draw out some of the main considerations. She apologised for the references in some of the papers to a Disciplinary Hearing which had been an error. She gave an assurance that the Council was not implying in any way that the appellant had done anything wrong and that despite the references to a Disciplinary Hearing the matter had been dealt with as a Sickness Absence issue throughout and this was supported by the submitted evidence. She stated that the chief difference between this Appeal Hearing and the Sickness Absence Hearing was that the burden was with the appellant to persuade the Panel that the original decision was unreasonable or incorrect. She advised that the Panel must have regard to the earlier Hearing but they were entitled to come to a different decision.

Ms O'Boyle submitted that there was not an enormous dispute about the facts of this case but it was mainly a question of how those facts were interpreted. She pointed out that the Panel had to come to its decision on the balance of probabilities.

Ms O'Boyle stated that the Council's case was that the appellant had been absent on sick leave for 37 weeks when the Sickness Absence Hearing had taken place and that at that time there had been no realistic prospect of a return to work. She submitted that no evidence from a medically qualified practitioner had yet been presented to this Panel which suggested a realistic prospect of a return to work.

Ms O'Boyle set out the background to the Appeal. She advised that she would call Mrs S Lindsay, Housing Resources Manager, to give evidence about the nature of the work carried out by the appellant and the team within which the appellant had been employed. Mrs Lindsay would also give evidence about how the Council's Managing Absence Policy had been applied including a detailed account of doctors' certificates, referrals to the Council's Occupational Health provider and their advice, and home visits.

Ms O'Boyle advised that she would ask Mrs Lindsay who had been present at the Sickness Absence Hearing to comment on the demeanour of the appellant at that time and now. She would also ask Mrs Lindsay to give evidence about the filling of the appellant's post and why that post had not yet been advertised.

Ms O'Boyle stated that she would also call Mr R Palmer, Director of Finance and ICT and Chairman of the Sickness Absence Hearing. She advised that Mr Palmer would give evidence about the evidence he had received at that Hearing.

Ms O'Boyle submitted that the appellant's third ground of appeal that the Council had contributed to the appellant's length of absence due to treatment she had received from the Council's Occupational Health providers was not a valid ground of appeal. She stated that the Panel was not a forum for taking decisions on medical competency.

Mrs Lindsay attended the meeting, read her statement and enlarged on some aspects at the request of Ms O'Boyle. Mrs Lindsay stated that the pressure on other staff in the team in which the appellant had worked had become greater since the Sickness Absence Hearing as the Council had changed a gas supplier and as a result 500 invoices needed to be processed each month whereas previously 500 invoices had needed to be processed quarterly. Mrs Lindsay stated that she had followed the Council's Managing Absence Policy and had visited the appellant at home in order to keep in touch with the appellant as she had been concerned about the appellant's wellbeing. She stated that she had not intended any of her letters or notes to imply the appellant's condition was not as bad as it appeared.

Mrs Lindsay was shown the Council's Occupational Health provider's letter dated 6 August 2009 and asked if she would have followed any different procedures had she been in possession of that letter earlier. Mrs Lindsay stated she would have followed the same procedures.

Mrs Lindsay agreed that the appellant looked better than she had at the Sickness Absence Hearing when she had appeared to be in a great deal of pain.

Mrs Lindsay answered questions from the appellant's husband. She said she could not comment on whether the appellant was popular with other staff. She stated that she considered all of the comments included within her documents were relevant to the consideration of the appellant's sickness absence. She denied that her attitude towards the appellant had changed when it had become apparent that the appellant required an operation. Mrs Lindsay stated that she did not manage the contract with the Council's Occupational Health provider. Mrs Lindsay described the Council's current process for filling vacant positions and stated that it would have prejudiced the outcome of this meeting if the position had already been advertised and someone else employed. She stated that the employment of additional staff to cope with an increase in workload was not acceptable in the current financial climate and that other work would have to be streamlined to ensure that the additional invoices were processed in time.

Mrs Lindsay answered questions from members of the Panel. She stated that regular workplace assessments were undertaken. She advised that there were six members of staff in the team in which the appellant had worked but that not all of those undertook the same duties as the appellant. Invoices had been dealt with by one full-time member of staff, one other part-time member of staff and the appellant. Ms Lindsay confirmed that she had decided to seek dismissal of the appellant when she had received advice from the Council's Occupational Health provider that the appellant remained totally unfit for work after having been absent for over 30 weeks.

Mrs Lindsay left the meeting. Ms O'Boyle called Mr R Palmer to the meeting.

Mr Palmer confirmed that his letter dated 6 July 2009 had been his decision letter in relation to the Sickness Absence Hearing and that the three issues specified in that letter had been the matters on which he had heard evidence. His attention was drawn to the reference in his letter that the appellant's recovery was expected to take a further 12 to 18 months and asked to compare that with the appellant's first ground

of appeal suggesting that period related to a full recovery and that a return to work could be achieved much sooner. Mr Palmer drew attention to the Council's Occupational Health provider's letter dated 1 July 2009. Mr Palmer was shown a copy of the Council's Occupational Health provider's letter dated 6 August 2009 and asked if he would have come to a different decision had he been in receipt of that letter at the Sickness Absence Hearing. Mr Palmer stated that he would have made the same decision.

Mr Palmer, as a Service Director, explained the Council's current procedures for filling vacant posts and the reason why no steps had been taken to fill the appellant's post in advance of this meeting.

Mr Palmer confirmed that during the Sickness Absence Hearing the appellant had been unable to sit or to stand still and had appeared to be in great pain. He confirmed that at no time had he considered the appellant to have been the subject of disciplinary action. The Hearing he had chaired had been solely concerned with sickness absence.

Mr Palmer answered questions of the appellant's husband. Asked whether his decision would have been different if he had considered the appellant would have returned to work within six weeks rather than 12-18 months, he stated that he would needed compelling evidence of a return to work within that timescale and such evidence had not been submitted. He acknowledged the Sickness Hearing had started a little late as he had been discussing procedural matters and said that he had apologised at the time. He explained the role of Ms Maginnis at the Sickness Absence Hearing had been to advise him but as Chairman of the Hearing the decision had been his alone. Mr Palmer stated that the reference to a further 12 to 18 months absence had been made by the appellant herself. He confirmed that the appellant appeared to be in better health now than she had been at the Sickness Absence Hearing.

Mr Palmer answered questions of the Panel. He stated that the letter dated 6 August 2009 from the Council's Occupational Health provider was broadly in line with the advice he had received at the Sickness Absence Hearing. He confirmed there was no specific period of absence in the Council's Policy which automatically triggered dismissal but felt that a period of some 37 weeks absence with no realistic return date justified the action he had taken.

R Palmer left the meeting.

The Chairman asked the parties to sum up their cases and advised that no new evidence could be presented at this time.

Ms O'Boyle reminded the Panel of the three issues as set out in Mr Palmer's letter dated 6 July 2009.

She submitted that in relation to the first issue the evidence submitted at the Sickness Absence Hearing and at this meeting including the tabled letter from the Council's Occupational Health provider proved that the appellant had taken a high level of sickness absence since 15 October 2008 and there was no clear indication of a return date.

In relation to the second issue she submitted it was not sufficient for the appellant to simply return to work but there was a need for sustained regular service. She stated that the submitted evidence did not suggest this would be possible.

In relation to the third issue she drew attention to the evidence given by Mrs S Lindsay about the significant impact of the appellant's absence on the rest of the team and submitted that this strain could not be sustained.

Ms O'Boyle pointed out that no new evidence had been presented at this meeting on behalf of the appellant. She submitted that the Council's Monitoring Absence Policy had been applied correctly and that all the actions of the officers had been for the right reasons, showing compassion for the appellant.

She drew attention to the fact that the appellant's period of sickness absence had commenced on 15 October 2008 and at that the time of dismissal had amounted to 37 weeks during which time the appellant had not returned to work at all.

Ms O'Boyle asked the Panel to conclude that the decision of Mr Palmer had been correct at the time of the Sickness Absence Hearing and remained correct today.

The Chairman asked Ms O'Boyle if she could provide the date of the report of the Registrar referred to in the Council's Occupational Health provider's letter dated 6 August 2009. Ms O'Boyle said she did not have a copy of that report. The appellant's husband advised that it would have been sometime after the referral on 23 June 2009.

The appellant's husband submitted that everything the Council had done at the Sickness Absence Hearing had been correct legally but he had attempted to draw the attention of the Panel of the moral implications of the decision taken. He claimed that the Council should treat its staff better and that his wife if dismissed would be unlikely to obtain further employment in view of her age. He submitted that his wife's health was now significantly better than it had been at the time of the Sickness Absence Hearing.

The Chairman indicated that the Panel would consider the matter in the absence of the parties. He asked the appellant and her husband if they wished to wait to be notified of the decision. The appellant's husband stated that they would prefer to return home and be notified of the decision in writing. Ms O'Boyle also advised that she would await the decision in writing. The appellant, her husband and Ms O'Boyle then left the meeting.

The Panel discussed all of the evidence which had been submitted.

RESOLVED:

(1) That it is the unanimous decision of the Panel that, on the basis of the evidence presented on behalf of the appellant and on behalf of the Council, in writing and orally, the appeal against dismissal from the service be not upheld for the following reasons:

(a) the contention that the appellant would be fit to return to work in the new future has not been evidenced by medical opinion from either the Council's Occupational Health provider or the appellant's own G.P. or consultant; reliance has been placed on the medical evidence produced at the original Hearing from the Council's Occupational Health provider and in a subsequent letter dated 6 August 2009 which was tabled at the meeting; both letters indicate that there is no clear prognosis of the appellant's condition or likely return date and therefore the appeal on this point is rejected;

(b) the appellant's claim that her post would probably not be filled and as a result she had been made redundant is not agreed; evidence from Mrs S Lindsay indicated that it would be her intention to request that the post be filled although this could not be guaranteed as there was currently a recruitment freeze; it is not considered that it would have been appropriate to advertise the position until this appeal procedure had been concluded; it is clear that there is no intention that the post would be deleted from the Establishment therefore resulting in a redundancy situation; it is clear that the appellant was dismissed on grounds of capability due to ill health and the appeal on this ground is rejected;

(c) the appellant's contention that the length of her absence is the responsibility of the Council as the Council's Occupational Health provider prescribed treatment is not a relevant ground of appeal and the appeal on this point is rejected;

(2) That for future cases the Council's template letter following a Sickness Absence Hearing includes suitable thanks for the work undertaken by the postholder, where appropriate; and

(3) That the officers review the arrangements for the instruction of and the monitoring of invoices from the Council's Occupational Health provider.

CHAIRMAN

EPPING FOREST DISTRICT COUNCIL

STAFF APPEALS PANEL HEARINGS PROCEDURE

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1. PURPOSE OF THE STAFF APPEALS PANEL HEARING

- 1.1 The purpose of the Hearing is to enable eligible employees to appeal against a decision to dismiss under the Disciplinary/Capability and Managing Absence Procedures to a higher and independent level of authority. The Panel will also hear an employee's grievance at Stage 3.

2. SCOPE

- 2.1 All employees of Epping Forest District Council (EFDC) are covered by this policy with the exception of the Chief Executive (Head of Paid Services), Corporate Directors, Monitoring Officer, Deputy Monitoring Officer, Heads of Service, Chief Financial Officer (if the postholder is not a designated Chief Officer) casual staff and those employees with less than 6 months continuous local government service. For staff in these categories separate arrangements apply.
- 2.2 The provisions of this procedure shall not apply in relation to dismissals arising out of;
- the expiry of a casual, temporary or fixed term contract of employment
 - termination of employment by reason of redundancy.

3. ROLE OF THE STAFF APPEALS PANEL

- 3.1 The role of the Staff Appeals Panel will be to consider whether the dismissal should be rescinded, upheld or reduced in the light of their deliberations. Also to hear Stage 3 grievances.

4. MEMBERS OF THE APPEALS PANEL

- 4.1 The Staff Appeals Panel will comprise of five members of the Epping Forest District Council (hereinafter called the Council) who are not members of the Executive Committee.
- 4.2 The Council will appoint a Chairman and Vice-Chairman of the Panel and no meeting will be held in the absence of both the Chairman and Vice Chairman.
- 4.3 A senior member of the Human Resources (HR) Unit will be present to advise on points of fact, evidence, procedure and law. The HR Advisor will be completely neutral and impartial. If a senior member of the HR Unit is not available or unable to fulfil this role due to prior involvement in the case, then an independent external advisor may be substituted.

5. NOTIFICATION OF APPEAL

- 5.1 Within 5 working days of receiving the letter of formal notification of the decision, the employee must write to the Head of HR informing them of their intention to appeal, and that they will be submitting a full Written Statement within the next 5 working days.

6. WHEN THE HEARING SHOULD BE HELD

- 6.1 The Hearing will usually be held within eight weeks from the date on which the Head of HR received formal notification of the decision. This timescale may be varied and an extension beyond this period granted with the agreement of the Head of Legal and Administration or their representative, (hereinafter called the Council's representative), the Head of Service and the employee and/or their representative in consultation with the Chairman of the Staff Appeals Panel.

7. PROCESS

- 7.1 If the employee is a member of Legal and Administration Services and the Head of Service has been party to the decision against which the employee is appealing, the Written Statement will be prepared and taken forward by a Corporate Director.
- 7.2 Within 10 working days from receipt of the employee's Written Statement, the Council's representative will construct the Council's Written Statement.
- 7.3 A copy of the employee's Written Statement and the Council's Written Statement will be sent, by the Council's representative, for review by the Chief Executive. This review process shall be completed within 5 working days on receipt of the Written Statements.

- 7.4 Where the appeal is against both the finding and the penalty, any transcription notes taken at the disciplinary hearing will not form part of the appeal papers and the proceedings are likely to be in the form of a complete re-hearing of the evidence.
- 7.5 The employee and the Council's representative may exchange further statements if necessary. Where a hearing date has been fixed well in advance, supplementary evidence may be given to the Council's representative for distribution provided that this is at least 10 working days before the hearing to allow research into the points and copies to be taken, thereby avoiding the need for adjournment.
- 7.6 Further guidance on compiling Written Statements is given in the documents 'Staff Appeals Panel Hearings - Guidance Notes for Employees' and the same for the Council Representative.

8. EMPLOYEE'S CASE – WRITTEN STATEMENT

- 8.1 It is the employee's responsibility to prove that the Council's original decision was unreasonable or incorrect.
- 8.2 The employee must prepare a comprehensive Written Statement, perhaps with assistance from their nominated representative.
- 8.3 The Written Statement should clearly state the following:-
- full circumstances of the case and full details of events as they have happened to date
 - full details of the dismissal they are appealing against
 - the grounds on which they are appealing against, the decision and the remedy sought
 - a list of the key documents to be produced at the hearing
 - copies of all these key documents, which may include;
 - a timetable of events as appropriate
 - any evidence to present to the Panel
 - a list of names of any witnesses to be called to give evidence in support of the appeal: and
 - written statements of witnesses
- 8.4 Only those grounds and items of evidence which are referred to in the Written Statement or supplementary statements can be raised at the hearing. Any attempt to introduce new material at the hearing may lead to an adjournment. Material not contained in the Written Statements and therefore not circulated will only be admitted with the agreement of both parties, or by order of the Panel Chairman.
- 8.5 The Employee's Written Statement of Case will be sent to the Council's representative within 5 working days of submitting the notification of Appeal to the Head of HR.

9. COUNCIL'S CASE – WRITTEN STATEMENT

- 9.1 The Council's representative will respond to the submission of the employee's Statement by preparing a Written Statement of the Council's case in support of the original decision within 10 working days.

9.2 The Statement will present the circumstances of the case and the action taken to date. It should answer points raised on the employee's Statement and give reasons why the original decision was made.

9.3 The Statement should also list and append any key documents which the Council's representative wishes to produce at the hearing. These documents may include:

- organisational charts
- copies of the employee's contract, appraisal documents, notes of disciplinary hearings or interviews or job description
- a timetable of the events as appropriate
- a list of names of any witnesses to be called to give evidence
- written statements of witnesses.

10. REVIEW OF PAPERS

10.1 The Chief Executive or, in their absence, one of the Corporate Directors (provided they have had no prior involvement in the case) shall review the Written Statements to ensure that the information presented is adequate. If either or both of the Statements are unclear or ambiguous the Chief Executive will direct the employee or Council's representative to clarify or expand the relevant points.

10.2 The review mechanism will ensure that the final Statements give a clear logical detailed account of events, with the employee's Statement clearly stating the grounds for the appeal and the defending statement clearly answering all the points raised by the employee. The Chief Executive shall complete this review process within 5 working days on receipt of the Written Statements.

11. NOTICE OF HEARING

11.1 The Secretary to the Appeals Panel will give a minimum of 10 working days notice (excluding the day of the hearing) to the employee. Employees are responsible for arranging their representation if required. This may be a representative of their choice. The employee will be reminded of this right when they are notified of the arrangements for the hearing.

12. ISSUE OF CASE STATEMENTS

12.1 After the review, which will take no longer than 5 working days, the statements will be passed to the Secretary to the Appeals Panel. The Secretary will produce a Case File incorporating these Case Statements within 5 working days of receipt of the Statements.

12.2 The Case File will include the following;

- Index
- Written Statement from the Employee plus supporting documentation, including a list of witnesses appearing.

- Written Statement for the Council's representative plus supporting documentation, including a list of witnesses appearing.
- Contractual documentation ie a job description, contract of employment.
- Copies of;
 - the appropriate Standing Order
 - the Procedures for Staff Appeals Panel Hearings
 - Guidance Notes for Staff Appeals Panel members
 - Guidance Notes for the Employee and for the Council's Representative
 - The previous hearing papers, if not included above

12.3 The Secretary will send copies of the case file to the Panel Members, the HR Advisor, the employee and Council's representative no later than 10 working days before the Hearing date.

12.4 These procedures allow for a maximum of 5 working days for the review to be carried out, a maximum of 5 working days for the Secretary of the Appeals Panel to produce a Case File and a minimum of 10 working days for all parties involved with the Appeal to read the papers. However, these timescales may be varied by agreement of the parties.

13. CONDUCT OF THE APPEAL HEARING

13.1 The employee, their representative and the Council's representative will remain present throughout the hearing, except when the Panel are left alone to consider and determine the case.

13.2 The Panel may adjourn proceedings if they feel further investigation is necessary, a vital witness is absent or for any other appropriate reason. They will confer with all parties before reaching their decision but if they decide an adjournment is necessary the proceedings must be reconvened as soon as is practicably possible.

14. ORDER OF PROCEEDINGS

14.1 Introduction

14.1.1 The Chairman of the Panel will preside over the Hearing, introducing the Members of the Panel, the Secretary and the HR Advisor to the parties. They will then state the reasons for the hearing being held and the remedy sought by the employee.

14.1.2 The Chairman will then confirm the presence or absence of the parties to the case and any representative thereof. In the absence of any of these persons the Chairman may order the hearing to be postponed or order the parties to proceed.

14.2 Evidence

14.2.1 The Chairman will outline the order with which the case will be heard. This will be as follows:

- the employee's opening statement (if appropriate)

- the employee's evidence
- the Council's opening statement (if appropriate)
- the Council's evidence
- Council's summing up
- Employee's summing up

14.2.1 With the agreement of the employee and the Council's representative, the Chairman may rule that the order of these could be amended.

15. THE EMPLOYEE'S CASE

15.1 The employee and/or their representative will make an opening statement, which is effectively a summary of the Written Statement.

15.2 The employee and/or their representative would call witnesses who will be asked a series of questions whose answers will provide evidence for their case. Each witness, including the employee, will be cross-examined by the Council's representative after giving their evidence. After the Council's representative has completed their cross examination the Panel may also ask questions.

15.3 If the employee is presenting their own case they will present their own evidence referring to documents contained in the case file and calling witnesses to support their case. Whilst acting as an advocate and calling witnesses they cannot be cross-examined.

15.4 During the hearing the Panel may ask questions of clarification from time to time. Otherwise questions by the Panel shall be put to each party, after he or she has been cross-examined by the Council's representative.

16. THE COUNCIL'S CASE

16.1 The Council's representative will also make an opening statement.

16.2 They will present their case in support of the original decision, presenting and questioning such witnesses as are mentioned in their Written Statement of Case.

16.3 The employee will have an opportunity to ask questions and can question any witnesses after they have given evidence.

16.4 The Panel may ask questions on points of clarification at any time. Otherwise questions by the Panel will be put to each party, after they have presented their case.

17. RE-EXAMINATION

17.1 Both parties will be asked if they wish to re-examine any evidence before they proceed to the next stage. Only in exceptional circumstances will witnesses, who have previously given evidence, be recalled to the Hearing.

18. FINAL STATEMENT/SUMMING UP

- 18.1 The Council's representative and then the employee and/or their representative may make final statements if they so wish. Neither party may introduce new matters or evidence in their summing up.
- 18.2 The Appeal Panel may seek clarification on any points made in the final statements, but no other party may do so.

19. ADJOURNMENTS AND EVIDENCE

- 19.1 Either party may request an adjournment of the Hearing at any stage. The Panel will consider the reasons for the request and will decide according to the individual circumstances whether or not to allow an adjournment.
- 19.2 The Panel may order an adjournment of the Hearing if they feel that further evidence is required or further witnesses are vital to the determination of the Appeal. The Panel will confer with all parties before reaching a decision but if they decide an adjournment is necessary, the proceedings will stand adjourned and will be reconvened as soon as practically possible.
- 19.3 With the agreement of all parties the Chairman may amend the order in which the evidence is presented.
- 19.4 The submission of new evidence or documentation not contained in the Written Statements will not be allowed by the Staff Appeals Panel except with the consent of the other side or by order of the Panel. If the opposing party object to the submission the Panel will have the power:-
- to disallow the submission and order proceedings to continue
 - to allow the submission of the new evidence
 - to order a short adjournment so that the new evidence can be considered by all parties, after which the Hearing will reconvene
 - to order that the Hearing is adjourned to another day to allow time for proper consideration of the new evidence.
- 19.5 In determining its ruling concerning new evidence, the Panel shall take into consideration the importance of the new evidence and the length of time needed to consider the evidence fully. They will, if they are satisfied that the evidence is relevant to the determination of the Appeal, either order a short adjournment or order the Panel to stand adjourned to another day to allow proper consideration by all parties of the new evidence.
- 19.6 Before the date of an adjourned Hearing, further statements relating to the new evidence or witnesses must be exchanged.

20. CONSIDERATION OF THE CASE

- 20.1 The Council's representative, the employee or their representative will not have voting powers and will not be present during the Panel's deliberation on the case.

- 20.2 The employee, their representative and the Council's representative will withdraw to allow the Panel to deliberate in private.
- 20.3 The Secretary to the Panel and the HR Advisor shall remain present throughout the hearing. They will also remain in the hearing after the employee and the Council's representative have withdrawn whilst the Panel considers its decision. The Secretary and HR Advisor will advise and assist the Panel as required.
- 20.4 If the Panel requires clarification on any point during their consideration of the case in private, the representatives of both sides will be recalled to avoid any unfair advantage to either side.

21. DECISION OF THE PANEL

- 21.1 The employee, their representative and the Council's representative will be recalled and the Panel will announce its decision.
- 21.2 The decision of the Appeals Panel is final. The Panel may allow the appeal, reduce the dismissal to a lesser penalty or reject the appeal.
- 21.3 The decision will normally be given orally at the Hearing; if this is not possible it will be confirmed in writing within 5 working days of the Hearing. If the decision is given orally it will also be confirmed in writing within 5 working days. The HR Adviser will write to the employee confirming the decision, sending copies to their Head of Service, the Council's representative and if appropriate their representative.
- 21.4 Where the appeal is against both the finding and the dismissal it will be necessary to deal with the appeal on the basis of a complete rehearing. If the appeal is simply against the dismissal or only some elements of the original hearing, with the agreement of the parties, there is likely to be opportunity to omit stages of this procedure.
- 21.5 An appeal is not intended to be a substitution for, or prejudicial to, an employee's right of appeal to an Employment Tribunal. However, Employment Tribunals do expect internal appeals procedures to have been exhausted before a complaint is brought before them.

22. FURTHER GUIDANCE

- 22.1 Further guidance on the operation, interpretation and application of this procedure is available from HR.
- 22.2 Alternatively, see the following;

Staff Appeals Panel Hearings – Guidance Notes for Employees
Staff Appeals Panel Hearings – Guidance Notes for the Council's Representative
Staff Appeals Panel Hearings – Guidance Notes for Appeal Panel Members