

**AGENDA FOR
EMPLOYMENT PANEL**



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To: All Members of Employment Panel

Councillors : T Rafiq (Chair), R Bernstein and J Grimshaw

Dear Member/Colleague

Employment Panel

You are invited to attend a meeting of the Employment Panel which will be held as follows:-

Date:	Tuesday, 2 July 2024
Place:	Irwell Room - Town Hall
Time:	3.00 pm
Briefing Facilities:	If Opposition Members and Co-opted Members require briefing on any particular item on the Agenda, the appropriate Director/Senior Officer originating the related report should be contacted.
Notes:	

AGENDA

1 APOLOGIES FOR ABSENCE

2 DECLARATIONS OF INTEREST

Members of the Employment Panel are asked whether they have an interest in any of the matters on the agenda and, if so, to formally declare that interest.

3 EXCLUSION OF PRESS AND PUBLIC

To consider passing the appropriate resolution under Section 100(A)(4) of the Local Government Act 1972 that the press and public be excluded from the meeting during consideration of the following items of business since they involve the likely disclosure of exempt information.

4 APPEAL AGAINST DISMISSAL (*Pages 3 - 70*)

Documents attached.

5 EMPLOYMENT APPEAL PROCEDURES (*Pages 71 - 78*)

Employment appeal procedure and procedure at hearing attached.

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

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EMPLOYMENT APPEAL PROCEDURE

August 2017

This procedure covers appeals made against decisions made under the following procedures:

- Disciplinary
- Grievance
- Capability
- Managing Attendance

A **Dismissal Appeals Panel**, made up of elected Members of the Council will hear appeals against all dismissals.

A **Grievance Appeal Panel**, made up of elected Members of the Council will hear all Grievance Appeals

An **Employment Appeals Panel**, made up of senior managers, will hear appeals against all other actions/decisions.

The Chair of the appeals panel should be of a higher level than the Chair of the original hearing.

The Chair of the original Hearing will present on behalf of management and may be accompanied by the HR Advisor who advised them during the Hearing. The HR Advisors role is to support the Chair during the hearing if required, not to present the case. The Trade Union representative may also be accompanied by a support officer. See hearing Procedure for support officer role descriptions.

How to lodge an appeal:

The employee must lodge their appeal in writing within 11 working days of receiving the written decision.

If the appeal is received outside of the 11 working day time limit, it will be declared out of time, and will not be heard.

An appeal must be addressed to the Assistant Director-Human Resources, who will acknowledge receipt of the appeal in writing within 2 working days.

Appeals against disciplinary/capability action:

In the case of appeals against disciplinary/capability/managing employees attendance action or the outcome of grievances, the appeal must state the reasons for appeal, which will be one of the following:

- The employee thinks that a finding is unfair: or for grievances the outcome was unfair and the employee is still aggrieved
- The employee thinks that the penalty is unfair: not applicable for grievances
- New evidence coming to light not considered by the original hearing
- The procedure wasn't used correctly

In their appeal employees should state the nature of their case and any evidence/witnesses they are referring to in support of their case.

Pre-Appeal Panel

A pre-appeal panel, consisting of the Chair of the Appeal Panel and its HR Advisor may meet to consider the relevant issues for the appeal. The pre-appeal panel will use the appeals form stating grounds for appeal to recommend the most appropriate way forward in negotiation with the applicant and respondent. This will be either:

- An appeal which focuses on the reasons for appeal
- An appeal which hears all the evidence and submissions made to the original disciplinary hearing

The pre-appeal panel should consider the following: -

- If the employee has appealed because they feel the findings are unfair then the appeal will usually hear all the evidence and submissions made to the original hearing.
- If the employee has appealed because they feel that the penalty is unfair, the appeal will usually focus on the issues surrounding the decision, and not reconsider all the evidence. It may be helpful, however for the management representative at the appeal to briefly summarise the case at the Appeal Hearing.
- If the employee has appealed due to new evidence, which has come to light since the original hearing, then the appeal will usually focus on that new evidence. It may be considered alongside all the other evidence presented or may be the main focus of the appeal, depending on the individual circumstances of the case. New evidence must be submitted prior to the appeal (see timescales below). If the appeal focuses on the new evidence it may be helpful for the management representative at the appeal to briefly summarise the case at the Appeal Hearing.
- If the employee has appealed because they think that the procedure was not used correctly then the appeal should focus on the issues surrounding the procedure and the impact, if any, on the outcome of the original hearing. It may be helpful for the management representative at the appeal to briefly summarise the case at the Appeal Hearing.

This meeting should take place at least 5 working days before the hearing to enable any information from the meeting to be passed on to all relevant parties.

PROCEDURE

Dismissal/Grievance Appeals Panel

Where the appeal is against dismissal or the decision at a Grievance Hearing, the Assistant Director-Resources and Regulation (HR & OD) Human Resources will send the appeal form to Democratic Services, for action.

A Dismissal/Grievance Appeals Panel will be made up of the Chair of the Human Resources and Appeals Panel, and other Elected Members. An HR Advisor will be appointed to advise

the Panel. A member of Democratic Services will be present to take notes of the proceedings.

Democratic Services will co-ordinate and arrange the Panel, in consultation with all parties, including the applicant and the respondent. The letter to the employee should state: -

- Their right to be accompanied
- What action may be taken by the appeals panel – eg change an original decision
-

The employee (or their representative) should be given the opportunity to comment on any new evidence arising during the appeal before any decision is made.

The HR Advisor will confirm the decision of the panel in writing.

Employment Appeals Panel

An Employment Appeals Panel will consist of three senior managers who have not previously been involved in the case. A HR advisor will be appointed to advise the Panel. A note taker may also be present to take notes of the proceedings.

Corporate HR will co-ordinate and arrange the Panel in consultation with all parties, including the applicant and the respondent.

The HR Advisor will confirm the decision of the panel in writing.

Timescales

The applicant and respondent will be given at least 12 working days notice of the date of the appeal.

All statements and documentation (including any new evidence to be considered) will be submitted 10 days prior to the date of the appeal together with a list of any witnesses to be called.

Papers will be distributed to Panel members, applicant and respondent 7 working days prior to the appeal.

Unless there are extenuating circumstances, appeals will be arranged and heard within 30 working days of the receipt of the written request.

Where it is not possible to arrange the appeal within 30 days, the applicant will be kept informed of any delays.

The appeal will be carried out in accordance with the Authority's Hearing Procedure.

Review

This procedure will be reviewed every three years, through consultation between representatives of the Council and the appropriate Trade Unions or upon request by either side, for example, in relation to legislative changes or where problems arising with the procedure are identified.

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Procedure

The Chair of the Hearing/Appeal will introduce everybody and explain the following procedure to both sides: -

1. The **applicant** will state the nature of the case, referring to evidence gathered. He/she will be permitted to call witnesses and to produce relevant documentation.
2. The **respondent** will be given the opportunity to ask questions:
 - (a) of the **applicant** on the evidence given by him/her and
 - (b) of any of the witnesses the **applicant** has called on their evidence.
3. The Chair (and other panel members, if relevant) and the HR advisor will take the opportunity to ask questions.
4. The **respondent** will be given the right of reply, to state his/her case, to call witnesses and to produce relevant documentation.
5. The **applicant** will be given the opportunity to ask questions:
 - (a) of the **respondent** on the evidence given by him/her and
 - (b) of any of the witnesses the **respondent** has called on their evidence.
6. The Chair (and other panel members, if relevant) and the HR advisor will take the opportunity to ask questions.
7. If appropriate there will be a general discussion to establish all the facts and/or clear up any misunderstandings.
8. The **applicant** and **respondent** may summarise the main points of their case if they so wish. No new evidence or information may be included.
9. The Chair (or Appeal Panel) will adjourn to consider the case, with the HR advisor.
10. If the Chair wishes to clarify any points of evidence, both sides will be recalled.
11. The Chair will reconvene the hearing to deliver the decision of the panel. In Disciplinary Hearings where the Chair is considering action short of dismissal then the Chair should explain this but not deliver the sanction. In this situation only the **respondent** may put forward any other information to be considered and the Chair will adjourn to consider the sanction/mitigation.
12. The decision of the Chair (or of the Appeal Panel) will normally be given verbally at the end of the hearing and will subsequently be confirmed in writing to both parties. (Written confirmation should be made either by recorded delivery, registered mail or by hand).

Notes:

The following chart identifies the applicant and respondent under each procedure:

Procedure	Applicant	Respondent
Disciplinary hearing	Management	Employee
Disciplinary appeal	Employee	Management (chair of hearing)
Grievance hearing	Employee	Other employee or management
Grievance appeal	Employee	Management (chair of hearing)
Capability hearing	Management	Employee
Capability appeal	Employee	Management (chair of hearing)
Managing attendance hearing	Management	Employee
Managing attendance appeal	Employee	Management (chair of hearing)

An employee has the right to be accompanied to all hearings/appeals listed above by a fellow worker, a trade union representative, or an official employed by a trade union. Their companion may present their case on their behalf, but the employee must answer any questions addressed to them personally.

The companion should be allowed to address the hearing in order to:

- Present the employee's case
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the hearing
- Confer with the employee during the hearing

They should be able to participate as fully as possible in the hearing, including asking witnesses questions. However, the companion cannot answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the management representative from explaining their case.

No other person, for example partner or relative, will be allowed to attend the Hearing.

Reasonable adjustments will be observed, in line with the Equality Act 2010.

The applicant and the respondent are responsible for calling their own witnesses. In disciplinary hearings the investigators will organise and call their own witnesses.

If employees need assistance organising or calling any of their witnesses, for example if they are experiencing difficulties in arranging witnesses to attend, they should contact the HR Advisor for assistance.

Appeal Hearings – Role of Support Officers:-

HR Support Officer

During Appeal Hearings, the Chair of the original hearing will present the management case to the appeals panel. If they wish, the HR Advisor who advised them during that original Hearing may accompany them at the Appeal Hearing to offer support. At the Appeal the HR Support Officers role is to:-

- Support the original Chair at the Appeal by:-
- Taking notes,
- Finding/Identifying evidence in the bundle,
- Clarifying notes from the original hearing,
- Pointing out issues to the original Chair that might result in the original Chair requesting an adjournment

Trade Union Support Officer

During Appeal Hearings, the trade union representative may, if they wish, be accompanied by an additional Trade Union Officer to offer support. At the Appeal the Trade Union Support Officers role is to:-

- Support the trade union representative by:-
- Taking notes o Finding/Identifying evidence in the bundle
- Clarifying notes from the original hearing if appropriate
- Pointing out issues to the trade union representative that might result in the representative requesting an adjournment

At the Appeal Hearing the HR and Trade Union Support Officers' role is NOT to:-

- Take an active part in the Hearing
- Offer their opinion to the appeals panel

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