

EMPLOYEE APPEALS COMMITTEE

Guidance for Officers

Introduction

Employees can appeal decisions made under several procedures to the Employee Appeals Committee. These appeals are heard by Elected Members. This procedural recourse is provided when an employee:

- Has been dismissed under the Disciplinary Policy and Procedure
- Has been subject to Punitive Action under the Disciplinary Policy and Procedure (e.g. demotion, financial penalty)
- Has been issued with a disciplinary warning, where exceptionally, the warning has been issued by a Depute Chief Executive or the Chief Executive in person.
- Has been dismissed under the Supporting Attendance Policy
- Wishes to raise a Stage 3 Grievance under the Grievance Procedure

The employee must provide a written submission giving details of the grounds of the appeal to the Head of Corporate Services asking for the appeals process to be invoked. The employee must do this within 10 days of the decision/ written confirmation/ date of dismissal depending on the policy and action taken.

This note should be read in conjunction with the relevant [Policies and Procedures](#).

Role of Committee Services

The role of Committee Services is to arrange appeal hearings, ensuring all that all the relevant parties can attend and that submissions are circulated within agreed timescales prior to the hearing. They are also responsible for clerking the appeal hearing ensuring the procedure is adhered to by all. Their role includes:

- Arrange a date, time and venue for the Committee to sit
- Ensure that anyone who is essential to the appeal can attend:
 - The employee and their representative if they have elected to have one
 - The management representatives
 - At least three Committee Members (minimum quorum)
 - Human Resources representatives to advise both management and Elected Members
 - A legal adviser to the committee
 - An occupational physician where the appeal relates to a capability dismissal as a result of ill health.
 - A member of the Education Committee where the appeal relates to a member of teaching staff.
 - Child protection adviser if relevant to the appeal
- Arrange for the papers to be produced by Admin Services and distributed to all those attending not less than 5 working days prior to the hearing.
- Co-ordinate the participation of all those in attendance at the appeal hearing e.g. inviting them into the committee room at the appropriate times including at the start of proceedings and after adjournments.

- Advise the Chair as necessary on the agreed procedure during the hearing, dealing with any queries relating to the process or the competency of proceedings.
- Take a note of the appeal hearing to ensure that there is an accurate record of events.
- Provide written confirmation of the Committee's decision to both the appellant and management parties.

Purpose of the Employee Appeals Committee

To consider the grounds of the employees appeal and the remedy sought e.g. reinstatement if dismissed. This can often result in Committee Members reviewing the decisions taken by officers and the reasons for them. It is therefore important that the council's submission contains all the information that was considered when the decision was made including the reasoning that was applied.

Appeals Procedure

Hearings conducted by the Employee Appeals Committee follow a similar format to disciplinary hearings but by their nature tend to be more formal. All parties and attendees should only provide input during the hearing when invited to do so by the Committee Chairperson.

In appeals against disciplinary action and appeals against dismissal under the Supporting Attendance Policy the management present their case first with an opportunity for the appellant and/or their representative to ask questions of the management representative and their witnesses. Then the appellants case is presented and the management representative can ask questions to them and any witnesses in attendance. The Committee Members are also provided with an opportunity to ask questions of both sides.

In appeals against grievance decisions the order of presentation is reversed with the appellant presenting their case first.

Once all the evidence has been heard and all the questions asked, the hearing is adjourned to allow the Committee to review the evidence and determine whether the appeal has been upheld or upheld in part Both the management representative and their HR Adv the appellant and any representative leave the hearing at this point only to return for the outcome

Management Case

The Nominated Officer would normally lead the management's case supported by a Senior Human Resources Adviser who will provide advice prior, during and after proceedings as required.

At the appeal hearing only evidence in the submissions circulated prior to the hearing will be considered. No new evidence can be submitted during the hearing unless as an exception it is agreed by all parties. An adjournment may be necessary to review this new evidence and in some circumstances the appeal be reconvened at a later date.

The key activities in presenting the management case;

Preparation for Committee

- Producing the submission: (with support from HR)
 - Use standard reporting template that covers key submission headings
 - Ensure all the necessary evidence is included in the submission
 - Confirm all relevant dates and facts are accurate
 - Review the submission to ensure there are no omissions or errors e.g. dates in report correlate to the said documents and page numbering of report is correct.
- Identify witnesses to support the submission and arrange for their attendance.
- Consider the sequence in which witnesses are called. It is usual to call witnesses chronologically, however if one witness is seen as being a stronger witness, more able to support the management case, then it may be beneficial to call this witness last.
- Arrange for an occupational health physician to attend if required.
- Review your submission as someone with no knowledge of the case to ensure that it is self-explanatory and that the evidence presented is clear and easily found.
- Consider what evidence your witnesses are likely to give and how that is relevant to your submission, drafting relevant questions to draw out key facts/ details.
- Ensure your submission evidences that due process was followed
- Review the employee's submission and consider their grounds of appeal against the management case and what evidence is likely to be drawn out to examine any differences in perspective. Similarly consider what testimony the employee's witnesses are likely to give.
- Ensure all appendices are clearly and accurately referenced
- Draft a question set to ask the employee and their witnesses that draws out the key facts and critical evidence in the investigation.
- Work closely with the Senior HR Adviser in all aspects of preparation. If necessary you may want to consult with Legal Services on procedural or legislative issues.

Presenting at Committee

- Ensure you have your submission pack in front of you as all parties may refer to particular documents
- Ensure you can quickly identify key documents you wish to refer to. It would be beneficial for the panel if you are able to reference in the submission pack the points you are referring to.
- Before you start presenting your case, ensure that all parties can clearly hear you.
- Have your summary of the management case written down, at least in bullet points, so that it's presented in a structured manner and key points are covered.
- Take your time presenting your case, pausing at key points to highlight their significance.

- Try to make eye contact with the committee as much as possible as you're presenting.
- Clearly indicate when you have finished the presentation of the management case.
- Keep emotions in check no matter how others behave, presenting evidence or answering questions in a matter of fact manner.
- As far as possible anticipate lines of enquiry and questions that emerge as the hearing progresses to ensure you have some time to prepare a response.
- Provide an opportunity for your witnesses to get comfortable before you start to ask them questions, ensuring they have access to any relevant reference documents when answering your questions.
- Try to ensure the questions asked of witnesses elicit fact or relevant details without encouraging them to be defensive when answering.
- If a witness' testimony has been undermined by the employee or the employee's representative, reassert the key aspects of their testimony when allowed to re-question.
- When summing up the management case return to the key aspects of your opening presentation and draw out the evidence examined during the hearing that affirms the reasoning for the decisions taken and refutes any presentations made by the employee.
- Adopt an impartial demeanor regardless of how you feel about the Committee's decision and the outcome of the hearing.

An Officer Attending as a Witness

- Management witnesses are not there to defend or prove the management's case. They should remain objective, only provide factual or relevant testimony in relation to the issues investigated and to answer the questions asked of them.
- Witnesses will be asked questions initially by whoever has asked them to attend i.e. either the management representative or the appellant. They will then be asked questions of the other party, followed by questions from Committee Members. Finally, witnesses can be re-questioned by the party who has asked them to attend
- Only answer the question that you have been asked, keep answers concise and do not provide supplementary or additional information.
- Ensure that you are answering a question, and not responding to a statement. Clarify the question if need be.

If you provided a statement, read it over just prior to attending to ensure you are familiar with it. Similarly, if you are the Investigating Officer read through your report before you attend as a witness.

- Take your time when answering a question, be clear what is being asked and consult relevant documentation if necessary before you answer.

- Be mindful that the Committee Members are unlikely to have the depth of knowledge you have about the issues you are being questioned on so provide any necessary background information in your response. Don't use terms or acronyms that won't be familiar to your audience.
- Adopt an impartial and calm demeanor when answering questions, ensuring you keep your emotions in check regardless of how others are behaving.
- If you don't know the answer to question even after clarification just say you don't know.
- Make good eye contact with those asking the questions and the Committee Members when answering questions to help convey your answers

Procedural Points for Noting

- Predominantly but not exclusively in cases of dismissal on the grounds of capability, if any new and important medical evidence is produced, the hearing may be adjourned for a period of no more than 14 days to allow the appropriate medical reports to be obtained (Ref: Para 6.11 of Appeals Procedure).
- If an appellant does not attend on the day of the appeal after previously agreeing to do so, the committee will convene to decide forward action. The management representatives will be asked to attend for this decision.