

Employment Dismissal Appeal Policy

Human Resources

Issued by HR Policy Team

Effective from 1 February 2019

# EMPLOYMENT DISMISSAL APPEAL POLICY

# 1 Introduction

* 1. The Panel considers and determines all appeals against dismissal by Council employees, except those on JNC terms and conditions, or those covered by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, for whom separate arrangements exist. These are set out in the Appointment, Discipline and Dismissal of Chief Officers Policy.

1.2 Staff appointed by the Governing Bodies of schools, are also exempt and procedures adopted by the Governing Body will apply.

1.3 The Panel has the authority to determine the appeal and to decide on, or recommend, any action to be taken by the employing department as a result of the outcome of the appeal.

1.4 An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

**2 Grounds of Appeal**

2.1 Appeals must be made to the Head of HR, in writing, within five working days of receipt of the notice of dismissal and must outline the grounds of the appeal.

2.2 An appeal may be lodged on one or more of the following grounds:

* Procedure – where failure to follow the correct procedure has had a material effect on the decision
* The facts of the case – where the Hearing Manager came to a conclusion on a material point of fact, which no reasonable person could have reached
* Sanction – where no reasonable Hearing Manager would have decided the particular sanction given the circumstances of the case
* New evidence is available that could not have reasonably been raised at the disciplinary hearing and the absence of which had a material effect on the decision.

2.3 Appeals will not be allowed on any other grounds.

2.4 The appeal must state specific grounds, either contesting the facts and/or conclusions of the Hearing Panel’s decision to dismiss, or putting forward reasons why this was not appropriate. Any facts or arguments relied upon should be clearly stated.

2.5 Should the Head of HR determine that this requirement has not been satisfied, then a further period of five working days will be given to the appellant to clarify the grounds of appeal.

2.6 Failure by the employee to comply with these timescales may result in the appeal being deemed out of time.

**3 Composition of Panel**

3.1 Appeals will be heard by an Executive Director, or Director, who has had no prior involvement in the case.

3.2 An adviser from Human Resources will be present to advise the panel. In some cases, it may be appropriate to have a legal adviser present as well. This decision will be made by the Head of HR on a case by case basis.

3.3 An officer will attend as minute taker for the panel. In most cases this would be the relevant PA to the Director hearing the appeal.

**4 Convening the Panel**

4.1 The Panel shall meet within 14 working days of the receipt of the written appeal. Where this timescale cannot be met, the employee should be informed of the reason for the delay.

* 1. An employee will be given seven working days’ notice in writing of the appeal hearing. This will include:
* Notice in writing of the date of the hearing
* A copy of the employing department’s written submission to the Panel
* A copy of this procedure and the relevant HR policy resulting in the dismissal action

4.3 Documentation of any relevant matters to be raised and information regarding witnesses to be called must be provided by both parties at least four days prior to the hearing.

4.4 The employee may submit a written submission relating to their grounds of appeal, which should identify any parts of the evidence from the dismissal process, which s/he disputes or wishes to question.

4.5 Where witnesses are council employees, their release from duty will be arranged unless the impact on the service is unreasonable. In the latter case, arrangements may be made to hold the hearing at a more convenient time, or to adjourn it so that all relevant witnesses can be heard.

4.6 Evidence from the witnesses, may be accepted in the form of a written statement which shall, at the discretion of the Panel be read by the parties or read aloud by the witness. Sufficient copies shall be made available for members of the Panel and for the parties and their representatives (it should be noted that where a statement is presented in the absence of a witness, the Panel may give less weight to such evidence which is not capable of challenge by questioning of that witness).

4.7 The employee shall also give details of any representative on which they will rely.

4.8 The Head of HR shall, not less than three working days in advance of the hearing, send to the Panel, the employee and his/her trade union representative, the Chair of Hearing Panel a copy of the documentation for the hearing which shall comprise:

* Copy of the procedure for the hearing (and any other relevant HR procedures)
* Copies of the written statements of the employee and the employing department

4.9 Every effort should be made to avoid the submission of late documents which will only be accepted at the Panel’s discretion.

**5 Appeal Hearing**

5.1 The appeal hearing will not be a rehearing and will only address the specific grounds of appeal set out in the employee’s appeal submission and new evidence where appropriate.

5.2 The Chief Officer will Chair the panel, and will convene the hearing with the HR Adviser and the Minute taker.

5.3 The hearing may proceed in the absence of the employee and/or his/her representative.

5.6 The Chair will manage the proceedings; the procedure for the conduct of the appeal shall be as follows, but the panel may vary the procedure where it is of the view that to do so would aid the fair and efficient conduct of the appeal.

Evidence of Employee

5.7 The Chair will:

* Invite both the employee, their representative and the management side to be present in the room at the same time
* Introduce all parties and explain the purpose of the hearing
* Ask the employee or their representative to present their grounds of appeal, setting out the evidence to support their argument
* Invite the management side and the panel to put questions to the employee
* If appropriate, ask the employee to call any witnesses individually
* Invite the management side and the panel to put questions to the witnesses

Evidence of Management Side

5.8 The Chair will:

* Call upon the management side to respond to the appeal
* Allow the employee (or their representative) and the panel to put questions to the management side
* Ask the manager to call any witnesses individually
* Invite the employee (or their representative) and the panel to put questions to the witnesses

Summing Up

5.9 The Chair will:

* Ask the management side for their closing address to sum up their case. No new evidence may be introduced at this stage.
* The employee (or their representative) to be invited to make a closing address to sum up their case. No new evidence may be introduced at this stage.
* Request both sides to withdraw from the hearing to allow the panel to make their deliberations

5.10 At any stage in the proceedings Panel members, may put questions and offer advice, if they consider that further information is required on a particular point.

5.11 If the Panel consider that certain factors or grounds of the appeal require further investigation, they can adjourn the hearing for additional information to be acquired. If so, the employee will be informed of the expected duration of any adjournment. Where further information is gathered, the employee will be allowed a reasonable period of time, with their representative, to consider the new information prior to the reconvening of the appeal hearing.

5.12 In all other cases, the Panel shall seek to come to a decision on the appeal immediately following the hearing.

**6 Decision**

6.1 After the closing statements, the panel must decide on the basis of both sets of representations, together with any additional information acquired, whether to allow the appeal, reject it or substitute a lower level warning.

6.2 The possible outcomes of an appeal hearing are as follows:

* Uphold the original decision in its entirety
* Allow the appeal in its entirety
* Allow the appeal in part (where the appeal challenges more than one finding of misconduct)
* Reduce the severity of the sanction.

6.3 The decision shall be communicated in writing to the employee and the head of the employing department within five working days of the hearing, outlining reasons for the finding. There is no further right of appeal.