



<b>Title:</b>	<b>Constitution of the Council (Part 3D: Appeals Panel)</b>
<b>Owner:</b>	<b>Linda McDonald</b>
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**Adopted by Full Council on 21<sup>st</sup> May 2018**



# FUNCTIONS AND PROCEDURES OF THE APPEALS PANEL

## 1 PURPOSE

### ONLY FULL COUNCIL CAN AMEND THE FUNCTIONS OF THE APPEALS PANEL

- 1.1 To consider and decide on appeals by employees of the Council against dismissal decisions resulting from disciplinary action, including in respect of Chief Officers other than Statutory Officers (Statutory Officers have no right of appeal against a decision of the Full Council to dismiss them).

## 2 PROCEDURES OF THE APPEALS PANEL

### AMENDMENT OF THE PROCEDURES

- 2.1 Subject to compliance with the European Human Rights Directive and the rules of natural justice, the Appeals Panel may vary the procedure at hearings if they consider that it is conducive to the business.

### MEMBERSHIP

- 2.2 Membership will be a total of 3 to reflect the political make-up of the Council.

### MEETINGS

- 2.3 All meetings of the Panel shall be held at the Town Hall Burton upon Trent or the Maltsters Burton upon Trent at 10.00am unless previously agreed by the Panel.
- 2.4 The Panel will meet so often as may be required to perform the functions of the Panel.

## CHAIRMAN AND VICE-CHAIRMAN

2.5 The Council shall appoint the Chairman and the Panel shall appoint the Vice-Chairman.

## RIGHT TO ATTEND

2.6 Meetings of the Panel shall be open to the press and public except for confidential business. However, most meetings of the Panel are likely to consider confidential business and will, therefore, be held in private.

2.7 All Councillors formally appointed to the Panel by the Council have the right to attend and to vote at meetings of the Panel.

2.8 Other Councillors who are not formal members of the Committee may attend meetings of the Committee, except where Exempt Information is likely to be disclosed. If Exempt Information is likely to be disclosed, they can only attend such meetings if they can demonstrate that their attendance is necessary to perform their duties as a Councillor. If they do attend, they may ask the Chairman for consent to speak (giving reasons). The Chairman may seek the views of the Committee before making a decision. If the Chairman gives such consent, the Councillor may take part in the debate when invited to do so by the Chairman (but may not vote).

## QUORUM

2.9 A quorum shall be no less than 2 Councillors.

## HEARING PROCEDURE

2.10 Appeal Hearings will be conducted in accordance with the procedure set out in Appendix 1.

## REPORTING ARRANGEMENTS

2.11 Where necessary the Panel will make reports and recommendations to the Executive and/or Full Council arising from the outcome of their work.

## APPLICATION OF COUNCIL MEETING PROCEDURE RULES

- 2.12 Save where inconsistent with these Rules, proceedings at the Panel will be governed as set out in Rule 23 of the Council Meeting Procedure Rules– see Part 3A.

# HEARING PROCEDURE

## 1 BACKGROUND

- 1.1 This document sets out the procedure which the Appeals Panel will usually follow in hearing appeals by employees of the Council against dismissal decisions resulting from disciplinary action, including in respect of Chief Officers other than Statutory Officers.
- 1.2 The Panel may decide to vary this procedure if it is conducive to do so.
- 1.3 The purpose of this document is to provide an efficient and effective hearing process that will help the Panel to deal with all the issues that need to be resolved in a way that is appropriate and fair to the employee.
- 1.4 The procedure has been prepared with regard to relevant legislation.
- 1.5 If there is any inconsistency between this procedure and the requirements of legislation the latter will prevail. Any matter not covered in this procedure will be determined by reference to the legislation.

## 2 INTERPRETATION

- 2.1 “Appellant” means the employee bringing the appeal or their representative, as appropriate.
- 2.2 “Management Representative” means the person putting the management case.
- 2.3 “Panel Advisor” means the Chief Executive unless the Chief Executive is not able to attend for any reason (e.g. they have already been involved in the decision to dismiss), in which case another Chief Officer or a suitably qualified independent advisor not previously involved in any way shall act as advisor to the Panel.

### 3 TIMETABLE

- 3.1 In order to exercise the right of appeal against dismissal the employee must lodge the appeal in writing to the SSC Manager (HR,OD & Payments) within 10 calendar days of receiving written confirmation of the decision to dismiss, setting out the grounds for appeal; stating whether he or she is to be represented or accompanied and if so by whom; stating whether he or she wishes to call witnesses and if so their names; and should include copies of any additional documents not used at the original hearing.
- 3.2 The grounds for appeal referred to at paragraph 3.1 above should be one or more of the following:
- 3.2.1 The finding or penalty is unfair (stating reasons)
  - 3.2.2 New evidence has come to light (stating the evidence)
  - 3.2.3 The Capability & Disciplinary Procedure was not used correctly (stating how)
- 3.3 The Panel will consider the appeal within 21 working days, excluding the week of a Borough Council election.

### 4 SCOPE

- 4.1 The purpose of the hearing is to decide whether or not to uphold the decision to dismiss.
- 4.2 The appeal will not ordinarily be a re-hearing but will only consider the grounds of the appeal which have been set out in the notice of appeal from the Appellant.
- 4.3 A full re-hearing may be requested by the Appellant or the Management Representative; alternatively, the Chairman may decide that a re-hearing is necessary. The only grounds for a re-hearing are:
- 4.3.1 The disciplinary hearing procedure was not used correctly;
  - 4.3.2 New evidence has come to light which could not reasonably have been produced at the original hearing.

- 4.4 When a request for a full re-hearing is received the Chairman should take advice from the Panel Advisor and the Panel shall decide whether or not to allow this.

## 5 REPRESENTATION

- 5.1 The Appellant may be represented or accompanied during the meeting by a solicitor, a barrister, a representative of a trade union or, with the permission of the Panel, another person.
- 5.2 The Management Representative shall be a solicitor, a barrister or an officer of the Council. They may be accompanied by the person who made the original decision to dismiss (if they are not the Management Representative) and any special adviser who was present at the original hearing.

## 6 LEGAL ADVICE

- 6.1 The Panel may take legal advice, in private if necessary, at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Panel should be shared with the Appellant and the Management Representative if they are present.

## 7 ADJOURNMENT

- 7.1 At any time during the proceedings the Chairman may adjourn the appeal, and if the date, place and time of the adjourned appeal are announced before the adjournment, a further notice shall not be required.

## 8 INTRODUCTIONS

- 8.1 The Chairman will formally introduce all the members of the Panel and everyone else involved in the hearing.



## 9 PRELIMINARY MATTERS

- 9.1 The Chairman will confirm that all persons present and involved have received copies of the agenda, the procedure and all relevant supporting documents.
- 9.2 The Chairman will explain the purpose and scope of the hearing.
- 9.3 The Chairman will ask both sides' representatives to confirm what witnesses they intend to call (witnesses, other than the appropriate manager and the Appellant, will ordinarily only be present whilst they are giving their evidence).
- 9.4 The Chairman will also seek to resolve any preliminary issues before the hearing starts. If these cannot be agreed, the Panel shall decide them.

## 10 THE APPELLANT'S CASE

- 10.1 The Appellant will present their case by reference to their notice of appeal.
- 10.2 With the Panel's permission, the Appellant may then call such witnesses as are reasonably necessary to substantiate their case.
- 10.3 The procedure for each witness shall be:
  - 10.3.1 The Appellant shall ask them questions;
  - 10.3.2 The Management Representative may ask them questions;
  - 10.3.3 The Panel may ask them questions;
  - 10.3.4 The Panel Advisor may ask them questions;
  - 10.3.5 The Appellant may ask them further questions to clarify matters raised by the Management Representative, the Panel and/or the Panel Advisor during their questioning.
- 10.4 The Management Representative may ask the Appellant questions.
- 10.5 The Panel may ask the Appellant questions.
- 10.6 The Panel Advisor may ask the Appellant questions.
- 10.7 The Appellant may only introduce matters not set out in their notice of appeal with the agreement of the Panel.

## 11 THE MANAGEMENT CASE

- 11.1 The Management Representative will explain the reasons for the original decision to dismiss and respond to the Appellant's case.
- 11.2 With the Panel's permission, the Management Representative may then call such witnesses as are reasonably necessary to substantiate their case.
- 11.3 The procedure for each witness shall be:
  - 11.3.1 The Management Representative shall ask them questions;
  - 11.3.2 The Appellant may ask them questions;
  - 11.3.3 The Panel may ask them questions;
  - 11.3.4 The Panel Advisor may ask them questions;
  - 11.3.5 The Management Representative may ask them further questions to clarify matters raised by the Appellant, the Panel and/or the Panel Advisor during their questioning.
- 11.4 The Appellant may ask the Management Representative questions.
- 11.5 The Panel may ask the Management Representative questions.
- 11.6 The Panel Advisor may ask the Management Representative questions.
- 11.7 The Management Representative may only introduce new matters with the agreement of the Panel.

## 12 OTHER EVIDENCE

- 12.1 The Panel may invite any other person to be present to assist in resolving any question or fact which is in dispute. Such a person will only be present whilst giving information and being questioned on it.

## 13 SUMMING UP THE CASES

- 13.1 The Management Representative will then sum up their case.

- 13.2 The Appellant will then sum up their case.
- 13.3 Only points raised during the hearing may be referred to when summing up.
- 13.4 Either party may, with the leave of the Panel, address the Panel a second time, but where the Panel grants leave to one party it shall not refuse it to the other.

## 14 DECISION

- 14.1 All parties will withdraw, with the exception of the clerk and the Panel Advisor, while the Panel considers its decision.
- 14.2 The Committee will then decide whether to:
  - 14.2.1 Uphold the original decision to dismiss;
  - 14.2.2 Impose an alternative sanction short of dismissal in substitution for the original decision;
  - 14.2.3 Overturn the original decision and impose no sanction.
- 14.3 Should, during its deliberations, the Panel wish to recall either side (normally only for clarification on evidence or submissions given), both parties shall be present even where only one is concerned with the point that has given rise to doubt.
- 14.4 The decision reached will be final. Decisions will usually be announced orally to the parties. Exceptionally the decision may be deferred for up to five working days.

## 15 NOTIFICATION OF THE DECISION

- 15.1 The decision will be confirmed in writing, with reasons. This will usually be within five working days of the conclusion of the hearing.