

# Public Document Pack

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14 April 2021

## Board of Appeal

A virtual meeting of the Board will be held at **10.30 am** on **Thursday, 22 April 2021**.

**Note:** In accordance with regulations in response to the current public health emergency, this meeting will be held virtually with participants in remote attendance.

**Items 1 and 2 in Part I of the agenda will be available to watch via the internet at the address below. The items in Part II of the agenda contain exempt information, as indicated, and therefore will not be broadcast.**

<http://www.westsussex.public-i.tv/core/portal/home>

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## Agenda

### Part I

#### 1. **Appointment of Chairman**

The Board on this occasion will comprise:

Cllr Patricia Arculus

Cllr Morwen Millson

Cllr Ashvin Patel

The Board is invited to appoint a Chairman at the meeting.

#### 2. **Procedure to be followed at Appeal Hearings against Dismissal** (Pages 3 - 10)

The procedure to be followed at appeal hearings against dismissal is attached (cream paper).

**Note:** As, in accordance with regulations in response to the public health emergency, this will be a virtual meeting with participants in remote

attendance, the procedure will be adapted as necessary to fit the current circumstances.

## **Part II**

### **3. Exclusion of Public and Press**

The Board is asked to consider in respect of the following items whether the public, including the press, should be excluded from the meeting on the grounds of exemption under Part I of Schedule 12A of the Local Government Act 1972, as indicated below and because, in all the circumstances of the case, the public interest in maintaining the exemption of that information outweighs the public interest in disclosing the information.

### **4. To hear an appeal against dismissal**

The following documents are enclosed **for members of the Board only**:

- (a) Documents prepared by Human Resources (blue paper);
- (b) List of accompanying documents prepared for the management case (green paper); and
- (c) Documents submitted by or on behalf of the appellant (lilac paper).

Exempt: paragraph 1 – Information relating to any individual

**To the Appellant and all members of the Board of Appeal**

## **Procedure to be followed at Virtual Appeal Hearings against Dismissal or Grievance Outcome**

This information is for all those attending an appeal against dismissal or grievance outcome that is to be heard virtually.

### **1. The Staff Appeals Panel**

1.1 The Staff Appeals Panel of the County Council acts as the Council's appeal body. Boards of Appeal are drawn from the Staff Appeals Panel to hear individual appeals.

1.2 Dismissal may have been on the grounds of discipline (misconduct), capability, redundancy or ill health retirement. The County Council's Disciplinary, Redundancy, Sickness and Capability Procedures and Grievance Procedure give employees' rights of appeal at all stages, but all stages prior to dismissal or grievance appeal are heard at officer level.

1.3 The Board of Appeal hears appeals against dismissals or grievance as the final body of appeal within the County Council. The role of the Board of Appeal is to consider the case on the evidence and by reference to any grounds on which the employee is appealing and the management response and to determine whether the evidence heard changes the decision to dismiss. The Board may limit itself to considering the grounds that the dismissed employee raises if other aspects are not disputed.

1.4 The Board will consider whether any disputed disciplinary allegations against the employee have been proved and, if so, determine what sanction is appropriate. The Board will consider evidence put forward by the employee concerned and the Presenting Officer for the management case, including evidence from witnesses called. They will then consider whether, on the evidence, the employee should be dismissed or whether another determination is more appropriate.

### **2. Roles - who will be present at the Virtual Hearing?**

2.1 At the virtual hearing, the following people will be present for the whole of the hearing:

- The Members of the Board of Appeal – consisting of 3 or 4 elected County Councillors, including a Chairman
- The Adviser to the Panel (from Legal Services or Human Resources).
- The (dismissed or aggrieved) employee – called the Appellant
- Their representative (a colleague or Trade Union representative).
- The Presenting Officer/Management Representative (this will be a Senior Manager from the Service, whose role it is to present the management case, respond to the Appellant's case and answer questions relating to the

service, context etc. during the hearing – this person will usually be the chair of an earlier decision-making panel).

- An adviser to the Presenting Officer (usually from Human Resources) to support the presentation of the management case and responses to questions.
- A note taker who will take notes during the hearing, alternatively these may be taken by the adviser to the Board of Appeal.
- One or two officers (usually from Democratic Services), one of whom will be present for all of the hearing to ensure all those expected to attend have been able to join the hearing virtually and to ensure once the hearing has commenced that if anyone drops out of the hearing as a result of technical issues, the Chairman is informed so the hearing can be paused and re-started once all parties are present.

2.2 Additionally, there may be present during the meeting:

- Witnesses called by either party, who are present only for the time that they are required to give evidence.
- The Chief Executive or her nominee (in exceptional cases).

2.3 Members of the County Council may have a working relationship with particular officers or may sit on a committee or panel which relates to the subject of the case, or through some other work may have knowledge of the case or facts relating to it. In such cases it may be appropriate to declare a conflict of interest, in order that an alternative panel member can be arranged.

### **3. Arranging the virtual Hearing - witness attendance**

3.1 An officer from Democratic Services will arrange a virtual hearing date in discussion with members of the Board, Human Resources and the Appellant. To expedite this process, there are a number of pre-arranged hearing dates, and Democratic Services will endeavour to use these pre-agreed dates wherever possible.

3.2 Once the date has been finalised, the Appellant shall be given notice in writing, at least ten clear working days in advance of the time and place of the hearing.

3.3 The Appellant may be represented at the Hearing by a trade union representative or work colleague.

3.4 It is important that the Appellant identifies whether any witnesses should be required to participate in the hearing – it may be acceptable for evidence to be presented by a written statement but this would apply only where the evidence is not to be challenged.

3.5 Where witnesses are required to attend they will be provided with a link to the join the virtual meeting. They will be given an opportunity to test their

virtual access and will be asked to provide a phone number which they can be contacted on during the appeal hearing.

#### **4. Exchange of documents**

4.1 Democratic Services will arrange for any documents, on which either the Appellant or the Presenting Officer will rely, to be exchanged. To do this, Democratic Services will require the documents from both the Appellant and the Presenting Officer to be provided to them no later than 8 working days before the hearing. These documents will then be photocopied and supplied to the other party no later than 6 working days before the hearing.

4.2 The panel members and Adviser will also be supplied with all the documents at that time.

4.3 If the Appellant wishes to produce a written statement for the Board to consider, this should be sent to Democratic Services at least 8 working days before the hearing. Democratic Services will forward any such documents to the Board and to the Presenting Officer with the other documents.

4.4 It is important that Board is able to understand the grounds for appeal before the day of the hearing. Appellants must provide this information in their letter of appeal.

#### **5. Before the Board of Appeal**

5.1 Papers will be sent out to the members of the Board of Appeal, Adviser, the Appellant and the Presenting Officer, to give all parties the opportunity to read through the paperwork before the hearing.

5.2 The Appellant is encouraged to contact their representative and prepare for the hearing. This could include deciding whether witnesses should be required to attend, preparing a list of questions for witnesses, agreeing what points to make in the opening statement and deciding who will present and ask questions. The representative will not be able to answer questions on behalf of the Appellant.

5.3 The Appellant will be asked to confirm if they have access to a device that will enable them to join a virtual meeting using Microsoft Teams. If they do not have access to such a device the County Council will arrange for a device to be made available for their use in a designated office at County Hall, Chichester on the day of the hearing.

5.4 The Appellant will be provided with a link to join the virtual hearing and will also be encouraged to participate in a test in advance of the hearing date to ensure they will be able to access the virtual hearing successfully.

#### **6. The Procedure to be followed at a virtual hearing**

6.1 For hearings being held virtually there is a formality which requires the start of the hearing to be webcast. This process ensures the meeting complies with the appropriate legislation. Only the Adviser to the Board and the members

appointed to it are required to be present for this, (known as Part I of the meeting). Part I of the meeting enables the members to select a Chairman for the Board of Appeal and agree that the remainder of the meeting will take place in a private session (known as Part II).

6.2 Whilst this formality is taking place the other parties involved (including the Appellant and any representative) should join the Part II virtual meeting using the link provided. They will remain in the virtual 'lobby' until all parties including the members and Adviser are also in the lobby. The technical support officer will then admit everyone at the same time to the virtual hearing. The Chairman will welcome the parties and may make some general comments, for example, regarding timings.

6.3 The Appellant and/or his/her representative will present their case and have the opportunity of calling their witnesses. When the Appellant or his/her representative is ready to call their witness(es) they are asked to inform the Chairman. The technical support officer will contact the witnesses to ask them to join the hearing and they will be admitted through the lobby at the appropriate time. When the Appellant, Presenting Officer, the Board and Adviser have finished asking their questions the witness will be required to leave the virtual hearing.

6.4 The Presenting Officer will set out the case on behalf of WSCC and have the opportunity of calling witnesses. When the Presenting Officer is ready to call their witness(es) they are asked to inform the Chairman. The technical support officer will contact the witness(es) to ask them to join the hearing and they will be admitted through the lobby at the appropriate time. When the Appellant, Presenting Officer, Board and Adviser have finished asking their questions the witness will be required to leave the virtual hearing.

6.5 Both parties will have the opportunity to sum up their cases if they wish. Prior to the summing up, there will be a short adjournment of ten to fifteen minutes for the parties to prepare their summing up. Following the summing-up, the Appellant, his/her representative and the management representatives will be asked to leave the virtual hearing while the Board deliberates and reaches their decision.

6.6 The Adviser will remain in the hearing whilst the Board deliberates. All parties should remain available to re-join the hearing to provide clarification if necessary (if that is required both sides will need to re-join).

## **7. Additional or new information**

7.1 As a general rule, an appeal should not consider information that has not previously been examined by a dismissal or grievance panel.

7.2 However, there may be exceptional circumstances in which documents or witnesses, which were not presented at the dismissal or grievance meeting, may be taken into account. The new information, either witness or document, has to be of material substance– i.e. it has to provide some substantial new information, which is important to the outcome. There must be a good reason why it was not available for the original decision maker to take account of it.

7.3 In the event that the Appellant or management side submits new information at the time of the document exchange or brings a new witness or document to the hearing, the Board will need to consider if it can be admitted, by hearing representations from both parties. The Adviser will advise on a case-by-case basis and the new information will not automatically be allowed.

7.4 If the document/witness information does not add any new information, it will usually not be allowed.

7.5 If however the document contains something of material substance, it may be allowed, which may lead to an adjournment, to give the other party time to prepare a response, or, if a document is presented on the day, photocopy, read and prepare a response.

7.6 If the Appellant wants to use a summary of the arguments they intend to make about the case they may do so, provided that these are submitted to the Board at the time of the exchange of documents.

## **8. Other procedural matters**

8.1 If anyone attending the hearing needs a reasonable adjustment to enable them to fully participate in the virtual hearing they should put a request in to the Officer from Democratic Services who is arranging the Hearing. Such adjustments could include ensuring the provision of frequent breaks or an interpreter.

8.2 When using Microsoft Teams:

- All parties involved should keep their videos switched on during the hearing. Microphones should be on mute unless a person is speaking.
- The chat function must not be used during the hearing unless it concerns a technical issue relating to accessing the hearing using the technology or software.
- The 'raised hand' function should be used where a person wishes to speak.
- All parties involved are reminded that the hearing is confidential and therefore there should be no other parties present in the same room whilst the hearing is taking place.

8.3 It is one of the roles of the Chairman to arrange for breaks in the

proceedings, throughout the day, at suitable points in the proceedings (for example, following the end of the Appellant's submission). The Chairman will agree a time for all parties to reconvene. They will be required to be admitted through the virtual lobby once all parties are present at the appropriate time.

8.4 Both the Management Representative and the Appellant (or their representative) can request an adjournment in the proceedings. The Chairman will make a decision on whether to allow (or not) such requests.

8.5 It is one of the roles of the Chairman to ensure that the Board keeps to time. Whilst every endeavour should be made to ensure the virtual hearing lasts for no more than a day, hearings occasionally run into a second day.

8.6 Virtual Boards of Appeal will usually start at 10.00 in the morning. It is unusual for hearings to run beyond 6pm, unless there is very little still to cover, in which case it is often preferable to conclude the hearing in one day. Remaining beyond 6pm should be with the agreement of all parties.

8.7 During the meeting, notes will be taken. These notes form a record for the County Council of the meeting and will be shared with the employee on request after the hearing. No audio recording of the virtual hearing will be made.

## **9. Deliberation**

9.1 The Adviser will remain with the Board during its deliberations to provide legal advice. It is the role of the Adviser to:

- Guide the Board in making a decision
- Ensure that the Board understands the case in relation to employment law and the policies and procedures of West Sussex County Council
- Provide clarity and direction to the Board
- Advise on previous cases to ensure consistency
- Advise on sanctions/outcomes

9.2 During their deliberation, the Board may recall any of the parties (the Appellant, their representative, the Presenting Officer or the Management Representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return to the hearing.

## **10. Outcomes**

10.1 The Board has the following range of outcomes available:

- Uphold the decision to dismiss or;
- Modify the decision by substituting a lower level of sanction (e.g. a final warning); or to
- Uphold the appeal and re-instate the employee.

10.2 The elected members who make up the Board of Appeal will each have a



vote on the matter and may arrive at their decision by majority vote if need be. The Adviser to the Panel can advise the members of the Board on outcomes.

10.3 If the Board dismisses the allegation(s) or modifies the decision to dismiss, the Appellant is to be reinstated into his/her employment, subject to whatever warning or alternative sanction the Board may decide. This means that the Appellant will be reinstated into their former position – there is no means to reinstate the Appellant into an alternative role/location/grade etc. The powers of the Board do not extend to making any award of compensation to the Appellant or to varying unilaterally the Appellant’s contract of employment – i.e. there is no power to demote the Appellant, require them to work elsewhere etc.

10.4 All the main parties (the Appellant, their representative, the Presenting Officer and the Management Representative) will be contacted and asked to re join the virtual hearing at the end of the deliberations.

10.5 The Board shall announce their decision verbally to all parties and confirm the decision in writing within five working days. If more time is required for deliberation the Board Chairman will advise when the decision will be notified to the parties.

## **11. Review of appeal**

11.1 If the Board wishes to make recommendations or observations to management which are outside the remit of the appeal, they will provide these to the Adviser following the conclusion of the hearing. These will be considered by the relevant Director (and Presenting Officer if appropriate). A response will be provided to the Adviser and included in the annual report to Governance Committee.

**January 2021**

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