

Procedure to be followed at Appeal Hearings against Dismissal or Earlier Grievance Outcome

This information is for all those attending an appeal against dismissal or earlier grievance outcome.

1. The Staff Appeals Panel

- 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.
- 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, Grievance Procedure give employees' rights of appeal at all stages, but all stages prior to dismissal or grievance appeal are heard at officer level.
- The Board of Appeal hears appeals against dismissals or grievance appeals 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.
- 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 Hearing?

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

- The Members of the Board of Appeal – consisting of 3 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 respond to the appellant's case and answer questions relating to the service, context etc. during the hearing – this person will usually be usually the chair of an earlier decision-making panel).
- An adviser to the Presenting Officer (usually from Human Resources) to present the management case.
- A Note taker who will take notes and carry out any administrative tasks, such as photocopying, and take notes during the hearing.

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 (in exceptional cases).

Conflict of interest

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 Hearing - witness attendance

An officer from Democratic Services will arrange a 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.

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.

The appellant may be represented at the Hearing by a representative, who may be his/her trade union representative or work colleague.

It is important that the appellant identifies whether any witnesses should be required to attend the hearing – it may be acceptable for evidence to be presented by written statements but this would apply only where the evidence is not to be challenged. The appellant should advise Democratic Services if particular witnesses need to attend the hearing of the appeal in person.

4. Exchange of documents

- Democratic Services will arrange for any documents, on which either the employee 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.
- The panel members and attending Adviser will also be supplied with all the documents at that time.
- 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.
- It is important that Panel is able to understand the grounds for appeal before the day of the hearing. Appellants must provide this information in their letter of appeal.

Late provision of documents

See below under "Additional or new information".

5. Before the Board of Appeal

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.

The appellant is encouraged to meet 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.

6. The Procedure to be followed at a hearing

Before the formal appeal hearing begins, the members select a Chairman for the Board of Appeal.

The Chairman welcomes the parties and may make some general comments, for example, regarding timings.

The Appellant's case and grounds for appeal

- The appellant (or his/her representative) shall put forward their case,

including any comments about the earlier decision which is the subject of appeal, in the presence of the Presenting Officer and the Management Representative. They may also call witnesses and direct the Board to any relevant documents. The appellant's representative may call the appellant to give evidence in connection with any matter about which the Board is being asked to make findings.

- The Presenting Officer shall then have the opportunity to ask questions of the appellant and his/her witnesses.
- The Board and Adviser shall have the opportunity to ask questions of the appellant and his/her witnesses and may ask questions of the appellant's representative to clarify any aspects of the case.

The Management case

- The Presenting Officer shall set out the case, the evidence that will be considered, the findings the Board is asked to make and may comment on the grounds of appeal in the presence of the appellant and his/her representative.
- The Presenting Officer may call witnesses and direct the Board to any documents which are relevant to the matter or the grounds of appeal.
- The appellant (or his/her representative) shall then have the opportunity to ask questions of any witness on the evidence presented by him/her.
- The Board, and Adviser shall have the opportunity to ask questions of the Presenting Officer to clarify the matters being presented to it and will also be able to ask questions of the witnesses, as they speak, in turn.

The Presenting Officer followed by the appellant (or his/her representative) shall each have the opportunity to sum up their cases if they so wish. No new information should be introduced at this stage.

The parties will then leave the room, leaving the Board of Appeal to deliberate with the Adviser.

7. Additional or new information

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

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.

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 Panel will need to consider if it can be admitted, by hearing representations from both parties. The Adviser to the panel will advise on a case-by-case basis and the new information will not automatically be allowed.

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

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.

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 panel at the time of the exchange of documents.

8. Other procedural matters

Breaks and Adjournments

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). There will also be a break for lunch.

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.

Time and length of hearing

It is one of the roles of the Chairman to ensure that the Panel keeps to time.

Whilst every endeavour should be made to ensure the meeting lasts for no more than a day, panels occasionally run into a second day.

Boards of Appeal will start at 10.30 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.

Reasonable Adjustments

If the appellant, or any other of the people attending the hearing, need a reasonable adjustment to enable them to fully participate, they should put a request in to the Officer from Democratic Services who is arranging the

Hearing. Such adjustments could include – ensuring the room has wheelchair access, provision of frequent breaks or an interpreter.

Notes

During the meeting, notes will be taken, usually by the administrative officer. These notes form a record for the County Council of the meeting and will be shared with the employee after the hearing.

9. Deliberation

The Adviser to the Board will remain with the Board during its deliberations and will advise the Panel.

It is the role of the Adviser to:

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

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

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.

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.

If the Board dismisses the allegation(s) or modifies the decision to dismiss, the employee 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 employee's contract of employment – i.e. there is no power to demote the employee, require them to work elsewhere etc.

Communicating the outcome

All the main parties (the appellant, their representative, the Presenting Officer and the Management Representative) will be called back to the room at the end of the deliberations.

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

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.

Last updated January 2020