



# West Lancashire Borough Council

## Procedure for Dealing with Employment Related Appeals against Dismissal or Demotion in all applicable Policies.

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## 1. Introduction

The employment policies that can potentially result in the dismissal or demotion of an employee are disciplinary policy and procedure, capability /performance policy, management of sickness absence policy and organisational change policy selection for redundancy.

This process details the route by which these primary decisions to dismiss or demote can be appealed by the individual employees subject to the decisions. This applies to all Council employees with the exception of Chief Officers and those in statutory roles that are governed by processes detailed in the constitution.

## 2. Appeals Hearing Officers Roles

An employee who wishes to appeal against a disciplinary, capability, performance, sickness management or selection for redundancy decision, at whatever level of sanction short of dismissal or demotion, because they believe it to be wrong, unfair, or unjust must write to the Head of Service or Corporate Director and the Human Resources and Organisational Development Team, or as appropriate for the level of action being delivered to the employee.

The appeal must set out the grounds for appeal and be received within **ten working days** of the employee's receipt of the written confirmation of the decision and level of action to be taken.

Except in cases where they dealt with the matter initially, the Head of Service or Corporate Director or Chief Operating Officer (or other nominated officer) will hear all appeals, as appropriate, based on the level of action being taken and their decision will be final.

Appeals against dismissal will always be heard by Chief Operating Officer or Corporate Director accompanied by a HR&OD Officer and a Legal Services Officer.

## 3. Possible Outcomes for an Appeal

An appeals hearing may uphold an appeal, substitute a lesser sanction, confirm the action taken, or in exceptional circumstances, may issue a higher level of sanction (unless the original decision is a dismissal).

If a decision to dismiss is overturned, an employee will be reinstated immediately and be paid for any period between the date of the original summary dismissal and the successful appeal decision.

An employee's continuous service will not be affected. Appeals against dismissal taken by the Corporate Director, will be heard by the Chief Operating Officer.

The decision of the employment appeals hearing will be full and final, and no other appeal will be available within the Council.

#### 4. Officers Authorised to Issue Warnings and Conduct Appeal Hearings in relation to Disciplinary Matters

| Level of Sanction                                | Designated Hearing Officer         | Designated Officer to Whom Appeals are made |
|--|------------------------------------|---|
| Corrective Guidance letter (Not formal Sanction) | Line Manager                       | No Appeal                                   |
| First Written Warning                            | Line Manager                       | Senior Manager*                             |
| Final Written Warning                            | Senior Manager*                    | Head of Service                             |
| Action Short of Dismissal including Demotion     | Head of Service                    | Corporate Director                          |
| Summary Dismissal                                | Head of Service/Corporate Director | Corporate Director /Chief Operating Officer |

\*Senior Manager = 3<sup>rd</sup> tier or above

#### 5. Officers Authorised to Issue Warnings and Conduct Appeal Hearings in relation to Capability/Performance Matters

| Level of Sanction                                | Designated Hearing Officer         | Designated Officer to Whom Appeals are made |
|--|------------------------------------|---|
| Corrective Guidance letter (Not formal sanction) | Line Manager                       | No Appeal                                   |
| Stage One (First Written Warning)                | Line Manager                       | Senior Manager*                             |
| Stage Two (Second Written Warning)               | Line Manager                       | Senior Manager*                             |
| Stage Three (Final Written Warning)              | Senior Manager*                    | Head of Service                             |
| Stage Four Summary Dismissal or Demotion         | Head of Service/Corporate Director | Corporate Director /Chief Operating Officer |

\*Senior Manager = 3<sup>rd</sup> tier or above

**6. Officers Authorised to Issue Warnings and Conduct Appeal Hearings in relation to Sickness Management Matters – Short Term Repeated Absence**

| Level of Sanction                              | Designated Hearing Officer         | Designated Officer to Whom Appeals are made |
|--|------------------------------------|---|
| Return to Work Interview (Not formal sanction) | Line Manager                       | No Appeal                                   |
| Stage One                                      | Line Manager                       | Senior Manager*                             |
| Stage Two                                      | Line Manager                       | Senior Manager*                             |
| Stage Three (Attendance Hearing)               | Head of Service                    | Corporate Director                          |
| Stage Four Summary Dismissal or Demotion       | Head of Service/Corporate Director | Corporate Director /Chief Operating Officer |

\*Senior Manager = 3<sup>rd</sup> tier or above

**7. Officers Authorised to Issue Warnings and Conduct Appeal Hearings in relation to Sickness Management Matters – Long Term Absence**

| Level of Sanction  | Designated Hearing Officer         | Designated Officer to Whom Appeals are made |
|--------------------|------------------------------------|---|
| Case Review        | Head of Service                    | No Appeal                                   |
| Attendance Hearing | Head of Service/Corporate Director | Corporate Director/Chief Operating Officer  |

**8. Officers Authorised to Issue notice of being At Risk of Redundancy and Appeal Process**

| Level of Sanction                      | Designated Hearing Officer | Designated Officer to Whom Appeals are made |
|--|----------------------------|---|
| Declare employee at Risk of Redundancy | Head of Service            | Corporate Director/Chief Operating Officer  |

**9. Hearings and Appeals Protocol for appeals against sanctions lower than dismissal.**

The procedure to be followed at a Disciplinary, Capability, Performance, Sickness, hearing, or appeal is as follows:

- 9.1 An Appeal is a re-hearing of a case at the previous stage, excluding consideration of any allegations that were not proven. Where the facts of a case are not in dispute and there are no procedural issues arising from the conduct of the original hearing, but only the severity of the penalty is at point, both sides may agree on a statement of facts to be jointly submitted in evidence. In such circumstances, it may be appropriate for the normal order of the hearing to be reversed and for the employee to present their case first.

- 9.2 The Appeal Hearing will be administered and arranged by The HR & OD Team. The HR &OD Team will administer all the documentation associated with the Appeal Hearing. The presenting manager will be required to produce a covering summary of the case and ensure all material that is to be relied upon is present in the papers presented.
- 9.3 New evidence may only be introduced where it is significant to the case and was not previously available to either side. In such situations, the evidence must be disclosed at the earliest opportunity and normally at least five working days before the appeal hearing. If new evidence is produced, at the request of either side, the appeal may be adjourned to enable further investigation and a review of the original decision to take place.
- 9.4. Usual practice would be for the Hearing Officer to introduce those present and confirm the purpose of the hearing.
- 9.5 The management representative(s) (who is usually the officer who heard the original hearing) shall present the case in the presence of the employee and their representative and may call witnesses to provide evidence.
- 9.6 The employee, or their representative or companion, will then have an opportunity to ask questions of the management representative(s) on the evidence provided by them and any witnesses called.
- 9.7 The Hearing Officer will then have an opportunity to ask questions of the management representative(s) and any witnesses called.
- 9.8. The employee, or their representative or companion, shall present their case in the presence of the management representative(s) and may call witnesses to provide evidence.
- 9.9 The management representative(s) will then have an opportunity to ask questions of the employee and any witnesses called by the employee.
- 9.10 The Hearing Officer will then have an opportunity to ask questions of the employee and any witnesses called by the employee.
- 9.11 The management representative(s) and the employee, or their representative or companion, will then have the opportunity to sum up, their case.
- 9.12 No new evidence may be introduced by either party at this stage.
- 9.13. The management representative(s) and the employee and their representative or companion, together with any witnesses, will then withdraw from the proceedings.
- 9.14 The Hearing Officer will then deliberate in confidence. The HR and Legal Advisor will be present during deliberations to assist the

hearing officer but will not be the decision makers. If it is necessary to recall one or other of the parties to clarify any evidence provided, both parties will return to the hearing, notwithstanding that only one party may be concerned with the evidence requiring clarification.

- 9.15 The hearing officer will endeavour to announce their decision either orally on the day in person or by telephone, or in writing at a later date, as may be determined. If more time is required, the parties will be notified before the close of business and be provided with an estimated day upon which the decision will be confirmed.
- 9.16 The decision of the hearing officer, including an oral decision, will be confirmed in writing, within five working days of the hearing, or appeal, along with confirmation of an employee's right of appeal.
- 9.17 Please note that if this is appeal hearing, there is no further right of appeal as the appeal decision is final.

## **10 Protocol for Appeals Following a decision to Dismiss or Demote an Employee from employment.**

- 10.1 The dismissal appeal hearing will consider an appeal for dismissal or demotion or a sanction lesser than dismissal when it cannot be heard by a Head of Service or the Corporate Director because they may have had prior involvement in the case at the hearing stage. The hearing officer and decision maker will be the Corporate Director or Chief Operating Officer.
- 10.2 The HR & OD Manager (or nominated officer), a Council Solicitor representing the Council will attend the dismissal appeal hearing to advise where necessary on employment issues, procedural and legal matters and to take notes of the hearing, respectively.
- 10.3 The remit of the dismissal appeals hearing is to consider the detail of an appeal lodged by an employee against any formal disciplinary/capability/performance/sickness management or redundancy decision to dismiss. The dismissal appeal hearing may dismiss the appeal, uphold the appeal, or allow the appeal in part by substituting a lesser sanction.
- 10.4 Appeals are a re-hearing of a case at the previous stage, excluding consideration of any allegations that were not proven. Where the facts of a case are not in dispute and there are no procedural issues arising from the conduct of the original hearing, only the severity of the penalty is at issue. Both sides may agree on a statement of facts to be jointly submitted in evidence. In such circumstances, it may be appropriate for the normal hearing order to be reversed and for the employee to present their case first. The hearing officer of the dismissal appeal hearing will determine when this should occur.

- 10.5 New evidence may only be introduced where it is significant to the case and was not previously available to either side. In such situations, the evidence must be disclosed to the management or the employee and the HR and Legal officers at the earliest opportunity and normally at least five working days prior to the appeal hearing. If new evidence is produced at the request of either side, the appeal may be adjourned to enable further investigation and a review of the original decision to take place.
- 10.6 Notification of the Appeal - The Human Resources & Organisational Development Team will confirm the arrangements for the appeal in writing with the employee. The letter will normally be hand delivered or sent by recorded delivery.
- 10.7 The dismissal appeal hearing will endeavour to consider the appeal within twenty-five working days from receipt of the letter confirming the employee's wish to appeal.
- 10.8 Exchange of papers- Both parties must submit a written statement of the case 10 working days before the appeal hearing. The statement of case will then be circulated not later than five working days before the date of the dismissal appeal hearing. The hearing officer may only accept submissions of documents on time.
- 10.9 Employee must submit a written statement of the case, with a reasonable explanation for appealing the decision of the original hearing. If this is not provided the appeal may be dismissed.
- 10.10 An employee's statement of the case should contain the following:
- The grounds for the appeal.
  - Copies of any evidence that will be submitted to support an employee's case.
  - The reason(s) why the appeal should be upheld.
- 10.11 Management's statement of the case should contain the following:
- Details of the background to the case.
  - A record of the disciplinary/capability/performance /sickness management hearing, including copies of witness statements or other evidence as applicable. Or redundancy selection criteria used to declare the employee at risk.
  - The reason(s) why decision to dismiss was taken.
  - The reason (s) why the appeal should be dismissed.



## **11. Procedure to be followed at the Dismissal or Demotion Appeal Hearing**

- 11.1 Each party will provide an oral submission which outlines and supports the arguments put forward in their respective statement of the case. Normally the oral presentation will be made in the following order, but this may be varied at the discretion of the Hearing Officer:
- 11.2 The management representative(s) will present the management's case and call witnesses as appropriate.
- 11.3 An employee will be entitled to be accompanied by a Trade Union representative or work colleague at all disciplinary appeals. This is known as the employees companion. The companion will be present and may present an employee's case, call witnesses, observe proceedings, and advise an employee. But they cannot answer questions on an employee's behalf. There will be no right to external legal representation in any internal appeal proceedings.
- 11.4 Following each presentation, the hearing officer and HR&OD and Legal Services Officers will have the opportunity to ask questions of either party. In addition, either party can ask questions about the other party's presentation.
- 11.5 When a witness has presented their statement, questions may be asked by the hearing officer and HR&OD and Legal Services Officers, by management representative(s) and by the employee or their companion.
- 11.6 The management representative(s) and the employee, or their companion, will then have the opportunity to sum up, their case.
- 11.7 Either party may not introduce any new evidence at this stage.
- 11.8 The management representative(s) and the employee and their companion, together with any witnesses, will withdraw from the proceedings.
- 11.9 The dismissal appeal hearing officer will then deliberate in confidence. The HR and Legal Advisor will be present during deliberations to assist the hearing officer but will not be the decision makers. If it is necessary to recall one of the parties to clarify any evidence provided, both parties will return to the hearing, notwithstanding that only one party may be concerned with the evidence requiring clarification.
- 11.10 An adjournment may be called at the discretion of the hearing officer at any time during the appeal.

- 11.11 The decision of the dismissal appeal hearing, including the oral decision, will be confirmed in writing, normally within five working days of the appeal. If more time is required, the parties will be notified before the close of business and be provided with an estimated day upon which the decision will be confirmed.
- 11.12 Please note: The hearing officer may adjourn the proceedings at any stage if appropriate. If the adjournment enables additional information to be gathered, the hearing officer will specify the nature of the information required. Any adjournment will be for a stated period determined by the hearing officer.
- 11.13 Witnesses will be required to be on-call throughout the proceedings but will only be present for some appeals.
- 11.14 Where witnesses are called to provide evidence at an appeal, the Council reserves the right to conceal the identity of any or all of the witnesses if there is a legitimate reason to do so, e.g., where there is a potential risk to the safety of witnesses if their identity is disclosed. In these circumstances, the Council will consider providing a summary of the information to an employee and their chosen representative or companion. The fact that this information has not been open to cross examination will be acknowledged and taken into consideration in any decision making upon which this evidence is relied upon.