



**Nottinghamshire
County Council**

Nottinghamshire County Council

Employment Appeals Process

13 July 2017

Title: Employment Appeal Process			
Aim/Summary: To outline the employment appeals process for outcomes of the attendance management, performance management and disciplinary procedures			
Document type (please choose one)			
Procedure	*	Guidance	
Strategy			
Approved by: Central Joint Consultative and Negotiating Panel		Version number: Final	
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Subject Areas (choose all relevant)			
About the Council		Older people	
Births, Deaths, Marriages		Parking	
Business		Recycling and Waste	
Children and Families		Roads	
Countryside & Environment		Schools	
History and Heritage		Social Care	
Jobs		Employees	*
Leisure		Travel and Transport	
Libraries			

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Please include any supporting documents	
Review date	Amendments

Employment Appeals

1. Appeals should be lodged with the Service Director – Customers and Human Resources within 10 days of the outcome of the employment procedure being confirmed.
2. Anyone seeking to appeal the decision to apply a sanction must complete the standard pro-forma (appendix 1). The form will specify the grounds for appeal and provide information to enable the appeal meeting to be convened, for example, the name of the appellant's trade union representative
3. The council fully accepts the fundamental principle of fairness in allowing an appeal to be considered. It will be insufficient for the appellant to simply state disagreement with an outcome and the process requires some detail to be provided on the grounds for appeal. The grounds for appeal are:
 - The decision was unreasonable
 - New relevant evidence that it was not available to present at the original hearing is now known
 - There was a significant failure to follow the relevant policy and/or procedure.
4. If there is any doubt about the content of the pro-forma, either in relation to the administrative arrangements for the appeal and/or the grounds for appeal, the Service Director, Customers and Human Resources (or a nominated deputy) will discuss the concerns with the appellant or their trade union representative.
5. Appellants will receive email confirmation of whether their appeal will be progressed within 5 working days of it being lodged with the Service Director Customers and Human Resources. The ground(s) for the appeal (as set in paragraph 3 above) should be confirmed to the employing service as part of the formal notification of appeal.
6. All appeals will be considered by officers rather than elected members. The Decision Officer for appeals against 1st, 2nd and final warnings will be a minimum of Group Manager Level and at least 2 grades more senior than the appellant.
7. Any dismissal on the grounds of conduct, unacceptable attendance, performance or redundancy will be heard by a chief officer from a different department to that where the dismissed employee is based and who has had no previous involvement in the decision making regarding the case
8. A list of officers designated to consider appeals has been identified by departments and these individuals will be fully trained in the various employment policies and procedures from which a termination of the contract of employment could arise.
9. It will be normal practice for the decision officer in the earlier hearing to present the management response to the appeal unless unable to do so.
10. To ensure consistency of approach and legal compliance, a suitable HR adviser will be available to support and advise the nominated Chief Officer who will be the Decision Officer in appeals regarding dismissal. HR advice to appeal bodies is 'neutral' in the sense that the HR adviser should not have been previously involved with the case and does not contribute to the decision other than to provide professional, technical advice in terms of employment policy and process and to identify or confirm the existence of relevant precedents.
11. The appeal process is not an opportunity for a full re-hearing of the case by the Appeal Decision Officer and appeals should be confined to the specific grounds listed above in paragraph 3. However, if the Appeals Decision Officer believes that the circumstances of the case have not been properly investigated or the process has been so flawed as to make any decision potentially unfair, it remains open to them to send the case back to the original panel for reconsideration.

12. Appeals (and proceedings generally) should be progressed in a timely manner. In order to standardise timescales and minimise delay all appeals should:
 - a) Provide a minimum of 15 working days' notice of a hearing unless a shorter time period is agreed with the appellant or their representative.
 - b) Requests for the release of witnesses from work, where they are employees of the County Council, should ideally be done at least 10 days before the hearing.
 - c) Ensure that case papers are exchanged between the appellant and presenting manager 10 days before the appeal hearing.
13. In cases where it is known that delay may be a factor, the Decision officer must be informed to determine whether the appeal hearing can be progressed by an alternative route, giving due consideration to any compassionate circumstances and the availability of appropriate advice to the appellant.. Appellant are expected to make all reasonable efforts to attend an appeal hearing and there will be a maximum of one further opportunity to have their case considered as the final stage of the internal appeals procedure
14. Out of time issues will be considered at the start of the appeal hearing and the Decision Officer will determine whether to allow an appeal to proceed. .
15. Information about the conduct of the appeal should be exchanged between the management representative and the appellant (or his/her representative) and copied to those hearing the appeal.
16. The Appellant's statement of case should cover the basis for the appeal and the outcome desired for example reinstatement or redeployment. .
17. The papers to be relied on in the appeal must be submitted by both parties at least 10 days before the appeal hearing and should include written details of any witnesses to be called, The appellant will not be allowed to introduce new information at the appeal hearing that has not previously been submitted unless there are extenuating circumstances which prevented this from happening earlier.
18. The Decision Officer has the power to dismiss the appeal or to uphold it. Other potential outcomes of the appeal process are:
 - a) The case is referred back to the original panel for a new hearing.
 - b) Where there is an indication of bias or poor management of the original hearing, the case is referred back to a new panel for fresh consideration
 - c) The appellant is re-instated, potentially redeployed or some other appropriate action

Please note there is no scope for the Appeal Decision Officer to award compensation or other financial settlement as part of the appeals process

19. The Decision Officer should apply the same test as that applied by the employment tribunal, that is, did the decision fall within the band of reasonable responses as it is not the role of the Appeal Decision Officer to substitute their opinion for that of the original decision maker
20. The Decision Officer can alter the severity of the penalty imposed by disciplinary sanctions in circumstances where:
 - a) The grounds for the appeal are the unreasonable nature of the decision. This includes the severity of penalty imposed or the perverse nature of the decision, or
 - b) Severe procedural irregularities have a significant impact on the original decision and this has warranted a full re-hearing by the original panel.
21. The decision will be notified to the parties involved no later than 5 working days after the hearing.
22. In any case where reinstatement following dismissal is granted the resultant break in service will be considered as continuous service for purposes of statutory entitlements. Normal pay will be backdated to the date of termination.
23. This appeal is the last stage of the County Council's internal procedures and no further right to internal appeal exists.

Appendix 1 Appeal pro-forma

Date completed by applicant:	Date received by Service Director Customers and HR	Date appeal acknowledged and eligibility confirmed

NOTICE OF APPEAL

To be submitted **within 10 days** of confirmation of formal action arising from a disciplinary, performance or attendance management procedure or the outcome of a grievance hearing or meeting at which a decision was made to dismiss on the grounds of redundancy.

Pro-forma to be sent to the Service Director Customers and Human Resources

1. DETAILS

APPELLANT'S NAME: _____

EMAIL ADDRESS: _____

ADDRESS: _____

TEL NO: _____

DEPARTMENT: _____

SECTION: _____

NAME OF TU REPRESENTATIVE: _____

EMAIL ADDRESS: _____

ADDRESS: _____

REPRESENTATIVE'S TEL NO: _____

NAME AND WORKPLACE CONTACT OF ANY WITNESSES TO BE CONTACTED:

- 1.
- 2.
- 3.

THE HR OFFICER RESPONSIBLE FOR MAKING THE ARRANGEMENTS TO HAVE YOUR APPEAL CONSIDERED WILL MAKE CONTACT WITH THE WITNESSES YOU LIST.

THERE IS NO NEED TO PROVIDE CHARACTER WITNESSES FOR THE APPEAL HEARING AS ONLY THOSE WHO HAVE DIRECT INFORMATION ABOUT THE MATTERS UNER CONSIDERATION WILL BE CALLED

PLEASE INCLUDE DETAILS OF ANY ADJUSTMENTS, ADAPTATIONS OR NEEDS YOU HAVE TO ENABLE YOU TO PARTICIPATE IN THE APPEAL HEARING e.g. hearing loop, braille documents, more frequent breaks etc.

DETAILS OF DECISION BEING APPEALED:

TYPE OF HEARING (disciplinary, grievance, capability/performance, attendance management, redundancy, recruitment):

DATE(S) OF PREVIOUS HEARING(S): _____

OUTCOME OF PREVIOUS HEARING (e.g. final warning, dismissal, or grievance not upheld):

WHEN FIRST INFORMED OF DECISION (if at the hearing state the date, if by letter the date it was received):

APPEAL

Please tick one or more of the following boxes to indicate the grounds on which you wish to appeal the previous decision. Please note that a failure to provide the grounds of the appeal may result in your appeal being dismissed without a hearing:

GROUND IN DISCIPLINARY, PERFORMANCE OR ATTENDANCE MANAGEMENT APPEALS

The decision was unreasonable. This can relate to the severity of the penalty or the rationale for the decision.

There is new evidence available which wasn't reasonably practicable to present at the previous hearing.

There was a significant failure to follow relevant policy and/or procedure.

In cases of a compulsory redundancy dismissal, you cannot use the appeal process to challenge the decision taken by politicians to cease or reduce an area of work. The sole reason to challenge a decision in these circumstances is that the selection criteria were applied unfairly

GROUNDING IN GRIEVANCE APPEALS

[illegible]

Please identify any dates in the next 2 months when you are unavailable to attend an appeal hearing

4. Signed _____ Date _____

Please return completed pro-forma to Personal Assistant to the Service Director, Customers and Human Resources, Resources, 2nd Floor, County Hall, West Bridgford, NG2 7QP.

Appendix 2

Appeal hearing procedure

1. Written statements relating to the grounds for appeal and the cases to be put by the two sides should be exchanged and submitted in advance of the appeal hearing in accordance with XXX of the disciplinary procedure.
2. The Authority's representative will state the case against the Appeal in the presence of the Appellant (and representative). Witnesses may be called by the Authority's representative in support of the Authority's case.
3. The Authority's representative and each witness called by the Authority, having given evidence against the appeal, may then be the subject of examination by the Appellant (or representative).
4. Each witness may then be re-examined by the Authority's representative upon the evidence provided through their examination by the Appellant (or representative).
5. The Appeal Decision Officer may ask questions of each witness and of the Authority's representative on the submitted evidence.

NB After giving evidence each witness will be:

- (a) Instructed not to discuss the case in any way until after the Appeal has been determined and
- (b) Asked to retire.

Unless otherwise determined by the parties to the Appeal, witnesses may be the subject of recall.

6. The Appellant (or representative) will state the case in support of the Appeal in the presence of the Authority's representative. Witnesses may be called by the Appellant (or representative) in support of their case.
7. The Appellant and each witness called by the Appellant (or representative), having given evidence in support of the appeal may then be the subject of examination by the Authority's representative.
8. Each witness may then be re-examined by the Appellant (or representative) upon the evidence provided through their examination by the Authority's representative.
9. The Appeal Decision Officer may ask questions of each witness and the Appellant on the submitted evidence.

NB After giving evidence each witness will be:

- (a) Instructed not to discuss the case in any way until after the Appeal has been determined and
- (b) Asked to retire.

Unless otherwise determined by the parties to the Appeal, witnesses may be the subject of recall.

Please note the appellant's representative cannot answer questions on their member's behalf

10. The Authority's representative shall have the opportunity to sum up the case against the Appeal.
11. The Appellant (or representative) shall have the opportunity to sum up the case in support of the Appeal.
12. The Appellant (and representative) and the Authority's representative shall withdraw.
13. The Appeal Decision Officer together with the HR adviser will deliberate in private only recalling the Appellant (and their representative) and the Authority's representative to clear points of uncertainty on evidence already given. If recall is necessary both parties will return, notwithstanding that only one of them is concerned with the point giving rise to doubt. The Decision Officer may seek the advice of the Council's legal representative or other technical specialist if necessary, for example to understand a safeguarding impact.

14. The Appeal Decision Officer will normally give their outcome to the Appellant (and their representative) and the Authority's representative(s) personally, which will be confirmed in writing to the parties concerned within 5 working days.

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