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To: Councillor Copland, Convener; Councillor Al-Samarai, Vice Convener; and Councillors Davidson, Fairfull and Thomson.

Town House,  
ABERDEEN 01 June 2023

## APPEALS SUB COMMITTEE

The Members of the **APPEALS SUB COMMITTEE** are requested to meet in **Committee Room 2 - Town House** on **MONDAY, 12 JUNE 2023 at 10.00 am.**

JENNI LAWSON  
INTERIM CHIEF OFFICER – GOVERNANCE (LEGAL)

### **BUSINESS**

- 1 Appeals Sub Committee Procedure (Pages 3 - 8)

#### **Confidential Information**

**The following items of business are to be treated as confidential information in terms of section 50A(3)(b) of the Local Government (Scotland) Act 1973.**

- 2 List of Attendees and Witnesses (Pages 9 - 10)
- 3 Appeal 23/03 (Pages 11 - 90)

Should you require any further information about this agenda, please contact Lynsey McBain, tel 01224 067344 or [lymcbain@aberdeencity.gov.uk](mailto:lymcbain@aberdeencity.gov.uk)

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## **Appeals Sub Committee – Procedure**

### **1. Introduction**

- 1.1 The Council will operate an Appeals Sub Committee to hear appeals made in accordance with the Council's Human Resources Policies and Procedures. The Sub Committee will determine individual appeals by employees and industrial dispute(s) raised by a recognised Trade Union of the Council, in accordance with the Council's Dispute Resolution Procedure.

### **2. Composition and Training of Appeals Sub Committee**

- 2.1 The Appeals Sub Committee will comprise 5 members drawn from the pool of membership of the Staff Governance Committee.
- 2.2 The quorum shall be 3 members.
- 2.3 The Clerk to the Sub Committee will select the five elected members from the pool having regard to availability and will seek to secure one Member per Political Group.
- 2.4 The Convenor of the Appeals Sub Committee will be the Convenor of the Staff Governance Committee or, if unavailable, the Vice Convenor of the Staff Governance Committee.
- 2.5 All members in the pool of the Appeals Sub Committee shall be required to undertake training prior to hearing an appeal and to undertake refresher training annually.

## **PART A – Individual Appeals**

### **3. Pre-hearing procedure**

- 3.1 An appeal shall be lodged with the Clerk to the Appeals Sub Committee within 10 working days of receipt of the decision being appealed against. Unless exceptional circumstances exist, any appeal submitted outwith this timescale will not be processed. The Convener will determine whether any exceptional circumstances exist.
- 3.2 Within 5 working days of receipt of the appeal, the Sub Committee Clerk shall notify the relevant manager of the appeal and both parties of the date for the hearing.
- 3.3 The Sub Committee Clerk will also notify the Chief Officer- People and Organisation who will appoint an HR officer with no previous involvement in the case to facilitate informal mediation. Nothing said by either party in the course of informal mediation shall be referred to or discussed at the appeal hearing if mediation is unsuccessful. Mediation will not affect the timetable for the hearing.
- 3.4 Not less than 10 working days before the Appeal hearing, the parties shall submit to the Sub Committee Clerk a list of witnesses and one copy of any document which they wish the Sub Committee to consider.
- 3.5 If either party considers that the process should be adjusted in any way, for example, to enable a disabled individual to participate fully in the hearing, they should submit a request for an adjustment to the Sub Committee Clerk no later than 10 days before the

hearing. The Convenor will determine whether the request should be granted and the Sub Committee Clerk will issue that decision to all parties prior to the date of the hearing

#### **4. Appeal Hearing**

4.1 An appeal hearing will be heard within 12 weeks of a letter of appeal being submitted by the Appellant, however, this may be varied by mutual agreement. Where parties cannot agree, the Convenor will determine whether the hearing is postponed.

#### **4.2 Attendees**

4.2.1 The Appellant may be accompanied by a trade union official or another Council employee. The companion will be allowed to address the hearing to put and sum up the Appellant's case, respond on behalf of the Appellant to any views expressed at the hearing and confer with the Appellant during the hearing. The companion does not have the right to answer questions on the Appellant's behalf, address the hearing if the Appellant does not wish it or prevent the Management Officer from explaining their case.

4.2.2 The Management Officer who is presenting the case, may be accompanied by a Human Resources officer.

4.2.3 Legal and Human Resources officers will be present to provide advice to the Sub Committee as required.

#### **4.3 Role of Sub Committee**

4.3.1 The role of the Appeals Sub Committee is to review the fairness of decisions of Officers of the Council. It will not re-hear the submissions with a view to making a fresh decision. The Appeals Sub Committee will only decide whether the Officer's decision was fair and reasonable in the circumstances, and, if not, what decision is appropriate. The range of decisions available to the Appeals Sub Committee are detailed in paragraph 5.7.2.

4.3.2 Points for consideration by the Appeals Sub Committee can include the following:-

- a) Appropriateness of the penalty in the circumstances, including due regard to the Council's policies and procedures;
- b) Extenuating circumstances;
- c) Procedural matters;
- d) Any new evidence which may have a bearing on the original decision that has come to light since the final management hearing;
- e) The precedent that an individual decision might make for other cases;
- f) Compliance with legislative requirements.

#### **5.1 Order of Hearing**

#### **5.2 Preliminary points**

5.2.1 Management Officer invited by the Convener to raise any preliminary matters for consideration by the Appeals Sub Committee. Appellant provided opportunity to respond to any matters raised.

5.2.2 Appellant invited by the Convener to raise any preliminary matters for consideration by the Appeals Sub Committee. Management Officer provided opportunity to respond to any matters raised.

5.2.3 Both parties may be asked to withdraw for the Sub Committee to deliberate on preliminary matters in private.

5.2.4 Both parties recalled and advised of outcome of Appeals Sub Committee deliberations on preliminary matters.

### **5.3 Management presents case**

5.3.1 The Management Officer will put forward their facts and considerations, including calling witnesses, that resulted in the decision to dismiss/issue a final written warning or other decision in the presence of the Appellant and their companion.

5.3.2 The Appellant will have the opportunity to ask questions of the Management Officer and witnesses.

5.3.3 The members of the Appeals Sub Committee will then have the opportunity to ask questions of the Management Officer and witnesses.

5.3.4 Witnesses may normally only be entitled to be present when giving evidence and shall be capable of recall for further clarification.

### **5.4 Appellant presents case**

5.4.1 The Appellant, will put their case, including calling witnesses, in the presence of the Management Officer.

5.4.2 The Management Officer will have the opportunity to ask questions of the Appellant and witnesses.

5.4.3 The members of the Appeals Sub Committee will then have the opportunity to ask questions of the Appellant and witnesses.

5.4.4 Witnesses may normally only be entitled to be present when giving evidence and shall be capable of recall for further clarification.

### **5.5 HR/Legal Clarification**

5.5.1 The HR and Legal Advisers to the Sub Committee may in their role as advisers put points of clarity to the Management Officer or the Appellant and highlight relevant points of procedure or provide guidance throughout the appeal hearing.

### **5.6 Summing Up**

5.6.1 The Management Officer will have the opportunity, if they wish, to sum up their case.

5.6.2 The Appellant will have the opportunity, if they wish, to sum up their case.

5.6.3 The Management Officer and the Appellant and their companion, will then leave the appeal hearing.

## **5.7 Conclusion/Deliberations**

- 5.7.1 The Appeals Sub Committee with the support of the advisers to the Sub Committee will then deliberate in private, only recalling the parties if necessary to obtain clarification or further information. If this is the case, both parties shall be present and allowed to comment on the point of clarification or further information.
- 5.7.2 The Appeals Sub Committee is authorised to revoke, confirm or to vary the decision being appealed against.

## **5.8. Decision**

Once the Sub Committee has reached its decision, it will normally recall the parties and issue its decision in the presence of the parties. Where the decision has been unanimous then this will be declared by the Convener. Where there has been a division on the decision, the Sub Committee will replicate the vote (the original decision is a binding decision), which will be undertaken by roll-call. The decision of the Sub Committee will be confirmed in writing to both parties within 5 working days.

## **PART B – Trade Unions**

### **6. Formal Dispute Hearing**

- 6.1 A dispute hearing will be heard as soon as is practicably possible after the submission of Form 1 to the Sub Committee Clerk by a recognised Trade Union of the Council.
- 6.2 Within 5 working days of receipt of Form 1, the Sub Committee Clerk shall notify the Director and relevant Chief Officer of the appeal. Form 2 will be completed by the Director/Chief Officer and submitted to the Sub Committee Clerk within 10 working days. Within 5 working days of receipt of Form 2, the Sub Committee Clerk will intimate Form 2 to the Union representative and advise both parties of the date for the hearing.
- 6.3 The role of the Appeals Sub Committee is to review the remedy sought by the Trade Union(s). The Sub Committee will only decide whether the decision(s) taken by Management that gave rise to the dispute were reasonable in the circumstances and, if not, what decision is appropriate. The range of decisions available to the Appeals Sub Committee is detailed in paragraph 6.6.

### **6.4 Attendees**

- 6.4.1 Those entitled (but not required) to be present at the Hearing shall be
- representatives of the employees concerned and the Union representatives (a maximum of four);
  - representatives of management and management's legal representative (a maximum of four, including the Chief Officer).
- 6.4.2 Legal and Human Resources officers will be present to provide advice to the Sub Committee as required.

### **6.5 Order of hearing**

The Hearing shall take the following format:

- 6.5.1 Either side may raise any preliminary points, and the Sub Committee's decision thereon will be final.

- 6.5.2 The Union representative (normally one only) shall be permitted to address the Sub Committee on the substance of the appeal. The Convenor may exercise their discretion to allow more than one representative to address the Sub Committee.
- 6.5.3 Members of the Sub Committee will be allowed to ask questions of the Union representative.
- 6.5.4 The Sub Committee's Advisers will be allowed to ask questions of the Union representative for the purposes of clarification only.
- 6.5.5 The Management side representative (normally one only) shall be permitted to address the Sub Committee on the substance of the appeal. The Convenor may exercise their discretion to allow more than one representative to address the Sub Committee.
- 6.5.6 Members of the Sub Committee will be allowed to ask questions of the Management representative.
- 6.5.7 The Sub Committee's Advisers will be allowed to ask questions of the Management representative for the purposes of clarification only.
- 6.5.8 Parties will withdraw to enable the Sub Committee to deliberate in private, but the Sub Committee may require any party to answer further questions (in which case both parties will be present when the questions are asked and answered, and the other party, to whom the questions were not addressed, will be allowed the opportunity to comment if necessary).

## **6.6 Conclusions/Deliberations**

### **6.6.1 The Sub Committee is authorised to**

- Uphold the Dispute in full
  - ❖ This is to agree with the position of the Trades Union(s) bringing the dispute and to instruct management/officers to deliver the remedy requested to resolve the dispute.
- Uphold the Dispute in part
  - ❖ This is to agree partially with the position of the Trade Union(s). In this outcome the Appeals Sub Committee has the authority to determine what, if any, part of the remedy requested should be applied to resolve the dispute.
- the Dispute is NOT upheld
  - ❖ In a situation where the position of the Trade Union(s) is NOT upheld, the position of management is confirmed. This does not preclude further discussions taking place between Management and the Trade Union(s) regarding ways to resolve any ongoing industrial dispute.

## **6.7 Decision**

- 6.7.1 Once the Sub Committee has reached its decision, it will normally recall the parties and issue its decision in the presence of the parties. Where the decision has been unanimous then this will be declared by the Convenor. Where there has been a division on the decision, the Sub Committee will replicate the vote (the original decision is a binding decision), which will be undertaken by roll-call. The decision of the Sub Committee will be confirmed in writing to both parties within 5 working days.

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