

ABERDEEN CITY COUNCIL

COMMITTEE	Staff Governance Committee
DATE	4 May 2018
REPORT TITLE	Appeals Sub Committee Procedure
REPORT NUMBER	GOV/18/006
DIRECTOR	Fraser Bell
CHIEF OFFICER	Fraser Bell
REPORT AUTHOR	Elaine Falconer
TERMS OF REFERENCE	Remit of Committee – 7

1. PURPOSE OF REPORT

- 1.1 The purpose of this Report is to agree a procedure for the operation of the Appeals Sub Committee in respect of appeals by staff against dismissal or final written warning where the right of appeal exists and to determine disputes notified by Trade Unions in accordance with the Council's disputes resolution procedures.

2. RECOMMENDATIONS

That the Committee:-

- 2.1 Approves the Appeals Sub Committee procedure appended to this Report as Appendix 1.
- 2.2 Agree that all appeals to the Appeals Sub Committee intimated after 4 May 2018 will be processed in accordance with this Appeals Sub Committee procedure.
- 2.3 Instruct the interim Chief Officer – People and Organisation to notify management and the Trade Unions of the procedure.

3. BACKGROUND

- 3.1 As part of the Governance Review process, the Appeals Committee procedure, approved by the Appeals Committee on 27 August 2014 and revised by that Committee with respect to Member training on 24 September 2014, has been reviewed to meet the requirements of the Appeals Sub Committee.

- 3.2 The Appeals Sub Committee procedure appended to this Report at Appendix 1 is designed to streamline the current process by removing the need for completion of various forms and documents, with a view to ensuring appeals are dealt with as speedily as possible whilst also providing a clear structure around procedural and administrative requirements.
- 3.3 The main changes to the procedure are the removal of the need for a Form 1 and Form 2 so that an appeal will commence on submission of a letter by the Appellant to the Committee Clerk to the Appeals Sub Committee and Management's case will normally comprise an Investigation Report and Outcome letter. In order to simplify the procedure, the requirement for a joint statement of agreed facts and agreed list of joint documents has also been removed. The parties are merely required to submit to the Sub Committee Clerk a list of witnesses and one copy of any document which they wish the Committee to consider. The Sub Committee Clerk will ensure there is no duplication in the papers to be circulated to the Sub Committee.
- 3.4 There is no provision in the new procedure for a preliminary hearing to take place. It is envisaged that any preliminary points can be dealt with at the start of the substantive hearing. In particular there is no provision for a preliminary hearing to determine whether the appeal should take the form of a review or a re-hearing. This is in light of recent case law which provides that ultimately what is relevant is the overall fairness of the procedure, in particular the 'thoroughness and the open-mindedness of the decision-maker' and not just whether an appeal has taken the form of a rehearing rather than a review as had been the earlier received wisdom. The informal mediation process prior to the Appeal hearing has been retained.
- 3.5 It is recognised that an Appellant can feel intimidated appearing before a Council Committee in difficult personal circumstances. In terms of the new procedure, the Appeals Sub Committee will comprise at most 5 members drawn from the pool of membership of the Staff Governance Committee and the quorum shall be 3 members. 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. This is to ensure that all members participating in Appeal Sub Committee hearings will have received adequate, up-to-date training to support them in fulfilling their role on the Sub Committee.
- 3.6 In developing the new procedure regard has been had firstly to the principles contained in the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance procedures and associated Guidance. Secondly, consideration has been given to concerns expressed by Members and others as to the over-complication and over-formality of the appeal hearing and perceived inequality of arms between the Appellant and Management who have always been represented by Legal Officers. Under the new procedure, in individual employee appeals, Management may be accompanied by a Human Resources Adviser whilst an Appellant may be accompanied by a Trade Union Official or another Council employee. Either side may seek an adjustment of the process on a case by case basis to enable all parties to participate as fully as possible in the process.

3.7. The procedure for considering Trade Union disputes remains similar to the existing process but is now contained in the one document. Informal consultation has taken place with the recognised Trade Unions and has informed the content of the procedure.

3.8. It is envisaged that the new procedure will improve the experience of all Members and Staff involved in Appeal hearings.

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications arising from the recommendations of this report.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal implications arising from the recommendations of this Report.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	None	N/A	N/A
Legal	None	N/A	N/A
Employee	The opportunity to appeal against a disciplinary decision is essential to natural justice and a fair procedure essential to a fair dismissal.	Low	The recommendation in this report should help to ensure that this risk is controlled.
Customer	None	N/A	N/A
Environment	None	N/A	N/A
Technology	None	N/A	N/A
Reputational	None	N/A	N/A

7. OUTCOMES

Design Principles of Target Operating Model	
	Impact of Report
Customer Service Design	N/A
Organisational Design	N/A
Governance	This report links to the 'Governance' design principles of transparency, in making the decision-making process clear; being inclusive, in allowing all stakeholders to be heard; and being flexible, in not incurring any disadvantage to stakeholders because of delays.
Workforce	This Report also links to the 'Workforce' design principle in that any individual or collective employment issue raised, is fairly and properly considered.
Process Design	The Appeal Sub Committee procedure is designed to make the process fit for the needs of the Council's employees.
Technology	N/A
Partnerships and Alliances	N/A

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	No action required.
Privacy Impact Assessment	Not required
Children's Rights Impact Assessment/Duty of Due Regard	Not required

9. BACKGROUND PAPERS

ACAS Code of Practice on Disciplinary and Grievance Procedures

10. APPENDICES (if applicable)

Appendix 1 – Appeals Sub Committee - Procedure

11. REPORT AUTHOR CONTACT DETAILS

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