



Appeals against Dismissal Procedure

1. Introduction

- 1.1 Employees have the right to appeal against any decision to dismiss them. This policy sets out the process that will be followed in dealing with any such appeal.
- 1.2 This procedure sets out to ensure that decisions taken are fair and reasonable in all circumstances and that the appropriate process has been followed in reaching decisions.
- 1.3 The decision to dismiss may have been made in-line with the following policies:
 - Disciplinary Policy
 - Capability Policy
 - Redundancy Policy
 - Promoting Attendance Controlling Absence Policy
 - Probationary Policy
 - Any other relevant policies whereby dismissal may be the outcome.

In exceptional circumstances a dismissal may have been carried out that doesn't sit within any of the above policies e.g. Some other Substantial Reason Dismissals.

2. Scope

- 2.1 This procedure applies to all employees of the council excluding officers employed under J.N.C. Conditions of Service for Chief Officers and for Chief Executives and Protected Officers.
- 2.2 This procedure does **not** apply to agency staff, external contractors or external consultants or staff
- 2.3 This procedure does **not** apply to appeals against actions or decisions other than dismissal made under relevant policies.

3. Principles

- 3.1 All employees have the right of appeal against a management decision to dismiss.
- 3.2 We are committed to the Council's values of Working Collaboratively, One Team One Council and Working Smart (WOW).
- 3.3 Confidentiality must be maintained throughout the appeal process by all those involved.
- 3.4 Employees have the right to be accompanied at an appeal hearing by a trade union representative or a work colleague. There is no right however to legal representation.

- 3.5 Elected members who sit on the Appeals Panel will attend an appropriate training course or demonstrate an appropriate level of competence.

4. Procedure

4.1 How to Appeal

4.1.1 An employee wishing to appeal against a dismissal made must submit in writing to the Head of Business Support within 10 working days of receiving the letter confirming dismissal under the relevant policies.

4.1.2 An appeal may be made on the following grounds:

- A procedural error
- The decision was unfair and unreasonable
- That further new material information has come to light which, had it been known at the time of the hearing, may have affected the decision to dismiss. This must be information that was unavailable at the original hearing and is pertinent to the case.

4.1.3 The letter of appeal must set out the grounds of the appeal and should state whether the appeal is in respect of the whole decision or relates to only part of any finding or decision.

4.2 Arrangements for the Appeal Hearing

4.2.1 On receipt of the appeal, the Head of Business Support will liaise with Democratic Services who will make arrangements with the Chair of the Employment Appeals Committee (or his/her deputy) to convene an Employment Appeals Panel, which will normally be within 20 working days.

4.2.2 The agreed paperwork will be circulated to the parties 5 working days in advance of the hearing which will include:

- Original letter of dismissal
- Any relevant papers supporting the decision to dismissal
- Letter of Appeal
- Specific detail of what the employee wishes to appeal against
- Any documentation submitted by the employee in support of their appeal.

4.2.3 The employee submitting the appeal will be responsible for informing Democratic Services of the names of any witnesses they may wish to call in support of their appeal. It will be the responsibility of the employee to notify the witnesses of the date, time and location of the hearing.

4.2.4 Any witnesses who are employees of Wyre Council that the employee submitting the appeal wishes to be available at the hearing will be responsible for informing their line manager of the request to attend an appeal hearing.

- 4.2.5 The Panel will comprise of 3 members of the Employment Appeals Committee. A representative from Human Resources (or Independent Advisor) will be present to advise and support the Panel.

The chair of the dismissal hearing (management representative) will attend and may also be supported by a representative from Human Resources.

- 4.2.6 All hearings and investigation meetings during a pandemic will be held virtually where possible or in line with the government guidelines at the time. It may also be necessary to extend the period of time set out in 4.2.1 above to arrange the hearing to a reasonable length as deemed appropriate by the Chair of the Employment Appeals Committee (or his/her deputy) hearing the grievance. During the appeal hearing the employee will only be able to refer to and pursue the grounds of appeal specified in their appeal letter.

4.3 **Procedure for the Employment Appeals Hearing**

4.3.1 Introduction

The chair of the Employment Appeals Panel will introduce those present and explain their reason for attendance.

The chair of the Employment Appeals Panel will confirm that the hearing is an appeal against dismissal and will explain how it will be conducted.

4.3.2 Employee's Statement of Appeal

The employee, or their representative will state their ground of appeal and desired outcomes. The employee will only be able to refer to and pursue the grounds specified in the letter of appeal and submitted documentation.

It is not expected that new evidence will be allowed at the appeal, unless there are mitigating circumstances as to why the information was not previously presented or available. A decision on whether to allow new evidence, will be at the discretion of the Panel.

As part of their representation, the employee may call witnesses in support of their appeal.

The panel, the management representative and their relevant advisors may ask questions of the employee and any witnesses.

Whilst the employee's representative may assist the employee with the presentation of their case, the employee must answer questions asked of them by the panel, management representative and their relevant advisors.

4.3.3 Presentation of the Management Representative

The management representative will provide a statement including the reasons for their decision to dismiss. As part of this witnesses may be called.

The employee, their representative, the panel and their relevant advisors may ask questions of the management representative and any witnesses. The HR Advisor to the management representative may contribute as required.

4.3.4 Final Statements

The management representative and then the employee or their representative may sum up their case and make a final statement if they so wish.

4.3.5 Adjournment

The employee, their representative, the management representative (including their HR Advisor) and any witness will then withdraw. The panel with their advisor will consider the evidence. If it is necessary to recall either party or witness in order to clear up any point of uncertainty on the evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

4.3.6 Decision

The chair will, if possible, give a decision to the parties immediately after the hearing. On occasions, time constraints may make it necessary to adjourn the hearing for a longer period to properly consider the information provided. In this case, it will be agreed to re-adjourn the meeting at a later date or that the employee will be informed of the decision in writing.

In any case, the decision made will be confirmed in writing within 5 working days of the hearing.

4.4 This is the final stage of the Council's internal process and the decision of the panel is final.

5. Pandemic

5.1 In response to a pandemic all Council employees are expected to follow the social distancing and public health guidelines published by the Government and by the Council in order that the highest level of Health and Safety working practices are met.

5.2 Wherever possible, meetings should be held virtually either by video call or by telephone to avoid face to face contact (see Appendix 1 – Electronic Meeting Guidance). It is recognised that this is not possible or practical for every situation and therefore meetings should be held with only essential members present and social distancing and personal hygiene measures such as regular hand washing, use of hand sanitiser and surface cleaning at the front of mind.

- 5.3 Pandemic Risk Assessments must be followed at all times and any issues raised immediately with an appropriate line manager.

6. Equality Impact Assessment And Monitoring

- 6.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

7. Data Protection

- 7.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.

Electronic Meeting guidance

Where the Chair decides that a meeting should take place using alternative arrangements (e.g. by telephone or video conference) that have been previously agreed then the following will apply:

- the usual notice and arrangements for issuing papers continues except where the Chair has exercised their right to waive the usual notice;
- all participants will receive clear instructions regarding how to access the meeting including where they can access support if they experience difficulty;
- all participants will be given advance notice of the meeting in line with current policy procedures so that they can declare if they have a disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed;
- all participants must attend the meeting with webcams enabled at all times;
- where there is a requirement for an adjournment / breakout for any participant this will be carried out either at a different physical location or separate independent virtual meeting;
- all participants will note and follow any instructions given on how to manage their participation at the meeting. For example confirming attendance, speaking through the Chair of the meeting, etc;
- all panel members will abide by their normal rules, procedures and code of conduct adopted by the Council in relation to holding hearings, giving particular regard to the duty to maintain confidentiality;
- the panel will contribute towards a safe and secure environment for the meeting by giving due regard to the Council policies relating to Data Protection and the appropriate use of ICT;
- a minute taker may be nominated to take notes of the meeting – but it will not ordinarily be recorded;
- under no circumstances can a recording take place without all parties being aware.