



Epping Forest District Council

STAFF APPEALS PANEL **Friday, 26th January, 2007**

Place: Civil Offices, High Street, Epping

Room: Committee Room1

Time: 9.30 am

Democratic Services Officer G Woodhall, Research and Democratic Services
Tel: 01992 564470 Email: gwoodhall@eppingforestdc.gov.uk

Members:

Councillors P House (Chairman), T Farr (Vice-Chairman), P Gode, Mrs H Harding and K Wright

PLEASE NOTE THE TIME OF THIS MEETING

- 1. APOLOGIES FOR ABSENCE**
- 2. SUBSITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)**

(Head of Research and Democratic Services) To report the appointment of any substitute members for the meeting.
- 3. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.
- 4. MINUTES (Pages 5 - 8)**

To confirm the minutes of the last meeting of the Panel held on 27 November 2006 (attached).
- 5. STAFF APPEALS PANEL PROCEDURE (Pages 9 - 16)**

6. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

<i>Agenda Item No</i>	<i>Subject</i>	<i>Exempt Information Paragraph Number</i>
7	Staff Appeal No. 03 - 2006/07	1 and 2

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

7. STAFF APPEAL NO. 03 - 2006/07 (Pages 17 - 18)

Restricted report attached. Case papers from the appellant and the Council have been circulated separately to Panel members.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Staff Appeals Panel **Date:** Monday, 27 November 2006

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 9.40 am - 5.10 pm

Members Present: P House (Chairman), T Farr (Vice-Chairman), P Gode, Mrs H Harding and K Wright

Other Councillors:

Apologies:

Officers Present: C O'Boyle (Head of Legal, Administration and Estates) and G Lunnun (Democratic Services Manager)

1. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted there were no substitute members present at this meeting.

2. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

3. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 14 November 2001 be taken as read and signed by the Chairman as a correct record.

4. STAFF APPEALS PANEL PROCEDURE

The Panel noted the agreed procedure for its conduct in determination of staff appeals.

5. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the item of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12(A) of the

Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraph Number
7	Staff Appeal No 02 - 2006/07	1 and 2

6. STAFF APPEAL NO. 02 - 2006/07

The Panel considered an appeal by an employee of Leisure Services against a decision of the Head of Housing Services acting under delegated authority to dismiss him.

The appellant's father was in attendance at the meeting to present his son's case. The Council's case was presented by James Burton, Counsel who called D Macnab (Head of Leisure Services), T Tidey (Head of Human Resources and Performance Management) and A Hall (Head of Housing Services) as witnesses. Ms C O'Boyle (Head of Legal, Administration and Estates and Solicitor to the Council) advised the Panel as required, on details of employment law and policies relevant to the appeal.

Following consideration of submissions from both parties and appropriate cross-examination, the Panel determined the appeal in private session.

RESOLVED:

That it is the unanimous decision of the Panel that, on the basis of the evidence presented on behalf of the appellant and by Counsel on behalf of the Council in writing and orally, the appeal against dismissal from service without notice or payment in lieu of notice be not upheld for the following reasons:

- (a) the allegations of fact that the appellant:
 - (i) defaced personal photographs of the son and dog of one of his supervisors, which were displayed on her computer;
 - (ii) wrote offensive comments about one of his supervisors on the Staff Duty Sheet in his own blood;
 - (iii) deliberately caused damage to the Therapy Room at Waltham Abbey Sports Centre by hitting a door and breaking glass fittings;
 were proven and admitted by the appellant;
- (b) as a consequence of the appellant's actions described in (a)(iii) above, the appellant endangered any or all of the following: other staff, members of the public, himself, contrary to his responsibilities under the Health and Safety at Work etc Act 1974;
- (c) as a consequence of the appellant's actions described in (a)(i)-(iii) above, he caused a fundamental breach in the relationship of mutual trust and confidence between himself as a employee and the Council as an employer;

(d) the proven allegations amounted to Gross Misconduct under the Council's Disciplinary/Capability Procedure;

(e) consideration has been given to the relevant provisions of the Disability Discrimination Act 1995 and the DDA Code of Good Practice and whether the Council had complied with its duty to make reasonable adjustments in relation to the appellant; it is considered that the Council took steps in excess of what is required as it made adjustments both before and after it knew or could reasonably be expected to have known about the appellant's disability; accordingly, it is considered there has been no discrimination for a reason related to disability that is not justified; in particular:

(i) the Council moved the appellant's place of employment twice and with the latter move, it made considerable adjustments to help the appellant by requiring him to undertake less demanding duties;

(ii) the Council arranged for the appellant to receive counselling, referred him to Harlow Occupational Health Service Ltd and arranged for him to see a consultant clinical psychologist and adult psychotherapist;

(iii) the Council expended significant resources in attempting to assist the appellant;

(iv) the Council attempted to organise the appellant's shifts so that he was not directly responsible to the supervisor with whom he had problems;

(v) the Council considered possible redeployment including undertaking risk assessment of alternative posts;

(f) consideration has been given as to whether the appellant's actions were justified or mitigated by reason of bullying by the supervisor against whom his actions were directed; the Council undertook a very thorough investigation into this allegation by the appellant and found no support for the allegation; no evidence was submitted to cast doubt on the outcome of this investigation;

(g) consideration has also been given as to whether the appellant's actions were justified or mitigated by reason of bullying by other supervisors; the appellant has not raised these matters under the Council's Harassment and Bullying Policies as he did with the allegation made under (f) above; the appellant has not provided sufficient details of these allegations for the Council to undertake a meaningful investigation; it is considered that these matters are of no relevance to the actions of the appellant aimed at the supervisor with whom he had problems.

CHAIRMAN

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EPPING FOREST DISTRICT COUNCIL

STAFF APPEALS PANEL HEARINGS PROCEDURE

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1. PURPOSE OF THE STAFF APPEALS PANEL HEARING

- 1.1 The purpose of the Hearing is to enable eligible employees to appeal against a decision to dismiss under the Disciplinary/Capability and Managing Absence Procedures to a higher and independent level of authority. The Panel will also hear an employee's grievance at Stage 3.

2. SCOPE

- 2.1 All employees of Epping Forest District Council (EFDC) are covered by this policy with the exception of the Chief Executive (Head of Paid Services), Corporate Directors, Monitoring Officer, Deputy Monitoring Officer, Heads of Service, Chief Financial Officer (if the postholder is not a designated Chief Officer) casual staff and those employees with less than 6 months continuous local government service. For staff in these categories separate arrangements apply.
- 2.2 The provisions of this procedure shall not apply in relation to dismissals arising out of;
- the expiry of a casual, temporary or fixed term contract of employment
 - termination of employment by reason of redundancy.

3. ROLE OF THE STAFF APPEALS PANEL

- 3.1 The role of the Staff Appeals Panel will be to consider whether the dismissal should be rescinded, upheld or reduced in the light of their deliberations. Also to hear Stage 3 grievances.

4. MEMBERS OF THE APPEALS PANEL

- 4.1 The Staff Appeals Panel will comprise of five members of the Epping Forest District Council (hereinafter called the Council) who are not members of the Executive Committee.
- 4.2 The Council will appoint a Chairman and Vice-Chairman of the Panel and no meeting will be held in the absence of both the Chairman and Vice Chairman.
- 4.3 A senior member of the Human Resources (HR) Unit will be present to advise on points of fact, evidence, procedure and law. The HR Advisor will be completely neutral and impartial. If a senior member of the HR Unit is not available or unable to fulfil this role due to prior involvement in the case, then an independent external advisor may be substituted.

5. NOTIFICATION OF APPEAL

- 5.1 Within 5 working days of receiving the letter of formal notification of the decision, the employee must write to the Head of HR informing them of their intention to appeal, and that they will be submitting a full Written Statement within the next 5 working days.

6. WHEN THE HEARING SHOULD BE HELD

- 6.1 The Hearing will usually be held within eight weeks from the date on which the Head of HR received formal notification of the decision. This timescale may be varied and an extension beyond this period granted with the agreement of the Head of Legal and Administration or their representative, (hereinafter called the Council's representative), the Head of Service and the employee and/or their representative in consultation with the Chairman of the Staff Appeals Panel.

7. PROCESS

- 7.1 If the employee is a member of Legal and Administration Services and the Head of Service has been party to the decision against which the employee is appealing, the Written Statement will be prepared and taken forward by a Corporate Director.
- 7.2 Within 10 working days from receipt of the employee's Written Statement, the Council's representative will construct the Council's Written Statement.
- 7.3 A copy of the employee's Written Statement and the Council's Written Statement will be sent, by the Council's representative, for review by the Chief Executive. This review process shall be completed within 5 working days on receipt of the Written Statements.

- 7.4 Where the appeal is against both the finding and the penalty, any transcription notes taken at the disciplinary hearing will not form part of the appeal papers and the proceedings are likely to be in the form of a complete re-hearing of the evidence.
- 7.5 The employee and the Council's representative may exchange further statements if necessary. Where a hearing date has been fixed well in advance, supplementary evidence may be given to the Council's representative for distribution provided that this is at least 10 working days before the hearing to allow research into the points and copies to be taken, thereby avoiding the need for adjournment.
- 7.6 Further guidance on compiling Written Statements is given in the documents 'Staff Appeals Panel Hearings - Guidance Notes for Employees' and the same for the Council Representative.

8. EMPLOYEE'S CASE – WRITTEN STATEMENT

- 8.1 It is the employee's responsibility to prove that the Council's original decision was unreasonable or incorrect.
- 8.2 The employee must prepare a comprehensive Written Statement, perhaps with assistance from their nominated representative.
- 8.3 The Written Statement should clearly state the following:-
- full circumstances of the case and full details of events as they have happened to date
 - full details of the dismissal they are appealing against
 - the grounds on which they are appealing against, the decision and the remedy sought
 - a list of the key documents to be produced at the hearing
 - copies of all these key documents, which may include;
 - a timetable of events as appropriate
 - any evidence to present to the Panel
 - a list of names of any witnesses to be called to give evidence in support of the appeal: and
 - written statements of witnesses
- 8.4 Only those grounds and items of evidence which are referred to in the Written Statement or supplementary statements can be raised at the hearing. Any attempt to introduce new material at the hearing may lead to an adjournment. Material not contained in the Written Statements and therefore not circulated will only be admitted with the agreement of both parties, or by order of the Panel Chairman.
- 8.5 The Employee's Written Statement of Case will be sent to the Council's representative within 5 working days of submitting the notification of Appeal to the Head of HR.

9. COUNCIL'S CASE – WRITTEN STATEMENT

- 9.1 The Council's representative will respond to the submission of the employee's Statement by preparing a Written Statement of the Council's case in support of the original decision within 10 working days.

9.2 The Statement will present the circumstances of the case and the action taken to date. It should answer points raised on the employee's Statement and give reasons why the original decision was made.

9.3 The Statement should also list and append any key documents which the Council's representative wishes to produce at the hearing. These documents may include:

- organisational charts
- copies of the employee's contract, appraisal documents, notes of disciplinary hearings or interviews or job description
- a timetable of the events as appropriate
- a list of names of any witnesses to be called to give evidence
- written statements of witnesses.

10. REVIEW OF PAPERS

10.1 The Chief Executive or, in their absence, one of the Corporate Directors (provided they have had no prior involvement in the case) shall review the Written Statements to ensure that the information presented is adequate. If either or both of the Statements are unclear or ambiguous the Chief Executive will direct the employee or Council's representative to clarify or expand the relevant points.

10.2 The review mechanism will ensure that the final Statements give a clear logical detailed account of events, with the employee's Statement clearly stating the grounds for the appeal and the defending statement clearly answering all the points raised by the employee. The Chief Executive shall complete this review process within 5 working days on receipt of the Written Statements.

11. NOTICE OF HEARING

11.1 The Secretary to the Appeals Panel will give a minimum of 10 working days notice (excluding the day of the hearing) to the employee. Employees are responsible for arranging their representation if required. This may be a representative of their choice. The employee will be reminded of this right when they are notified of the arrangements for the hearing.

12. ISSUE OF CASE STATEMENTS

12.1 After the review, which will take no longer than 5 working days, the statements will be passed to the Secretary to the Appeals Panel. The Secretary will produce a Case File incorporating these Case Statements within 5 working days of receipt of the Statements.

12.2 The Case File will include the following;

- Index
- Written Statement from the Employee plus supporting documentation, including a list of witnesses appearing.

- Written Statement for the Council's representative plus supporting documentation, including a list of witnesses appearing.
- Contractual documentation ie a job description, contract of employment.
- Copies of;
 - the appropriate Standing Order
 - the Procedures for Staff Appeals Panel Hearings
 - Guidance Notes for Staff Appeals Panel members
 - Guidance Notes for the Employee and for the Council's Representative
 - The previous hearing papers, if not included above

12.3 The Secretary will send copies of the case file to the Panel Members, the HR Advisor, the employee and Council's representative no later than 10 working days before the Hearing date.

12.4 These procedures allow for a maximum of 5 working days for the review to be carried out, a maximum of 5 working days for the Secretary of the Appeals Panel to produce a Case File and a minimum of 10 working days for all parties involved with the Appeal to read the papers. However, these timescales may be varied by agreement of the parties.

13. CONDUCT OF THE APPEAL HEARING

13.1 The employee, their representative and the Council's representative will remain present throughout the hearing, except when the Panel are left alone to consider and determine the case.

13.2 The Panel may adjourn proceedings if they feel further investigation is necessary, a vital witness is absent or for any other appropriate reason. They will confer with all parties before reaching their decision but if they decide an adjournment is necessary the proceedings must be reconvened as soon as is practicably possible.

14. ORDER OF PROCEEDINGS

14.1 Introduction

13.1.1 The Chairman of the Panel will preside over the Hearing, introducing the Members of the Panel, the Secretary and the HR Advisor to the parties. They will then state the reasons for the hearing being held and the remedy sought by the employee.

14.1.2 The Chairman will then confirm the presence or absence of the parties to the case and any representative thereof. In the absence of any of these persons the Chairman may order the hearing to be postponed or order the parties to proceed.

14.2 Evidence

14.2.1 The Chairman will outline the order with which the case will be heard. This will be as follows:

- the employee's opening statement (if appropriate)
- the employee's evidence
- the Council's opening statement (if appropriate)
- the Council's evidence
- Council's summing up
- Employee's summing up

14.2.1 With the agreement of the employee and the Council's representative, the Chairman may rule that the order of these could be amended.

15. THE EMPLOYEE'S CASE

- 15.1 The employee and/or their representative will make an opening statement, which is effectively a summary of the Written Statement.
- 15.2 The employee and/or their representative would call witnesses who will be asked a series of questions whose answers will provide evidence for their case. Each witness, including the employee, will be cross-examined by the Council's representative after giving their evidence. After the Council's representative has completed their cross examination the Panel may also ask questions.
- 15.3 If the employee is presenting their own case they will present their own evidence referring to documents contained in the case file and calling witnesses to support their case. Whilst acting as an advocate and calling witnesses they cannot be cross-examined.
- 15.4 During the hearing the Panel may ask questions of clarification from time to time. Otherwise questions by the Panel shall be put to each party, after he or she has been cross-examined by the Council's representative.

16. THE COUNCIL'S CASE

- 16.1 The Council's representative will also make an opening statement.
- 16.2 They will present their case in support of the original decision, presenting and questioning such witnesses as are mentioned in their Written Statement of Case.
- 16.3 The employee will have an opportunity to ask questions and can question any witnesses after they have given evidence.
- 16.4 The Panel may ask questions on points of clarification at any time. Otherwise questions by the Panel will be put to each party, after they have presented their case.

17. RE-EXAMINATION

- 17.1 Both parties will be asked if they wish to re-examine any evidence before they proceed to the next stage. Only in exceptional circumstances will witnesses, who have previously given evidence, be recalled to the Hearing.

18. FINAL STATEMENT/SUMMING UP

- 18.1 The Council's representative and then the employee and/or their representative may make final statements if they so wish. Neither party may introduce new matters or evidence in their summing up.
- 18.2 The Appeal Panel may seek clarification on any points made in the final statements, but no other party may do so.

19. ADJOURNMENTS AND EVIDENCE

- 19.1 Either party may request an adjournment of the Hearing at any stage. The Panel will consider the reasons for the request and will decide according to the individual circumstances whether or not to allow an adjournment.
- 19.2 The Panel may order an adjournment of the Hearing if they feel that further evidence is required or further witnesses are vital to the determination of the Appeal. The Panel will confer with all parties before reaching a decision but if they decide an adjournment is necessary, the proceedings will stand adjourned and will be reconvened as soon as practically possible.
- 19.3 With the agreement of all parties the Chairman may amend the order in which the evidence is presented.
- 19.4 The submission of new evidence or documentation not contained in the Written Statements will not be allowed by the Staff Appeals Panel except with the consent of the other side or by order of the Panel. If the opposing party object to the submission the Panel will have the power:-
- to disallow the submission and order proceedings to continue
 - to allow the submission of the new evidence
 - to order a short adjournment so that the new evidence can be considered by all parties, after which the Hearing will reconvene
 - to order that the Hearing is adjourned to another day to allow time for proper consideration of the new evidence.
- 19.5 In determining its ruling concerning new evidence, the Panel shall take into consideration the importance of the new evidence and the length of time needed to consider the evidence fully. They will, if they are satisfied that the evidence is relevant to the determination of the Appeal, either order a short adjournment or order the Panel to stand adjourned to another day to allow proper consideration by all parties of the new evidence.
- 19.6 Before the date of an adjourned Hearing, further statements relating to the new evidence or witnesses must be exchanged.

20. CONSIDERATION OF THE CASE

- 20.1 The Council's representative, the employee or their representative will not have voting powers and will not be present during the Panel's deliberation on the case.

- 20.2 The employee, their representative and the Council's representative will withdraw to allow the Panel to deliberate in private.
- 20.3 The Secretary to the Panel and the HR Advisor shall remain present throughout the hearing. They will also remain in the hearing after the employee and the Council's representative have withdrawn whilst the Panel considers its decision. The Secretary and HR Advisor will advise and assist the Panel as required.
- 20.4 If the Panel requires clarification on any point during their consideration of the case in private, the representatives of both sides will be recalled to avoid any unfair advantage to either side.

21. DECISION OF THE PANEL

- 21.1 The employee, their representative and the Council's representative will be recalled and the Panel will announce its decision.
- 21.2 The decision of the Appeals Panel is final. The Panel may allow the appeal, reduce the dismissal to a lesser penalty or reject the appeal.
- 21.3 The decision will normally be given orally at the Hearing; if this is not possible it will be confirmed in writing within 5 working days of the Hearing. If the decision is given orally it will also be confirmed in writing within 5 working days. The HR Adviser will write to the employee confirming the decision, sending copies to their Head of Service, the Council's representative and if appropriate their representative.
- 21.4 Where the appeal is against both the finding and the dismissal it will be necessary to deal with the appeal on the basis of a complete rehearing. If the appeal is simply against the dismissal or only some elements of the original hearing, with the agreement of the parties, there is likely to be opportunity to omit stages of this procedure.
- 21.5 An appeal is not intended to be a substitution for, or prejudicial to, an employee's right of appeal to an Employment Tribunal. However, Employment Tribunals do expect internal appeals procedures to have been exhausted before a complaint is brought before them.

22. FURTHER GUIDANCE

- 22.1 Further guidance on the operation, interpretation and application of this procedure is available from HR.
- 22.2 Alternatively, see the following;

Staff Appeals Panel Hearings – Guidance Notes for Employees
Staff Appeals Panel Hearings – Guidance Notes for the Council's Representative
Staff Appeals Panel Hearings – Guidance Notes for Appeal Panel Members

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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