

# **EMPLOYEE APPEAL HEARING POLICY**

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## **1. POLICY STATEMENT**

- 1.1 The purpose of the Appeal Hearing is to enable employees to appeal against any formal action under the disciplinary, improving performance, managing absence, medical capability, grievance and redundancy policies
- 1.2 Examples of formal action, following a hearing, may be a first written warning, a final written warning, dismissal (with or without notice) or there may be exceptional circumstances where consideration may be given to lesser penalties for example a transfer, demotion or loss of increments,
- 1.3 The Procedure will be implemented in accordance with the Equality Act 2010 and any amendments or future enactments related to it.
- 1.4 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.
- 1.5 The timescales set out in this Policy may be varied by agreement of the parties, including the Appeal Officer.

## **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 Service), Chief Officers, Monitoring Officer, Deputy Monitoring Officer, section 151 Officer, Deputy section 151 Officer (in relation to their statutory role only, whether or not the post holder is designated a Chief Officer) and casual staff, for who separate arrangements apply.

## **3. LEGAL CONTEXT**

- 3.1.4 **Equality Act 2010**

The Equality Act came into force on 1 October 2010. The Equality Act brings together over 116 separate pieces of legislation into one single Act. Combined, they make up the Equality Act 2010 that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

The Act simplifies, strengthens and harmonised legislation to provide a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have merged are:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2



- the Equality Act (Sexual Orientation) Regulations 2007

### 3.1.5 The ACAS statutory Code of Practice

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992. A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

## 4 ASSESSMENT OF RISK

See Equality Impact Assessment

## 5 ROLES & RESPONSIBILITIES

### 5.1 APPEALS OFFICER

5.1.1 An officer at the appropriate management level will chair the appeal hearing, whose decision will be final. This officer will be referred to as the Appeals Officer

5.1.2 To ensure impartiality the Appeals Officer will not have had prior involvement in the case. Appeals against dismissal for whatever reason will be heard by a Director or the Chief Executive. All other appeals will be heard by an appropriate senior manager.

5.1.3 At the discretion of the appeal officer and where a hearing date has been fixed well in advance, supplementary evidence may be given to the People Team 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.

5.1.5 The Appeal Officer 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.

5.1.6 If either party request an adjournment the Appeal Officer will consider the reasons for the request and will decide according to the individual circumstances whether or not to allow an adjournment.

5.1.7 With the agreement of all parties the Appeal Officer may amend the order in which evidence is presented at a hearing.

5.1.8 If any party to the appeal object to the submission of new evidence the Appeal Officer will have the power to:

- Disallow the submission and order proceedings to continue
- Allow the submission of the new evidence
- Order a short adjournment so that the new evidence can be considered by all parties, after which the Appeal Hearing will reconvene
- Order that the Appeal Hearing is adjourned to another day to allow time for proper consideration of the new evidence.

Taking into consideration the importance of the new evidence and the length of time needed to consider the evidence in full.



5.1.4 For recording purposes the Appeal Officer will complete the Fair Decisions template which can be found in the People Team/Manager Toolkit. This document will be placed with the People Team case file along with the 'outcome of the hearing' letter. The completed Fair Decisions forms will also be placed in a corporate 'library' held by the People Team to ensure consistent decision making across the Council.

## 5.2 **EMPLOYEE**

5.2.1 The employee has the right to be accompanied by a representative of their choice.

5.2.2 Within 5 working days of receiving written confirmation of the outcome following a formal hearing, the employee must write to the HR Manager (People Team) informing them of their intention to appeal.

5.2.3 All appeals must be made in writing and should state clearly the basis on which it is made, i.e.:

- The penalty – too severe given the circumstances of the case
- The findings – the evidence did not support the conclusion of the Hearing Officer
- The process – a failure to follow procedure had a material effect on the decision

5.2.4 The employee will provide a written statement of their case on the appeal pro-forma within 5 working days after the intention to appeal letter was sent.

5.2.5 The employee and the Presenting Officer may exchange further statements via the People Team if necessary. Where a hearing date has been fixed well in advance, supplementary evidence may be given to the People Team 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. This will be at the discretion of the Appeals Officer.

5.2.6 It is the employee's responsibility to prove that the Council's original decision was unreasonable or incorrect.

5.2.7 The employee must prepare a comprehensive Written Statement using the relevant pro-forma, perhaps with assistance from their nominated representative.

5.2.8 Depending on the nature of the appeal the Written Statement could include;

- full circumstances of the case and full details of events as they have happened to date (For appeals against the process only the hearing will consider statements from the employee and the original Hearing Officer on this issue only.)
- full details of the formal decision or 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 Hearing Officer
- a list of names of any witnesses to be called to give evidence in support of the appeal: and
- written statements of witnesses

5.2.9 Only those grounds and items of evidence which are referred to in the Written Statement or supplementary statements can be raised at the appeal hearing. Any attempt to introduce new material at the appeal 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 Appeals Officer.

5.2.10 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 and will also be sent a copy of the appeal procedure and any other relevant policies.

5.2.11 Employees are responsible for arranging their own witnesses to attend the hearing

5.2.12 The employee, their representative and the Presenting Officer will remain present throughout the hearing, except when the Appeal Officer is left alone with the People Team advisor to consider and determine the case.

### 5.3 **EMPLOYEE REPRESENTATIVE**

5.3.1 The employee has the right to be accompanied by a representative of their choice.

5.3.2 The employee representative can present the case for the employee, and ask questions. They cannot answer questions on behalf of the employee.

### 5.4 **PEOPLE TEAM ADVISOR**

5.4.1 In all cases a representative of the People Team will advise the Appeals Officer on points of fact, evidence, procedure and employment law. The People Team Advisor will be completely neutral and impartial. If a member of the People Team is not available or unable to fulfil this role, then a suitable advisor may be substituted.

5.4.2 The People Team shall be responsible for ensuring that a person at the appropriate management level hears the matter and who has had no significant prior involvement in the case.

5.4.3 The People Team will write to the employee to give a minimum of 10 working days' notice (excluding the day of the hearing). The notice of the hearing will give the time and location of the Appeal Hearing and the names of the Presenting and Appeal Officers.

5.4.3 The employee and the Presenting Officer may exchange further statements via the People Team if necessary. The hearing will usually be held as soon as reasonably practicable from the date on which the HR Manager, People Team ,



received formal notification of the intention to appeal and on receipt of both written statements.

5.4.5 The People Team will organise an appropriate note taker for the Appeal Hearing

5.4.6 The People Team will produce a Case File incorporating both Case Statements and will include, where relevant, the following;

- Index
- Written Statement from the Employee plus supporting documentation, including a list of witnesses appearing.
- Written Statement for the Presenting Officer plus supporting documentation, including a list of witnesses appearing.
- Documentation i.e. a job description, contract of employment, witness statements etc.
- Copies of;
  - The previous hearing papers.
  - Any other relevant policies.

5.4.7 The People Team will send copies of the case file to the Appeal Officer, their People Team Advisor, the employee and Presenting Officer no later than 10 working days before the Appeal Hearing date (excluding the day of the hearing).

5.4.8 Letters/documents sent to the employee's home address will be dispatched by an appropriate method where a signature is required on receipt of the letter/documents.

5.4.9 Further guidance on the operation, interpretation and application of this procedure is available from a People Team Advisor.

## 5.5 **PRESENTING OFFICER**

5.5.1 In cases where the employee is appealing against the severity of the penalty only, the case will not be re-heard. The Presenting Officer at the appeal hearing will be the Hearing Chair of the original hearing and the Presenting Officer at the original hearing may be called as a witness.

5.5.2 In cases where the employee is appealing against the findings and the penalty, the appeal will be a re-hearing and where possible the Presenting Officer will be the original Presenting Officer who presented the case at the original hearing.

5.5.3 Within 10 working days from the receipt of the employee's appeal pro-forma Written Statement, the Presenting Officer will construct their Written Statement.

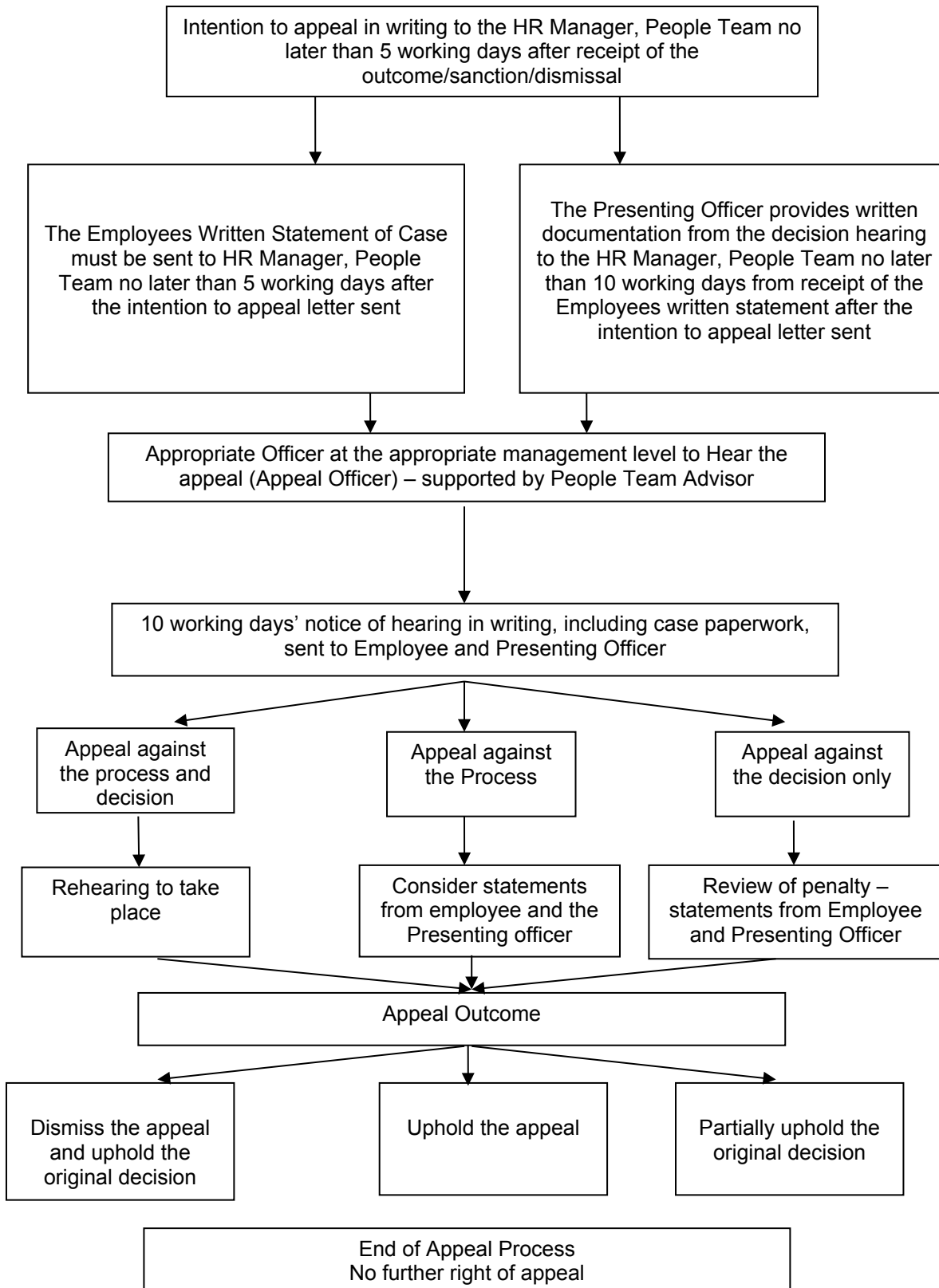
5.5.4 The employee and the Presenting Officer may exchange further statements via the People Team if necessary. Where a hearing date has been fixed well in advance, supplementary evidence may be given to the People Team for distribution provided that this is at least 10 working days before the hearing to allow research into the points and copies to be taken, thereby avoiding the need for adjournment. This will be at the discretion of the Appeals Officer.



- 5.5.5 In cases where the employee is appealing against the process the Presenting Officer at the appeal hearing will be the Hearing Chair of the original review hearing
- 5.5.6 Depending on the nature of the Appeal the Presenting Officer will respond to the employee's submission by preparing a Written Statement of their case in support of the original decision within 10 working days of receipt of the full written appeal statement from the employee. The Written Statement will form part of the Case File (see para 13.2)
- 5.5.7 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.
- 5.5.8 The Statement should also list and attach any key documents which the Council's representative wishes to produce at the hearing. Depending on the nature of the appeal these documents may include:
- the decision letter
  - organisational charts
  - copies of the employee's contract, notes of probationary reviews, improvement plans or job description etc.
  - a timetable of the events as appropriate
  - a list of names of any witnesses to be called to give evidence
  - written statements of witnesses
  - documents provided at the original hearing
  - other evidence to present to the Appeals Officer.
  - The employee, their representative and the Presenting Officer will remain present throughout the hearing, except when the Appeal Officer is left alone with the People Team advisor to consider and determine the case.



**6. PROCESS**





## 7 DEFINITION OF TERMS

Term	Definition
Adjournment	Either party may request an adjournment of the Appeal Hearing at any stage
Appeal	Is the process where the outcome of any formal action or dismissal taken against them under the disciplinary, improving performance, managing absence, medical capability, grievance and redundancy policies are reviewed
Appeal Hearing	To enable employees to appeal against any formal action or dismissal taken against them under the disciplinary, improving performance, managing absence, medical capability, grievance and redundancy policies.
Appeal Outcome	<p>The appeal outcome can be to:</p> <ul style="list-style-type: none"> <li>• Dismiss the appeal and uphold the original decision</li> <li>• Uphold the appeal</li> <li>• Partially uphold the original decision</li> </ul> <p>The decision of the Appeal Officer is final, and is normally delivered verbally at the hearing, or where this has not been possible in writing within 5 working days of the appeal hearing</p>
Appeal Officer	An appropriate Officer at the appropriate management level to hear the appeal
Appeal Pro-forma	Is the form that is completed and submitted in order to provide a full written Case Statement
Employee Case Statements	<p>Depending on the nature of the appeal the Written Statement could include;</p> <ul style="list-style-type: none"> <li>▪ full circumstances of the case and full details of events as they have happened to date (For appeals against the process only the hearing will consider statements from the employee and the original Hearing Officer on this issue only.)</li> <li>▪ full details of the formal decision or dismissal they are appealing against the grounds on which they are appealing against, the decision and the remedy sought</li> </ul> <p>a list of the key documents to be produced at the hearing</p> <ul style="list-style-type: none"> <li>▪ copies of all these key documents,</li> </ul>



	<p>which may include;</p> <ul style="list-style-type: none"> <li>▪ a timetable of events as appropriate</li> <li>▪ any evidence to present to the Hearing Officer</li> <li>▪ a list of names of any witnesses to be called to give evidence in support of the appeal: and</li> <li>▪ written statements of witnesses</li> </ul>
Presenting Officer Case Statement	<p>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.</p> <p>The Statement should also list and attach any key documents which the Council's representative wishes to produce at the hearing. Depending on the nature of the appeal these documents may include:</p> <ul style="list-style-type: none"> <li>▪ the decision letter</li> <li>▪ organisational charts</li> <li>▪ copies of the employee's contract, notes of probationary reviews, improvement plans or job description etc.</li> <li>▪ a timetable of the events as appropriate</li> <li>▪ a list of names of any witnesses to be called to give evidence</li> <li>▪ written statements of witnesses</li> <li>▪ documents provided at the original hearing</li> <li>▪ other evidence to present to the Appeals Officer.</li> <li>▪ The employee, their representative and the Presenting Officer will remain present throughout the hearing, except when the Appeal Officer is left alone with the People Team advisor to consider and determine the case.</li> </ul>
Dismissal with/without notice	<p>Where a dismissal is for reasons of Gross Misconduct it will usually be without notice.</p> <p>Where dismissal is for any other reason it will normally be with notice</p>
Fair Decision Template	<p>In order to ensure that all elements of a case are considered when making a decision a fair decision template has been devised and will be used in all appeal cases <a href="#">Template &lt;Link&gt;</a></p>



<p>3.1 REVIEW OR REHEARING</p>	<p>For hearings where the employee is appealing against the findings and the penalty, the appeal will be a re-hearing.</p> <p>For appeals against the process only the hearing will consider statements from the employee and the original Hearing Officer on this issue only. It will not be a re-hearing.</p> <p>Where the employee is appealing against the penalty only, the case will not be reheard and the hearing shall review the severity of the decision. In this circumstance the employee accepts the evidence and conclusion of the original hearing.</p>
<p>New Evidence</p>	<p>The submission of new evidence or documentation not contained in the written statements will not be allowed by the appeal officer except with the consent of the other side or by their instruction.</p>
<p>People Team Advisor</p>	<p>The People Team Advisor will advise the Appeal Officer on policy and points of employment law.</p>
<p>Presenting Officer</p>	<p>The presenting officer will usually have been the hearing officer where the sanction was given, and will present their case in defence of the decision made.</p>
<p>Rehearing</p>	<p>A re-hearing will only take place where the employee is appealing against the findings and the penalty.</p>
<p>Review</p>	<p>Where the employee is appealing against the penalty only, the hearing shall review the severity of the decision only.</p>
<p>Stage 3 Grievance</p>	<p>A stage 3 grievance appeals are against decisions made under the Grievance Procedure must be in writing and should state clearly the basis on which it is made,</p>
<p>Warning      First Written                     Final Written</p>	<p>A first written warning will normally remain on an employee's record for a period of 6 months A Final Written warning will normally remain on an employee's record for a period of between 12 to 24 months</p>