



# **East Herts Council**

## **Appeals Policy**

### **Policy Statement**

**Policy Statement No 5 (Issue No 1)  
June 2009**

## **Contents**

1.0	Aims of the Policy	3
2.0	Policy Statement	3
3.0	Who to Appeal To and Time Limits	4
4.0	Grounds for Appeal	4
5.0	Appeal Meeting Procedure	7
6.0	Policy Review and Amendment	9
	Appendix A (Appeal Submission Form)	10

# **APPEALS POLICY**

## **Policy Statement No 5 (Issue No 1) June 2009**

### **1.0 Aims of the Policy**

1.1 The purpose of this policy is to provide a standardised appeals procedure that applies to East Herts Council policies that include a right of appeal. This policy takes precedence over any appeals processes detailed in existing policies.

### **2.0 Policy Statement**

2.1 The Appeals Procedure includes appeals against disciplinary action, grievance, absence management, managing performance, selection for redundancy, ending of fixed term employment and requests to work beyond normal retirement. This policy applies to all employees, except for Chief Officer level and above, where procedures set out in the Constitution are used.

2.2 The Appeals Procedure refers to the following policies:

- Disciplinary Policy
- Grievance Policy
- Managing Performance Policy
- Absence Management Policy
- Achieving Organisational Change Policy
- Ending of Fixed Term Employment Policy and Procedure
- Harassment and Bullying Policy
- The Duty to Consider Working Beyond Retirement Policy and Procedure

Or any subsequent replacement/revision of such policy.

2.3 These procedures have been drawn up based on legislation, the ACAS code of practice and have been agreed by UNISON.

### **3.0 Who to Appeal To and Time Limits**

3.1 An employee has a right to appeal against formal action taken in accordance with the stated policies.

3.2 The appeal must be submitted within 10 working days of the date of the written notification of the decision. The appeal should be submitted to the Head of Human Resources using the Appeal Submission form (Appendix A). An appeal submitted late will not be allowed to proceed.

3.3 Unless there are exceptional circumstances, the appeal meeting should take place within 10 working days of receipt of the Appeal Submission form by the Head of HR.

### **4.0 Grounds for Appeal**

#### **4.1 Appeals against Disciplinary Action**

An employee can appeal against a disciplinary sanction on the following grounds:

- There was a significant breach of the procedure.
- A reasonable person could not have reached the decisions to find against the employee on the basis of the evidence submitted.
- The Penalty was too harsh, taking into account the seriousness of the offence and any mitigating circumstances.
- Significant new evidence has become available, and that evidence could not have been available at the time of the original hearing.

#### **4.2 Appeals against Managing Performance Procedure**

An employee can appeal against any formal sanction made under the Managing Performance Policy on the following grounds:

- There was a significant breach of the procedure.
- The employee was given insufficient time in which to demonstrate that they could achieve the required standard.
- The employee was not offered appropriate support and training.

- The employee was not offered suitable and available redeployment.
- That management have not acted reasonably.

#### 4.3 Appeals against Absence Management Procedure

An employee can appeal against any formal sanction made under the Absence Management Policy on the following grounds:

- There was a significant breach of the procedure.
- The employee was given insufficient time in which to demonstrate that they could achieve the required standard.
- The employee was not offered suitable and available redeployment.
- That management have not acted reasonably.

#### 4.4 Appeals against Grievance

An employee has the right to appeal against the outcome of the Grievance Procedure.

#### 4.5 Appeal against Selection for Redundancy Decisions/Non-assimilation

4.5.1 An employee may appeal against redundancy/non-assimilation on the following grounds:

- i. Their post is not redundant;
- ii. They believe they should have been assimilated into a new post;

**Or**

- iii. That the selection criteria were unfairly applied.

4.5.2 If the appeal is on the ground of non-assimilation, the employee needs to identify which post/s it would have been appropriate to assimilate them into and why, setting the similarity of tasks carried out (this may be different to the employees job specification) and any transferable skills not already identified.

4.5.3 If the appeal is on the grounds that the selection criteria were unfairly applied, the appeal hearing will have available anonymised information on the assessment of the other candidates within the ring-fence, which will be taken into consideration when reaching a decision. This information will be

made available to both sides before the appeal hearing and both sides will be invited to comment on how the appeal might impact on other staff.

- 4.5.4 If an appeal on the grounds that the selection criteria were incorrectly applied is successful, the member of staff who is selected for redundancy in their place will also have a right of appeal.

#### 4.6 Appeal against Harassment and Bullying Decisions

- 4.6.1 If the manager decides that it is likely that there is some substance to the complaint and the matter should be resolved through informal means or finds that there is no case to answer, the complainant may appeal against the decision.

- 4.6.2 An appeal must be based on at least one of the following reasons:

- The investigator's investigation or report was inadequate.
- A reasonable person could not have reached the decision on the basis of the evidence provided.
- The manager's decision was inappropriate in the light of the conclusions of the investigator's report.

- 4.6.3 If the manager decides that there is a disciplinary case to answer, then the disciplinary policy will be used. The employee will have the right of appeal in accordance with the disciplinary process.

#### 4.7 Appeal against Ending Fixed Term Employment

A member of staff who is not satisfied with the decision to terminate their fixed term employment should present their reasons using the Appeal Submission form.

#### 4.8 Appeal against Refusal of a Request to Extend Employment beyond Normal Retirement Age

A member of staff who is not satisfied with the decision not to extend their employment beyond normal retirement age should present their reasons using the Appeal Submission form.

## **5.0 Appeal Meeting Procedure**

- 5.1 Appeals will usually be heard by the next level of management who will be a Head of Service or Director who has not previously been involved in the case. The only exception to this will be in the case of appeals against dismissal, which will be heard by the Chief Executive in accordance with the Constitution.
- 5.2 In some situations this will not be the case and the appeal will need to be heard by the same level of senior management, e.g. if a Head of Service appeals against a First Written Warning it will be heard by another Director not previously involved in the case.
- 5.3 For grievances concerning a Director, appeals will be heard by the Chief Executive in accordance with the Constitution.
- 5.4 Step 1- Written Notification
- 5.4.1 Human Resources will send written notification to the employee of the appeal meeting date, time and location, giving them at least 7 working days notice. A copy of the Appeals Policy will be included with the letter. The meeting should normally take place within 10 working days of receipt of the Appeal Submission form to the Head of HR.
- 5.4.2 No later than 5 working days prior to the meeting the employee must submit any new evidence or inform the Head of HR of any new witnesses they intend to call at the meeting.
- 5.4.3 The Manager/ Head of Service will be required to submit a response to the appeal. This should present the circumstances of the case and the action taken to date, and should include a full set of the key documents to be presented at the hearing, including witness statements, a full summary of the circumstances of the case, copies of all correspondence relating to the case and the outcome found at previous stages of the procedure.
- 5.4.4 Copies of all relevant documents will be circulated by Human Resources to all those attending the appeal no later than 3 working days before the date of the meeting.

## 5.5 Step 2- Appeal Meeting

5.5.1 Appeal hearings will not rehear the whole case, but will focus on the grounds of appeal. Further evidence may be introduced by either side if it is relevant to the grounds for the appeal.

### 5.5.2 The Role of Human Resources

The Head of Service/ Director will be accompanied by an HR Officer. It is their role to advise on procedure, to advise on ensuring consistency and equity of treatment. They may also ask questions of clarification of either side. The HR Officer may also take notes at the hearing unless the Head of Service/ Director decides that an additional note-taker should be present. The HR Officer that attends the appeal hearing will not have previously been involved in the case.

### 5.5.3 Witnesses

It is not necessary to recall original witnesses to the appeal meeting. The employee can only recall witnesses or ask new witnesses to attend the appeal meeting if their contribution relates to new evidence that is relevant to the grounds of appeal. The employee must notify the Head of HR no later than three working days before the meeting if they intend to call a witness. Witnesses will only be present at the meeting when giving evidence.

### 5.5.4 Process

The Head of Service/ Director will ensure that all the parties have the relevant documents and ensure that both sides understand the grounds of appeal that are to be considered.

The employee or their representative will set out the grounds of the appeal, calling any witnesses and referring to the documents that have already been submitted.

At the conclusion of the case for the appeal, the Manager/ Head of Service, the Director and the HR Officer may question the employee or their representative.

The Manager/ Head of Service will then respond to the case for appeal in a similar fashion.



At the conclusion of their response they may be questioned by the employee or their representative, the Head of Service/ Director and the HR Officer.

The appellant must always have the right to sum up their case following the manager's responses.

The Head of Service/ Director will then close the meeting to consider the matter, advised by the HR Officer.

### 5.6 Step 3- Written Notification of Outcome

- 5.6.1 The decision will be confirmed to the employee in writing within 3 working days of the appeal meeting. If the decision can be made on the day the employee will also be notified verbally. The decision made at the appeal will be final and there is no further right of appeal within East Herts Council.
- 5.6.2 The employee cannot use the Grievance Procedure by way of further challenge to the decision.
- 5.6.3 No increased penalty will result from an appeal being raised.
- 5.6.4 When an appeal is against a decision to dismiss, the dismissal will have taken effect in accordance with the original decision, either summarily or by notice. Should the appeal be successful the member of staff will be reinstated with full back pay or, if it is considered that disciplinary action less than dismissal is appropriate this will be implemented.

## **6.0 Policy Review and Amendment**

- 6.1 This Policy shall be reviewed after two years or sooner in line with legislation and best practice to reflect the best possible level of support and management.

**Appeal Submission Form**

Date.....

I am writing to appeal the recent decision that was made to:

Please give details of which policy was used, what decision was made and who made the decision.

My grounds of appeal are:

Please outline your reasons for invoking the appeals process.

Resolution sought:

Please outline the outcome you are looking for.

(Name)

Please send the completed Appeals Submission form to the Head of Human Resources within 10 working days of the date of the written notification of the decision.