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<b>Policy Name</b>	<b>Appeals</b>
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<b>Statement No</b>	5
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## 1. Purpose/Aim

- 1.1 The purpose of this policy is to provide a standardised appeals process for the policies listed in section 2. This policy overrides any appeals processes detailed in existing policies.

## 2. Scope

- 2.1 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 policy refers to the following policies (or any subsequent replacement/revision of such policy):

- Disciplinary Policy
- Grievance Policy
- Managing Performance Policy
- Absence Management Policy
- Redundancy Policy (excluding voluntary redundancy)
- Flexible Working Scheme
- Harassment and Bullying Policy

and,

- Process for dismissal for Some Other Substantial Reason (SOSR)

- 2.3 Any formal appeal received that is not directly covered by any of the policies listed above and is not subject to a specific

appeals process should also be dealt with following the process detailed in Sections 3 and 5.

2.4 This policy is based on legislation and the ACAS code of practice, and has been agreed with UNISON.

### **3. 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 to be appealed. The appeal should be submitted to the Head of HR and Organisational Development using the Appeal Submission form (Appendix A), stating their grounds of appeal and the resolution sought. Appeals submitted late without mitigating circumstances will not be allowed to proceed.

3.3 The appeal hearing should be held without unreasonable delay.

### **4. Grounds for Appeal**

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

4.1.1 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 decision 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**

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

## **4.3 Appeals against Absence Management Procedure**

4.3.1 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, where appropriate.
- That management have not acted reasonably.

## **4.4 Appeals against Grievance**

4.4.1 An employee has the right to appeal against the outcome of the Grievance Procedure. They must clearly set out their grounds of appeal using the Appeal Submission Form.

## **4.5 Appeal against Redundancy Decisions**

4.5.1 Under the Redundancy Policy, employees can appeal against decisions on the following grounds:

### **That their post is not redundant**

The employee needs to specifically state why they believe their role is not redundant and where their duties have transferred to.

### **That they should have been slotted in to/ring fenced for a new post**

The employee needs to specifically state which post/s it would have been appropriate to slot them in to / ring fence them for and why, setting out the similarity of tasks carried out (this may be different to the employee's job specification) and any transferable skills not already identified.

### **That the selection criteria during interview / management selection unfairly applied**

The appeal hearing will have available anonymised information on the assessment of the other candidates, 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. If the appeal is successful, the member of staff who is selected for redundancy in their place will also have a right of appeal.

### **That the post offered is not suitable alternative employment**

The employee needs to state why they believe the role that has been offered to them is not suitable alternative employment.

4.5.2 Where notice of redundancy has already been served, any appeals will run concurrently with the employee's notice period.

## **4.6 Appeal against Harassment and Bullying Decisions**

4.6.1 If, following the completion of the investigation report, the manager decides that it is likely that there is some substance to the complaint and the matter should be resolved through informal means rather than formal 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.
- Further evidence has come to light during the investigation period which has not yet been considered.

4.6.3 If the manager decides that there is a disciplinary case to answer neither party will have a right of appeal against this decision. There is a separate right of appeal regarding a sanction against an employee following a disciplinary hearing (see 4.1 Appeal against Disciplinary Action).

#### **4.7 Appeal against a Dismissal for Some Other Substantial Reason (SOSR)**

4.7.1 A member of staff who wishes to appeal the decision to dismiss for SOSR should state their full grounds of appeal using the Appeal Submission form.

#### **4.8 Appeal against Decisions in Relation to Flexible Working Applications**

4.8.1 A member of staff who wishes to appeal a decision in relation to a proposal they have made to work flexibly should state their full grounds of appeal using the Appeal Submission form.

### **5. Appeal Hearing Process**

5.1 HR will allocate an appropriate manager who has not been previously involved in the case to hear the appeal (the Hearing Manager). This may be a service manager, Head of Service or the Deputy Chief Executive depending on the nature of the appeal. Appeals against dismissal will be heard by the Chief Executive in accordance with the Constitution.

5.2 For grievances concerning a Chief Executive or Chief Officer, appeals will be heard in accordance with the Constitution.

#### **5.3 PROCESS: Step 1 - Written Notification**

5.3.1 Human Resources will write to the employee confirming the date, time and location of the appeal hearing, giving at least 7 working days' notice and informing of their right to be accompanied by a trade union representative/work colleague.

5.3.2 No later than 5 working days prior to the hearing the employee must submit any new evidence or inform the Head of HR of any witnesses they intend to call at the hearing.

5.3.3 The manager responding to the appeal (the Responding Manager) 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 appeal hearing, including witness statements, a full summary of the circumstances of the case, copies of all correspondence relating to the case and the outcome of previous stages of the procedure.

5.3.4 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 hearing.

## **5.4 The Role of Human Resources**

5.4.1 The Hearing Manager will be accompanied by an HR Officer. It is the HR Officer's role to advise on procedure, to advise on ensuring consistency of decision making and equity of treatment. The HR Officer may also ask questions of clarification of either side. If possible, the HR Officer supporting the Hearing Manager will not have previously been involved in the case.

5.4.2 The Responding Manager may also be accompanied by an HR Officer. It is their role to advise the manager and answer any questions on the circumstances of the case.

5.4.3 Either HR Officer may take the notes of the hearing unless the Hearing Manager decides that an additional note-taker should be present.

## **5.5 Witnesses**

- 5.5.1 Original witnesses are not required to attend the appeal hearing. The employee can only recall witnesses or ask new witnesses to attend the appeal hearing if their contribution relates to new evidence that is relevant to the grounds of appeal.
- 5.5.2 The employee must notify the Head of HR no later than 5 working days before the hearing if they intend to call a witness. It is the employee's responsibility to arrange their witness's attendance at the hearing.
- 5.5.3 Witnesses will only be present in the hearing when giving evidence.

## **5.6 Step 2 - Appeal Hearing**

- 5.6.1 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 and provided it is received within the specified timescale of 3 working days before the date of the hearing.
- 5.6.2 The Hearing Manager 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.
- 5.6.3 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.

- 5.6.4 At the conclusion of the case for the appeal, the Responding Manager, the Hearing Manager and the HR Officer may question the employee or their representative.
- 5.6.5 The Responding Manager will then respond to the case for appeal.
- 5.6.6 At the conclusion of their response they may be questioned by the employee or their representative, the Hearing Manager and the advising HR Officer.
- 5.6.7 Both parties will make final statements which summarise the key points of their case. The employee will sum up after the Responding manager. It is not appropriate for new evidence to be presented at this stage.
- 5.6.8 The Hearing Manager will then close the hearing to consider the matter, advised by the HR Officer.
- 5.6.9 At any time during the hearing either party can make a request for an adjournment to the Hearing Manager.

## **5.7 Step 3 - Written Notification of Outcome**

- 5.7.1 The decision will be confirmed to the employee in writing within 3 working days of the appeal hearing. 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.
- 5.7.2 The employee cannot use the Grievance Policy by way of further challenge to the decision.
- 5.7.3 No increased penalty will result from an appeal being raised.
- 5.7.4 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 and backdated to the date of the original decision.

## **6. Policy Review and Amendment**

- 6.1 This Policy shall be reviewed after three 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 against 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 grounds of appeal.

Resolution sought:

Please outline the outcome you are looking for.

(Name)

Please send the completed Appeals Submission form to the Head of HR and Organisational Development within 10 working days of the date of the written notification of the decision.