

APPEALS COMMITTEE

PROCEDURE FOR CONSIDERATION OF APPEALS SICKNESS ABSENCE MANAGEMENT POLICY AND PROCEDURE

(Covering all employees except the Chief Executive, Depute Chief Executive and Heads of Service)

1. TERMS OF REFERENCE

- 1.1 The committee will be convened to hear an appeal against a decision to dismiss in terms of the Sickness Absence Management Policy and Procedure.
- 1.2 The committee has delegated power to decide appeals and will be the council's final arbiter on such matters.

2. CONDITIONS RELATING TO AN APPEAL

- 2.1 For the committee to be convened notice of appeal against dismissal must be lodged with the Head of Corporate Services within ten working days of the appellant receiving written notification of the decision arising out of the Sickness Absence Management Policy and Procedure.
- 2.2 The notice of appeal, which must be in writing, may be lodged by the appellant or their trade union or by some other person of the appellant's choice.
- 2.3 The appellant and their representative, if any, will be given a minimum of ten working days notice in writing of the date, time and place of the appeal hearing.

3. MEMBERSHIP OF THE COMMITTEE

- 3.1 The committee comprises a panel of twelve members. Seven members are called to committee meetings and three form a quorum.
- 3.2 Where a meeting of the committee is adjourned for any reason, only those members in attendance at the original hearing will be eligible to attend the reconvened hearing.

4. REPRESENTATION AND ATTENDANCE OF OFFICERS

- 4.1 The Depute Chief Executive (or representative) will represent council at the appeal hearing.
- 4.2 The appellant will have the right to be represented at the appeal hearing by a trade union official or officials or by some other person(s) of their choice.
- 4.3 The Committee Services Manager or representative will act as Clerk to the committee.
- 4.4 The Head of Corporate Services or representative will act as adviser to the committee.

- 4.5 If an appeal hearing is adjourned, all parties involved will ensure that, other than in exceptional circumstances, the original representatives attend the re-convened hearing for continuity purposes.

5. PROCEDURE PRIOR TO APPEAL HEARING

- 5.1 Following submission of a written notice of appeal, the appellant or their representative will submit to the Committee Services Manager:

- a written statement indicating the grounds of the appeal;
- copies of any written statements made by witnesses for the appellant which were considered at the sickness absence monitoring meetings;
- a copy of any other documents to be placed before the committee; and
- the names of any witnesses to be called to give evidence on behalf of the appellant.

- 5.2 The Depute Chief Executive will submit to the Committee Services Manager:

- a written statement of case against the appellant;
- copies of any written statements made by witnesses for the council or medical and other reports considered at sickness absence monitoring meetings
- a copy of any other documents to be placed before the committee; and
- the names of any witnesses to be called to give evidence on behalf of the council.

- 5.3 In cases involving dismissal where the decision to dismiss was taken after consideration of medical evidence, whether direct or indirect, a report by the Medical Adviser will be submitted to the committee. The Medical Adviser will attend the appeal hearing as a witness on behalf of the service. Independent medical evidence may be introduced on behalf of the appellant.

- 5.4 The Committee Services Manager will issue the agenda for the meeting of the committee, which will contain all the documents submitted under paragraphs 5.1, 5.2 and, where appropriate, 5.3 above, not less than 5 working days in advance of the appeal hearing. Documents submitted after the deadlines in 5.1 and 5.2 may only be considered with the committee's permission.

- 5.5 The committee may order such other information and/or documents to be submitted as it may consider appropriate.

6. PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

- 6.1 Witnesses will be excluded until called unless it is agreed that they should be present from the start of the hearing.

- 6.2 The council's representatives will put the case, in the presence of the appellant and their representatives, and may call witnesses.

- 6.3 The appellant or their representatives will have the opportunity to ask questions of the council's representatives and witnesses.
- 6.4 The committee members will have the opportunity to ask questions of the council's representatives and witnesses.
- 6.5 The council's representatives will have the opportunity to re-examine witnesses on any matter referred to in their questioning by committee members, the appellant or their representatives.
- 6.6 The appellant or their representatives will put the case in the presence of the council's representatives and may call witnesses.
- 6.7 The council's representatives will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.8 The committee members will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.9 The appellant or their representatives will have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the committee or the council's representatives.
- 6.10 The council's representatives, then the appellant or their representatives, will have the opportunity to sum up their cases if they so wish. The summing up will not introduce any new matter.
- 6.11 If at any stage new facts are alleged or new evidence produced, the committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period as it may deem reasonable. If any new and important medical evidence is produced, the hearing may be adjourned for a period of not more than 14 days to allow the appropriate medical reports to be submitted.
- 6.12 At the conclusion of the evidence the council's representatives, the appellant and their representatives, and any witnesses, will withdraw.
- 6.13 The committee, together with the officers appointed to assist the committee, will deliberate in private, only recalling the council's representatives and the appellant and their representatives to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point, giving rise to doubt.
- 6.14 The committee will, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event the decision will be notified, in writing, to the appellant and their representatives by the Committee Services Manager within three working days of the date of the hearing.

7. POWERS OF THE COMMITTEE

- 7.1 The form of the decision of the committee will be announced and confirmed in one of the following, as appropriate:

- "that the grounds of the appeal have been substantiated and the appeal be upheld"
 - "that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that "
 - "that the grounds of the appeal have not been substantiated and the appeal be not upheld".
- 7.2 If the appeal is upheld, the action taken to dismiss in terms of the Sickness Absence Management Policy and Procedure will be withdrawn and any monies due to the appellant will be payable in full. Where the appeal was against a decision to dismiss, the appellant will be reinstated to their former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 7.3 If the appeal is substantiated in part, the action taken to dismiss in terms of the Sickness Absence Management Policy and Procedure will be withdrawn. Where the appeal was against a decision to dismiss, the appellant will be either:
- reinstated to their former post or a similar post on no less favourable terms; or
 - re-engaged in some other post on terms and conditions which may be determined by the committee.
- 7.4 If the appeal is not upheld, the dismissal in terms of the Sickness Absence Management Policy and Procedure will stand and be regarded as confirmed.
- 7.5 Where the appeal is against a dismissal in terms of the Sickness Absence Management Policy and Procedure and that appeal is not upheld, the committee may decide that the appellant will be offered re-employment with the council on such terms and conditions as the committee may determine.
- 7.6 For the purposes of paragraphs 7.2 - 7.5 above the terms 'reinstatement', 're-engagement' and 'offer of re-employment' will be defined as follows:
- 'Reinstatement' is the restoration of the contract of employment between the appellant and the council as if the dismissal had never taken place. Thus, the outstanding salary/wages for the period the contract ceased to operate will be payable in full. In addition, all rights arising out of continuous employment will be restored as necessary to ensure reinstatement is without detriment;
 - 'Re-engagement' is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post. Thus, salary/wages for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the committee. In addition, all rights arising out of continuous employment will be restored; and
 - 'An offer of re-employment' is an offer to employ the appellant under a new contract of employment from a future date which may be

determined by the committee. The committee may also determine the post, its grade, location and other terms and conditions of employment. If an offer of re-employment on the specified terms is accepted, the appellant's continuity of service will be regarded as broken and continuous employment will be calculated for future purposes from the date re-employment takes effect.

8. REPORTING TO THE FULL COUNCIL

The decision of the committee will be reported to the full council at the earliest opportunity.

9. TIME LIMITS

The time limits in this procedure may be varied by mutual agreement.