



Employee Appeals Committee (Private)

West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

18 January 2023

A hybrid meeting of the **Employee Appeals Committee (Private)** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre, Livingston** on **Friday 27 January 2023** at **9:30am**.

For Chief Executive

BUSINESS

Public Session

1. Apologies for Absence
2. Declarations of Interest - Members must declare any interests they have in the items of business for consideration at the meeting, identifying the relevant agenda items and the nature of their interests.
3. Order of Business, including notice of urgent business, declarations of interest in any urgent business and consideration of reports for information.

The Chair will invite members to identify any such reports they wish to have fully considered, which failing they will be taken as read and their recommendations approved.

4. Confirm Draft Minutes of Meeting of Employee Appeals Committee (Private) held on Friday 16 December 2022 (herewith)
5. A Copy of the Procedure for Consideration of Appeals Against Disciplinary Action (herewith)
6. PRIVATE SESSION - The Clerk considers that the following business is likely to be taken in private (exempt under the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act)

Private Items for Decision

DATA LABEL: Public

7. Consideration of Appeal
 - (a) Submission on Behalf of the Council
 - (b) Submission on Behalf of the Appellant

NOTE **For further information please contact Anastasia Dragona on tel. no. 01506 281601 or email anastasia.dragona@westlothian.gov.uk**

CODE OF CONDUCT AND DECLARATIONS OF INTEREST (2021)

This form is a reminder and an aid. It is not a substitute for understanding the Code of Conduct and guidance.

Interests must be declared at the meeting, in public.

Look at every item of business and consider if there is a connection.

If you see a connection, decide if it amounts to an interest by applying the objective test.

The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection does not amount to an interest then you have nothing to declare and no reason to withdraw.

If the connection amounts to an interest, declare it as soon as possible and leave the meeting when the agenda item comes up.

When you declare an interest, identify the agenda item and give enough information so that the public understands what it is and why you are declaring it.

Even if the connection does not amount to an interest you can make a statement about it for the purposes of transparency.

More detailed information is on the next page.

Look at each item on the agenda, consider if there is a “connection”, take advice if necessary from appropriate officers in plenty of time. A connection is any link between the item of business and:-

- you
- a person you are associated with (e.g., employer, business partner, domestic partner, family member)
- a body or organisation you are associated with (e.g., outside body, community group, charity)

Anything in your Register of Interests is a connection unless one of the following exceptions applies.

A connection does not exist where:-

- you are a council tax payer, a rate payer, or a council house tenant, including at budget-setting meetings
- services delivered to the public are being considered, including at budget-setting meetings
- councillors’ remuneration, expenses, support services or pensions are being considered
- you are on an outside body through a council appointment or nomination unless it is for regulatory business or you have a personal conflict due to your connections, actions or legal obligations
- you hold a view in advance on a policy issue, have discussed that view, have expressed that view in public, or have asked for support for it

If you see a connection then you have to decide if it is an “interest” by applying the objective test. The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection amounts to an interest then:-

- declare the interest in enough detail that members of the public will understand what it is
- leave the meeting room (physical or online) when that item is being considered
- do not contact colleagues participating in the item of business

Even if decide your connection is not an interest you can voluntarily make a statement about it for the record and for the purposes of transparency.

The relevant documents are:-

- [Councillors’ Code of Conduct, part 5](#)
- [Standards Commission Guidance, paragraphs 129-166](#)
- [Advice note for councillors on how to declare interests](#)

If you require assistance, contact:-

- James Millar, Interim Monitoring Officer and Governance Manager, 01506 281613, james.millar@westlothian.gov.uk
- Carol Johnston, Chief Solicitor and Depute Monitoring Officer, 01506 281626, carol.johnston@westlothian.gov.uk
- Committee Services Team, 01506 281604, 01506 281621
committee.services@westlothian.gov.uk

January 2022

MINUTE of MEETING of the EMPLOYEE APPEALS COMMITTEE (PRIVATE) held within COUNCIL CHAMBERS, on 16 DECEMBER 2022.

Present – Councillors Tom Conn (Chair), Maria MacAulay, Moira McKee Shemilt, Anne McMillan and Tony Pearson

1 DECLARATIONS OF INTEREST

Councillor Tom Conn stated a connection as a fully paid up member of Unite; as the appellant and his representative were not known to him, he would participate in the meeting.

Councillor Tony Pearson stated a connection as a fully paid up member of Unite; as the appellant and his representative were not known to him, he would participate in the meeting.

2 MINUTES

The committee noted the minute of its meeting held on 28 October 2022. The Chair thereafter signed the minute.

3 PRIVATE SESSION

The committee resolved in terms of Paragraph 1 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 that the remaining items of business be taken in private.

4 CONSIDERATION OF APPEAL

Introductions were made by all parties and the Chair explained the procedure that would be followed.

The committee was invited to consider an appeal by an employee under the Procedure for Consideration of Appeals against Disciplinary Action.

The management was represented by Jim Jack, Head of Operational Services, who was accompanied by Alison Egan, HR Business Partner. The management called one witness.

The appellant was present and was accompanied by his trade union representative. The appellant did not call any witnesses.

Parties agreed that witnesses would be excluded from the proceedings until called.

The committee heard the management speak in relation to the appeal.

The appellant was then given the opportunity to question the management.

The committee had an opportunity to question the management.

The management called their witness.

The appellant had the opportunity to question the management's witness.

The committee then had an opportunity to question the management's witness.

The management was given an opportunity to re-examine their witness after he had answered questions from the appellant and committee.

The committee heard the appellant and his representative speak in relation to the appeal.

The management was given the opportunity to question the appellant.

The committee then had the opportunity to question the appellant.

The appellant and his representative were given an opportunity to re-examine anything that had been raised during questioning.

Finally, each side summed up the merits of the case.

All parties then exited the meeting to allow the committee to deliberate in private.

Motion

To uphold the appeal and reinstate the appellant to his original post and salary with a final written warning as council procedures had not been followed correctly and disciplinary action was excessive.

- Moved by Councillor Tony Pearson and seconded by Councillor Maria MacAulay.

Amendment

To not uphold the appeal; the disciplinary action should stand and be regarded as confirmed.

- Moved by Councillor Anne McMillan and seconded by Councillor Tom Conn.

Following an electronic vote, the motion was successful by 3 votes to 2 and was agreed accordingly.

After reaching its decision, all parties returned to hear the decision of the committee.

Decision

The committee found that the grounds for the appeal had been

substantiated and therefore the appeal was upheld.

EMPLOYEE APPEALS COMMITTEE

PROCEDURE FOR CONSIDERATION OF APPEALS AGAINST DISCIPLINARY ACTION

(Covering all employees except the Chief Executive, and Teachers)

1. TERMS OF REFERENCE

- 1.1 The Employee Appeals Committee will be convened to hear an appeal against a decision to:
- (a) dismiss or take other forms of punitive disciplinary action as defined in paragraph 7.2 of the disciplinary procedure; or
 - (b) issue a warning, oral or written, where, exceptionally, the warning has been issued by a Depute Chief Executive or the Chief Executive in person.
- 1.2 The Employee Appeals 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 Employee Appeals Committee to be convened notice of appeal against disciplinary action 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 disciplinary hearing.
- 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 EMPLOYEE APPEALS COMMITTEE

- 3.1 The Employee Appeals Committee comprises a panel of seven members. Five members are called to Employee Appeals Committee meetings and three form a quorum.
- 3.2 Where a meeting of the Employee Appeals 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 the council at the appeal hearing. The council may be represented by the Chief Executive in the case of an appeal by a Head of Service or Depute Chief Executive.
- 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 Employee Appeals Committee.
- 4.4 The Head of Corporate Services or representative will act as adviser to the Employee Appeals 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.
- 4.6 Where the appeal relates to disciplinary action taken in respect of inappropriate behaviour towards children or other vulnerable groups, the Chief Social Worker or his/her nominee will act as an adviser to the Employee Appeals Committee on child protection and related matters.

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 original disciplinary hearing;
 - a copy of any other documents to be placed before the Employee Appeals 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 which were considered at the original disciplinary hearing;
 - a copy of any other documents to be placed before the Employee Appeals 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 Employee Appeals 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 Employee Appeals 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.
- 5.5 The Employee Appeals 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 present 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 Employee Appeals 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 Employee Appeals 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 Employee Appeals 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 Employee Appeals 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 Employee Appeals 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 Employee Appeals 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 Employee Appeals 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. The written notification will refer to the provisions contained in the appropriate Scheme of Conditions of Service concerning an appeal to the Scottish Joint Council.

7. POWERS OF THE EMPLOYEE APPEALS COMMITTEE IN DISCIPLINARY CASES

7.1 The form of the decision of the Employee Appeals 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 disciplinary action 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 disciplinary action will be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss (disciplinary or otherwise), the appellant will be either:

- reinstated to their former post or a similar post on no less favourable terms except that a lesser disciplinary penalty will apply; or
- re-engaged in some other post on terms and conditions which may be determined by the Employee Appeals Committee.

7.4 If the appeal is not upheld, the disciplinary action will stand and be regarded as confirmed.

7.5 Where the appeal is against a dismissal and that appeal is not upheld, the Employee Appeals Committee may decide that the appellant will be offered re-employment with the council on such terms and conditions as the Employee Appeals 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 unless the council impose an alternative disciplinary penalty of a financial nature i.e. a period of suspension without pay or the withholding of an annual increment. 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 e.g. demotion to a lower graded 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 Employee Appeals 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

Employee Appeals Committee. The Employee Appeals 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 Employee Appeals 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.