**Disciplinary Appeal Hearing Guidance**

**Purpose of the appeals process**

Employees who have had disciplinary action taken against them must be given the opportunity to appeal.

The appeals process is about looking at what happened previously in the disciplinary process and remedying any defects in the original disciplinary procedure. The appeal is NOT however a rehearing of the original case but rather an opportunity for the employee to highlight to an independent manager, with the power to make an alternative decision, why they believe the disciplinary action was unjust.

There is no right of appeal against any non-disciplinary action taken (e.g. a decision to counsel the employee or to suspend).

**Grounds for appeal**

An employee can choose to appeal where:

 they consider a finding or the penalty to be unduly severe or inconsistent;

 new and relevant evidence comes to light that was unavailable at the time of the disciplinary hearing; or

 they consider that the disciplinary procedure was not used correctly and they were disadvantaged because of this

An appeal on other grounds will not be considered competent.

**Registering an appeal**

Apart from satisfying the above grounds, for an appeal to be considered competent it must satisfy the following:

 be in writing outlining the grounds for appeal (it is insufficient for the employee just to state that they wish to appeal without setting out their grounds)

 be made within the timescale provided for within the letter outlining the disciplinary action

 be submitted to the officer stated within the outcome letter

The manager who took the disciplinary action should receive a copy of the written appeal and be informed that they will be required to attend the appeal hearing.

**Who hears the appeal?**

Appeals for non-teaching staff are heard at Head of Service level or above. Appeals for teaching staff are also heard at Head of Service level or above other than in the case of a dismissal, where the appeal would be heard by a Director. In all cases the person hearing the appeal will not have had any prior involvement in the case.

Exceptions to the above are appeals against a final written warning or dismissal, where for non-teaching staff the employee has the option of having their appeal heard by the Council’s Appeals by Employees Committee; or for teaching staff the Education, Culture & Sport Committee.

**When should the appeal be heard?**

The manager appointed to hear the appeal should contact the employee in writing with the appeal arrangements as soon as possible, and inform them of their right to be accompanied at the appeal hearing.

**Who should attend the appeal hearing?**

 the manager holding the appeal

 the manager who made the decision at the disciplinary hearing

 an HR Adviser to provide the manager with procedural advice and guidance

 the employee

 the employee's companion if they wish to be accompanied (see earlier section on ‘Right to be accompanied’).

**HOW TO CONDUCT AN APPEAL HEARING**

**Introduction**

An employee has the right of appeal against any disciplinary action taken against them; they will do this in writing within a specified timescale. To hear an appeal you must prepare in advance and understand the grounds for appeal.

**Preparation**

 Contact an HR Adviser to arrange their attendance at the hearing to provide support, guidance and advice

 Write to the employee confirming when the appeal will be heard, using the model letter

 Book a room in a confidential location with a separate room for any adjournment

**The appeal hearing**

 Present at the appeal will be the Chair, the Chair of the disciplinary hearing, the employee and his/her representative and an independent HR Adviser

 Commence the hearing by introducing everyone present, confirm their role in the appeal hearing and explain the procedure that is stated in the letter sent to the employee

 Invite the employee to state the grounds and reasons for appeal

 Invite the chair of the disciplinary hearing the opportunity to respond and give their reasons for the decision

 You and the HR Adviser may then ask appropriate questions of either party

 Both parties will be given the opportunity to make a closing statement, firstly the Chair of the Disciplinary Hearing, then the employee

 Ask employee whether he/she considers that they have had a fair hearing, and whether they have anything further to add

 Both parties will be asked to withdraw and you will make a decision in consultation with HR

**Options available are:-**

 To uphold the appeal in full (all records of disciplinary proceedings will be removed and sanctions will be removed from file)

 To uphold the appeal in part. In such circumstances, it may be appropriate that the level of disciplinary action is reduced

 To reject the appeal

**Factors to consider before reaching a decision**

In arriving at a fair and reasonable decision, you should:

 be prepared to overturn a previous decision if it becomes apparent that it was not soundly based and is wrong – such an outcome does not undermine authority but rather demonstrates the independent nature of the appeal

 listen carefully to both sides of the case and make a judgement as objectively as possible

 satisfy themselves that no unfair bias or prejudice affected the original decision

And, if any of the following issues form the basis for the appeal:

 consider whether the disciplinary action taken was within the ‘band of reasonable responses’

 consider whether any procedural deficiencies may have unfairly affected the outcome and disadvantaged the employee (if this is the case made by the appellant)

 consider whether any areas of mitigation offered by the employee at the disciplinary hearing were properly considered by the person who took the disciplinary action

 pay particular attention to any new matters/evidence that has come to light, whether this would have affected the outcome of the disciplinary hearing, whether the employee had the opportunity to raise these matters at the disciplinary hearing. The chair should ensure that manager has an opportunity to comment on these

 resume the meeting and give your outcome as soon as reasonably practical. This would be within 24 hours unless in exceptional circumstances

 once reconvened inform the employee of the decision. This will then be confirmed in writing.