

## **PART 1 - POLICY**

### **PURPOSE**

Fife Council hope that the jointly agreed Policies and Procedures in place within the Council will ensure that employees feel they are valued and that they will be treated fairly by the Council. However there may be occasions where employees are unhappy with decisions taken by the Council or a failure of the Council to reach a decision. This procedure has therefore been agreed to assist employees to address these problems internally.

### **GUIDING PRINCIPLES**

- a) employees are expected to raise issues initially through the relevant procedure for example the grievance procedure
- b) employees may appeal on their own behalf or through a trade union representative or other representative of their choice
- c) appeals will be dealt with as quickly as possible within the agreed time limits wherever possible
- d) the raising of an appeal will not preclude an employee from making an application to an Employment Tribunal

### **SCOPE**

This procedure applies to all single status and craft employees. There are separate procedures for chief officials and teachers. Employees may appeal on questions which relate to:

- a) any issue which has been raised under the grievance procedure is unresolved after the procedure is exhausted
- b) disciplinary action or action related to capability which has resulted in termination of employment

Appeals should be lodged within ten working days of the date of receipt of written confirmation of the decision which is the cause of the appeal.

## **PART 2 - PROCEDURE**

### **INITIATING THE APPEAL**

Where there is a right of appeal as described under Part 1 the employee or their chosen representative should write to the Executive Director of Finance and Corporate Services giving brief details of the substance of the appeal. Legal & Democratic Services will then arrange for the Appeals Sub-Committee to hear the case and request copies of submissions from both parties. The submissions will be forwarded to both parties and all Members of the Sub-Committee at least five working days in advance of the hearing.

The chosen representative and the employee will be given at least five working days written notice of the time and place of the hearing. Either side may call witnesses to the hearing where this will assist in presenting the case. Where witnesses are to be used it will be the responsibility of the side calling the witness to arrange this. Intention to call witnesses should be noted to the Committee Officer, Legal & Democratic Service, in advance of the hearing.

### **APPEAL HEARING**

The Appeals Sub-Committee shall hear the appeal in the following order:-

- a) the employee or their representative presents the case in the presence of the Council's representative
- b) the Council's representative may then question the employee or their representative and any witnesses called
- c) the Council's representative presents the Council's case in the presence of the employee and their representative
- d) the employee or their representative may then question the Council's representative and any witnesses called
- e) the Appeals Sub Committee may then question both parties and any witnesses which were called
- f) the Council's representative and employee or chosen representative may then sum up their cases respectively after which both sides will leave the hearing
- g) the Appeals Sub Committee will then consider the case and may recall parties only to clarify points of uncertainty - where this is necessary both parties will be recalled

Where the appeal is one relating to termination of employment it is for the Council to demonstrate that the action taken was fair and the Sub Committee will hear the Council's case first, that is steps (c) and (d) followed by steps (a) and (b).

## **APPEALS DECISION**

Where possible the Appeals Sub Committee will announce its decision to the parties at the end of the meeting however the decision will also be notified in writing by the Committee Officer within three working days.

The decision will be either:-

- a) “ that the grounds of the appeal have been substantiated and the appeal be upheld”
- b) “that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that .....
- c) “that the grounds of the appeal have not been substantiated and the appeal be not upheld”

## **NOTES**

- a) Appeals will be heard by the Appeals Sub Committee as quickly as possible, and the aim would be within twenty working days of receipt of notice of the appeal. Please note that this is not always possible due to the availability of Committee members, representatives and accommodation.
- b) In cases involving dismissal the Council must satisfy the members that the decision was fair, in all other cases it is for the employee to satisfy the members that the appeal should be upheld.

For the purposes of this procedure a working day means Monday - Friday except public holidays.

## FIFE COUNCIL

### GRIEVANCE, DISCIPLINARY AND CAPABILITY APPEAL - STATEMENT OF CASE

#### Employee Details -

Name:	
Post Title:	
Section:	Service:
Action appealed against:	

#### Statement of Case - To be completed by Management and the Employee (or the chosen representative)

please read the notes overleaf before completing this section

*continue on separate sheet if necessary*

## NOTES

- 1 The Committee Officer will arrange a date, time and place for the hearing. You will be notified of the arrangements at least five working days prior to the appeal hearing, a full set of the papers for the hearing will be sent with this letter.
- 2 The completed summary form and any supporting papers should reach the Committee Officer not later than seven working days before the hearing.
- 3 Any letters, or other documents, you wish the Sub-Committee to consider should accompany this form.
- 4 This form has been issued to enable the Sub-Committee to hear cases in a fair and logical manner and to avoid disputes as to facts being argued at the Hearing. The statement of case should include the following:-
  - a) for employees
    - (i) The reason why you feel that an appeal is justified. For example, the decision was unjust or too severe, and why you feel that.
    - (ii) A summary of the facts you wish the Sub-Committee to consider - you will be allowed to expand on these at the Hearing.
    - (iii) Any relevant documentation. Please note that management will include relevant correspondence and minutes (see the relevant checklist for further guidance).
    - (iv) A note of the witnesses, if any, you will be calling and a brief indication of the evidence they will give.
  - b) for management
    - (i) The reason why you think the decision made, or disciplinary action taken, was fair.
    - (ii) A brief summary of the facts you wish the Sub-Committee to consider - you will be allowed to expand on these at the Hearing.
    - (iii) Any relevant correspondence and minutes (see the relevant checklist for further guidance).
    - (iii) A note of the witnesses, if any, you will be calling and a brief indication of the evidence they will give.
- 5 The Sub-Committee is reluctant to accept papers presented on the day and, unless there is a very good reason, will not normally hear evidence which was not available when the original decision was taken. Should new evidence have come to light since the decision, you should immediately contact the Committee Officer to discuss this.
- 6 All papers and meeting notices will be sent to you or, if you have nominated a representative, to your representative.
- 7 You are reminded that it is your responsibility to arrange for representation and/or the presence of any witnesses on your behalf.

**PLEASE NOTE ALL DOCUMENTS MUST BE FULLY REDACTED TO REMOVE NAMES OF SERVICE USERS AND/OR SCHOOL PUPILS**

## Checklists

The following checklists show the correspondence and documents that management should provide with their appeal submission.

### Appeal against Capability Dismissal – Long Term Absence

<b>Management Case</b>	Paper outlining the management case – summary of employee history and reason for dismissal detailing:- <ul style="list-style-type: none"> <li>• Any reasonable adjustments attempted or explanation why this cannot be accommodated</li> <li>• Return to work attempts</li> <li>• Redeployment search (where relevant)</li> </ul>
<b>Job Profile</b>	Only where relevant
<b>Occupational Health Report(s)</b>	Copy of any reports that were requested and relied on in making dismissal decision
<b>Capability Hearing Report</b>	Copy of report presented at capability hearing along with any relevant absence review meeting notes
<b>Note of Capability Hearing</b>	Note of hearing which employee will have been sent previously
<b>Outcome Letter</b>	Letter confirming outcome of capability hearing and right of appeal

### Appeal against Capability Dismissal – Frequent Absence

<b>Management Case</b>	Paper outlining the management case – summary of employee history and reason for dismissal detailing:- <ul style="list-style-type: none"> <li>• Any reasonable adjustments attempted or explanation why this this cannot be accommodated</li> <li>• Return to work attempts</li> <li>• Redeployment search (where relevant)</li> </ul>
<b>Job Profile</b>	Only where relevant
<b>Absence history</b>	Print of absence history
<b>Return to Work Forms and/or Absence Review Meeting Notes</b>	Relevant form and notes
<b>Stage 1 Outcome Letter</b>	Ensuring absence history was correct and right of appeal was offered
<b>Stage 2 Outcome Letter</b>	Ensuring absence history was correct and right of appeal was offered
<b>Occupational Health Report(s)</b>	Copy of any reports that were requested and relied on in making dismissal decision
<b>Capability Hearing Report</b>	Copy of report presented at capability hearing
<b>Note of Capability Hearing</b>	Note of hearing which appellant will have been sent previously
<b>Outcome Letter</b>	Letter confirming outcome of capability hearing and right of appeal

## Appeal against Termination – Discipline

<b>Management Case</b>	Paper outlining the management case – summary of misconduct and reason for dismissal, detailing considerations of any other sanctions
<b>Job Profile</b>	Only where relevant
<b>Suspension Letter</b>	Where applicable
<b>Disciplinary Investigation Report</b>	Copy of report presented at disciplinary hearing
<b>Note of Disciplinary Hearing</b>	Note of hearing which appellant will have been sent previously
<b>Outcome Letter</b>	Letter confirming outcome of disciplinary hearing and right of appeal

## Appeal against Termination – Capability (Performance)

<b>Management Case</b>	Paper outlining the management case – summary of performance issues and reason for dismissal detailing any alternatives to dismissal that were considered
<b>Job Profile</b>	Required
<b>Performance Hearing Report</b>	Copy of report and relevant appendices:- <ul style="list-style-type: none"> <li>• Informal evidence of performance issues raised and support/training put in place</li> <li>• Action plan</li> </ul>
<b>Stage 1 Performance Management meeting note</b>	Note of meeting, including action plan of improvements required and support agreed
<b>Stage 1 Review Meeting note</b>	Note of stage 1 review meeting
<b>Outcome letter</b>	Stage 1 outcome letter
<b>Stage 2 Performance Management meeting note</b>	Note of meeting, including action plan of improvements required and support agreed
<b>Stage 2 Review Meeting note</b>	Note of stage 2 review meeting
<b>Outcome Letter</b>	Stage 2 outcome letter
<b>Stage 3 – Capability Hearing report</b>	Capability Hearing report
<b>Note of Capability Hearing</b>	Note of hearing which appellant will have been sent previously
<b>Outcome Letter</b>	Letter confirming outcome of disciplinary hearing and right of appeal