

(This report is not a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

WEST SUFFOLK
JOINT STAFF
CONSULTATIVE
PANEL

23 SEPTEMBER 2013

JSP13/005

Report of the Head of Human Resources and Organisational Development

JOINT APPEAL POLICY AND PROCEDURE (Decision Plan Reference: OCT13/09)

1. Summary and reasons for recommendation(s)

- 1.1 The Human Resources Service is currently working through the HR Policies that are in place at each Council, in order to produce and agree new joint policies for West Suffolk. This report proposes a new joint Appeal Policy and Procedure.
- 1.2 The new Policy and Procedure are in accordance with current employment legislation specifically the Employment Rights Acts 1996, 1999 and the Employment 2008 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.3 Both existing policies and procedures, in place at Forest Heath and St Edmundsbury, have been reviewed and changes made to ensure that managers have a sound and effective single policy for dealing with employee grievances.
- 1.4 The joint policy details the composition of the Appeals Panel. The ACAS Code of Practice recommends any appeal is lead by a senior manager not previously included in the Disciplinary Procedure.
- 1.5 The Joint Leadership Team, Unison and the Portfolio Holders have been consulted on this policy

2. Recommendation(s)

- 2.1 **That the Joint Staff Consultative Panel recommend to both Forest Heath District Council and St Edmundsbury Borough Council Cabinet and Council that:**

- 1. The Joint Appeal Policy and Procedure is adopted.**
- 2. The changes are made to the both Councils' Constitutions, as required.**

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3. Corporate priorities/Strategic Priorities

- 3.1 The recommendation meets the Councils' priorities to work together to be efficient councils in the effective management of human resources.

4. Key issues

- 4.1 The two councils have a Joint Leadership Team, a single pay and reward strategy, and are bringing together a shared workforce. HR Policies and procedures underpin the terms and conditions of employment, and are tools for both managers and employees to utilise to deal with matters when they arise.
- 4.2 It is important for everyone to have absolute clarity, fairness and consistency in regard to resolving employment concerns and disputes, the adoption of this joint and up-to-date policy will be supported by information sharing and training for managers and staff, as appropriate.

5. Other options considered

- 5.1 To retain existing, different policies that need reviewing is not an effective option.

6. Community impact

- 6.1 **Crime and disorder impact** *(including Section 17 of the Crime and Disorder Act 1998)*

6.1.1 None.

6.2 Diversity and equality impact *(including the findings of the Equality Impact Assessment)*

6.2.1 The adoption of a joint policy supports equity and consistency in approach between the two partner employers in West Suffolk.

6.3 Sustainability impact *(including completing a Sustainability Impact Assessment)*

6.3.1 Not applicable.

6.4 Other impact *(any other impacts affecting this report)*

6.4.1 Amendment to the Councils’ Constitutions will be required following approval at Council of this policy, removing reference to the Staffing Appeals Committee (SEBC)/Appeals Committee (FHDC) and constituting a Joint Appeals Committee for any termination or grievance involving those posts that are member responsibility only.

7. Consultation *(what consultation has been undertaken, and what were the outcomes?)*

7.1 This paper is the consultation document for the Joint Staff Consultative Panel; Unison and the Joint Leadership Team have been consulted during its development.

8. Financial and resource implications *(including asset management implications)*

8.1 Effective HR Policies mitigate risk of employment disputes. Training will be delivered as part of the HR Bite-size programme contained within the Corporate L & D/Training programme.

9. Risk/opportunity assessment *(potential hazards or opportunities affecting corporate, service or project objectives)*

Risk area	Inherent level of risk <i>(before controls)</i>	Controls	Residual risk <i>(after controls)</i>
Poor employment relations	Medium	Adoption of joint policy	Low
Delay in dealing with problems	Medium	Effective policy with clear and practical timescales	Low
Lack of management skill in solving workplace disputes	Medium	Training for managers	Low

10. Legal and policy implications

10.1 Compliance with TULR(C)A and Employment Rights Acts 1996, 1999 and the Employment Act 2008 and ACAS Codes of Practice.

11. Ward(s) affected

11.1 None directly.

12. Background papers

12.1 None.

13. Documents attached

13.1 Appendix - Joint Appeal Policy and Procedure – November 2013

Forest Heath District Council &
St Edmundsbury Borough Council

Appeal Policy and Procedure

September 2013

Appeal Policy

Aims of the Procedure

The purpose of this policy is to provide a standardised appeal procedure that applies to both St Edmundsbury Borough Council and Forest Heath District Council. This policy takes precedence over any appeal processes detailed in existing policies.

Appeal Procedure

1. Employees have a right of appeal against any formal written disciplinary warning, or a decision to dismiss resulting from the use of the separate Disciplinary, Capability, Ill Health or Probationary Procedures and from selection for redundancy or any other management action to dismiss. Employees may also use this Appeal Procedure against a decision from a formal Grievance Hearing or if they feel that a harassment complaint has not been investigated properly or treated seriously by management.
2. Appeals will be to an Appeals Panel.
3. An appeal must be lodged in writing to the Chief Executive within 10 working days of the date of the letter informing employees of the decision affecting them.
4. The Head of Human Resources will make the necessary arrangements to convene a suitable Staffing Appeals Panel. The panel will include two members of West Suffolk Councils' Joint Leadership Team, to be advised by a representative from HR. The panel will not have been involved in the case and, if possible, work at a higher level of authority in the organisation than the original disciplinary panel.
5. The actual procedure is set out below and employees will have full rights of representation.
6. Parties to an appeal should be notified of the hearing date within **20 working days** of the registration of the appeal. Only in exceptional circumstances should it be necessary to exceed this timescale. Statements of Appeal together with, where appropriate, a list of witnesses to be called, must be received from both parties by the Head of Human Resources no later than **15 working days** before the hearing date. These statements should detail precisely the grounds of the appeal and outline the details of the case. A Case File incorporating these statements will be sent to the parties no later than **five working days** before the hearing date. However, the timescales of this paragraph may be varied by agreement of the parties.

7. If, as a result of an appeal or any other review, disciplinary actions against employees are withdrawn or, on appeal, are found clearly to have been mistakenly instituted, all details will be removed from employees' personal files and they will be informed accordingly.
8. An appeals panel may:
 - (a) uphold the original decision,
 - (b) allow the appeal, or
 - (c) substitute its own alternative (but only in the most exceptional circumstances will the original sanction be increased in severity).
9. There is no right of appeal against a decision to dismiss taken as a result of unsatisfactory performance during the probation period.
10. An appeal is not intended to be in substitution for, or prejudicial to, employees' rights of appeal to the Employment Tribunal. However, apart from initial registration, Employment Tribunals usually satisfy themselves that internal appeal procedures have been exhausted before they entertain cases referred to them.
11. The format for Appeal Hearings to the Appeals Panel is attached as Appendix A.

APPENDIX A

Form of Appeal Procedures to the Staffing Appeals Committee of the Council

Introduction

The Chair of the Panel will introduce the Members of the Panel to the proceedings.

The Appellant's case

The Appellant may make an opening statement and as part of the presentation of his/her case may call witnesses. New, relevant, evidence will be admissible.

The Management representative will have the opportunity to ask questions of the Appellant and any witnesses called after each witness has given evidence.

The Panel may also ask questions.

The Respondent's case

The Management representative may also make an opening statement and as part of the presentation of his/her case may also call witnesses. New, relevant, evidence will be admissible.

The Appellant will then have an opportunity to ask questions of the Management Representative, and any witnesses called after each witness has given evidence.

The Panel may also ask questions.

Re-examination

Both parties will be asked if they wish to re-examine any evidence before they proceed to the next stage.

Final statements

Both the Management Representative, and the Appellant (last) may make final statements if they so wish.

Adjournment

Either party may request an adjournment of the hearing at any stage.

Consideration of the case

All parties to the hearing will then withdraw.

The Panel, will then deliberate. If it is necessary to recall either party or any witness to the hearing in order to clear up any points of uncertainty on the

evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Decision of the Panel

The Panel will, if possible, give its decision to the parties immediately after the hearing but, in any case, such decision will be confirmed in writing.

Note:

- (i) Where a disciplinary appeal is against both the finding and the penalty, normally it may be necessary to deal with the appeal on the basis of a complete re-hearing. In this situation the procedure for disciplinary hearings should be (re)used.
- (ii) There may be situations where, with the agreement of all parties, the order of procedure can be reversed, ie the Management Representative will state his/her case first with the Appellant second. The order for final statements will always allow the Appellant the final submission.
- (iii) References to 'Appellant' are deemed to include anyone acting on their behalf.
- (iv) The decision of the Appeals Panel is final and there is no further internal right of appeal.