

# Personnel Appeals Panel under the Conduct Procedure **AGENDA**

**DATE:** Tuesday 16 September 2014

**TIME:** 11.00 am \*

**VENUE:** Committee Room 6,  
Harrow Civic Centre

\* **Please note:** There will be a briefing for Members of the Panel at 10.30 am in Committee Room 6

## **MEMBERSHIP**

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### **Councillors:**

Councillor Pamela Fitzpatrick    Councillor Marilyn Ashton  
Councillor Barry Kendler

**Contact:** Maria Farrell, Democratic & Electoral Services Officer  
Tel: 020 8424 1367    E-mail: [maria.farrell@harrow.gov.uk](mailto:maria.farrell@harrow.gov.uk)

## **AGENDA - PART I** (Pages 1 - 10)

### **1. APPOINTMENT OF CHAIRMAN**

To appoint a Chairman for the purposes of this meeting.

### **2. DECLARATIONS OF INTEREST**

To receive declarations of disclosable pecuniary or non pecuniary interests, arising from business to be transacted at this meeting, from all Members of the Panel.

### **3. MINUTES**

[Note: Personnel Appeals Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chairman for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Personnel Appeals Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chairman and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].

### **4. EXCLUSION OF THE PRESS AND PUBLIC**

To resolve that the press and public be excluded from the meeting for the following items of business, on the grounds that they involve the likely disclosure of confidential information in breach of an obligation of confidence, or of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972:

<u>Agenda Item No</u>	<u>Title</u>	<u>Description of Exempt Information</u>
5.	Disciplinary Hearing	Information under paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972, relating to any individual.

## **AGENDA - PART II** (Pages 11 - 138)

### **5. DISCIPLINARY HEARING**

#### **DISCIPLINARY HEARING** (Pages 1 - 138)

- (i) Procedure for Hearing & Conduct Procedure (pages 1 - 10)
- (ii) Appellant's Case Statement (pages 11 - 104)
  - Appendix 1 (page 25)
  - Appendix 2 (page 27 - 32)
  - Appendix 3 (page 33 - 48)
  - Appendix 4 (page 49 - 56)
  - Appendix 5 (page 57 - 64)
  - Appendix 6 (pages 65 - 66)

- Appendix 7 (page 67 - 68)
- Appendix 8 (page 69 - 74)
- Appendix 9 (page 75 - 76)
- Appendix 10 (pages 77 - 82)
- Appendix 11 (page 83 - 88)
- Appendix 12 pages 89 - 92)
- Appendix 13 (page 93 - 98)
- Appendix 14 (page 99 - 101)
- Appendix 15 (page 102 - 104)

(iii) Management's Case Statement (pages 105 - 138)

- Appendix 1 (page 110 - 112)
- Appendix 2 (page 113 - 117)
- Appendix 3 (page 118)
- Appendix 4 (page 119)
- Appendix 5 (page 120 - 137)

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# **PROCEDURE FOR HEARING AND DISCIPLINARY PROCEDURE**

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## **Conduct of the Appeal Hearing**

- The Appeal Panel must conduct the meeting ensuring good order and natural justice to ensure that both sides have a fair hearing.
- The panel must allow an opportunity for both sides to put their case fully including an opportunity to call witnesses and to put questions to witnesses brought by the other side.
- The Appeal Panel will not consider issues that are not relevant to the grounds of appeal.
- The panel will adjourn to consider the appeal and whether the disciplinary action taken was appropriate.

## **Procedure at the Appeal Hearing**

- The Manager /Chair of Members Panel hearing the Appeal – introduces everyone, confirms purpose of Hearing, advises employee of their right to be represented if not, and asks all present to confirm receipt of documentation sent out relevant to the appeal.
- The Employee/Representative – sets out reason(s) for their appeal, can call witnesses and introduces any new information not previously available to the panel.
- Manager who made the decision to take disciplinary action responds to employee's statement.
- Both Parties and Appeal Panel given opportunity to ask questions of the witnesses.
- Manager who made the decision to take disciplinary action summarises their case.
- Employee's /representative summarises their case.
- The Hearing adjourns while the Panel considers the case in private (only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will return).
- The following is a list of questions the panel must address:

The following is a list of questions the Appeals panel must address.

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|---|-----|----|
| 1. Was there as much investigation as is reasonable in the circumstances, i.e. did the conduct panel have all the relevant information it needed to consider in making a decision to dismiss? | YES | NO |
| 2. Were the requirements of the conduct procedure properly complied with, including advance notice to the 'employee' of the allegation to be considered at the conduct hearing?               | YES | NO |

- |  |     |    |
|--|-----|----|
| 3. Did the Conduct panel pay sufficient regard to any explanation put forward by or on behalf of the 'employee'?   | YES | NO |
| 4. From the Appeals panel papers and the cases submitted at the hearing by both the employee and management, does the appeals panel believe that the 'employee' committed the misconduct as alleged?                     | YES | NO |
| 5. Does the appeals panel believe there are reasonable grounds on which to sustain and justify that belief on the balance of probabilities - is it more likely than less likely that the 'employee' did what is alleged? | YES | NO |

**“YES” answers to all of these questions will mean that the Appeals Panel is in agreement that an act of misconduct was correctly determined by the Conduct Panel. The next consideration for the Appeals Panel will be whether the decision to dismiss was appropriate.**

- |   |     |     |
|---|-----|-----|
| 6. Does the Appeals Panel find that the misconduct was sufficiently serious to justify the decision to dismiss by the Conduct Panel?  | YES | NO  |
| 7. Does the Appeals Panel find that the Conduct Panel took account of any mitigating circumstances put forward by or on behalf of the 'employee', and any response to these by management's representative? | YES | YES |
| 8. Does the Appeals Panel find that the decision to dismiss was reasonable in all the circumstances?  | YES | NO  |

The panel needs to remember that their decision can be challenged internally and externally (Employment Tribunal). The above eight questions should be considered carefully before deciding the appropriate disciplinary action. If the panel can show that they considered all eight of these questions they will be able to demonstrate the reasonableness of their decision and have more chance of being able to defend their decision at appeal or tribunal.

- Manager who made the decision to take disciplinary action and employee (and his/her representative) recalled and Manager/Chair of the Members Panel relays the decision on whether the appeal was successful or not, together with the implications of the decision.
- The decision will be confirmed to the employee within 5 days of the Appeal Hearing by the Manager hearing the appeal. They should ensure they provide reasonable justification to support the outcomes.





## Fair Treatment Suite CONDUCT PROCEDURE

**SOURCE** Portfolio holder's Decision 30.3.09, implemented 9.4.09

**AND DATE:** Reference PHD 068/08

**SCOPE:** This Procedure applies to all employees - excluding Chief Officers and school based staff.

**AMENDED:** October 2010

### Policy Statement

The aim of the Conduct Procedure is to help and encourage all employees to achieve and maintain acceptable standards of conduct.

The Conduct Procedure should be viewed as a corrective rather than punitive process.

This non-contractual procedure provides a fair and consistent approach towards dealing with issue of conduct. It has been developed to comply with legal requirements and in accordance with ACAS guidance and best practice principles.

Issues of misconduct will be dealt with promptly and effectively in line with the principles of natural justice. Where disciplinary action is required to be taken, the proper procedures must be complied with before any decision is taken. Employees will be informed of the potential action they face if they fail to meet the Council's standards of conduct/behaviour. The level of disciplinary action will depend upon the seriousness of the matter, circumstances and any previous warnings issued. This procedure (comprising a toolkit and Best Practice Notes), will enable Managers to promptly address concerns relating to conduct and take all reasonable steps to assist employees to achieve and maintain rules and required standards of conduct/behaviour.

This procedure replaces the previous Disciplinary Procedure.

### Principles

The key principles of this Conduct Procedure are:

- Employees will be treated fairly and consistently
- Allegations will be investigated appropriately
- Employees will be advised of the nature of the allegation/s against them and the potential disciplinary action that could be taken against them

- Employees will have the opportunity to respond to an allegation before any disciplinary action is taken
- Employees will have the right to be accompanied by a trade union representative or a work colleague at all formal stages of the procedure
- Employees will have a right of appeal against a disciplinary decision
- All Allegations will be investigated without undue delay
- No employee will be dismissed for a first breach of conduct, except for gross misconduct

## **Scope**

This procedure is applicable to all Council employees whether they are on permanent, fixed-term or temporary contracts of employment (except schools based staff).

The procedure does not apply to employees within their probationary period (See Probationary Procedure).

It is strongly recommended for adoption by governing bodies following consultation with staff of the school.

## **Legal Context**

The Conduct Procedure takes into account the provisions of the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002, the Employment Act (Dispute Resolution) Regulations 2004, the Employment Act 2008 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

## **Confidentiality**

At all stages of the procedure, all parties will observe confidentiality and sensitivity to employees concerned.

Information / documentation will be circulated to relevant parties in strict confidence in accordance with the need to ensure a fair process.

Managers and employees involved in the process will be accountable for the security of paperwork and the storage of electronic data related to this procedure.

## **Equalities and Diversity**

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees in relation to race, sex, disability, age, religion or belief or sexual orientation or trade union membership or activity.

In implementing this procedure, Managers must ensure that equality and diversity considerations are integral at every stage throughout the process.

Monitoring of the use of this procedure and its impact is carried out on the different social identity groups currently held by the Council. Monitoring is reported in the Corporate Annual Equality Report.

## **Conduct vs Capability**

A distinction **must** be drawn between unacceptable conduct and behaviour of employees, which is attributable to a willful refusal to work to the required standard and inability to perform to the required level. The latter is a matter of capability and should be dealt with in accordance with the Council's Capability Procedure.

## **Using the Conduct Procedure**

This procedure comprises a Toolkit for Managers which provides a step by step guide to the stages in dealing with conduct issues and includes links to the Best Practice Notes and other relevant documents.

The Conduct Procedure (comprising the Toolkit containing links to Best Practice Notes, other Council Policies and standard forms and model letters) is available on the Harrow Hub (Intranet).

## **Useful Contacts**

There are a number of support mechanisms available to employees throughout the use of this procedure. Managers should ensure their employees are aware of these.

A list of useful contacts is attached overleaf.

## Useful Contacts

<b>ACAS Advisory, Conciliation and Arbitration Service</b>	ACAS provide a free, impartial and confidential Helpline service that can answer employment questions Telephone 08457 474747 Minicom: 08456061600 ACAS London Regional Office, Euston Tower, 286 Euston Road, London. NWE1 3JJ
<b>Access to Work</b>	Kings House, 1st Floor, Clarendon Road, Harrow, Middlesex HA1 1YJ Telephone: 020 8426 3110 Fax: 020 8426 3134 Minicom: 020 8426 3133 Email: <a href="mailto:atw-london-region@jobcentreplus.gsi.gov">atw-london-region@jobcentreplus.gsi.gov</a>
<b>Disability Adviser</b>	Representative from HAD based at Harrow Council every Wednesday - 3 <sup>rd</sup> Floor, West Wing, Ext 3893 Email: <a href="mailto:Angela.dias@harrow.gov.uk">Angela.dias@harrow.gov.uk</a> or contact Human Resources and Development Advice Line as above.
<b>Disability, Advice, Information and Support Group</b>	Employee Support group for employees with disabilities Email: <a href="mailto:Daisdais@harrow.gov.uk">Daisdais@harrow.gov.uk</a>
<b>ERP Technical Team</b>	ERP Technical Team, South Wing, 3 <sup>rd</sup> Floor, Civic Centre Ext 2085 for assistance on access issues
<b>First Assist</b>	Employee Assistance Programme - confidential service offering 24 hour telephone information service, legal advice and guidance, debt counselling and financial information, 24 hour telephone counselling service. Telephone: 0800 716017
<b>Harrow Association of Disabled People</b>	Ground Floor, Bentley House Headstone Drive, Wealdstone Harrow, Middlesex. HA3 5QX Telephone: 020 8861 9920 Minicom: 020 8861 4547 Fax: 020 8861 9926 Email: <a href="mailto:general@had.org.uk">general@had.org.uk</a>
<b>Harrow Council Black Workers' Group</b>	Employee support group for black and minority ethnic employees at Harrow. For more information please contact Brenda Goring (Vice Chair) on 020 8863 5611 ext. 3776) or contact Human Resources and Development Advice Line as above.
<b>Health and Safety</b>	Telephone: 020 8424 1407
<b>Human Resources and Development</b>	Contact Human Resources and Development Advice Line, 0208 424 1110 for advice and guidance on the procedure and toolkit
<b>Lesbian, Gay, Bisexual and Transgender Group (LGBT)</b>	Employee support group for lesbian, gay, bisexual and transgender employees <b>Email: <a href="mailto:lgb@harrow.gov.uk">lgb@harrow.gov.uk</a></b>
<b>Mind in Harrow</b>	8 Havelock Place, Harrow, Middlesex HA1 1LJ Telephone: 020 8426 0929 Email: <a href="mailto:info@mindinharrow.org.uk">info@mindinharrow.org.uk</a>
<b>Occupational Health Service</b>	Room 215B, Civic Centre, Tel Telephone: 020 8424 1449 Email: <a href="mailto:Ochealth.chealth@harrow.gov.uk">Ochealth.chealth@harrow.gov.uk</a>
<b>Shared Services</b>	Shared Services, South Wing, 3 <sup>rd</sup> Floor, Civic Centre Ext 2197 for information regarding SSP and occupational sick pay
<b>Staff Carers</b>	Employee support group for employees with caring responsibilities 020 8424 1023 (ext 2023)
<b>Trade Unions</b>	<b>GMB</b> - 020 8424 1086 <b>Unison</b> - 020 8424 1795



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