

People Framework

Hearings Procedure



Version number 1
Date June 2019

Contents

1. Formal Hearing	4
2. Right to be accompanied	4
3. Attendance at Hearing	5
4. Written Submission	5
5. Managing Sensitivities	5
6. Witnesses	6
7. Conducting a Hearing	6
8. The Decision	7
9. Considerations before Deciding a Hearing Outcome	7
10. Concluding the Hearing	8

Tracking

Policy Title	Hearing Procedure		
LT sign off	15 November 2019		
Committee	HR Panel Strategy & Resources	Date approved	17 December 2019 (TBC) 30 January 2020 (TBC)
Review due date	15 November 2021	Review completed	
Service			

Revision History

Revision Date	Revisor	Previous Version	Description of Revision

Document Approvals

Each revision requires the following approvals:

Sponsor Approval		Name	Date

1. Formal Hearing

Where a formal Hearing is considered appropriate, arrangements for the Hearing will be made as soon as is reasonably practicable.

The Chair of the Hearing will be a manager with no prior involvement in the case and normally from the service area concerned, who will hear all the evidence and decide the outcome. It may be considered appropriate to select a second Panel member from another service area.

Where a possible outcome of the formal Hearing is dismissal, the Hearing will be chaired by a Senior Officer with delegated authority to dismiss.

An HR Advisor, also with no prior involvement in the case, will attend the Hearing in an advisory capacity to support the Chair.

Also in attendance will be the employee, their representative and, where applicable, the Investigating Officer or manager. Both management and the employee may submit documentation and call and question witnesses.

The HR Advisor will confirm the Hearing arrangements in writing to all parties giving at least 7 calendar days' notice.

Any documentation that either management or the employee wishes to be considered at the Hearing must be made available to the HR Advisor no later than 3 working days prior to the hearing to enable (where practicable) distribution of full documentation packs to the relevant parties prior to the hearing.

If there is a late submission of evidence it will be for the Chair decide whether or not this will be accepted.

Where applicable, as part of the Hearing pack the employee will be provided with a copy of the investigation/management report.

In certain circumstances (for example to protect a witness) some information may be withheld or anonymised.

In order to ensure an accurate record of the formal process, the Council will record all formal Hearings using an electronic voice recorder. A copy of the recording will be made available to the employee on request.

2. Right to be accompanied

Employees have a statutory right to be accompanied by a member of the Staff Consultative Group, trade union representative or a work colleague in a formal Hearing.

The representative does not have the right to answer questions on the employee's behalf, address the Hearing if the employee does not wish it or prevent the employer from explaining their case.

3. Attendance at Hearing

The employee will be notified of the Hearing date in writing. Where an employee or their representative is unable to attend the hearing, they should inform the Chair in advance, giving a valid reason. The Chair will arrange an alternative Hearing date, which will be no later than 7 calendar days from the original Hearing date.

Where an employee is absent due to sickness prior to the Hearing, the Chair will establish the reason for the absence and will seek HR advice to determine whether postponement of the Hearing is appropriate.

The employee may be referred to the Council's Occupational Health service, who will assess their fitness to attend and provide advice on any reasonable support or adjustments which are required to ensure that the employee is able to fully participate in the Hearing.

Where an employee fails to attend a Hearing due to unforeseen circumstances on the date proposed, the Chair will consider whether to proceed with the Hearing in the absence of the employee or to arrange an alternative date, which will be no later than 7 calendar days from the original Hearing date.

Where appropriate, the 7 calendar day limit may be extended by mutual consent.

4. Written Submission

In cases where it is necessary to proceed with a Hearing in the absence of the employee and it is known this will be necessary in advance of the Hearing, the employee will be offered the opportunity to make additional written submissions to the Hearing..

Where non-attendance is not known in advance and postponement is not considered appropriate, the Hearing will proceed with consideration of any written submission from the employee already received and, where requested and available, appropriate contributions from their representative.

Similar consideration will be given to the need to proceed with investigatory processes in the employee's absence.

5. Managing Sensitivities

Where a case involves particularly sensitive circumstances or the perceived possibility of intimidation of one of the parties, either party may request that their evidence is heard separately during a disciplinary Hearing.

The Chair conducting the Hearing will consider the circumstances and, where a decision is taken to hear the evidence of each of the parties separately, the Chair will be responsible for ensuring that both sides are fully apprised of the other's responses.

Where the above situation arises, the Chair will ensure that separate rooms are available so that the employee, manager or witnesses can wait during periods where they are not required at the Hearing.

6. Witnesses

If the employee wishes to invite any witnesses to the Hearing they must inform the Chair beforehand.

The employee is responsible for inviting any witnesses they wish to attend.

A Council employee is not obliged to attend a Hearing as a witness. Where an employee wishes to call other Council employees as witnesses, the individuals concerned may decide whether or not they wish to attend the Hearing in this capacity.

7. Conducting a Hearing

The Chair arranges for the parties to enter and take their designated seats.

The Chair reminds parties that the Hearing will be recorded using an electronic voice recorder. The Chair will then commence the recording of the Hearing.

The Chair conducts introductions, explains the protocol for the Hearing.

The Chair responds to any initial procedural questions and deals with any preliminary issues, e.g. establishing whether there are any witnesses to call (and the arrangements for these), deciding upon the usage of any documentation submitted late by either party and/or deciding on whether to proceed with the hearing in the event the employee is not in attendance (see Note ii), below).

If the employee is unaccompanied, the Chair checks that they are happy to proceed without representation and makes a note to that effect.

If the employee is not in attendance, the Chair checks that the circumstances are in order for the hearing to proceed in the employee's absence, i.e. that the employee has been notified that the hearing will proceed in their absence and/or the employee has confirmed non-attendance.

The Hearing will follow the format detailed below:

- Where appropriate the Investigating Officer/management representative presents the investigation report, including all relevant documentation and/or statistics (the investigation report may suffice in some cases)
- Employee/representative puts questions to the Investigating Officer/management representative
- Chair (including the HR Adviser) put questions to the Investigator. The Investigating Officer/management representative remains in attendance for the remainder of the hearing.
- Management representative calls in and questions any witnesses
- Employee/representative questions the management witnesses
- Chair/HR Adviser question the management witnesses if they wish
- Management witness withdraws after their questioning has been completed
- Employee/representative presents the employee's responses
- Management representative puts questions to the employee/representative
- Chair/HR Adviser puts questions to the employee/representative if they wish
- Employee/representative calls in and questions any witnesses
- Management representative questions the employee witnesses

- Chair/HR Adviser question the employee witnesses if they wish
- Each employee witness withdraws after their questioning has been completed
- Management representative summarises the management position
- Employee/representative summarises the employee's position
- All parties withdraw

Where necessary, the Chair may decide to adjourn the Hearing to gather further evidence to better understand the issue. Where this is the case, the Council's Investigation Procedure will apply.

8. The Decision

The Chair and the HR Adviser will review and discuss all related evidence and any relevant Council policies, procedures and practices. The Chair will make the final decision on the outcome. The HR Adviser acts in an advisory capacity only.

Before making the final decision the Chair should ask themselves:

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have the requirements of the relevant procedure been properly complied with up to this point?
3. Has sufficient regard been paid to any explanation put forward by or on behalf of the employee?
4. Is there a genuine belief based on the facts outlined in the investigation, that the complaint/allegations should be upheld?
5. Are there reasonable grounds on which to sustain that belief on the balance of probabilities?
6. Is the evidence sufficient to justify the action being contemplated?
7. Has regard been given to any mitigating circumstances?
8. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

The effect of answering yes to questions 1 to 5 is to reach the finding that the complaint/allegation should be upheld. Questions 6 to 8 help to determine whether the proposed outcome is reasonable.

9. Considerations before Deciding a Hearing Outcome

It is good practice to look at each case on its own merits taking into consideration of any mitigating circumstances (e.g. health, domestic issues, provocation etc).

Consideration should be given to the following areas before a deciding an outcome:

- The outcome of the Hearing in similar cases in the past
- Whether standards of other employees are acceptable, i.e. that the employee is not being unfairly singled out
- The employee's employment record (including current warnings), general work record, work experience, position and length of service
- Any mitigating circumstances which might influence the outcome of the Hearing
- Whether the proposed outcome of the Hearing is reasonable in view of all the circumstances
- Effectiveness of any training, additional support or adjustments
- Any OH advice received
- Whether Ill Health Retirement is appropriate

If the Chair wishes to put further questions to either party, both parties will be recalled; even if the question is to be directed at one party only. At no time should the Chair be alone with either the employee and their representative, or with the management representative.

10. Concluding the Hearing

The Chair will make a written summary of the decision, reasons for the decision and, where applicable, any related action plan on the Hearing Decision Record Sheet. The Hearing will be reconvened and all parties (excluding the Investigator) will be recalled. In some cases, for example where proceedings finish late in the day, it may be considered appropriate that parties are asked to reconvene at a later date (e.g. the following day) for the decision to be confirmed. The Chair will determine this.

The Chair will confirm the outcome of the Hearing, summarising the nature of the issue, the findings of the investigation (where applicable), the decision and the reasons for the decision, and any recommendations considered appropriate.

The outcome of the Hearing will be confirmed to the employee in writing within 10 calendar days of the Hearing.

The Chair will bring the Hearing to a close, without further discussion or debate.