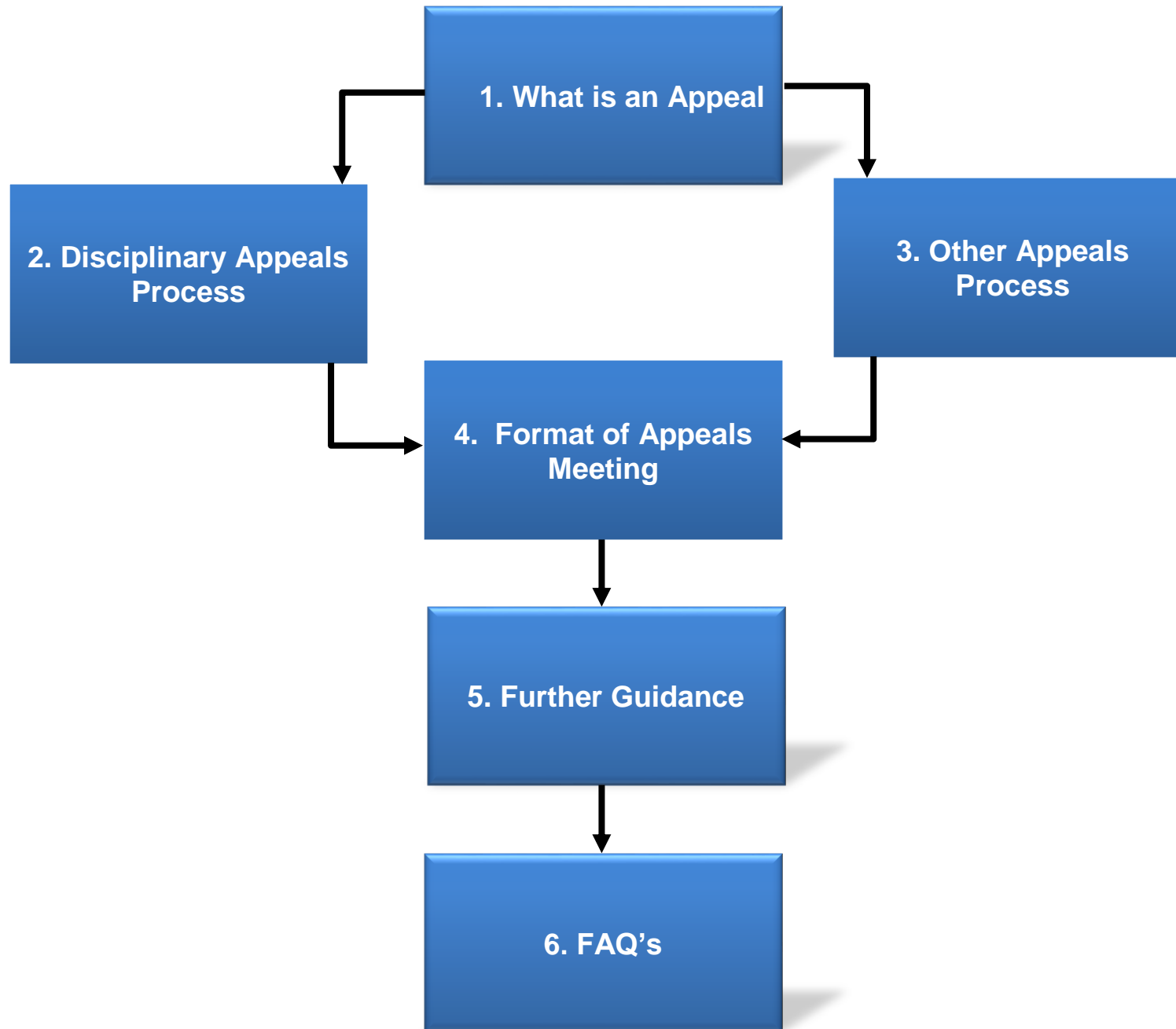


# CORPORATE APPEALS POLICY



# TIMESCALES

Employee lodges appeal	Within 10 working days of the date of notification of a decision
Confirmation of appeal, detailing timescales and information required	Within 5 working days of receiving the appeal
Appeal meeting arranged	Within a reasonable time and not longer than 30 working days from receipt of the employee's appeal
Employee informed of date of appeal	At least 5 working days before the appeal meeting
Employee required to provide details of appeal, their representative and witnesses	At least 5 working days before the appeal meeting
Employee provided with management evidence	At least 5 working days before the appeal meeting
Employee advised of outcome of appeal	Confirmation in writing within 5 working days of the appeal meeting

\*For the purpose of timescales, 'days' are classed as working days and are based on a full time week (Mon-Fri) and not contracted days of an employee

# ROLES AND RESPONSIBILITIES

## Employee responsibilities

Ensure all forms and required paperwork is submitted within given timescales/deadlines.

If the employee intends to bring a representative or calling any witnesses to the appeal meeting, it is their responsibility to ensure that they inform them of meeting time, dates, and locations to confirm their attendance **and provide them with all necessary paperwork.**

The employee should ensure that they are fully prepared for the appeal meeting and should liaise with their representative prior to the meeting to ensure they are aware of their role.

## Appeal Officer/Panel Responsibilities

The role of the Appeal Panel/Appeal Officer is to conduct the meeting in an honest and objective manner. In the case of an appeal against a dismissal the convened Appeal Panel the same responsibilities apply. See **Appeals Policy Following Disciplinary Dismissals.**

The Appeal Officer is usually the manager's manager, an equivalent manager or a more senior manager than the manager who fulfilled the role of Deciding Officer in the original meeting. They should not have had direct involvement in the case previously. However, direct involvement does not mean 'prior knowledge' of the case, but rather, active involvement in key decisions that have been made in relation to the case.

The Appeal Panel/Appeal Officer should refer to the appropriate policy (disciplinary, grievance for example), to ensure that the correct process has been followed. The Appeal Panel/Appeal Officer should also liaise with the clerk to the original hearing who will provide administrative support, take notes as necessary and assist with the following where appropriate:-

- Ensuring that the procedure is followed and that timescales are adhered to, making sure that the employee is aware of these.
- Reminding the employee that they have the right to be accompanied and that they need to name their representative in advance of the meeting.

## **HR Responsibilities**

If the employee is appealing against a dismissal a HR Business Partner will be in attendance at the appeal meeting and also have involvement in convening the appeal meeting. The purpose of their attendance would be to ensure procedure was correctly followed and to provide impartial advice on policy and employment law issues raised by either side during the course of the meeting. HR will not necessarily be in attendance at all Appeal meetings, although general support is available if required.

HR will review this policy and ensure it is up to date in line with any legislative or organisation changes.

# 1. What is an appeal?

An appeal may be lodged by an employee against a management decision in the following circumstances:

- Dismissal following unsatisfactory progress during the probationary period
- Dismissal for Gross Misconduct
- First and Final warnings
- Ill health dismissal
- Outcome of a grievance
- Penalty issued following a capability hearing
- Redundancy
- Any stage of the formal attendance procedure
- Any other dismissal

An employee may also appeal against a decision following an application for the following:

- Any applications made within the council's Flexible Working Policy
- Secondment
- Redeployment

This policy has been developed to ensure that an appeal to any decision taken against a Denbighshire County Council employee is conducted in an honest and objective manner, taking into account the original decision and how reasonably the council's policies had been applied.

## **Notification of appeal**

Grounds for appeal should be reasonable. Employees can make an appeal against a decision/matter/outcome if they believe:

- The finding was unreasonable in view of the evidence produced
- There is new evidence available which was not available at the time of the original meeting
- There were serious procedural irregularities
- Insufficient regard was given to mitigating factors

The appeal must be lodged in writing within 10 working days (See timescales section) of receiving official notification of the decision, by completing the Notification of Appeal form. See **Notification of Appeal Form Template**. If the appeal is lodged after the 10 day deadline, the manager should confirm with HR the next course of action. In exceptional circumstances, and only with genuine good reason, an additional 5 working days (See timescales section) may be granted, but after this time, the right of appeal is lost

In their written notification of appeal, the employee should make clear:

- If it is the decision and/or the level of sanction or the process which is being appealed against
- Exact grounds for the appeal, including a full explanation of why they are appealing

## 2. Appeals Process following a Disciplinary Dismissal

### Appeal panel and role

Where there is an appeal against a dismissal following a disciplinary, then a two Head of Service/Director Panel and a HR Business Partner will be convened. The Panel must nominate one Panel member to take the role of Chairperson for the meeting.

The role of the Panel is to conduct the meeting in an honest and objective manner. Equal consideration has to be given to the submissions of the Deciding Officer and the employee and regard for the reasonableness of the disciplinary decision already taken. A properly conducted appeal meeting may correct a previously flawed disciplinary process and care must be taken to ensure that the Panel's decision is one that it can reasonably take, having regard for the range of disciplinary sanctions available.

The Panel must have regard for the fact that in the event of a decision to dismiss, an employment tribunal hearing may be convened at a later date. In such circumstances, the tribunal will consider the reasonableness of the employer's actions including the appeal process. The Panel must therefore consider all aspects of the case, seek more information if appropriate, and have regard for any new information that has been presented, even if not presented or known at the original disciplinary meeting. If the Panel is not satisfied with the disciplinary process, and a full re-hearing has not taken place, it may be appropriate to refer the matter for further investigation and/or a new disciplinary meeting.

Further details on the reasonableness test are shown below. All Appeal Panel members, where appropriate, must have regard also for this aspect. They must be satisfied that their decision is warranted, in terms of the misconduct or unsatisfactory performance that has occurred.

The reasonableness of an employer's actions, as may be tested by an Employment Tribunal, relates to a range of issues including:

- Has an appropriate investigation been undertaken?
- Have the appropriate procedural steps been followed?
- Is there a genuine belief in the actions of the individual?
- Are there reasonable grounds for that belief?
- Are there any mitigating circumstances to be considered on the part of the individual?

Please refer to the Disciplinary Policy for further details on the correct Disciplinary process to be followed and subsequent possible outcomes.



### 3. All other appeals other than dismissals issued under the disciplinary policy

#### Appeal Officer and their role

The Appeal Officer is usually the manager's manager, an equivalent or a more senior manager than the manager who fulfilled the role of Deciding Officer in the original meeting. **However, for any stage 3 absence dismissals, under the attendance at work procedure, the appeal must be heard by another Head of Service or Director.**

The role of the Appeal Officer is to conduct the meeting in an honest and objective manner. Equal consideration has to be given to the submissions of the Deciding Officer and the employee and regard for the reasonableness of the decision already taken. A properly conducted appeal meeting may correct a previously flawed process.

The Appeal Officer will determine the procedure for how the appeal will be heard as follows:

If the grounds for appeal are regarding a specific part of the original case, the Appeal Officer will consider that specific part, and the appeal will not be a re-hearing of the whole case.

If the grounds for appeal are that the original hearing procedure was flawed the case may be re-heard by the Appeal Officer.

If the appeal is against a decision to refuse flexible working the Appeal Officer will consider the original application and the manager's reasons for refusing.

## 4. Format of Appeal Meeting

The Chair of the Appeal Panel/Appeal Officer will introduce all those present and confirm the purpose, format and ground rules of the meeting and confirm whether any information has been presented, and whether the new information can be presented at the appeal.

The Chair of the Appeal Panel/Appeal Officer will check that the employee is accompanied by a trade union representative or **Denbighshire County Council** colleague. If not, it will be confirmed that this is from choice.

If required the meeting may be adjourned at any time. This may be appropriate if new facts emerge or matters raised need clarification. It may be necessary to reconvene the meeting at a later date. If no adjournment is necessary, the employee and their representative will be given the chance to summarise their points.

### Who attends an Appeal Meeting?

- The Appeal Panel/Appeal Officer
- The employee that has submitted the appeal
- Trade Union / colleague representative
- The deciding officer of the original hearing
- Witnesses if applicable
- HR Business Partner in the case of Disciplinary dismissal appeals
- Possibly a HR representative where required for appeals other than those arising from a disciplinary dismissal
- An Administrator for the meeting

### Appeal meeting part 1 – Employee presents their appeal

- a) The employee or their representative will present their information, calling witnesses if applicable and/or referring to any prepared witness statements.
- b) The Appeal Panel/Appeal Officer may ask questions of the employee or their representative and/or question any witnesses if applicable, or further refer to the statements.
- c) The Deciding Officer may ask questions of the employee or their representative and/or question any witnesses if applicable, or further refer to the statements.
- d) The Appeal Panel/Appeal Officer may interject for points of clarification.

### Appeal meeting part 2 – Deciding Officer presents their decision

- a) The Deciding Officer of the original meeting will present their information, calling witnesses if applicable and/or referring to any prepared witness statements.
- b) The Appeal Panel/Appeal Officer may ask questions of the Deciding Officer, or further refer to the statements.
- c) The employee may ask questions of the Deciding Officer and/or question any witnesses if applicable, or further refer to the statements.
- d) The Appeal Panel/Appeal Officer may interject for points of clarification.

Witnesses may be released from the meeting upon conclusion of their evidence, at the discretion of the Appeal Panel/Appeal Officer.

### Appeal meeting part 3 – Overall summary

- a) The Deciding Officer will be asked to give his/her summary.
- b) The Employee or their representative will be asked to give their summary.
- c) The Chair of the Appeal Panel/Appeal Officer will ask if both sides are satisfied that they have said all they have to say.
- d) The Chair of the Appeal Panel/Appeal Officer will thank the employee, their representative and the Deciding Officer of the original meeting and ask them to leave

### Appeal meeting part 4 – Making a decision

The Appeal Panel/Appeal Officer will consider the evidence as presented, consulting as they wish with the notes made by the administrator to the appeal.

If the employee is appealing the decision to dismiss due to a disciplinary, the Appeal Panel/Appeal Officer should consider:

1. If the case had been sufficiently investigated, and if so,
2. If it was reasonable, on the balance of probabilities, for the original meeting to conclude that misconduct had been substantiated, and if so,
3. Was the outcome within the range of reasonable actions to take

If the employee is appealing the level of the action imposed following a disciplinary, the Appeal Panel/Appeal Officer should consider the facts as put to the appeal meeting and determine what level of action is appropriate. This will be the same greater or or a lesser response than that imposed at the original meeting.

If the employee is appealing for a reason other than as a result of a disciplinary, the Appeal Officer should consider whether the correct process had been followed, the fairness and reasonableness of the case to date, and whether the outcome fell into the range

of reasonable outcomes of that particular situation. As outlined in the paragraph above, the outcome will be the same or lesser than imposed at the original meeting.

The Chair of the Appeal Panel/Appeal Officer may recall all parties and announce the decision(s) to the parties personally. Alternatively, the Chair of the Appeal Panel/Appeal Officer may prefer not to recall the two sides but to defer their decision and respond later in writing.

If the Appeal Panel/Appeal Officer have decided that reinstatement is the outcome of the appeal meeting, then this must be carefully considered where there is a breakdown in relationships.

If the employee's appeal is against a refusal for flexible working, the Appeal Panel/Appeal Officer should consider the business reasons for the original decision.

The decision of the appeal meeting will be final and will be confirmed in writing to all parties including the employee's representative within 5 working days\* of the appeal meeting. The administrator to the meeting will assist the panel in this correspondence.

There is no further right of appeal against the decision after an appeal has been heard.

Copies of all notes and correspondence related to the appeal should be forwarded to HR.

## 5. Further Guidance

### Administration prior to appeal meeting

HR will confirm receipt of the appeal in writing, within 5 working days (See timescales section).

The employee will be informed in writing of the appeal meeting and their right to be accompanied at the appeal by an employee representative, trade union official or colleague. See [Invitation to Appeal Meeting Letter Template](#). The representative can participate in the meeting, but they cannot answer questions on behalf of the employee.

The appeal meeting will be held within a reasonable timescale, usually within 10 working days (see timescales section) of receipt of the appeal. However, in more complex cases this may be extended to within 30 working days.

At least 5 working days (See timescales section) prior to the meeting the employee will be:

- given written notice of the meeting time and place
- informed how the case will be heard and by whom
- provided with any additional new management information / evidence that will be considered at the meeting.

At least 5 working days (See timescales section) prior to the meeting the employee will need to provide the Appeal Panel/Appeal Officer with the following:

- confirmation that they will be attending the meeting
- any additional details to support their appeal
- the details of their representative
- the details of any witnesses

It is the responsibility of the employee to ensure that their representative and their witnesses are available to attend the meeting. The **Appeal Panel/Appeal Officer** may either rely on the **written outcome of the original hearing** or arrange for the witnesses to attend the appeal meeting.

Provision will be made for any reasonable adjustments to accommodate the needs of a person with disabilities at the meeting, provided reasonable notice is given to the **Appeal Panel/Appeal Officer** responsible prior to the meeting. This may include holding the meeting in an accessible room, providing an interpreter, additional equipment or allowing extra breaks.

## **Postponement and failure to attend appeal meeting**

Postponement and failure to attend an appeal meeting will follow the same guidance as noted in the standard policy statements

## **Notes during the appeal meeting**

An administrator may attend the appeal meeting to take notes.

These notes will be for the purpose of the Appeal Panel/Appeal Officer and to prepare agreed minutes of the meeting. These notes will not be available for distribution to any other party.

The notes should be typed up and distributed within 5 working days (See timescales section) of the appeal. The original notes and a copy of the typed notes should be placed on the employee's HR file.

Normal procedure will be that appeal meetings will be recorded using voice recording equipment supplied by Denbighshire County Council. If the employee does not wish to give their consent to the Appeal Panel / Appeal Officer using the voice recording equipment then they will need to inform the Appeal Officer / Appeal Panel 5 days before the meeting.

Any recording will be treated as personal data under the General Data Protection Regulation (GDPR) in accordance with the (GDPR) principles.

## **Documents to be considered at the appeal**

Wherever possible information from the original meeting, which is not disputed, should be agreed and circulated in advance of the appeal being heard.

Any intention by any party to present new evidence/witnesses during the appeal meeting, which were not considered at the original meeting, should be submitted to the administrator of the appeal at least 2 working days (See timescales section) before the appeal meeting. The Chair of the Appeal Panel/Appeal Officer will have the final decision whether such information can be presented.

## **Other Considerations**

The Appeal Panel/Appeal Officer should consider the following:

- Making an appeal is likely to be a distressing experience for the employee.
- If the employee becomes upset or distressed allow time for them to regain their composure. If necessary adjourn and reconvene at a later date.
- During the meeting frustrations and anger may be vented. However abusive language or behaviour should not be tolerated.
- Whether the appeal could be a result of a legitimate attempt by the employee's manager to manage their performance, or if there are any other ongoing issues or concerns which could have led to the appeal, or have an impact on it.
- Arranging for the original Investigating Officer and any other relevant participants to be available to attend the meeting should further information or clarity be required.
- Allowing the employee time to state their case clearly.
- Ensuring that any new evidence introduced is included in the appeal meeting documentation

### **Witnesses**

Witnesses to an incident may provide important information about the facts leading to the incident under discussion.

Both the Deciding Officer and the employee can call witnesses.

The Deciding Officer / employee will initially need to approach the witnesses to confirm they are willing to provide evidence. Any witnesses called by either party will not be subject to any detriment for either attending or declining to attend an Appeal meeting.

A minimum of 5 working days (See timescales section) before the meeting the Deciding Officer / employee should provide the Appeal Panel/Appeal Officer with the details of any witnesses they intend to call. The Chair of the Appeal Panel/Appeal Officer will ensure that the employee is supplied with any evidence from the management case, including witness statements, which the Appeal Panel/Appeal Officer will be using.

It is the Deciding Officer / employee's responsibility to ensure that their witnesses are available to attend the meeting. Witnesses will only be in attendance to give their evidence and will not be present for the entire meeting. Witnesses may be questioned by the Appeal Panel/Appeal Officer, the Deciding Officer, the employee or their representative.

Rooms should be made available for witnesses to wait in before they are called to the meeting. Witnesses called upon by the employee should be kept separate to witnesses called upon by the Deciding Officer for the duration of the meeting. Every effort will be made to provide witnesses with timescales.

It is not always necessary to request that witnesses attend an appeal meeting as decisions can be made using witness statements alone.

### **Right for time off to be a witness**

An employee who has been called a witness is entitled to reasonable time off to fulfil that role, by prior arrangement with their manager. This should include time to confer with their colleague or manager before the meeting and to attend the meeting.

The manager has the right to refuse if not given sufficient notice or if unable to cover the absence. However they should not unreasonably prevent the employee from attending.

Employees do not have to accept a request to be a witness and they should not be pressurised to do so, however they should be encouraged to co-operate as much as possible to ensure a fair and reasonable process.



## 6. Frequently Asked Questions (FAQs)

### **What should I expect if I am called as a witness to a meeting?**

If you are asked to attend a meeting, the employer and employee must be allowed to verify and question you about the information you have provided. In general, you should only be called to a meeting if further clarification of your written statement is required.

If you are a witness for an employee you will be questioned by the Appeal Panel/Appeal Officer who may ask you to clarify certain aspects of your statement, including your version of events.

As a witness, as part of the management case, the employee who has made the appeal can also ask you questions.

It is important that you refer only to the facts of the case and as far as possible refer to actual words or actions.

Different witnesses may have different versions of what happened and the Appeal Panel/Appeal Officer must weigh up the evidence.

### **What if I do not agree with the appeal decision?**

The decision of the Appeal Panel/Appeal Officer is final in accordance with Denbighshire County Council's appeal process. If you do not accept the appeal decision you could seek advice from an external expert.

### **What if relations have broken down between my manager and I? Do I have to stay in the same job whilst the appeal is going on?**

It is important to remain as professional as possible **and in most cases it would be expected for the employee and manager to remain as they are during the short duration of the appeal. However, it is sometimes appropriate to** be temporarily assigned to another role within your department or be managed by a different manager in the short term **but this would not be on a permanent basis.** Mediation may also be a consideration. You should discuss the situation with your manager or if not possible, a more senior manager.

### **What if my union representative, work colleague or myself are not available on the day scheduled for the appeal meeting?**

If there are genuine reasons why you or your representatives are unable to attend on the scheduled date, one further date will be arranged. Should this delay have an impact on timescales, your agreement to extend the meeting beyond the time limit will be expected. **When requesting a re-arrangement of the meeting, you should specify when you are available.**

If you fail to attend more than once without reasonable cause, the manager hearing your appeal can decide to proceed in your absence on the basis of the information available. You will be notified of the decision in writing.

**Will I be given enough time to prepare my case?**

Each appeal request will be dealt with on a case-by-case basis. Your manager will ensure that you are allowed time to prepare for your case.

**What if I am appealing because I feel I have been treated unfairly in my original hearing?**

You should give specific examples of the treatment you believe to be unfair within your appeal form. The Appeal Panel/Appeal Officer will consider all the information presented during the appeal and will make an impartial decision in conjunction with the appropriate council policies. A HR Specialist or Business Partner may also attend the Appeal to provide clarity on council policy and ensure that correct procedure is followed

**Can the Appeal Officer/Panel consider new or related incidents that come to light in the appeal meeting?**

The Appeal Panel/Appeal Officer can only consider matters considered during the original case. If substantial new information comes to light during the meeting this will need to be referred for separate investigation as a new case - in line with the relevant policy or procedure.