



If you require this procedure in another format please go to the end of the document for details.

#### **Introduction**

This procedure should be referred to when a hearing is required to formally consider the outcome of a management investigation (including those conducted under KCC's employment policies, i.e. Disciplinary, Performance & Capability) and to hear a potential dismissal that does not fall under one of KCC's employment policies (i.e. for Some Other Substantial Reason).

All hearings are based on the findings of an investigation (conducted by management, independent investigators or Internal Audit). All evidence presented by management must be pertinent to the case in question and have been shared with the employee prior to the hearing.

This procedure also covers appeal hearings.

#### **Arrangements for hearings**

Formal hearings are conducted by the appropriate level of management and will be supported by an HR representative. The hearing will take place as close as possible to the conclusion of the investigation process or performance/capability review meeting. The hearing should take place where possible within a maximum of 20 working days of the investigation report being submitted to the line manager (or identified manager if the line manager has been involved in the investigation process), unless mutually agreed otherwise. The employee and their representative (where known) will be provided with notification of the arrangements, along with details of the case to be presented, as soon as possible and at least 5 working days in advance of the hearing. The employee should also submit any documentation they intend to rely upon to the relevant manager at least 48 hours in advance of the hearing.

It may be the case that the investigating officer will present the management case at the hearing. In cases of minor misconduct/poor performance which are likely to result in a first or second level warning, the line manager can investigate the issues and chair any subsequent hearing.

#### **Witnesses**

Witnesses will be called where relevant and where they will add value to the case being heard. Witnesses will attend to give evidence and to answer questions from all parties. It is up to the employee to make arrangements for any witnesses they are calling to attend. Details of proposed witnesses should be communicated to either party in advance of the hearing.

## **Representation**

The employee has the right to be accompanied by either a workplace colleague or trade union representative at all hearings. The employee has the right to defer the hearing by up to 5 working days if their representative or colleague is unavailable on the first occasion, but when a hearing is rescheduled on this basis it may proceed in their absence if they are still unable to attend.

## **Attendance**

If the employee is unable to attend the hearing, the hearing may be able to be rescheduled once. Alternatively, the individual can submit a written statement/case for consideration at the hearing; there may also be the facility available to conduct the hearing via a telephone conference call. If the employee is unable or unwilling to attend a rescheduled hearing, it may be the case that the hearing will be held in the absence of the employee; if this situation arises the employee will be notified in advance.

## **Format of the hearing**

- (a) **Step One** - Management presents case and calls witnesses. Witnesses can be questioned by all others present.
- (b) **Step Two** - Employee or representative will present their case and may call witnesses who can be questioned by all others present.
- (c) **Step Three** - Both parties to be given opportunity to sum up their cases.

The hearing is adjourned for deliberation. If further clarity is required, both parties and/or witnesses may be recalled.

- (d) **Step Four** - The manager chairing the hearing will, where possible, communicate the decision to all parties in person. Where a decision cannot be communicated on the day of the hearing, the decision of the Chair will be notified in writing within 5 working days, together with information on the right of appeal.

It may be necessary for adjournments to take place during hearings. Either party may request an adjournment.

## **Hearing outcomes**

- (a) **No case to answer/management action**

If the finding of the hearing is that there is no case to answer, this will be the end of the matter and confirmed in writing to the employee. There may, however, be recommendations for some management action, e.g. additional training, more frequent supervision or alternative support etc. Again, in this instance, the details will be confirmed in writing to the employee. Records will be retained in line with KCC's retention of records schedule.

- (b) **First level warning**

Issued by line manager/senior manager, with a right of appeal to the next level of management. The warning will be disregarded for the purposes of the relevant procedure after six months.

(c) **Second Level Warning**

Issued by line manager/senior manager, with a right of appeal to the next level of management; will be disregarded for the purposes of the relevant procedure after twelve months.

(d) **Final Warning**

Issued by Corporate Director, or delegated manager, with a right of appeal to Corporate Director, or Head of Paid Service if issued by Corporate Director. The warning will be disregarded for the purposes of the relevant procedure after eighteen months.

(e) **Transfer and/or Downgrading**

Issued by a senior manager delegated by a Corporate Director\*, with a right of appeal to the Senior Officer Appeals Panel.

(f) **Dismissal or Summary Dismissal**

Issued by a senior manager delegated by a Corporate Director\*, with a right of appeal to the Senior Officer Appeals Panel.

Appeals against (e) and (f) should be addressed to the Corporate Director of Engagement, Organisational Design and Development (EODD).

\* or by the Corporate Director themselves

### **Retention of Records**

Warnings that are issued will be placed on the individual's personal file but will be disregarded for the purposes of the relevant procedure after the stated period of the warning – providing the individual's conduct or performance improves.

In the event of further conduct or performance issues arising, lapsed warnings may be referred to should it be necessary to counter an employee's claim that they were unaware of the standards required.

### **Appealing Against Sanctions**

All employees have a right to appeal against warnings, transfer, downgrading and dismissal (including summary dismissal). An appeal hearing is not intended to repeat the detailed investigation of the previous hearing, but to focus on specific factors which the employee feels have received insufficient consideration, such as:

- an inconsistent, inappropriate or excessively harsh penalty
- extenuating circumstances
- bias of the manager who made the decision
- unfairness in the conduct of the hearing
- procedural failing in the investigation or conduct of the hearing
- new evidence subsequently coming to light.

### **Registering an appeal**

Appeals must be made in writing, by the employee or their representative, within 10 working days of receipt of confirmation of the warning or dismissal. This must include the reasons for the appeal.

## Appeal hearing arrangements

- (a) **Appeals against formal warnings** – Where possible, appeals should normally be heard within one month of the original hearing by the appropriate level of management, supported by the Human Resources Team. The employee should receive written confirmation of arrangements at least 10 working days in advance of the hearing.

An exchange of all documents of each party's case and a list of witnesses to attend the appeal hearing should take place 5 working days before the hearing.

- (b) **Appeals against dismissal, transfer or downgrading** - The members of the Senior Officer Appeals Panel that hear appeals against dismissal, transfer or downgrading will be senior managers, supported by a representative from Invicta Law and the Human Resources Team.

## Format of appeal hearings

All Appeal Hearings are held in private and are to be based upon and confined to the reasons for the appeal. New evidence may be used and/or new witnesses may be called to an appeal hearing only if the evidence is relevant to the grounds of the appeal. Appeal hearings may be recorded.

- (a) **Step One** - The employee presents their case and calls witnesses. Questions may be asked by the party presenting the management case and those hearing it.
- (b) **Step Two** – Management presents case and witnesses. Questions may be asked by the employee and/or their representative and by those hearing the case.
- (c) **Step Three** – Both parties are given the opportunity to sum up their cases. The hearing is adjourned for deliberation. If further clarity is required, both parties and/or witnesses may be re-called.
- (d) **Step Four** - The grounds for appeal, the management case and sanction issued are considered. The manager or Senior Officer Appeals Panel may substitute, but not increase, the level of sanction.
- (e) **Step Five** - The decision of the manager or Senior Officer Appeal Panel is normally communicated to both parties in person, but may be deferred if further deliberation is needed. In any event, written confirmation will normally be issued within 5 working days.

Where an appeal against dismissal is unsuccessful, the effective date of termination is the date on which the employee was originally dismissed.

## Alternative Formats

This document is available in other formats. Call 03000 421553 or email [alternativeformats@kent.gov.uk](mailto:alternativeformats@kent.gov.uk)