

FALKIRK COUNCIL

Subject: REFERRAL FROM JOINT CONSULTATIVE COMMITTEE
Meeting: EXECUTIVE
Date: 17 MAY 2016
Author: DIRECTOR OF CORPORATE & HOUSING SERVICES

1. INTRODUCTION

- 1.1 The purpose of this report is to seek approval of the policies which were referred to the Executive, by the Joint Consultative Committee on 19 April 2016.

2. POLICIES FOR APPROVAL

- 2.1 At its meeting on 19 April 2016, the Joint Consultative Committee agreed to refer the following policies to the Executive for approval.

Disputes Policy

- 2.2 This policy has been reviewed in accordance with the HR policy review timetable and revised as follows:
- It now includes clearer definitions of issues which may be considered under the Disputes Policy and others which are specifically excluded from consideration under this policy;
 - It is also recognised that early resolution of concerns can prevent issues escalating and as such, in line with proposed changes to the Grievance Policy, greater emphasis has been placed on seeking informal resolution at a local level;
 - A proposed change to timescales for convening a formal meeting to explore the detail of the dispute from 3 to within 5 working days.

Grievance Policy

- 2.3 This policy has also been reviewed in accordance with the HR policy review timetable as follows:
- It now includes clearer definitions of issues which may be considered under the Grievance Policy and others which are specifically excluded from consideration under this policy;
 - It is also recognised that early resolution of concerns can prevent issues escalating and, as such, the policy has been reviewed to include greater emphasis on informal mechanisms, including mediation, for resolving grievance concerns;
 - The policy now clearly outlines management and employee responsibilities to try to resolve issues in a positive manner.

3. REPORT FOR NOTING

Crown Office and Procurator Fiscal Service Letter

- 3.1 At its meeting on 19 April 2016, the Joint Consultative Committee considered a report on the outcome of the Glasgow Fatal Accident Inquiry (FAI) concerning the bin lorry accident on 22 December 2014.

- 3.2 The report follows a letter received from the Crown Office & Procurator Fiscal Service which makes recommendations following the FAI. The report explains actions required to ensure recommendations are considered and implemented appropriately across Falkirk Council. The main recommendations relate to: recruitment process; assessing medical information and employee medicals; employee training; fitting of AEBS in vehicles and review of collection routes.
- 3.3 The Joint Consultative Committee agreed to refer the report to Executive for noting.

4. **RECOMMENDATION**

- 4.1 It is recommended that the Executive approves the immediate implementation of the policies as noted in section 2 and notes the report detailed in section 3.

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DIRECTOR OF CORPORATE & HOUSING SERVICES

Date: 4 May 2016
Ref: AAB170516 – Referral Report from JCC
Author: T Gillespie, ext 6239, K Algie, ext 6223

BACKGROUND PAPERS

FALKIRK COUNCIL

Subject: DISPUTES POLICY
Meeting: JOINT CONSULTATIVE COMMITTEE
Date: 19 APRIL 2016
Author: DIRECTOR OF CORPORATE & HOUSING SERVICES

1. INTRODUCTION

- 1.1 Falkirk Council is committed to maintaining constructive relationships with its employees and recognised Trade Unions. The Council however recognises that from time to time, a number of internal and external factors impact on this. The Disputes Policy aims to deal with such situations, providing a clear process to promptly resolve collective disputes and achieve a mutually acceptable solution.
- 1.2 This Policy is utilised in the event of a difficulty arising between the Council and a collective group of employees where representation by a recognised Trade Union is available and where the appropriate mechanism for addressing the issue is not provided within other procedures.
- 1.3 This Policy has now been reviewed in accordance with the HR policy review timetable and the purpose of this report is to advise Committee of updates to the Disputes Policy.

2. DISPUTES POLICY

- 2.1 The policy has been revised as follows:
- This policy has been reviewed to include clearer definitions of issues which may be considered under the Disputes Policy and others which are specifically excluded from consideration under this policy.
 - It is also recognised that early resolution of concerns can prevent issues escalating. As such, in line with proposed changes to the Grievance Policy, greater emphasis has been placed on seeking informal resolution at a local level.
 - A proposed change to timescale for convening formal meeting to explore dispute from 3 to within 5 working days.
- 2.2 A copy of the revised policy is attached for Committee's consideration.

3. RECOMMENDATION

- 3.1 It is recommended that Committee agree the changes to the Disputes Policy and refer it to the Executive for approval.

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pp **DIRECTOR OF CORPORATE & HOUSING SERVICES**

Date: 14 March 2016

Contact Name: Kathleen Docherty, Senior Human Resources Adviser

LIST OF BACKGROUND PAPERS

None



FALKIRK COUNCIL

DISPUTES POLICY



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PART 1

1.0 POLICY STATEMENT

Falkirk Council is committed to maintaining constructive relationships with its employees and recognised Trade Unions. The Council however recognises that from time to time, a number of internal and external factors impact on this relationship. It also accepts that these problems can be resolved by the use of, and commitment to, agreed consultation and negotiating procedures.

Normally groups of employees should discuss their differences with their line manager/supervisor or, if they wish, a more senior manager so that the issue can be dealt with without recourse to formal procedures.

It is also recognised that there may however be occasions when difficulties will arise which require more formal procedures to be instigated if resolutions, acceptable to the parties, are to be found. The Disputes procedure aims to deal with such situations, providing a clear process to promptly resolve collective disputes and achieve a mutually acceptable solution.

The Disputes procedure should not be read in isolation and should be recognised as being available within the framework of Discipline, Grievance etc procedures. It is recommended that this procedure be utilised in the event of a difficulty arising between the Council and a collective group of employees where representation by a recognised Trade Union is available and where the appropriate mechanism for addressing the issue is not provided within other procedures.

PART 2

2.0 PROCEDURE

2.1 Scope

This policy applies to recognised Trade Unions within Falkirk Council and formal disputes may only be registered by the local Branch Secretary of the relevant trade union or a Full-time Official.

2.2 Definition

Disputes are collective complaints by groups of employees supported by their recognised Trade Union.

Issues likely to fall outside the scope of the Disputes Policy include:

- matters more effectively dealt with under a specific policy or procedure i.e. conduct or capability issues;
- matters over which the Council has no control e.g. a nationally agreed condition of service;

- grievances raised by non-trade union members;
- grading issues;
- concerns raised as a 'protected disclosure' under the Council's Confidential Reporting Policy i.e. whistle-blowing concerns;
- allegations of bullying, harassment or victimisation which should be considered under the Council's Dignity at Work Policy; and
- complaints relating to the right to request access to information requests.

2.3 Informal Resolution

Every effort will be made to resolve disputes informally. Trade union representatives and managers are encouraged to deal with collective concerns/ disagreements informally at a local level within 5 working days of the issue being raised. Where management and the relevant trade union representatives agree that no agreement can be reached informally at a local level, the matter may be progressed formally.

2.4 Formal Dispute Registration

Disputes should be registered with the Head of Human Resources & Business Transformation and the submission should be in writing. The written submission should be dated, should outline the reasons for the dispute and identify the names of individuals on whose behalf the dispute is being raised. It is also important that the written submission states the remedy being sought to allow the dispute to be dealt with.

If the dispute is being registered on behalf of the Council, formal notice will be sent to the Secretary or Full-time Official of the Trade Union concerned by the Head of Human Resources & Business Transformation. If the dispute is being registered on behalf of a recognised Trade Union or on behalf of the Joint Trade Union Committee (JTUC), formal notice will be forwarded by the appropriate Secretary to the Head of Human Resources & Business Transformation.

A formal dispute will only be considered registered once a signed written submission has been received by the relevant party.

2.5 Working Arrangements

The working and management arrangements which applied before the dispute should normally operate until the dispute is resolved.

There will be no withdrawal of labour or lock out of any nature whatsoever, until the disputes procedure has been exhausted.

The Council will not attempt to implement any alterations to conditions of employment enjoyed by the group of employees on whose behalf the dispute is submitted. Similarly, no changes to well established work practices will be considered until agreement has been reached by the parties involved or, alternatively, the procedures have been exhausted. However, in exceptional circumstances, in consultation with Trade Unions, it may be necessary for changes to take effect whilst the dispute is ongoing, for example, where there are health and safety risks, and/ or child or vulnerable adult protection risks.

2.6 Disputes Process

Following registration of the dispute, both parties will make representatives available for a preliminary meeting to take place within 5 working days, unless an alternative date beyond this period is agreed by all parties. The initial meeting, convened by the Head of Human Resources & Business Transformation, or representative, will be held to both explore the issues of the dispute and, assuming a resolution is not immediately possible, to agree the procedures and timescale for further progress.

In accordance with any agreements reached concerning process/timescale, the Head of Human Resources & Business Transformation, or representative, in pursuing a resolution of the matter, will convene all appropriate meetings between the representatives of the recognised Trade Unions, and as appropriate or necessary, their full time officials, the Chief Executive, Chief Officers of the Service(s) involved, and other officers as required.

The outcome from the Collective Disputes Meeting will be notified in writing within 5 working days or other period agreed by both parties.

2.7 Unresolved Disputes

It is recognised that the above process may not always result in a solution agreed by both parties. If this is the case then there are further options available:

- Either party may request a meeting of the Council's Appeals Committee.
- Either party can request the involvement of a third party, i.e. ACAS (Advisory Conciliation and Arbitration Service). In the event of either party suggesting such a course of action, the involvement of a third party, the remit and terms of the process require to be agreed by both parties before the issue may be remitted to the approved third party.

PART 3

3.0 MONITORING & REVIEW

This policy will be reviewed, revised and updated to meet the needs of the Council by the Head of Human Resources & Business Transformation in conjunction with Chief Officers and in consultation with the recognised Trade Unions as appropriate.

FALKIRK COUNCIL

Subject: GRIEVANCE POLICY
Meeting: JOINT CONSULTATIVE COMMITTEE
Date: 19 APRIL 2016
Author: DIRECTOR OF CORPORATE & HOUSING SERVICES

1. INTRODUCTION

- 1.1 The Council's Grievance Policy provides mechanisms to address individual grievances in a manner consistent with the relevant ACAS Code of Practice. The Policy aims to encourage open communication between employees and their managers to ensure that problems arising during the course of employment can be raised and, where possible, resolved quickly and to the satisfaction of all concerned.
- 1.2 This Policy has now been reviewed in accordance with the HR policy review timetable and the purpose of this report is to advise Committee of updates to the Grievance Policy.

2. GRIEVANCE POLICY

- 2.1 The policy has been revised as follows:
- This policy has been reviewed to include clearer definitions of issues which may be considered under the Grievance Policy and others which are specifically excluded from consideration under this policy.
 - It is also recognised that early resolution of concerns can prevent issues escalating and, as such, the policy has been reviewed to include greater emphasis on informal mechanisms, including mediation, for resolving grievance concerns;
 - The policy now clearly outlines management and employee responsibilities to try to resolve issues in a positive manner.
- 2.2 A copy of the revised policy is attached for Committee's consideration.

3. RECOMMENDATION

- 3.1 It is recommended that Committee agree the changes to the Grievance Policy and refer it to the Executive for approval.

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***pp* DIRECTOR OF CORPORATE & HOUSING SERVICES**

Date: 14 March 2016

Contact Name: Kathleen Docherty, Senior Human Resources Adviser

LIST OF BACKGROUND PAPERS

None



FALKIRK COUNCIL

**GRIEVANCE POLICY
AND
PROCEDURE**

*(For all employees including
Teachers)*

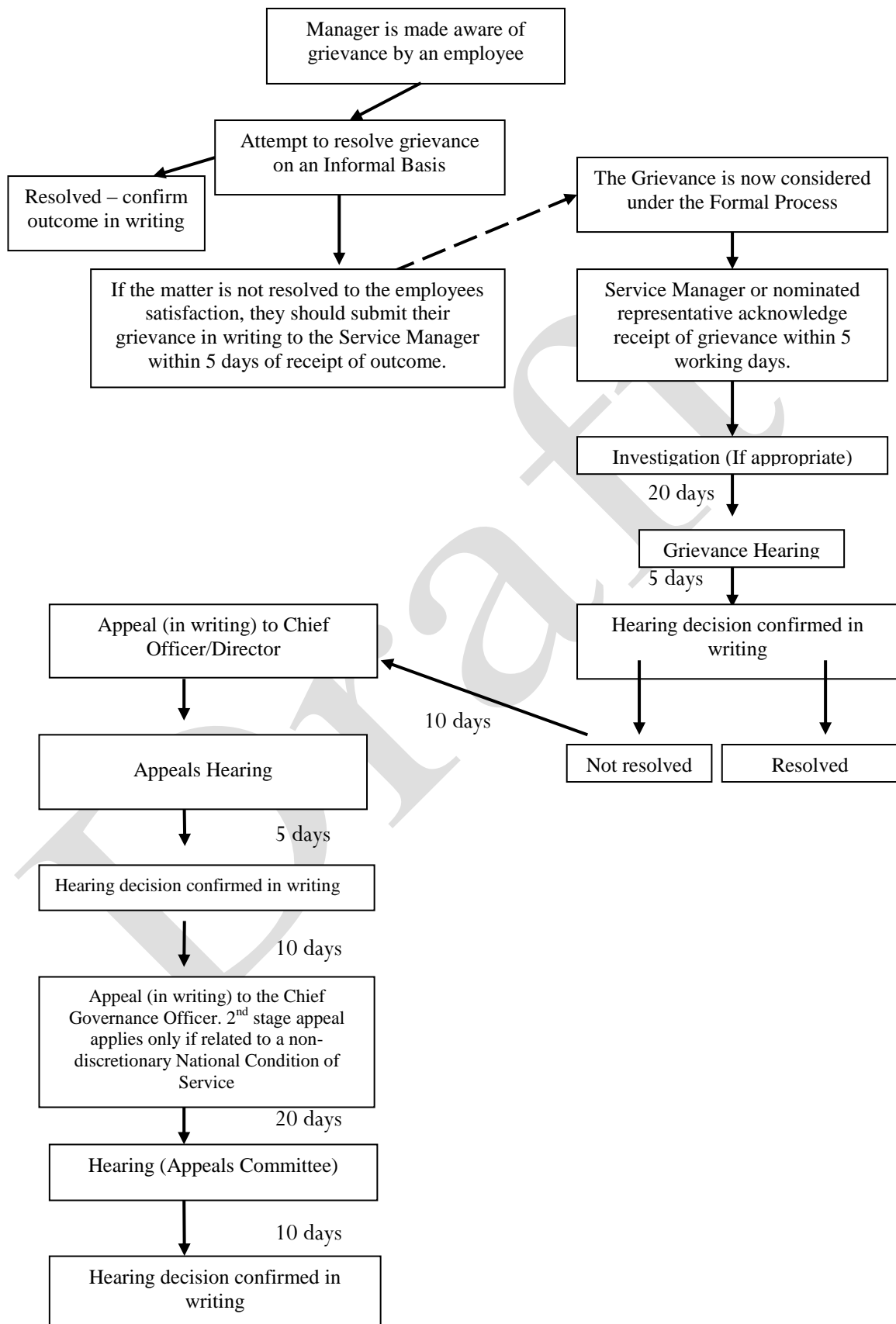


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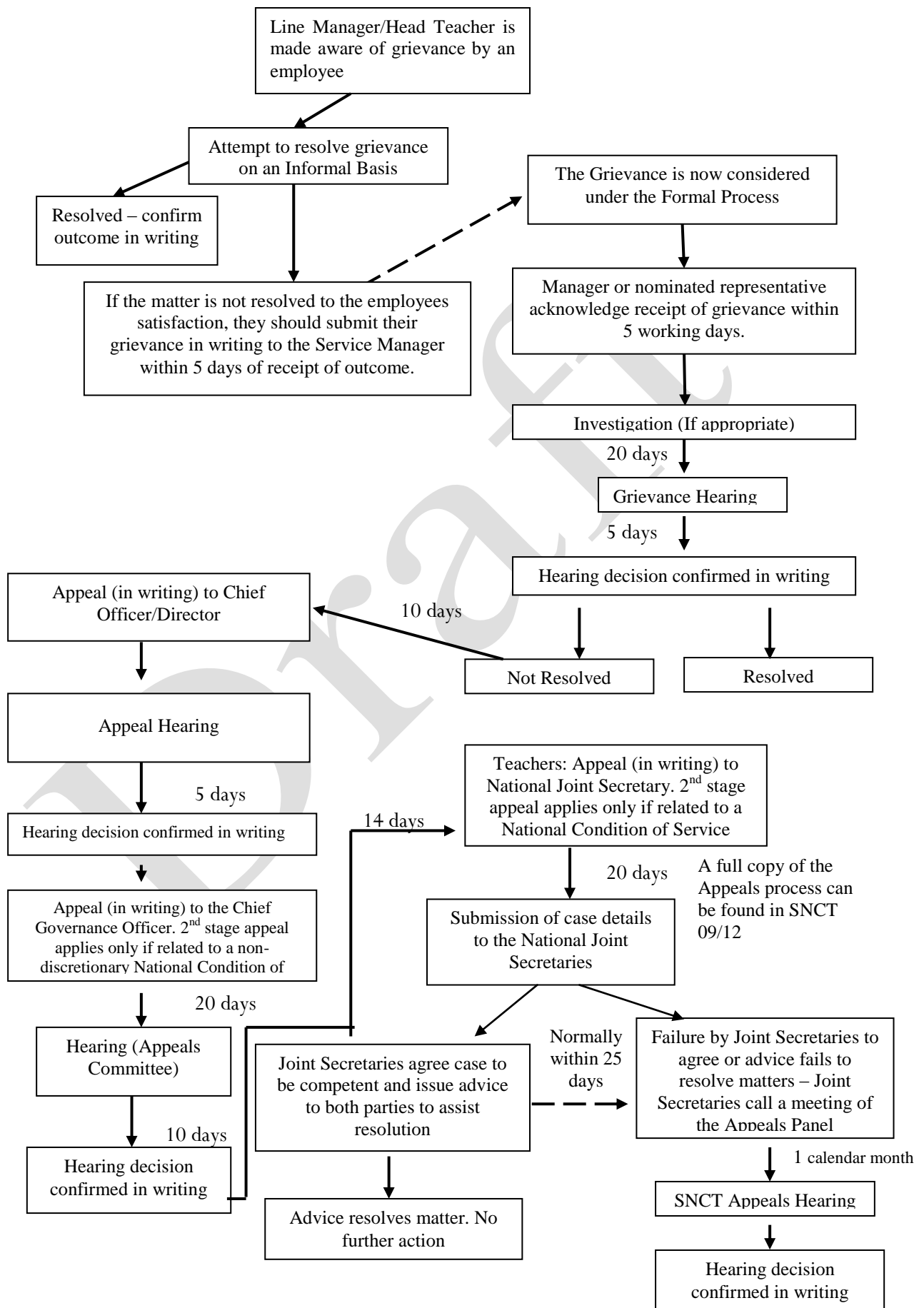
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GRIEVANCE HANDLING

(ALL EMPLOYEES EXCLUDING TEACHERS)



GRIEVANCE HANDLING (TEACHERS ONLY)



PART 1

1.0 POLICY STATEMENT

1.1 Falkirk Council places great emphasis in having a well-motivated workforce and encourages open and honest communication at all levels. It recognises, however, that there will be occasions when an employee may feel aggrieved either about a condition of employment matter or the way in which he/she has been treated.

1.2 The Grievance Policy and Procedure aims to encourage open communication between employees and their managers to ensure that problems arising during the course of employment can be raised and, where possible, resolved quickly and to the satisfaction of all concerned.

The key objectives are: -

- To achieve a fair and equitable method of resolving an employee's grievance.
- To provide consistency in the treatment of employees.
- To assist in the efficient and effective operation of the Council.
- To comply with employment legislation and ACAS guidelines.

1.3 The Grievance Procedure is designed to address individual grievances. It should be recognised however, that while the Policy and Procedure incorporates mechanisms to appeal the outcome of the grievance at appropriate stages, there is no opportunity to raise the same grievance twice. Two or more employees who share a common grievance arising from the same circumstances can pursue a collective grievance, either by using the Grievance Procedure, or the Disputes Procedure, a copy of which may be obtained from line managers or Trade Union Representatives or Human Resources. In the event of registration of a grievance within the formal procedures, in the interests of good employee relations, no alteration will be made to the existing Conditions of Employment which gave rise to the grievance, or to the established working practices, until the grievance has been suitably resolved and the procedure itself exhausted. In circumstances however, where the issue involves service users/clients or a matter affecting the Health and Safety of an individual, the appropriateness of this arrangement will be discussed.

1.4 The employee can at any stage withdraw from the Grievance Procedure by giving notice in writing. In these circumstances the employee will be considered to have abandoned the grievance.

PART 2

2.0 PROCEDURE

2.1 INTRODUCTION

This Procedure outlines the stages to be followed within a specified time frame. It also sets out the roles of Managers/Head Teachers to assist in the early resolution of an employee's grievance. If an employee or Manager/Head Teacher is unsure of the correct procedure to follow they should obtain the appropriate advice and guidance from Human Resources.

2.2 SCOPE

This Policy applies to all Falkirk Council employees.

2.3 DEFINITION

The ACAS Code of Practice relating to Grievance at Work refers to Grievances as 'concerns, problems or complaints that employees raise with their employers'. Issues which grievances may relate to include:

- Terms & Conditions of Employment;
- Health & Safety;
- Work Relations;
- New Working Practices;
- Working Environment;
- Organisational Change;
- Discriminatory Practices.

Issues likely to fall outside the scope of the grievance policy include:

- grievances raised by an ex-employee;
- matters over which the Council has no control;
- grading issues;
- grievances that are the subject of, or may be considered under, a collective dispute which will be dealt with in line with the Council's Disputes Policy;
- where an employee raises a concern as a 'protected disclosure' under the Council's Confidential Reporting Policy;
- allegations of bullying, harassment or victimisation which should be considered under the Council's Dignity at Work Policy;
- counter complaints during/ following a disciplinary process which should be considered as part of the Disciplinary process;
- Matters for which there is a separate right of appeal e.g. appeal against disciplinary action or actions taken under the Council's Capability Policy; and

- Complaints relating to the right to request access to information requests..

In circumstances in which an employee is unclear whether the issue they wish to raise or have addressed would fall under the scope of the policy, advice should be sought from Human Resources in the first instance.

2.4 ROLES AND RESPONSIBILITIES

Managers are expected to:-

- deal personally with any grievance lodged with them or, if not within their authority to resolve, to pass it to the appropriate senior manager;
- deal with grievances :
 - confidentially, considering carefully what information relating to the grievance should be shared, and with whom;
 - Informally, wherever possible;
 - fairly, with an open mind and in a non discriminatory way;
 - in a timely way, adhering to the prescribed timescales where possible; and
 - seeking advice from Human Resources as appropriate.

Employees are expected to:-

- attempt to resolve grievances informally through discussion with their manager or the person concerned;
- lodge a formal grievance with their line manager, if the informal discussions fail (if the grievance is against the immediate manager, it may be lodged with the manager at the level above);
- have a clear and realistic view of what they wish to achieve from the grievance
- co-operate with arrangements to consider the grievance and not misuse the provisions of this policy by making malicious or groundless complaints; and.
- attend any meetings to which they are invited.

2.5 INFORMAL RESOLUTION

The successful resolution of an informal grievance will depend upon the employee and the manager seeking positively to resolve the grievance as speedily and effectively as possible. Whilst recognising that the nature of an employee's grievance can be very wide, in many instances it can best be resolved in an informal manner in open discussion with his/her Line Manager, or in writing. Addressing a grievance in an informal manner encourages effective management and good communication between the employee and the Line Manager.

In some cases informal resolution may involve a Line Manager from the same Service but external to the grievance seeking a resolution without recourse to a formal hearing. This option would be facilitated by Human Resources, with a view to agreeing a resolution.

Another option where the manager and employee have been unable to resolve the issue in the workplace, is to consider the use of an independent third party to help resolve the issue. This may involve an independent mediator. Should the parties concerned wish to make use of third party intervention, this should be notified to the Human Resources

who will be responsible for making appropriate arrangements. This is not appropriate for grievances relating to contractual terms and conditions.

If the grievance is not resolved on an informal basis, the employee may be able to progress to the formal grievance procedure.

2.6 FORMAL PROCEDURE

To ensure fair treatment, where an employee has raised a grievance informally with his/her Line Manager and is still dissatisfied, he/she can raise the grievance to the next level of line management as outlined below.

2.6.1 Stage 1

If despite any informal attempt to resolve the grievance, the employee remains dissatisfied, he/she has the right to submit the grievance to an appropriate more senior Manager within 5 working days of receipt of the outcome. This must be in writing and must specify the employee's reasons for raising the grievance, confirming whether informal approaches have been unsuccessful or were not practicable and indicating the resolution sought.

The Manager shall formally acknowledge receipt of the grievance and will either:

- a) determine that, depending on the nature of the grievance, an investigation is required prior to any hearing. In such circumstances, the employee should be advised in writing if this is the case;
- b) consider it appropriate to explore whether there is an opportunity to resolve the grievance by informal means. In such circumstances, they should contact the employee and/ or his/ her representative to agree a way forward; or
- c) arrange for a hearing normally within 5 working days of receipt of the employee's letter. The employee will be formally notified of the outcome of the hearing within 5 working days.

2.6.2 Stage 2

If the matter is not resolved to the employee's satisfaction then he/she has the right of appeal to their Chief Officer/Director within 10 working days of the receipt of the written outcome of Stage 1. This must be in writing and specify the grounds of the appeal. Any appeal received after this time scale will not be considered, unless good cause is shown for the appeal being made late. The Service Director or Chief Officer will make arrangements for the appeal to be heard. Where this cannot be done within the Division concerned, the chairperson will be determined by Human Resources. Where the grievance appeal relates to the application of a non-discretionary national condition of Service, the appeal chair will be Chief Officer/Director level.

Prior to the appeal being heard, if it is expressly agreed between the parties, Human Resources will arrange a meeting to mediate the matter. This process should occur within 10 days, unless there are exceptional circumstances. If this process is unsuccessful, then the appeal will proceed.

Following from the appeal hearing/mediation the employee will be formally notified in writing of the outcome within 5 working days.

This is the end of the grievance process unless the matter is related to the application of a non-discretionary National Condition of Service.

2.6.3 Stage 3

Generally an employee has the opportunity to progress his/her appeal to the Appeals Committee of the Council providing the grievance is in connection with a non-discretionary National Condition of Service.

Employees only progress to this stage if they have pursued either or both the mediation and the hearing outlined in Stage 2.

The appeal must be submitted to the Chief Governance Officer within 10 working days of written notification of the outcome at Stage 2 and must clearly specify; a) the reasons for the appeal and b) the appropriate Clause of the National Conditions of Employment giving rise to the appeal.

The Appeals Committee of the Council will normally hear the grievance within 20 working days following receipt of the appeal or as soon as the Committee can be convened.

The decision of the Appeals Committee will be notified to the appellant either at the conclusion of the Hearing or alternatively within 10 working days and in any event will be confirmed in writing. With the exception of teachers (see section 6), this is the end of the Grievance process. The matter will not be reconsidered by the Council should the employee raise this issue.

2.7 TEACHER'S APPEALS PROCEDURE

When a teacher or other associated professional has exhausted the Council's grievance/appeals procedure and remains dissatisfied, they may refer their case to the Joint Secretaries of the Scottish Negotiating Committee for Teachers (SNCT) which has put in place a conciliation and appeals mechanism for grievances relating to National Conditions of Service Matters. Any such appeal will only be considered where it relates to the interpretation or implementation of a national agreement promulgated by the SNCT. Teachers cannot appeal matters devolved to the Local Negotiating Committee for Teachers (LNCT). A full detailed copy of the Appeals procedure can be found in SNCT 09/12.

Notice of an appeal to the SNCT must be lodged by the appellant or representative with the Joint Secretary (Employers' side) and the Joint Secretary (Teachers' side) within 20 working days of the outcome of the local appeal. The Joint Secretaries will consider whether the appeal is competent. Where the appeal is held to be competent the Joint Secretaries can issue advice to both parties to assist resolution. Such advice cannot be binding.

Where advice is issued but does not resolve matters or there is failure by the Joint Secretaries to agree on advice to resolve matters, the case will be referred to an Appeals Panel of the SNCT.

The decision of the Appeals Panel will be final and binding.

2.8 LNCT FAILURE TO AGREE

Where Conditions of Service matters are devolved to the LNCT and where there is a failure to agree at school level on any relevant matter, the Council and the unions will seek to resolve matters without delay through discussion in the LNCT.

Where agreement between the two sides of the LNCT is not possible, either side may refer the failure to agree to the Joint Chairs of the SNCT for conciliation, where there is no conflict of interest. If the conciliation is unsuccessful the Joint Chairs of the SNCT may recommend further procedures for resolution of the difference, including external conciliation, mediation or arbitration. Before a failure to agree is reached a joint approach can be made to the Joint Secretary (Teacher's side) and the Joint Secretary (Employer's side) for advice. Such advice is not binding.

2.9 GRIEVANCE RELATING TO DISCIPLINARY MATTER

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

2.10 GRIEVANCE PROCEDURE – CHIEF OFFICER

If a grievance is raised by a Chief Officer or a Director the matter should be referred, in the first instance, to the Head of Human Resources & Business Transformation who will make the appropriate arrangements. If this course of action is not appropriate, the matter should be referred to the Chief Governance Officer.

If a grievance is submitted by a Chief Officer against a decision or actions of the Chief Executive, written notification should be submitted to the Head of Human Resources & Business Transformation who, in conjunction with the Chief Governance Officer, will make appropriate arrangements to deal with the complaint.

Thereafter, if the Chief Officer is still dissatisfied, Stage 3 of the grievance procedures will apply (as detailed at paragraph 2.5.3 above).

2.11 GRIEVANCE PROCEDURE – CHIEF EXECUTIVE

Should the Chief Executive wish to raise a grievance, written notification will be submitted to the Chief Governance Officer who will consult with the Leader of the Council. Thereafter arrangements will be made for the grievance to be appropriately addressed by mutually agreed arrangements with the Leader of the Council. Any appeal, which requires to be considered at a hearing, will be considered by the Appeals Committee of the Council.

2.12 EX - EMPLOYEES

Where the employment has already terminated, an individual has the right to raise a complaint in writing in accordance with Falkirk Council's Complaints Procedure.

PART 3

3.0 GUIDANCE – FOR MANAGERS & EMPLOYEES

3.1 ROLE OF HUMAN RESOURCES AND LEGAL ADVISERS

To ensure a consistency of approach, fairness throughout and to comply with the principles of natural justice, it is essential that suitable advice and guidance is obtained by managers from either Human Resources and/or Legal Advisers.

With these objectives in mind, either Human Resources and/or Legal Advisers may be in attendance to provide advice to the Chairperson of the Grievance/Appeal Panel on the correct procedures to be adopted, precedents and to address the legal or human resources implications arising from the grievance itself. In addition, a representative from Human Resources will be present at all levels of a formal grievance and a Legal Adviser will be present at any Appeal.

During the hearing Advisers will only advise on procedural issues in relation to the grievance and raise questions to seek clarification of the facts and will not be party to any decisions.

Advice regarding the grievance can also be provided generally and outwith the context of the formal hearing.

3.2 EMPLOYEE REPRESENTATION

Employees have the right to be accompanied at a formal grievance hearing by a trade union representative or colleague. Employees must be given the right to have such a representative present. It would, however, not normally be reasonable for an employee to request to be accompanied by a representative whose presence may prejudice the hearing e.g. where there is a potential conflict of interest.

If the employee attends the hearing without a representative, it must be confirmed first of all that he/she has been advised of the right to be accompanied. If the employee advises that he/she has not, the Chairperson should ask if the employee wants representation. If the employee advises that he/she does not want to be accompanied, this should be recorded prior to the hearing starting. Should the employee confirm that he/she does want to be accompanied, agreement should be made to adjourn in order that representation can be arranged. Should the employee turn up at the hearing having not been able to arrange representation in time, again an adjournment should be made in order that the employee can organise suitable representation. If the employee's representative cannot attend on a proposed date the employee can suggest an alternative time and date as long as it is reasonable and it is within 5 working days of the original proposed date. Should the employee be unable to arrange for the representative of their choice to be available, it is reasonable to suggest that arrangements are made for a substitute.

3.3 WITNESSES

Employees have the right to call witnesses in support of their grievance and are personally responsible for arranging these. The chairperson of the hearing must be notified of any witnesses attending on behalf of the employee as soon as possible but at least 3 working days before the grievance hearing. Council employees called as witnesses will receive full pay and on the production of appropriate receipts, reasonable travelling expenses.

Witnesses should be asked not to discuss the matter with any other colleagues.

3.4 TIMESCALE

Where it is not possible to reach agreement within the specified time period, it may be necessary, by mutual consent, to extend the timescales. This should be confirmed in writing stating the reasons for the delay and the agreed extension to the timescale. In the event that there is no prior agreement, or a manager fails to meet the extended timescale, the employee may register a “failure to agree” and opt to proceed to the next stage in the grievance procedure.

3.5 NATURAL JUSTICE AND EQUITY

If, in exceptional circumstances, due to the nature of the grievance, it is decided that the Line Manager is not the most appropriate person to deal with the matter, discussions should take place with Human Resources to determine a suitable alternative. The employee will be notified in writing of this decision not later than 5 working days after the formal submission of the grievance. Thereafter, the grievance will be heard in accordance with Stage 1 in the first instance.

In the event that the grievance is considered to be about or to involve the immediate Line Manager then the grievance should be addressed to the Service Manager or Head Teacher. If however the grievance relates to the Service Manager or Head Teacher, the matter should be referred to the appropriate Head of Service who will confirm how the matter will be progressed.

No Officer or Elected Member who has been party to an earlier decision will take part in any further stages in the grievance/appeal procedure.

3.6 ARRANGING A GRIEVANCE HEARING/APPEAL

Following formal confirmation being received that an employee wishes to pursue a grievance/appeal it is essential that the hearing runs smoothly and to do so requires a number of considerations:

- It must be established that there is a genuine basis for the employee’s grievance/appeal and a mutual understanding of the reasons why it has arisen.
- It falls within the terms of the Grievance Policy and Procedure.
- It is being heard at the correct management level.
- Witness statements, as appropriate, have been received.

Once it has been confirmed that there are grounds for a grievance/appeal the employee must be formally advised at each stage of:

- The date, time and location of the hearing.
- The name, designation of the Chairperson.
- Where appropriate, who will be presenting the management case.
- Who will be present as an adviser(s) to the chairperson.

It is also important to clearly establish:

- Who will represent the employee.
- If there are any witnesses to be called and if so who they are.

The employee must take all reasonable steps to attend the meeting.

The Chairperson convening the hearing is responsible for writing to the employee. All parties should be made aware that they are personally responsible for contacting any witnesses they may wish to call during the hearing.

In advance of the date of the hearing, the Chairperson should make sure that a room is available which is large enough to accommodate everyone in comfort and without interruption. Separate rooms should be available for each party to use prior to the hearing and during any possible adjournments.

3.7 FORMAT OF THE HEARING

It is important that the hearing should be conducted in as relaxed a manner as possible as it can be a distressing experience for all involved in the process. The Chairperson will open the hearing, introduce the parties and be as welcoming and friendly as possible.

The Chairperson will explain the format of the proceedings and advise that it is only points raised in connection with the grievance/appeal that will be relevant and any other issues will be excluded. The Adviser(s) will assist to ensure that only the relevant issues are addressed.

3.8 PROCESS AT THE HEARING

The following outlines the process to be followed at the hearing:

The Chairperson asks the employee or his/her representative, to present his/her case outlining specifically the reasons giving rise to the grievance/appeal.

At this point the opportunity is given to call witnesses to support the employee's evidence.

Thereafter, the Chairperson invites questions from the management representative, following on from which he/she may seek any point(s) of clarification. The Adviser(s) present may also ask questions but restricted to points of clarification.

Once satisfied that there are no further matters to be raised the Chairperson invites the management representative to put forward his/her case.

At this point the opportunity is given to call witnesses to support management's case.

The employee or his/her representative will have the right to question the management representative, after which again, the Chairperson can seek any point(s) of clarification. The Adviser(s) present may also ask questions to clarify any matters.

The Hearing can be adjourned, where necessary, to clarify any point of detail of the grievance. If this happens, the Chairperson must state the period of adjournment.

Following completion of the submissions the Chairperson will invite the management representative in the first instance, to summarise his/her case, followed thereafter by the employee or his/her representative.

3.9 CONCLUSION

The Chairperson then summarises the hearing and the main points of both presentations. The employee should be asked if he/she has been given a fair and reasonable opportunity to present their case. If the response is 'no' then the Chairperson must ask for a further explanation and take the stated concern into account when giving the decision. If the procedures have been followed this is highly unlikely to happen.

The hearing is then adjourned to allow the Chairperson to come to the decision. Even if during the course of the hearing the Chairperson has an idea of what the decision may be, it is advisable that the adjournment is used to allow the opportunity to consider the facts and seek advice from any Advisers present. It should be remembered that if a decision cannot be made during an adjournment, it can be put in writing within the agreed timescales.

3.10 MAKING THE DECISION

All the facts of the case should be reviewed as they have been presented. The role of Human Resources and Legal Representatives, where they are present is to provide advice on the case (but not on its merits which is a matter for the Chairperson) and details of any relevant case law, legislation, precedents and terms and conditions of the contract of employment, which can be taken into account.

3.11 RECONVENING THE HEARING

If the decision is being made immediately, the employee should be clearly advised of the decision and the reasons why it has been reached. This should be confirmed in writing within 5 working days. If more time is required a decision should be confirmed in writing within 5 working days once it has been reached. The decision letter should outline the conduct of the grievance hearing, the decision taken and the reasons for this.

The employee must also be made aware of their right to appeal against the decision within 10 working days of receiving the written confirmation of the decision.

When an independent Chairperson has heard a grievance/appeal from another Service a copy of his/her decision must be forwarded to the employee's Service.

3.12 REVIEW OF PROCEDURES

The Head of Human Resources & Business Transformation will review this policy as per the agreed Human Resources Policy Review Timetable in conjunction with Service Directors and Trade Unions taking into consideration legislative amendments and best practice advice.

This Policy has been Equality Impact Assessed and no adverse impact has been identified.

GRIEVANCE PROCEDURES NOTIFICATION OF GRIEVANCE/GRIEVANCE APPEAL

N.B if completing in by hand please do so clearly and in black ink.

If you require any assistance in completing this form, please contact Human Resources.

PERSONAL DETAILS

Name	Job Title
Service	Location
Home Address	
Trade Union Details (You are advised to contact your Trade Union before submitting this form.) Including name of Trade Union and Representative	

INFORMAL RESOLUTION

Please specify any informal steps taken to resolve your grievance or why you did not consider this appropriate:

Grounds of Grievance/Grievance Appeal

Please state the grounds of your grievance or appeal, in your own words.

[illegible]

Use a separate sheet if necessary

RESOLUTION SOUGHT

Please specify your desired outcome from the grievance process:

Grievance Process		
<u>1st Stage</u> When completed send to:- Service Manager	<u>2nd Stage (Appeal)</u> When completed send to: Chief Officer or Director	<u>3rd Stage (Appeal against non-discretionary National Conditions of Service)</u> When completed send to: Chief Governance Officer

In accordance with the Data Protection Act 1998, you are advised that this information will be retained on file and used for Human Resources purposes.

FALKIRK COUNCIL

Subject: CROWN OFFICE and PROCURATOR FISCAL SERVICE LETTER
Meeting: JOINT CONSULTATIVE COMMITTEE
Date: 19 APRIL 2016
Author: DIRECTOR OF DEVELOPMENT SERVICES AND DIRECTOR OF CORPORATE AND HOUSING SERVICES

1. INTRODUCTION

- 1.1 The purpose of this report is to update Committee on the content of a letter received from the Crown Office and Procurator Fiscal Service on 4 February 2016 (copy attached) and explain actions required to ensure recommendations are considered and implemented appropriately across Falkirk Council.

2. BACKGROUND

- 2.1 The letter was received by the Chief Executive in relation to the recent determination by Sheriff Becket on 7 December 2015 in relation to the Glasgow Fatal Accident Inquiry (FAI) concerning the bin lorry accident on 22 December 2014.
- 2.2 The determination provided a number of recommendations and matters for consideration to be addressed mainly by Glasgow City Council although the rationales for the recommendations are applicable to other local authorities. These are detailed below with suitable responses in relation to how these recommendations may affect Falkirk Council.

3. RECOMMENDATIONS WITHIN DETERMINATION

- 3.1 **Recommendation 5.2** “when a doctor is advising an organisation employing a driver as to that driver’s fitness to drive following a medical incident whilst driving, that organisation should provide all available information about the incident to the doctor and the doctor should insist on having it prior to giving advice to the organisation and the driver”

Response – HR will review the OH requirements for medicals for drivers. Currently there is a mixed approach adopted, with some services preferring to use the services of OH and others using GP checks for drivers of specific vehicles. It is suggested that all services move to GP’s undertaking medicals in all cases as required by legislation. Guidance will be developed by HR and issued to all services to ensure that services are clear on responsibilities and accountabilities in this respect.

- 3.2 **Recommendation 5.3** “Glasgow City Council when employing a driver, should not allow employment to commence before references sought have been received”

Response – The existing Recruitment & Selection Policy already requires references to be sought prior to any offer of employment. Services will however be reminded of the need to take up two references prior to any offer of employment.

- 3.3 **Recommendation 5.4** “Glasgow City Council should carry out an internal review of its employment processes with a view to ascertaining potential areas for improvement in relation to checking medical and sickness absence information provided by applicants, for example by having focussed health questions within reference requests for drivers and obtaining medical reports in relation to health related driving issues from applicants GPS”

Response – The existing Recruitment & Selection Policy requires references to be sought prior to any offer of employment. This has however been reinforced, with specific guidance for references for drivers developed, which will be issued to services shortly. The Recruitment & Selection Policy will also be updated by HR in due course to ensure alignment. The pre-employment process, undertaken by OH, for new drivers/applicants will also be reviewed to ensure thorough and robust assessment to ensure fitness for employment. In addition, this is an on-going review of the Transport and the Driving at Work Policies being undertaken by HR to ensure alignment.

- 3.4 **Recommendation 5.5** “Glasgow City Council should provide its refuse collection operators with some basic training to familiarise them with the steering and braking mechanisms of the vehicles in which they work”

Response – Waste Services currently undertake training with drivers and non-drivers to familiarise them with the mechanisms of the vehicles and this is recorded for file purposes. When new refuse vehicles are delivered, all drivers and operatives are trained on the use of that vehicle.

- 3.5 **Recommendation 5.6** “Local Authorities and any other organisations which collect refuse when sourcing and purchasing refuse collection vehicles which are large goods vehicles should seek to have AEBS fitted to those vehicles wherever it is reasonably practicable to do so”

(DEFINITION OF AEBS – “An advanced emergency braking system (AEBS) or autonomous emergency braking (AEB) is an autonomous road vehicle safety system which employs sensors to monitor the proximity of vehicles in front and detects situations where the relative speed and distance between the host and target vehicles suggest that a collision is imminent. In such a situation, emergency braking can be automatically applied to avoid the collision or at least to mitigate its effects.)

Response - Comes as standard on new LGV's (over 7.5 tonnes gross vehicle weight) purchased since October 2015. So any LGV vehicles bought after October 2015 will come with this technology. We are awaiting delivery of 9 refuse vehicles all of which will come with AEBS.

- 3.6 **Recommendation 5.7** “Local Authorities and any other organisations which collect refuse and which currently have LGV's without AEBS but to which AEBS could be retrofitted, should explore the possibility of retrofitting with the respective manufacturer”

Response – Our current understanding is that these devices can only be retrofitted to the LGV's manufactured after October 2014. Having liaised with Falkirk Council vehicle manufacturers we have identified that there are currently 6 refuse collection vehicles which could be fitted with this technology. It is not common practise in the industry to

have these devices retrofitted and the initial indications are suggesting £20k per vehicle to have the devices fitted. This does not include vehicle downtime and transportation costs to Germany for fitting.

Mercedes who are our main vehicle providers have commented that “It may be worth mentioning that in its present form AEBS does not pick up pedestrians or cycles, in the Glasgow Fatal Accident it would not have picked up the people or bicycles but it will pick up large stationary objects.”

- 3.7 **Recommendation 5.8** “Glasgow City Council should seek to identify routes between refuse collection points, which so far as is reasonably practicable, minimise the number of people who would be at risk should control be lost of a refuse collection lorry”

Response – Waste services currently have route risk assessments in place for refuse vehicles and these have taken into account busy areas like central town areas and schools.

- 3.8 **Recommendation 5.9** “the potential for the presence of exceptional numbers of pedestrians at particular times should be taken into account of as part of route risk assessment in refuse collection”

Response – This is taken into account with Refuse Risk Assessments at the moment and should also be replicated by other Council service users of LGV's. This was discussed at the recent Fit Fleet Group in January 2016. An annual Statement of Assurance is also completed by service Nominated Transport Service Officers across all service areas within the Council to ensure compliance.

4. **MATTER FOR CONSIDERATION WITHIN DETERMINATION**

- 4.1 Matter for Consideration 6.1 “occupational health doctors performing D4 examinations and providing advice to employers on applicant drivers, and employers of drivers who facilitate their staff applying for renewal of group 2 licences without the involvement of GP's, should consider whether to require the applicant to sign a consent form permitting release by any GP of relevant medical records to the occupational health doctor.

Response – Not for ourselves

5. **RECOMMENDATIONS**

It is recommended that Committee note the content of the report and refer to Executive for noting.

.....
DIRECTOR OF DEVELOPMENT SERVICES AND *pp* DIRECTOR OF CORPORATE & HOUSING SERVICES

Date: 7 March 2016

Contact Name: Carl Bullough (Operations), Pat Taggart (Fleet Manager)

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA



John T. Logue, Director of Serious Casework

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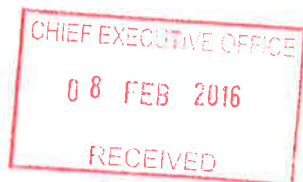
Fax: 0844 561 4070

Legal Post: LP-1 Edinburgh 30

Your ref:

Our ref: JTL/GE

4 February 2016



Dear Madam

DVLA procedures on medical fitness to drive Consideration of a public consultation

You may be aware of the recent Fatal Accident Inquiry at Glasgow Sheriff Court in relation to the tragic accident on 22 December 2014 in Queen Street and George Square, Glasgow when the driver of a bin lorry lost consciousness and, as a result, the lorry mounted a pavement and collided with a number of pedestrians, killing 6 people and injuring 15 more.

The Sheriff issued his Determination, in terms of Section 6 of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976, on 7 December 2015. A copy of the Determination is enclosed.

I would draw your attention to the detailed and sensible Recommendations and Matters for Consideration set out in the Determination. Although a number of the Recommendations are addressed to Glasgow City Council the reasoning that lies behind them is equally applicable to all local authorities. In particular you will wish to note the following:

- Recommendation 5.2 When a doctor is advising an organisation employing a driver as to that driver's fitness to drive following a medical incident whilst driving, that organisation should provide all available information about the incident to the doctor and the doctor should insist on having it prior to giving advice to the organisation and the driver.
- Recommendation 5.3 Glasgow City Council, when employing a driver, should not allow employment to commence before references sought have been received.
- Recommendation 5.4 Glasgow City Council should carry out an internal review of its employment processes with a view to ascertaining potential areas for improvement in relation to checking medical and sickness absence information provided by applicants, for example by having focussed health questions within

reference requests for drivers and obtaining medical reports in relation to health related driving issues from applicants' GPs.

- Recommendation 5.5 Glasgow City Council should provide its refuse collection operators with some basic training to familiarise them with the steering and braking mechanisms of the vehicles in which they work.
- Recommendation 5.6 Local Authorities and any other organisations which collect refuse, when sourcing and purchasing refuse collection vehicles which are large goods vehicles, should seek to have AEBS fitted to those vehicles wherever it is reasonably practicable to do so.
- Recommendation 5.7 Local Authorities and any other organisations which collect refuse, and which currently have large goods vehicles without AEBS but to which AEBS could be retrofitted, should explore the possibility of retrofitting with the respective manufacturer.
- Recommendation 5.8 Glasgow City Council should seek to identify routes between refuse collection points which, so far as is reasonably practicable, minimise the number of people who would be at risk should control be lost of a refuse collection lorry.
- Recommendation 5.9 The potential for the presence of exceptional numbers of pedestrians at particular times should be taken account of as part of route risk assessment in refuse collection.
- Matter for Consideration 6.1 Occupational health doctors performing D4 examinations and providing advice to employers on applicant drivers, and employers of drivers who facilitate their staff applying for renewal of group 2 licences without the involvement of GPs, should consider whether to require the applicant to sign a consent form permitting release by any GP of relevant medical records to the occupational health doctor.

There are a number of Recommendations applicable to the medical profession and DVLA surrounding fitness to drive which will be of interest to you.

Finally, you will note that Recommendations 5.17 and 5.19 invite the Secretary of State for Transport to instigate consultations on matters relating to fitness to drive. Your local authority, and any occupational health provider you engage in relation to your drivers, may have an interest in such consultations.

I trust you will take forward and implement those matters above which are applicable to your local authority with a view to preventing such a tragedy from happening again.

Yours faithfully



JOHN T. LOGUE
Director of Serious Casework

Enclosure:

Determination into the deaths of John Kerr Sweeney, Lorraine Sweeney, Erin Paula McQuade, Stephenie Catherine Tait, Gillian Margaret Ewing, Jacqueline Morton; Sheriff John Beckett QC, 7 December 2015