



APPEALS COMMITTEE

CONFIDENTIAL

THURSDAY, 12 NOVEMBER, 2020 at 2.15 P.M.

Your attendance is requested at a meeting of the **APPEALS COMMITTEE** to be held on **THURSDAY, 12 NOVEMBER, 2020, by SKYPE, at 2.15 P.M.**

4 November, 2020

Director of Business Services

To: Councillors A Simpson (Chair), R Cassie, R McKail and H Smith.

Contact Person:-	Niall David Tel: 01467 538939 Email:- niall.david@aberdeenshire.gov.uk
-------------------------	---

B U S I N E S S

1. Declaration of Members' Interests

2A. Statement on Equalities

Consider, and if so decided, adopt the following:-

"In accordance with the Council's legal duty under section 149 of the Equality Act 2010, the Committee, in making decisions on the attached reports, shall have due regard to the need to:-

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it."

2B. Resolution

Consider, and if so decided, adopt the following resolution:-

"That under Sections 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting during consideration of the items considered on account of the likely disclosure of exempt information of the class described in paragraph 1 of Part 1 of Schedule 7A of the Act."

- 3. Appeals Committee Procedure. **(Page 4)**
- 4. Appeal Against Dismissal (Case No.369). **(Pages 5- 42)**
(EXEMPT under paragraph 1)
- 5. Appeals Committee Guidance Note. **(Page 43)**

DESCRIPTIONS OF EXEMPT INFORMATION

Paragraph 1 - Employee - Information relating to employees or former employees.

PUBLIC SECTOR EQUALITY DUTY – GUIDANCE FOR MEMBERS

What is the duty?

In making decisions on the attached reports, Members are reminded of their legal duty under section 149 of the Equality Act 2010 to have due regard to the need to:-

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it.

The “protected characteristics” under the legislation are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; and (in relation to point (i) above only) marriage and civil partnership.

How can Members discharge the duty?

To ‘have due regard’ means that in making decisions, Members must consciously consider the need to do the three things set out above. This requires a conscious approach and state of mind. The duty must influence the final decision.

However, it is not a duty to achieve a particular result (e.g. to eliminate unlawful racial discrimination or to promote good relations between persons of different racial groups). It is a duty to have due regard to the need to achieve these goals.

How much regard is ‘due’ will depend upon the circumstances and in particular on the relevance of the needs to the decision in question. The greater the relevance and potential impact that a decision may have on people with protected characteristics, the higher the regard required by the duty.

What does this mean for Committee/Full Council decisions?

Members are directed to the section in reports headed ‘Equalities, Staffing and Financial Implications’. This will indicate whether or not an Equality Impact Assessment (EIA) has been carried out as part of the development of the proposals and, if so, what the outcome of that assessment is.

An EIA will be appended to a report where it is likely that the action recommended in the report could have a differential impact (either positive or negative) upon people from different protected groups. The report author will have assessed whether or not an EIA is required. If one is not required, the report author will explain why that is.

Where an EIA is provided, Members should consider its contents and take those into account when reaching their decision. Members should also be satisfied that the assessment is sufficiently robust and that they have enough of an understanding of the issues to be able to discharge their legal duty satisfactorily.

For more detailed guidance please refer to the following link:-
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/psed_technical_guidance_scotland.doc

APPEALS COMMITTEE PROCEDURE

In cases where the officer has a right of complaint to a Tribunal and in respect of Disciplinary Action.

1. Statement of Authority's case
2. Questions by Appellant
3. Statement of Appellant's case
4. Questions by Authority's representative
5. Questions by Committee members
6. Summing up by Authority's representative
7. Summing up by Appellant or representative
8. Parties and witnesses withdraw
9. Committee deliberates and comes to a decision
10. Parties recalled and decision announced

Aberdeenshire Council Appeals Committee

In summary - the role of the Committee

Role:-

1. Be objective and maintain the credibility of the Appeals Committee by following a proper process;
2. Be fair to all parties;
3. Give a chance to be heard and to answer allegations;
4. Do not pre-judge the case;
5. Listen to the evidence;
6. Consider whether the authorised Officer of the Council has acted reasonably in the correct and proper exercise of the powers delegated to him/her;
7. Do not just substitute your own preferred outcome;

Remember:-

8. The appeal is a *review*, not a re-hearing. You should aim therefore to assess whether the decision of the authorised officer was reasonable;
9. You must consider the contractual and other basic employment obligations of both the employer and the employee;
10. You should be aware of and understand the policy or procedure in question – and you should not seek to revise the policies or procedures within an appeal hearing;
11. The outcome should be fair and reasonable – an objective assessment;
12. If evidence is disputed, decide which version of events is more credible;
13. You should not express a view during the course of the hearing;
14. As appeals are a civil matter, the applicable standard of proof is the balance of probabilities.

August 2013