

HUMAN RESOURCES & PERFORMANCE

APPEALS POLICY, PROCESS and GUIDANCE

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HUMAN RESOURCES & PERFORMANCE

APPEALS POLICY

1. Policy

- 1.1 The x is committed to establishing a fair and equitable working environment. It is recognised that employees should be given the opportunity of an appeal as the final stage to internal employment processes. The purpose of this policy is to provide a universal appeals process for a range of employment policies and procedures, for example, discipline, absence management, secondment, flexible working, learning and development etc.

2. Scope

- 2.1 The Appeals Policy applies to all x employees excluding those covered by Chief Officers` terms and conditions of employment.

3. Process

3.1 Lodging an appeal

3.1.1 All appeals should:

- be lodged in writing to the relevant person (usually the Head of Human Resources & Performance);
- be made within 10 working days of the date of the letter setting out the decision from the previous process (e.g. discipline, absence management etc)
- clearly set out the grounds of appeal

3.2 The Appeal Hearing

- 3.2.1 A manager more senior than the person who made the original decision will usually hear an appeal. Alternative arrangements may be made in consultation with the Head of Human Resources and Performance (HR&P).

- 3.2.2 Where the appeal is against dismissal, an individual has the right to elect for their appeal to be heard by the Appeals Panel of Authority Members.

- 3.2.3 The Head of HR&P will be present at an appeal to provide procedural and employment law advice to the Chair and/or panel.

- 3.2.4 The appeal hearing will not be a re-hearing of the case. Its purpose is to:

- consider whether due process has been followed, particularly the requirements of relevant policies;
- review the evidence leading to the original decision, including inconsistencies, e.g. conflicting evidence/accounts; and, where applicable,
- decide on the appropriateness of the outcome and the course of action to follow

- 3.2.5 The decision of the Chair/panel will be final and there will be no further internal

right of appeal.

3.2.6 An appeal will usually be heard within 10 working days of the appeal being lodged with HR&P.

3.2.7 Where an appeal is against a job evaluation decision, a post holder has right of appeal to the Job Evaluation Appeals Panel (as they are trained in the job evaluation scheme).

3.3 Documentation

3.3.1 Documentation to be relied upon at an appeal should be provided to the Head of HR&P and circulated to all parties at least 2 days prior to the hearing.

3.3.2 Notes of meetings will be taken and kept in accordance with the Data Protection Act. These notes will be copied and circulated to the relevant parties, who must also ensure confidentiality and secure retention.

3.4 Right to be accompanied

3.4.1 The appellant has the right to be accompanied by a trade union official or PDNPA colleague at an appeal hearing (in accordance with statutory provisions).

3.5 Outcome

3.5.1 The appellant will be informed of the decision, in writing, setting out the reasons, within 5 working days of the appeal hearing. Exceptionally, a holding letter can be sent explaining the reasons for a different timescale.

4 **Equality and Diversity**

4.1 Appeals must be managed fairly and be free from discrimination. When participating in the appeals process those involved should manage the tensions that can arise between meeting the needs of the organisation and the needs of individuals.

4.2 Statutory provisions, e.g. equalities legislation, will always take precedence.

5 **Manager responsibilities**

5.1 *For the manager against whom the appeal is made* - To prepare and present reasons for their decision at appeal hearings as appropriate.

5.2 *For the senior manager hearing the appeal* - To conduct appeal hearings in a fair and reasonable manner and determine the outcome.

5.3 To take equality and diversity considerations into account.

5.4 To seek advice from HR&P.

5.5 To ensure notes are taken and stored securely.

5.6 To maintain confidentiality of information.

6 Employee responsibilities

- 6.1 To ensure documentation, for which they are responsible, is provided in a timely way.
- 6.2 To advise any witnesses s/he wishes to call.
- 6.3 To arrange with their companion to attend the hearing, and brief the companion accordingly.
- 6.4 To maintain confidentiality of information.

7 HR&P responsibilities

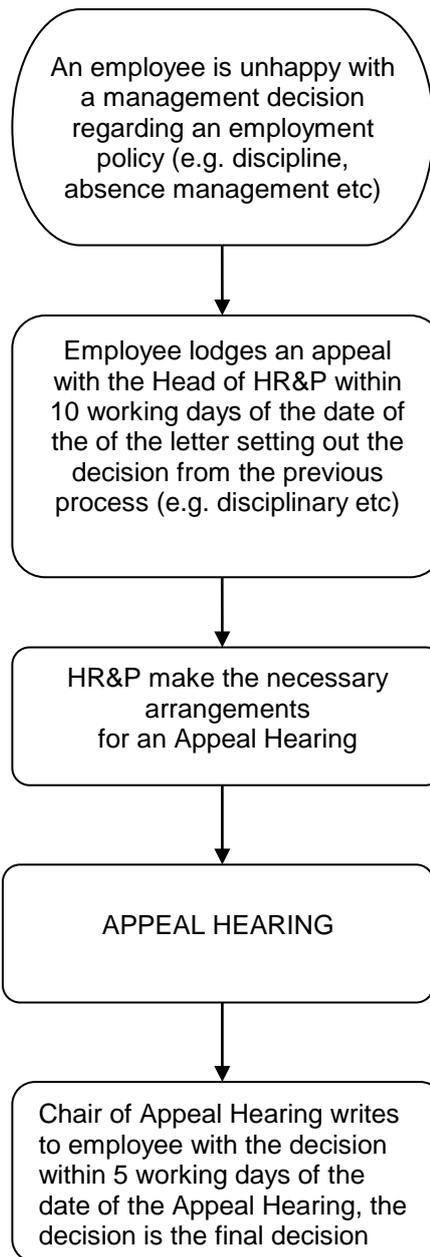
- 7.1 To provide advice and guidance to managers and employees on the operation of this policy.
- 7.2 To organise hearings and circulate paperwork in a timely way.
- 7.3 To provide professional advice at any appeal hearing.
- 7.4 To monitor cases and provide management information.
- 7.5 To maintain confidentiality of information.
- 7.6 To review this policy in line with drivers from change in legislation, through feedback as a Learning Organisation or developments in best practice.

8 Relevant Legislation and x Policy

Equality Act 2010
Employment Act 2002
Data Protection Act 1998
Age Discrimination Act 2006
Work and Families Act 2006
Employment Rights Order 2006
Employment Relations Act 2004
Disability Discrimination Act 2005
Trade Union and Labour Relations (Consolidation) Act 1992
Comprehensive Equality Policy (particularly Equality in Employment)
Joint Performance and Achievement Review process
Employment policies
Values

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APPEALS PROCESS



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APPEALS GUIDANCE

9. Guidance

Introduction

The Appeals Policy has been developed to provide a consistent framework by which appeals may be heard and decided. These guidance notes are not an integral part of the appeals policy. They set out good practice to follow and give more information on what to expect from the process. Each case must be considered on its own merits. There are certain things that managers and employees must do to ensure that the x complies with its statutory duties and these have been included in the policy itself, e.g. submit an appeal in writing, ensure a record of a hearing is made and stored securely.

If you need more guidance on the way the appeals process works, you can contact a member of the Human Resources & Performance (HR&P) team, a staff committee representative or a union official, if you are a member.

9.1 Lodging an appeal - *staff*

9.1.1 You must lodge your appeal in writing with the Head of HR&P, within 10 working days of the date of the letter setting out the decision from the previous process (e.g. discipline etc).

9.1.2 You should clearly set out the grounds for your appeal.

9.2 Receiving an Appeal – *manager*

9.2.1 Appeals will usually be lodged with the Head of HR&P. If you receive written notification of an employee's intention to appeal a decision, please advise the employee to write to the Head of HR&P.

9.2.2 An appeal should be in writing and sent to the nominated person as detailed in the original decision letter to the employee. The grounds of appeal should also be clearly set out.

9.3 Who hears an appeal?

9.3.1 An appeal will usually be heard by a completely independent manager or a manager more senior than the manager who made the original decision. Exceptionally, alternative arrangements may be made in consultation with you and your companion as appropriate.

9.3.2 Where your appeal is against dismissal, you have the right to elect for it to be heard by the Appeals Panel of Authority Members.

9.3.3 Where the appeal is against decision by Resource Management Team (e.g. under the Managing Change policy), the appeal is heard by the Appeals Panel of Authority Members.

9.3.4 If your appeal is about the outcome of a re-grading of your post through the job evaluation process, the Job Evaluation Appeals Panel trained in the job evaluation scheme hears the appeal. The Job Evaluation Appeals Panel is chaired by the Director of Corporate Resources and comprises 3 members who have not had any involvement with the original evaluation. You should lodge your appeal, clearly stating the reasons for appeal to the Head of HR&P. One reason for appeal might be that another post with a similar job description is on a higher grade. If this is the reason for appeal you should include in your appeal a comparison of your job description against the comparator post (It should be noted however that jobs can be very close in the points they score in evaluation but fall either side of score at which the next higher grade takes effect). The Head of HR & P will then ask the Appeals Panel to meet within 20 working days to take account of the reasons for appeal and re-evaluate the post. Neither you nor your manager attend the re-evaluation meeting. You and your manager will then be informed of their decision, which is final. Any change of grade (up or down) will be effective from the date you lodged the appeal with the Head of HR & P.

9.3.5 The Head of HR&P will be present at the appeal hearing to provide procedural and employment law advice to the Chair and/or panel. However, where the Head of HR & P has advised the manager in the decision which led to the appeal, then the Director of Corporate Resources or the Head of Law will advise the manager/ panel hearing the appeal. This will ensure the appeal is objective and fair.

9.4 Preparing for an Appeal

Chair of the appeal hearing/ Appeal panel chair

9.4.1 The purpose of an appeal hearing is not to re-hear the whole case, but rather to:

- Consider whether due process has been followed, particularly the requirements of relevant policies;
- Review the evidence leading to the original decision, including inconsistencies, e.g. conflicting evidence/accounts; and,
- Determine if the Manager's decision which led to the appeal was reasonable in the particular circumstances and decide on the appropriateness of the outcome given the range of options open to the manager.

9.4.2 To ensure the case is considered objectively and fairly you must keep an open mind and follow the procedure referred to below, at 9.5.1. HR&P will advise you.

manager

9.4.3 If you are the manager who made the decision the employee is appealing against (or the panel Chair) you will become the 'presenting manager' at an appeal. You need to explain how and why you reached your decision. If the appeal follows on from a disciplinary hearing you will also need to explain why you decided upon whatever sanction you applied.

9.4.4 In some circumstances the letter confirming your decision will be sufficient and it may not even be necessary for you to attend the appeal. Ultimately it will be the decision of the Chair of the appeal hearing whether or not you need to be present.

9.4.5 A member of the HR&P team will usually make the arrangements for the hearing and notify all parties of the arrangements (date, time, venue, timescales for documentation etc).

staff

9.4.6 If you intend to rely on any documents at an appeal hearing, you need to ensure they are provided to Head of HR & P at least 2 days in advance. It is helpful if you attach them to your letter of appeal when you submit it. If an appeal is being heard by the Appeals Panel, documents must be provided at least 10 days before the hearing date so that they can be circulated to members (given all papers provided to members for any meeting are sent a week before the meeting date)

9.4.7 You may choose to be accompanied by a recognised trade union official, a staff committee representative or work colleague at the appeal hearing. You should let HR&P know the name of your companion as soon as possible and no later than two full working days before the meeting. You should brief them about their role (see 9.7 below).

9.4.8 It is always helpful to set out what you want to say before an appeal hearing. Read the documents you have submitted (if there are any). Try to be as factual, clear and succinct as possible. Discuss what you want to say with your companion before the meeting. It can be helpful to get another point of view and for them to know what you wish to say so that they can prompt you. Also give a copy of the Appeals process and these Guidance notes to your companion drawing particular attention to section 9.7 below about their role. Before the hearing your companion may ask the Head of HR&P any policy or procedural questions.

9.5 Procedure to be followed at Appeal Hearings

9.5.1 The Chair of the appeal hearing or Appeals Panel Chair will decide on the exact procedure to be followed as it may vary depending upon the nature of the case. The appellant must be given an opportunity to state their case and present evidence.

The following is a recommended process:

- The Chair identifies those present at the hearing and their roles (including that of the Democratic Services officer who will take the formal minute).
- The Appellant is invited to present their case.
- The Presenting Manager and/or the HR Representative, Panel and/or Accompanying Person may ask questions, through the Chair, to clarify any of the points made.
- The Presenting Manager then states why they made their decision and the key contributory reasons.
- The Appellant, Panel and/or Accompanying Person may ask questions to clarify any of the points made, again through the Chair.
- The Presenting Manager sums up.

- The Appellant (and their Accompanying Person if desired) sums up. Makes any statement of mitigation – allowing the appellant to have the final say.
- During the course of the hearing the Chair may adjourn proceedings at any time and the Appellant or their Accompanying Person or Presenting Manager or the HR Representative may request an adjournment which will be determined by the Chair.
- At the conclusion of the hearing a formal adjournment occurs when all the parties will be asked to withdraw and the Panel retires to reach their decision. The Panel will be accompanied by Head of HR & Performance, Director of Corporate Resources or Head of Law as appropriate.
- The hearing may be reconvened for the Chair or panel members to ask any further questions on points of clarification. In these cases all parties must be present.
- Both parties will be invited back to hear the Panel's decision
- The Decision will be confirmed in writing within 5 working days.

9.6 Documentation

manager

- 9.6.1 As the presenting manager you are responsible for ensuring that you provide any documentation that you intend to rely upon or which you think provides evidence of the appropriateness of your decision.
- 9.6.2 Requests by an appellant for relevant documentation will usually be provided to the appellant within 2 working days. The appellant must make requests for documents within 5 working days of the date of the appeal hearing (10 days in the case of an appeal to be heard by the Appeals Panel). Delays in supplying documents may lead to the appeal hearing being delayed.
- 9.6.3 HR&P will circulate the papers from both sides at least 2 full working days before the hearing (one week if the appeal to be heard by the Appeals Panel).

staff

- 9.6.4 You are responsible for ensuring that you provide any documentation that you intend to rely upon or which you think provides evidence of your position.
- 9.6.5 If you are asked for relevant documents you should provide them within 2 working days. If you wish to request documents, you should do so at least 5 working days ahead of the date of the appeal hearing so that they can be circulated 2 days before the hearing. You may request a delay for the hearing if documents are not provided within this timescale.
- 9.6.6 HR&P will circulate the paperwork from both sides at least 2 full working days before the hearing (one week if the appeal to be heard by the Appeals Panel).

9.7 Right to be accompanied

- 9.7.1 An employee has the right to be accompanied at an appeal hearing by a trade union official or a work colleague. An employee may not be accompanied by a solicitor or friend/relative from outside the x (unless required as a reasonable adjustment, for example, for a disability or to translate).
- 9.7.2 Where an employee chooses to be accompanied by a trade union official, it is good practice for this person to come from the union recognised by the x, i.e. UNISON. However, an employee does have the right to be accompanied by an official from another trade union, as long as the official is certified by their union as having experience of, or has having received training in acting as a worker's companion at disciplinary or grievance hearings.
- 9.7.3 The companion's role is to help the employee prepare for the hearing, take notes during the hearing for the employee and remind the employee of information/issues the employee wishes to discuss. The companion may ask questions of witnesses, sum up the employee's case and respond on the employee's behalf to any view expressed at the hearing. A companion may not answer questions directed to the employee, address the hearing if the employee does not wish it, or prevent the manager from explaining their case. The employee and/or the companion may request reasonable adjournments during a hearing, for example, in order to confer.

9.8 Outcome/ confirming the decision

- 9.8.1 The Panel have the following 3 options dependent on the circumstances of the case
- a) To uphold the Appeal - to determine that the appeal had merit and the Presenting Manager's decision was invalid/ flawed.
 - b) To dismiss the Appeal - to determine that the Presenting Manager's decision is upheld
 - c) To uphold the Appeal in part and so determine that a lesser penalty is appropriate (e.g. in the case of a dismissal that the employee is re-engaged but that a Final Written Warning is appropriate, or re-engagement with a demotion.)
- 9.8.2 The Chair/Panel should inform the Appellant and Presenting Manager of the outcome at the conclusion of the hearing. The decision will then be confirmed in writing, together with the reasons, within 5 working days of the appeal hearing. Exceptionally, a holding letter can be sent explaining the reasons for a different timescale.
- 9.8.3 The letter will confirm that the appeal decision is the final stage of the internal process. In some cases an employee may then wish to consider taking the matter externally to an Employment Tribunal.

9.9 Note-taking

9.9.1 There must be a documented record of an appeal hearing.

9.9.2 A note-taker should be present during an appeal hearing. The note-taker will be determined by HR&P for an appeal. For an Appeals Panel of members, Democratic Services will normally take the notes and record the formal minute. The note-taker will be reminded of the need for confidentiality. A companion may also take notes.

9.9.3 Notes may be typed or remain handwritten (if legible). All notes should be circulated after the hearing and the employee and their companion will have the option to put a copy of their comments/amendments on file, where they disagree with the notes.

9.9.4 Hand-written notes should be kept and stored confidentially along with other documents (see Record Keeping, below).

9.10 Record Keeping

9.10.1 All records relating to appeals should be kept in accordance with the Data Protection Act 1998, Freedom of Information Act 2000 and the x's Data Protection Statement (Appendix 3 of the x's E-policy), which require the secure storage and release of certain data to individuals on their request. The individuals concerned should be given, in confidence, copies of any meeting records, although in certain circumstances some information may be withheld (e.g. to protect a witness). Individuals should seek advice from an HR&P Adviser before withholding information.