

APPEAL POLICY

		POLICY	
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	X		
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Disciplinary Policy		April 2021	
Grievance Policy		March 2021	
Capability Policy		March 2021	
Change Policy		November 2022	
Sickness Absence & Wellbeing Policy		January 2022	
Dignity at Work Policy		March 2021	
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APPENDICIES

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1.0 INTRODUCTION

1.1 The appeals process is applicable to the following policies:

- Disciplinary Policy
- Capability Policy
- Sickness Absence & Wellbeing Policy
- Change Policy
- Grievance Policy
- Dignity at Work Policy

1.2 An employee may appeal against any formal sanction imposed, or any dismissal in accordance with the above policies.

2.0 POLICY STATEMENT

2.1 This procedure is for use in appeals when an individual feels that a sanction or decision made in accordance with the above policies were;

- Unfair
- The process was flawed
- New evidence has come to light

3.0 DEFINITIONS/ ABBREVIATIONS

3.1 There are three potential grounds, or reasons, for appeal;

- New evidence has come to light,
- The reasonableness of the penalty imposed (for example, the severity of the sanction in light of mitigation and a Just and Restorative Culture)
- Procedural irregularities during the investigation or hearing.

4.0 ROLES AND RESPONSIBILITIES

4.1 The Employee

4.1.1 The employee (or ex-employee) who is appealing against a formal sanction must act in accordance with the Trust's CARE Values.

4.1.2 The employee (or ex-employee) is responsible for co-operating during the appeal process.

4.1.3 The employee (or ex-employee) is responsible for arranging their own Trade Union Representative or current workplace colleague, acting in a non-professional capacity, throughout the appeals procedure.

4.2 The Responding Manager

4.2.1 The responding manager will be responsible for preparing a thorough management case, for consideration by the Appeal Panel.

4.3 Appeal Panel Members

4.3.1 The appeal panel members must consider the management and staff side case, in line with Just and Restorative Culture principles, to come to a fair and justifiable decision as to the outcome of the appeal panel.

5.0 APPROVAL

Joint Staff Partnership Forum

6.0 DOCUMENT REQUIREMENTS

6.1 How to Appeal

6.1.1 Appeals should be confirmed in writing to the manager identified within the written confirmation of the outcome letter. The appeal must be registered within 10 working days of the date of the original outcome letter.

6.1.2 Appeals should be submitted in the form found at Appendix 2.

6.1.3 When lodging an appeal, the employee (or ex-employee) should clearly state the grounds of their appeal which will fall into one of the below three categories;

- New evidence coming to light
- The reasonableness of the penalty imposed (for example, severity of the sanction in light of mitigation and a Just and Restorative Culture)
- Procedural irregularities during the investigation / hearing, which had a material effect on the outcome of the case.

6.1.4 The identified manager will send a letter to acknowledge the appeal letter.

6.1.5 An appeal will normally be heard within 28 calendar days of receipt of the appeal submission, unless exceptional circumstances arise, including, for example, issues regarding the availability of the relevant parties, or clarification of grounds of appeal. In such cases, the employee (or ex-employee) will be notified of the delay, and the reasons for this.

6.1.6 In cases where ACAS early conciliation has been instigated following a formal sanction being imposed, such as dismissal, an appeal may be postponed pending the outcome of the conciliation, only if agreeable to the employee (or ex-employee) instigating ACAS action.

6.1.7 The employee (or ex-employee) should provide a written statement of case, at least 10 working days prior to the appeal hearing, including copies of any witness statements or evidence, upon which they intend to rely.

Management will also provide a written statement of case, at least 10 working days prior to the appeal hearing, together with any witness statements or evidence upon which they intend to rely. Both parties should identify in their statement of case any witnesses they intend to call. All statements and evidence will be submitted to the hearing, and where statements are not agreed, this will be identified to the Chair, who will make the final decision regarding the validity of the content of the statement.

6.1.8 Once the written statement of cases have been received, an appeal bundle will be generated, including all documents. This will be sent to the employee (or ex-employee), including their representative (if applicable), management and the appeal panel at least 7 working days before the appeal hearing.

6.1.9 It is the responsibility of all parties concerned to arrange for the attendance of their witnesses. In the case where witnesses are employees of the organisation time off with pay, or time off in lieu will be granted for them to attend the hearing. It is not normal Trust policy to involve patients/clients/relatives or members of the public as witnesses at the meeting, and the written statement will be relied on as evidence.

6.2 Level of Appeal

6.2.1 The membership of an appeal panel will be defined by the sanction that was issued in the original hearing, and who issued the sanction.

6.2.2 The Chair of the appeal should be more senior than the manager who chaired the original panel.

6.2.3 The Chair of the appeal will also be accompanied at the hearing by a representative from the People Directorate, whose role is to provide support and advice to the Chair. The Chair reserves the right to call a specialist advisor to provide independent advice if required. Neither person on the appeal panel must have had any involvement in the case previously.

6.2.4 For appeals where an individual has been in receipt of a formal sanction for matters connected to their professional Code of Conduct, there should always be an appropriate representative from their profession on the panel, who must not have had any involvement in the case previously. This individual may come from an external organisation, if deemed appropriate, but would be in addition to the panel members identified above.

6.3 Appeal Outcome

6.3.1 Upon hearing the appeal, and after adjournment, the Chair of the appeal hearing will convey their decision to the employee (or ex-employee). This decision is final. The decision will be confirmed in writing within 10 calendar days from the date of the appeal hearing. In exceptional circumstances, the Chair may extend this deadline and will provide a written explanation for the delay to the employee (or ex-employee).

6.3.2 The outcome of an appeal will be to confirm, decrease, re-hear, or cancel the outcome.

6.3.3 In line with Just Culture principles, an appeal will never be used as an opportunity to punish the employee (or ex-employee) for appealing the original decision and will not result in an increase in sanction or penalty.

6.3.4 An outcome letter will be sent to the employee confirming the reasons for the decision (including any relevant pay and/or terms and condition changes) within 10 calendar days of the appeal hearing.

6.4 Right to be accompanied

6.4.1 All employees (or ex-employees) will have the right, if they wish, to be represented by an accredited Trade Union Representative or current workplace colleague, not acting in a legal capacity.

6.4.2 In situations where the individual cannot attend the appeal hearing, as their representative is unavailable, the Trust will provide an alternative date for the appeal. This will only be permitted on one occasion. The alternative date should fall within 14 calendar days of the original planned date.

6.5 Confidentiality

6.5.1 All information at any stage of this process, whether it is written or verbal information, must be treated as confidential information by all parties. Failure to do so may result in disciplinary action being taken.

6.5.2 When sharing documentation, there may be occasions where this is shared digitally via secure NHS.NET email.

6.5.3 In cases where this is substantial volumes of documentation, external companies may be contacted in order for the documentation to be shared securely.

6.5.4 All records should be kept by all parties in accordance with the Data Protection Act 2018. The Data Protection Act gives individuals the right to request and have access to certain personal data.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
Application of the appeal panel	Deputy Director of People	Audit	Annually	Joint Staff Partnership Forum
Employee Relations Assurance	People Operational Lead	Employee Relations Assurance	Quarterly	People, Culture and OD Committee

8.0 TRAINING AND IMPLEMENTATION

8.1 No training is provided for this policy as the document is self-explanatory.

8.2 Guidance can be sought from People Directorate.

9.0 IMPACT ASSESSMENTS

- This document has been subject to an Equality Impact Assessment
- This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

Employment Rights Act 1996
ACAS Code
Gov.Uk

Related SFHFT Documents:

- Disciplinary Policy
- Capability Policy
- Management of Sickness Absence & Wellbeing Policy
- Change Policy
- Grievance Policy
- Dignity at Work Policy

11.0 APPENDICES

Appendix 1 Order of Exchange for Appeal Hearings
Appendix 2 Employee Appeal Form
Appendix 3 Equality Impact Assessment

Appendix 1

Order of Exchange for Appeal Hearings

1. The Hearing Panel will convene where the chair will lead hearing proceedings. The Chair is responsible for the proper conduct of the proceedings.
2. The staff member, their representative (if applicable) and the Management Side Representatives will be invited into the room of the Hearing and will be present at all times during the Hearing, apart from during adjournments called by the panel.
3. The Chair of the Hearing Panel will introduce themselves and the other members of the Hearing Panel.
4. The Chair of the panel will ask for any declarations.
5. The Chair is required to confirm which witnesses are available to attend the Hearing.
6. The Chair runs through the appeal Hearing order of exchanges.
7. The individual/Staff Side representative shall state the case for the staff side (referring to any written evidence and calling any witnesses).
8. Witnesses will only be admitted to the hearing to give their evidence. The panel, the management side and individual/staff side shall be entitled to question any of the staff side witnesses called. Once they have answered questions the witness will retire. The witness must adhere to confidentiality and will be reminded about this by the chair of the panel.
9. The panel and the management side shall be entitled to question the individual/staff side statement of case
10. Management side shall state the case for the decision made (referring to any written evidence and calling any witnesses)
11. The panel, the individual/staff side and management side shall be entitled to question any management witnesses called. Once they have answered questions the witness will retire. The witness must adhere to confidentiality and will be reminded about this by the chair of the panel.
12. The panel and the individual/staff side shall be entitled to question the management side statement of case.
13. The management side shall be entitled to sum up provided they do not introduce any new items.
14. The individual/staff side shall be entitled to sum up provided they do not introduce any new items.
15. The panel will then retire to consider its decision.

16. The panel will then reconvene and orally convey the decision to be then confirmed in writing within 10 working days, (excluding bank holidays, statutory holiday days and weekends). This notification must include reasons for the decision. However, due to the complexities of the issues under deliberation and the need for detailed consideration, the parties should not necessarily expect a decision to be conveyed on the day of the hearing in all instances. Sometimes it will be necessary for a written response to be issued without oral conveyance.

Appendix 2

EMPLOYEE APPEAL FORM

Please use this form to register and provide details of your appeal against a formal sanction imposed in accordance with the Trust's Disciplinary/ Capability/ Sickness Absence Management/ Change or Grievance policies.

Appeals should be registered in writing to the manager identified within 10 working days of the date of the written confirmation of the outcome.

This form will be included within the documents submitted for consideration by the Appeal Hearing Panel

1. EMPLOYEE DETAILS

Employee Name	
Contact telephone number	
Address	
Division	
Department/ Ward/ Unit	

2. HEARING DETAILS

Please indicate which Trust policy process you are appealing the outcome of:

Disciplinary Policy	
Capability Policy	
Sickness Absence Management & Wellbeing Policy	
Change Policy	
Grievance Policy	
Dignity at Work Policy	

Date of hearing	
Name of representative (if applicable)	

3. APPEAL DETAILS

Please indicate which category the grounds of your appeal fall into:

New evidence coming to light	
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The reasonableness of the penalty imposed (in terms of for example, severity in light of mitigation)	
Procedural irregularities during the investigation or hearing	

Please state the grounds and reasons for your appeal:

(Please continue on separate sheet if necessary)

Signed: _____ Date: _____

APPENDIX 3 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: Appeal Policy			
New or existing service/policy/procedure: Existing			
Date of Assessment:			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Gender	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Age	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Religion	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Disability	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None

Sexuality	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Pregnancy and Maternity	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Gender Reassignment	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Marriage and Civil Partnership	None	This policy is to ensure all appeals are heard in a consistent and fair manner	None
Socio-Economic Factors (i.e. living in a poorer neighbourhood / social deprivation)	None None	This policy is to ensure all appeals are heard in a consistent and fair manner This policy is to ensure all appeals are heard in a consistent and fair manner	None None
What consultation with protected characteristic groups including patient groups have you carried out? <ul style="list-style-type: none"> Joint staff Partnership sub group 			
What data or information did you use in support of this EqIA? <ul style="list-style-type: none"> Gov.uk 			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments? <ul style="list-style-type: none"> None 			

<p>Level of impact</p> <p>From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact:</p> <p>Low Level of Impact</p>
<p>Name of Responsible Person undertaking this assessment:</p>
<p>Signature:</p>
<p>Date:</p>