

APPEALS POLICY

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Patients first • Personal responsibility • Passion for excellence • Pride in our team

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 1 of 13
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History

Issue	Date Issued	Brief Summary of Change	Approved by
1	Mar 2004	New Policy	Management Board
2	Mar 2010	Update and revision of policy	TEC
3	Nov 2014	Review of Policy	TEC
4	Oct 2017	Review of Policy	TEC
5	April 2021	Review of policy	TEC

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CONTENTS

1	INTRODUCTION	4
2	SCOPE	4
3	RESPONSIBILITIES	5
4	TIMESCALE	6
5	CONSTITUTION OF APPEALS PANEL	7
6	EMPLOYEE REPRESENTATION	7
7	PROCEDURE TO BE FOLLOWED AT APPEALS	7
8	DISSEMINATION AND IMPLEMENTATION	8
9	MONITORING	8
10	ARCHIVING ARRANGEMENTS	8
11	EQUALITY IMPACT ASSESSMENT	9
12	APPEALS PROCEDURE (APPENDIX 1)	12

1. INTRODUCTION

- 1.1 This policy forms part of Ashford & St Peter's Hospitals NHS Trust's (ASPH's) commitment to create a positive culture of respect for all individuals including staff, patients, their families and carers as well as community partners. The Trust's values (the '4P's') are integral to all aspects of day-to-day life in the organisation and underpin the application of all our employment policies and procedures.
- 1.2 The Trust is committed to ensuring that all employees are dealt with fairly and reasonably and a number of employment policies allow for employees at certain stages of these procedures to make a formal appeal. The Trust has a duty to promote equality of opportunity and the removal of discrimination where it is found to exist and will apply this policy fairly and consistently irrespective of race, disability, gender, sexual orientation, religion or belief, age, gender identity, caring responsibilities, flexible working status, pregnancy, relationship status, staff association or trade union activity.
- 1.3 The purpose of this procedure is to set out the managerial level at which appeals will be heard, and to ensure that decisions are in accordance with the principles of fairness, equity and consistency in all circumstances and that due process has been observed in arriving at the decision. The Appeal will not re-hear the whole case but will review those aspects which the appellant believes have given rise to an incorrect or unfair decision made through a number of the Trust's other Policies and Procedures, including where that formal sanction has taken the form of termination of contract (dismissal). This may include the submission of new and relevant evidence that was not available at the original hearing.
- 1.4 For the purpose of this policy working days are categorised Monday to Friday (Weekends and Bank or Public Holidays are not considered working days).

2.0 SCOPE

- 2.1 This policy applies to ASPH employees and applies to those situations where employees have a right to appeal against formal action taken in accordance with the following:

- Disciplinary Policy and Procedure
- Performance and Capability Policy and Procedure
- Organisational Change Policy (in redundancy situations)
- Sickness Absence Policy
- Policy and Procedure for Grievance (outcome at formal stage)
- Dignity at Work Policy (including formal outcome of the investigation)

(The 'Conduct, Capability, Ill-Health and Appeals Policies and Procedures for Practitioners' contains separate appeal arrangements for medical and dental staff.)

Any other appeal will be addressed as per the procedure contained within the relevant policy.

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 4 of 13
---	--	------------------------------	---------------------------	-----------	--------------

2.2 Employees have the right of appeal against any action or any penalty that has been determined by a disciplinary or capability panel. The potential grounds or reason for appeal may include:

- A procedural error that resulted in a significant detriment to the employee.
- The decision was unfair and unreasonable in the circumstances.
- New material or information has since come to light, that if known at the time may have led to a different outcome. This must be information that was unavailable at the original hearing or meeting and is pertinent to the case.

3. RESPONSIBILITIES

3.1 Appellant

For the purposes of this document the employee or dismissed former employee is referred to as “the appellant”.

- Appellants are expected to act in accordance with the Trust Policies at all times.
- An appeal can only be lodged if the Appellant can provide sufficient information that an unfair decision has been made, and falls under one or more of the categories for Grounds of Appeal listed above.
- Appellants are responsible for co-operating during the appeals procedure.
- Appellants are responsible for arranging their own trade union representation or support throughout the appeals procedure.
- For providing their grounds of appeal in a timely manner as set out in this policy

3.2 Responding Manager

For the purpose of this document the original chair of the panel is referred to as “Responding manager”.

- The Responding Manager must inform the Appellant of their right to appeal both verbally at a hearing and in the letter confirming any outcome.
- Appeal cases should be dealt with without any undue delay on the part of the manager.
- Where it is decided that a case is to be referred to an appeal hearing the responding manager must prepare a thorough management case for consideration by the Appeal panel.

3.3 Appeal Panel Members

- Panel members must consider the management case and the appellant’s case fairly during the hearing and come to a fair and justifiable outcome.

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 5 of 13
---	--	------------------------------	---------------------------	-----------	--------------

- The hearing manager must write to confirm the outcome of the hearing to the appellant and responding manager within 5 working days of the date of the hearing.

3.4 Human Resources

- The Human Resources department is responsible for the creation and maintenance of records of Appeal cases within the Trust in line with best practice for information governance.
- To support, where necessary, responding managers through the formal Appeal procedure.
- Responsible for the review and maintenance of the Appeals policy through agreed forums within the Trust.
- Responsible for advising the Appeal Panel Members.
- Responsible for advice and guidance on the implementation of the policy.
- Responsible for provision of training on the policy

3.5 Trade Unions

- To represent appellants through the Appeal procedure where they are fully paid-up members of that trade union or professional body.
- To ensure that all representatives have attended mandatory grievance and disciplinary training with their relevant trade union or professional body.
- To make every reasonable attempt to attend meetings at the scheduled time to support employees.

4. TIMESCALE

- 4.1 This right must be exercised within **10 working days** of the date of the outcome letter confirming the decision which is to be appealed. The grounds of appeal must be clearly summarised as follows in writing to the Director of Workforce Transformation:
- a. The grounds for appeal; and
 - b. whether the employee is appealing against the actual finding/s of the original panel, or against the level of any sanction imposed
- 4.2 All appeals lodged will be heard as soon as possible and normally within a period of **28 days** from the date that the appeal notification is received, unless an extension to this period is agreed by both parties to the dispute. Where there are

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 6 of 13
---	--	------------------------------	---------------------------	-----------	--------------

delays in convening an appeal panel within the specified timescale, the appellant will be kept informed.

5. CONSTITUTION OF APPEALS PANEL

- 5.1 All appeals against any disciplinary or capability decision will be heard by a panel as set out below:
- A senior manager, either a direct report of an Executive Director or a member of the Trust Board (Executive Director).
 - A senior member of the HR Team in an advisory capacity.
 - Where the appeal is against a dismissal or termination of employment, the panel in addition will include at least one further member, for example Non-Executive Director, who will be of a more senior level than the manager whose decision is the subject of the appeal. In cases where the appellant carries a professional registration, consideration should be given for the third panel member to be from the same professional background i.e. Nursing and Midwifery; Allied Health Professional.
- 5.2 In all cases, the appeal panel will have had no involvement in the preceding disciplinary process. A member of the HR Team who has not previously been involved in an advisory capacity, will act as an advisor to the panel. All parties will be given at least 10 working days' notice of the date of the hearing.
- 5.3 Where appropriate/necessary, appeals panels will be supported by a professional advisor.
- 5.4 Where an appeal is being lodged by an executive director, the panel will be constituted by the Chairman and one other non-executive director.

6.0 EMPLOYEE REPRESENTATION

Employees may appear personally before an Appeals Panel, either alone or accompanied by a representative of their professional organisation, trade union, or with a work colleague, not acting in a legal capacity.

7.0 PROCEDURE TO BE FOLLOWED AT APPEALS

- 7.1 The procedure to be followed at an appeal hearing is detailed out in Appendix 1
- 7.2 All parties must take reasonable steps to attend the appeal hearing. An appellant who cannot attend a meeting should inform the panel chair as soon as they practically can. If the appellant fails to attend through circumstances outside their

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 7 of 13
---	--	------------------------------	---------------------------	-----------	--------------

control and unforeseeable at the time the meeting was arranged (e.g. certificated illness) the panel chair should arrange another meeting.

- 7.3 If the appellant fails to attend the rearranged meeting without a reason that is satisfactory to the Trust, the hearing may continue and a decision may be taken in their absence. This should be stated in the letter to the appellant, informing them of the rearranged hearing date.
- 7.4 In exceptional circumstances, where there is a history of the appellant failing to attend meetings, the appellant may be informed from the outset that the first scheduled hearing may be heard in their absence, if they fail to attend without a satisfactory reason.
- 7.5 If an appellant's union representative or work colleague cannot attend on the first arranged date, the hearing will be rearranged within a reasonable timeframe. The appellant must notify the appeal panel in advance of the hearing (no less than two working days prior to the scheduled date. If a second date must be arranged for this reason. The representative's unavailability is not sufficient reason to postpone the hearing for a second time and the employee should make alternative arrangements to be accompanied or represented. An appeal hearing will only be rescheduled on one occasion for this reason.

8.0 DISSEMINATION AND IMPLEMENTATION

The policy will be available to all staff via the Trust Intranet. Upon publication, all employees will be advised of the updated policy via the daily communication email, Aspire. HR Business Partners, HR Advisors and Employee Relations Manager will be available to provide support and advice on the application of this policy to employees and managers within the Trust on an ongoing basis.

9.0 MONITORING

The policy will be monitored on an ongoing basis regular feedback will be discussed at the Senior HR Team meeting. Any reviews will include ensuring that the policy complies with any change to employment legislation.

10.0 ARCHIVING ARRANGEMENTS

Responsibility for archiving trust-wide policies lies with the Quality Department where all paper copies will be stored, and electronic folders have been set up to hold master copies. Requests for retrieval of documents can be made to the Quality Dept.

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 8 of 13
---	--	------------------------------	---------------------------	-----------	--------------

Equality Impact Assessment Summary

<p>Background</p> <ul style="list-style-type: none"> • Description of the aims of the policy • Context in which the policy operates • Who was involved in the Equality Impact Assessment
<p>Ashford and St Peters NHS Foundation Trust aspire to put patients first with the highest standard of clinical competence and corporate behaviour, ensuring that safe, fair and equitable procedures are applied.</p> <p>The aim of this policy is to:</p> <ul style="list-style-type: none"> • To state clearly the standard adopted by the Trust regarding when an appeal is received • To provide a framework for dealing with / submitting an appeals all those involved have access to support. • To provide a policy and procedure for dealing with appeals, which is fair to individual members of staff as well as protecting the safety of colleagues and patients. • This Equality Impact Assessment was completed by a HR Business Partner and was reviewed by the wider HR Team (HR Business Partners, Employee Relations Manager and Advisors), as well as members of the following committees : Policy Sub Group, Employee Partnership Forum and the Trust Executive Committee.
<p>Methodology</p> <ul style="list-style-type: none"> • A brief account of how the likely effects of the policy was assessed (to include race and ethnic origin, disability, gender, culture, religion or belief, sexual orientation, age) • The data sources and any other information used • The consultation that was carried out (who, why and how?)
<p>The likely effects of the policy were assessed by a review of the formal cases that have been addressed with reference to this policy over the last three years (August 2017 – August 2020)</p>
<p>Key Findings</p> <ul style="list-style-type: none"> • Describe the results of the assessment • Identify if there is adverse or a potentially adverse impacts for any equalities groups
<p>The application of this policy will not have an adverse impact on a particular equalities group. This policy is accessible to all employees, regardless of the equalities group.</p>
<p>Conclusion</p> <ul style="list-style-type: none"> • Provide a summary of the overall conclusions
<p>In conclusion, the policy does not appear to have an adverse impact on a particular equalities group.</p>
<p>Recommendations</p> <ul style="list-style-type: none"> • State recommended changes to the proposed policy as a result of the impact assessment • Where it has not been possible to amend the policy, provide the detail of any actions that have been identified • Describe the plans for reviewing the assessment
<p>There are no changes recommended to the policy on the basis on this assessment however ongoing monitoring will take place to identify whether this policy is applied to any particular equalities group. Further work may then be required to ensure accessibility of the policy to all employees and equalities groups.</p>

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 9 of 13
---	--	------------------------------	---------------------------	-----------	--------------

Guidance on Equalities Groups

<p>Race and Ethnic origin (includes gypsies and travellers) (consider communication, access to information on services and employment, and ease of access to services and employment)</p>	<p>Religion or belief (include dress, individual care needs, family relationships, dietary requirements and spiritual needs for consideration)</p>
<p>Disability (consider communication issues, access to employment and services, whether individual care needs are being met and whether the policy promotes the involvement of disabled people)</p>	<p>Sexual orientation including lesbian, gay and bisexual people (consider whether the policy/service promotes a culture of openness and takes account of individual needs)</p>
<p>Gender (consider care needs and employment issues, identify and remove or justify terms which are gender specific)</p>	<p>Age (consider any barriers to accessing services or employment, identify and remove or justify terms which could be ageist, for example, using titles of senior or junior)</p>
<p>Culture (consider dietary requirements, family relationships and individual care needs)</p>	<p>Social class (consider ability to access services and information, for example, is information provided in plain English?)</p>

APPEAL PROCEDURE - APPENDIX 1

TERMS OF REFERENCE OF THE APPEAL PANEL

The Trust will delegate to the Appeal Panel responsibility for hearing and deciding individual appeals against disciplinary and capability actions and the panel will consider and decide on the following points:

- Whether there were reasonable grounds for action under the Trust's Disciplinary or Capability procedures.
- Whether the circumstances were adequately investigated
- Whether the Trust's procedures, policies and practices were correctly, fairly and consistently applied
- Whether the evidence allowed the manager hearing the case to reach a reasonable belief that, on the balance of probability, the allegations of misconduct or incapability should be upheld
- Whether the action taken was reasonable in the circumstances
- Whether the responding manager took into account the employee's length of service, previous record, and the evidence and mitigation presented by the employee at the hearing
- Whether consideration was given to alternatives to the decision
- If new information is submitted to the Appeals Hearing the panel chair will consider whether to re-submit the case to the manager or continue with the hearing taking account of the new information

The Appeal Panel will make a decision to rescind, vary or endorse the original decision or substitute some other penalty, reduced or increased.

STATEMENT OF CASE

The appellant and chair of the original panel should submit a statement of their case to the Employee Relations Manager. This must arrive no later than 10 working days prior to the appeal hearing. No later than 5 working days prior to the hearing the Employee Relations Manager will simultaneously forward to the panel and both parties copies of statements of case and any other documents relevant to the hearing.

WITNESSES

Both parties may call witnesses who will be present only whilst they are actively contributing to the process. Where witnesses are called by either side it must be made clear in advance how their attendance will assist the panel in reaching a conclusion. The Chair of the appeal hearing has the final decision regarding admittance of witnesses.

Any witnesses that are called must be notified to the Employee Relations Manager 7 working days before the hearing.

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 11 of 13
---	--	------------------------------	---------------------------	-----------	---------------

THE PROCEDURE DURING THE HEARING

The appellant (and their representative) and the chair of the original panel (responding manager) will be present throughout the hearing. The responding manager may request to be accompanied by a Human Resources professional at the hearing if they so wish. The panel will not re-hear the original case or evidence that was presented to the disciplinary hearing. Witnesses will only be present in the hearing for the time required.

Either party may request an adjournment at any time. The Chair of the appeal hearing will decide if this is appropriate.

The following procedure will normally be followed:

Appellant's case

- The appellant or their representative will state their case and may call witnesses.
- The responding manager will have the opportunity to ask questions of the appellant their representative and witnesses.
- The members of the panel will have the opportunity to ask questions of the appellant their representative and witnesses.
- The appellant or their representative will have the opportunity to re-examine their witnesses on any matter referred to in questioning by members of the panel or the disciplining manager.

Management case

- The responding manager will state their case and may call witnesses.
- The appellant or their representative will have the opportunity to ask questions of the responding manager and witnesses;
- The members of the panel will have the opportunity to ask questions of the responding manager and their witnesses.
- The responding manager will have the opportunity to re-examine their witnesses on any matters referred to in questioning by members of the appellant or their representative;

Summing up

- The responding manager and the appellant or their representative will then have an opportunity to summarise their case. In their summing up, neither party may introduce any new material.
- The panel may, at its discretion, adjourn the appeal in order that further evidence may be produced by either party to the dispute, or for any other reason.
- Once both parties have finished their summing up, the manager, the employee and their representative present in the hearing will withdraw.

THE APPEAL DECISION

Once the panel has determined an outcome the meeting will be reconvened and the outcome communicated to the appellant. Alternatively, should the panel require a longer period of deliberation, the outcome will be communicated in writing to the appellant within 10 working days of the appeal hearing.

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 12 of 13
---	--	------------------------------	---------------------------	-----------	---------------

The potential outcomes of an Appeal Panel may include:

- To fully overturn the initial management decision;
- To uphold aspects of the management decision and overturn others;
- To recommend an alternative solution or outcome where all or part of a decision is overturned;
- To 'downgrade' the sanction in place, e.g. dismissal to final written warning;
- To recommend additional investigation and reconsideration of the initial decision;
- To recommend a new, full, investigation to take the place of the first investigation which led to the decision under appeal;
- To fully uphold the initial management decision or sanction.

The panel's decision will be the final recourse to appeal within the Trust unless a new, full investigation is recommended which results in a disciplinary sanction being issued, in which case there would be a right of appeal against this new sanction. If the appeal against dismissal is unsuccessful, the termination date will be that which is notified in the original disciplinary decision letter.

In all cases the outcome will be confirmed in writing to the appellant within five working days of the appeal hearing (unless the hearing has been adjourned to allow longer deliberation as above).

Volume 2 Employment & Occ. Health	Current version is held on the Intranet	First Ratified March 2004	Next review April 2024	Version 5	Page 13 of 13
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