

Guidance for **Disciplinary Appeal Managers**

Reviewing the case

When you are appointed as an appeal manager, you will be notified of the HR representative who will support you through this process. HR will provide you with all of the relevant documentation from the formal investigation and disciplinary hearing, along with the appeal that has been received from the employee.

The appeal process is not a re-hearing, therefore the grounds for an appeal must be based on:

- ✔ New evidence coming to light which was not available at the time of the original decision or which was unreasonably withheld (other than by the employee) and which could have materially affected the outcome;
- ✔ A flaw in the procedure which could have influenced the final outcome;
- ✔ Unfairness of the judgement;
- ✔ The severity of the penalty.

If you do not consider that the reasons for appeal reflect one of these grounds you should discuss this with your HR representative.

As chair of the appeal panel, your role is to thoroughly review the case, consider the decision to issue a disciplinary sanction and decide the final outcome of the disciplinary matter.

Communications

HR will contact with you to schedule a date for the appeal hearing. This should be prioritised and held within ten working days of receiving the appeal.

HR will write to the employee inviting them to attend an appeal hearing and the letter will confirm the following:

- ✔ The grounds of appeal
- ✔ The right to be accompanied by an appropriate work colleague or trade union representative
- ✔ Date, time and venue of the appeal hearing
- ✔ Reminder of the Employee Assistance Programme.

The Disciplinary Policy and Procedure will be enclosed with the letter along with names of any witnesses who will attend the hearing.

The employee will be invited to submit any additional written submissions and/or provide the names of any witnesses they wish to call to the hearing at least two working days prior to the appeal hearing, so please schedule some time in your diary to review any additional information that is received.

You may wish to consider if it is more appropriate for any witnesses to provide a statement rather than to attend the appeal hearing.

Preparing for an Appeal Hearing

It is important that you keep an open mind regarding the outcome and ensure impartiality, fairness and confidentiality throughout the process.

Please ensure that you read all of documentation thoroughly to identify any specific issues that need to be explored during the appeal hearing. Consider the questions you wish to ask the employee. Be prepared to be flexible about asking additional questions or amending them as new information comes to light. It is good practice to use open questions (who, what, why, when, how etc.) with closed questions to clarify points.

You may wish to prepare a script in advance of the hearing to ensure that you obtain all of the necessary information. This would include key points (see *Chairing an Appeal Hearing* below) which must be covered plus your specific questions.

☺ A template script for an appeal hearing is available within the **Disciplinary Toolkit**.

In alleged gross misconduct cases, you will chair the hearing and there will be a second manager on the panel as well. You should discuss the case with them in advance of the hearing.

If the employee has a disability or special requirements and has asked for adjustments to be made during the investigation process, you should try to accommodate reasonable requests wherever possible, taking into account any Occupational Health advice as appropriate.

Arrange a pre-meet with your HR representative (and second manager, if applicable) prior to the hearing to ensure that you are comfortable with the format for the hearing and to review your questions. Where appropriate, the HR representative will be in attendance at the hearing to provide support.

Right to be accompanied

The employee can be accompanied at their appeal hearing by a work colleague or trade union representative. They can confer with the employee during the meeting and may present all or part of their

case, respond to any views expressed and sum up the case on their behalf. However, they are not permitted to answer any questions put directly to them at the hearing.

No parties attending an appeal hearing are permitted to use a recording device. This is to encourage openness and full participation of all parties during the hearing.

Chairing an Appeal Hearing

It is important that you cover the following points during the appeal hearing.

Introduction

- ☑ Thank the employee for attending and inform them that you have been appointed to chair the appeal hearing.
- ☑ Confirm that the appeal hearing is being carried out in line with the Disciplinary Policy and there is no further right of appeal within the University.
- ☑ Introduce all parties present and confirm their roles.
 - **Second manager on the panel** - in cases of alleged gross misconduct.
 - **HR representative** – to offer procedural advice and take a note of the meeting.
 - **Disciplinary Manager** – if appropriate, to present the outcome of the disciplinary hearing.
- ☑ Confirm if any witnesses will be called to join the hearing at a later stage.
- ☑ Note that the employee was given the opportunity to be accompanied at the hearing and that they have chosen to be accompanied OR have not chosen to be accompanied.
- ☑ Remind all parties of the expectation of confidentiality and honesty during the hearing.
- ☑ Advise that the meeting can be adjourned at the request of any party.
- ☑ Remind the parties that this is not a re-hearing and that the format of the appeal hearing will be that the employee will be invited to outline the grounds of their appeal and the management case will be presented.
- ☑ Explain that as chair, you can ask questions at any time and all other parties can raise questions as long as they are posed through you.
- ☑ Check that all parties have received the documentation in advance, understand the format for the hearing and have any questions regarding the process.

Hearing

- ☑ Confirm that you have read and considered the outputs of the investigation conducted by [*name of investigating manager*] and the disciplinary hearing chaired by [*name of disciplinary manager*] into the allegations raised against the employee.
- ☑ State precisely what the grounds of the appeal are.
- ☑ Invite the employee to present their appeal and call any witnesses.

- ✔ Invite the disciplinary manager to present the management case.
- ✔ Opportunity for you and any other party to ask questions.
- ✔ Check if the employee has any further information that they wish to provide or have any final questions before the meeting concludes.

Closing the Hearing

- ✔ Advise the employee that the panel will consider all of the information that has been provided during the formal stages of this disciplinary matter in order to reach a final decision.
- ✔ Confirm with the employee that they will be notified of the outcome in writing within five working days unless otherwise notified. If there is to be a delay to this timescale, the employee will be advised of this and the reasons for it.
- ✔ Reiterate that there is no further right of appeal and that your decision is final.
- ✔ Remind the employee of the Employee Assistance Programme should they wish to access this free and confidential support service.
- ✔ Close the hearing and thank all parties for attending.

Outcome of the Appeal Hearing

Following the hearing, you are required to consider all of the information that has been presented to you before and during the appeal hearing to establish the appropriateness of the decision to issue a formal sanction under the disciplinary procedure.

Possible appeal outcomes are:

- ✔ Uphold the disciplinary decision
- ✔ Impose a lesser disciplinary sanction
- ✔ Uphold or partially uphold the appeal

Outcome letter

Once you have reached your decision you are required to notify the employee of the outcome within five working days of the appeal hearing. If you need more time to reach your decision (for example due to special circumstances, further investigations etc.), you should contact HR who will advise the employee that of the delay and when an outcome can be expected.

You are required to draft an outcome letter and it is important that the letter contains sufficient detailed information to enable all parties understand how and why your conclusion/s and decision/s have been reached. The following details should be included in the letter:

- ☑ The allegations
- ☑ The grounds of the appeal
- ☑ Notice of which grounds of appeal were upheld / not upheld
- ☑ The reasons for upholding / not upholding these grounds
- ☑ This decision is final and there is no further appeal

☑ A template for the outcome letter is available within the **Disciplinary Toolkit**.

The HR representative will take a record of the appeal hearing and this will be made available to the employee within ten working days of the hearing.

Concluding the process

Once the process has concluded, please destroy all documentation securely in line with data protection principles. HR will maintain a master data file.

Please do not hesitate to contact your HR representative if you have questions at any stage of the process.