

APPEAL PROCEDURE

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PROCEDURE SUMMARY

This procedure sets out the framework for the Trust's approach to the management of appeals in the following circumstances:

- Against dismissal on the grounds of conduct, capability (performance and / or health), redundancy, statutory restriction, fixed term or for some other substantial reason.
- Against formal action that has resulted in a sanction taken in accordance with the disciplinary (conduct) and / or capability (performance) procedures.

The Trust monitors the implementation of and compliance with this procedure in the following ways;

This procedure is subject to monitoring and review in accordance with the agreed review schedule of Trust HR policies and as agreed by the Trust's Joint Partnership Committee.

Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

The Director responsible for monitoring and reviewing this procedure is the Executive Director of People and Culture

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

APPEAL PROCEDURAL GUIDELINE

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

APPEAL PROCEDURAL GUIDELINE

ASSURANCE STATEMENT

This procedure aims to ensure that Essex Partnership University NHS Foundation Trust [‘the Trust’] maintains high standards of employee relations with its employees and allows staff to appeal against outcomes that they believe are not fair and / or have not been arrived at in a reasonable and / or proportionate way.

The management of appeal procedures within the Trust will be built on and demonstrate the Trust’s corporate values and behaviours. These values being;

- Open
- Compassionate
- Empowering

In doing so support the achievement of its strategic priorities to:

- To continuously improve service user experience and outcomes through the delivery of high quality, safe and innovative services.
- To be a high performing health and care organisation and in the top 25% of community and mental health Foundation Trusts.
- To be a valued system leader focused on integrated solutions that are shaped by the communities we serve.

1.0 INTRODUCTION

1.1 The ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015) confirms that “employers should allow an employee to appeal against any formal decision made”.

1.2 This procedure will be used to appeal in the following circumstances:

- Against dismissal on the grounds of conduct, capability (performance, including probation, and / or health), redundancy, statutory restriction, fixed term or for some other substantial reason.
- Against formal action that has resulted in a sanction taken in accordance with the disciplinary (conduct) and / or capability (performance) procedures.

1.3 The timescales within this procedure are used as a guideline only and are working days, unless otherwise stated.

2.0 DEFINITIONS

- 2.1 Respondent – the person responsible for instigating the action (decision) that is being appealed against.
- 2.2 Appellant – the person appealing the decision that has been taken, and is being questioned.

3.0 GUIDING PRINCIPLES

- 3.1 Natural justice dictates that individuals have the right to appeal against formal action taken (as detailed above). This might include, but is not limited to:
- On procedural grounds
 - Against the severity of the formal action
 - That the appellant considers the respondent made an error of judgement on a point of fact
 - That new evidence is available which has not been previously considered
- 3.2 The appeal panel will not include anyone who has had involvement in the action taken that has led to the appeal.
- 3.3 There is a statutory right to be accompanied at an appeal hearing by a fellow worker, an accredited trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
- 3.4 All parties involved in appeal hearings are responsible for maintaining the confidentiality of information shared during the process.

4.0 INSTIGATING AN APPEAL

- 4.0 Appeals will be made in writing to the Deputy Director of HR & Communications, or person nominated within the respondent's letter, within 10 working days of the notice of formal action and must set out clearly the grounds on which the appeal is made and the remedy sought.
- 4.1 On receipt of an appeal a letter will be sent to the appellant and their nominated representative, where applicable, by HR usually within 10 working days of receipt of the accepted appeal to acknowledge receipt.
- 4.2 If not included in 4.1 above, a further letter will be sent by HR to the appellant, their representative and the respondent, no later than 10 working days before the appeal hearing, to confirm the following:
- Confirmation of what the appeal relates to
 - Details (date, time, venue) of the appeal hearing which will normally be within two calendar months of receipt of the accepted appeal.
 - The name(s) of all parties involved in the appeal hearing
 - A copy of the appeal procedure

- Confirmation of the right to be accompanied
- Copies of documentation which will be provided to the appeal hearing, where this has not already been provided to the appellant, their representative and the respondent.

4.3 An appeal hearing will normally take the form of a review where the role of the appeal panel is to consider the decision reached and action taken by the respondent and decide if the outcome was fair, reasonable and proportionate in all the circumstances.

An appeal will only be by way of a re-hearing of the evidence if the appellant has new additional material to introduce which was not available to the respondent at the time of the decision being made or the chair of the appeal deems it necessary on procedural grounds.

A review is defined as:

Where there is no new evidence or where the issues in dispute have been agreed as a review hearing will not re-examine the facts, OR

Where it is appropriate for an appeal panel to consider whether the respondent's decision was fair, reasonable and proportionate in all the circumstances, without re-hearing all the evidence.

Where there is evidence to satisfy the appeal panel that there were fair and reasonable grounds for action and the procedure has been followed correctly but the action taken was too severe in the circumstances, i.e. was not proportionate.

Where the appeal is being considered as a review it will be for the respondent to attend and present the case pertaining to the decision to take formal action.

A re-hearing is defined as:

Where the appeal is made on the grounds of procedural unfairness or there is new evidence produced which was not raised or considered by the respondent at the time formal action was taken.

Where the appeal is being considered as a re-hearing it will be for the respondent to present the case for consideration by the appeal panel.

In all circumstances the final decision of whether an appeal will be by way of review or re-hearing rests with the Appeal Officer.

5.0 APPEAL HEARING

5.1 Where formal action appealed is less than dismissal the Appeal Panel will consist of an Appeal Officer who must be more senior to the respondent and a HR adviser. The HR adviser will advise the Appeal Panel on procedure and best practice.

- 5.2 Where the employee is appealing against dismissal the Appeal Panel will consist of an Appeal Officer who must be more senior to the respondent and original Hearing Manager and another senior manager of the Trust which may be an appropriately skilled and experienced HR adviser.
- 5.2 The Appeal Panel will not normally include any manager who has had previous involvement in the decision to suspend (if relevant), involvement in any investigation, the previous hearing or meeting, nor as a witness.
- 5.3 In matters which involve the professional conduct or competence of an employee a 'professional adviser' may be appointed to the appeal panel who has special knowledge of the field of work of the employee.
- 5.4 The Appeal Hearing will be recorded and the notes transcribed. If employees do not wish for the appeal hearing to be recorded and transcribed they should contact the HR service at least five working days prior to the appeal hearing in order for a minute taker to be arranged.
- 5.5 Additional attendees may be permitted by mutual consent of all parties for training purposes.
- 5.6 The appeal hearing will take place in accordance with the appeal hearing procedure at Appendix One (Review) or Appendix Two (Re-Hearing).
- 5.7 The following outcomes are available to the Appeal Officer:
- Uphold the appeal, or part thereof
 - Reject the appeal and confirm the original outcome
 - Where the appeal takes the form of a re-hearing the Appeal Officer may confirm, amend or reject the action taken by the respondent. This process will allow the Appeal Officer to substitute a new outcome to that made by the respondent. This may include, in exceptional circumstances, increasing the severity of the action taken.
- 5.8 In all circumstances the decision of the Appeal Officer is final and there is no further right of appeal.

6.0 VARIATION TO TIMESCALES

- 6.1 Timescales regarding the procedural steps indicated within this procedure and the process for the appeal hearing set out in Appendix One or Appendix Two are subject to reasonable variation
- 6.2 Any references to 'working days' mean Monday to Friday, excluding weekends and bank holidays

END