

Employment Appeals Procedure

Version:	3
Bodies consulted:	Staff side chair
Approved by:	EMT
Date Approved:	27.9.16
Lead Manager:	Director of Human Resources
Responsible Director:	Deputy Chief Executive
Date issued:	Sep 16
Review date:	Aug 21



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Employment Appeals Procedure

1 Introduction

The Tavistock and Portman NHS Foundation Trust (The Trust) supports the right of staff to appeal against decisions affecting their employment. The Trust therefore aims to provide simple and fair processes for dealing with staff members' appeals.

2 Purpose

To set out clearly the employment decisions against which staff may appeal, and the processes that will be followed in hearing appeals.

3 Scope

This procedure applies to all staff in the Trust who may be affected as a result of the following employment policies, procedures and processes:

- Change Management Procedure
- Disciplinary Procedure
- Employee Capability Procedure
- Sickness Absence Procedure
- Termination of Employment for any other reason

The procedure does not apply to:

- Outcomes of the Agenda for Change job evaluation process, which has its own appeal mechanism (For details, please refer to the Trust's job evaluation protocols on the HR page on the intranet.)
- Outcomes of professional conduct or competence proceedings of medical staff, which are set out in separate procedures
- Staff grievances, which are dealt with in the Grievance Policy and Procedure
- Retirement which is dealt with in the Retirement Procedure
- Flexible working requests which are dealt with in the Flexible Working Policy and Procedure

At all appeal hearings staff have the right to be accompanied by a fellow worker or a trade union representative or an official employed by a trade union.

The policy represents the final right of appeal within the Trust for formal decisions made through other Trust policies or procedures as described above. An employee has the right to appeal against the decision affecting their employment with the Trust if they are not satisfied with the decision reached in the matter. In accordance with this procedure, it will be confirmed to the employee that they have this right to appeal whilst giving them written notice of decisions that have an impact on their employment and a timescale within which to decide whether or not to appeal. If an employee does appeal, the Trust will hold the Appeal Hearing in accordance with this procedure.

4 Definitions

Statement of Case

A report produced by both the appellant and the manager summarising the events which led to formal action being taken through one of the Trust's procedures.

5 Duties and responsibilities

Director of Human Resources

The Director of Human Resources will receive staff members' Notifications of Appeal, ensure that arrangements are made for Appeal Hearings to take place, and provide Human Resources advice to Appeal Panels when appropriate. Human Resources Managers will advise managers and staff on the application of the Appeal Procedure, advise on the preparation of statements of case, and advise Appeal Panels, as appropriate.

HR adviser

A senior HR professional who provides advice and guidance to managers on employment matters or assists an appeal chair.

Trust Directors and Managers

Trust Directors and managers will sit on and chair Appeal Panels when required, and ensure that Appeal Hearings are conducted according to this Procedure. Directors and managers will also prepare statements of case relating to decisions that they have made and which are appealed against, presenting these at Appeal Hearings.

6 Procedures

Decisions against which staff (individuals and groups of staff) have the right to appeal

Redundancy and Redeployment Decisions

- Dismissal on the grounds of redundancy;
- Decisions about redeployment that are made as a result of an individual's or staff group's post(s) being redundant;

Outcomes of Formal Disciplinary Hearings

- A formal written warning for misconduct;
- A final written warning for misconduct;
- Dismissal on the grounds of misconduct

Outcomes of Formal Employee Capability Meetings

- First written warning for poor performance
- Final written warning for poor performance
- Redeployment
- Dismissal on the grounds of capability – work performance

Outcomes of a Stage 3 Sickness Absence Hearing

- Dismissal on the grounds of capability – health

Termination of Employment for Other Reasons

- Dismissal on the grounds that there has been a breach of a statutory obligation (eg right to work, registration issues);
- Dismissal for some other substantial reason

Lodging an Appeal and Appeal Hearing Timescales

In all cases, staff should send notification of their appeal to the Director of Human Resources within two weeks of the date of the contested decision being notified to the staff member.

Staff will be notified in writing of their Appeal Hearing date in writing within 10 working days of the appeal being lodged with the Director of Human Resources. Staff will be given a minimum of 10 working days notice of the date of the Appeal Hearing.

While every effort will be made to meet these timescales, appeals against termination of employment will take precedence over all other appeals.

Appeal Hearings

Dismissals

All appeals against dismissal will be arranged with a member of the Management Team and a Non-Executive Director of the Trust who has had no prior involvement in the case supported by a Human Resources

Adviser who, where possible, has had no prior involvement with the case. Consideration will need to be given to the availability of Non-Executive Directors, which means that, on occasion, the timescale of 20 working days may be exceeded.

Formal Warnings for Conduct or Capability

Appeals against formal warnings received through employee capability or disciplinary proceedings will generally be heard by the manager of the manager who issued the warning, so long as the more senior manager has had no previous involvement in the case. On occasions it may be necessary for another senior manager to hear the appeal. The Appeal Panel will be advised by a member of the Human Resources Department who, where possible, has had no previous involvement in the case.

Statement of Case

Both the manager who issued the warning or dismissal notice, and the member of staff who is appealing the decision (the appellant) shall prepare a written statement of case for presentation at the Appeal Hearing. This should be a factual account, backed up by:

- A chronology of the events
- Copies of all relevant correspondence and written evidence, including any supporting and witness statements
- The appellant should include a clear statement setting out the reason(s) for their appeal
- The manager should include a clear statement setting out the reason(s) the action was taken
- In both cases each document must be given a page number and a contents page, so that it can be followed easily at the Appeal Hearing; additional attachments should clearly be indicated as appendices
- Within reason, the staff member may request assistance with the copying of the statement of case

Statements of case must be submitted to the Director of Human Resources no less than five working days before the Appeal Hearing. The Appeal Hearing will not proceed unless both statements of case have been received in time. All parties will receive copies of all submitted statements of case and supporting documents prior to the Appeal Hearing.

Role of the Appeal Panel

The appeal panel's role is to consider the following:

- For conduct and capability cases, to consider whether the matter was adequately and appropriately investigated;
- Whether the Trust's procedures were correctly and fairly implemented;
- If the Trust's procedures were not implemented correctly whether this would have made a difference to the outcome; and
- Whether the decision made was reasonable based on the information available.

If new evidence is introduced during an appeal, the matter may be referred back to the previous management level so that they may reconsider whether the action taken was reasonable in the light of it; or, if appropriate, the panel may advise the manager to withdraw the original action. If, subsequently, the employee still wishes to appeal against any further decision based on the new and additional evidence, or the original decision, the panel would be reconvened.

Procedure at the Hearing

The procedure to be followed at the Appeal Hearing will be as follows:

- The manager will present their case, calling and questioning any witnesses in the presence of the appellant and their representative
- The appellant or their representative will have the opportunity to ask questions of the manager and their witnesses
- The Appeal Panel shall have the opportunity to ask questions of the manager and their witnesses
- The appellant shall have the opportunity to re-examine witnesses
- The appellant or their representative shall present their case, calling and questioning any witnesses in the presence of the manager
- The manager will have the opportunity to ask questions of the appellant or their representative and witnesses
- The Appeal Panel will have the opportunity to ask questions of the appellant or their representative and witnesses
- The manager shall have the opportunity to re-examine witnesses
- The manager will have the opportunity to sum up their case if they wish to

- The appellant or their representative will have the opportunity to sum up their case if they wish to
- Both the manager and the appellant will withdraw so that the Appeal Panel may deliberate in private, only recalling parties in order to clarify any points of uncertainty on the evidence already presented. Where this is necessary, both parties shall return.

The decision of the Appeal Panel will be announced at the end of the Appeal Hearing so far as possible, although there may be occasions where due to the volume of evidence the Appeal Panel has to deliberate for longer. In any case, decisions will be confirmed in writing within 7 working days of the conclusion of the Appeal Hearing.

7 Training Requirements

This procedure will be made available to all staff via the Staff Intranet. Human Resources in partnership with staff side will deliver training sessions on the policy to all staff as per the staff training programme. The Human Resources Team will maintain its skills and knowledge in relation to the conduct of employment appeals through appropriate training. Human Resources will brief Managers and Directors involved in Appeal Hearings (either as panel members or in the capacity of presenting the management statement of case) on the application of the procedure.

8 Process for monitoring compliance with this Procedure

The Director of Human Resources will ensure that this procedure is reviewed at least every two years in partnership with staff side. Where matters arise as a result of particular appeals that suggest that the procedure needs to be reviewed or employment legislation changes, a review may take place at an earlier stage than planned.

9 References

- Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice 1 - Disciplinary and Grievance Procedures
<http://www.acas.org.uk/index.aspx?articleid=2174>
- Employment Rights Act (1996)

- Trade Union and Labour Relations (Consolidation) Act 1992
- Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 2006
- Agenda for Change Terms and Conditions
- NHS Employers website:
<http://www.nhsemployers.org/Aboutus/Pages/Home.aspx>
- Equalities Act 2010
- Direct gov website: <http://www.direct.gov.uk/en/Employment/index.htm>

10 Associated documents¹

- Employee Capability Policy and Procedure
- Redundancy and Redeployment Procedure
- Sickness Absence Procedure
- Disciplinary Policy and Procedure

¹ For the current version of Trust procedures, please refer to the intranet.

Appendix A : Equality Analysis

Completed by	Craig de Sousa
Position	Director of Human Resources
Date	26 July 2016

The following questions determine whether analysis is needed	Yes	No
Is it likely to affect people with particular protected characteristics differently?	Y	
Is it a major policy, significantly affecting how Trust services are delivered?	Y	
Will the policy have a significant effect on how partner organisations operate in terms of equality?		Y
Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?		Y
Does the policy relate to an area with known inequalities?	Y	
Does the policy relate to any equality objectives that have been set by the Trust?	Y	
Other?		Y

If the answer to *all* of these questions was no, then the assessment is complete.

If the answer to *any* of the questions was yes, then undertake the following analysis:

	Yes	No	Comment
Do policy outcomes and service take-up differ between people with different protected characteristics?	Y		There is evidence that BME staff across NHS organisations in London are more likely to enter formal HR processes.
What are the key findings of any engagement you have undertaken?			That with robust and senior oversight, in our case non-executives chairing appeals, outcomes present less bias.

If there is a greater effect on one group, is that consistent with the policy aims?		Y	
If the policy has negative effects on people sharing particular characteristics, what steps can be taken to mitigate these effects?	Y		Non-executives chairing panels and the HR director being present on all dismissal panels, where possible.
Will the policy deliver practical benefits for certain groups?		Y	
Does the policy miss opportunities to advance equality of opportunity and foster good relations?		Y	
Do other policies need to change to enable this policy to be effective?		Y	
Additional comments	This procedure seeks to create consistent and non-biased approach to considering employee appeals.		

If one or more answers are yes, then the policy may unlawful under the Equality Act 2010 –seek advice from Human Resources.