

Appeals Procedure

Date	Version	
March 2012	Version 3	
Purpose		
The purpose of this procedure is to set out the process of appeal.		
Who should read this document?		
This procedure applies to all employees of the Trust with some exceptions of medical staff, as outlined below.		
This procedure will be applied in relation to disciplinary and sickness absence issues for medical staff. However, it is important that it is read in conjunction with the Trust's Maintaining High Professional Standards Policy, which gives further relevant advice and guidance for both the organisation and the employee concerned.		
In matters relating to capability, practice restrictions or exclusion from work and concerns about a practitioners health, separate procedures will be applied as outlined in the Trust's Maintaining High Professional Standards Policy.		
Key messages		
This procedure clarifies the managerial level at which appeals will be heard, the constitution of an appeal panel and the process to be used.		
Accountabilities		
Production	Deputy Director of Workforce	
Review and approval	JSNC	
Ratification	Director of Finance	
Dissemination	Deputy Director of Workforce	
Compliance	Director of Workforce & OD	
Links to other policies and procedures		
Performance and Conduct Sickness Absence Policy Organisational Change and Redundancy Maintaining High Professional Standards		
Version History		
1.1	January 2012	Discussion at JSNC
1.2	13 th January 2012	Discussion at JSNC Policy sub-group
1.3	1 st March 2012	Updated following JSNC Policy sub-group
2	January 2019	Extended to April 2019
3	February 2020	Extended to February 2020 by Richard Maguire & Lisa White
Last Approval		Due for Review
March 2012		Extended to February 2020

PHNT is committed to creating a fully inclusive and accessible service.

Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of patients and staff.

We will treat people with dignity and respect, actively promote equality and diversity, and eliminate all forms of discrimination regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/ maternity.

An electronic version of this document is available on the Trust Documents Network Share Folder (G:\TrustDocuments). Larger text, Braille and Audio versions can be made available upon request.

Section	Description	Page
1	Introduction	4
2	Purpose, including legal or regulatory background	4
3	Definitions	4
4	Duties	4
5	General Principles	5
6	Professional Advice	5
7	Appeal Against Formal Action (short of dismissal)	6
8	Appeal Against Dismissal	6
9	Procedure At The Hearing	7
10	Appeal Decisions	7
11	Overall Responsibility for the Document	7
12	Consultation and Ratification	7
13	Dissemination and Implementation	8
14	Monitoring Compliance and Effectiveness	8
15	References and Associated Documentation	8
Appendix 1	Dissemination Plan	9
Appendix 2	Review and Approval Checklist	10
Appendix 3	Appeal Hearing Procedure	11
Appendix 4	Appeal Panel Composition	12

1 Introduction

Plymouth Hospitals NHS Trust is committed to ensuring that all employees are dealt with fairly and reasonably and a number of employment policies allow for employees at some stages of these procedures to make a formal appeal. All employees have a right to appeal against formal action taken in accordance with Trust policies.

The purpose of this procedure is to set out the process of appeal and to clarify the managerial level at which appeals will be heard, the constitution of an appeal panel, and the process to be used.

2 Purpose, including legal or regulatory background

The purpose of this procedure is to clarify the managerial level at which appeals will be heard, the constitution of an appeal panel and the process to be used.

3 Definitions

Appeal – to apply to a higher authority to request a review of a decision.

Appellant – a person who appeals.

Formal action – action above an informal discussion and forming part of the formal procedure, usually including keeping a record of this on an employee's personal file.

Disciplinary Action – action taken in recognition of an employee's actions, usually in the form of issuing warnings (e.g. written warning) with a record of this being placed on an employee's file.

Dismissal - the termination of an employee's contract, with or without notice.

4 Duties

Responsibilities of the Workforce & OD Directorate are to:

- advise and support line managers and employees on the interpretation and application of this policy.
- work in partnership with Senior Managers and Trade Union Representatives to ensure consistency and fairness in the way the policy is applied to employees, identify areas of ineffective practice and address as appropriate.
- ensure training and education for line managers is available.

Responsibilities of the line manager are to:

- ensure the policy is applied fairly and consistently.
- ensure that employees are aware of their right to appeal.
- seek help and advice from HR Direct.

Responsibilities of the employee are to:

- ensure they follow the correct process for appeal.
- Clearly state their grounds for appeal.

An employee (i.e. appellant) who considers that he/she has been unfairly treated in respect of any formal procedures that fall under the Management of Performance and Conduct Policy, Management of Sickness Absence Policy, or Management of Organisational Change and Redundancy Policy, shall have the right of appeal against such action in line with this procedure.

Such appeals should be lodged in writing to the Director of Workforce and Organisational Development, within ten (10) working days, from and including, the date of the letter confirming the formal action taken.

The letter lodging the appeal must set out in full the grounds for the appeal. These grounds will determine whether a full hearing, with all witnesses, is required or whether the appeal need only focus on specific points of contention.

In cases where a formal warning has been issued, the severity of the warning may be changed in either direction at an appeal hearing.

A Manager, Human Resources representative, or Executive Director who has been directly involved in the circumstances leading to the formal action, cannot be a panel member at the appeal hearing.

The appellant has the right to be represented at an appeal hearing by a recognised trade union representative, work colleague or friend not acting in a legal capacity (with the exception of medical staff where their terms and conditions of employment expressly permit legal / other representation, refer to Maintaining High Professional Standards Policy).

Failure of the appellant to attend an appeal hearing, without adequate reason, will result in the appeal being deemed to have been withdrawn.

If appropriate, one member of the Panel should have special knowledge of the subject on which the appeal is based. Where this is not possible and the circumstances of the appeal are such that the work of the panel would be enhanced by having additional professional/technical information available to them, then a mutually agreed Professional Advisor may be appointed from outside the Trust.

The Professional Advisor will be experienced in the particular subject matter under review, and must not have any direct involvement in the circumstances leading up to the Appeal.

The Advisor may only advise the panel on any professional or technical matter arising during the course of the hearing which they feel may be related to the case. He/she will not be entitled to vote on the decision.

7**Appeal Against Formal Action (short of dismissal)**

Appeals against formal warnings will be heard by a manager more senior to the manager who issued the warning (usually but not in all cases, a Directorate Manager or equivalent level) and a Workforce Representative at an appropriate level of seniority depending on the complexity of the case.

Such an appeal should be arranged as soon as it is reasonably practicable, normally within four (4) weeks from the date that the appeal was lodged. A written statement of case will be prepared by the manager who initiated the former action, and the appellant or his/her representative are required to provide written reasons for his/her grounds of appeal. There will be a simultaneous exchange of the statements of case, no later than five (5) working days in advance of the hearing.

The senior manager will conduct a hearing with the appellant and the manager who originally imposed the formal action. Both parties will be given the opportunity to state their case.

Following the hearing and any subsequent investigation and adjournment, the senior manager will make a final decision on the appeal. This will be communicated in writing to both parties. There will be no further right of appeal.

8**Appeal Against Dismissal**

Appeals against dismissal relating to Performance and Conduct or redundancy, will be heard by a panel comprising of two Directors including one Executive Director. An HR Business Partner, Deputy Director of Workforce, or the Director of Workforce and Organisational Development will advise the panel on HR process.

Appeals against dismissal relating to short or long term sickness absence, will be heard in accordance with the Managing Sickness Absence Policy, comprising of two senior managers, usually more senior to the dismissing manager. An HR Business Partner, Deputy Director of Workforce, or the Director of Workforce and Organisational Development will advise the panel on HR process.

Such an appeal should be arranged as soon as it is reasonably practical to do so, normally within four (4) weeks of the appeal being lodged.

A written statement of case will be prepared by the manager who initiated the formal action, and the appellant or his/her representative will provide written reasons of his/her grounds of appeal. Both parties will inform the secretary to the panel of the names of their respective witnesses (if appropriate). There will be a simultaneous exchange of the statements of case, no later than five (5) working days in advance of the panel hearing.

These statements of case, together with the names of any witnesses to be called, and any other relevant information, will be circulated to both parties and all panel members, at least ten days prior to the appeal hearing.

The two parties shall be entitled to bring before the panel such witnesses as they deem necessary to support their case. Witnesses will only be present at the hearing whilst they are giving evidence. It is usual for witnesses to be questioned by both parties and by panel members.

9 Procedure At The Hearing

The appeal will be heard in accordance with the procedure outlined at Appendix 1.

The Chair of the Appeal (either the manager hearing the appeal or someone appointed from the appeal panel) has the discretion to seek clarification or amplification of evidence, to recall witnesses and to adjourn the hearing for any reason (such as to allow further evidence to be produced or to clarify procedural matters) at any stage in the proceedings. The Chair may seek HR advice as appropriate.

The Chair of the panel will rule on the admissibility of questions and evidence. Similarly, questions should formally be put through the Chair of the panel.

After both parties have presented their cases and summed up, the appeal will be adjourned to allow the manager or panel hearing the appeal to deliberate in private. The secretary and, where relevant, the specialist adviser will remain to provide procedural and technical advice. Should any further clarification of evidence be necessary, both parties will be recalled.

10 Appeal Decisions

The outcome of the appeal may be one of the following:

- That the appeal is dismissed and the original decision is confirmed.
- That the penalty is reduced or increased
- That the appeal is allowed and a finding that no offence was committed or the original decision should be overturned, confirmed. The penalty imposed is therefore withdrawn and all records are removed from the file.

Where possible, the Chair/panel will recall both parties and announce the decision verbally. If a decision cannot be made without further deliberation, however, it may be necessary to communicate the decision in writing at a later date. In either event, the outcome will be confirmed in writing to the appellant and their representative usually not later than five (5) working days after the hearing date.

11 Overall Responsibility for the Document

The Senior Management Team and the Director of Workforce and OD in conjunction with the JSNC Policy Group is responsible for ratifying this document. The Director of Workforce and OD has overall responsibility for the dissemination, implementation and review of this policy.

12 Consultation and Ratification

The Director of Workforce and OD is responsible for ratifying this document and has overall responsibility for the dissemination, implementation and review of this policy.

This policy will be reviewed by the Policy Sub Group of the Joint Staff Negotiating Committee and will be signed by the staff side chair and the Director of Workforce.

This policy will be reviewed on an annual basis and the policy will be revised as and when necessary.

13 Dissemination and Implementation

Following approval and ratification by the appropriate group, this policy will be rolled out across the Trust.

Publication of this policy will be publicised in Vital Signs, the Trust's weekly staff news briefing and it will be available electronically on the TrustDocument Network Share Folder.

14 Monitoring Compliance and Effectiveness

Monitoring of this procedure will be undertaken by the Director of Workforce and Organisational Development. This procedure will be reviewed regularly by the Workforce and Organisational Development Directorate and staff side.

The standards and Key Performance Indicators identified with the implementation of this policy are the NHSLA, Standards as determined by the Care Quality Commission.

15 References and Associated Documentation

Further guidance on the use of this procedure is available from the HR Direct Team, or your trade union/ professional organisation representative.

Useful websites: www.acas.org.uk ; www.nhsemployers.org ; www.dh.gov.uk

Core Information				
Document Title	Appeals Procedure			
Date Finalised	March 2012			
Dissemination Lead	Deputy Director of Workforce			
Previous Documents				
Previous document in use?	No			
Action to retrieve old copies.	N/A			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
All Trust Staff	March 2012	Vital Signs	Deputy Director of Workforce	

Review		
Title	Is the title clear and unambiguous?	Yes
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Yes
	Does the style & format comply?	Yes
Rationale	Are reasons for development of the document stated?	Yes
Development Process	Is the method described in brief?	Yes
	Are people involved in the development identified?	Yes
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Yes
	Is there evidence of consultation with stakeholders and users?	Yes
Content	Is the objective of the document clear?	Yes
	Is the target population clear and unambiguous?	Yes
	Are the intended outcomes described?	Yes
	Are the statements clear and unambiguous?	Yes
Evidence Base	Is the type of evidence to support the document identified explicitly?	Yes
	Are key references cited and in full?	Yes
	Are supporting documents referenced?	Yes
Approval	Does the document identify which committee/group will review it?	Yes
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Yes
	Does the document identify which Executive Director will ratify it?	Yes
Dissemination & Implementation	Is there an outline/plan to identify how this will be done?	Yes
	Does the plan include the necessary training/support to ensure compliance?	Yes
Document Control	Does the document identify where it will be held?	Yes
	Have archiving arrangements for superseded documents been addressed?	Yes
Monitoring Compliance & Effectiveness	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes
	Is there a plan to review or audit compliance with the document?	Yes
Review Date	Is the review date identified?	Yes
	Is the frequency of review identified? If so is it acceptable?	Yes
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Yes

1. INTRODUCTION BY CHAIR

The Chair will:

- introduce those present.
- outline the procedure for hearing

2. STAFF SIDE CASE

- a. The appellant and/or representative will present their grounds for appeal.
- b. The employee and/or representative will call any witnesses to support their case, as appropriate.
- c. All parties will question the witnesses.
- d. The manager will have the opportunity to question the appellant about their case.
- e. The Chair/Appeal Panel will have the opportunity to question the case.

3. MANAGEMENT CASE

- a. The manager will present the case to support the disciplinary action taken or original outcome decision (e.g. in cases of appeal against redundancy or sickness absence warnings).
- b. The manager will call any witnesses to support their case, as appropriate.
- c. All parties will question the witnesses.
- d. The appellant and/or representative will be given the opportunity to question the manager's case.
- e. The Chair/Appeal Panel will have the opportunity to question the case.

4. SUMMING UP

- a. The employee and/or representative will summarise their case
(No new information may be brought in at this stage)
- b. The manager will summarise their case

5. ADJOURNMENT FOR CHAIR/APPEAL PANEL TO CONSIDER CASE**6. RECONVENE FOR DECISION (if to be given verbally)**

The appellant will be informed of:

- the outcome of the appeal
- that the outcome will be confirmed in writing

ADVICE MUST BE SOUGHT IN ALL CASES FROM HR DIRECT OVER PANEL COMPOSITION

To be read in conjunction with para 5.1 and 6.1 of this Procedure

Category of Staff	Appeals heard by Provided they did not dismiss / give warning / disciplinary sanction
Chief Executive	Appropriate appeal panel
Executive Directors	Trust Chairperson Non Executive Director
All medical staff	Executive Director Medical/Clinical Director Assistant/Associate Medical Director Clinical Director
Directorate Managers	Executive Director Directors
All other grades of staff	Executive Director Directorate Manager Another grade of manager (more senior to the manager who issued the warning)