

SALISBURY NHS FOUNDATION TRUST

Appeal Policy

Version Information

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Version No.	Updated By	Updated On	Description of Changes
1.0	Directorate Personnel Manager	04/04/2013	New Policy
1.1	HR Advisor	20/05/2014	Changes to sections 3 and 6 regarding reasons for appeal and amendment to show working days instead of calendar days.
1.2	HR Advisor	05/11/2015	Addition of values and behaviours paragraph and addition of paragraph under table in section 6 regarding who will hear the appeal.
1.3	HR Advisor	08/06/2017	Amendment to timescale applied for lodging an appeal to bring in line with disciplinary policy. (Section 6)
1.4	Senior Business Partner Employee Relations	September 2022	Removed Monitoring and review process section 2 and replaced with section 10 Monitoring effectiveness of and compliance with this policy Removed employee may request to have an appeal meeting if grievance not satisfactorily resolved as this is stated in section 4 Clarified point 3 that appeal will be heard if new evidence has come to light that would materially in point change the original decision as this is stated in section 9.1
FINAL	Senior Business Partner Employee Relations	January 2023	

1. Introduction

The Trust recognises that on occasions employees may need to formally exercise their right to question or complain about decisions that have been made regarding their employment.

The Trust aims to provide a simple, fair and independent system for responding to employee complaints and has developed this policy to help employees through the appeal process.

This policy does not discriminate and applies to all protected characteristics under the Equality Act 2010, specifically: age, race, sex, marriage or civil partnership, pregnancy and maternity, transgender, religion or belief, disability and gender reassignment.

In accordance with the Equality Act 2010, the Trust will make reasonable adjustments to cater for all employees who have a disability or special needs to enable their attendance at any meetings that are necessary as part of this procedure, for example providing for wheelchair access if necessary, or assistance to better understand the process being used and any correspondence they are sent. The Trust's Policy for the Employment of People with Disabilities should also be referred to. Similarly, for those who would benefit from similar assistance due to a limited ability to use English as a first language, equivalent support will be provided by the Trust (for instance provision of a translator).

2. What is an appeal?

An appeal is an opportunity to question a decision previously reached under other Trust Policies or Procedures. Appeals are heard by an independent panel that make a decision whether the original decision was fair and reasonable based on the evidence that was available at that time.

Reasons for an appeal must be clearly outlined and specific. Appeals may be made on various grounds, including new evidence that has come to light since the original decision was made, undue severity or inconsistency of the penalty. An employee cannot lodge an appeal just because they are unhappy with the outcome.

3. Who can appeal and what can they appeal against?

An Appellant (s) is the employee who is appealing a decision.

Appellants (this includes employees who have been dismissed) have the right of appeal against:-

- Disciplinary sanctions
- Termination of employment, including redundancy
- Other Trust policy related decisions where the right of appeal is explicitly stated i.e. Capability, Management of Attendance Policies and Flexible Working applications.

The policy does not:

- Apply to initial grievance issues (refer to Grievance Policy) however grievance appeals will be heard under this policy
- Apply to banding issues (refer to Control of Banding Policy)
- Apply to appeals against Clinical Excellence Award nominations

4. Who can help me with my appeal?

Appellants have the right to be accompanied at an Appeal hearing by a Trade Union representative or work colleague.

While Occupational Health cannot directly help Appellants with the appeal, Appellants of the Trust can access support from these services such as confidential counselling.

5. How do I register a formal appeal?

Appeal hearings are divided into 2 categories depending on the severity of the original Decision:

Reason for Appeal	Category of Appeal
Dismissal Redundancy Any termination of employment situation All collective dispute appeals	<u>Category A</u> Heard in front of a panel chaired by either a member of the Executive, General Manager or equivalent.
All other appeals (Grievances, capability stage 1 & 2, matching, suitable alternatives, Management of Attendance stages 2,3 and 4, flexible working requests)	<u>Category B</u> Heard in front of a panel chaired by a Manager more senior to the Manager that made the original decision.

NB: Please note where possible, appeals should be chaired by a Manager outside of the Directorate/Department. This will ensure fairness and objectivity of the decision making at the appeal stage. If for any reason this is not possible, this would be discussed with all parties at the time of securing an Appeal Panel.

In order to register an appeal under both categories, appellants should complete the form at Appendix A including supporting documentation and send it to the person specified in the original outcome letter with a copy to their People Partner within 10 working days of the date on the outcome letter.

The appellant should also enclose a statement of case which outlines the reasons for appealing the contested decision together with any witnesses they intend to call. Further information on preparing a statement of case is outlined in Section 8.

6. What happens after an appeal is registered?

The appellant will be invited in writing to attend a hearing. The date, time, venue and details of the panel members will also be confirmed. The meeting will be held (where possible) within 14 working days.

Should Management side intend to call witnesses this will also be confirmed prior to the hearing.

If the appellant, Trade Union Representative or work colleague cannot attend on the proposed date an alternative date will be suggested, ideally within 5 working days of the original date set. Reasonable efforts will be made to accommodate availability, but reasonable timescales must be adhered to.

7. Preparing a statement of case

7.1 What is a Statement of Case?

A Statement of Case is a detailed written account of the reasons for appealing the contested decision.

7.2 Why is a statement of case required?

A statement of case will:-

- Allow the members of the Appeal Panel to prepare for the appeal hearing and gain initial understanding of the facts from both the management and appellant's perspective.
- Allow each of the parties to gain a full understanding of each other's case in preparation of the hearing.

7.3 What will happen with the statement of case?

Prior to the hearing, the appellant's statement of case will be issued to the management side to enable management to prepare a response. The appellant's and management statement of case, (including response) and any other relevant information (e.g. the original investigation report, minutes of hearing, original outcome letter), will be submitted to the Appeals Panel prior to the hearing. This will form the "appeal pack" which will be issued to all parties at least 5 working days before the hearing.

7.4 What should be included in the appellant's statement of case?

As a suggested format the statement of case submitted by the appellant may include:-

- A simple chronology (list in order) of events
- Reason(s) for the appeal
- Any supporting statements or documents (including written evidence and emails) should be attached if appropriate.
- Give each document a page number and include a contents page so that it is easy for everyone to follow at the appeal.

Guidance on preparing a statement of case is available from your People Advisor

7.5 What is the Management Statement of Case?

It is a clear response to the appellants' statement of case and outlines the rationale for the decision that was reached and subsequent action that was taken.

8. How will the appeal hearing be carried out?

The purpose of an Appeal hearing is to decide whether the decision that was originally made was reasonable, based on the information that was available at the time. It is not a re-hearing of the original case.

8.1 Guidelines and Procedure to be followed at an Appeal Hearing

- New evidence which has come to light since the appeal which could materially change the decision.
 - The Appeal Panel will normally consist of a minimum of 2 people, one being more senior than the person who made the original decision that is being appealed.
 - If any party has specific requirements (e.g. hearing loop, interpreter etc) these should be notified to the Panel Chair (in advance where possible) who will make arrangements to accommodate these. Each party also has the right to adjourn the meeting at any time if necessary.
 - The appellant and/or the appellant's representative shall put forward the case for appeal.
 - Management side will have the opportunity to ask questions of the appellant.
 - The members of the Appeals Panel shall have the opportunity to ask questions of the appellant.
 - As part of the case the appellant may introduce pre-agreed witnesses. Should this be the case, both the Appeals Panel and the management side will have an opportunity to ask questions of the witnesses.
 - The appellant or the appellant's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Appeals Panel and/or the management side.
 - The management side will then have the opportunity to present their case and call witnesses.
 - The appellant or the appellant's representative shall have the opportunity to ask questions of the management side and their witnesses.
 - Management side shall have the opportunity to re-examine witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or the appellant's representative.
 - The members of the Appeals Panel shall have the opportunity to ask questions of the Management side.
 - Management side and the appellant or the appellant's representative shall have the opportunity to sum up their cases if they so wish.
 - Management side, the appellant and the appellant's representative shall withdraw, and the Appeal Panel will deliberate.
 - The outcome will normally be given verbally but the panel may at their discretion communicate the outcome in writing. Outcomes given verbally will be followed up in writing normally within 5 working days of the hearing.
 - Any recommendations/decisions made in the appeal hearing will be detailed in the appeal outcome letter.
 - Where the decision of the appeal panel is to re-instate an employee following dismissal, the employee will be re-instated on all previous terms and conditions of employment including pay, benefits and continuous service.
 - Witnesses will normally be asked to leave the hearing at the conclusion of their evidence and the Appeals Panel Chair will indicate whether they should remain available for the duration of the hearing in case it is necessary to recall them.
 - There is no further right of appeal, the appeal decision is final.

All appeal outcome letters are held in HR and will be provided on a case-by-case basis by the Directorate HR Manager.

8.2 Confidentiality

All employees involved within any appeal process are required to respect the need for confidentiality. All appeals, associated correspondence and interviews will be treated in the strictest confidence and any breaches in confidentiality will be subject to disciplinary action.

9 Monitoring compliance with and the effectiveness of this policy

OD and P will monitor compliance with this policy and procedure and our people managers are responsible for the implementation of this policy.

10 Equality Impact Assessment

An Equality Impact Assessment has been completed and was presented to the ratifying committee at the time of approval.

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| Post Holder Responsible for Policy: | Directorate HR Manager |
| Directorate Responsible for Policy: | Human Resources |
| Contact Details: | Human Resources Department
Salisbury NHS Foundation Trust
Salisbury District Hospital
Salisbury
Wiltshire
SP2 8BJ |
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