

# Appeals Policy



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<b>Responsible Executive Director:</b>	Deputy Chief Executive & Chief Finance Officer
<b>Author and Job Title:</b>	HR Manager/HR Business Partner
<b>Date Approved:</b>	05 November 2018
<b>Approved by:</b>	Deputy Chief Executive & Chief Finance Officer
<b>Date of next review:</b>	04 November 2021

	Yes/No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	ACAS Good Practice Guidance
Has legal advice been sought?	No	
Has HR been consulted?	Yes	
Have training issues been addressed?	Yes	Dissemination of information within Directorates
Are there other HR related issues that need to be considered?	Yes	Associated HR Policies
Has the policy been reviewed by SPI?	Yes	Comments received
Are there financial issues and have they been addressed?	No	
What engagement has there been with patients/members of the public preparing this policy?	Yes	Internal Staff only
Are there linked policies and procedures?	Yes	Disciplinary Flexible Working
Has the lead Executive Director approved the policy?	Yes	Deputy Chief Executive & Chief Finance Officer
Which Committees have assured the policy?	n/a	
Has an implementation plan been provided?	Yes	
How will the policy be shared with: <ul style="list-style-type: none"> <li>• Staff?</li> <li>• Patients?</li> <li>• Public?</li> </ul>		Intranet and internal communication Directorate cascade
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?		Intranet

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## 1. Introduction

BNSSG recognises that on occasions you may need to formally exercise your right to question or complain about decisions made regarding your employment. The CCG aims to provide a simple, fair and independent system for responding to your complaints and has developed this appeals procedure to help you through the process.

## 2. Purpose and scope

This policy can be used by all permanent and fixed term employees within the CCG (this policy does not apply to agency workers or interims). The fair and equitable implementation of this policy will be monitored locally by the CCG and will be regularly checked against legislative requirements and best practice.

The CCG will review and resolve all appeals in a timely manner and ensure that the individual who has raised the appeal is kept up to date throughout the process.

## 3. What is an appeal?

An Appeal is your opportunity to question decisions reached using the organisation's other policies. Appeals allow all sides to have put their case in front of an independent panel and for that Panel to then make a decision based upon the facts that have been presented.

An appeal is not a re-hearing of the case previously presented under the relevant staff policy, or procedure. It is solely a review of that process, or procedure, which is intended to establish whether the conduct of the process under the relevant policy, or procedure, prior to the appeal was fair and had been conducted properly, and that the decisions made were not the result of perversity of judgement in the face of the evidence presented.

No new evidence may be given at an appeal hearing, save for where it can be shown that there were justifiable reasons why it had not been presented previously and, if it had been presented previously, would have been likely to have been material to the decision(s) made. Such justification is to be provided as part of the application to appeal

## 4. Who can Appeal and what can they lodge an Appeal about?

This policy represents the final right of appeal within the organisation for formal sanctions or decisions made through a number of the CCG's other staff policies and procedures, including where that formal sanction has taken the form of termination of contract (dismissal).

As a member of staff, you have the right of appeal against:

- Disciplinary sanctions
- Termination of employment, including redundancy
- Policy related decisions - for example, turning down a flexible working request

The policy does not:

- Affect the arrangements for dealing with issues concerning the professional conduct or competence of medical and dental staff, which are set out in separate procedures
- Apply to grievance issues (refer to Grievance Policy)
- Apply to banding issues (refer to Banding Policy).

## 5. Who can help me with my Appeal?

You can ask your Trade Union Representative for advice throughout any part of the appeal process. You have the right to be accompanied at an appeal hearing by a Trade Union representative or work colleague (see Appendix 1 for more information). You can also seek advice regarding the appeals process and the policy from the Human Resources department.

## 6. How do I register a formal Appeal?

The stage at which you enter the appeals procedure will depend upon the reason for your appeal;

You should have been advised by HR of the appropriate stage and person to whom you should initially register your appeal; however the normal stages and methods of registering your appeal are detailed below.

The written grounds of appeal should clearly outline which of the three grounds of appeal the employee wishes the panel to consider:

- whether the procedure was followed correctly
- whether the decision to take action was fair and reasonable, i.e. in the case of disciplinary action being taken against an individual
- whether the action taken or outcome reached was within the band of reasonable responses

In order to register your appeal you should write to the next line manager above the level at which the contested decision was made within **10 working days**. The letter should indicate the reasons why you are appealing and should be copied to the HR Department. You should also provide the name of your representative, if applicable.

## 7. What happens after I have registered my Appeal?

You will be invited to attend an appeal hearing and will be given at least **7** working days' notice of the hearing.

You and your named representative will have the appeal hearing date and arrangements confirmed in writing as soon as practically possible.

You will be given at least **7** working days' notice of the date of the appeal meeting or hearing.

Appeals against termination of employment will take precedence over all other appeals.

Arrangements for the different appeals stages are provided below.

## 8. What happens at an Appeals Hearing?

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

The Panel Chair may decide to vary the procedure adopted at an appeal in the light of the particular circumstances of the case, or at the request of either party. However this will only happen with the full agreement of everyone involved in the Appeal.

Consideration will be given to the availability of the employee's representative however it is expected that the employee and their representative make every effort to attend the hearing

If any party has specific requirements (e.g. hearing loop, interpreter etc.) these should be notified to the Panel Chair prior to the appeal hearing and suitable adjustments will be made to accommodate these requirements wherever possible.

## 9. The Appeal

You will be invited to attend an appeal hearing and asked for a statement of case, which should be submitted to the Human Resource Department **5** working days before the appeal hearing. The management side will prepare their statement of case.

Guidance about how to prepare a statement of case is provided below. Failure to submit a statement of case will result in a delay in the appeal hearing. Both parties must also notify the panel in advance of the hearing whether they wish to bring witnesses.

A recognised Trade Union Representative or work colleague can advise you and accompany you at the hearing.

Your appeal will be heard by an appeals panel. The appeals panel will listen to both sides of the case, ask questions of both sides and will then reach a balanced decision based upon the evidence that has been presented.

The appeals panel will normally consist of at least 2 people, usually more senior than the person who made the original decision that is being appealed.

No member of an appeals panel will have been involved in the decision that gave rise to the appeal.

The appeal panel chair will have the discretion to co-opt external professional advisers in appropriate circumstances, after prior consultation and agreement with the parties to the appeal.

The decision of the appeals panel, and the reasons for reaching that decision, will normally be announced at the end of the appeal hearing and confirmed in writing within 5 working days.

If due to reasons such as the amount of information given, time constraints, or complexity etc., the panel may decide to adjourn to consider their decision and inform you of the outcome in writing.

Decisions and rationale will be confirmed in writing within 5 working days and the letter will outline your further right of appeal if you are not satisfied with the outcome.

The Decision given by the Appeals panel will be final and there will be no further right of appeal.

## 10. Preparing a Statement of Case

### What is a Statement of Case?

A Statement of Case is a written account of the matter for appeal. It must be factual and must be backed up by objective evidence. You may use some subjective detail to set the scene of the case. You must **not** however use 'new' information at the appeal stage, you can only use information available at the time the **decision** you are contesting was taken.

### Why do I need to prepare a statement of case?

Statements of case are required for all formal stages of the procedure. A hearing will not go ahead unless written Statements of Case have been received from both parties to the appeal.

Statements of Case:

- Allow the members of the appeal panel to study all written material in advance of the hearing.
- Help to keep the time taken up by the hearing to the minimum necessary.
- Allows each of the parties to gain a full understanding of each other's case.

### What will happen with my statement of case?

Prior to the hearing all parties will be sent identical information packs containing the statement of case as provided by each party. This pack will also be sent to the panel prior to the hearing.

### What should be included in a statement of case?

- A simple chronology [list in order] of events.
- Copies of all relevant correspondence and written evidence.
- The person who is appealing should include a statement, which gives the reason(s) for the appeal.
- The manager should include the reason(s) why the action was taken.
- Any supporting statements or documents 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 is available from your Human Resources Department or Trade Union representative.

### How will the Appeals Hearing be carried out?

The appellant [the person making the Appeal] or the appellant's representative [i.e. Trade Union representative or colleague] shall present his or her case in the presence of the manager.

The manager shall 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, or the appellant's representative.

As part of the case the appellant may introduce witnesses. Should this be the case, both the panel and the manager 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 or the manager.

The manager will be asked to summarise the key points of the written statement of case and call witnesses in the presence of the appellant and his/her representative.

The appellant or the appellant's representative shall have the opportunity to ask questions of the manager and his/her witnesses.

The members of the appeals panel shall have the opportunity to ask questions of the manager and his/her witnesses.

The manager 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, the appellant or the appellant's representative.

The manager and the appellant or the appellant's representative shall have the opportunity to sum up their cases if they so wish. The appellant or the appellant's representative shall have the right to speak last. In their summing-up, neither party may introduce any new information.

At the suggestion of the Chair or any party to the appeal, the panel may meet privately with representatives of the parties to consider any matter that may help in clarifying or resolving the appeal. Such meetings should only take place with the approval of the appellant.

The appeals panel may, at its discretion, adjourn the appeal either in order that either party to the appeal may produce further evidence or for any other substantial reason.

The manager, the appellant and the appellant's representative shall withdraw.

The appeals panel, and, where appropriate, the adviser, shall deliberate in private only recalling both parties to clear points of uncertainty on the evidence already given. If recall is necessary, both parties shall return, notwithstanding only one is concerned with the point that has given rise to doubt.

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.

### **The Outcome**

The potential outcomes of an Appeal Panel are:

- To fully overturn the initial management decision;
- To uphold aspects of the management decision and overturn others;
- To recommend an alternative solution or outcome where all or part of a decision is overturned;
- To 'downgrade' the sanction in place, e.g. dismissal to final written warning;
- To recommend additional investigation and reconsideration of the initial decision;
- To recommend a new, full, investigation to take the place of the first investigation which led to the decision under appeal;
- To fully uphold the initial management decision or sanction.



The decision of the Appeal Panel is final. The appeal decision will be communicated and a letter will be sent to the employee with the outcome of the meeting. Once this has been done, no further communication will be entered into on this matter as this completes the internal procedure

## **11. Training requirements**

Training and support will be available to all line managers in the implementation and application of this policy.

## **12. Equality Impact Assessment**

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation. It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

## **13. Monitoring compliance and effectiveness**

This policy will be reviewed every 3 years but can be reviewed at any time if the CCG deems it necessary to do so or a review is requested by management or staff.

## **14. Counter fraud**

The CCG is committed to reducing fraud in the NHS to a minimum, keeping it at that level and putting funds stolen through fraud back into patient care. Therefore, we have given consideration to fraud and corruption that may occur in this area and our responses to these acts during the development of this policy document

## **15. References, acknowledgements and associated documents**

Grievance Policy  
Disciplinary Policy  
Flexible Working  
Re-Banding

## 16 Appendices

### Appendix 1: The Right to be accompanied

#### **(Taken from the ACAS Code of Practice on Disciplinary and Grievance Procedures)**

Employees have a statutory right to be accompanied by a work colleague or trade union official when they are required or invited by their employer to attend disciplinary interviews/hearings.

Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions.

Employees should inform their employer if they want to be accompanied and tell the employer who their companion is.

The Companion can be a fellow worker or a trade union representative. Nobody has to accept an invitation to act as a Companion, and should not be pressurised to do so.

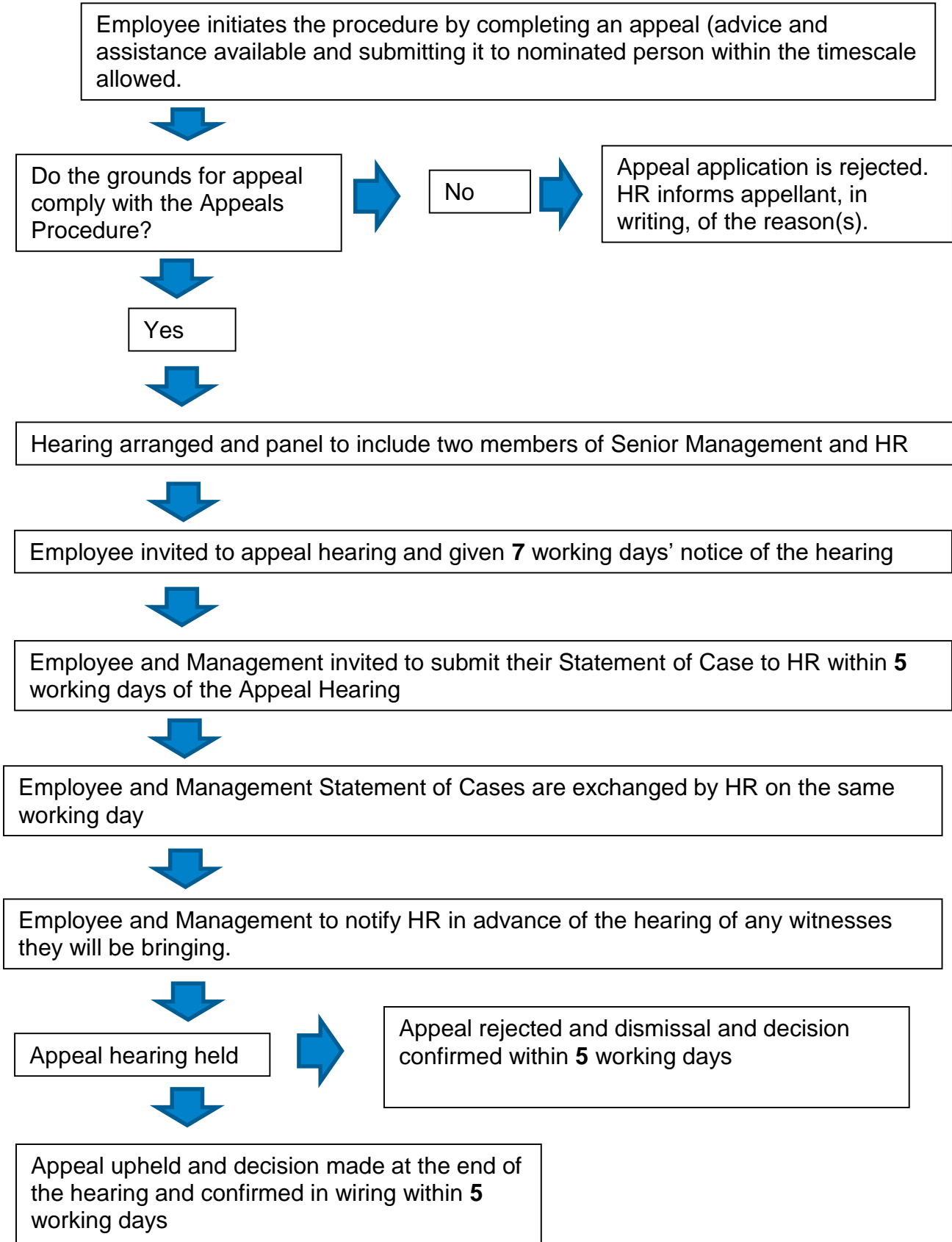
When choosing a Companion, the employee should be aware that it would not be reasonable to insist on being accompanied by a fellow worker whose presence would prejudice the meeting or who might have a conflict of interest.

The Companion can have a say at the interview/hearing but cannot answer questions for the employee.

Employees who are acting as Companions can take paid time off to prepare for and attend a meeting/hearing.

## Appendix 2: Appeals Process Flowchart

### PROCESS BEGINS



## 16.1 Equality Impact Assessment Screening

Equality Impact Assessment Screening		
Query	Response	
What is the aim of the document?	to set out the CCG responsibilities in relation to	
Who is the target audience of the document (which staff groups)?	All staff	
Who is it likely to impact on and how?	Staff	Yes - All Appeals will be handled and processed in a fair and transparent way and to avoid any subjective bias. No anticipated detrimental impact on any equality group. The policy adheres to AFC Terms and Conditions, is legally compliant and takes account of best practice. Makes all reasonable provision to ensure equity of access to all staff. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.
	Patients	No
	Visitors	No

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	Carers	No
	Visitors	No
	Other – governors, volunteers etc	Yes
Does the document affect one group more or less favourably than another based on the ‘protected characteristics’ in the Equality Act 2010:	Age (younger and older people)	no
	Disability (includes physical and sensory impairments, learning disabilities, mental health)	no
	Gender (men or women)	no
	Pregnancy and maternity	no
	Race (includes ethnicity as well as gypsy travellers)	no
	Sexual Orientation (lesbian, gay and bisexual people)	no
	Transgender people	no
	Groups at risk of stigma or social exclusion (e.g. offenders, homeless people)	no
	Human Rights (particularly rights to privacy, dignity, liberty and non-degrading treatment)	no

## 16.2 Implementation Plan

Target Group	Implementation or Training objective	Method	Lead	Target start date	Target End date	Resources Required
Governing Body	Ensure GB is aware of CCG's responsibilities for implementation and monitoring of HR Policies	Cover paper to the policies to be presented to the Governing Body	HR Business Partner	1 January 2019	28 February 2019	staff time, governing body time
Executive Directors	Ensure awareness of responsibilities of CCG process to ensure compliance Individual Executive Director responsibilities Directorate Responsibilities	<p>Ensure systems are in place to implement relevant policies in their areas</p> <p>Discussion/bite size workshop on overview of policies with Individual Directors</p> <p>Launch of Policies at SMT</p> <p>Launch of Policies through Directorate meetings/briefings</p> <p>To ensure the provision of advice, guidance and support to Directors in the operation of HR policies.</p> <p>Ensure systems exist to identify staff training needs on the implementation of new and updated policies</p>	HR Business Partner	1 February 2019	31 March 2019	staff time, executive director time
Managers	Ensure awareness of CCG process and roles	<p>Ensure staff have read and understood the relevant policies, strategies and procedures.</p> <p>Ensure policies and procedures are accessible for all their staff on the Hub</p> <p>Ensure systems exist to identify staff training needs on the implementation of new and updated policies</p> <p>Specific training sessions and 1:1 support to be provided, including awareness of the application of HR policies.</p> <p>Implementation of training workshops for Line Managers.</p>	HR Manager/ Learning and Development Manager	9 <sup>th</sup> January 2019	31 March 2019	staff time, training room resources

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All Staff	Ensure awareness of CCG processes and procedures	<p>Information about the policy and CCG processes to be placed on the Hub/Consult HR platforms and to familiarise themselves with this policy and the how it may impact upon them.</p> <p>Ensure a system is in place for policies to be placed on the intranet</p> <p>Information about the policy and CCG process to be communicated through the Voice</p> <p>Awareness raising item at individual Directorate/Directorate SMT and team meetings</p>	<p>HR Business Partner/HR Manager/Comms</p> <p>Corporate Team/Comms Team</p> <p>Comms Team</p> <p>Executive Directors/Senior Managers</p>	1 January 2019	31 March 2019	staff time,
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