

APPEALS PROCEDURE WHEN NOT DETAILED IN THE RELEVANT HR POLICY OR PROCEDURE

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Target Audience:

People who need to know about this document in detail	Author/Owners of this procedure.
People who need to have a broad understanding of this document	Board Members, Management Board, Senior Leaders, Board Committees.
People who need to know that this document exists	Employees, Bank Staff and Agency Workers of Cwm Taf Morgannwg University Health Board and its hosted organisations.

Integrated Impact Assessment:

Equality Impact Assessment Date & Outcome	Date: 13.05.2021 Outcome: This policy has been screened for relevance to Equality. No potential negative impact has been identified.
Welsh Language Standard	Yes.
Date of approval by Equality Team:	13/05/2021
Aligns to the following Wellbeing of Future Generation Act Objective	Co-create with Staff and Partners and a Learning and Growing Culture.



Disclaimer:

If the review date of this Procedure has passed, please ensure that the version you are using is the most up to date version either by contacting the author or email CTM_Corporate_Governance@wales.nhs.uk.

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1. PROCEDURE STATEMENT

This procedure sets out the process for a staff member within Cwm Taf University Health Board (CTMUHB) to appeal against a decision or action, where this process is not explicit in the relevant HR policy or procedure.

The Director for People will ensure that copies of this procedure are archived and stored in line with CTMUHB Records Management Policy, and are made available for reference purposes should any situation arise where they are required.

2. SCOPE OF PROCEDURE

In many employment relations processes, the employee has a right of appeal to appeal against formal disciplinary action or any termination of employment. Relevant policies and procedures include:

- Capability Policy;
- Fixed Term Contract Policy;
- Managing Attendance at Work Policy; and
- Retire to Access NHS Pension and Return to Work.

3. AIMS AND OBJECTIVES

This procedure sets out the formal appeals process, and the Order of Proceedings that will be followed at an Appeal Hearing falling within the scope of this procedure.

All employees are expected to comply with this procedure. Failure to comply is a serious offence and could result in disciplinary action.

4. RESPONSIBILITIES

The Appellant must be informed by the Appeals Co-ordinator (normally a member of the Workforce and OD Team), at least 14 calendar days before the appeal hearing date that they are required to submit the grounds for of their appeal, submit all documentary evidence in support of it, and provide the name(s) of any witnesses they wish to call.

It is the Appellant's responsibility to secure the agreement of their witnesses to attend the Appeal Panel, in advance of the Hearing date, and to advise the Appeals Co-ordinator of their details, as soon as possible. This will ensure that arrangements can be made for their release from work to attend.

The Appellant should also notify the Appeals Co-ordinator of the name, designation and contact details of any witnesses they wish to call, who are not employed by CTMUHB, if applicable.

The notification of their intention to appeal a decision, should indicate the grounds on which the appeal is based. The Appellant should be explicit as to whether this is an appeal against the process, decision or outcome.

If this information is not provided, the Appeals Co-ordinator will specifically request it from the Appellant, prior to the appeal hearing date. The Appellant and/or their Trade Union representative is required to comply with this request to enable the

appeal process to progress.

5. DEFINITIONS

An appeal hearing is convened to enable an independent review of the 'reasonableness' of the outcome or decision made under an organisational policy, immediately prior to the appeal stage. An appeal is not another hearing of the case and therefore focuses on reviewing the process followed and the appropriateness of the decision / outcome made. There is no further right of appeal once this process is completed

6. IMPLEMENTATION AND COMPLIANCE

6.1 Constitution of the Appeal Hearing Panel

The Appeal Panel must be comprised of the appropriate level of management as set out in the relevant policy. Where this is not specified, the appeal will normally be heard by the manager, one level above the manager who made the original decision.

The Appeal Panel must not include any members who have previously been directly or indirectly involved in the case.

A Workforce and OD representative will attend to provide advice and support to the Appeal Panel Chair, as well as to ensure, all aspects of the appeal are fully explored, and the appropriate process is followed.

6.2 Terms of Reference for the Appeal Hearing

The Appeal Panel is entrusted with ensuring the fair implementation of the relevant CTMUHB policy and procedure.

The Appeal Panel will need to be satisfied that:

- The relevant CTMUHB policy and procedure was correctly and fairly implemented; and
- The original decision was reasonable in the circumstances based on the information available, at the time the decision was made.

The Appeal Panel must restrict proceedings to looking at the grounds of appeal made by the Appellant, and ensuring that these grounds are adequately examined to reach a proper judgement on whether the appeal should be upheld. In most circumstances, the appeal will not be a re-examination of all the evidence considered by the original hearing/dismissal meeting.

The Appeal Panel *may* also consider any new evidence that may have been pertinent at the time of the hearing/dismissal meeting that may not have been known by Management at the time of the Disciplinary Hearing/Dismissing Meeting.

6.3 Right to be Accompanied

The Appellants has the right to be accompanied by a Trade Union Representative or

a workplace colleague, at the appeal stage of the procedure.

Should the Appellant wish to be accompanied, it is their responsibility to contact their Trade Union representative/workplace colleague to discuss the Appeal Panel date and to ensure they are available to attend. The Appellant will be reminded of this requirement in the letter inviting them to the Appeal Hearing and confirming the arrangements.

At the Appeal Hearing, the Trade Union representative/workplace colleague will be permitted to:

- address the Hearing.
- put or sum up the Appellant's case.
- confer with the Appellant during the Hearing.
- question the Disciplining Officer/Dismissing Manager.
- question the witnesses called by the Manager.

The Trade Union representative/workplace colleague does not have the right to answer questions on behalf of the Appellant, address the Hearing if the Appellant does not wish it, or prevent the Appellant from explaining their case.

In exceptional circumstances, as a reasonable adjustment, the Appeal Panel Chair can agree that a friend or family member in addition to their Trade Union representative/workplace colleague can also accompany the Appellant.

The friend/family member will not be permitted to address the Hearing as their role will be solely to provide emotional support to the Appellant. Such an arrangement must be requested and agreed with the Appeal Panel Chair in advance of the Appeal Hearing date.

6.4 Conducting the Appeal Hearing

The nominated Senior Officer will act as Chair of the Appeal Panel and will introduce those present at the Appeal Panel.

The Appeal Panel will always include a Workforce and OD Team representative.

The Chair of the Appeal Panel will ensure where an Appellant is unaccompanied, they are reminded of their right to be accompanied, and confirm with the Appellant that they are happy to proceed unaccompanied.

The order of proceedings will be as follows:

- 6.4.1 Both the Disciplining Officer/Dismissing Manager, the Appellant and their Trade Union representative/workplace colleague will remain present throughout the proceedings, until the Appeal Panel adjourns to deliberate in private.
- 6.4.2 The Appeal Panel members may make notes during the hearing to aid deliberations.

These contemporaneous notes may also be used as a record of the matter discussed during the Appeal Hearing.



- 6.4.3 The Chair will request that the Appellant or their Trade Union representative/workplace colleague confirms the grounds of their appeal, and provides information to support their case.
- 6.4.4 The Disciplining Officer/Dismissing Manager will have the opportunity to ask questions of the Appellant.
- 6.4.5 The Appeal Panel shall have the opportunity to ask questions of the Appellant.
- 6.4.6 The Disciplining Officer/Dismissing Manager will present their statement of case, which should include the justification for the decision that was taken at the Disciplinary Hearing/Dismissing Meeting.
- 6.4.7 The Appellant or their Trade Union representative/workplace colleague shall have the opportunity to ask questions of the Disciplining Officer/Dismissing Manager.
- 6.4.8 The panel shall have the opportunity to ask questions of the Disciplining Officer/Dismissing Manager.
- 6.4.9 The Chair of the Appeal Panel will ensure that the Appellant is provided with the opportunity to say everything they wished to say.
- 6.4.10 The Disciplining Officer/Dismissing Manager will have the opportunity to sum up.
- No new information is permitted to be introduced at this stage.
- 6.4.11 The Appellant or Trade Union representative/workplace colleague will have opportunity to sum up.
- No new information is permitted to be introduced at this stage.
- 6.4.12 The Appeal Panel may, at its discretion, adjourn the Appeal Hearing to allow further information to be sought and reviewed by them, prior to making their decision.
- 6.4.13 The Appeal Panel will deliberate in private, only recalling both parties to clarify any points of uncertainty on evidence/information already provided.
- If a recall is necessary, both parties shall return to the Appeal Hearing.
- 6.4.14 When a decision is reached by the Chair of the Appeal Panel, they will inform the Appellant and Disciplining Officer/Dismissing Manager of the outcome either immediately verbally or within 7 calendar days.
- In either case, the decision will be notified to all parties in writing, within 7 calendar days of the Appeal Hearing date.
- 6.4.15 The Chair of the Appeal Panel will inform the Appellant that the decision reached by any level of Appeal Hearing is considered final.

No further internal appeals mechanism will operate within CTMUHB.

- 6.4.16 The decision outcome of the Appeal Panel will be reported to the Board.

7. EQUALITY IMPACT AND WELSH LANGUAGE ASSESSMENT STATEMENTS

This policy has been screened for relevance to Equality. No potential negative impact has been identified.

Under Welsh Language Standard 82, this policy will be made available in Welsh:

8. REFERENCES

This procedure set out in this policy reflects the ACAS Code of Practice - Appealing a Disciplinary or Grievance Outcome.

9. RELATED POLICIES

- Capability Policy;
- Fixed Term Contract Policy;
- Managing Attendance at Work Policy; and
- Retire to Access NHS Pension and Return to Work.