



## Appeal Policy and Procedures

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## **Executive summary**

This policy applies to all staff irrespective of their Age, Disability, Gender reassignment, Marriage and Civil partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex and Sexual orientation.

This Policy sets out Leeds Community Healthcare (LCH) NHS Trust's Appeal Policy and Procedure (the Policy).

This Policy applies to all employees of LCH excluding "workers" such as staff employed on an honorary contract or through an agency for which the responsibility rests with the individual's statutory employer.

This Policy will not be applied to appeals made by medical and dental staff against formal action or sanctions given under the Trust's Maintaining High Professional Standards in the Modern NHS Policy and Procedure, any appeal will be dealt with in accordance with that Policy. This appeal policy will only apply to medical and dental staff for matters that fall outside of the Maintaining High Professional Standards in the NHS.

The Policy has been drafted to comply with statutory requirements, professional codes of conduct and the following ACAS Code and guidance. This Policy should be read together with other relevant Trust policies, procedures and local guidance.

This Policy has been developed in consultation with staff side and management representatives, and other key stakeholders.

The Policy may be reviewed at the request of management or staff side by giving four weeks' written notice to the Director of Workforce with reasons for the review.

This Policy may affect your pensionable pay and could impact on your pension. Please refer to NHS Pension agency on [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions) or (0113) 2066222.

## **Equality Analysis**

Leeds Community Healthcare NHS Trust's vision is to provide the best possible care to every community. In support of the vision, with due regard to the Equality Act 2010 General Duty aims, Equality Analysis has been undertaken on this policy and any outcomes have been considered in the development of this policy.

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## 1 Introduction

Leeds Community Healthcare NHS Trust (the Trust) is committed to ensuring that all employees are dealt with fairly and reasonably.

All employees have a right to appeal against formal sanctions or outcomes taken in accordance with Trust policies.

## 2 Aims and Objectives

The aim 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

<b>Appeal</b>	To apply to a higher authority to request a review of a decision.
<b>Appellant</b>	An individual wishing to appeal a formal decision or outcome given under a relevant HR policy
<b>Responding Manager</b>	The manager who made the decision being appealed

## 4 Responsibilities

### 4.1 Joint Responsibilities

- Good working relations are vital for the Trust to operate successfully and provide its essential services. Management, Staffside representatives and employees accept the responsibility of working together with the shared intention of facilitating good working relations.
- Senior Managers and Staffside representatives will work in partnership to ensure consistency and fairness in the way the policy is applied to employees, addressing areas of ineffective practice as appropriate.
- All staff employed by Leeds Community Healthcare NHS Trust must work in accordance with the Leeds Safeguarding Multi-agency Policies and Procedures and local guidelines in relation to any safeguarding concerns they have for service users and the public with whom they are in contact.

### 4.2 Management Responsibility

Managers will:

- ensure employees are aware of their right of appeal and the procedure they must follow;

- Seek appropriate advice and guidance from an HR representative on the application of this policy and procedure if there is any uncertainty.

#### **4.3 Employee Responsibility**

Employees will:

- ensure they follow the correct procedure should they wish to exercise their right of appeal, clearly stating their grounds of appeal.

#### **4.4 Workforce Department Responsibilities**

The Workforce Department will:

- advise and support managers and employees on the interpretation and application of this policy and procedure.
- ensure training and education in the application of this policy is available to managers.

#### **4.5 Trade Union Responsibilities**

Trade Unions will:-

- Provide advice and support to their members in formal meetings, hearings and appeals and;
- Contribute to the development of the Trust's employment policies and practices;

### **5 General Principles**

An employee (appellant) who considers that they have been unfairly treated in respect of formal decision or outcomes that fall under the following policies and procedures has the right of appeal against such action in line with this procedure;

- Disciplinary Policy and Procedure
- Managing Attendance Policy and Procedure
- Managing Concerns with Performance Policy
- Grievance Policy and Procedure
- Dismissal due to non-compliance with vaccination requirements of role

In wishing to exercise this right, appeals should be lodged in writing to the Director of Workforce, within fifteen (15) working days of the date of the letter confirming the outcome of the formal hearing.

The letter lodging the appeal must set out in full the reasons for appeal, i.e. procedural, new evidence, severity of sanction etc.

To ensure independence, an individual who has been directly involved in the circumstances leading to the outcome being appealed cannot be a panel member

at the appeal hearing; for example the Investigating Manager, Commissioning Manager, Panel member, Staffside representative or Specialist Advisor.

## **6 Right to be Accompanied**

An employee has the statutory right to request to be accompanied at an appeal hearing. The Companion<sup>1</sup> can be a Trade Union representative, an official employed by the Union or a work colleague.

An employee's request to be accompanied must be reasonable.

Before the appeal hearing the employee should inform the Trust of the identity of their Companion.

The role of the Companion is to assist and support the employee. The Companion is allowed to put the employee's case forward, sum up the employee's case and respond on the employee's behalf to any view expressed. The Companion is also entitled to confer with the employee during the appeal hearing. The Companion does not have the right to answer questions on behalf of the employee, disrupt the process or prevent the Trust from explaining their case. The Companion is not entitled to address the appeal hearing if the employee does not wish them to.

The employee is responsible for arranging their Companion to attend the appeal. Making such arrangements should not cause undue delay to the process as it is in the interests of everybody to deal with these matters promptly.

If the Companion is unavailable at the time the appeal hearing is scheduled, the employee can suggest an alternative time and date provided it is reasonable, other panel members are available and it is not more than seven (7) working days after the original date. Otherwise, the employee will need to choose an alternative Companion.

Nothing in this policy will affect any adjustments that will need to be made to help either the employee or their Companion overcome a disability or if they have difficulty understanding and communicating in English. In the event where an employee's first language is not English, they will have the right to an interpreter.

## **11 Training Needs**

Refer to the Statutory and Mandatory Training Policy including Training Needs Analysis. Up to date information is available on the Intranet for course details.

## **12 Approval and Ratification process**

This policy will be approved by the JNCF and ratified by the Trust's Remuneration Committee

## **13 Dissemination and Implementation**

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<sup>1</sup> With the exception of medical staff where their terms and conditions of employment expressly permit legal / other representation. Refer to the Trust's Maintaining High Professional Standards in the Modern NHS Policy and Procedure.

Following ratification this policy will be available to all staff via the Trust intranet site.

A short summary of its contents will also be published in Community Talk

#### **14 Review arrangements**

This policy will be reviewed in three years following ratification or sooner if there is a local or national requirement.

#### **15 Associated documents**

Managing Attendance Policy and Procedure  
Managing Concerns with Performance Policy  
Bullying & Harassment Policy  
Freedom to Speak Up Policy  
Maintaining High Professional Standards Policy  
Confidentiality Code of Conduct  
Grievance Policy and Procedure  
Disciplinary Policy and Procedure  
Records Management Policy  
Employee records – guidance for managers

#### **16 Monitoring Compliance and Effectiveness**

The Workforce Department will provide reports on the number of appeals as part of the employee relations monitoring data.

### 1. Procedure

#### 1.1 Appeal Panel Membership

An appeal panel will comprise of a minimum of 3 members;

1. A manager more senior to the manager who made the decision at the formal stage (for all appeals against dismissal the manager must be Board level);
2. A senior HR representative;
3. Staffside representative.

Plus a Professional or Specialist Advisor as appropriate

#### 1.2 Professional Advice

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.

#### 1.3 Arrangements for the Appeal Hearing

A HR representative will be responsible for setting up the appeal hearing. It is expected that the appeal hearing will be convened within 30 working days of receipt of the appeal letter. The HR representative will send a letter to the appellant inviting them to the appeal hearing giving at least ten working days' notice.

A written case will be prepared by the manager (responding manager) who made the decision being appealed. The responding manager will provide their rationale for the decision made and respond to the appellant's reasons for appeal.

The appellant may provide further information on their grounds for appeal in addition to their original appeal letter.

All information to be considered at the appeal hearing must be submitted to the HR representative five (5) working days before the appeal hearing who will then exchange the statements of case between the parties. The cases will be provided to the appeal panel four (4) working days prior to the appeal hearing. If, during the course of the hearing the appeal panel determines that new evidence needs to be

presented, they will consider whether an adjournment is appropriate: much will depend on the weight of the new evidence and its relevance. The appeal panel has the power to determine whether to consider the new evidence as relevant to the appeal, or whether the case should be reheard on the basis of the new evidence by an independent panel in accordance with the relevant policy.

A failure by either party to disclose written material in accordance with the above may result in a refusal to admit such information at the appeal hearing. The Appeal panel hearing the case will decide whether to admit information following discussion with the individuals present as to the reason for the late disclosure and the significance of this information.

Where failure to attend the hearing is with prior notice and the reason given for non-attendance is reasonable i.e. sickness, the hearing will be reconvened. Where failure to attend is due to sickness absence from work an occupational health referral may be required to advise if the individual is fit to attend the hearing.

Where failure to attend is not notified prior to the hearing the nominated HR representative will write to the employee requesting a reason for their non-attendance. The hearing will be reconvened at a date and time that is suitable for the panel members.

If the reconvened hearing is not attended by the employee or their nominated representative the hearing may proceed in their absence.

If the employee fails to attend without good reason, or is persistently (no more than two times) unable to do so (for example for health reasons) the Trust may have to make a decision based on the available evidence

## **1.4 Procedure to be followed at the Appeal Hearing**

### **1.4.1 Introduction by Chair**

The Chair will:

- Introduce those present;
- Clarify why everyone is there, i.e. to hear the appeal against X decision on the grounds of Y;
- Outline the procedure for hearing

The Chair of the Appeal 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 of the panel will rule on the admissibility of questions and evidence.

Similarly, questions should formally be put through the Chair of the panel.

### **1.4.2 Appellant Case**

- The appellant will present their grounds for appeal.
- The employee will call any witnesses to support their case, as appropriate.
- All parties will have the opportunity to question the witnesses.
- The manager will have the opportunity to question the appellant about their case.
- The Appeal Panel members will have the opportunity to question the appellant.

### **1.4.3 Management Case**

- The responding manager will present the case to support the decision taken.
- The responding manager will call any witnesses to support their case, as appropriate
- All parties will have the opportunity to question the witnesses
- The appellant will have the opportunity to question the responding manager's case.
- The Appeal Panel members will have the opportunity to question the responding manager.

#### 1.4.4 Summary

- The appellant will be asked to summarise their case.
- The responding manager will be asked to summarise their case.

#### 1.4.5 Appeal Decision

Where possible, the Chair will recall both parties after an adjournment to announce the decision verbally. If a decision cannot be made without further deliberation it may be necessary to communicate the decision in writing at a later date. In either event, it is expected that the outcome will be confirmed in writing to the appellant and their Companion no later than five (5) working days after the hearing date.

Potential outcomes of the appeal may be:

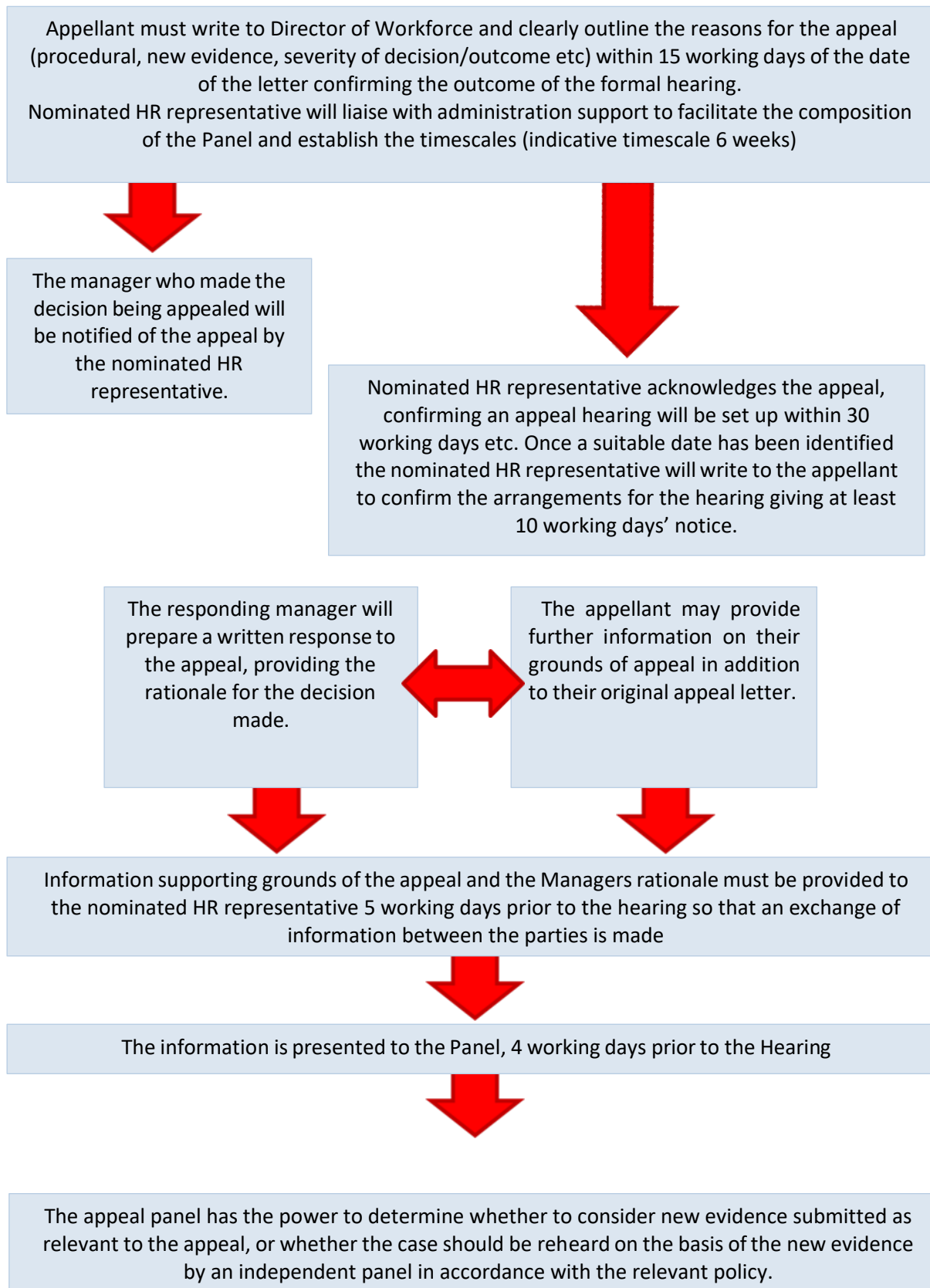
- That the appeal is rejected and the original decision is upheld;
- That aspects of the original decision are overturned and others are upheld;
- That the original decision is fully overturned;
- That the sanction in place is downgraded, i.e. dismissal to a final written warning. There would be no further right of appeal against a downgraded sanction;
- That further investigation is recommended with reconsideration of the original decision;
- That the case be reheard by an independent panel on the basis of new evidence.

The above list is not exhaustive.

The appeal is the end of the internal process.

**Note – all records and reports received / created by the appeal panel should be forwarded to the relevant HR representative at the end of the appeal process.**

**APPEALS PROCEDURE**



## PROCEDURAL FLOWCHART

**Chair of Appeal:-**

- Independent chair of Appeal Panel introduces those present
- Clarifies the purpose of the appeal hearing
- Outlines the order of the hearing

**Appellant case:-**

- Sets out the reason for the appeal and explains their case
- May call any witness in support of their case, as appropriate
- All parties will have the opportunity to question the witness
- The responding manager will have the opportunity to question the appellant about their case
- The Appeal Panel will have the opportunity to question the appellant

**Responding Manager:-**

- Presents rationale to support their original decision
- May call any witness in support of their case, as appropriate
- All parties will have the opportunity to question the witness
- The appellant will have the opportunity to question the responding manager about their case
- The Appeal Panel will have the opportunity to question the responding manager

**Summary:-**

- The appellant will summarise their case
- The responding manager will summarise their case

**Appeal decision:-**

- Appeal Panel adjourn to consider the appeal in private
- Informs the parties of the decision verbally on the day where possible
- Outcome confirmed to Appellant in writing no later than 5 working days after the hearing date.

The Appeal is the end of the internal process