



## Employment Related Appeals Procedures

### 1. Introduction

This document provides guidance on how appeals against disciplinary action and dismissal will normally be managed.

### 2. Scope and Purpose

#### 2.1 Formal Sanctions

Section 3 outlines the procedure associated with appeals against formal sanctions issued through the Absence Management, Capability and Disciplinary Policy; it applies to all University employees other than those who:

- have TUPE transferred in to the University and have retained their pre-existing disciplinary and appeals procedures; or
- are within their probation period<sup>1</sup>.

#### 2.2 Dismissals

Section 4 outlines the procedure relating to all dismissal appeals. It applies to all University employees, other than those who have TUPE transferred in to the University and have retained their pre-existing disciplinary and appeals procedures.

The University's absence management, capability, disciplinary and redundancy policies allow staff to appeal the fairness of their dismissal by reason of **conduct, capability or redundancy**. Staff may also appeal the termination of their employment for the following reasons:

- by reason of a **statutory restriction**; i.e. because they cannot continue to work in their job without contravention, by them or the University, of a statutory duty or restriction; for example they no longer have, or are unable to evidence, their right to work in the UK;

---

<sup>1</sup> Issues relating to conduct, capability or attendance during probation should be dealt with under the 'Guidance for Managing Probation'

- **some other substantial reason;** for example the termination of a fixed-term contract to cover maternity leave, a student experience fixed-term contract or contract for training/work-experience.

### **3. Appeals against Formal Sanctions**

Employees wishing to appeal against formal action must submit their appeal, in writing, to their College/ Support Group Head of HR (Head of HR) within two calendar weeks of receiving the written decision. The employee's appeal letter must set out the grounds of their appeal and provide new evidence, where appropriate.

The appeal will be heard as soon as practicable, normally not later than four weeks following receipt of the written appeal by the Head of HR. If necessary, this time limit may be extended through mutual agreement, or where there are issues with availability.

#### **3.1 Grounds of Appeal**

Employees must have grounds for believing a disciplinary decision is wrong or unjust. Potential grounds for appeal could include, but are not limited to:

- new evidence has come to light or was not fully considered at the time disciplinary action was taken;
- the sanction imposed was:
  - too severe or out of proportion to the employee's absence record, misconduct or under-performance;
  - inconsistent with action taken against other employees, in similar circumstances;
- the University's policies and procedures were not followed correctly, appropriately or fairly.

If an appeal is received which does not set out any grounds of appeal, the Head of HR will contact the employee and ask them to clarify their grounds of appeal. The appeal will not be heard if no relevant grounds are provided.

### **3.2 Appeal Convenor**

The Head of HR will appoint an Appeal Convenor to hear the appeal. The Appeal Convenor will be a University employee who is at a grade equal to, or more senior than, the person who made the original decision to take formal action. The Head of HR will also appoint an HR Advisor, who was not involved in the initial case, to provide support for the Appeal Convenor throughout the process.

In all cases, the Head of HR will take care to ensure that there is no conflict of interest when appointing the Appeal Convenor. This means that the appointed Appeal Convenor may work in a different School or Support Department<sup>2</sup> where necessary to avoid a conflict of interest.

The Appeal Convenor will have had no previous involvement in the original decision, and should not be familiar with the events which led to the formal action being taken. Furthermore, the Appeal Convenor must have no other interest in the case, either personal or work related, which could influence their ability to carry out their duties objectively.

Before appointing Appeal Panel members, the Appeal Convenor must familiarise themselves with the case, and the grounds for appeal, including any new evidence submitted by the employee.

If it is the case that substantial new evidence has come to light, the Appeal Convenor may decide at this stage that the matter should be referred back for reconsideration by the parties who made the original decision to take formal action, rather than the appeal continuing.

### **3.3 Appeal Panel Membership**

The Appeal Convenor will appoint up to two other panel members to sit on the Appeal Panel, dependent upon the complexities of the case, and the amount of expertise or specialist knowledge required.

These panel members will normally be other employees who have had no prior involvement in the case, and should be selected on the basis of relevant expertise or experience in a specific area; for

---

<sup>2</sup> Support Department is a generic term which, for the purposes of this document, means a unit or division at level 5 within the University hierarchy.

example, where the employee is an Academic<sup>3</sup>, at least one panel member (who may be the Convenor) must be, or have been, an Academic.

Care will be taken by the Appeal Convenor when appointing these panel members to ensure there is no conflict of interest; it may be appropriate to appoint a panel member who is external to the University where the relevant expertise or independence cannot be found internally.

The Appeal Convenor must inform the employee of the names of the other panel members at least one week before the hearing.

An HR Advisor will attend the Appeal Hearing, to provide guidance, support and advice to the Appeal Convenor on procedural matters.

At this stage, if the employee identifies any potential conflict of interest, they should immediately alert the Convenor who will consider how to resolve the issue with the HR Advisor, including, if appropriate, the appointment of an alternative panel member.

### **3.4 Right to be accompanied**

Prior to the Appeal Hearing, the employee will be reminded of their right to be accompanied and represented by a trade union representative or workplace colleague. When arrangements are confirmed, the employee is responsible for notifying their chosen representative of the arrangements. They are also responsible for advising the Appeal Convenor in advance of the Hearing that they will be accompanied and by whom.

### **3.5 Hearing the Appeal**

A hearing will be convened at which the employee will have an opportunity to make their case to the Appeal Panel. The employee and their Trade Union representative or workplace colleague, if they choose to be accompanied, are present throughout the Hearing. The Panel and employee will also have the opportunity to call witnesses where appropriate.

---

<sup>3</sup> An 'Academic' for the purposes of this policy, is defined as a Professor, Reader, Senior Lecturer or Lecturer or is otherwise engaged in teaching, the provision of learning or research

Normally, the person who made the original decision to impose a formal sanction, and the HR Advisor who provided procedural support during the disciplinary hearing will be present throughout the hearing.

The appeal hearing is not a re-hearing of the original investigation and hearing which imposed the disciplinary sanction; the Appeal Panel will therefore confine itself to considering whether the original decision was inappropriate on the grounds of appeal specified by the employee.

The Appeal Panel can decide to:

- confirm the original decision to take formal action; or
- uphold the appeal and overturn the original decision, and either:
  - reduce the level of formal action taken, or the timescale for a warning period, or
  - decide that formal action in the circumstances was not appropriate.

The decision of the Panel will be confirmed verbally on the day of the hearing where possible. It should also be confirmed in writing to the employee within one week of the Appeal Hearing.

The letter to the employee should include the outcome of the Appeal Hearing, in addition to the reasons the Appeal Panel have reached that decision.

The decision of the Appeal Panel is final in terms of University procedures.

#### **4. Appeals against Dismissal**

Employees wishing to appeal against dismissal must submit their appeal, in writing, to their College/ Support Group Head of HR (Head of HR), within two calendar weeks of receiving written notification of their dismissal.

The employee's letter of appeal must set out the grounds of their appeal and provide new evidence, where appropriate.

The appeal will be heard as soon as practicable, normally not later than four weeks following receipt of the written appeal by the Head of HR. If necessary, this time limit may be extended through mutual agreement, or where there are issues with availability.

There may be occasions where appeals are heard after the employee's employment has ended, dependent on the length of notice given and the timing of the appeal hearing.

#### **4.1 Grounds of Appeal - non-redundancy dismissals**

Employees must have grounds for believing the decision to terminate their employment is wrong or unjust. Potential grounds for appeal could include, but are not limited to:

- new evidence has come to light or was not fully considered at the time the decision to dismiss was taken;
- the decision to dismiss was:
  - too severe or out of proportion to, for example, the employee's absence record, misconduct or under-performance;
  - inconsistent with action taken against other employees, in similar circumstances;
- the University's policies and procedures were not followed correctly, appropriately or fairly.

If an appeal is received which does not set out any grounds of appeal, the Head of HR will contact the employee and ask them to clarify their grounds of appeal. The appeal will not be heard if no relevant grounds are provided.

#### **4.2 Grounds of Appeal - dismissals on grounds of redundancy**

An employee who has been given formal notice of redundancy may choose to appeal their dismissal on grounds of redundancy. Potential grounds for appeal could include, but are not limited to the following grounds:

- their post is not redundant;
- if applicable, they were wrongly included in the pool from which employees were selected for redundancy;
- based on the selection criteria, they were unfairly selected for redundancy;
- the University's redundancy policy and procedures were not followed correctly, appropriately or fairly.

If an appeal is received which does not set out any grounds of appeal, the Head of HR will contact the employee and ask them to clarify their grounds of appeal. The appeal will not be heard if no relevant grounds are provided.

### **4.3 Appeal Convenor**

The Head of HR will, in consultation with the Director of HR, propose an Appeal Convenor to hear the appeal.

The Director of HR will advise the University Principal of the appeal against dismissal and request the appointment of the proposed Appeal Convenor.

The Appeal Convenor could be either:

- a University employee who is at a grade equal to, or more senior than, the person who made the original decision to dismiss the employee; or
- an external person drawn from a panel appointed by the Court, following consultation with the recognised Trade Unions, which may include members of the Court.

Care will be taken to ensure that there is no conflict of interest when appointing the Appeal Convenor.

This means that the appointed Appeal Convenor, if a University employee, should ideally work in a different School or Support Department<sup>4</sup>, and will be from a different College or Support Group where necessary to avoid a conflict of interest.

The Appeal Convenor will have had no involvement in the original decision to dismiss, and should not be familiar with the events which led to the employee's dismissal. Furthermore, the Appeal Convenor must have no other interest in the case, either personal or work related, which could influence their ability to carry out their duties objectively.

The Appeal Convenor will have access to an HR Advisor for guidance, support and advice. The Head of HR will be responsible for appointing an HR Advisor with no prior involvement in the case. Before appointing Appeal Panel members, the Appeal Convenor must familiarise themselves with the case, and the grounds for appeal, including any new evidence submitted by the employee.

---

<sup>4</sup> Support Department is a generic term which, for the purposes of this document, means a unit or division at level 5 within the University hierarchy.

If it is the case that substantial new evidence has come to light, the Appeal Convenor may decide at this stage that the matter should be referred back for reconsideration by the parties who made the original decision to dismiss, rather than the appeal continuing.

#### **4.4 Appeal Panel Membership**

Where the appeal is continuing, the Appeal Convenor will appoint up to two other panel members to sit on the Appeal Panel.

These panel members will normally be other employees who have had no prior involvement in the case, and should be selected on the basis of relevant expertise or experience in a specific area.

Care will be taken by the Appeal Convenor when appointing these panel members to ensure there is no conflict of interest; it may be appropriate to appoint a panel member who is external to the University where the relevant expertise or independence cannot be found internally.

The Appeal Convenor must inform the employee of the names of the other panel members at least one week before the hearing.

At this stage, if the employee identifies any potential conflict of interest, they should immediately alert the Appeal Convenor who will investigate how to resolve the issue with the HR Advisor, including, if appropriate, the appointment of an alternative panel member.

#### Academic staff<sup>5</sup>

In appeals from Academics, if the Appeal Convenor is not a member of the University's academic staff, an additional panel member, who is such a member, must be appointed. If the employee is an Academic at grade 8 or above, then, as per Court Resolution 55/2010, an external panel member will always be appointed.

In either case, the Appeal Convenor will seek guidance and support from the appellant's Head of HR in appointing additional panel members.

---

<sup>5</sup> An 'Academic' for the purposes of this policy, is defined as a Professor, Reader, Senior Lecturer or Lecturer or is otherwise engaged in teaching, the provision of learning or research



#### **4.5 Right to be accompanied**

Prior to the Appeal Hearing, the employee will be reminded of their right to be accompanied and represented by a trade union representative or workplace colleague. When arrangements are confirmed, the employee is responsible for notifying their chosen representative of the arrangements. They are also responsible for advising the Appeal Convenor in advance of the Hearing that they will be accompanied and by whom.

#### **4.6 Hearing the Appeal**

A hearing will be convened at which the employee will have an opportunity to make their case to the Appeal Panel. The employee and their Trade Union representative or workplace colleague, if they choose to be accompanied, are present throughout the Hearing. The Panel, and employee, will also have the opportunity to call witnesses where appropriate.

Normally, the person who made the original decision to impose a formal sanction, and the HR Advisor who supported them on procedural matters, will be present throughout the hearing.

The Appeal Panel will be asked to consider whether the original decision to dismiss was inappropriate on the grounds of appeal specified by the employee.

Where the dismissal is on grounds of redundancy, the Appeal Panel will receive any Equality Impact Assessment carried out as part of a collective redundancy situation.

The Appeal Panel can take the following action:

**For non-redundancy related dismissals**, they may:

- a) confirm the original decision to dismiss ; **or**
- b) uphold the appeal and overturn the original decision to dismiss, and either:
  - re-instate the employee to their former position or re-engage in a different position, and clear the employee of all charges; **or**
  - re-instate the employee to their former position or re-engage in a different position, and reduce the sanction to one falling short of dismissal, e.g. a final written warning.

**For appeals against redundancy**, they may:

- a) confirm the decision to dismiss on the grounds of redundancy; **or**

b) uphold the appeal and re-instate the employee. Where the employee's appeal focussed on procedural matters, and the appeal is upheld, they may require the relevant part of the procedure to be followed.

Where the Panel decide to overturn the decision to dismiss, the employee will be reinstated to the same job or a suitable job on equivalent terms and conditions with effect from the date their employment terminated, and their employment will be deemed to have continued as if no dismissal had taken place.

The decision of the Panel will be confirmed verbally where possible. It should also be confirmed in writing to the employee within one week of the Appeal Hearing. The letter to the employee should include the outcome of the Appeal Hearing, in addition to the reasons the Appeal Panel have reached that decision.

The decision of the Appeal Panel is final in terms of University procedures.

## **5. References**

Discipline and grievances at work: The Acas guide

Acas Code of Practice 1- Disciplinary and Grievance Procedures

## **6. Policy History and Review**

This policy was approved by CJCNC in April 2011 and took effect from 1 April 2011. It replaced Section 10 of 'Disciplinary Policy, Procedure and Regulations (Academic and Academic Related Staff)'; Section 5 of 'Disciplinary Policy and Procedure (non-Teaching Staff) (SAM 3:2)'; Sections 8 and 11 of 'Capability Policy for Academic and Related Staff'; Section 9 of 'Capability Policy for Technical, Clerical and Manual Staff'; Section 6 of 'Staffing Policy Statement and Procedures: Redeployment, Retraining and Redundancy (Academic and Academic-Related Staff); and Section 10 of 'Staffing Policy Statement and Procedures: Redeployment, Retraining and Redundancy (Non-Teaching Staff)', which ceased to apply from the same date.

A full review of this Policy was carried out, and amended as noted at Section 6.1, and was approved by CJCNC on 27 September 2013. Further review was carried out, and amended as noted at Section 6.2, and was approved by HRPDG on 28 September 2016. A minor clarification was

made to paragraph 4.6 regarding non-redundancy related dismissals, and was approved by HRPDG in June 2018. In the event of any significant change to the legal position on appeals against formal action or dismissal, relevant statutory requirements or any other related matter, this procedure will be subject to immediate review in consultation with the Trade Unions. In the absence of such a change, the policy will be reviewed by December 2019.

### 6.1 Change control record:

No.	Approval date:	Amendment made:	Approved by:
1.	27 Sep 2013	<b>Full Review:</b> The Policy review with only minor amendments applied: <b>Sections 2 and 3.</b> Clarifying and making consistent throughout the timescales for Notification of an Appeal and lodging the grounds for appeal. <b>Sub Sections 2.4 and 3.4</b> Clarification on those eligible to attend an Appeal Hearing.	CJCNC
2.	April 2015	<b>Minor Amendment:</b> Removal of the reference to Hours to be Notified which no longer has relevance.	HRPDG; CJCNC
3.	September 2016	<b>Full review</b> to reflect changes to redundancy redeployment procedures and accord all staff, irrespective of service, the right to appeal a formal sanction and dismissal.	HRPDG
4.	June 2018	<b>Minor Amendment:</b> clarification of wording in paragraph 4.6 regarding non-redundancy related dismissals.	HRPDG on behalf of CJCNC

### 7. Alternative Format

This document can be provided in alternative formats on request by email to: [UHRS@ed.ac.uk](mailto:UHRS@ed.ac.uk) or by calling 0131 650 8127.