**B&H Appeal Guidance**

**Grounds for appeal**

The complainant can appeal where they are dissatisfied with the outcome. An

appeal can only be made on one or more of the following grounds. Where the

complainant considers:

• that it was unreasonable for the investigating officer to have reached their

conclusion on the basis of the evidence and information obtained

• that the investigation was fundamentally flawed

• that the procedure was not followed and this has adversely affected the

outcome of the complaint.

**Registering an appeal**

To register an appeal, the employee must:

• submit their letter of appeal, in writing, to their Director within 10 working

days of receiving the investigating officer’s written confirmation of their

findings

• set out the grounds for appeal (it is insufficient for the employee just to

state that they wish to appeal without setting out their grounds)

• demonstrate the grounds on which they consider the decision to be

unreasonable.

**Who hears the appeal?**

The appeal must be heard by

• the relevant Director who in turn can nominate a Head of Service

• someone with no prior involvement in the case

**When should the appeal be heard?**

The manager appointed to hear the appeal should contact the employee in

writing with the appeal arrangements as soon as possible, and inform them of

their right to be accompanied at the appeal hearing.

The appeal hearing should normally take place **within 10 working days** of

receipt of the employee’s written notice of appeal.

If for some good and sufficient reason it is not practical to hold the hearing

within this timescale then the employee must be informed as soon as this

becomes evident, given an explanation for the delay and advised of the date

the hearing is expected to take place. This should only be within a few days

of the 10-day timescale.

**Who should attend the appeal hearing?**

• the manager chairing the appeal

• an HR Adviser to provide the manager with procedural advice and

guidance

• the investigating officer

• the complainant

• the complainant’s companion. This must be a work colleague or a trade

union representative

**Notifying the accused employee**

The manager appointed as Chair of the appeal hearing should write to the

accused employee, advising that the complainant has lodged an appeal.

**Conducting the appeal hearing**

The chair should hold the hearing in as private location as possible to ensure

there will be no interruptions (e.g. phone calls, maintenance work). The chair

should identify a separate room in case adjournments are necessary and

arrange for water to be made available in both rooms.

The chair should conduct the hearing by following these steps:

**Step 1 – Introduction**

Firstly explain the purpose and format of the hearing and deal with any

procedural issues that may arise

**Step 2 – Statement of grounds for appeal**

Ask the complainant to state their grounds and reasons for the appeal

**Step 3 – Response from the investigating officer**

Ask the manager who reached the conclusion following the investigation to

Respond

**Step 4 – Information gathering**

Question both the manager and the complainant

**Step 5 – Closing statements**

Give both parties the opportunity to make a closing statement, firstly the

manager then the complainant

**Step 6 – Adjournment**

Summarise the facts then adjourn the hearing to consider all of the relevant

issues that have emerged and make a decision

**Step 7 – Making the decision**

Decide whether there are sufficient and reasonable grounds to

• Uphold the appeal in full **or**

• Uphold the appeal in part **or**

• Reject the appeal

**Step 8 – Communicating the decision**

Re-convene the hearing so that you can notify the employee of your decision

and your reasons for it then confirm the decision in writing.

You should do so **within 5 working days** of the hearing.

The accused employee should also receive confirmation of the outcome of the

appeal.

If exceptional circumstances exist whereby it is not possible to respond by this

deadline, then the employee must be given an explanation for the delay and

told when a response can be expected.

**Factors to consider before reaching a decision**

In arriving at a fair and reasonable decision, the chair should:

• be prepared to overturn a previous decision if it becomes apparent that it

was not soundly based and is wrong – such an outcome does not

undermine authority but rather demonstrates the independent nature of the

appeal.

• listen carefully to both sides of the case and make a judgement as

objectively as possible

• satisfy themselves that no unfair bias or prejudice affected the original

decision

• consider whether previous responses were within the band of reasonable

responses

• consider whether any procedural deficiencies may have unfairly affected

the outcome and disadvantaged the employee (if this is the case made by

the complainant)

• pay particular attention to any new matters/evidence that has come to

light, whether this would have affected the outcome of the investigation

and whether the employee had the opportunity to raise these matters

during the investigation. The chair should ensure that the investigating

officer has an opportunity to comment on these

• check whether similar complaints have been made before and if so, how

they were resolved.

• explore possible opportunities to resolve the complaint, and check the

legitimacy of potential solutions with Human Resources.