**INSERT LOGO**

**Appeal Policy**

**Status of Policy:** Non- Contractual

**Review Date:** [insert date}

**Policy applies to:** Employees of the [name of organisation]

**1. Introduction**

All employees of the organisation have the right of appeal against a management decision/action in relation to:

* + Termination of employment
	+ Any formal disciplinary sanction
	+ An outcome of the Bullying and Harassment policy and procedure
	+ An outcome arising from a grievance or dispute
	+ Refusal of flexible working application under the Flexible Working Policy

**2. Purpose and Scope**

This policy and procedure applies to all staff employed by the organisation.

The purpose of the appeal procedure is to ensure that decisions are fair and reasonable in all circumstances and that appropriate process was followed in reaching decisions.

**3. Right to Representation**

Employees have the right to be accompanied by an accredited Trade Union representative or colleague at any appeal hearing. Consideration will also be given to allowing an employee as an alternative to be accompanied by a friend, not acting in a legal capacity. This consideration will be subject to the nature and sensitivities of the case.

It is an employees’ responsibility to arrange representation, and it should not cause unreasonable delay to the process.

**4. Appeal Procedure**

A summary of the appeal process is detailed at appendix A

4.1 How to Appeal

The employee must submit a written statement outlining the grounds of appeal.

An appeal may be made on one or more of the following grounds:

* A procedural error has taken place
* The decision reached was disproportionate, in the circumstances
* That further new material information has come to light which, had it been known by the panel at the time of the hearing, may have affected the panel’s decision.  This must be information that was unavailable at the original hearing or meeting and is pertinent to the case.

The written statement of appeal must be received by [insert appropriate person] within 10 working days of the date of the letter notifying the employee of the outcome giving rise to the appeal. The letter of appeal should be sent to the following address

INSERT ADDRESS

An employee choosing to be accompanied by a trade union representative, friend or colleague, not acting in a legal capacity, should state the name and address of her/his representative if this is known at that time.

4.2. Correspondence before an Appeal Hearing

4.2.1 Appeal Papers and Timeframes

A statement of appeal should be acknowledged in writing by [insert appropriate person] within 5 working days of receipt of the statement.

An appeal hearing date (in all cases other than dismissal) should be arranged within 10 working days of receipt of the appeal statement. wherever possible. In cases of an appeal against a dismissal the appeal should be heard, wherever possible, within 4 weeks of receipt of the written statement of appeal.

Where these time periods are not possible, both parties should agree a date to hear the appeal this date will be confirmed in writing to the employee. The employee will also be asked to confirm any witnesses who they intend to call.

The Chair of the Appeal panel will normally call the manager involved at the previous stage to present the management case.

The manger involved at the previous stage will be invited to prepare a statement in response to the employee’s appeal statement.

Any available original papers, together with the employee’s statement of case and the management case in response will be circulated to all parties at least 5 working days in advance of the hearing.

The Chair of the Panel will make arrangements for the delivery of papers.

Statements of case from both parties, and other papers will be circulated to:

* Members of the Appeal panel;
* The Manager presenting the case;
* The employee;
* The employee’s representative (at the employee’s request).

4.2.2 Witnesses

Either party (presenting manager or employee) can call witnesses to attend the hearing and they should advise the Chair of the panel in writing at the time of submitting their statement of case.

In all instances it should be clear why the presence of these witnesses will contribute to the decision making process.

Witnesses who attend to give evidence will normally be open to questions from all parties and will be asked to leave the hearing at the conclusion of their evidence. The appeal panel chair will indicate whether they should remain available for the duration of the hearing in case it is necessary to recall them.

If a witness is not available on the date of the hearing, they may submit a written statement instead, if appropriate

On very rare occasions, the Chair of the panel may need to seek further information or clarification after the hearing. In these circumstances, the Chair will give notice to both parties that such information is being sought.

If a witness is no longer required to attend the hearing, both sides should be advised before the hearing date.

Witnesses will not be advised of the outcome of the hearing by the panel.

4.3 The Appeal Hearing

**Guidance on the format of an Appeal Hearing appears at appendix B**

An Appeal hearing takes precedence over routine meetings and management and staff may need to reschedule appointments in order to attend.

Under normal circumstances an appeal hearing shall not be postponed. The hearing may be re-arranged only once if the employee or their representative is unable to attend. This would be expected to be within 2 weeks and not longer than one month from the original appeal hearing date. At the second attempt, the hearing will take place and a decision will be made in the absence of the employee unless there are extenuating circumstances or justification.

4.4 Constitution of the Appeal Panel following any decision except a dismissal/termination of employment

* Two members of [insert e.g. senior leadership team, parish council etc.] who have had no prior involvement with the case.
* The panel may be supported by a third person to ensure objectivity or to be an expert in the field relating to the employee’s place of work or from the profession to which the employee belongs.
* A note taker will usually be present.
* No member of the Appeals Panel should have had involvement in the decision giving rise to the appeal.

4.5 Constitution of the Appeal Panel following Dismissal/Termination of Employment

* A member of the [insert as appropriate e.g. senior leadership team/Parish Council etc.] team or, exceptionally, [insert as appropriate e.g. Vice Chair of the Council] or Chair of the Finance Committee/Staffing Committee],
* A further senior person in the Parish who has had no prior involvement with the case;
* A further advisor to the panel may be required in order to access specialist advice if the matter relates to professional code of conduct issues;
* A note taker will usually be present.
* No member of the Appeals Panel should have had involvement in the decision giving rise to the appeal.

4.6 Sickness Absence

The [organisation’s] aim is to proceed with all appeal hearings with the minimum of delay.  The appeal process may therefore continue during an employee’s sickness absence where that is ongoing.  In such situations, professional medical advice may, where appropriate be sought from Occupational Health to ascertain the anticipated length of the absence and whether the individual is fit enough to attend a hearing.  If the absence is likely to be lengthy, the employee should be offered the opportunity to submit a written case and the appeal may be heard in the employee’s absence based on the evidence available and a response made in writing. The absent employee may wish to be represented by their staff representative or colleague not acting in a legal capacity. Where this process is to be followed, case, it must be agreed by all parties prior to the hearing.

4.7 Conducting an Appeal Hearing

Guidance on the procedure to be followed at an Appeal hearing is set out in appendix B.

An appeal hearing will consider the case in respect of the grounds for appeal as stated in the employee’s written statement of appeal.  It will not re-hear of the original case.

The appeal panel will consider all the facts and the original decision will be reviewed.

An appeal is not a rehearing of the original case. The purpose of an Appeal hearing is to reconsider a decision taken on the basis of the merits of the case known at the time of the decision.

New evidence, not considered at the original hearing, will not normally be admitted at an appeal hearing. The exception will be when material new information has come to light which:

If any new evidence which fulfils these criteria, is to be introduced at an appeal hearing, both parties must be given notice, and sight of the evidence and given an opportunity to consider and respond to it.

All parties (excluding witnesses) will be present throughout the hearing. A note-taker may also be present.

4.9 Decisions of Appeal Panel

The role of the panel is to determine whether one or more of the grounds of appeal have been made out, i.e. whether, taking into account all the relevant facts and circumstances of the case, it is considered that:

* A  procedural error had taken place
* The decision reached by the original panel was disproportionate, in the circumstances
* That further new material information had come to light which, had it been known by the original panel at the time of the hearing, may have affected the panel’s decision (see 4.7, above for the circumstances in which new evidence can be admitted at an appeal hearing).

The options available to the appeal panel are as follows:

* To uphold the previous decision.
* To overturn the previous decision.
* To apply an alternative solution/sanction.

In cases of appeals against the outcome of a disciplinary hearing, sanctions can, in exceptional circumstances, be increased.

The decision of the Appeal Panel, and the reasons for reaching that decision, will normally be announced at the end of the Appeal hearing. Decisions will be confirmed in writing, usually within 5 working days. If the panel is unable to reach a decision on the day of the hearing, the Chair will confirm with the employee that the decision will be advised in writing or arrange a further meeting to continue the Appeal hearing.

The following information should be supplied in the letter:

* The date, venue and names of the people in attendance;
* The reason for the appeal and brief details;
* The decision;
* The reasons for the decision;
* Where relevant, what action needs to be taken

The appeal decision will be final and there is no further right of appeal.

**5. Privacy and Data Protection Statement**

In accordance with the GDPR (General Data Protection Regulation), employees have a right to access information that XX may hold on them. This includes information regarding any HR processes undertaken (e.g. flexible working applications, grievances, disciplinary action etc), or information obtained through monitoring processes (e.g collation of information about number of days sickness absence). The way in which information about an employee will be used is outlined within the XX Privacy Notice, copies of which are available from XX.  XX is committed to being transparent about how it collects and uses personal data and to meeting its data protection obligations. To this end, XX undertakes that the employee will be made aware of any information regarding them that is gathered as part of a HR process.

As a data subject, each employee has a number of rights (outlined in the Privacy Notice).

If you would like to exercise any of these rights, please contact the XX Data Protection Officer.

# Appendix A - Flowchart giving overview of the Appeals Process

Employee informed of their right to appeal

Employee submits a written statement of appeal to [insert appropriate person] within 10 working days

Appeal may be on the following grounds:

A  procedural error has taken place

The decision reached was disproportionate, in the circumstances

That further new material information has come to light which, had it been known by the panel at the time of the hearing, may have affected the panel’s decision.

The appeal will be acknowledged in writing by [insert appropriate person] within 5 working days of receipt of the appeal.

Appeal against decision except a dismissal should be heard within 10 working days of receipt of appeal. Appeal against dismissal should be heard within 4 weeks of receipt of appeal.

Management and each employee submit a written statement of case 5 working days before the date of appeal hearing.

Appeal Hearing held in accordance with the process as set out in Appendix B

# Appendix B - Guidance on conducting an Appeal Hearing

This template is for guidance - it is recognised that the Chair will need to determine how best to manage any hearing given the individual circumstances of the case.

**Introduction**

* Chair welcomes attendees.
* Chair requests that all attendees turn off any electronic devises to avoid unnecessary interruptions during the meeting.
* Introductions of those present and their roles including: panel members, note-taker, and the person/people presenting the management response to the appeal (the Respondent/s) – i.e. the person who chaired the original hearing – who may be accompanied by another of the original panellists
* The employee who has raised the appeal (the appellant) is asked to introduce him/herself and any companion/representative. Chair will check whether the participants are happy with use of first names or how they prefer to be addressed.
* Chair confirms with the employee that they have received the letter notifying them of the appeal hearing/meeting and any associated documentation.
* Chair advises that any questions, comfort breaks and adjournments requests should be directed to the Chair.
* Chair identifies the location of the rooms available to both the employee and member(s) of the original panel, to be used should any adjournments be required.

**Preliminary Matters**

* Chair confirms that the appeal hearing/meeting is a result of the decision of a (disciplinary/ capability/sickness/grievance) panel, providing the date of original hearing/meeting and its outcome.
* If the appeal hearing/meeting has been rescheduled, Chair confirms with the employee that they acknowledge why this was the case.
* Chair reaffirms that the appeal process is not an opportunity for a re-hearing of the original submission but to: consider the grounds of their appeal i.e. that the appeal is based in one or more of the following:
1. That the appellant believes that a procedural error had taken place
2. That the appellant believes that the decision reached by the original panel was disproportionate, in the circumstances
3. That further new material information had come to light which, had it been known by the original panel at the time of the hearing, may have affected the panel’s decision (see 4.7 of the Appeal Policy for the circumstances in which new evidence can be admitted at an appeal hearing).
* Chair advises that the options available to the appeal panel are as follows:
1. To uphold the previous decision.
2. To overturn the previous decision.
3. To apply an alternative solution/sanction.
* Chair advises that the decision of the appeal panel will be made after the hearing, either following an adjournment, or after closing the hearing, should it require more time to consider the case. The outcome will be confirmed in writing usually within 5 working days of the hearing.
* Chair advises that the appeal decision will be final and that there will be no further right of appeal.

**Clarify the procedure**

* Chair advises of the procedure to be followed, or if appropriate invites the HR representative to outline the procedure [see “the presentation of the appeal” below].
* Representation of Employee – If the Appellant is accompanied, Chair confirms the role of the companion, i.e. that they will be able to address the hearing in order to: put the employee’s case forward; sum up the case; respond on the employee’s behalf to any view expressed at the hearing; and confer with the employee. However, the representative will not usually answer questions on behalf of the employee – although in exceptional circumstances, and with the agreement of the panel, they may do so.
* If the employee is not accompanied, Chair confirms that the Appellant has been advised of their right to be accompanied but has chosen to attend unaccompanied.
* Chair clarifies whether any witnesses are being called, and that this has been agreed with the Appeal Chair in advance. Chair reiterates the point that an appeal is not a re-hearing of the original case and that, therefore, any witnesses called should be questioned only on areas relating to the grounds of the appeal.

**Documentation**

* Chair confirms the documentation provided,
* Chair confirms that no additional documentation is being presented which has not already been shared.
* Chair advises that it is the employee’s responsibility to specifically draw the panel’s attention to all relevant documentary evidence that should be considered in relation to their grounds for appeal.
* Chair explains that anything that does not relate to the grounds for appeal or which is not directly referenced by the appellant, will not be taken into consideration for the purpose of this procedure.

**Note Taking**

* Chair advises that the note-taker will take summary (non verbatim) notes to support the panel’s consideration. Should the employee want a summary of these notes these can be provided on request. Chair advises that both the employee and their representative are welcome to make their own written notes.
* Chair/other appropriate panel member responds to any procedural concerns/queries that may arise.

**The presentation of the Appeal**

*Please note that not all of these steps will be required, if no witnesses are being called.*

1. The Appellant will be invited to present her/his case, during which it would be helpful if s/he directed the panel to the issues that they would like the Appeal Panel to consider.
2. Where previously agreed with the Chair, the Appellant’s witnesses may be called.
3. The Appeal Panel will ask questions/seek clarification as necessary from both the Appellant/Representative and any witnesses.
4. The Respondent(s) have the opportunity to ask clarifying questions of the Appellant and any witnesses.
5. The Respondent (s) responding to the appeal will be invited to present their case, responding to each of the points raised by the employee and making their representation to the panel.
6. Where previously agreed with the Chair, the Respondent’s witnesses may be called.
7. The Appeal Panel will ask questions/seek clarification as necessary from both the Respondent(s) and any witnesses.
8. The Appellant/Representative has the opportunity to ask clarifying questions of the respondent and any witnesses.
9. The Appellant/Representative has the opportunity to make a closing statement.
10. The Respondent(s) have the opportunity to make a closing statement.
11. The panel adjourns to consider their decision.

**Adjournment and Deliberation**

1. The appeal panel will carefully consider the evidence which they have heard and conclude whether the appeal case has been made out, i.e. whether they conclude that:

* a procedural error had taken place
* that the decision reached by the original panel was disproportionate, in the circumstances
* further new material information which had come to light would have affected the original panel’s decision, had it been known at the time of the hearing, and which therefore should now alter the outcome.

2. Based on this deliberation, the appeal panel will make a decision whether to:

* uphold the previous decision.
* overturn the previous decision.
* apply an alternative solution/sanction.

3. If the appeal panel believes that it needs more time to consider all the evidence and that therefore it is not reasonable for the parties to wait, they may adjourn the decision, with a clearly identified timeframe within which the decision will be made and communicated.

4. Exceptionally, the appeal panel may conclude that they are unable to make a decision because further information is required. Where this is the case, the panel should consider exactly what information is required, how/from whom it will be obtained and when it will be obtained by.

5. Very exceptionally, the appeal panel may conclude that the original investigation or hearing was flawed so significantly, that there should be a re-investigation or re-hearing. NB this conclusion should take place only in **very** exceptional circumstances,

**Decision**

1. The Appellant/Representative, and the Respondent(s) are called back to the meeting to hear the decision of the appeal panel.
2. The Chair explains the decision of the panel and the rationale for reaching this conclusion.
3. The Chair explains that the outcome of the appeal hearing will be confirmed, in writing, to the Appellant, copied to the Representative and to the Respondent(s) – usually within 5 working days of the appeal hearing.
4. If the panel requires more time for deliberation, the Chair explains this to all the parties, and advises when the decision will be made. The Chair also agrees with the Appellant/ Representative whether they prefer to attend a further meeting to hear the outcome, or whether they prefer to receive the outcome in writing.
5. If the panel has been unable to make a decision because further information is required, the Chair explains what information is required, how/from whom this will be obtained and when it will be obtained by. The Chair also agrees with the Appellant/Representative whether they prefer to attend a further meeting to hear the outcome, once this information has been considered, or whether they prefer to receive the outcome in writing.
6. If the panel have concluded that a re-investigation or re-hearing is essential, this is explained by the Chair, and an outline of how this is to be achieved is given.
7. The panel Chair thanks all parties for their contribution and closes the meeting, ensuring that everybody is clear about the outcome what will happen next.

**Record of the meeting**

1. The summary notes of the meeting should be typed, and shared with relevant parties (the Appellant/Representative and Respondent).
2. The notes need to clearly state the outcome, any agreed actions, timescales etc.
3. The notes should be securely stored, as they may be required at a future procedure.