



The Scottish Parliament
Pàrlamaid na h-Alba

Disciplinary Procedures - Brief for the Appeal Manager

Pròiseasan Smachdachaidh – Brath-ullachaidh airson Manaidseir an Ath-thagraidh

19 December 2018



The appeal stage of the [Disciplinary Procedures](#) reflects the right of employees to appeal any action taken against them or sanction applied. If the member of staff pursues an Employment Tribunal claim, the way in which the appeal is handled may be an important aspect of any Employment Tribunal claim or defence. The appeal manager will normally be the Assistant Clerk/Chief Executive with responsibility for the business area. However, under certain circumstances, the Human Resources Office will designate another manager to hear the appeal. Such circumstances may be because the line AC/CE has had previous involvement in handling the case, or the person raising the appeal has a right to appeal to a higher level due to the seniority of his or her post.

If you are hearing the disciplinary appeal you should:

- deal with it promptly (and within the timescales set out in Section 5 of the [staff handbook](#))
- advise the member of staff of their entitlement to be assisted by a trade union representative or work colleague (you should be aware that if the member of staff is a member of a union other than the PCS, Prospect or the FDA, they will still be entitled to have representation)
- Beyond this, you should not, however, permit any other person outwith the organisation to assist the member of staff at the Appeal Hearing)
- hold the Hearing at a suitable time, giving reasonable notice so that the member of staff can inform and consult his or her representative (Where possible, Appeal Hearings should be scheduled to be heard in the morning or early in the member of staff's shift to allow yourself appropriate time to reach and communicate a decision on the same day if at all possible)
- be prepared to hold the Hearing off-campus if the circumstances are such that this might be warranted
- ensure all relevant facts and documents are available to you and to the member of staff
- inform any witnesses and relevant managers that the Appeal Hearing is taking place and that you may have to contact them at short notice
- invite the representative nominated by the Human Resources Office, to provide you with procedural advice and to take a note of the Hearing on your behalf
- ensure that a factual and objective note of the Hearing is taken

Preparation

Remember you are in charge of the process and as part of your preparation for the Hearing you should:

- read Section 5 of the Staff Handbook to ensure that you are up to date with the current Disciplinary Policy and Procedures
- consider carefully the background to the disciplinary case, including the written grounds for appeal
- examine the original decision closely and the reasons for it and consider the ground(s) of appeal
- consider if you need to make any enquiries before the Hearing to clarify matters that are not clear to you
- consider any lines of questioning that you may wish to adopt
- have a prior discussion of the case with the representative nominated by the Human Resources Office to ensure that you are fully aware of all the necessary procedural issues



The Appeal Hearing

When hearing the appeal you should:

- introduce those present and explain why they are there
- explain that the purpose of the Hearing is to consider the appeal against the outcome of the Disciplinary Hearing
- give the member of staff the opportunity to explain the reasons for the appeal, tell you why he or she was not satisfied with the original decision and what he or she thinks would be a reasonable solution
- carefully consider any new evidence which has come to light which if known at the time, may have resulted in a different outcome to the Disciplinary Hearing
- allow the member of staff (or his or her representative) the opportunity to comment on any new evidence which has come to light
- ask the Human Resources Office representative if he or she has any comments before you adjourn to deliberate (this will ensure that all points have been covered)

General Questioning and Discussion

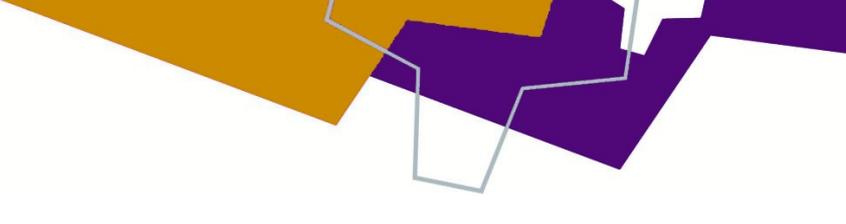
It is up to you to encourage an open and frank discussion and to do this you should:

- keep the approach formal and polite whilst encouraging the member of staff to talk freely with a view to establishing all the facts
- be fair and impartial
- use questions to clarify all the issues and to check that what has been said is understood (reflecting what has been said to you and frequent short summaries are helpful in this regard)
- go through the complaint regarding the member of staff's conduct and the original response to it to obtain more details on why the member of staff has appealed against the original decision
- ask open-ended questions – e.g. what happened then? – to get the broad picture and find out whether there is any new evidence since the earlier decision
- be careful not to make any remarks that may cause offence

If you think that any further investigation is necessary or you need to clarify any points with witnesses, you should adjourn the Hearing to allow you the opportunity to conduct further enquiries. You can:

- ask the Investigating Officer to investigate further
- appoint someone else to investigate on your behalf; or
- ask the witnesses questions direct

You should then reconvene the Appeal Hearing and report the outcome of your further investigations. You must always give the member of staff the opportunity to discuss these outcomes.



Summing Up

At the end of the Hearing, you should summarise the main points and check whether the member of staff has any further points to add.

The Decision

You should adjourn the Hearing before making a decision. It is preferable for you to come to a decision on the same day so you may wish to adjourn for a period and reconvene at a specific time and invite the member of staff to return at that time when you will be able to give them a decision. During the adjournment you should check once again with the Human Resources Office representative that all matters under appeal have been covered.

If you are unable to make a decision straight away, you should tell the member of staff that this is the case and make arrangements for the Hearing to be reconvened at a time by which you expect to have made your decision.

Concluding the Appeal Hearing

When you reconvene the Hearing you should inform the member of staff of your decision, the reasons for it and confirm that this is the final stage of the disciplinary procedure and that there is no further right of appeal.

You should confirm your decision in writing to the member of staff within seven working days of the Appeal Hearing. The note of the Hearing should be attached to the letter confirming your decision. You should ask the member of staff to confirm that the note is an accurate record of the Hearing. If the member of staff has any comments on the terms of the note, it is a matter for you to accept any comments that are acceptable to you. However, if you do not agree to the comments, you should let the member of staff know this and, at your discretion, you may attach his or her comments to the note with a record saying that you do not agree with them. This process is a courtesy only and will not impact on the final decision.

Records

All of the paperwork connected with the appeal should be given to the Human Resources Office representative who will ensure that it is kept in accordance with the terms of the Data Protection Act 1998.

Confidentiality

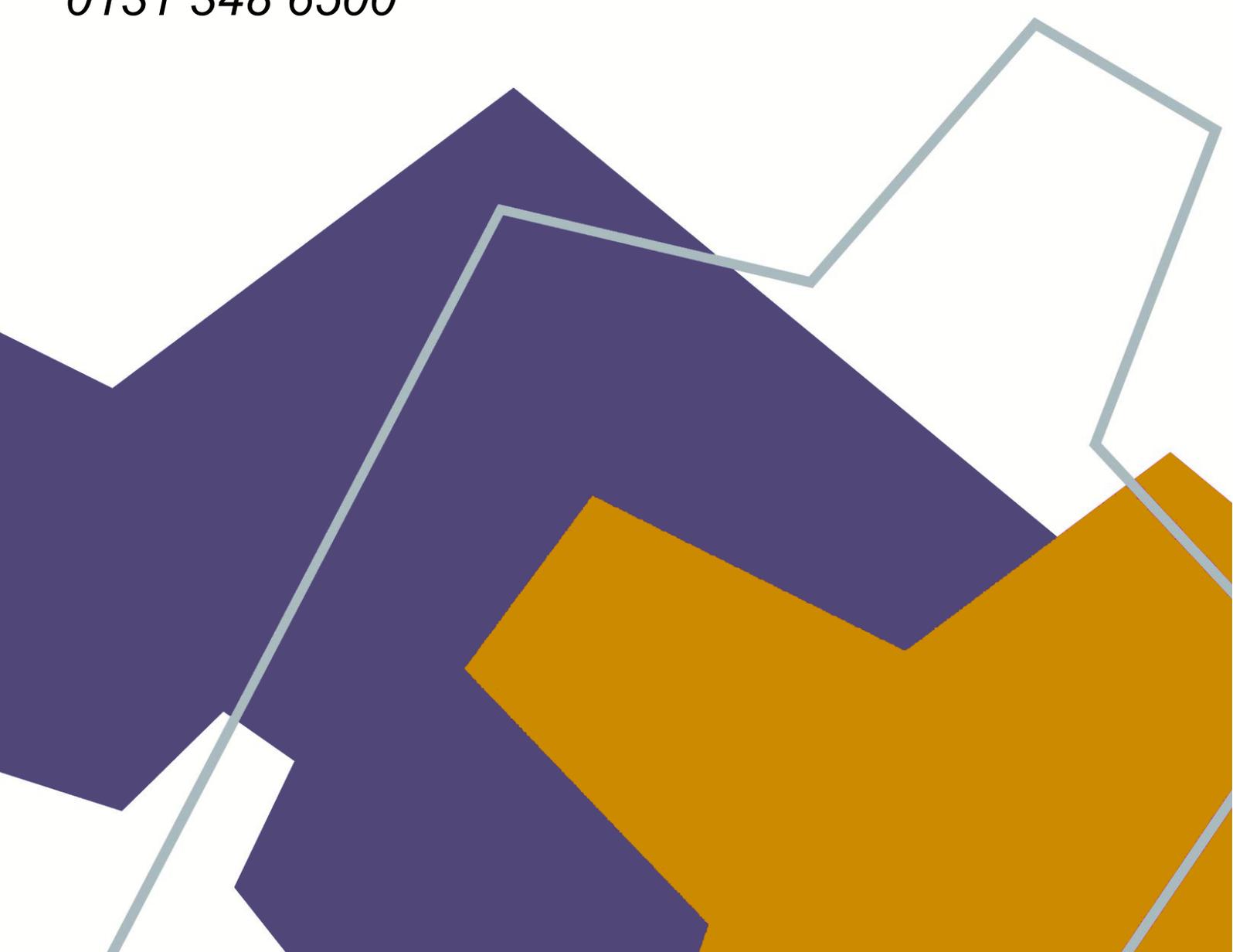
The appeal proceedings are confidential and, as such, should not be discussed with anyone other than those who have participated in the process unless it is necessary and only then on a strictly “need to know” basis.

Disciplinary Procedures - Brief for the Appeal Manager

For further information contact:

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An abstract graphic at the bottom of the page consists of several overlapping geometric shapes. There are two large purple shapes and one large orange shape. A light blue outline of a complex polygon is overlaid on these shapes, extending from the bottom left towards the top right.