

## **Conduct of the Appeal Hearing**

- The Appeal Panel must conduct the meeting ensuring good order and natural justice to ensure that both sides have a fair hearing.
- The panel must allow an opportunity for both sides to put their case fully including an opportunity to call witnesses and to put questions to witnesses brought by the other side.
- The Appeal Panel will not consider issues that are not relevant to the grounds of appeal.
- The panel will adjourn to consider the appeal and whether the disciplinary action taken was appropriate.

## **Procedure at the Appeal Hearing**

- The Manager /Chair of Members Panel hearing the Appeal – introduces everyone, confirms purpose of Hearing, advises employee of their right to be represented if not, and asks all present to confirm receipt of documentation sent out relevant to the appeal.
- The Employee/Representative – sets out reason(s) for their appeal, can call witnesses and introduces any new information not previously available to the panel.
- Manager who made the decision to take disciplinary action responds to employee's statement.
- Both Parties and Appeal Panel given opportunity to ask questions of the witnesses.
- Manager who made the decision to take disciplinary action summarises their case.
- Employee's /representative summarises their case.
- The Hearing adjourns while the Panel considers the case in private (only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will return).
- The following is a list of questions the panel must address:

The following is a list of questions the Appeals panel must address.

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| 1. Was there as much investigation as is reasonable in the circumstances, i.e. did the conduct panel have all the relevant information it needed to consider in making a decision to dismiss? | YES | NO |
| 2. Were the requirements of the conduct procedure properly complied with, including advance notice to the 'employee' of the allegation to be considered at the conduct hearing?               | YES | NO |

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| 3. Did the Conduct panel pay sufficient regard to any explanation put forward by or on behalf of the 'employee'?   | YES | NO |
| 4. From the Appeals panel papers and the cases submitted at the hearing by both the employee and management, does the appeals panel believe that the 'employee' committed the misconduct as alleged?                     | YES | NO |
| 5. Does the appeals panel believe there are reasonable grounds on which to sustain and justify that belief on the balance of probabilities - is it more likely than less likely that the 'employee' did what is alleged? | YES | NO |

**“YES” answers to all of these questions will mean that the Appeals Panel is in agreement that an act of misconduct was correctly determined by the Conduct Panel. The next consideration for the Appeals Panel will be whether the decision to dismiss was appropriate.**

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| 6. Does the Appeals Panel find that the misconduct was sufficiently serious to justify the decision to dismiss by the Conduct Panel?  | YES | NO  |
| 7. Does the Appeals Panel find that the Conduct Panel took account of any mitigating circumstances put forward by or on behalf of the 'employee', and any response to these by management's representative? | YES | YES |
| 8. Does the Appeals Panel find that the decision to dismiss was reasonable in all the circumstances?  | YES | NO  |

The panel needs to remember that their decision can be challenged internally and externally (Employment Tribunal). The above eight questions should be considered carefully before deciding the appropriate disciplinary action. If the panel can show that they considered all eight of these questions they will be able to demonstrate the reasonableness of their decision and have more chance of being able to defend their decision at appeal or tribunal.

- Manager who made the decision to take disciplinary action and employee (and his/her representative) recalled and Manager/Chair of the Members Panel relays the decision on whether the appeal was successful or not, together with the implications of the decision.
- The decision will be confirmed to the employee within 5 days of the Appeal Hearing by the Manager hearing the appeal. They should ensure they provide reasonable justification to support the outcomes.