

## **Managing an Appeal - iDerby guidance**

This page tells you about employee appeals. There is also separate guidance for employees making an appeal.

### **What are appeals?**

An appeal is a process that allows employees to ask for a decision that has been taken to be looked at for a second time. For example, if a warning was given during a disciplinary proceeding and new evidence has arisen that could have affected that decision; an appeal is an opportunity for this to be considered.

### **Chair's responsibilities**

The Chair of the original hearing is responsible for managing any appeal, this guidance details their responsibilities. Employees who wish to appeal should refer to making an appeal – Employee Guidance on iDerby.

### **There are three stages of the process:**

- Receiving and acknowledging an appeal
- Arranging the appeal hearing
- Holding the appeal hearing

### **Receiving and acknowledging an appeal**

Appeals are made to the Chair who made the original decision at the previous hearing. You are responsible for acknowledging the appeal and arranging the appeal hearing.

Employees have ten calendar days to make their appeal from the date of the letter advising them of the decision of the hearing. This takes into account if the hearing was reconvened or if you (as the chair) needed more time to consider further and didn't advise the outcome until later.

To make an appeal, employees are strongly advised to use the electronic e form. This ensures that:

- The basis of the appeal is clearly set out.
- Any supplementary information is provided at the same time.
- The appeal is received speedily and a delivery acknowledgement is automatically generated.

If the appeal was submitted electronically by e-form, make sure any attachments are saved. A copy will automatically be sent to Strategic HR for them to allocate a HR

Advisor to support the appeal chair, and the employee will have received a delivery acknowledgement.

You should contact the HR Advisor who supported you as chair of the original hearing to seek advice. We need to be clear about the grounds for appeal and may need to ask the employee for further information.

Whether the form is received electronically or by hand, the employee should receive a response immediately using the appropriate acknowledgement letter:

- Acknowledgement template letter
- Appeal out of time letter - If the appeal is out of time because more than 10 calendar days have passed since the decision was received by the employee, contact Strategic HR for advice.
- If the appeal is going ahead, download the Manager action record. This is to provide a factual record of key dates and actions taken. It may be used as further evidence if required. Complete as much of the information as you can.

## **Arrange the appeal process**

### **Preparation**

As the Chair of the previous hearing it is your responsibility to arrange the appeal hearing.

An appeal hearing will be heard by a tier 1 or 2 Director and, *other than in exceptional circumstances*, will be held within 14 calendar days of receipt of the employee's appeal. The employee must be given a minimum of seven calendar days' notice of the appeal hearing date.

### **You will need to:**

- **arrange a chair for the hearing.** This must be a Tier 1 or 2 Director, usually from within your directorate, but not from the same service area to maintain impartiality for the employee. You can arrange for a Tier 1 or 2 Director from another directorate to chair the hearing if this will avoid delay.
- **ensure any witnesses you wish to call will be available to give evidence at the appeal hearing.** Remember this hearing will only address the points of the appeal so unless the witnesses' evidence is relevant to the points raised in the appeal it is unlikely you will need to call them.
- **find out who the HR Advisor will be.** Contact Strategic HR to find out who the HR Advisor will be and advise the Chair of this. Strategic HR should have received a copy of the appeal application form and already allocated an Advisor.

- **find out if the employee or their companion requires any reasonable adjustments for the hearing.** For example, you will be aware from the original hearing you chaired whether a signer was required. Make sure any reasonable adjustments are also available at the appeal hearing.
- **find out who is taking notes.** Everyone is responsible for making their own notes, but if all parties agree, a neutral individual may attend to take minutes of the meeting. You as the chair would be responsible for organising this additional resource.
- **book a room for the appeal hearing.**
- **send out with the invite letter.**
- **prepare the management appeal response document for the employee to receive at least 7 calendar days before the appeal hearing.** The majority of this information will already be available from the original hearing documentation or statement of case. You will need to summarise the original case explaining how the decision was reached and addressing any appeal points. A management response appeal template is available.
- **Invite attendees**

Prepare the appeal invitation letter and ensure the following are included...

- Hearing Plan - Appeal
- Employee Information - Appeal, this tells an employee what to expect and how to prepare for the hearing.
- If you have completed your management response appeal and associated appendices, this can be sent with the invitation letter. However the invite letter should be sent with as much notice as possible, so the management appeal response can be sent later if necessary as long as the employee receives it no later than 7 calendar days prior to the hearing.
- Send the invitation letter and documents to the employee, ensuring a copy goes to:
  - the Chair of hearing - the Tier 1 or 2 Director.
  - the HR advisor appointed earlier who will act as adviser to the Chair of the hearing.

Send this letter by second class mail. In exceptional circumstances you may wish to consider hand delivery. If you use hand delivery, ask someone neutral who has no involvement in the case to deliver the letter. If you feel you need evidence of this you can ask the person to sign to say they have delivered it using the hand delivery receipt template

### **How to deal with delays to appeal hearings**

Everyone involved in the appeals procedure has a responsibility to ensure that the process runs as smoothly and quickly as possible. Remember that any delays may add to any concerns or anxiety an employee experiences in this kind of situation. You need to ensure that as far as possible, you and anyone else involved in the process do not cause any delays. You should liaise with all known parties to arrange a date suitable for everyone to avoid delays.

Only one postponement will be allowed.

### **Delays caused by the employee's companion**

The employee is responsible for arranging someone to accompany them. If the employee's companion cannot attend the original date of the appeal hearing they may offer a reasonable alternative date to you within seven calendar days.

### **Delays caused by Witnesses**

The employee is responsible for arranging for their witnesses to attend. However, an appeal is not a re-hearing of the original case. It will only address the points the employee raised in their appeal. So they may not need any witnesses.

### **Alternative dates**

If the employee offers an alternative date that is not suitable for management, dialogue should take place to ensure a date is confirmed as soon as possible, keeping any delays to an absolute minimum.

Consider asking an alternative tier 1 or 2 officer to chair from another department to Chair. If the assigned HR Advisor cannot make an alternative date, a different HR Advisor can attend.

### **Delays caused by medical reasons**

If an employee is likely to be sick for more than 14 days and the appeal is not related to capability attendance they should be referred to occupational health. This is to assess whether they are fit to attend a hearing. The hearing may then be rearranged in line with advice from occupational health.

### **Delays caused by reasonable adjustments**

If the employee or their companion requires reasonable adjustments (for example, a BSL interpreter) and this impacts on the date of the hearing, ensure you act reasonably and take this into account when organising a date but keeping delays to a minimum.

### **Delays caused by employee absence**

The absence of the employee themselves does not mean you cannot proceed with the appeal hearing. If the employee cannot attend, their companion can represent them, again avoiding necessary delays. Seek advice from Strategic HR.

Where an employee fails to attend the appeal hearing and has given no justifiable reason, you may write to them using the Appeal hearing/meeting absence notification - letter template. Seek advice from Strategic HR before using this letter.

Remember that except in exceptional circumstances appeals will only be postponed once.

In all cases, where an employee is repeatedly unwilling or unable to attend the appeal hearing, consider all the facts and come to a reasonable decision on how to proceed. This may mean that you need to make a decision based on the evidence available. Seek advice from Strategic HR before proceeding.

### **The right to be accompanied**

Employees have a legal right to be accompanied by either:

- another employee of the Council or
- a trade union representative. The trade union representative does not have to be a specifically named representative it can be any representative of the employee's union.

This is in addition to any support needed such as interpreters, signers or any other reasonable adjustment under the Equality Act 2010. Reasonable adjustments should also be made for the employee's companion if they require any.

If the employee wishes to be accompanied at the appeal hearing, they should confirm with you who their companion is. The role of a companion is described in the Hearing Plan - Appeal. If you have concerns or a query about whom the employee has asked to bring as a companion, contact Strategic HR for advice.

### **Solicitors as companions**

If the employee asks to bring a solicitor as their companion, contact Strategic HR for advice. Although a solicitor falls outside the definition of a companion, there is case

law that applies in some potential dismissal cases that may be defined as 'career ending' - where the hearing could determine whether an 'individual' is barred from practising their profession, which may then justify a solicitor attending as a companion.

### **Confidentiality**

Everyone involved in the appeal process is expected to maintain confidentiality at all times. You should not discuss the matter with anyone not directly involved in the process.

### **Holding the appeal hearing**

The Chair should follow the process in the appeal Hearing Plan - Appeal. You will attend as management representative. The Chair will make the decision, taking advice from the HR Advisor and communicate this verbally at the hearing.

There are 3 options when hearing an appeal:

- Uphold the appeal
- Substitute a lesser penalty
- Dismiss the appeal

### **Outcome of the hearing**

#### **Actions for the Chair**

Having verbally informed the employee of your decision, you will send your final decision in writing to the employee within seven calendar days from the date of the hearing using the relevant appeal hearing outcome letter.

- Outcome decision not upheld – letter template
- Outcome decision not upheld, lesser sanction - letter template
- Outcome decision not upheld, no sanction - letter template

Send this letter by second class mail. In exceptional circumstances you may wish to consider hand delivery. If you use hand delivery, ask someone neutral who has no involvement in the case to deliver the letter. If you feel you need evidence of this you can ask the person to sign to say they have delivered it using the hand-delivery-receipt-template.

Once the appeal is complete, there is no further right of appeal and the decision is final.

If the appeal hearing is held in the absence of the employee, or a decision is not given verbally, make sure the employee has a reasonable opportunity to receive the letter before the effective date. Seek advice from Strategic HR.

### **Document retention**

The Chair should assemble all the case papers and send them securely and confidentially to Strategic HR. Strategic HR will retain copies of all relevant papers and arrange for the case to be recorded on the HR systems.