An employee has the legal right to appeal against the decision made following a disciplinary hearing. They must be notified of this right in the letter that notifies them of the outcome of the disciplinary hearing. The deadline to appeal is five working days from when the employee receives notification of the decision in writing.

If the employee does appeal, as the Appeal Manager, you must try to hold the appeal hearing without unnecessary delay.

**Preparing for the appeal hearing**

The purpose of an appeal is to enable an independent review of the ‘reasonableness’ of the outcome of the disciplinary hearing. It is important the appeal does not become another disciplinary hearing but focuses on reviewing the process followed and the appropriateness of the decision. As the Appeal Manager you should consider the following points:

- Has a thorough and sufficient investigation been conducted?
- Was the manager’s decision to take disciplinary action reasonable based on the evidence relating to the case?
- Was the disciplinary action decided upon reasonable, given the circumstances of the case?
- Is the treatment of the employee consistent with the Learning Trust’s general approach to similar cases (where the Trust is the provider of HR services)?
- Has the matter been handled fairly and appropriately and is it consistent with the Disciplinary Procedure?
- Is there any new evidence, which, if known at the time, would have altered the decision?

**Note:** There is a toolkit on the Intranet, which contains letters and templates to support the appeal process.
The right to be accompanied

It is a statutory right for a worker to be accompanied, by a fellow worker or trade union official, at appeal hearings. Workers may be overawed or feel intimidated by some hearings, and the accompanying person can help the individual to make all the necessary points. A trade union representative would usually come from a recognised union.

The accompanying person can address the meeting, but not answer questions on behalf of the worker.

Dealing with delays

If the employee is genuinely unable to attend the appeal hearing, e.g. because they are ill, offer them an alternative at a reasonable date and time.

If the accompanying person cannot make the hearing, the employee must propose another date and time which is no more than five working days after the day you originally proposed, beginning with the first working day after that day.

If the employee fails to attend the rearranged hearing, this stage of the procedure is complete and you can make your decision there and then on the available information.

Don't forget that you will still have to tell them in writing of the decision and that there is no further right of appeal available.

If you cannot make the hearing, you must offer the employee a reasonable alternative date and time. It is important that you notify the employee as soon as possible of any delays. If you fail to do so, a tribunal could increase any compensation awarded against you.

Points to consider

1. It is important to act in good faith and not be unduly influenced by what has gone before, or be committed to upholding the previous decision.

2. There must be opportunity to hear both sides of the case and to weigh up the pros and cons as objectively as possible.

3. You should be satisfied that the procedure has been followed properly and if not use the appeal hearing to right earlier procedural deficiencies.

4. All matters raised which are relevant to the decision, whether or not they were known to the manager at the time of taking the decision should be considered.

5. You should be satisfied that a thorough investigation has taken place and all reasonable efforts have been made to gather the relevant evidence.
During the hearing

- As the Appeal Manager, you will chair the appeal hearing and introduce those present. In most instances the other people in attendance will be the HR representative from the disciplinary hearing, the disciplinary Hearing Manager, the employee concerned and their representative (or person accompanying them) and a supporting HR representative not previously involved in the case. In exceptional cases, it may be appropriate for another specialist to be present to assist the Hearing Manager where there is a need for professional/technical advice.

- You should explain the purpose of the appeal hearing which is usually to determine whether the outcome from the original hearing was correct and whether the disciplinary sanctions imposed at that hearing should be upheld, overturned or replaced with another sanction. You should also explain the procedure to be followed during the hearing and confirm that all parties have copies of the appropriate paperwork.

- The parties present at the appeal hearing will introduce themselves and confirm their respective roles in the hearing.
  - You should explain that the hearing is being conducted as part of the disciplinary appeals procedure and a written record of the meeting will be made. It should be stated if any witnesses have been asked to give evidence and if so who they are.
  - The conclusions reached at the disciplinary hearing should be fully explained and the evidence on which those conclusions were based.
  - You should explain the role of the employees accompanying person or trade union representative if present. If the employee is unaccompanied, you should confirm that the employee understood that they had the right to be accompanied, but chose not to exercise this right.

- The employee or their representative will be asked to set out the ways in which he or she believes the conclusions of the disciplinary hearing were flawed.

- You should conduct a review of the evidence heard at the original hearing and consider the points raised by the employee in respect of each conclusion. Where the original hearing heard evidence directly from witnesses, you may decide to either consider the written record of their evidence, or to recall them to give evidence directly to the appeal panel.

- The appellant will present their findings to you, indicating the evidence gathered and referring to any documents previously circulated.

- The appellant will call any witnesses named in the documents previously circulated.
Conducting a disciplinary hearing, continued

- The appellant or their representative will be allowed full opportunity to question the original Hearing Manager on the disciplinary hearing, and to raise points about any information provided by witnesses either at the disciplinary hearing or at the appeal hearing. The employee may request that oral evidence be given by witnesses on their behalf.

- Supported by your HR representative, you may question the appellant and any witnesses on the evidence they presented. The management representative may also question the appellant and any witnesses. You may release the witnesses when they are no longer required. Although the employee may confer with their representative at any time during the hearing, the Chair has the right to ask the employee personally to answer any questions put to them.

- The appellant and/or their representative will then present their case to the hearing, indicating the basis of their appeal and referring to any documents previously circulated.

- The management representative will then outline how and why they came to decide the outcome of the original hearing.

- Supported by your HR representative, you may question the management representative. The appellant and their representative may also question the Management representative.

- The panel will take into account any mitigating factors put forward by the employee when subsequently making a decision about whether or not to confirm the original decision or impose a different one.

**Note:** The appellant may submit late evidence or evidence on the day. It is at your discretion if you choose to accept any late evidence. You should take into account if there have been any mitigating circumstances.

**Adjournment**

You may call a short break at any time in the proceedings. If you consider that more than a short break for deliberation is necessary then you should formally adjourn the hearing.

If at any time those present become too upset to continue or the hearing is becoming heated, you should arrange for an adjournment to allow people to compose themselves before continuing. If either side requests an adjournment, you should consider the request sympathetically.
Conducting a disciplinary hearing, continued

Making a decision

The balance of probabilities

In coming to a conclusion on the facts of the case, you will need to decide on the ‘balance of probabilities’ and whether the outcome of the original hearing was justified. This is not as stringent a test as in a criminal court of law where the test of ‘beyond reasonable doubt’ applies, but it nevertheless requires the panel to come to a conclusion based on evidence rather than ‘gut feeling’.

The decision

Having considered all the points, it is important to also consider the seriousness of the misconduct in the context of the employee’s previous record and the circumstances of the case. The HR representative should be able to advise you on any precedents within the Trust to ensure the decision is consistent with them.

Test of reasonableness

At this stage, it may be useful to run through the following checklist to ensure you have reached a fair decision:

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the appeals procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this hearing?
- Was the misconduct sufficiently serious enough to justify the sanctions imposed?
- Has there been regard paid to any mitigating circumstances put forward by, or on behalf of, the employee e.g. health, domestic, bereavement?

The sanction

There are three decisions that can be reached:

Not to uphold the appeal

The panel must be able to justify that there is insufficient evidence to warrant an overturning of the original panel’s decision.

To uphold the appeal

This is likely to occur when new evidence has been presented, a review of the process has uncovered flaws in how the disciplinary was conducted, or if mitigating circumstances have been uncovered which were not previously taken into account.
Issue a lesser sanction

If the appeal panel decide the sanctions imposed were too severe and not in the band of reasonable action, they may replace the original decision with a lesser sanction. This may be as a result of new evidence being made available. Additional supporting action may also be suggested if appropriate. The Appeal Manager cannot replace the original decision with more severe disciplinary action.

If the panel is not satisfied with the investigation or any other material aspect of what has gone before, it is for the Appeal Manager to submit the matter for further investigation and/or a new disciplinary hearing.

You should write to the employee with your decision and the reason for it as soon as possible after the hearing (within five working days maximum). Make it clear that the decision is final and no further right of appeal is available.