

## **Internal Procedure Note – Requesting an appeal of a regulatory decision**

### **1. Introduction**

This procedure note should be read in conjunction with our published procedure [‘How to appeal a regulatory decision’](#) which was published in April 2016.

This gives additional guidance to staff about handling an appeal.

### **2. Who within SHR will handle an appeal?**

Any appeal submitted will be considered by an appeal panel made up of two Board members and an advisory member from SCAP (Scottish Charities Appeal Panel). The Corporate Governance Manager will support the appeal panel.

The Directors’ of the Governance & Performance and Finance & Risk Divisions will act as the key contacts for providing evidence to an appeal panel.

### **3. Who can make an appeal?**

An individual or regulatory body can make an appeal about some regulatory decisions we make. The important thing is that the individual or regulatory body must be affected by the decision to be able to make an appeal to us, please see Appendix 1 of our [published procedure](#) which sets out who can make an appeal.

### **4. Which decisions can be appealed?**

We have set out in our published procedure which decisions individuals or regulated bodies can make an appeal about. The decisions that an individual or regulated body can appeal are our statutory decisions, such as appointing a manager or refusing to grant consent for a disposal. Please see appendix 1 of our published procedure which sets out which decisions can be appealed.

### **5. Timescales for making an appeal**

Individuals or regulated bodies should make an appeal to us within 15 working days of receiving our formal notification of our decision. We say in our published guidance that an individual or regulated body can contact us if the 15 day deadline will prove challenging, for example because of the regulated body’s internal governance arrangements. We should respond positively to such requests for additional time to submit an appeal.

## 6. Appeals which don't meet our published criteria

If an appeal is received but:

- Isn't made by an individual or regulated body who can appeal the decision;
- Isn't about a decision which is open to appeal.

In this case the Corporate Governance Manager should write to the individual or regulated body to confirm that the issue doesn't meet our published criteria and that we cannot consider it using our appeals procedure.

## 7. Grounds for appeal

The grounds for appeal are set out in our published procedure, they are:

- **Factual error:** for example the decision is based on an incorrect assumption or factual inaccuracy in our assessment of the issues and the evidence provided demonstrates this.
- **New evidence:** relevant evidence has become available that the body making the appeal and those hearing the appeal agree is material to the decision.
- **Decision did not follow procedures:** for example we made the decision without following our own published procedures, for example using our powers proportionately as set out in our Regulatory Framework.
- **Decision did not take account of relevant issues and / or took account of irrelevant issues:** for example, we ignored material evidence and placed weight on information that had no bearing on the issue.
- **Decision was so unreasonable that no reasonable person acting properly could have taken it:** this ground recognises that, while decisions are subjective and decision-makers use discretion, it is possible that a decision could be beyond the range of responses open to a reasonable decision-maker.

The decision about whether the grounds for an appeal are met will be made by the appeals panel. This means any appeals that are made by a person or body entitled to appeal and about a decision that can be appealed should be passed to the appeals panel to consider.

## 8. What happens while the appeal is being dealt with?

If we receive an appeal about a decision we have made then we can proceed to implement the decision while the appeal is ongoing. The exception to this is where we have decided to de-register an RSL, if we receive an appeal about this decision then we should put any action to process the de-registration on hold until the appeal has been fully considered.

## 9. Logging an appeal

The Corporate Governance Manager will monitor our SHR appeals mailbox and log any appeals in the appeal tracker. The Strategy & Communications Division will provide absence cover.

## 10. Timescales for handling an appeal

The Corporate Governance Manager will acknowledge that we have received an appeal within 5 working days of an appeal being submitted. After we have written to acknowledge an appeal we have a number of timescales to meet as follows:

- The panel must meet to discuss the complaint within **15 working days**;
- If the panel decides the grounds for appeal have not been met we should write to the individual or regulated body within **5 working days** of the panel's discussion;
- If the panel decides the grounds for appeal have been met we should write to the appellant **within 5 working days** of the panels discussion. Our letter should set out who the panel members are, what additional information we require, and when the panel will meet to make its decision;
- Normally the panel will make and communicate its decision **within 25 working days** of receiving the initial appeals letter. In some cases the panel will be unable to meet that timescale, for example if the case is particularly complex, if this is the case we must write to the appellant telling them when they will get a response to the appeal.

## 11. Convening an appeals panel

The panel will be made up of two board members appointed by the Chair. The Corporate Governance Manager will liaise with the Chair and SCAP members to establish an appeals panel and agree a panel Chair. This will be based on availability and rotate amongst members.

The Corporate Governance Manager will provide information on who has appealed and a brief summary of the issues to assist with establishing the panel and to ensure there are no conflicts of interest.

## 12. Supporting the appeal panel

The Corporate Governance Manager will liaise with the panel Chair to establish any support requirements and direct the Panel to the relevant Director who will provide information to the panel to assist it in considering the appeal.

### **13. Considering an appeal**

The panel will meet or hold a telephone conference within 15 working days of an appeal being submitted to decide if the grounds for appeal have been met. The Chair of the panel will confirm the outcome of this discussion in writing to the appellant within 5 working days of this meeting. If the grounds have been met the panel will meet again to consider the appeal fully and make a decision. The panel is likely to seek further information from the relevant Director to support its considerations.

The panel will make its decision within 25 working days of the appeal submission.

The panel via the Corporate Services Manager will keep the appellant updated on any risk to meeting target timescales.

### **14. The outcome of the appeal**

When the panel has made its decision the panel Chair will write to the appellant within 25 working days of the appeal being submitted. If required the Corporate Governance Manager and the relevant Director will support the panel Chair.

The Director will communicate the decision to staff and ensure the decision of the panel is implemented.