



A Guide and Support Pack for Managers conducting Appeals

**Amends the previous Bullying &
Harassment Appeals Guide -
Issued 12 October 2004**

Statement from Allan Leighton

Firstly, Can I thank you for agreeing to conduct the Appeal into this case.

As you know eliminating Bullying and Harassment is a major initiative in making Royal Mail a Great Place To Work.

This is a personal priority of mine. Thorough and quick investigations that meet my timescales are essential.

Therefore, please use the enclosed guide and refer to your Regional Case Managers who have been appointed to support both you and our drive to success.

Once again many thanks

Allan Leighton

Joint Royal Mail/CWU/CMA statement

1. Royal Mail Group is committed to being a business in which equality of opportunity is a reality and in which every individual can seek, obtain and continue employment without unfair discrimination. This is supported by the unions recognised by Royal Mail.
2. Royal Mail Group and the Unions are working together to create an environment where bullying and harassment is not acceptable and where all employees support the rights of their colleagues to be treated with dignity and respect.
3. Harassment is: *INAPPROPRIATE and UNWANTED* behaviour that could reasonably be perceived by the recipient or any other person, as affecting their dignity. This behaviour may focus on a person's age, creed, disability, nationality, race, sex, sexual orientation, family status, religion or any other personal characteristic, that may affect the dignity of any individual or group of individuals at work.
4. Bullying is intimidation on a regular and persistent basis or as a one off which serves to undermine the competence, effectiveness, confidence and integrity of the person on the receiving end. A bully misuses his or her power, position or knowledge to criticise, humiliate and destroy a subordinate, a colleague or their manager.
5. Harassment includes suggestive remarks or gestures, pin-ups, graffiti, offensive comments, jokes and banter based on any of the above. None of these is part of a culture in which all employees are treated with dignity and respect.
6. Bullying and harassment are not acceptable in Royal Mail Group. Every effort will be made to deal with allegations on an informal basis in the first instance. Any employee, regardless of grade or position responsible for inciting, perpetrating or condoning bullying or harassment may be disciplined, and can be held personally liable if the person who has been harassed undertakes legal proceedings. Some types of harassment are classed as criminal offences that could lead to prosecution.
7. Any employee who believes him or her self to have been harassed or bullied should, if possible, ask the Respondent to stop. If this is not possible, or if it continues following the request to stop, he/she has the right to complain and should complete a Harassment and Complaint report form (H1). This should be sent to **FREEPOST, ER Operations Team, Royal Mail, Coton House, Rugby, Warwickshire, CV23 0AA**. The matter will be dealt with quickly and in confidence. Anyone complaining about bullying and harassment has a right to be supported at every stage by his or her union.
8. The Respondent may be transferred to another work area during the investigation process, or precautionary suspended. If investigation shows that the complaint is well founded, Royal Mail Group's primary aim will be to prevent recurrence of the behaviour. If necessary, disciplinary action, up to and including dismissal, may be taken. If it is necessary to separate the people concerned, every effort will be made to move the Respondent and not the Complainant, unless it is the stated wish of the latter to move.
9. All Royal Mail Group managers and leaders are responsible for ensuring that bullying or harassment is prevented. Where bullying and harassment occurs, managers and leaders are expected to deal with it whether or not it is brought formally to their attention.

10. Royal Mail Group will not tolerate intimidation, victimisation or unfair discrimination against any employee who makes a complaint of or who assists in an investigation of alleged bullying or harassment. Retaliation against an employee who complains of bullying or harassment can be expected to lead to disciplinary action and may be a criminal offence resulting in prosecution.

Appeals Guide for Managers: Bullying and Harassment Procedure 2004

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Part 1: The Manager's Role



1.1 Purpose

This guide outlines the Appeal stage of the process, and how to ensure cases are effectively concluded. Every case is different and the guidelines cannot cover every eventuality. If you need assistance at any stage of the Appeal contact a Regional Case Manager.

1.2 Access to the Appeal Process

The Complainant will have the right to an appeal against the decision if their complaint is not upheld. It is important to remember that employers may not restrict the grounds on which an employee can appeal.

The appeal will need to be set out in writing and sent to the RCM. Individuals may seek help in the preparation of their appeal but the individual retains responsibility for submitting it to the RCM within ten working days of receipt of the conclusions of the investigation. If an employee gives a verbal notification of appeal, without written confirmation, this will be followed up by the relevant RCM.

The RCM will notify the respondent that an appeal has been requested by the complainant, and will appoint a more senior Manager than dealt with the original investigation, unless this not reasonably practicable. The Manager so appointed must not have previously been involved in the investigation. The Manager will examine the evidence and conduct any further investigation required.

The appeal will be monitored by the RCM to safeguard the integrity and impartiality of the appeal process.

1.3 Role of the Manager

The purpose of the appeal will be to consider:

1. Whether the correct process and procedure has been followed
2. Whether any new evidence has come to light which would have materially affected the outcome, and
3. Whether there is any way in which the decision could be found to be inherently unfair.

Managers hearing appeals should understand that there may be other issues that need to be considered in an appeal and that they cannot refuse to uphold an appeal simply because it does not fall under one of the three headings set out above.

A face-to-face meeting with the Complainant must be offered. Employees will have the right to be accompanied by a trade union representative or work colleague from within Royal Mail Group plc. The work colleague must not be geographically remote to the individual concerned.

1.4 Representation and the role of companions during the procedure

The Employment Relations Act 1999 (as amended by the Employment Relations Act 2004) covers the role of companions in the bullying and harassment procedure.

For the purposes of this legislation, the term 'Companion' refers to a person accompanying an employee during the procedure, regardless of whether they are a Complainant, Respondent or Witness.

Thus, with effect from 1st October 2004:

1. An employee has the right to be accompanied by a trade union representative or work colleague (from any location).
2. A companion must be allowed to confer with the employee during the meeting and, *if the employee wishes*, to address the meeting in order to:
 - a) Address the interview to put the employee's case;
 - b) Sum up that case; and
 - c) Respond on the employee's behalf to any view expressed at the interview.
3. The companion must not at any time exercise any of these rights in an obstructive way. Employees and companions may, where appropriate, be reminded of their responsibilities under Section 3 (iv) (Employee Obligations) of the bullying and harassment procedure.

NB: If an employee is disabled it may be a reasonable adjustment to allow a support worker, lip reader or other individual to accompany them as appropriate.

The Manager will provide a final decision (which is not subject to further appeal) and will have the authority to either uphold or overturn the decision of the original investigator.

1.5 Rearranging Appeal meetings

- If the employer, the employee or the employee's companion cannot reasonably attend the appeal meeting for a reason that was not reasonably foreseeable at the time the meeting was arranged, the meeting must be rearranged. For example, one of the parties may be ill, or his/her car may break down on the way to the meeting.
- However, if either party did not attend the meeting and the failure could be reasonably foreseen, then neither party will be under any further obligation under the statutory procedures.
- The employer is obliged to rearrange the meeting once. However, if the meeting falls through a second time for unforeseeable reasons, neither party will be under any further obligation under the statutory procedures to attend a meeting.

General Requirements

The above requirements are in addition to the obligations under section 10 of the Employment Relations Act 1999. This provides that, where the companion cannot attend on a proposed date, the employee can propose an alternative date that falls within 5 days after the original date. If reasonable, the employer must then invite all parties to attend at this new time.

1.6 What are the timescales in which to complete the Appeal?

The Manager will communicate the decision in writing to both the Complainant and Respondent. The communication will include a statement on whether the appeal has been upheld and will outline any remedies required within 21 days of receipt of the appeal. Where this cannot be achieved the Manager will write to advise the relevant parties accordingly. If there are any reasons why this cannot be achieved contact the Regional Case Manager for advice.

1.7 Who should be notified of progress with the Appeal

The Appeal Manager should send a weekly update to the Regional Case Manager via e-mail. The report will include the current status of the Appeal, what needs to be done to complete and any barriers to completion.

Part 2: First Step

2.1 Introducing Yourself

Using Complainant Letter 26 from the Standard Letters Pack, write to the Complainant introducing yourself as the Manager conducting the Appeal. Explain the purpose of your role and give them the opportunity to meet with you prior to commencing the Appeal.



2.2 What if the Complainant requests a meeting?

A face-to-face meeting with the Complainant must be offered. Contact them to arrange a suitable date, time and location for the meeting, usually a Royal Mail plc building. However, the Complainant may request a change of location from their usual place of work. The meeting should usually be held during the Complainant duty time, unless they request otherwise. They will need to arrange clearance from their line manager.

As with previous stages of the Bullying and Harassment procedure, they have the right to be accompanied by a trade union representative or by a work colleague from within Royal Mail plc. The work colleague should not be from an area geographically remote to the individual.

2.3 How should I prepare for the meeting?

Before the meeting:

- Re-read the bullying and harassment investigation case papers and the written request for the Appeal.
- Plan the meeting by noting down any points which need clarification or where additional information is required. The additional information obtained from the meeting may have to be used as a basis for interviewing any other parties, if any further investigation is required in order to conclude the Appeal.
- Ensure the accommodation arranged is suitable, quiet and free from interruption.
- Make sure that if the meeting is not at the complainants work location, that the Reception or Callers Counter are notified of the visitor, and how to contact you on their arrival.

2.4 How should I start the meeting?

At the start of the meeting:

- If the complainant is unaccompanied advise them they can be supported by a union representative or colleague, though this person should not have been a witness in the case
- Advise that the meeting is confidential and that it must not be discussed with colleagues or friends as this could prejudice the Appeal

- Introduce all parties and clarify roles and responsibilities e.g. if you have a note-taker present
- If there is no note-taker explain that you will be taking notes so that you have an accurate record, and that it is important that their own words are written down
- Explain that a record of the meeting will be prepared for their signature, and that they will be able to read, comment and make any changes necessary before they sign it.

2.5 What should I ask to get the most from the meeting?

The type of question asked and the manner and atmosphere in which interviews are carried out will have a bearing on the outcome of the situation and the longer-term perception regarding the 'fairness of the system'.

- Ask the individual to talk through the reason why they requested the Appeal and explain why they felt this materially affected the outcome of the case. Making full notes, using the individual's own words.
- Ensure you get as many details as possible, seeking clarification where necessary as this will help if you need to carryout any further investigation.
- Make an effort to put the Complainant at their ease, as they will often be nervous even if they do not show this. Should they become distressed or aggressive, suspend the meeting for a short period to allow them to regain their composure.

Using the right types of questions should ensure you get all the details you need to help make a decision on the facts.

Open questions	<p><i>e.g. How was your journey? What would you like to do about the situation?</i></p> <p>These should produce facts, opinions and suggestions. It is difficult to predict possible answers with any certainty. Use open questions to establish rapport at the beginning of an interview. Open questions are also used to 'open-up' a particular topic and to discover the feelings of others.</p>
Probing questions	<p><i>e.g. How do you mean? Why do you say that?</i></p> <p><i>Can you give me some evidence?</i> These should produce more detail about an area being discussed, a better understanding of reasons behind actions and the feelings on the subject. Use probing questions to encourage the person to provide more detail, and to confirm your understanding. These questions are often statements that reflect or summarise previous answers.</p>

Closed questions	e.g. Were you driving the van? These questions should produce facts, and also opinions in yes/no form. It is possible to predict the range of possible answers. Use closed questions to confirm an answer or get precise information. Use sparingly to collect specific pieces of information.
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2.6 What questions should you avoid?

Good questions produce high quality answers. If you get poor answers you may have to waste time trying to get the necessary facts again. There is also a danger that you may make a decision based on information that is misleading, inaccurate or biased.

Leading Questions	In this case, whether you mean to or not, you are encouraging the interviewee to give the answer you want to hear. e.g. You know the procedures, correct? You will be coming, won't you? I expect you agree that...?
Multiple Questions	If you ask more than one question it can be confusing to the candidate, as they have to decide which question to answer. You may not get all your questions answered either. e.g. Can you tell me if you'll be coming and when you want picked up? Are you going to attend or will you nominate someone else - if so could you to phone me?
Unclear Questions	If your question is not clear, the answer is unlikely to be clear either! You may force the interviewee to ask you to clarify the question, which can be embarrassing for them. Alternatively they may just guess what you're asking. Avoid using jargon or technical terms unless you are absolutely sure the person will understand. Always err on the side of caution and make sure your questions sound like questions. e.g. 'I was wondering what you thought of Kath' is not clear - do you want an answer?

Be cautious of using questions beginning with 'Why' as they often produce defensive reactions if related to someone's behaviour, e.g. 'Why did you do that?'. This may make the recipient feel they are being attacked. Try asking something like 'What were the factors that resulted in you choosing that course of action?'

Funnelling Process - think about the different types of questions as filters, each one with a finer mesh as you identify the key factors in a situation.

Start off an interview with open questions to build rapport and to get the 'big picture'. These questions will provide the source of all subsequent questions.

Then use probing questions. This will help you get more detail and to provide a focus for further questions. Going further down the funnel, make your probing questions more in-depth until you have the amount of detail you need.

Use closed question to confirm what you have heard and to get details and confirmation.

2.7 When and how should I end the meeting?

- When you are satisfied that you have explored and collected as much relevant information to enable the Appeal to commence. Recap the points that have been captured and then ask the complainant if there is any other information that they wish to add.
- Allow them to ask questions but do not be drawn into discussing potential outcomes of the Appeal.
- Tell them that you will provide them with a copy of the meeting notes to check and sign and re-emphasise the need to keep the details of the meeting confidential.
- If you get the meeting notes typed, do not destroy the original hand-written notes. These should be retained with the papers, as they would form part of the evidence in any subsequent Employment Tribunal.

Part 3: Interview Notes

3.1 What should the interview/meeting notes look like?

Interview notes are generally a summary of the points discussed during the interview but may also include some direct quotations from individuals where there is a need to be clear as to what exactly was said. Interview notes may be written in the first or third person but should include the following:

- The date, time, venue of the interview or meeting and names of those present and their roles
- Where the interviewee is not accompanied a statement that they were aware of their right to have a friend or work colleague with them, which they declined
- A statement to say that the Appeal is confidential and should not be discussed with other parties
- A summary of the points discussed and specifically evidence provided by the interviewee, to support their request for a Appeal
- Where individuals are complaining about things that have been said these should be expressed as quotations
- A summary of the remedies/outcomes the individual is seeking in making the request for a Appeal
- Reference to the fact that the individual was asked at the end of the interview if there was anything further that they wished to add
- A statement that the notes of the meeting will be typed and the individual will be provided with a copy to check, sign and amend if necessary
- The finish time of the interview
- An indication of when the individual can expect a decision to be reached.

Investigations can be unnecessarily delayed where notes are not produced and agreed promptly.

The following points should therefore be borne in mind:

- The notes produced should be a summary of the points discussed during the meeting and not necessarily a verbatim account.
- Every effort should be made to produce the typed notes on the day of the interview whilst the points are still fresh in everyone's mind.
- It is for the interviewer to ensure the accuracy of the notes and not the note-taker.
- Individuals are asked to check the notes and sign them as a true record of the interview. Where they disagree with any of the notes they are able to amend

them or provide additional comments, but managers should also retain the original notes, as it is useful to see what changes/additions have been made after the interview.

- Managers need to allow individuals time to check and respond to the notes without unnecessarily delaying the Appeal. It is therefore recommended that three days be allowed.
- It is recommended that individuals be advised that if the signed notes are not returned within 3 days, with amendments where required, it will be assumed that they are accepted as a true record of the interview and the investigation will proceed on that basis.
- Where individuals are loathe to sign off notes, managers should record the reasons given and associate with the notes.

Note: Where complaints made under the Bullying and Harassment procedure are not resolved to the satisfaction of the complainant they may, in some circumstances, be able to pursue it externally through an Employment Tribunal. Written notes and correspondence are therefore extremely valuable. A tribunal is far more likely to accept the explanation given by an employer if it is supported by documentation prepared at the time. You must therefore keep a file of all paperwork associated with the case. It is useful to keep file notes of any actions taken which might not otherwise be recorded - e.g. telephone calls to chase up outstanding notes etc.

Part 4: Starting The Appeal

4.1 What should I do next?

The Manager conducting the Appeal will determine (based on the meeting or written evidence submitted by the complainant) the extent to which further investigation, if any, is necessary. If further advice or guidance is required before progressing to the Appeal, contact your Regional Case Manager.

4.2 If further investigation were not required, what would be the next step?

Working with the case papers and the notes made at the meeting (if the complainant attended), you need to make a decision on whether the case was materially affected by points raised in the request for Appeal.

To assist in the decision making process, you should complete the Appeal Summary Report which is included in Appendix 1 of this guide.

4.3 If further investigation is required then how should this be progressed?

- Plan what further investigation is required. Decide whom you need to interview and what you need to establish.
- Use the appropriate letter from the standard letters pack to invite those who you need to interview. As with the complainant the employee has the right to be accompanied by a union representative or colleague.
- Interview an appropriate number of witnesses to establish the information that you require. For advice please contact the Regional Case Manager.
- Use same principles in arranging and carrying out the interview as in the meeting with the complainant requesting the Appeal.
- On conclusion of further investigations, use the notes made in conjunction with the case papers and the notes from the complainants meeting (if the complainant attended). You need to make a decision on whether the case was materially affected by points raised in the request for Appeal.
- To assist in the decision making process, you should complete the Appeal Summary Report which is included in Appendix 1 of this guide.

4.4 What approach should I follow to make my decision on whether to uphold the Appeal?

Once you are convinced that you have enough information to commence the Appeal, you should use Appeal Summary Report for recording and balancing evidence. Many managers find this format useful because it brings together the evidence into one document, with supporting evidence listed on one side and contradictory evidence on the other.

You will need to use this information to determine the facts of the case and whether you have a 'reasonable belief' that:

1. The correct process and procedure has been followed
2. New evidence has come to light which would have materially affected the outcome, and
3. There is any way in which the decision could be found to be inherently unfair.

Where there is no direct evidence, resolution may depend on your assessment of the balance of probabilities and the credibility of the people involved. In doing so it is important that you carefully consider any personal biases which you may hold and set these aside in making your decision.

Your conclusions and how you came to them should be recorded on the Appeal Summary Report (See Appendix 1).

4.5 Complaints not made in Good Faith.

Complaints that are not made in good faith undermine the validity of the whole investigation process and damage the basis of good working relationships.

While a guiding principle of the Bullying and Harassment procedure is that managers will treat all complaints seriously, there is an obligation upon all employees that complaints must be made in good faith.

Whilst conducting an Appeal, and where an investigator believes there is evidence to suggest that a complaint was not made in good faith, s/he must decide whether the complaint was so made.

For a complaint to be deemed as not made in good faith there must be reasonable grounds for belief with supporting evidence. For example, where a complaint is brought that is untrue and/or aims to annoy, irritate, distress, damage or otherwise harm the reputation and/or integrity of the person against whom it has been made.

If it is found that a complaint has not been brought in good faith, appropriate action may be taken under the Conduct Code, which may include dismissal.

Where it is believed that the complaint was not made in good faith, the investigator will:

- Compile a summary of supporting evidence, clearly stating why they believe that the complaint was so made,
- Inform the Complainant of the outcome of the appeal and that s/he believes there is evidence to suggest that the complaint was not made in good faith (See Letters 28 and 29 of the Standard Letters pack), and
- Forward the summary and the original case papers to the relevant RCM.
- The RCM will use the summary only to decide whether the case should be dealt with under the Conduct Code.

NB: The original Investigating Manager will not undertake the investigation of the Conduct case.

Some conditions of mental ill health may adversely affect an individual's memory or ability to concentrate, learn, evaluate, judge or understand. Where this is the case it may be appropriate to confidentially seek advice from Employee Health Services. The advice of the Employee Health Services may be included in your report to the Regional Case Manager.

4.6 What should I do if I think that action under the conduct code is appropriate?

Where disciplinary action is considered necessary, upon conclusion of an Appeal under the Bullying and Harassment Procedure, the principles of the Conduct Code will apply.

Any subsequent misconduct should normally be managed within the reporting line. In such circumstances it may be necessary for the manager conducting the Appeal to determine the potential severity of the misconduct before passing the papers to the respondents first or second line manager as appropriate.

Part 5: Notifying My Decision



5.1 Who do I need to notify of my decision(s)?

You need to notify the outcome in writing to the complainant, the respondent, the relevant line manager, and the Regional Case Manager.

5.2 How should I communicate this?

The communication of the outcome should be in writing and include a statement on whether any grounds for Appeal have been upheld. This should outline any further remedies required to the complainant, line manager, and the respondent. Use the Appeal Summary Report for this purpose. (See Letter 27 of the Standard Letters pack)

5.3 How should parties involved in the case be re-introduced back into work?

Regardless of the outcome of the investigation there is likely to be a need to re-affirm standards within the workplace and ensure that there is no victimisation as a result of the complaint being made. Where a business policy has been breached, it will be necessary to advise the respondent and complainant accordingly when communicating the outcome of the Appeal.

It may also be appropriate to refer to the Code of Business Standards and ensure that the parties understand the standards that are expected in the future.

Where you do not believe that the complaint has been proven, but there are lessons to be learned as a result of the Appeal, it may be prudent to recommend the re-affirmation of standards more widely within the workplace. This may be particularly appropriate where it has become apparent from the Appeal that poor standards of behaviour have become the norm within the work place. In such circumstances it would be appropriate to advise the whole team of the standards expected, without reference to the specific case investigated, and how breaches of these standards will be dealt with in future.

Your Regional Case Manager may be able to help further in these situations.

5.4 Whose responsibility is it to implement the remedial actions recommended?

It is the line manager(s) of the parties involved who have the responsibility to implement the remedial actions from the Appeal. When allocating remedial actions, a clear statement of what should happen and by when, should be made.

The Regional Case Manager will revisit and monitor the recommendations 8 weeks after they were made, to ensure that they have been completed.

Upon the conclusion of cases under the Bullying & Harassment Procedure, the RCM will refer to the Head of Diversity any that appear likely to lead to ET proceedings. He/she will liaise with Legal Services where pre-emptive action is appropriate.

5.5 There were learning points to be considered by the investigating manager. How should I provide this feedback?

As a minimum, learning points should be provided in writing to the original investigating manager. Comments should concentrate on the decision making process rather than the decision reached.

There are benefits in meeting with the Investigating Manager, in that you can check understanding and explain the points raised if need be. This is a worthwhile investment, as it encourages the development of the manager and should translate into improved investigations.

5.6 When I have communicated my decision, what should I do with the case papers?

On completion, all case papers including those generated by the Appeal should be returned to the Regional Case Manager. The Appeal is the final stage of the formal process, so the papers are retained locally for three months, in case the complainant decides to take their complaint to an Employment Tribunal. After this period the file is archived at People & Organisational Services, Royal Mail, Pond Street, Sheffield.

Appendix 1: Appeal Summary Report

To: (Regional Case Manager)
From: (Investigating Manager)
Date: (00/00/00)

IN STRICTEST CONFIDENCE

Case Reference No.	
Complainants Name (<i>in full</i>)	
Complainants Pay No.	
Complainants Grade/Job Title	
Complainants Office of Work	
Date Complaint Raised	

Alleged Respondents Name (<i>in full</i>)	
Alleged Respondents Grade/Job	
Alleged Respondents Office of	

Manager conducting Appeal	
Managers Job Title	
Date Appeal Commenced	

Appendix 1 Continued

Details of Complaint: (Briefly outline all the allegations made by the complainant below)

Appeal Conclusion: Record your judgement & indicate how you reached your decision)

Actions: (Record here any actions that you wish to recommend)

Appendix 1 Continued

Record of Interviews: (Please give details of all interviews held in relation to this complaint)

Name of person Interviewed (in full)	Grade/Job Title	Date of Interview

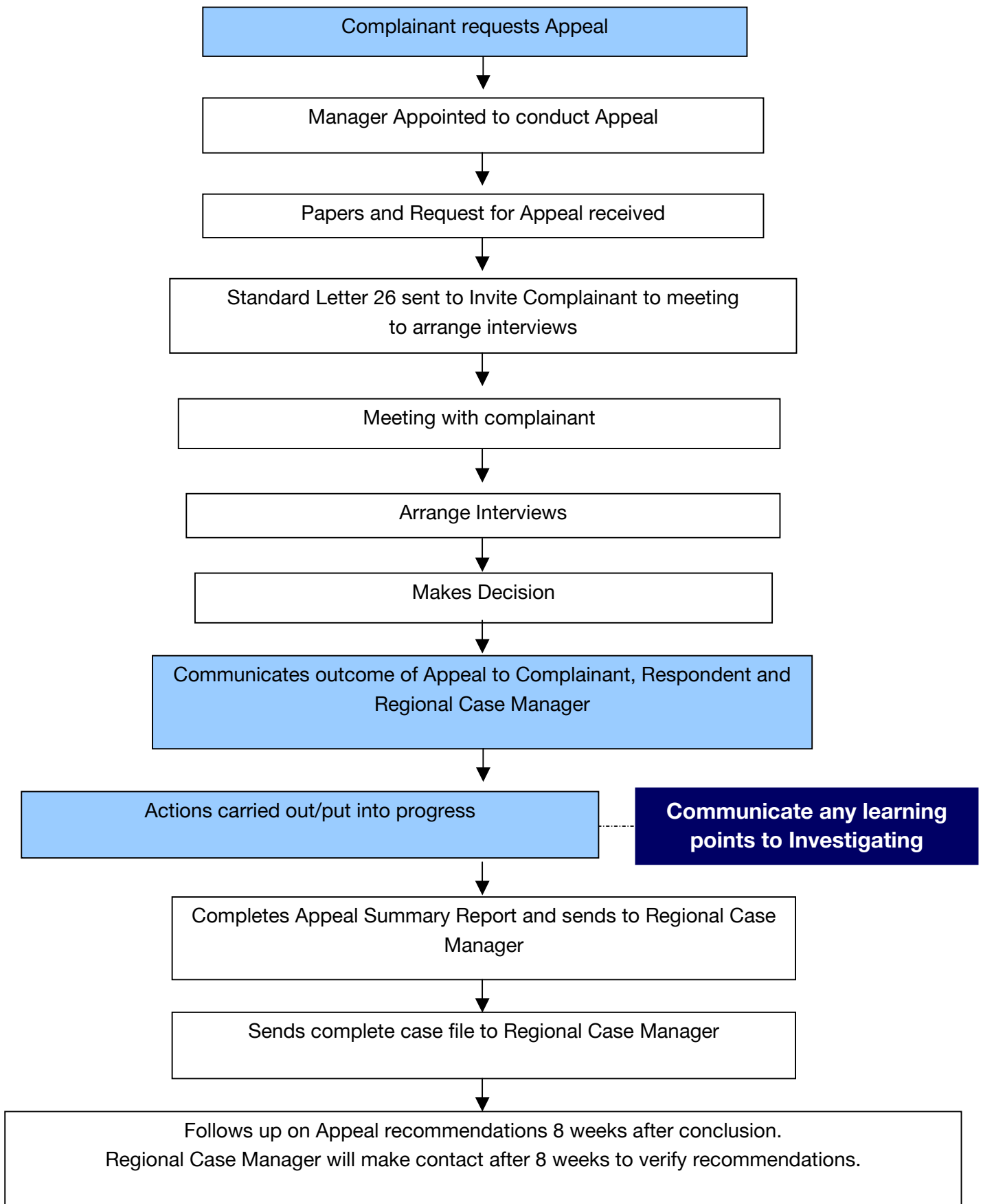
Supporting Evidence List here any evidence given by the complainant, witnesses or the respondent that supports the appeal	Conflicting Evidence complainant, witnesses or the respondent that contradicts the appeal

Signature of Manager conducting Appeal Date

Managers Note - Only front page of this report may be copied and issued as the Appeal Summary Report for the complainant.

Both pages will also comprise as your Appeal Summary Report to be sent to the Regional Case Manager on completion of the case.

Appendix 2: Appeal Process



Key Contacts

Regional Case Manager	(RCM to insert contact no.)
Regional Service Manager Advice & Guidance	(RCM to insert contact no.)
Bullying & Harassment Helpline	0800 5874777
Employee Health Services	0845 7994400
Legal Services	0208 8681 9191