



GUIDANCE NOTES FOR LODGING AN APPEAL

Please note: these guidance notes are specific to a. the basis in which persons may make an appeal, b. the key steps and factors in the appeals process and c. the required documentation in order to file that appeal.

The Public Service Management Law (as amended from time to time) (“the PSML”) specifies when an appeal can be made to the Civil Service Appeals Commission (“the Commission”). These appeal rights fall into three categories:

1. S.33 – Appeals lodged by civil servants who have applied for a position of Chief Officer of a Ministry or a Portfolio (the decision having been made by the Head of the Civil Service);
2. S.34 – Appeals lodged by a Chief Officer of a Ministry or Portfolio against a personnel related decision made by the Head of the Civil Service or the Official Member¹, as the case may be; and
3. S.54 - Appeals by staff members or civil servants against a personnel related decision made by a Chief Officer.

SECTION A – TYPES OF APPEALS

1. S.33 – APPEALS LODGED BY CIVIL SERVANTS WHO HAVE APPLIED FOR A POSITION OF CHIEF OFFICER OF A MINISTRY OR A PORTFOLIO (THE DECISION HAVING BEEN MADE BY THE HEAD OF THE CIVIL SERVICE)

A. Basis for Appeals (lodged under s.33)

A civil servant who has applied for the position of Chief Officer of a Ministry or a Portfolio may appeal against an appointment decision made by the Head of the Civil Service.

B. Timeline for Submission of Appeals (lodged under s.33)

An appeal must be lodged within thirty calendar days of **being notified** of the decision.

C. Required Evidence for Appeals (lodged under s.33)

In lodging such an appeal the civil servant shall provide evidence to show that the Head of the Civil Service has acted in:

- an unfair manner; or
- a manner inconsistent with the requirements of s.26 of the PSML.

¹ Official Member refers to Deputy Governor or the Attorney General (PSML 2013R)



D. Important Information for Appeals (lodged under s.33)

- The Commission does not have final determination authority in relation to these appeals; but instead makes a recommendation to the Governor who is then responsible for making the final decision as he/she sees fit.

2. S.34 – APPEALS LODGED BY A CHIEF OFFICER OF A MINISTRY OR A PORTFOLIO AGAINST A PERSONNEL RELATED DECISION MADE BY THE HEAD OF THE CIVIL SERVICE OR THE OFFICIAL MEMBER

A. Basis for Appeals (lodged under s.34)

A Chief Officer of a Ministry or a Portfolio may appeal against a personnel related decision made in accordance with s.28, s.29, s. 31 or s.32 by the Head of the Civil Service or an Official Member, as the case may be. Such decisions include:

- Remuneration decisions;
- Dismissal decisions;
- Early retirement on medical grounds decisions;
- Retirement to improve the organisation decisions;
- Performance assessment ratings and comments; and
- Performance remuneration decisions (when applicable).

B. Timeline for Submission of Appeals (lodged under s.34)

An appeal must be lodged within thirty calendar days of **being notified** of the decision.

C. Required Evidence for Appeals (lodged under s.34)

In lodging such an appeal the Chief Officer shall provide evidence to show that the Head of the Civil Service or the Official Member, as the case may be, has acted in:

- an unfair or biased manner; or
- a manner inconsistent with the requirements of s.28, s.29, s. 31 or s.32 of the PSML.

D. Important Information for Appeals (lodged under s.34)

- Chief Officers appointed by the Governor (i.e. the Auditor General, the Cabinet Secretary, etc.) are not eligible to appeal his/her decisions to the Commission.
- The Commission does not have final determination authority in relation to these appeals; but instead makes a recommendation to the Governor who is then responsible for making the final decision as he/she sees fit.



3. S.54 – APPEALS LODGED BY STAFF MEMBERS OR CIVIL SERVANTS AGAINST A PERSONNEL RELATED DECISION MADE BY A CHIEF OFFICER

A. Basis for Appeals (lodged under s.54)

A staff member or civil servant may appeal about any decision of a Chief Officer made under Part VII of the PSML, other than a decision made under s.45 or s.46², including a decision on an appeal made under s.53³ of the PSML. Such decisions include:

- Appointment decisions (including transfers, promotions and reappointments);
- Remuneration decisions;
- Terms and conditions decisions;
- Performance assessment ratings and comments;
- Performance remuneration decisions (after such date as the Cabinet may by Order specify);
- Disciplinary decisions;
- Dismissal decisions;
- Early retirement on medical grounds decisions;
- Retirement to improve the organisation decisions; and
- Other termination of employment decisions.

B. Timeline for Submission of Appeals (lodged under s.54)

An appeal must be lodged within thirty calendar days of **being notified** of the decision.

C. Required Evidence for Appeals (lodged under s.54)

In lodging such an appeal the civil servant or staff member shall provide evidence to show that the Chief Officer has acted in:

- an unfair or biased manner; or
- a manner inconsistent with the requirements of Part VII of the PSML.

D. Important Information for Appeals (lodged under s.54)

- Only existing employees of government can appeal

² s.45 and s.46 relate to delegated authority of personnel related decisions by a Chief Officer to a Head of Department.

³ s.53 relates to decisions made by a Head of Department or other manager and appealed by a civil servant or staff member to a Chief Officer.



Under the PSML, only civil servants (i.e. existing employees of government) can lodge an appeal with the Commission. This means that the following are not eligible to lodge an appeal to the Commission:

- persons who are not civil servants, and who have unsuccessfully applied for a position as a civil servant;
 - employees of statutory authorities and government companies as they are not civil servants (and are therefore not covered by the Commission appeals process);
 - Royal Cayman Islands Police Service Officers as their employment conditions are otherwise governed within the remit of the Police Law; and
 - Her Majesty's Cayman Islands Prison Officers relating to any disciplinary matter as this employment condition is governed within the remit of the Prisons Law and the Prison (Discipline) Regulations.
- Appeals must be about Chief Officer decisions

In all cases, appeals lodged with the Commission by civil servants or staff members must be against a decision of a Chief Officer. The PSML makes provisions for civil servants or staff members to seek to remedy a situation prior to filing an appeal with the Commission. These provisions are engrained in s.53(1) and s.53(2) of the PSML and are as follows:

- Basis of Appeals lodged under s.53(1)
A civil servant seeking appointment may appeal to the Chief Officer about any appointment decision (made under Part VII of the PSML) by a Head of Department or other Manager in the civil service entity. Such an appeal must be lodged within 30 calendar days of **being notified** that he or she was not appointed.
- Basis of Appeals lodged under s.53(2)
A staff member may appeal to his Chief Officer about any decision (made under Part VII of the PSML) of a Head of Department or other Manager in the civil service entity. Such an appeal must be lodged within 30 calendar days of the decision **being notified in writing**. This internal appeal process is the responsibility of the Chief Officer and is not a matter that involves the Commission. The Commission recommends, however, that the process be documented in the entity's Human Resources Policies and Procedures Manual.



○ Grounds of Appeal

Where a civil servant lodges an appeal to the Chief Officer in accordance with s.53(1), or a staff member lodges an appeal to his Chief Officer in accordance with s.53(2) as detailed above; the civil servant or the staff member shall provide evidence to show that the Head of Department or other Manager in the civil service entity has acted:

- an unfair or biased manner; or
- a manner inconsistent with the requirements of Part VII of the PSML.

○ Decisions of Chief Officers

The Chief Officer to whom the appeal has been lodged shall render a decision based on the information provided by the civil servant or the staff member together with the information provided by the Head of Department or other Manager in the civil service entity, and any other information that the Chief Officer considers relevant. A decision shall be rendered within 30 calendar days of the Chief Officer being in possession of such information.

SECTION B – LODGING AN APPEAL

It must be noted that an appeal must be submitted in accordance with these Guidance Notes within the required 30 calendar day timeframe. In the event that the Appellant is unable to file a completed appeal within the 30 calendar day timeframe, he or she should submit the appeal and supporting documents to the extent that they are able, with a covering letter detailing what information is lacking and why, and when it is expected to become available. The matter will be considered and the Appellant notified as to the timeframe the Commission has agreed in order to complete the submission.

Where a potential Appellant is engaged in discussion (generally of a without prejudice nature) with the potential Respondent, the right of appeal may be extended beyond the 30 day legal timeframe if the Appellant communicates with the Commission during that legal timeframe indicating that such discussions are ongoing and requests an extension. The Commission will allow up to 30 days for these discussions to progress.

Prior to the end of this extended timeframe (i.e. by the close of business on the 30th day if a 30 day extension was granted), the Appellant must communicate to the Commission



whether additional time is being sought or whether the discussions have not resulted in a positive outcome and therefore they wish to proceed with the appeal.

In the event the Appellant wishes more time to engage in discussions, the Commission will consider this but a favourable decision should not be presumed. In the event the Appellant wishes to proceed with his or her appeal submission, or their request for an extension to continue discussions is refused, they will have 15 calendar days (from the end of the original extension) to submit a completed appeal submission.

A Notice of Appeal is not considered by the Commission to suffice in filing an appeal.

The responsibility for preparing and submitting an Appeal rests with the Appellant. However, an Appellant may seek assistance from a family member, friend, lawyer, CICSA representative or other person when preparing the Appeal submission.

In order to maintain their neutrality and independence, the Commission members and staff of the Commission Secretariat are not to assist an Appellant in preparing appeal documents.

As a general rule, the Appellant should complete the standard appeal form which is available either from the Commission office or online on the Commission's website. Appeal submissions without the form will not be refused provided the Appellant provides the information requested in the form in a clear and concise alternative format. An appeal submission can be lodged with the Commission by mailing, emailing, hand delivering or faxing it to the Commission Secretariat offices.

An appeal must be in writing and be signed by the Appellant. It must contain the following information:

- the Appellant's basic contact information (i.e. physical and mailing addresses, daytime telephone number, e-mail, etc.);
- the decision that is being appealed (including a copy of that decision);
- the grounds for appeal including the provisions of the PSML or Regulations that the Appellant considers/claims were not complied with; (NB: individuals who are not familiar with the PSML or Regulations, may need assistance from their representative at this point);
- evidence to support your case including but not limited to:
 - emails that help support your appeal argument;
 - letters that help support your appeal argument;



- authorized audio and video recordings that help support your appeal argument;
 - notarised written statements from other staff members or persons who can help support your case; and/or
 - medical certificates, leave request forms, court records, certifications etc. should also be provided when relevant to the appeal.
- the action the Appellant would like the Commission to take if his/her appeal is successful.

It is to be noted that once an appeal has been filed with the Commission, communication between an Appellant and a Respondent (that is the Head of the Civil Service, Chief Officer or Official Member whose decision the appeal is being lodged against) is prohibited, and as such, all communication is done via the Commission. This includes communication between the legal representatives for each party.

If the party acquires representation after an appeal or response has been lodged, then written notice of representation must be provided to the Commission. The Commission will inform the parties involved in writing, and at that juncture the Commission will communicate only with the representative(s).

SECTION C – TIMELINE FOR LODGING APPEALS

Under the PSML, appeals to the Commission must be lodged **within 30 calendar days** of the Appellant being notified of the decision made by the Head of the Civil Service, Official Member, or Chief Officer.

This legal timeline requirement means that before agreeing to consider an Appeal, the Commission must satisfy itself that the Appeal has been lodged within the 30 calendar day statutory limit.

SECTION D – GROUNDS OF APPEAL

Under the PSML, a decision of the Head of the Civil Service, Official Member or Chief Officer (as the case may be) can only be appealed in narrow circumstances. These are set out in Section A – Types of Appeals under the sub-headings Required Evidence for Appeals.



This means that a decision cannot be appealed merely because the Appellant does not like it. Further, this legal requirement means that before agreeing to consider an appeal, the Commission must satisfy itself that there are sufficient legal grounds for the appeal.

It is important to remember that in all cases the PSML places the onus of proof on the Appellant by requiring evidence to support the appeal.

SECTION E – APPEALS VS. GRIEVANCES

The PSML and Personnel Regulations draw a distinction between appeals and grievances.

Grievances are defined in Personnel Regulation 51(2) as concerns of a staff member relating to workplace conditions or safety, the behaviour of another staff member in the workplace, or compliance of other staff members with the Public Servant’s Code of Conduct. That Regulation also makes it clear that a grievance is not a matter which is the subject of the appeal process.

In other words the grounds for a grievance are different from the grounds for an appeal. Grievances, and a chief officer’s response to a grievance, cannot be appealed to Commission and fall outside the Commission’s jurisdiction.

SECTION F – WITHDRAWING AN APPEAL

Appellants may withdraw an appeal at any time before the Commission issues its decision i.e. either after it is lodged and before it is considered by the Commission; or after and before the Commission decision is issued. Appeals may be withdrawn by advising the Commission Secretariat in writing.

Appeals do not need to be withdrawn merely because an Appellant is leaving the Cayman Islands.

SECTION G – ACCEPTANCE OF AN APPEAL

After an appeal submission has been lodged with the Commission, the Commission will review the submission and determine whether 1. it falls within the Commission’s jurisdiction in accordance with s.33(1), s.34(1) or s.54(1) of the PSML; and 2. it provides clear and sufficient evidence to satisfy the requirements of s.33(2), s. 34(4) or s.54(2) of the PSML.



If the appeal does not fall within the Commission's jurisdiction and/or provide clear and sufficient evidence the appeal will not be accepted by the Commission and the Appellant notified accordingly.

If the appeal does fall within the Commission's jurisdiction and provides clear and sufficient evidence the appeal will be accepted by the Commission and the Appellant notified accordingly.

SECTION H – RESPONSE OF CHIEF OFFICER, HEAD OF THE CIVIL SERVICE OR OFFICIAL MEMBER

Following acceptance of the appeal, the Commission will then forward the Appeal Form and all supporting documentation submitted by the Appellant to the Chief Officer, Head of the Civil Service or Official Member against whose decision is being appealed indicating that the appeal has been accepted and therefore the Commission is now requesting that a considered response to the allegations be provided to the Commission within 10 calendar days.

The content of the considered response document is to be limited to the appeal concerned and is not to cover other matters relating to the Appellant unless they are relevant to the appeal. The response is not to include any allegation or make comments that have not previously been put formally to the Appellant. Information that the Chief Officer, Head of the Civil Service or Official Member may wish to provide in the considered response to the Commission include:

- An outline of the facts of the case from the Chief Officer, Head of the Civil Service or Official Member's perspective, including an outline of the events and actions leading up to the decision, and detailed documentation of the procedures that were followed by the Chief Officer, Head of the Civil Service or Official Member when taking the decision.
- An explanation of the reasons for the decision and how these reasons comply with relevant requirements of the Law and Regulations.
- Any comments on the Appellant's appeal submission which the Chief Officer, Head of the Civil Service or Official Member feels are relevant.
- Any other information the Chief Officer, Head of the Civil Service or Official Member considers relevant in considering the appeal, such as a summary of the Appellant's work history, or details of the internal appeal process, including steps taken to acquire evidence, persons interviewed, documents reviewed, etc.
- Documentary evidence to support the statements made in the response, such as copies of employment agreements, interview panel reports, performance assessments, written



warnings, notes of meetings, letter of dismissal, medical reports, certificates of conviction etc.

SECTION I – RESPONSE OF APPELLANT TO THE SUBMISSION OF THE CHIEF OFFICER, HEAD OF THE CIVIL SERVICE OR OFFICIAL MEMBER

Following receipt of the considered response by the Chief Officer, Head of the Civil Service or Official Member, the Commission will forward the response received to the Appellant and provide them with five calendar days to answer any new information which has been raised in the response submission.

The Appellant may **not** provide the Commission with new information or raise new points during this part of the process. This means that the Appellant may only respond to any points raised by the Chief Officer, Head of the Civil Service or Official Member which he or she had not already raised in his or her original appeal submission.

Once the follow-up response to any information raised in the Chief Officer's response is received from the Appellant the Commission will again review the submissions and determine whether it requires further information which can only be gleaned from a Hearing or whether a determination can be made based on the information available.

It is noted that the Commission may, in its discretion, allow either the Appellant and/or the Respondent additional time in order to make a submission if the Commission accepts an explanation put forward as to why additional information is required to complete the submission and the efforts which have been made to obtain this information.

SECTION J – HEARINGS

A Hearing is generally an exceptional event as opposed to a normal part of the Appeal procedures and a hearing date is only arranged if, following all submissions, the Commission determines that it requires further information which can only be gleaned from a Hearing. In such an event both parties will be contacted, provided with a copy of the final bundle of submissions, and a hearing date arranged at a mutually convenient time generally within 15 calendar days.

In the interest of natural justice, at any time prior to the Hearing both the Respondent and the Appellant are allowed to acquire representation (including legal representation) if they have not



already done so. The parties to an appeal may, at their own discretion, choose to be represented at a hearing of the Commission by -

- a) an attorney;
- b) a representative of an organisation representing employees or any class thereof; or
- c) any other person.

The Secretariat must be notified at least forty eight (48) hours prior to a scheduled Hearing of the names of any representative(s) appearing for either the Appellant or the Respondent.

Hearings are conducted in the same manner as formal Court proceedings. Each of the parties will be sworn in and invited to make verbal representations on the final bundle of submissions. Parties will be expected to provide answers to any questions posed by the Commission which it considers that either the Appellant or Respondent should be able to answer.

It should be noted that responses by either party seeking to claim lack of instruction will be treated by the Commission as failure to answer. Likewise, failure of either party to attend the Hearing, or provide their legal representative with the necessary information/instructions to answer the Commission's questions, will be treated as a failure to provide the Commission with the information necessary to determine the appeal.

SECTION K – DECISIONS RENDERED

In accordance with s.33(3) or s.34(2) of the PSML, the Commission will make a recommendation to the Governor within 30 calendar days of either the consideration of all submissions or of the Hearing, whichever is applicable. The Governor is then responsible for making the final decision as he/she sees fit.

In accordance with s.54(3) of the PSML, the Commission will render a decision in writing to both parties within 30 calendar days of either the consideration of all submissions or of the Hearing, whichever is applicable.

SECTION L – FLOWCHART OF APPEAL PROCESS