



**RESPONDING TO AN APPEAL  
TO THE  
CIVIL SERVICE APPEALS COMMISSION  
BY A CIVIL SERVANT**

**GUIDANCE FOR CIVIL SERVICE ENTITIES  
RESPONDING TO AN APPEAL  
MADE BY A CIVIL SERVANT**

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## INTRODUCTION

The Public Service Management Law, 2005, makes provision for civil servants to appeal to the Civil Service Appeals Commission (CSAC) about a personnel-related decision. Where such an appeal is made, the officer, (i.e. Head of the Civil Service, Official Member and Chief Officers), whose decision is being appealed will be invited by the CSAC to respond to the appeal and attend the Hearing.

This booklet provides information about how the CSAC appeal process operates and how The Head of the Civil Service, Official Members and Chief Officers should go about responding to an appeal that has been lodged with the CSAC.

The booklet has been prepared as general guidance for civil service entities responding to a CSAC appeal. Further information is available on the CSAC website at [www.CSAC.gov.ky](http://www.CSAC.gov.ky) or by contacting the CSAC offices at the 2<sup>nd</sup> Floor, Cayman Corporate Centre, Hospital Road, George Town, Grand Cayman.

### WHAT IS THE CIVIL SERVICE APPEALS COMMISSION (CSAC)?

The Civil Service Appeals Commission is a quasi-judicial body appointed under the Public Service Management Law, 2005. Its sole purpose is to consider, and decide upon, appeals from civil servants about personnel-related decisions made by the Head of the Civil Service or Official Member and Chief Officers in their respective civil service entities.

The Commission itself comprises a chairperson and up to six others who, by Law, must be independent from both the civil service and political parties. Accordingly, a person cannot be a member of the Commission if he is a civil servant, or if he is or has been within the preceding three years, a member of the Legislative Assembly, or hold an office in a political party.

To reinforce this independence the Law also states that no person or authority may direct or control the Commission in the carrying out of its duties.

### WHAT IS THE CSAC SECRETARIAT?

The CSAC is supported by a small secretariat headed by an Executive Director which provides technical and administrative support to the Commission.

## CIVIL SERVANT APPEALS TO THE CSAC

### Right to Appeal to the CSAC

The Public Service Management Law, 2005, allows civil servants to appeal to the CSAC about any personnel-related decision of the Head of the Civil Service, Official Members and Chief Officers made under Part V of the Law.

Such decisions fall into two groups: decisions that the chief officer has made as an appointing officer; and internal appeal decisions of the chief officer – (see the box entitled “The Two-Step Appeal Process”).

**In all cases, appeals to the CSAC must be about decisions of chief officers. Civil servants cannot appeal to CSAC about decisions of Heads of Departments, Sections or Units who are appointing officers. They can only appeal to the chief officer about those decisions.**

**However, under section 33, a civil servant applying for the position of chief officer of a ministry or portfolio may appeal directly to the CSAC about an appointment made by the Head of the Civil Service. Section 34 also establishes that a chief officer of a ministry or portfolio may appeal directly to the CSAC about a decision of the Head of the Civil Service or the Official Member, as the case may be.**

Only civil servants (i.e. existing employees of government) can lodge an appeal with the CSAC. This means that a person who is not a civil servant, and who has unsuccessfully applied for a position as a civil servant, may not lodge an appeal. Similarly, employees of statutory authorities and government companies are not civil servants and are therefore not covered by the CSAC appeals process.

#### The Two-Step Appeal Process

The Public Service Management Law, 2005, establishes a two stage appeal process.

If a civil servant is unhappy with a personnel decision of his/her appointing officer (and that appointing officer is not the chief officer) then in the first instance the civil servant may appeal to the chief officer. After discussion with both parties the chief officer must consider and rule on the appeal and notify his decision in writing.

This internal appeal process is the responsibility of the chief officer. The Law requires the specific arrangements for appealing to a chief officer to be established by the civil service entity concerned. That process should be documented in the entity’s HR policies and procedures manual.

If the civil servant is not satisfied with the chief officer’s appeal ruling, he/she may then appeal to the CSAC *about the chief officer’s appeal decision.*

## **Grounds for an Appeal to the CSAC**

A civil servant can appeal to the CSAC about any of the personnel-related decisions specified in Part V of the Law. This includes the following:

- Appointment decisions (including transfers, promotions and reappointments);
- Non-appointment at the end of a probationary period;
- Remuneration decisions;
- Terms and conditions decisions;
- Performance assessment ratings and comments;
- Disciplinary decisions;
- Dismissal decisions;
- Early retirement on medical grounds decisions;
- Retirement to improve the organisation decisions;
- Other termination of employment decisions.

However, a civil servant cannot appeal a decision merely because he/she does not like it. A decision can only be appealed if the appellant considers that the Head of the Civil Service, Official Member, or Chief Officer has failed to comply with the requirements of the Public Service Management Law, 2005 or the Personnel Regulations, in making the decision.

This means that the only valid grounds for an appeal are where the appellant considers that either:

- the processes and procedures specified in the Law or Regulations for that type of decision were not followed; or
- the substantive requirements of the Law or Regulations were not complied with (e.g. in relation to appointments to appoint the best candidate on the basis of merit with Caymanians given preference where two or more candidates rank broadly equally).

The Law also requires appellants to provide evidence to support their appeal. This means they need to be able to provide evidence that one or both of the above grounds exist.

Before agreeing to consider an Appeal, the CSAC will satisfy itself that there are sufficient grounds for the Appeal.

## **PREPARING AN APPEAL RESPONSE**

### **Timing and Content of a Civil Servant's Appeal**

Under the Law, an appeal by a civil servant against a decision must be lodged with the CSAC within 30 days of the appellant being notified of the decision. The 30 day period starts on the day the appellant receives the written notification, even if he/she received oral advice prior to that.

The CSAC has established the following minimum content for a civil servant's appeal submission. It must:

- Be in writing and be signed by the appellant;
- Contain the appellant's mailing address and daytime telephone number;
- Specify the decision that is being appealed (and attach a copy of that decision);
- Set out the grounds for appeal including the provisions of the PSML or Regulations that the appellant considers were not complied with;
- Provide evidence to support the case;
- State the action that the appellant would like the Commission to take.

### **Response Document**

After an appeal submission has been lodged with the CSAC, the individual whose decision is being appealed, (the respondent), will be contacted by the CSAC Secretariat, provided with a copy of the appeal documentation submitted by the appellant, and requested to make a written response to the Appeal.

The response should consist of the following:

1. An outline of the facts of the case from the respondent's perspective, including an outline of the events and actions leading up to the decision, and a detailed documentation of the procedures that were followed when taking the decision.
2. An explanation of the reasons for the decision and how these reasons comply with relevant requirements of the Law and Regulations.
3. Any comments on the appellant's appeal submission which the respondent wishes to make.

4. Any other information the respondent considers relevant in considering the appeal, such as a summary of the appellant's work history, or details of the internal appeal process.
5. Documentary evidence to support the statements made in the response, such as copies of employment agreements, interview panel reports, written warnings, notes of meetings, letter of dismissal, medical reports, certificates of conviction etc.

The response document should set out the information as clearly as possible and in a format that will make it easy for the Commissioners to read and comprehend. Description of actions and events, and documentary evidence, should be organised in chronological order.

The content of the response document should be limited to the appeal concerned and should not cover other matters relating to the appellant unless they are relevant to the appeal. The response should not include an allegation or makes comments that have not previously been put formally to the appellant.

A copy of the response will be provided to the appellant, prior to the appeal Hearing.

### **Assistance from CSAC**

In order to maintain its neutrality and independence, the CSAC Members and staff of the CSAC Secretariat are not allowed to assist appellants in preparing Appeal documents or to respondents in preparing an appeal response. However, the Secretariat is available to provide advice on administrative matters including the content required in appeal responses.

## **THE CSAC HEARING**

### **Scheduling of the Hearing**

Once the CSAC has accepted a civil servant's appeal and received a response, the CSAC will set and notify a date for a Hearing. A "Notice of Hearing" will be provided to both the appellant and the respondent involved. The Notice will specify the time, date and place of the Hearing, together with a summary of the issues to be covered.

The Hearing provides an opportunity for both the appellant and the respondent to present their various points of view and to discuss the decision being appealed with the Commission. This ensures that Commission Members are aware of all the facts before making a decision on the appeal. The Hearing is therefore a very important part of the appeal process.

If either party to the appeal (i.e. the appellant or the respondent) is unable to attend the Hearing on the date notified, they may request that the Hearing be rescheduled. This can be done by submitting a written request to reschedule the Hearing to the CSAC offices. This should be done at least 10 days prior to the Hearing date. The request must outline the reason for the rescheduling, i.e. what is preventing attendance at the Hearing on the originally scheduled date. The CSAC will consider the request to reschedule, consult with the other party as appropriate, and notify a new Hearing date if it agrees to reschedule.

#### **VALID REASONS FOR REQUESTING A RESCHEDULING**

The CSAC will only consider rescheduling a Hearing when there are valid reasons to do so, and even then will only do so in extraordinary circumstances.

Valid reasons would include an unavoidable conflict with another significant event, or a family or medical emergency.

### **Attendance at the Hearing**

The attendance of both the appellant and the respondent at the Hearing is compulsory.

The respondent may be accompanied to the Hearing by a limited number of relevant advisers and staff members, for example the HR Manager and the relevant appointing officer.

In order for the necessary administrative arrangements to be made, the CSAC must be advised of the names of any accompanying persons (and whether they are to act as representatives) at least 10 days in advance of the Hearing.

## **Hearing Procedure**

### ***General Process***

Although the CSAC is a quasi-judicial body and therefore a degree of formality is required, the Commission aims to make Hearings as relaxed and informal as possible.

The exact process and procedure for a particular Hearing is likely to vary from Hearing to Hearing depending on the nature and circumstances of the appeal itself. However, in general terms a Hearing is likely to operate as follows:

- The Chairman will begin by outlining the procedures that the Commission will follow.
- The appellant will be invited to make a brief statement before the Commission puts any questions to them.
- Questions will then be put to the appellant by the Commission.
- The respondent will be invited to make a brief statement. The statement should summarise the respondent's position and the reasons why the appeal should be turned down; there is no need to go through the written response document in detail as Commission Members will have read the papers prior to the Hearing.
- Questions will then be put to the respondent by the Commission.
- Both parties will be allowed to call and question witnesses.
- The appellant will then be given a chance to make a final statement to the Commission.
- The Hearing will conclude and all the parties will be asked to leave.

### ***Witnesses and Documents of Evidence***

In the course of the Hearing both the appellant and the respondent may call witnesses to confirm matters contained in their submissions. Both parties will also be able to ask questions of each other's witnesses if they wish to do so.

In the course of the Hearing both parties may also submit additional documents to confirm matters contained in their submissions. If the respondent intends to submit additional documents in this way (i.e. in addition to documents provided with the response) he/she needs to bring at least 8 copies of each document for circulation to the Members of the Commission and the appellant.

### **Hearing Behaviour**

Although strict rules of court procedure will not be followed, it is important to remember that this is still a quasi-legal proceeding. The parties should therefore conduct themselves accordingly, giving full attention to the Hearing and not attempting to conduct business or accept phone calls, putting the other parties on hold, etc., while the Hearing is in progress.

All persons attending the Hearing must follow the instructions of the chairman. If any person fails to do so, or otherwise becomes disruptive, the chairman may ask that person to leave the Hearing or even stop the Hearing entirely.

All participants in the Hearing will be required to testify under oath. Their conduct will also be subject to the requirements of the Public Service Management Law, 2005 (see "The CSAC Hearing Powers" box below).

The Hearing is confidential to the parties concerned and the proceedings are not to be disclosed to other persons either during or after the Hearing itself. The CSAC will record Hearing proceedings in order to preserve the record. All other recordings of Hearings are prohibited.

## **THE CSAC HEARING POWERS**

### *Power to Summon Witnesses and Documents*

The CSAC has all the powers of the Grand Court in relation to the summoning of witnesses and the production of documents.

Any person who fails to comply with any request made by the CSAC to produce any information that is in that person's possession or under that person's control is guilty of an offence and is liable to imprisonment for six months.

### *Appearance before the Commission*

Any person who without reasonable excuse fails to appear before the CSAC when required to do so, or who fails to provide answers or explanations when required to do so by the CSAC, is guilty of an offence and is liable to imprisonment for six months.

### *False Information*

A person who makes any statement or gives any information to the CSAC, knowing it to be false or misleading is guilty of an offence and is liable to imprisonment for six months.

### *Improper Influence*

A person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner, influences or attempts to influence any decision of the CSAC, is guilty of an offence and is liable to imprisonment for six months.

### *Privilege*

Any report, statement or other communication or document of record of any meeting, inquiry or proceedings of the CSAC is privileged and therefore may not be used in legal proceedings.

## **WHAT HAPPENS AFTER THE CSAC HEARING**

### **The CSAC Consideration and Ruling**

Following the Hearing, the Commission will consider the facts of the Appeal as presented in submissions and at the Hearing. It will then reach a decision which will be notified to the parties concerned in writing.

With respect to appeals by chief officers about decision of the Head of the civil service or the Official Member and appeals by civil servants applying for the position of chief officers, the Commission will rule on such appeals and make a recommendation to the Governor.

Under the Law, the CSAC is required to provide a written decision within 30 days of the Hearing.

### **Principles on which the CSAC Decisions will be Based**

In making appeal decisions, the CSAC will be guided by four principles:

- Procedural compliance –that the established procedures of the PSML and Regulations were followed correctly;
- Substance – that the substantive facts support the decision made and that the civil servant was treated fairly and reasonably in that context;
- Consistency – that the civil servant was treated in a similar way to another person in the same circumstances;
- Proportionality – that the decision was reasonable in the circumstances of the case and that the conduct or situation warranted the decision made.

Not all of these principles will be relevant to all appeals. Compliance with the relevant procedures laid down in the PSML and Regulations will be given particular weight and failure to follow those statutory procedures will mean that the decision is likely to be held to be unfair.

## WHAT CSAC DECISIONS ARE POSSIBLE?

The CSAC has broad remedial authority in considering an appeal. These include:

- ordering that the decision of the Head of the Civil Service, Official Member or Chief Officer be reversed in favour of the appellant;
- rejecting the appeal and confirming the decision;
- ordering that an appointment-related decision be declared invalid and that the Head of the Civil Service, Official Member or Chief Officer repeat the appointment process in accordance with the requirements of the Public Service Management Law;
- ordering that the Head of the Civil Service, Official Member, or Chief Officer review his or her decision in light of evidence provided to the Commission;
- confirming the decision, but ordering such monetary remedy in favour of appellant as the Commission considers appropriate; or
- ordering such other action as the Commission considers appropriate..

The CSAC may also make interim orders if it considers them appropriate.

## **Civil Service Appeals Commission**

**Location:** 2<sup>nd</sup> Floor, Cayman Corporate Centre  
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**Office Hours:** 8.30am – 5.00pm

