

## **DISCIPLINARY POLICY**

---

- 1. Introduction**
- 2. Structured support**
- 3. Formal action process**
  - 3.1. Investigations
- 4. Notes of the Hearing and Investigation**
- 5. Suspension**
- 6. Grievance**
- 7. Convening a Hearing**
- 8. Constitution of Panel**
- 9. Conducting a Formal Hearing**
- 10. Disciplinary Sanctions**
- 11. Appeals**
- 12. Key Roles and Responsibilities**
- 13. Glossary of Terms**

## 1. Introduction

- 1.1. The Disciplinary Policy & Procedure applies to all staff except those staff in their probation period and those covered by the *Appendix to the College Charter and Statutes 2015* governing academic staff. The Probation Procedures and the Appendix to the Statutes are available for reference on the College intranet and from campus Human Resources Offices. The Disciplinary Policy & Procedure describes the College's policy on managing disciplinary problems. Disciplinary issues cover situations of poor conduct and those performance issues that arise following negligence or deliberate unwillingness on behalf of the member of staff. Throughout this policy and procedure the terms 'disciplinary' and 'misconduct' are used interchangeably and both terms refer to matters related to the disciplinary process.
- 1.2. The College has separate procedures for managing issues of ill health, redundancy and scientific misconduct. Managers should refer to either the [Sickness Absence Policy and Procedure](#), [Change Management Policy and Procedure](#) or [Research Misconduct](#) for guidance. This Policy & Procedure does not apply to matters of poor performance, which are dealt with under the Capability Policy & Procedure.
- 1.3. The College treats equality of opportunity seriously and has an equality framework that is applicable to staff in order to promote and ensure equality of opportunity. Implementation of this Policy & Procedure must be clear and transparent and not subject to any unfair discriminatory practices.
- 1.4. Line managers and supervisors are required to familiarise and understand this policy.
- 1.5. The College Trades Unions have been consulted on this document and it follows the principles established by the ACAS Code of Practice April 2009. The Disciplinary Policy & Procedure will be reviewed periodically to ensure that it is effective.

## 2. Support framework

- 2.1 Line managers are expected to undertake their role in line with and be role models of the Imperial Expectations ethos. Line managers/supervisors are expected to meet with their staff on a regular basis to discuss work and give advice and guidance on work matters and should practice good people management to minimise the need to deal with misconduct.
- 2.2 Line manager are expected to be role models of Imperial Expectations. For example:
  - By providing accurate job descriptions and person specifications that enable capable people to be selected for vacancies.
  - Through communicating the College's standards of behaviour, the requirements of their job description, and how they are expected to deliver these to new starters in their induction.
  - Through management of the probationary period to enable line managers to develop the member of staff and to identify and resolve problems at an early stage.
  - By holding regular team and 1-2-1 meetings

- By undertaking annual Personal Review and Development Plan (PRDP) meetings
- 2.3 The standards against which a member of staff will be assessed should be communicated by their line manager/supervisor in accordance with the reasonable requirements of the post. If the member of staff is unsure of the required standard, they should discuss this with their line manager.
- 2.4 Where there are concerns about a member of staff's conduct that warrant closer consideration to them (with the exception of alleged serious or gross misconduct) then the line manager/supervisor must, in the first instance, discuss these with HR who will consider the issues and advise on the options for addressing these, such as through one-to-one discussion, mediation, coaching and training without attendance from Human Resources or Trade Union representatives. If it is judged that the concerns are such that they should be managed under the support section of this policy, HR will undertake a one-to-one briefing session with the manager to guide on the appropriate policies and support and advise the manager on how to discuss this with the member of staff. Following the discussion(s), the line manager will discuss their concerns with the member of staff informally, in line with the advice received, and will also provide the member of staff with the details of what support is available.
- 2.5 The member of staff will be given reasonable time to improve and the period of review will be agreed at the meeting. This will vary based on the nature of the concerns, to ensure that the member of staff is given a reasonable opportunity to address the concerns on an informal basis. Progress will be reviewed regularly during the informal review period, and feedback on progress will be given to the member of staff. Positive support and encouragement will be offered to the member of staff to help him or her meet the required standards of performance.
- 2.6 If there is no improvement following informal measures, or in cases of alleged serious or gross misconduct, consideration will be given to taking further action. This action is dependent on the nature of the issue. It may be identified that either the formal part of this policy and procedure or the Capability, Sickness Absence or Change Management Policy and Procedures, are appropriate. Usually it will be clear which formal procedure should be used. Where there is doubt, a Human Resources representative will advise.
- 2.7 This policy and procedure refers to Disciplinary issues.

### **3. Formal action process**

#### **3.1 Investigations –**

Where formal disciplinary action is being considered, it is College policy that the relevant facts and any evidence should be gathered in order that an informed discussion and decision can take place. Human Resources representatives will provide case specific guidance and assist during an investigation. The following should therefore be read as an outline guide on the information gathering process.

- 3.1.1 Where a member of staff has disclosed a disability (as defined by the Equality Act 2010) then arrangements for investigations (and any consequent formal meetings) should include consideration of any requirements for reasonable adjustments to accommodate the disability.
- 3.1.2 Where a member of staff has difficulty understanding written or spoken English then appropriate accommodations should be made.
- 3.1.3 The investigating officer will normally be the immediate line manager/supervisor but an alternative person can undertake this role if appropriate. Guidance should be sought from Human Resources.
- 3.1.4 **Time keeping:** Where there is concern about time-keeping the facts will be readily available to the immediate line manager/supervisor. As part of an investigation the line manager/supervisor will need to compile records as evidence of the extent of the problem. An investigation into time-keeping will also include gathering any notes and records of previous discussions about the problem.
- 3.1.5 **Conduct:** Where a misconduct issue has been raised then the line manager/supervisor will initially speak to the member of staff to establish the immediate facts of the case from the employee's perspective. If, following this initial meeting, it appears that there is cause for further review, then a full investigation will be conducted.

Breach of the College's [Information Systems Security Policy](#) on the use of collaborative internet environments or the conditions of use of IT facilities, may count as a misconduct issue.

- 3.1.6 The investigating officer should gather statements and interview the member of staff and possible witnesses. These investigation meetings should be undertaken promptly before recollections fade. The member of staff and witnesses may be accompanied during an investigation meeting by a Trade Union representative or a work colleague. Under exceptional circumstances the manager and Human Resources representative will consider requests for accompaniment by a relative or friend, this individual must not be a legal representative. A member of Human Resources may also be present to assist with the investigation.
- 3.1.7 Notes will be taken at each investigation meeting. These notes are not intended to be verbatim but will contain the key representations made at the meeting. Each person interviewed will be provided with a copy of the notes of their individual meeting as soon as is practicable and asked to confirm that these notes are an accurate record of the meeting.
- 3.1.8 The investigating officer, with assistance from Human Resources, will review the notes of the investigation meetings and any other documentary evidence that has been gathered. In complex cases, after review of the evidence, it may be necessary to meet again with a witness or the member of staff, or request written submissions from them if information needs to be corroborated or clarified.

3.1.9 The timetable for gathering evidence should be discussed with all parties and will usually be within ten working days. Investigation of a disciplinary matter must be given priority and every effort should be made to minimise delays.

3.1.10 Based on their investigations an investigating officer may determine:

(a) that there is no case to answer;  
(b) that the matter is appropriately dealt with by training or under other College procedures; or

(c) that there are sufficient grounds for convening a formal hearing.

If the investigating officer decides to refer the matter to a formal hearing then a report should be prepared summarising the investigation. The report should include all the notes of the investigation meetings and all the evidence gathered during the course of the investigation. A member of Human Resources can assist an investigating officer with the report.

#### **4 Notes of the Hearing and Investigation**

4.1 Notes and records of matters dealt with under the Disciplinary Policy & Procedure should be handled on a confidential basis and stored securely. The covert recording of informal or formal meetings, e.g. by use of a mobile phone or other recording device will not be permitted, and will result in disciplinary action.

The outcome of all action will be monitored centrally by the College to comply with statutory requirements. Spent disciplinary records may be retained by the Human Resources Division in a separate file for reference in the event of a dispute or legal proceedings but not for reference in the event of further action. Retention and subsequent removal of this information should be done in accordance with requirements under the Data Protection Act.

#### **5 Suspension**

5.1 In certain cases, for example where the nature of the allegation(s) are serious and may constitute gross misconduct, it may be appropriate to suspend an employee on full pay, pending an investigation. Apart from a situation where a member of staff does not have a legal or statutory right to work and therefore pay will be stopped, a decision to suspend a member of staff should not be taken lightly and should only be used where absolutely essential. The period of suspension will normally be limited to a maximum of four weeks. Suspension for a period longer than this must be approved by the Director of HR or an appropriate senior manager within HR.

5.2 Suspension is not a disciplinary sanction and does not represent disciplinary action. Regular contact should be maintained with the member of staff to advise them of the progress of the investigation.

- 5.3 Where two members of staff are involved, careful consideration should be given to the longer term impact on a fair disciplinary process if only one member of staff is to be suspended because of operational requirements.
- 5.4 The immediate line manager/supervisor will normally advise a member of staff that they are to be suspended in a meeting (see 5.5 below). Unless a serious gross misconduct incident arises out of normal working hours, the line manager should seek guidance from HR on the necessity of suspension before arranging a meeting.
- 5.5 Present at the meeting will be a Human Resources representative and the member of staff, who will be offered the opportunity to be accompanied by a work colleague or Trade Union representative if this can be arranged. Under exceptional circumstances the manager and Human Resources representative will consider requests for accompaniment by a relative or friend, this individual must not be a legal representative. In circumstances where representation or HR attendance cannot immediately be arranged, the member of staff will be provided with written information on the reason for suspension and also offered the opportunity of a further meeting, at the earliest opportunity, when HR and/or representation is available. Notes taken at a suspension meeting should be provided to the member of staff.
- 5.6 Staff on suspension should be informed in writing of the reason for the suspension and should be provided with a copy of this Policy and Procedure. The member of staff should be advised of the expected duration of the suspension, and any conditions about attending the workplace, contact with other staff or witnesses. The member of staff should be advised that they must make themselves available for contact during normal working hours and that any applications for annual leave during the period of suspension should be made in the usual way.

## **6 Grievance**

- 6.1 In the course of dealing with a disciplinary matter a member of staff may raise grievance issues about the conduct of the investigation or the investigating officer. A Human Resources representative will review any grievance raised during the course of a disciplinary matter and, in consultation with the member of staff and/or their representative, decide how the grievance should be considered based on the circumstances of the case.
- 6.2 As a guide, where the grievance constitutes a response to the allegations under investigation then the member of staff's comments will be considered in the formal hearing or appeal. Where the grievance is an allegation of harassment or bullying (including cyber bullying) then consideration will be given to suspending the process to review the allegation under the [Grievance](#) procedure. Where there are allegations of discrimination, consideration will be given to bringing in another manager to deal with the case. Grievances not related to the case may be reviewed separately under the College's Grievance Procedure.

## **7 Convening a Hearing**

- 7.1 A member of staff should be given adequate time and information to prepare for a formal hearing. It is College Policy that a member of staff will be given no less than five working days' written notice of a formal hearing. They will be supplied with any information that will be considered during the hearing including, if applicable, all statements gathered during an investigation. They will be asked for any information in support of their own case to be submitted prior to the hearing. Formal responses should be relevant. Proportionate to the allegations and of a reasonable length.
- 7.2 Where a member of staff has disclosed a disability (as defined by the Equality Act 2010) then arrangements for investigations (and any consequent formal meetings) should include consideration of any requirements for reasonable adjustments to accommodate the disability.
- 7.3 Where a member of staff has difficulty understanding written or spoken English then appropriate accommodations should be made.
- 7.4 A member of staff has a statutory right to be accompanied at a formal hearing by either a Trade Union representative or work colleague. Under exceptional circumstances the manager and Human Resources representative will consider requests for accompaniment by a relative or friend, this individual must not be a legal representative. In advance of the hearing the member of staff should advise the manager hearing the case of the name of the person who will be accompanying them.
- 7.5 Where it is known that the member of staff is an official of the Trade Union then the Human Resources representative will bring a copy of the request to attend the formal hearing to the attention of the relevant full-time regional officer.
- 7.6 If a member of staff is unable to arrange accompaniment on the date proposed, or fails to attend the meeting for reasons outside of their control, then reasonable efforts will be made to rearrange the formal hearing for a mutually suitable time.
- 7.7 In the event that a member of staff is unable to attend a formal hearing or cannot attend a rearranged hearing then they may be given the opportunity to respond to the allegation(s) in writing. If a member of staff does not attend a rearranged hearing or submit a response to the allegation(s) in writing within an agreed time scale, then the Chair of the hearing may make a decision on appropriate action in the member of staff's absence. This decision will be made without the benefit of the member of staff's oral or written statement if they have not attended or provided written documentation.
- 7.7 The formal hearing will be chaired by a line management representative nominated by the Head of Department/Division. The manager hearing a disciplinary case should ideally have had no prior involvement in the investigation. A Human Resources representative will be present.

7.8 The hearing should be an objective review of the case conducted in a way that allows all parties the opportunity to hear and comment on the issues under consideration before a decision is made.

## **8 Constitution of Panel**

8.1 Formal disciplinary hearings will normally comprise the following parties:

- a senior manager who will chair the hearing and decide on the appropriate sanction. The senior manager will be accompanied by a Human Resources representative. The senior manager and their supporting Human Resources representative will have no prior involvement in the investigation of the case.
- the member of staff and the member of staff's work colleague or Trade Union representative. Exceptionally the Trade Union may request that two representatives (either regional or local) are present at a formal hearing. The Chair of the Hearing will consider this request based on the complexity of the case. If agreement is given then one representative will take the main role of spokesperson and the other representative will provide a supporting role, assisting the main representative with paperwork and background information.
- the immediate line manager/investigating officer will present the issues of concern. In complex cases normally the investigating officer may be accompanied by a Human Resources representative who has assisted with the investigation.
- suitable administrative support should be present to take notes of the hearing.

8,2 Where dismissal is a possible outcome the hearing will be chaired by the Head of Department/Division or a senior member of staff as their nominee.

## **9 Conducting a formal hearing**

9.1 At a formal hearing the line manager/investigating officer should explain the complaint against the member of staff and go through the evidence that has been gathered, calling witnesses as appropriate. If necessary, the Human Resources representative who assisted with the investigation may take an active role in the hearing to assist in the presentation of the case. This may include asking questions of witnesses to clarify evidence.

9.2 The member of staff should be allowed to set out their case and answer any allegations that have been made. The member of staff should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. A format for conducting a formal hearing is attached at Appendix 1.

9.3 The person accompanying the member of staff may not answer questions on behalf of the member of staff but can address the hearing to present the member of staff's case, question witnesses, respond to views expressed and sum up the case. The member of staff may confer with the person accompanying them during the hearing.



- 9.4 Witnesses may be called to a formal hearing and should be available to answer any questions on their statement. During a hearing, witnesses will be requested to make an oral statement, or to confirm the contents of a previously written statement. Witnesses may be questioned by the member of staff, their representative, the management representative or Human Resources representative. Witnesses usually withdraw from the hearing after questioning.
- 9.5 During the formal hearing it may be appropriate to arrange an adjournment to seek further information. All parties can request an adjournment through the hearing's Chair. The Human Resources representative will provide guidance if this is necessary.

## **10 Disciplinary Sanctions**

- 10.1 Following a formal hearing, the senior manager chairing the hearing must decide whether formal action is necessary. Where it is decided that no action is justified then the member of staff should be informed in writing. Where it is decided that formal action is justified, the manager will need to consider what form this should take. Before making any decision the manager should take account of the member of staff's disciplinary and general record, length of service, actions taken in any previous similar cases, the explanations given by the member of staff and whether the intended action is reasonable under the circumstances. The Human Resources representative will provide guidance to the senior manager on appropriate action.
- 10.2 If a formal warning is considered appropriate then it will be confirmed in writing by the line manager with advice from the Human Resources representative.
- 10.3 The warning will state:
- the reason for the warning, outlining the details of the concern with the member of staff's conduct ;
  - the improvement that is expected from the member of staff;
  - the assistance and support arrangements that are available to assist improvement;
  - the timescale over which the improvement must be achieved;
  - the likely consequence if there is no significant and sustained improvement in conduct;
  - the length of time the warning will be active, normally one year;
  - the member of staff's right of appeal against the warning and the procedure for doing so.

- 10.4 A copy of the letter with the outcome of the formal hearing will be sent to the member of staff as soon as practicable after the hearing and normally within ten working days.
- 10.5 It is College policy that a member of staff should normally receive two formal written warnings before consideration is given to the termination of employment. It should be made clear that the second warning is a final warning and dismissal may follow if improvement is not forthcoming.
- 10.6 Exceptionally, the nature of the concern with the member of staff's conduct may warrant consideration being given to issuing a final written warning, or to dismissal, or to summary dismissal for matters of serious or gross misconduct, in circumstances where no previous warnings have been issued.
- 10.7 Where a member of staff has an active disciplinary warning on file then consideration will be given to withholding incremental progression through the salary spine. The member of staff will be informed in advance in the warning letter if incremental progression is to be withheld. This will not apply retrospectively. The review period for the reinstatement of the incremental progression will also be noted in the letter. A line manager may reinstate incremental progression where there is sustained improvement in conduct. This may be implemented before the expiry of the formal warning but it will not be backdated to the normal incremental date if this has passed.
- 10.8 **Gross misconduct** - the following offences are considered serious enough that they may warrant dismissal without prior formal warnings (the list is not to be considered exclusive or exhaustive):
- theft, fraud and deliberate falsification of records;
  - physical violence;
  - bullying (including cyber bullying) and/or harassment;
  - deliberate damage to property;
  - serious insubordination as demonstrated by wilful refusal to carry out reasonable requirements of the post or management requests;
  - misuse of College property or name;
  - misuse of computer facilities including use of internet and email (see <http://www.imperial.ac.uk/admin-services/ict/> );
  - bringing the College into serious disrepute;
  - serious failure of competence through alcohol or illegal drugs or breach of a local requirement to be alcohol free at work;
  - negligence with serious consequences which causes or might cause unacceptable loss, damage or injury;
  - serious infringements of health and safety rules;
  - serious breach of confidence (subject to the Public Interest (Disclosure) Act );
  - knowingly or recklessly disclosing personal data in breach of the Data Protection Act;
  - conviction of any criminal offence which the College views as making the individual unfit to hold their post;
  - vexatious or malicious behaviour;
  - fraudulent absence from work;

- proven serious discriminatory behaviour on the grounds of race, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief [including lack of belief], sex, sexual orientation, disability or age.

*(Note that allegations of theft, violence or criminal damage should be reported to Security and may also warrant referral to the police).*

- 10.9 The potential for summary dismissal does not negate the requirement for a full investigation or the right to a hearing, prior to any decision being made, in accordance with this procedure. Managers should seek advice from Human Resources.
- 10.10 **Termination of employment.** Where dismissal is a possible outcome the case will be heard by the Head of Department/Division or a senior member of staff as their nominee.
- 10.11 If, following a formal hearing, dismissal is considered appropriate then the Head of Department/Division or nominee has the authority to dismiss with agreement from the Human Resources representative. Where there is a decision to dismiss, it will be confirmed in writing. The letter will be from the Head of Department/Division or nominee, but may be prepared by a Human Resources representative. The letter will contain the reasons for the dismissal, the date employment will end and the right to appeal.
- 10.12 In cases of gross misconduct the member of staff may be dismissed summarily without notice.

## 11 Appeals

- 11.1 In all cases of formal disciplinary action the member of staff has the right of appeal against the decision to issue a formal written warning or to dismiss. In the written notification of the formal disciplinary action, the member of staff will be informed of the name of the person to whom an appeal should be addressed and the timescale for doing so. If the member of staff wishes to appeal they must set out the grounds of their appeal in writing.
- 11.2 **Appeals against a written warning** will be heard by a senior line manager with a member of Human Resources, both of whom will have had no previous involvement in the case. **Appeals against dismissal** will be heard by a College panel consisting of three members of the College not previously involved in the case, with a Human Resources representative present as Secretary to the Appeal Panel. A member of staff has a statutory right to be accompanied at the appeal hearing by either a Trades Union representative or work colleague. All appeal hearings will be convened as soon as practicable.
- 11.3 If new evidence is introduced during an appeal hearing it may be referred back to the original formal hearing in order that they may review the disciplinary sanction. The appeal hearing may be reconvened in the event that the member of staff does not accept the subsequent decision of the original hearing.
- 11.4 Appeal hearings will be conducted in accordance with the following terms of reference:

- To review whether the matter under consideration was adequately investigated and substantiated;
- To review whether the College's procedures were correctly and fairly implemented;
- To consider whether the disciplinary action was reasonable in the circumstances known to management at the time of the hearing.

11.5 In the event that an appeal panel decides to reinstate a member of staff who has been dismissed then this will be done in a manner which maintains continuous service and without loss of pay (assessment will be made of any income received by the member of staff while not in College employment).

11.6 The College regards the appeal decision as final.

## **12 Other**

12.1 Should a member of staff be concerned that this policy is being misused they should contact their HR Partner to discuss their concerns. Union members may wish to contact their local Union representative.

## 12 Key Roles and Responsibilities

Individual responsible	Role/Responsibility
<b>Informal action:</b>	
Manager	Practice good people management, including meeting with staff regularly to discuss work issues and to offer advice on work related matters in an attempt to avoid issues arising. To comply with the informal procedure set out in the policy, including making reasonable attempts to resolve any problems in an informal manner and giving reasonable time for improvement where relevant. Ideally managers will address/pre-empt issues before they escalate.
Member of staff	Seek help and advice from manager(s) on work related matters when necessary and listen to advice given by managers. Staff have an obligation to inform their manager if they do not understand the advice given.
HR	Discuss and consider with managers their conduct concerns regarding a member of staff and, where it is identified that structured support should be undertaken undertake individual training with managers. Maintain regular contact during the structured support period and review correspondence sent to individuals. Make contact with the individual to make them aware of what support is available. Assure the member of staff of confidentiality.
<b>Formal action:</b>	
HR	<ul style="list-style-type: none"> <li>i) A HR representative not involved in case will, on request, explain the procedure to individual who is the subject of the investigation.</li> <li>ii) Carry out their designated role at any meetings/hearings, including support of the manager (Chair) and provision of administrative support (note taking). Send any written communication, as set out in the procedure, in a timely manner.</li> </ul>
Trade Union/work colleague	Offer support and assistance to individuals and attend hearings in the capacity outlined in policy
Investigating Officer (normally member of staff's manager)	Carry out investigation and based on the evidence received, make a recommendation of either no action, further action or training needed.
Member of Staff	Prepare for and attend any meetings/hearings convened. Provide a written response to the allegation that should be

	proportionate to allegations and reasonable in length
Trade Union/work colleague	Offer support and assistance to individuals and attend meetings/hearings in the capacity outlined in policy
Chair	Carry out their designated role at any meetings/hearings. Confirm any action to individual as directed by the procedure, in line with timescales outlined in the policy
Witnesses	Attend any meetings/hearings to answer questions put to them and confirm statements previously given and to maintain confidentiality in relation to the matter.

### 13 Glossary of Terms

Cyber bullying	Using the internet and related technologies to harm another person in a deliberate, repeated and hostile manner
Disciplinary/misconduct issues	Situations of poor conduct and performance issues resulting from negligence or deliberate unwillingness of member of staff
Disciplinary sanctions	Approved course of action following formal hearing
Gross misconduct	Offences considered serious enough to possibly warrant dismissal without prior formal warnings
Summary dismissal	Dismissal without notice

## Appendix 1

### FORMAT OF FORMAL HEARINGS

- 1 The Chair of the Panel introduces all those present, explains the purpose of the hearing and how it will be conducted.
- 2 The management representative will put the case in the presence of the member of staff and his/her representative and will call any witnesses in support of the case.
- 3 Both the management representative and any witnesses may be questioned by the member of staff or their representative and by the Panel on the information given by them.
- 4 The member of staff or his/her representative shall put the case in the presence of the management representative and may call any witnesses in support.
- 5 Both the member of staff, his/her representative and any witnesses may be questioned by the management representative and by the Panel on the information given by them. Witnesses will withdraw after giving evidence.
- 6 The management representative may then make a closing statement followed by the member of staff or his/her representative.
- 7 Both parties will then withdraw while the Panel, together with the secretary to the Panel, deliberate in private to consider the evidence given.
- 8 The Panel may recall the parties to clarify evidence or seek further information. If recall is necessary, both parties shall be recalled.
9. The Panel will announce their decision to the member of staff and his/her representative and the management representatives at the end of the proceedings or later as they determine appropriate. The decision will be confirmed in writing no later than ten working days after the hearing.
10. In the case of an appeal hearing the decision is final.