



Security Vetting Appeals Panel

Security Vetting Appeals Panel
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PROCEDURAL GUIDANCE DOCUMENT

The purpose of this document is to provide procedural guidance on the conduct of appeals to the Security Vetting Appeals Panel (SVAP). For additional support on the process, please contact the Secretariat.

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Foreword

An appeal to the SVAP follows a formal process whereby the Appellant and the Respondent are each requested to submit a Main Statement of Case, both of whom have the opportunity to review and comment on the other party's submissions, save in the circumstances set out in this guidance document.

The Secretariat sets deadlines for the receipt of submissions. It is important that there is adherence to these deadlines.

Extensions to a deadline will only be granted for valid and substantive reasons. Requests for an extension should be accompanied by written reasons for the request. The Secretariat will inform the other party whenever an extension is granted.

When a vetting decision is based on information which cannot be disclosed to the Appellant (referred to as CLOSED information hereafter), special arrangements will be put in place¹.

Any party to an appeal may submit information or make representations to the Panel, or to the Chair alone, in the absence of the other party, but only by agreement of the Chair or Deputy Chair.

¹ See paragraphs under heading 'SVAP Rulings on Disclosure' for further information.

The Appeal Process

The Intention to Appeal

1. Organisations undertaking National Security Vetting (NSV) must ensure that they have in place an internal appeal mechanism which includes information about the existence of a potential route of appeal to the SVAP². Once the internal appeal process has been exhausted, an individual wishing to appeal to the SVAP must register their intention to appeal with the SVAP Secretariat by email or in writing (see the addresses set out above) within 28 days of being notified of the outcome of their internal appeal to uphold the refusal/withdrawal of their security clearance.

Determining Eligibility

2. The Secretariat will acknowledge receipt of the notice of intent from the individual within 7 days.
3. To assess an individual's eligibility to appeal to the SVAP, the Secretariat will ask the individual to complete and return a Background Information Form (BIF) within 14 days.
4. Thereafter, the Secretariat will contact the organisation concerned and, based on the information provided by the individual, request that they complete and return the BIF within 14 days.
5. In addition to completing the BIF, the organisation will be asked to provide:
 - a. A copy of the letter confirming the outcome of the internal appeal and;
 - b. a copy of the organisation's internal appeal procedures (the policy document)³.
6. The Secretariat will deal with issues of eligibility following a review of the information provided by both the individual and the organisation (in accordance with the SVAP's Terms of Reference).
7. The Secretariat will inform the individual and the organisation of the decision on eligibility, and if the individual is eligible to appeal, the case will be allocated to either the Chair or Deputy Chair who will act as the Presiding Chair ('Chair') for the duration of the appeal⁴.

The Appellant's Main Statement of Case

8. The Appellant will be asked to submit a written Main Statement of Case ('Statement'), together with any relevant supporting information within 28 days of

² [HMG Personnel Security Controls - Internal Review Mechanisms](#)

³ This is not required where previously provided by the organisation.

⁴ The 'Presiding Chair' will oversee a case for the duration of the appeal and will be responsible for providing direction on matters of disclosure, chairing the hearing, and drafting the final report. In exceptional circumstances the Presiding Chair may be substituted with the non-presiding Chair or Deputy Chair. In these circumstances parties will be informed accordingly.

the Secretariat's request. The Statement should clearly set out the grounds for appeal (i.e. why they are challenging the decision to refuse/withdraw security clearance). The Appellant will be asked also to provide a timeline of the relevant events.

9. The organisation ('Respondent') will be notified at this stage that the Secretariat has requested the Appellant's Statement.
10. The Appellant should not assume that any information they wish to rely on will be provided by the Respondent. If the Appellant holds or has access to information that they consider to be relevant to the appeal, they should provide it as part of their Statement.
11. Please see 'Main Statement of Case Instruction Note - Appellant' for further guidance in this context.
12. The Appellant can be assisted by a 'Friend' in the preparation of their Statement to the SVAP⁵.
13. The Secretariat will acknowledge receipt of the Appellant's Statement within 7 days of receipt.
14. The Secretariat will conduct a review of the Appellant's Statement to ensure that it has been appropriately completed and, where required, re-format and combine documentation into a single PDF file. Any changes made by the Secretariat will be explained to the Appellant for their comment prior to sending the Statement to the Respondent⁶.
15. The Secretariat may ask the Appellant to make revisions and in those circumstances, they will be provided a further 14 days to finalise their Statement. The Secretariat will notify the Respondent that the Appellant has been requested to make amendments and indicate the time frame.
16. Once finalised, the Secretariat will send a copy of the Appellant's Statement to the Respondent for comment and request that the Respondent submit their Main Statement of Case.

The Respondent's Main Statement of Case

17. The Respondent must submit a Statement detailing its reasons for refusing and/or withdrawing the Appellant's security clearance within 28 days of the Secretariat's request.
18. The Respondent must provide the SVAP and the Appellant (subject to confidentiality, consent of the originator and/or national security concerns) with all the information, facts and reasoning that are relevant to the initial vetting decision and the internal appeal.

⁵ See paragraphs under 'Role of a Friend'.

⁶ The Secretariat **will not** change the written substance of the Appellant's submissions. Changes will be limited to formatting and editorial corrections.

19. The Respondent should also include any relevant information that has been requested by the Appellant (subject to confidentiality, consent of the originator and/or national security concerns).
20. Please see 'Main Statement of Case Instruction Note - Respondent' for further guidance in this context.
21. The Respondent should liaise with the relevant stakeholder(s) when relying on information originating from/provided by a third-party⁷.
22. If the Respondent determines that information held in respect of the appeal and in support of its case cannot be disclosed to the appellant, the section 'CLOSED Information and Non-Disclosure' below provides further guidance.
23. The Secretariat will acknowledge receipt of the Respondent's Statement within 7 days of receiving it.
24. The Secretariat will conduct a review of the Respondent's Statement to ensure that it has been appropriately completed and, where required, re-format and combine the documentation into a single PDF file. Any changes made by the Secretariat will be explained to the Respondent for its comment prior to sending the Statement to the Appellant⁸.
25. The Secretariat may ask the Respondent to make revisions and in those circumstances, the Respondent will be provided a further 14 days to finalise their Statement. The Secretariat will notify the Appellant that the Respondent has been requested to make amendments and indicate the time frame.
26. Once finalised, the Secretariat will send a copy of the Respondent's Statement to the Appellant, excluding any information that the Respondent has requested should be withheld.

The Appellant's Final Comments

27. The Appellant will be invited to submit their final comments in response to the Respondent's Statement within 14 days of receiving the request from the Secretariat. If the Appellant considers that the Respondent holds information relevant to the appeal that has not been disclosed, they can request this either as part of their final comments or separately request that the SVAP obtains the information from the Respondent. The decision on disclosure will involve consideration of a number of factors, including the interests of natural justice and the public interest in safeguarding national security, the consent of the originator, personal privacy and confidentiality.
28. In addition to their final comments, Appellants may also wish to submit further information in response to the Respondent's submissions.

⁷ For example, UKSV.

⁸ The Secretariat **will not** change the written substance of the Respondent's submissions. Changes will be limited to formatting and editorial corrections.

29. The Secretariat will acknowledge receipt of the Appellant's final comments and forward them to the Respondent within 7 days.

The Respondent's Response

30. The Respondent will be invited to submit a response to the Appellant's final comments within 14 days of the Secretariat's request.
31. It is at the discretion of the Respondent as to whether it responds in writing at this stage, as any outstanding issues can be addressed at the hearing. The Secretariat will notify the Appellant accordingly.

The Hearing

32. Once all of the information from the Appellant and Respondent has been submitted, the Secretariat will write to both parties to arrange a hearing date. Hearings will usually be conducted in person and, save exceptionally, in London or Belfast.
33. Once a date has been agreed upon and the Lay Members have been assigned, the Secretariat will distribute a hearing bundle (electronically and/or in hardcopy) containing both parties' submissions. It is the responsibility of the parties to bring their own copies of the hearing bundle to the hearing.
34. From this juncture, any late submissions (excluding submissions requested by the Panel) will be subject to a decision by the Chair as to whether they will be considered as part of the appeal.
35. Hearings will only be rescheduled and/or adjourned when the Chair considers this step necessary in the interests of natural justice.
36. It is strongly advised that Appellants attend the hearing in person, for it provides a forum in which the Appellant can explain their case and address in detail any points of disagreement or areas of misunderstanding/uncertainty. If the Appellant declines to attend the hearing, their appeal will be considered on the basis of their written submissions and other information provided in regard to the appeal.
37. The Respondent should attend the hearing whether or not the Appellant is present.
38. Hearings are confidential. When appearing before the Panel, the Appellant may wish to be accompanied by a 'Friend'.
39. The Respondent will usually be permitted two representatives at the hearing; they should have sufficient seniority to enable them to speak on behalf of the Respondent and they should be familiar with the details of the case to respond to any matters raised by the Panel and the Appellant. If the Respondent has any questions concerning representation at the hearing, they should discuss this with the Secretariat at the earliest opportunity.
40. Where there is CLOSED information before the Panel, Counsel for the Respondent may attend the OPEN proceedings, but will be there primarily to protect the security/confidentiality of the CLOSED information and provide advice to the

Respondent's representatives. The SVAP expects the representatives of the Respondent (not Counsel) to present and address the facts of the case.

41. If there are discrete legal issues which it is suggested need to be addressed by Counsel, the SVAP and the Appellant should be notified of this request at least 28 days before the hearing by way of a written skeleton argument setting out the issue. The Chair will then decide how to proceed, including potentially inviting submissions on the issue from the Appellant. It will always be open to the Panel to vary this procedure, in the interests of justice.
42. If anyone attending the hearing requires specific arrangements to be made (e.g. requirements for access to the building), they should inform the Secretariat at the earliest opportunity.
43. Although the precise order of events at the hearing is at the discretion of the Chair, the Appellant will normally be invited to open the proceedings by briefly outlining their reasons for challenging the Respondent's decision to withdraw/refuse security clearance.
44. The Respondent will then be invited to state their case, adding any comments they might have in response to the written and oral statements made by the Appellant. The Appellant may then be invited to respond.
45. It will not be necessary for either party to go through their written submissions in detail as the Panel would have read the hearing bundle prior to the hearing. The Panel may pose questions to the Appellant and the Respondent for clarification or to test the information that has been presented.
46. The Appellant and the Respondent may ask questions of each other, but these must be put through the Chair. Cross-examination, as in a court of law, is not permitted.
47. Only in exceptional circumstances should either party seek to present new evidence and/or new arguments at the hearing. In the interests of fairness and in the absence of exceptional circumstances, the Panel will not permit the Respondent to introduce fresh grounds for refusing or withdrawing security clearance if those grounds did not constitute part of the original decision.
48. The Panel has no jurisdiction to entertain arguments in relation to performance or disciplinary issues. It will therefore maintain a clear demarcation between employee management issues and National Security Vetting issues, which should be respected by the Respondent and the Appellant.
49. In the event that significant new information comes to light in the course of the hearing, the proceedings may be adjourned if time is needed by one or more of the parties to properly respond.
50. The hearing will conclude with the Chair inviting final comments from both parties. If at this point the Panel wishes to discuss whether or not it has all the information that it needs to reach a conclusion, the parties will be asked to leave the hearing room. Thereafter, the parties will be asked to return at which stage the Panel may ask

further questions or seek clarification. The Chair will conclude the hearing once the submissions and any questions are complete.

51. The hearing is not formally recorded and/or minuted.

The Decision and Final Report

52. The Panel's decision will be reserved for the preparation of the final report.
53. On occasion, the appeal may be resolved during the course of the SVAP appeal process or at the hearing either because the Respondent decides to review or reverse its decision or the Appellant withdraws their appeal.
54. The SVAP encourages the parties to undertake any such review or discussion on whether it is possible to resolve an appeal by agreement significantly in advance of a hearing. The Panel, nonetheless, retains the right to set out its conclusions and make recommendations in a report.
55. Depending on the complexities of the case, the Panel's report will normally be issued 4-6 weeks after the hearing to the Head of the Organisation (or equivalent) and the Appellant. Other parties involved or concerned with the appeal (including those responsible for acting on the Panel's recommendations) may also be provided with the report.
56. The Panel's report will set out the relevant background to and the facts of the case, together with a summary of the parties' submissions at the hearing, and it will provide the Panel's decision and reasons, along with any recommendations.
57. The Panel will consider the appropriateness of the processes and procedures adopted by the Respondent and whether they were properly followed in the instant case. The Panel will assess the merits of the decision and will advise as to whether the Respondent was reasonably entitled to reach the relevant decision to refuse and/or withdraw the Appellant's National Security Vetting clearance.⁹
58. It is to be stressed that the Panel's role is not to substitute its own conclusions in place of the decision of the Respondent but instead, it will advise on whether the decision was reasonable in all the circumstances. The SVAP has the power to recommend that a decision to refuse or withdraw security clearance should stand or be set aside¹⁰, or that security clearance should be granted or restored. These powers can extend to recommending that the NSV process be re-run. In all instances, the Head of the Organisation takes the final decision on whether to accept the SVAP's advice and any recommendations.
59. The Respondent must inform the SVAP of their response to its final report and of the steps it proposes to take in light of the advice and/or recommendations.

⁹ See the 'Role and Jurisdiction of the Panel' paper for details on the tests the SVAP applies.

¹⁰ In some cases the SVAP may conclude that a decision was wrong, or that it was unsafe (in that it had been made without taking all relevant factors into account or taking into account matters which should not have been taken into account), but is not in a position to recommend what decision should have been taken. In addition, for various reasons it may not be practicable or appropriate to recommend that the process be re-run. In these circumstances, the only available course is to recommend that the decision to withdraw or refuse clearance is set aside (cancelled or annulled), so that it is no longer of any binding effect. This result may be of importance to an appellant.

60. The appeal process concludes once the final report has been issued, although the SVAP will follow up on its recommendations.

Handling of Information

61. All information submitted and received as part of an appeal to the SVAP, including the final report, must be handled appropriately and securely by all parties, bearing in mind the (likely) inclusion of personal data and relevant government policy.
62. All information provided in support of a party's case or pursuant to a request for disclosure is to be treated as confidential (unless already in the public domain) and is not to be used for any purpose, other than the conduct of the appeal or any related Employment Tribunal proceedings, without the consent of the originator of the information or the party which provided it.
63. If either party seeks to share the SVAP final report and/or any appeal material with any individual or organisation not party to the SVAP appeal (e.g. disclosure to an Employment Tribunal), they should first contact the Secretariat.

CLOSED Information and Non-Disclosure

64. If there is information that the Respondent considers should be withheld from the Appellant (e.g. on grounds of confidentiality, absence of consent from the originator, policy and/or national security), they are to provide an OPEN Statement which will be disclosed to the Appellant and a CLOSED Statement to be shared with the SVAP only. They must outline in a separate schedule their reasons for non-disclosure of each item, for consideration by the Chair.
65. The Respondent (and relevant third-party organisation(s), where applicable) are required to identify all the relevant CLOSED information to enable the Panel to assess the merits of the vetting decision.
66. CLOSED information is not restricted to that above the OFFICIAL-SENSITIVE marking. It may include policy documents, such as the Vetting Decision Framework (VDF) or documents of which the originator has withheld consent to disclosure to anyone but the Panel.
67. Respondents should check with the originator when determining whether there should be disclosure of information.
68. The Respondent is responsible for providing the Secretariat with a suitably indexed and paginated CLOSED bundle that is not to be disclosed to the Appellant.
69. If the Respondent has any doubts or concerns about the inclusion of certain information in their submissions or about the disclosure of information to the Appellant, they should consult the Secretariat at the earliest opportunity.

70. Once the Secretariat is in receipt of the Respondent's OPEN and CLOSED Statements, the Chair will review the material along with the Respondent's suggested reasons for non-disclosure.
71. The Secretariat will write to the Appellant enclosing the Respondent's OPEN Statement and notifying the Appellant that CLOSED information is being relied upon by the Respondent, and that the Chair will review the merits of the suggested non-disclosure before providing a direction.

SVAP Rulings on Disclosure

72. The SVAP will seek to ensure that no information submitted to the Panel is disclosed without the originator's consent.
73. However, it is a fundamental principle of natural justice that an Appellant is entitled to know the case that they have to meet.
74. There is a countervailing public interest in safeguarding national security and, in some cases, restricting the disclosure of information relating to personal privacy or confidential matters.
75. When these principles come into conflict, the SVAP must carry out a balancing exercise.
76. The importance and relevance of the information to the issues in the case will be considered alongside the reasons for non-disclosure. If the Chair considers that it would be in the interests of justice to explore whether the relevant information could be disclosed, in whole or in part (including by way of a gist), the issue will be raised with the Respondent including, if necessary, at a disclosure hearing.
77. An example of such disclosure might be information classified above the OFFICIAL-SENSITIVE marking and therefore not disclosed in the Respondent's OPEN Statement but could reasonably be disclosed to the Appellant subject to restrictions on access. For example where the Respondent has classified a note of an interview with the Appellant or documentation that the Appellant has seen in his or her role or is otherwise aware of the contents.
78. The SVAP does not have the power to compel the disclosure of information. However, it may make recommendations about the form of any proposed redactions so as to make the relevant document intelligible.
79. If the SVAP directs disclosure to the Appellant, the Respondent will be provided 14 days to implement the request (including by revising their Statement(s) or advancing any further submissions in support of their stance on non-disclosure.
80. When disclosure of relevant CLOSED information cannot be effected, the Chair may direct that the Appellant is offered the opportunity to request the appointment of a Special Advocate¹¹.

¹¹ A Special Advocate is an appropriately vetted barrister, who will make representations to the Panel on behalf of an Appellant in respect of undisclosed ('CLOSED') material. The procedures for the use of Special Advocates in SVAP proceedings will be provided when required.

81. If the Panel considers that, without a sustainable justification, information relevant to the case has not been disclosed, this is a matter that can be considered when determining the advice and recommendations to be provided in the Report.
82. The Respondent's reliance on CLOSED information does not give the Appellant an automatic recourse and right to the appointment of a Special Advocate - this is at the discretion of the Chair.
83. In any event, the parties will be informed of the Chair's decision on non-disclosure.

The Role of the 'Friend'

84. It is important that the Appellant is not disadvantaged by a lack of experience or expertise in presenting their case.
85. Appellants may choose to be supported by a 'Friend', which in the context of an SVAP appeal includes but is not limited to:
 - a. A family member or friend;
 - b. A voluntary helper, such as a colleague or trade union representative, or;
 - c. A fee-charging legal professional (i.e. a solicitor or barrister).
86. A 'Friend' can assist with the SVAP proceedings by:
 - a. Supporting the Appellant in the preparation of submissions to the SVAP;
 - b. Providing moral support;
 - c. Taking notes;
 - d. Giving advice at a hearing.
87. If an Appellant seeks to instruct a solicitor to assist with the SVAP proceedings, such as in the preparation of the submissions to be put before the Panel and in dealing with correspondence, the Appellant's written authority must be received by the Secretariat confirming their instruction.
88. Any such Friend will be bound by the same duties of confidentiality as bind the Appellant, and may be asked to sign a notification under the terms of the Official Secrets Act 1989.
89. Formal legal representation advocating on behalf of the Appellant (i.e. advancing submissions at the hearing) as in a court of law is not permitted.
90. However, if particular circumstances may justify permitting representation of the Appellant at the hearing, a written request (including full reasons) should be made at least 14 days before the hearing to the Chair who will provide a direction on the matter. The Respondent will be informed of the decision and, if necessary, will be provided with the opportunity to be represented.

91. If either party is in doubt as to who can or should be present at the hearing, they should contact the Secretariat well in advance.

Conduct in an Appeal

92. Inappropriate conduct during an appeal and/or behaviour towards the SVAP Members, Secretariat staff or any party to an SVAP appeal by any other party will not be tolerated.
93. Where inappropriate behaviour has been reported to the SVAP by either the Appellant or the Respondent, to avoid tainting the Panel presiding over an appeal, the Presiding Chair may direct that the matter should be referred to the Chair or the Deputy Chair (as appropriate).
94. In the event of sustained inappropriate behaviour from any party, the Presiding Chair of an appeal retains the right to stay an appeal and in serious circumstances can dismiss an appeal outright.
95. If any party is not satisfied with the conduct of the appeal and wishes to make a formal complaint, please write formally either via email or in writing to the Chair of the SVAP.