

Arts Council of Wales Investment Review 2023

Making an Appeal



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1. The purpose of this document

- 1.1 In 2023 we undergo our Investment Review process. It is likely that there will be changes to the organisations that we support and the levels of funding that we offer. Not all organisations will be successful and it's possible that there will be organisations that see the level of funding that they've previously received, reduced or discontinued.
- 1.2 In this document we explain the right of appeal, and associated procedure, available to any organisation that is dissatisfied with our funding decision. This Appeal Procedure applies only to the Investment Review 2023. If you have complaints about any other matter, please refer to the standard procedures outlined in our [Complaints Procedure](#). This document is available on our website.
- 1.3 Where this documentation refers to specific job titles these may change in the case of absence or unavailability, or where there are amendments to job titles. The steps in the process will not be changed.

2. Deciding if you have grounds for an appeal

- 2.1 We know that no one likes having to make an appeal. We will use our very best endeavours to reach decisions that are clear, fair, and consistent with our stated policies and priorities. However, if you are unhappy with how our decision was reached and want to make an appeal, it is important that you are clear about the grounds on which an appeal can be considered.
- 2.2 One of the Arts Council's most important responsibilities is to make strategic decisions about the allocation of public funds.

We want to invest in organisations that make a significant impact on cultural life across Wales. The extent to which we can achieve this goal depends on the funding that is available and the strategic choices that we make. The demand for funding is greater than the money available to us so we will have to make difficult and challenging choices using our professional judgement. It is possible that we will reach decisions that are unpopular, or that an organisation does not welcome. Under the terms of our Appeal Procedure, this in itself is not sufficient grounds for an appeal.
- 2.3 If you are considering an appeal, you should look carefully at what we are trying to do through our Investment Review. The rationale for the Investment Review is set out in the Terms of Reference (**note – these are currently being consulted on**) following consultation and confirmation from Council and are available on our website.
- 2.4 We recognise that one of the potential outcomes of the Investment Review is the removal/reduction in funding to an organisation that has previously been receiving support. This means, therefore, that you cannot appeal against the removal/reduction of grant solely on the basis of Council's decision to undertake the Investment Review.

- 2.5 The basis for our assessment and decision-making is set out in the Investment Review Terms of Reference.
- 2.6 At the heart of our assessment and decision making process will be the application that you yourself will have made, along with any other information that we have detailed as part of the application process. It will be your responsibility to ensure your application is received, in full, within the published deadline. We will not accept late applications nor any additional material you may wish to supply as part of your application if it is after the published deadline. You may only appeal against the decision of the Arts Council in respect of that submission that you make as part of the Investment Review process.
- 2.7 You may only appeal if you have specific evidence that demonstrates one or more of the following:
- we did not follow the published procedures for assessing your application;
 - we misunderstood a significant part of your application;
 - we did not take notice of relevant information, i.e. the information that we will have taken into account as defined in the **Terms of Reference** document.
- 2.8 Should your appeal be considered as eligible for hearing (see section 4 below) it will go forward to an Appeal Panel (“the Panel”). The Panel is not a legal tribunal and will proceed on the basis of common sense and fairness.
- 2.9 All decisions on funding are the responsibility of the Members of Council. The decisions of the Panel are, therefore, advisory and in the form of recommendations to Council.
- 2.10 There is no right of appeal against the amount awarded by the Arts Council, unless one or more of the grounds of appeal noted in 2.7 applies.
- 2.11 There is no right of appeal against a decision in respect of another organisation.

3. How to make an appeal

- 3.1 Any appeal must be made on the Appeal Form (Appendix 1). You can get a copy from our website. No other method of making the appeal will be accepted.
- 3.2 You must complete the appeal form fully, providing detailed reasons for the ground(s) of appeal as outlined in paragraph 2.7. For example, it is not enough to merely assert that the Arts Council’s decision was wrong. You must also state in what way exactly the decision was wrong and the basis for that assertion. An appeal which does not give adequate reasons may be deemed ineligible (see section 4 below).
- 3.3 Any extract from your application which is referred to in the appeal form must be clearly and unambiguously identified. No amended or additional information will be considered; the appeal must relate only to information which you have either already provided as part of your application or the additional relevant information, as defined in the **Terms of Reference** document, which we have and which has, or should have been, considered during the Arts Council’s assessment and decision making process.

- 3.4 The appeal form must be signed by a senior staff representative of your organisation and the Chair of your Board (or senior member of the management body that oversees your work).
- 3.5 Appeals must be received by 4pm, 21 calendar days after the letter of notification of the decision which is being appealed.

Appeals should be in electronic format and should be sent to the following email address: appeals@arts.wales

However, if for any reason you are unable to submit your appeal electronically, a hard copy should be submitted in an envelope addressed to the:

Director of Finance and Business Services, Arts Council of Wales, Bute Place, Cardiff CF10 5AL

- 3.6 Appeals will not be accepted if received after the specified deadline.

4. What happens once you have made an appeal?

- 4.1 The first stage in the process is **Initial Consideration**. This is undertaken by an external independent person (“Reviewer”). We will use an independent complaints reviewer to undertake this role. Its purpose will be to decide if your appeal is eligible for hearing by the Appeal Panel on one or more of the grounds outlined at paragraph 2.7 above. This is to avoid a waste of resources by both your organisation and the Arts Council in the event that the Reviewer concludes that the appeal has no prospect of success.
- 4.2 The Reviewer will consider the appeal in order to decide three matters of principle. These are:
- **whether your appeal has been properly made** – by this we mean that the form has been properly completed and signed, and contains all the information required;
 - **whether your appeal is in time** – by this we mean that your appeal has been received by 4pm within 21 calendar days of the date of the letter of notification of the decision which is being appealed;
 - **whether your appeal is misconceived** – by this we mean either that your appeal is not based on one or more of the grounds of appeal noted in paragraph 2.7 above, or that a wholly inadequate basis is given for the ground of appeal.
- 4.3 If the Reviewer decides that your appeal has not been properly made, and/or is out of time, and/or is misconceived, the appeal will be rejected.
- 4.4 The decision of the Reviewer is final. There is no further right of appeal against this decision.
- 4.5 The Reviewer will inform by letter both you and the Arts Council’s Director of Finance and Business Services of their decision. This will be done within 16 calendar days of the appeal submission deadline. The letter will outline the summary reasons for the rejection of the appeal and will inform you of your right to approach the Public Services Ombudsman for Wales (see paragraph 7.6).

- 4.6 The Director of Finance and Business Services will report the decision to the Arts Council's Chief Executive and to Members of Council.
- 4.7 The Reviewer is not permitted to make any contact with you at this stage and must conduct the Initial Consideration solely on the basis of the information contained in the appeal. Therefore it is in your best interests to ensure that all the relevant information that the appellant wishes to be considered is contained within the appeal documentation.
- 4.8 The Reviewer will exercise his/her powers sparingly and reasonably. If s/he has any doubt as to whether your appeal should be rejected at this stage, you will be given the benefit of the doubt and your appeal will go forward to hearing.

5. Full consideration of your appeal

- 5.1 If your appeal has not been rejected during Initial Consideration, the Appeal Panel will give it full consideration.
- 5.2 **Constitution of the Appeal Panel:** The Appeal Panel will consist of three external, independent members, one of whom will be designated as the Chair. The Arts Council's Director of Finance and Business Services will act as convenor for the Appeal Panel but will play no part in making a decision on your appeal.
- 5.3 Within 6 calendar days of receipt of the Reviewer's decision letter by the Arts Council, the Director of Finance and Business Services will inform the Arts Council's Chief Executive, Members of Council and the Chair of the Appeal Panel that the appeal is to be considered in full.
- 5.4 The Arts Council's Chief Executive may make a written submission to the Appeal Panel if s/he sees fit. The Chief Executive will complete this submission within 21 calendar days of notification of the Reviewer's decision, a copy of which will be sent to the appealing organisation.
- 5.5 The Arts Council's Director of Finance and Business Services will, at the time of receipt of the appeal, contact all members of the Appeal Panel to ascertain a suitable date, time and place for the hearing. S/he will then write to you, and to the Arts Council's Chief Executive. S/he will inform them that the appeal is to be considered by the Appeal Panel and notify the date, time and place for the hearing.
- 5.6 The Chair of the Appeal Panel shall have the power to alter the date, time or place of the hearing for any good reason at any time on request. The date of the appeal hearing must be no later than 28 calendar days following the date of receipt by the Director of Finance and Business Services of the Reviewer's appeal decision. If the parties agree otherwise, or if it is wholly impracticable to hold the hearing in that time, the appeal must be heard as soon as is practicable thereafter.
- 5.7 Those members of the Appeal Panel who are to consider the appeal shall be sent full copies of the appeal form and any response by the Arts Council at least 7 calendar days before the date of the hearing.

6. The appeal hearing

- 6.1 The hearing is designed to allow all members of the Appeal Panel to gain a full understanding of the reasons for the Arts Council's decision and for the reasons of your appeal, in order that a fair determination of the appeal can be made.
- 6.2 The quorum for the Panel hearing the appeal is three independent members, one of which will be designated as the Chair.
- 6.3 No Panel member may hear an appeal if s/he has had any significant involvement with the decision appealed against or if they, or a close member of their family, have any interest in your organisation.
- 6.4 Prior to the hearing the Appeal Panel may, at their discretion, meet to consider the issues raised by the appeal and the procedure that is to be adopted in the hearing.
- 6.5 The Appeal Panel shall only consider those matters raised by the parties in the appeal and in the Arts Council's response. No other issues can be dealt with by the Appeal Panel at the hearing.
- 6.6 Both you and the Arts Council will be entitled to appear at the hearing and be heard. Either party may choose not to appear and ask for the appeal to be decided on the basis of their written representations. You and the Arts Council may each be represented by up to two people of their choosing at the hearing, not including any person(s) present solely for the purpose of providing additional communication support to either party (e.g. sign language support).
- 6.7 The hearing of the appeal will be in private and conducted in English or Welsh as per the appellant's choice.
- 6.8 The procedure to be followed at the hearing should be as informal as possible, consistent with the objectives noted at paragraph 6.1 above and the need for a fair hearing for all concerned. Subject to what follows, the Chair shall be solely responsible for determining the precise procedure to be followed at the hearing and the conduct of the appeal as a whole. The procedure that is adopted at the hearing will include the following elements:
 - 6.8.1 The representative(s) of the Arts Council will briefly explain to the Appeal Panel the decision appealed against, the reasons for the decision, the Arts Council's response to the appeal, and response to any matters raised by you before and during the hearing. The representative(s) may refer to any relevant documentary evidence to justify the Arts Council's decision provided that the material has previously been copied to you and the Appeal Panel.
 - 6.8.2 Your representative(s) will be invited to briefly explain to the Appeal Panel the reasons for the appeal and why you are dissatisfied with the decision. You may refer to any relevant documentary evidence to justify your appeal provided that the material has previously been copied to the Appeal Panel and formed part of your original Investment Review application to the Arts Council. You will have the opportunity of commenting on all matters raised by the Arts Council before and during the hearing.

- 6.8.3 The members of the Appeal Panel may ask questions of any person at the hearing which they deem relevant to the appeal.
- 6.8.4 At the end of the hearing, both parties will be given the opportunity to briefly summarise their position and to make any final comments that they wish in relation to any matters that have been raised at the hearing by the other party and the Appeal Panel.
- 6.9 If you or your representative(s) fail(s) to appear at the hearing, the Appeal Panel, after being satisfied that proper notice has been given of the date, place and time of the hearing, may, at their discretion, either hear the appeal in your absence, or reject the appeal without hearing.
- 6.10 The burden of proof is on the organisation making the appeal. In other words, you must prove to the satisfaction of the Appeal Panel that the grounds for appeal against the Arts Council's funding decision is established.

7. Procedure after the hearing

- 7.1 **Powers of the Appeal Panel.** Following the hearing, in the absence of the parties' representatives, the Appeal Panel shall consider its decision. Each member of the Panel, including the Chair, has a vote. There are three decisions that the Appeal Panel can make:
- allow the appeal
 - continue the hearing of the appeal at a future date
 - dismiss the appeal
- 7.2 **Time for giving decision.** The decision of the Appeal Panel, together with supporting reasons and, where appropriate, recommendations, must be sent in writing to both parties within 7 calendar days of the hearing. That decision together with the supporting reasons and, where appropriate, recommendations must be reported at the same time to the Chair of the Arts Council.
- 7.3 **Appeal allowed.** The Appeal Panel may only allow the appeal if it is satisfied that one or more grounds of appeal, as contained in paragraph 2.7 above, is established. If the Appeal Panel allows the appeal, it does not have the power to substitute a fresh decision. Instead, the Chair of the Panel will notify you that it has recommended to the Chair of Council that the matter should be reconsidered, and will outline the grounds on which it has recommended Council to reconsider the matter. The Appeal Panel's recommendation will then be considered at the next meeting of Council, and Council's decision will be conveyed to you within 7 calendar days of that Council meeting.

- 7.4 **Hearing continued.** If the Appeal Panel decides that the hearing needs to be continued, the date for the continued hearing shall be fixed, where possible, at the first hearing and if not, as soon as possible thereafter in writing.
- 7.5 **Appeal dismissed.** There is no further appeal against the decision of the Appeal Panel.
- 7.6 **The Ombudsman.** If you consider that there has been maladministration on our part, or in the conduct of the appeal, you are entitled to approach the Public Services Ombudsman for Wales. The Ombudsman has produced a leaflet explaining how to refer complaints. This is available from Citizen's Advice Bureaux, Public Libraries and from the following address:

The Office of the Public Services Ombudsman for Wales,
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ
www.ombudsman.wales

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