



# POLICY FOR GRIEVANCE

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## Contents

(Click on the headings below to jump to the relevant section)

1. Principles .....	2
2. Scope .....	3
3. Legal requirements .....	3
4. Covert recordings .....	4
5. The informal procedure and mediation .....	4
6. Using mediation to resolve a grievance.....	6
7. Cases unsuitable for mediation.....	7
8. The formal procedure .....	7
8.5 Step 1 – Statement of Grievance, response and investigation.....	8
8.6 Step 2 – Meeting .....	8
8.7 Step 3 – Confirmation of outcome .....	9
8.8 Step 4 – Appeal .....	9
9. Record keeping .....	10
10. Data protection.....	10

This model has been the subject of consultation with the recognised trade unions at County level. Any school or academy looking to adopt, or adapt and adopt, as their own should consult recognised trade unions at local level.

### 1. Principles

- 1.1 Grievances are concerns, problems or complaints that employees raise with their employer. The Trust aims to have an open policy for communication and consultation so that problems and concerns can be raised and settled as a matter of course.
- 1.2 Grievances include reports of any form of bullying and harassment<sup>1</sup>.
- 1.3 Grievances will be dealt with in a confidential manner minimising the number of people involved. Confidentiality will be maintained during and after the grievance procedure. However, there may be instances when this is not possible and this will be made clear to the complainant or any witnesses providing statements at the time, for example;
  - the Chief Executive Headteacher may judge the risk to the individual(s) concerned and/or the academy/Trust as unacceptable,
  - it may not be appropriate that the details of any management action resulting from disciplinary procedure are reported back to the complainant.If witnesses are involved in giving evidence, they will be offered support up to and including protection of identity in some circumstances.
- 1.4 Employees will aim to settle most grievances informally with their manager wherever possible. Before moving to the formal grievance procedure both the Trust and the employee will first consider using a mediator to help resolve the problem (where this is deemed appropriate).
- 1.5 Managers and employees will raise and deal with issues promptly and will not unreasonably delay meetings, decisions or confirmation of those decisions.

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<sup>1</sup> Harassment is any unwanted conduct, physical or non-physical, affecting the dignity of men and women in the workplace.

- 1.6 Headteachers/Chief Executive Headteacher will arrange for any necessary investigations to establish the facts of the case.
- 1.7 The Trust will allow employees to be accompanied at any formal meeting.
- 1.8 The Trust will allow an employee to appeal against any formal decision made.
- 1.9 The Trust will keep written records of all grievances.
- 1.10 The Trust expects all managers and employees to comply with their obligations under equality legislation and ensure that all reasonable adjustments or supportive measures are considered to allow equal access to the policy and procedure regardless of age, gender, ethnicity, sexual orientation, disability, faith or religion, gender identity, pregnancy or marital status.
- 1.11 Through the implementation of this policy and procedure, the Trust will be mindful of the employer obligation to seek to maintain and protect the mental health and wellbeing of all staff as far as is reasonably practicable.
- 1.12 Any manager responsible for considering and resolving grievances within the Trust may seek guidance from external advisers when applying this policy.

## **2. Scope**

- 2.1 The grievance procedure contained in this document applies to all current employees - teaching and support staff. There is no legal requirement for an employer to consider grievances from ex-employees. This procedure should only be used by a single individual. Grievances on a matter of principle raised by a group of employees (or a representative of a recognised trade union on their behalf) should be dealt with through the Trust's Disputes Procedure.
- 2.2 Grievances relating to pay should be dealt with under the Trust's Pay and Performance Management Appeal Procedure.
- 2.3 Grievances relating to harassment and bullying will follow the grievance procedure but take into account the Trust's Bullying and Harassment policy.
- 2.4 If an employee wishes to raise an issue in confidence concerning unethical, illegal or improper conduct without fear of victimisation, subsequent discrimination or disadvantage the Trust's Whistleblowing Policy and Procedure may be more appropriate.

## **3. Legal requirements**

- 3.1 This grievance policy and procedure follows the best practice outlined in the ACAS Code of Practice on handling disciplinary and grievance procedures and the ACAS guide to handling discipline and grievances at work.
- 3.2 Any Statement of Employment Particulars issued to staff will contain a paragraph which confirms the Trust's obligation to provide the grievance procedure. The procedure contained in this document states to whom any grievance should be addressed. The Trust, through effective induction of new staff, will ensure employees know how to access the grievance procedure.
- 3.3 The Trust recognises that employees have a statutory right to be accompanied by a companion of their choice – a colleague or trade union representative – at any formal grievance meeting and related appeal hearing.

#### **4. Covert recordings**

The Trust believes that the covert recording of workplace meetings undermines trust between individuals.

The covert recording of any meetings or proceedings, including disciplinary and grievance hearings and appeals, by an employee potentially constitutes an act of gross misconduct. It features in the list of non-exhaustive acts of gross misconduct in the Trust's guidelines on conduct document. Without sufficient mitigation, the covert recording by an employee of colleagues in such a meeting may lead to the employee's summary dismissal.

The employee will be informed of this policy position before any disciplinary, grievance or capability meeting.

Similarly, no covert recording of the deliberations of a panel at the end of any hearing may be made by an employee. This would also potentially constitute an act of gross misconduct likely to lead to the employee's summary dismissal.

In some circumstances, it may be appropriate for a meeting to be recorded but in these cases, there must be written agreement between management and employee and consent will need to be obtained by all persons who will be included in the recording. The management and employee will then be under an obligation to ensure that all recordings are processed, securely stored and used in a manner consistent with the Data Protection Act 2018."

#### **5. The informal procedure and mediation**

5.1 If an employee has a grievance<sup>2</sup> to do with work, they should first attempt to resolve the issue informally. This would normally be through an informal discussion with their line manager or other individual who the grievance relates to.

5.1.1 In cases of bullying and harassment, it may be possible for the employee to explain to the other person that the behaviour in question is not welcome, that it offends them or makes them uncomfortable. Alternatively, if this personal approach is too difficult, they could consider putting it in writing to the individual concerned. The Trust's Bullying and Harassment policy statement must be read in conjunction with any bullying and harassment related grievances.

However, by its nature bullying and harassment may make the employee feel embarrassed, worried about damaging their reputation or the working environment and fearful of not being taken seriously and subsequent reprisals. In these situations, a management representative or a Trade Union Representative can make the initial approach.

5.2 If the employee cannot resolve their grievance through this informal approach, the next step is to notify the appropriate line manager that they wish for their grievance to be discussed at an informal grievance meeting.

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<sup>2</sup> This includes bullying and harassment complaints between employees

- 5.3 Where an employee discloses a mental health issue, which could be a disability, reasonable adjustments will be made to the procedure. This could be allowing a companion that does not meet the statutory definition of a companion, but is someone who understands the individual's condition and its effects or; having regular breaks during longer grievance meetings or; holding the meeting at a neutral venue. Where it is clear the process is causing repeated signs of distress to someone involved in the procedure the Headteacher/Chief Executive Headteacher will ensure the employee is aware of the support offered by Norfolk Support Line or suggest the employee seeks advice from their GP. In some cases, help may need to be sought from Occupational Health, with the agreement of the employee, to determine how the grievance procedure can continue fairly. Advice will be sought from HR in these situations.
- 5.4 Subject to 5.7 below, the line manager will arrange an informal grievance meeting at which any concerns are raised and examined through discussion. The employee can be accompanied or represented at this meeting by a companion (a work colleague or trade union representative).
- 5.5 At the informal meeting, the employee should outline clearly their own view of the problem and explain to the line manager what they would consider to be a suitable resolution to the matter.
- 5.6 After the informal meeting, the line manager should give a reply, verbally, as soon as possible. The initial response will be given within five working days but further discussion may be needed to resolve the problem.
- 5.7 In some circumstances, the immediate line manager will not have the authority to resolve the grievance. If this is the case, the line manager will need to refer the matter to their academy leader or the Chief Executive Headteacher depending on the nature of the grievance and the individuals involved. The Headteacher or Chief Executive Headteacher will identify an individual to act as 'line manager' for the purposes of seeking informal resolution.
- 5.8 Flexibility around timescales is often appropriate when trying to resolve informal grievances, particularly where it concerns interpersonal conflict between two or more employees.
- 5.9 If the employee is not satisfied with the line manager's reply at this informal stage, they should talk to their academy Headteacher if they wish to explore mediation or progress their grievance to the formal stage of this procedure.
- 5.10 If the grievance relates to the Headteacher and the employee is not satisfied with the reply at this informal stage, or if the employee feels unable to discuss their grievance informally with their Headteacher, the employee should contact the Chief Executive Headteacher.
- 5.11 If an employee (other than the Headteacher) has a grievance against a Governor or Director, the employee should raise the matter initially with their Headteacher who will discuss it with the Chief Executive Headteacher. The CEH will liaise with the Chair of Directors to agree a mechanism for informal resolution. If an employee has a grievance against the Chair of Directors, the CEH will seek to agree a mechanism for informal resolution using a nominated Director.
- 5.12 If the CEH has a grievance against a Governor or Director, they should raise the matter with the Chair of Directors. If the grievance is against the Chair of Directors, the CEH should raise their grievance

with the Vice-Chair of Directors who will have responsibility for agreeing a mechanism for seeking informal resolution.

- 5.13 If it is not possible to resolve the grievance through informal discussions, it may be appropriate for the Headteacher, the CEH, Chair of Directors or Vice Chair of Directors to nominate someone to mediate with the aim of achieving a solution and conciliation. If mediation is to be used, it should take place before the formal procedure commences.
- 5.14 Even where an informal approach is enough to resolve the immediate problem, the employee should keep a record of any incidents, including a note of any witnesses. Similarly, where the Headteacher or another management representative is involved in resolving the problem, proper notes must be kept in order to document the action taken.
- 5.15 Where the employee approaches a work colleague for support, it is important to respect the fact that this person may not wish to become involved. In such circumstances, the employee may consider contacting their trade union representative and/or the Norfolk Support Line to seek advice and informal assistance.

## **6. Using mediation to resolve a grievance**

- 6.1 An independent third party or mediator can sometimes help resolve grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.
- 6.2 A mediator does not have to be someone specially trained for the task, but they should have the necessary skills to facilitate a discussion between two people who may have different views about a situation. Mediators may be employees from within the Trust or they may be from an external mediation provider, in which case, there may be a cost. EducationHR may be able to help identify potential mediators.
- 6.3 There are no hard-and-fast rules for when mediation is appropriate but it can be used: -
- for conflict involving colleagues of a similar job or grade, or between an employee and their line manager;
  - at any stage in the conflict as long as any ongoing formal procedures are put in abeyance, or where mediation is included as a stage in the procedures themselves;
  - to rebuild relationships after a formal dispute has been resolved;
  - to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.
- 6.4 Where mediation is used the individual convening the mediation meeting should make a record of the alleged incident and the outcome of the meeting. To indicate agreement with the outcome, all parties should sign the record. This will remain confidential to the signatories.

## 7. Cases unsuitable for mediation

7.1 Mediation may not be suitable if: -

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation;
- it is used by a manager to avoid their managerial responsibilities;
- a decision about right or wrong is needed;
- the individual bringing a discrimination or harassment case wants it investigated;
- the parties do not have the power to settle the issue;
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

## 8. The formal procedure

8.1 If the grievance has not been able to be resolved informally, including through mediation, or it is not appropriate to resolve the problem informally, either because the complainant regards attempts at informal resolution as inappropriate because of the serious nature of the complaint or where informal attempts at resolution have failed, the issue should move to the formal stage to be resolved.

The employee who has raised the grievance should, without unreasonable delay, prepare a written statement of the grievance and submit this in line with the following table:-

Complainant	Grievance Officer	Appeal Officer
Non-teaching staff or teaching staff below academy leader	Academy leader	CEH
Academy leader	CEH	Chair of Directors
CEH	Chair of Directors	Appeals Committee

8.2 Where the identified Grievance Officer has been involved in attempts to resolve the issue informally to the extent that taking the role of Grievance Officer would not be deemed appropriate, the role of Grievance Officer will be passed up the Trust's line management structure to the next level.

8.3 The Statement of Grievance should explain the nature of the employee's grievance, including details of what the employee has done to try and resolve the matter informally and what they would consider a satisfactory outcome to the matter. It is essential that there is a clear statement about the grievance in order that it can be properly examined.

8.4 As appropriate, the academy leader, the CEH or the Chair of Directors will make arrangements to hear the grievance and work with the parties to achieve a resolution.

## **8.5 Step 1 – Statement of Grievance, response and investigation**

- 8.5.1 Once a Statement of Grievance has been received by the Grievance Officer, they will share the Statement with the person against whom the grievance is lodged.
- 8.5.2 The individual against whom the grievance is lodged then prepares a Statement in Response to the grievance. An appropriate timescale should be set for this stage of the process to ensure there is no unreasonable delay. However, the complexity of the situation will determine what is reasonable. If the matter has been considered at the informal stage of the procedure, a note of the steps taken to try to resolve the matter informally will also be required.
- 8.5.3 If the grievance is of a serious nature relating to misconduct, consideration may be given to suspending the employee who the grievance is against (or alternatives to suspension e.g. temporary redeployment). Due consideration will be given so that the decision to suspend is only made where it is a reasonable response based on the facts of the case (refer to *Suspension checklist C303* on InfoSpace)
- 8.5.4 If further information is needed in order to respond to the grievance, the meeting outlined below may be postponed while a full investigation is carried out. If such an investigation is considered necessary, both parties will be kept informed. The investigator will need to be independent to the case and be able to present adverse findings. The grievance meeting should not take place until the investigation is carried out.

## **8.6 Step 2 – Meeting**

- 8.6.1 The Grievance Officer will make arrangements for a formal grievance meeting as soon as possible. The meeting will ideally take place within ten days of receipt of the Statement in Response but this will depend on the availability of relevant parties including the companion (if the individual chooses to be accompanied – see 8.6.2 below) and others who need to be in attendance. The employee will receive, at least five working days in advance of the grievance meeting, a copy of the Statement in Response and any other relevant documents to be considered. The Grievance Officer will consider the Statement of Grievance, the Statement in Response and any other relevant, supporting documentation provided in advance of the meeting by either party.
- 8.6.2 At the grievance meeting, the employee will have opportunity to explain their grievance and their suggestions for resolving it. The employee has the right to be accompanied by a companion (i.e. a trade union representative or work colleague) at this meeting.
- 8.6.3 The respondent to the grievance may be supported by their trade union representative or by an HR adviser. The choice of supporter for the respondent may be influenced by the nature of the grievance.
- 8.6.4 The Grievance Officer may be supported by an HR adviser.



8.6.5 At the start of the meeting the Grievance Officer will consider whether it is more appropriate to meet with the employee separately from the other party, or may seek agreement from both parties for a joint meeting.

8.6.6 The agenda for a joint meeting will be as follows: -

- The employee will be asked to present the case and to answer questions from the Grievance Officer, the respondent and their respective advisers.
- The employee can call upon named witnesses to provide information and answer questions if appropriate.
- The respondent will present their case and answer questions.
- The respondent can call upon named witnesses to provide information and answer questions if appropriate.
- The employee makes a closing statement, followed by the closing statement of the respondent.

8.6.7 The Grievance Officer will introduce those present (where appropriate) and set out how the meeting will be conducted. The Grievance Officer will outline their understanding of the grievance, as notified in the Statement of Grievance.

8.6.8 Once discussion is concluded, the Grievance Officer will adjourn the meeting to consider the information provided and how the grievance might be resolved. If practicable, the Grievance Officer will invite both parties back to the meeting on the same day to sum up the main points, and to outline what action, if any, they feel is necessary to achieve a resolution.

### **8.7 Step 3 – Confirmation of outcome**

8.7.1 The Grievance Officer will write to the employee within five working days of the meeting with their decision and the reasons behind it. If the grievance is not upheld, the employee will have a right of appeal against that decision.

8.7.2 Where other individuals are affected by the outcome of the grievance, or some aspects of the outcome, they will be informed of the affect the outcome has on them and the reasons for it. The employee who raised the grievance will be informed of who else will be told and what information they will be given. Confidentiality remains of upmost importance so only information which affects another individual(s) will be communicated.

### **8.8 Step 4 – Appeal**

8.8.1 If the employee does not accept the Grievance Officer's decision, they have the right of appeal to an Appeal Officer.

8.8.2 The Appeal Officer must not have prior involvement in the grievance. If the listed Appeal Officer has prior involvement, the Appeal Officer role will pass to the next level up.

8.8.3 Where an employee wishes to lodge an appeal against the decision of the Grievance Officer, they should, within ten working days of receiving written confirmation of the outcome, write to the Appeal

Officer setting out the grounds for appeal and enclosing any documents to be taken into account. Where the Appeals Officer is listed as Appeals Committee, the appeal should be sent to the Chair of Directors (or Vice Chair of Directors if it is not appropriate for the Chair of Directors to receive the appeal) who will make arrangements for an Appeals Committee to be established.

- 8.8.4 The employee and the respondent will then be invited to another meeting which will normally take place within fifteen working days of receipt of appeal. The employee has the right to be accompanied by a companion to the appeal meeting. The respondent will have the right to be supported as before. It is likely that the Grievance Officer will also be required to attend.
- 8.8.5 The format for the meeting will generally follow that outlined in paragraph 8.6.6 above.
- 8.8.6 Before reaching their decision on the appeal, the Appeals Committee will consider the outcome from the formal grievance meeting, will listen to the grounds for appeal and consider any further statements provided by the respondent or others involved.
- 8.8.7 The decision of the Appeals Committee will be final. The Chair of the Appeals Committee will write to the employee within five working days to confirm this and to share the outcome of the meeting. The Appeals Committee will give the reasons behind the decision made.

## **9. Record keeping**

- 9.1 The grievance and related papers will be stored on the file of the employee who raised the grievance.
- 9.2 If the grievance is against another named individual and is upheld, it may be appropriate for a disciplinary investigation to be undertaken and/or a professional guidance letter issued, in which case relevant papers may also be placed on that individual's personal file.

## **10. Data protection**

The trust processes personal data collected during informal complaints and the formal grievance procedure in accordance with its data protection policy. In particular, data collected as part of informal complaints and the grievance procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of responding to the complaints or conducting the grievance procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the trust's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the trust's disciplinary procedure.