



# GRIEVANCE PROCEDURE

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## **PROCEDURE**

### **DEALING WITH GRIEVANCES**

A grievance can be defined as a complaint by the employee about action which the Council has taken or is contemplating taking in relation to him/her "Action" means any act or omission.

This policy and procedure provides a clear and effective process, which will:

Enable staff to raise a grievance about work

Enable the Council to address such issues in a timely, reasonable, fair and lawful way.

Enable senior managers to review decisions in the appeal process to ensure that the organisation deals fairly with staff.

### **SCOPE OF THE POLICY AND PROCEDURE**

However, the policy and procedure does not apply to:

- (a) Complaints that the Council has dismissed or is contemplating dismissing the employee
- (b) Complaints of harassment, which can be dealt with using the Council's Harassment Policy
- (c) Complaints about any matter being dealt with through the disciplinary, reorganisation, redeployment, probationary, managing sickness absence or capability procedures.
- (d) Individual complaints where the employee's recognised trade union representative has already written to the Council setting out the grievance and stating the names of at least two employees on behalf of whom s/he is raising the grievance, of whom one is the employee.
- (e) Complaints about decisions taken under any procedure which already offers the employee a right of appeal

## **EMPLOYEES COVERED BY THIS POLICY AND PROCEDURE**

This policy and procedure applies to established and temporary employees who work under a contract of service with Brent Council.

## **EMPLOYEES NOT COVERED BY THIS POLICY AND PROCEDURE**

The Policy and procedure do not apply to:

School based staff and teachers that are employed other than in schools, which are subject to a separate code

Chief Officers whose terms and conditions of employment are determined by the National Joint Council for Chief Officers in Local Authorities

## **LEGAL CONTEXT**

The framework for addressing employee grievances at work takes into account the provisions of the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002, and the ACAS Code of practice on Disciplinary and Grievance Procedures

## **CONSIDERING ANY ADVERSE IMPACT**

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, religion or belief, sexual orientation or disability. Managers are therefore required to ensure that their application of this policy and procedure is impartial, and that no staff group is disadvantaged, either because of their invoking the procedure, or in terms of the management response to the issues raised.

## **OUTLINE OF PROCEDURE**

This procedure has an **informal stage** followed by 2 formal stages i.e.

### **The formal complaint stage and the appeal Stage**

## **INFORMAL STAGE**

### **The employee will**

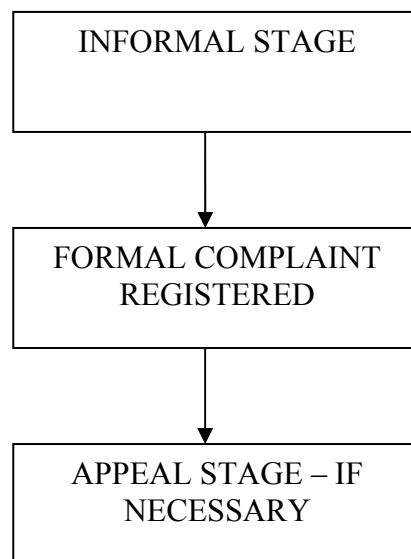
Make every effort to resolve problems at work or grievances informally with management (usually their line manager)

Most routine complaints and grievances are best resolved informally in discussion with the employee's line manager. Although if the complaint is about this person it may be raised with the manager's manager.

## FORMAL STAGE

- Take a matter to the formal stage, only if they are not satisfied with:
- The steps taken to resolve the matter informally
- The time taken to progress the matter
- The outcome of the informal process

If the decision reached at the formal stage does not satisfy the employee they have the right of appeal



## **INFORMAL STAGE**

### **The employee is entitled to**

- Raise the matter informally with their manager in the first instance
- State the remedy they are seeking
- Put their side of the matter
- Be accompanied by another Brent Council worker or recognised trade union representative acting as an observer (But not a legal representative)
- Be taken seriously
- Have the case treated as a confidential matter, if appropriate
- Be told the purpose of any meeting they are asked to attend
- Be told what action management intends to take (If any is appropriate) to remedy the matter
- Register a formal grievance by completing the pro-forma specifying their dissatisfaction with:
  - The steps taken to resolve the matter informally,
  - The timescale for dealing with the matter,
  - The outcome of the informal process

### **The manager will**

- Explore the issues raised promptly with the employees concerned
- Take stock and make every effort to resolve the matter informally and quickly:
- Otherwise consider whether the allegations may warrant formal management action
- Where appropriate develop a plan of action with all the parties involved to resolve the matter (which will include reasonable timescales)
- Consider with the employee whether alternative disputes resolution in the form of externally facilitated mediation may be helpful.
- Where appropriate offer independent support or counselling to the employee through referral to Occupational Health Service
- Make notes for use later (in case the matter moves on to the formal stage) which should not be kept on the employee's personal file.
- Give the employee a copy of notes of any informal meeting.
- Ensure that any case requiring formal action is referred to a senior manager with authority to deal with it, normally a Service Unit Director/Manager or above, or another manager of similar seniority.

## FORMAL STAGE

### The employee is entitled to:

- Raise the matter formally with their manager, or their manager's manager (if the complaint is about their manager) provided they have complied with the informal stage requirements.
- The complaint should be in writing, preferably on the appropriate proforma, and must be against a named individual or individuals. The manager will refer the matter to a senior manager, who will normally be the employee's Service Unit Director/ Manager or above, or another manager of similar seniority. Where the grievance is against a Director or the Chief Executive it should be referred to another Director.

If the scope/content of the formal grievance is not clear the manager to whom it has been referred should ask the employee to provide written clarification before arrangements are made for the grievance to be heard.

- Reasonable notice (normally 10 working days) in writing of the Date, time, place and purpose of the formal meeting with the employee, and
- The issues to be discussed
- The format of the meeting
- Rights to representation
- Who will hear the grievance?
- Arrangements for exchanging documents and witness statements (if applicable)
- Details of this Grievance Procedure

The opportunity to be represented by another Brent Council worker, an official employed by a trade union, or a certified trade union official. (but not a legal representative). A certified trade union official is one whom the trade union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings.

- Postpone the meeting to another reasonable time within 5 working days of the original date if their representative will not be available at the time proposed
- Put their side of the matter and (if applicable) hear what the other employee has to say.
- Submit evidence, documents and the names of witnesses relevant to their case.
- Contribute to any action plan that may resolve the matter
- A written record of any agreed action or outcome to deal with the problem
- Appeal within allotted timescale

## **The relevant manager will**

- Deal with the matter promptly as a formal complaint
- Explore the issues with the employee involved and with the employee being complained about.
- Investigate the matter thoroughly to the standard set out in the Council's Disciplinary Procedure (Investigation Stage)
- Take appropriate advice from an HR or Legal Services Adviser
- Decide whether the grievance should be upheld in full, partly upheld or not upheld. The decision should be confined to the issues raised in the original formal grievance; other issues which may arise should be dealt with separately.
- Have the responsibility to decide on an appropriate outcome and the authority to direct appropriate action to be taken by the relevant people. The feasibility and process of any proposed course of action must be investigated by the manager prior to the final decision, and any decision must fall within the Council's policies and procedures.
- Where appropriate, in consultation with the employees, develop a plan of action to resolve the issue-including reasonable timescales and monitoring.
- Where appropriate consider with the parties involved whether an alternative disputes resolution in the form of externally facilitated mediation may be helpful
- Where appropriate recommend formal disciplinary action against the employee being complained about
- Where appropriate offer independent support or counselling usually via the Occupational Health Service
- If s/he concludes that the grievance was malicious consider whether to recommend that disciplinary action should be taken against the employee.
- Make appropriate notes and records bearing in mind that a record of the hearing may be needed for an appeal or future Employment Tribunal case.
- Confirm the decision in writing and set out any right of appeal.
- Normally the manager will meet with the aggrieved party within 2 weeks, will have met with any other relevant parties within 4 weeks, and all formal proceedings should be concluded within 6 weeks.



## **APPEAL (FINAL FORMAL STAGE)**

### **The employee is entitled to:**

Appeal in writing against decisions at the formal stage within 10 working days of the date the employee receives the decision letter following the outcome of the First Formal Stage. The appeal must set out clearly and in detail the grounds of appeal which must be one or more of the following:-

**Procedure** – failure to follow procedure had a material effect on the decision

**The facts of the case** – the manager came to a conclusion on a material point of fact which no reasonable person could have come to

**Redress** - in a case where the grievance has been wholly or partly upheld the redress decided by the manager would not have been decided on by any reasonable person

**New evidence** - only new evidence that could not reasonably have been raised in the grievance process and the absence of which had a material effect on the grievance decision can be considered. The appeal is not to be used to re-argue the case with different evidence.

Reasonable notice (normally 10 working days) in writing of:

The date, time, place and purposes of the Appeal

The issues to be discussed

The format of the Appeal Hearing

Rights to representation

Arrangements for exchanging documents and witness statements

The opportunity to be represented by another Brent Council worker, an official employed by a trade union or a certified trade union official (not a legal representative)

Postpone the appeal to another reasonable time within 5 working days of the original date – only if their representative will not be available at the time proposed

Put the grounds of appeal and bring evidence relevant to their appeal

Hear and be able to question the management case

A letter within 5 working days confirming the issues discussed and the decision made.

**The Manager hearing the appeal will:**

Consider the grounds of appeal and if appropriate reconsider the decision on the grievance

If necessary change the decision on the facts of the case or change the redress given to the employee

Take appropriate advice from an HR/ Legal Services Adviser

Confirm the decision in writing

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The appeal must be lodged with the manager of the person who heard the First Formal Stage Grievance

The manager hearing the appeal will normally be more senior than the manager who heard the First Formal Stage Grievance. S/he will not have been previously involved, directly or indirectly, with the case.

The decision of the manager hearing the appeal is final and there shall be no further internal right of appeal. The manager will have the authority to confirm, vary or overturn the grievance decision. Where the manager decides to uphold the appeal in a case of procedural flaw or new evidence s/he will have the discretion to refer the grievance back for reinvestigation or to reinvestigate the grievance him/herself. Where the grievance is referred back for reinvestigation s/he will decide, depending on the circumstances, whether the grievance should be reheard by the same officer(s) who originally investigated the grievance or by different officers.

The employee grieved against does not have a right of appeal against the outcome of the grievance hearing or any right to participate in the appeal hearing.

## **GUIDANCE NOTES FOR MANAGERS**

### **HANDLING GRIEVANCES**

There are several ways to handle employee grievances. Managers have discretion over the method they adopt, but in case the matter goes beyond the internal process i.e. the appeal stage, to an Employment Tribunal, they must be able to show to the tribunal that they have:

- Acted fairly
- Taken a balanced view
- Taken the matter seriously
- Given it due consideration
- Dealt with it effectively

#### **Process**

The Manager investigating the grievance will always meet the employee raising the grievance and will pursue one or more of the following options:

- Offer independent mediation (provided both parties agree)
- Review any decisions or action, which gave rise to the grievance
- Meet the parties separately
- Talk to other relevant parties and consider any relevant documentation
- Hold a meeting at which both parties are present
- Take any other action to resolve the matter promptly and fairly

Under normal circumstances the manager investigating the grievance will meet the aggrieved party(ies) separately from the other party(ies). However it will then be open to the investigating manager to consider whether to interview the aggrieved party(ies) and the other party(ies) together, either after, or as an alternative to interviewing them separately.

The investigating manager shall arrange for a note-taker to attend any meeting on his/her behalf.

The manager investigating the grievance has the discretion to appoint additional manager(s) to investigate the grievance in conjunction with him/her, for example where the grievance is considered to be of such a nature (e.g.

because of its complexity or sensitivity) that it would not be appropriate to be dealt with by a single manager.

Depending on the nature of the grievance, the manager investigating the grievance must advise the employee complained about that a possible outcome of the grievance process is a recommendation for disciplinary action.

The employee complained about should be afforded the same rights in relation to representation, notice of any meeting with the manager, postponing any meeting with the manager as are enjoyed by the person pursuing the grievance.

Where the manager recommends that disciplinary action should be taken against the person grieved against the manager will refer the matter to the relevant Service Unit Director/Manager, or if appropriate to another manager of a similar or greater level of seniority, recommending that a hearing be convened in accordance with the disciplinary procedure. If a disciplinary hearing is convened, the grievance investigation will be treated as constituting the disciplinary investigation and the manager, having concluded there is a case to answer, will present the management case to the nominated disciplinary hearing officer.

Where the manager holds a meeting at which both parties are to be present then the parties must submit to the manager and to each other at least 5 working days before the meeting the names of any witnesses whom they intend to call and copies of any documents they intend to rely on at the meeting.

## **TIMESCALES**

### **Staff are expected to:**

Raise matters promptly with management. Grievances raised more than three months after the event will not be considered save in exceptional circumstances

### **Managers will:**

Take early action and pay particular attention to dealing with and resolving directly, problems and complaints raised by staff so not to allow matters to fester and become major problems.

Where a matter is raised formally, deal with the matter within timescales

Normally the Council intends that managers will:

Meet with the aggrieved party within 10 working days,

Conclude the case within 4-6 weeks,

Hear any appeal within 4 weeks of it being lodged.

## **CHECKLIST**

Ensure that you:

- Investigate the issues carefully
- Consider the grievance fairly, checking facts with the employee or manager who is the subject of the grievance
- Take a balanced view
- Do not promise anything you cannot deliver
- Weigh up the effect your decision will have on the Council
- Aim to give a decision within 5 working days at both formal grievance and appeal stage
- If you are unable to complete your interviews or decide on a course of action within timescale tell the employee the steps you intend to take and give timetable
- If you decide not to uphold the grievance give reasons in your decision letter
- Tell the employee of any appeal rights they have if not satisfied with the decision, or if the timescale for dealing with the matter is unreasonable.

## **HEARING AN APPEAL**

The grievance hearing officer/ panel chair and the employee will provide each other and the Chair of the appeal hearing with any documents to be used by them and the names of any witnesses to be called by the third working day before the appeal hearing, except that the employee must provide the grievance hearing officer/panel chair and the Chair of the appeal hearing at least 10 working days before the appeal hearing with any new evidence raised as a ground of appeal. The grievance hearing officer/panel chair will be entitled to introduce at the appeal hearing his/her own new evidence in response to the employee's own new evidence.

The management case will be presented by the grievance hearing officer/ panel chair. A Human Resources/ Legal Services representative may accompany the grievance hearing officer/ panel chair as his /her adviser.

A model procedure for the hearing:-

- Introduction - the Chair of the hearing introduces those present, explains the purpose of the appeal and outlines the procedure for the hearing
- Employee's Presentation - the employee's side states their case based on the grounds specified when submitting the appeal. She is questioned on it by the presenting manager then by the hearing officer and the adviser.
- Employee's Witnesses - the employee's side questions own witnesses in turn. Each is questioned by the presenting manager, then by the hearing officer and the adviser. Any witness shall withdraw after giving evidence and answering any questions put to them.
- Re examination At the Hearing Officer's discretion, a party may be allowed to ask questions of their own witnesses arising from the questioning of the other party.
- Management Presentation- the presenting manager states the management case, and is questioned on it by the employee's side, then by the hearing officer, and the adviser.
- Management Witnesses - the presenting manager questions own witnesses in turn. Each is questioned by the employee's side and then by the hearing officer and the adviser. Any witness shall withdraw after giving evidence and answering any questions put to them.
- Summaries - after an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence.
- Decision Normally the Chair of the hearing will adjourn to consider the case, consult with the adviser, and then recall the presenting manager and the employee's side and give the decision. The Chair of the hearing retains the right to recall witnesses during the deliberating process if further clarification is required. If this does happen, both sides should be recalled into the hearing.

## **GUIDANCE NOTES FOR MANAGERS (GENERAL PRINCIPLES)**

An employee who is the subject of proceedings under the Disciplinary, Managing Absence or Capability Procedures may not instigate the formal Grievance Procedure until the proceedings have been concluded, unless the subject of the grievance is unrelated to the proceedings. Where the grievance relates to the proceedings it should be raised at the appropriate time in those proceedings. Similarly a manager may not take action under these procedures against an employee who has a formal grievance in process until the grievance process is concluded, unless the two issues are unrelated or unless there are exceptional circumstances, for example, the employee has allegedly committed an act of gross misconduct.

Where a formal grievance is found to be malicious the employee may be subject to action under the disciplinary Procedure.

No employee will be victimised as a result of bringing a grievance. At the same time it will not prevent a manager from subsequently taking appropriate management action against the employee if required.

Where the employee formally raises a grievance in response to an action or proposed action by management the status quo prior to the action or proposed action will not continue pending conclusion of the grievance process.

Where the employee has initiated the formal grievance procedure but leaves the Council's service the grievance proceedings will cease as soon as the employee leaves unless there are exceptional circumstances.

An employee who has left the Council's service cannot instigate the formal grievance procedure unless there are exceptional circumstances.

Any disagreement between management and the employee concerning the application of this procedure e.g. whether a particular grievance is within the scope of this procedure, whether there are exceptional circumstances justifying the grievance being raised more than three months after the event or justifying the grievance being raised or carried on with after the employee has left the Council – may be referred to the Director of Human Resources and Diversity or to his/her delegated representative whose decision shall be final.

## **RECORD KEEPING**

All records connected to the grievance must be retained and kept securely and separately from the employee's personal file but alongside it. These records will be retained until six months after the end of the employee's employment with the Council.