

# **MANAGER GUIDANCE**

# **GRIEVANCE PROCEDURE**

<b>Version History</b>			
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<b>Links and Dependencies</b>
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ACAS Code of Practice on Disciplinary and Grievance Procedures
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<a href="#">Discipline and grievance - Acas Code of Practice   Acas</a>
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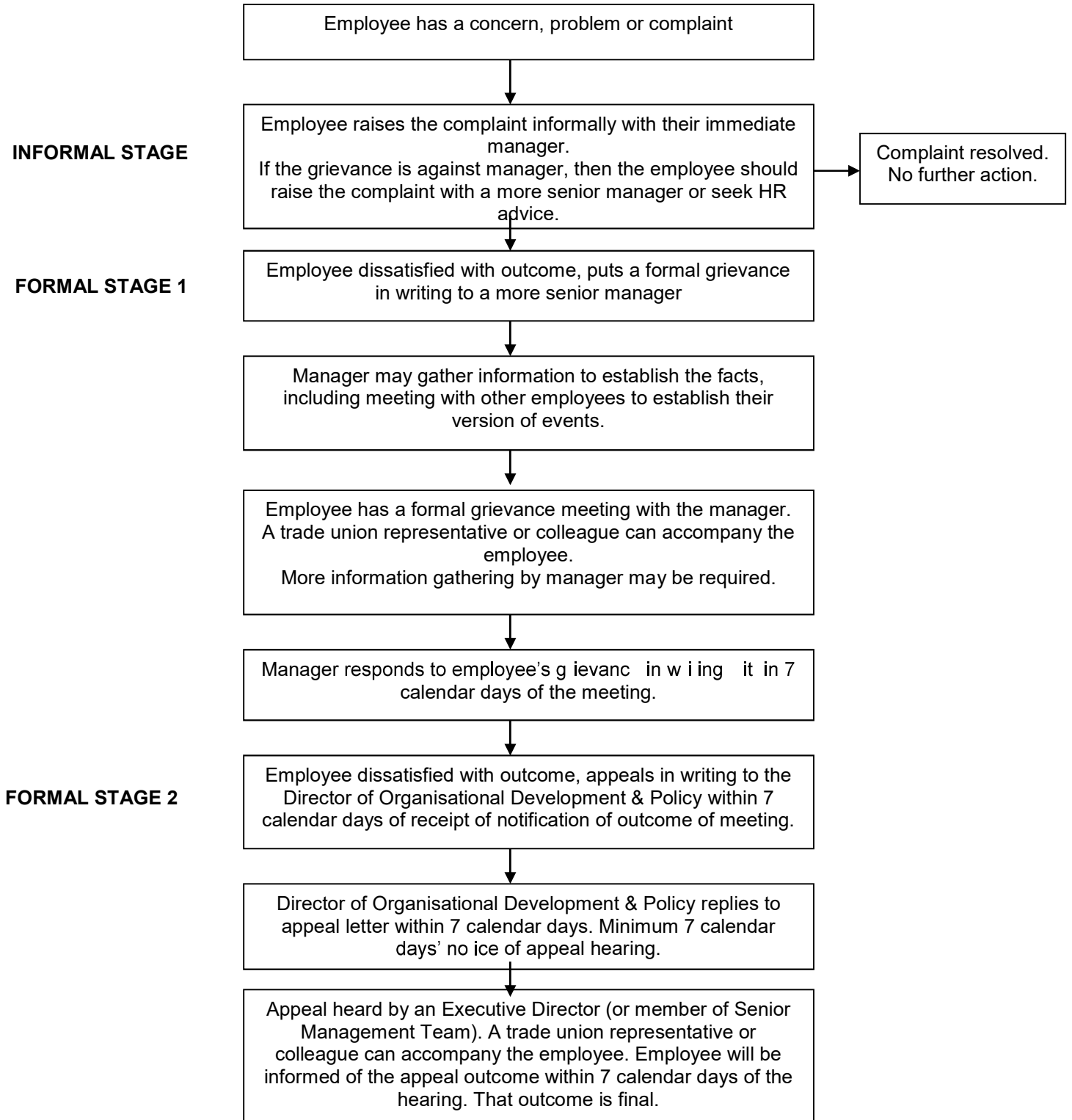
'A Fair Deal for Derbyshire' - Labour Manifesto 2013
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# Derbyshire County Council

## Guidance on the Grievance Procedure

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## GRIEVANCE PROCEDURE FLOWCHART



## **1. Introduction**

A grievance is a concern, problem or complaint which is raised by an employee if they feel unhappy about an aspect of their work or treatment they have received.

The purpose of the Grievance Procedure is to provide a means of resolving an employee's grievance as fairly, quickly and as close to its origin as possible. The Procedure sets out the processes to be followed in seeking to do this. This Guidance provides advice on the operation of the Procedure.

Everyone's prime objective should be to resolve the grievance informally without the need for the formal stages of the Procedure. You should consider whether mediation may be appropriate throughout the process but it can be particularly helpful at the informal stage.

It is good practice that all actions taken on issues within this document are confirmed in writing to the employee, with a copy provided to HR Services for the employee's personal file.

## **2. Review**

The Council's Grievance Procedure and Guidance Documents have been reviewed in the light of and are consistent with the ACAS Code of Practice and current legal precedents. The guidance will be updated in line with changing advice and codes of practice and the most up to date version is available on Our Derbyshire as well as the Council's website or from the Advice & Support Team.

## **3. Exclusions**

Use of the Grievance Procedure is not appropriate for some complaints. See the Grievance Procedure for the range of circumstances where it does not apply.

## **4. Grievance Records**

It is important, and in both the employer and employee's interest, to keep written records during the grievance process. Grievance records should be maintained in the strictest confidence and kept no longer than necessary. A copy should remain on the employee's file in accordance with the HR retention schedule.

Copies of meeting records should be given to the employee and their representative (if applicable) and sent to HR Services for the employee's

personal file. If the employee wishes to make any amendments, these will be recorded alongside the original text. These do not have to be agreed.

A copy of letters relating to the grievance process should be sent to Advice & Support Team who will maintain a register of formal grievance outcomes detailing:

- The nature of the grievance.
- Meetings held to discuss the grievance.
- Findings, actions taken and date and reasons for the action or for no action if that was the decision.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any subsequent developments.

Template letters and statement of case are available on Our Derbyshire and the website.

## 5. Roles

Key roles within the grievance process are:

**5.1 Manager** – responsible for addressing the grievance informally. Where the grievance is against the employee's manager, the employee may approach a more senior manager or the Advice & Support Team for advice on who to contact to raise the grievance. Offer mediation, seeking HR guidance, if this may be an appropriate way forward.

**5.2 Senior Manager** – responsibility for stage 1 of the Grievance Procedure – the formal meeting.

**5.3 Appeal Hearing Officer** - Hears an appeal brought by the employee against the stage 1 decision and determines whether to confirm, amend or reject the original decision. **Legal and HR Advisers** may attend the appeal hearing.

**5.4 The right to be accompanied** - Employees may be accompanied if they choose throughout the process by a colleague or a trade union representative. It is the employee's responsibility to arrange this. If the employee's chosen companion is not available at the proposed time of the grievance meeting, he or she may request a reasonable alternative time for the meeting that falls within five working days of the time originally proposed. In this case, the meeting will be postponed as requested but there is no requirement for further rearrangement unless exceptional circumstances apply.

In some cases, the employee may wish to bring the companion along simply for moral support rather than for representation.

## **6. Mediation**

Mediation is a voluntary process where the mediator helps the parties in dispute in attempting to resolve the issue.

If it is not possible to resolve the grievance informally, mediation may be an option without having to revert to formal procedures. Mediation is more effective if used at an early stage in the process but can be used at any stage in the process as a complement to formal procedures if parties agree to pause procedures. In order to be effective, employees cannot be represented or accompanied in mediation.

Mediation can only be used effectively where all parties involved in the grievance agree to it but its use is strongly encouraged as it can provide effective solutions to workplace conflict.

You should consult your Advice & Support Team on whether mediation is appropriate and its availability.

## **7. Addressing Grievances - Managers**

### **7.1 Preventing Grievances**

To help prevent grievances arising, you should:

- maintain regular face-to-face contact with your staff about day-to-day workplace issues;
- regularly ask questions about how your staff perceive various work-related matters;
- listen actively to what employees have to say; and
- be alert to any potential problems or discontent.

### **7.2 Handling Grievances Informally**

You should try to view an employee raising a grievance constructively. If a grievance is raised, this provides an opportunity for you to resolve a workplace problem that you may be unaware of.

If any employee raises a grievance you should discuss it with them informally before it is taken further. If the complaint is against you, a more senior manager should be involved. The employee can take advice from the Advice & Support Team on who to approach. It is clearly in your interests to

resolve problems before they can develop into major difficulties for all concerned.

Where the employee has made a complaint verbally, this can normally be classed as informal. You should be willing to deal with an employee's grievance irrespective of whether it is raised verbally or in writing.

You should not insist that an employee who has raised a complaint verbally should also put it in writing, as some employees may not wish to do so. However there needs to be clarity on the exact nature of their complaint and, if appropriate, this should be confirmed by you as the manager.

Once you know that an employee has a grievance, you can discuss the matter with the employee, consider the employee's point of view and, if possible, provide a solution or part solution.

If the grievance is relatively minor, the chances are that you will be able to resolve it quickly and easily. This will help to build trust and respect and enhance management/employee relationships.

The employee can choose to be accompanied if they wish by a colleague or trade union representative.

You should make a record of how you have handled the informal grievance and the outcome. If the employee is accompanied you should make a note of the meeting and provide a copy to the employee and their representative and to the HR Services for the employee's personal file.

### **7.3 Handling Grievances Formally – Stage 1**

If the grievance cannot be resolved by informal discussion or mediation, employees may raise a grievance formally. If you are the manager who handled the informal grievance, you should advise the employee who to submit the formal grievance to.

A formal grievance under stage 1 of the Grievance Procedure should be submitted to a more senior manager than handled the grievance informally. If you receive a formal grievance, you should respond within 7 calendar days and arrange a meeting with the employee as soon as possible to discuss the matter. The meeting should normally take place within a few days of the grievance being raised, unless special circumstances mean that more time is needed. It may, for example, be necessary to gather information on the matter before the meeting can take place, but you should ensure that the employee is kept up to date with the reasons for any delay.



## 7.4 Conducting a Grievance Meeting – Stage 1

The main tasks for you conducting a grievance meeting are to:

- Remember that a grievance meeting is not the same as a disciplinary hearing and is an occasion when discussion and dialogue may lead to a resolution.
- Allow the employee to be accompanied at the meeting.
- Invite the employee to restate their grievance and how they would like to see it resolved.
- Ask questions to clarify the facts and explore the matter fully.
- Achieve a clear understanding of the grievance and why it has arisen.
- Distinguish between matters of fact and matters that represent an opinion about the issue from the employee or their manager.
- Discuss any alternative solutions and if there might be room for compromise.
- Provide the employee with any relevant information about Council policies and rules or availability of resources.
- Don't be afraid to point out and question any discrepancies or to challenge what the employee is saying.
- Focus on what can be done to resolve the problem.
- At the end of the meeting, confirm what has been discussed, check understanding and agree what will happen next.

If possible, you should inform the employee of the decision made on the grievance at the end of the meeting, including an explanation of what action has been taken or will be taken or an explanation that no action can be taken, along with the reasons for this.

If however you do require time for reflection and further consideration or checking of matters raised, then you can adjourn the meeting before you take a decision. You should keep the employee informed of this and the reasons for it.

Decisions should be communicated to the employee in writing within 7 calendar days and, where appropriate, should set out what action you intend to take to resolve the grievance. Where an employee's grievance is not upheld, you should make sure the reasons are carefully explained. You should provide HR Services with a copy of the letter for the employee's personal file. If as a result of the meeting, you feel further investigations are required, you should notify the employee of this within the timescales indicated.

If an employee informs you that they are not satisfied with the decision after a grievance meeting, they have a right of appeal – see section 12.

## **8. Gathering Information**

A grievance may raise matters about which you are uncertain or don't have all the background facts. Information on such matters will need to be gathered promptly, impartially and thoroughly.

The information gathering may be before a grievance meeting or where one has been adjourned and may involve:

- Checking the wording of policies or procedures.
- Discussing with the Advice & Support Team.
- Accessing the employee's file to check the history of his or her employment terms or general background.
- Reviewing any other relevant documentation and
- Discussing the matters the employee has raised with other employees to establish clarity over the nature of the grievance and the sequence of events.

## **9. Interviewing Witnesses**

As part of the process of information gathering in to a grievance, it may be necessary for other employees and managers to be interviewed. Please consult the Advice & Support Team where you are considering gathering information from people outside the organisation.

- Prepare a list of questions in advance of each interview.
- Present the facts of the employee's complaint objectively and without embellishment and ask for comment.
- Avoid making assumptions.
- Point out and question any discrepancies in the evidence.
- Make sure that the whole story is uncovered and
- Take notes.

Witness statements are factual statements obtained from people who have relevant knowledge of an alleged incident or event. They are usually developed from notes taken at a meeting with the witness, and all statements should be dated and signed at the bottom of each page by the witness. A copy of any such statements should be given to the employee, although they can exceptionally be anonymised where this is practicable and is considered necessary in order to protect a witness.

## **10. Checklist for Effective Handling of Grievances**

To handle grievances effectively you should:

- Deal with the matter promptly. This does not mean that the grievance should be dealt with in haste, but that you should arrange to meet with the employee to discuss the matter and start any necessary information gathering without undue delay.
- Take the grievance seriously, considering why the employee feels aggrieved.
- Consider whether mediation may be helpful and ensure that all parties are aware of its availability.
- Identify and clarify the issues, establishing the essence of the problem. Listen sympathetically but be firm when trying to establish the facts which have a direct bearing on the case. Make notes to build up a short written statement of the problem.
- Ascertain what resolution / outcome the employee is seeking to redress their grievance.
- Gather information on the facts and surrounding circumstances.
- Check the evidence by questioning and talking to witnesses and obtain written statements where relevant.
- Actively look for a solution that will satisfy the employee without causing disproportionate difficulty for the Council or the employee's colleagues and taking into account the Council's policies and procedures, the resources available and the need for consistency and fairness.
- Evaluate and make a decision when all the facts have been gathered. If the grievance is against a fellow employee, no conclusion should be reached or views expressed until the matter has been discussed with the individual concerned.
- Provide feedback to the employee about what can and / or cannot be done to resolve the grievance.
- Ensure that all parties involved understand precisely what has been decided and take action as necessary.
- Follow through and ensure the actions are carried out.
- Review, checking that the grievance has been resolved.

## **11. Other Considerations**

### **11.1 Potentially Trivial, Frivolous, Vexatious or Repetitive Grievances**

If you consider the grievance to be potentially trivial, frivolous, vexatious or repetitive, you should first discuss your view with the Advice & Support Team and a colleague from the Leadership Job Family (grade 15 and above). If, having considered and consulted on the matter fully, you decide that the concern, problem or complaint expressed by the employee is too trivial, frivolous, vexatious or repetitive to be legitimate or genuine, you should advise the employee verbally and in writing, explaining why no further steps will be taken. You should provide HR Services with a copy for the employee's personal file.

The employee will be entitled to re-submit the complaint with further evidence or explanation which demonstrates that it is a substantive grievance.

### **11.2 False/Malicious Accusations**

Where there is an attempt to use the grievance procedure for potentially false or malicious accusations, this may be treated as misconduct and may lead to disciplinary action. If you consider the grievance to be potentially false or malicious, you should discuss your view with the Advice & Support Team and a colleague from the Leadership family as above.

### **11.3 Working Arrangements Relating to the Grievance**

The working arrangements in place immediately prior to the grievance being lodged will remain for the duration of the grievance, unless the manager considers that one or more of the following override that principle:

- Relevant legislation e.g. health and safety.
- Safeguarding requirements.
- Professional accountability.
- The safety of service users and staff or
- The efficiency of the service.

### **11.4 Collective Grievances**

The ACAS Code of Practice does not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union. These grievances should be handled in accordance with the collective negotiation or consultation process i.e. Workstreams / DJC / CJC or the collective dispute process.

This does not preclude employees from submitting a collective grievance.

### **11.5 Relationship to Disciplinary**

Should a grievance be raised by the employee during the course of a disciplinary process, the following action should be considered:

- Normally where a grievance is raised and the issue relates to the disciplinary matter, these will be considered as part of the disciplinary process to avoid duplication. In these circumstances advice should always be sought from the Advice & Support Team.
  
- Where a grievance is raised which is separate and wholly unrelated to the matter in hand, the two processes can run concurrently. Alternatively the grievance can be considered separately at the conclusion of the disciplinary process.

## **11.6 Recording of Meetings**

Neither party is allowed to record meetings held as part of the grievance procedure. Either party may take notes. If an individual is unable to take their own notes, for example they have a disability preventing them from doing so, a neutral person may be appointed to take notes for distribution afterwards. The use of recording equipment by either party without consent may constitute a disciplinary matter.

## **12. Grievance Appeals – Stage 2**

An employee may appeal against a decision made by a senior manager at a grievance meeting within 7 calendar days of receipt of written notification to them of the outcome of the meeting. The appeal will focus on the parts of the decision the employee is not satisfied with. The grounds of the appeal should be set out in the appeal letter.

There should be a response to the appeal letter within 7 calendar days and the same period notice of appeal date should be given.

The appeal will be heard by an Executive Director or a member of their Senior Management team, normally from a different Department to that in which the original hearing was heard. Legal and HR advisers may attend the appeal. The employee has a right to be accompanied at the appeal.

As the manager presenting the Council's case at the appeal hearing, you should draft your statement of case and make this available to the Appeal Hearing Officer at least 7 calendar days in advance of the hearing. The statement of case should address the grounds on which the employee believes the findings of the stage 1 meeting were wrong, and how they should be changed.

The employee will be informed of the outcome of the appeal in writing within 7 calendar days. That outcome is the final stage within the Council's procedures.

## **13. Grievance Appeals Hearing Process**

The Appeals Hearing shall be conducted as follows:-

- The Appellant puts his/her case to the Hearing Appeal Officer and calls any witnesses.

- The Manager (the manager who took the grievance meeting), followed by the Appeal Hearing Officer have the opportunity to ask questions of the appellant and his/her witnesses.
- The Manager puts the case in the presence of the appellant (and representative where applicable) and may call witnesses.
- The Appellant, followed by the Appeal Hearing Officer, have the opportunity to ask questions of the Manager and witnesses regarding the evidence given.
- The appellant, followed by the Manager, have the opportunity to sum up their case.
- The appellant and Manager withdraw.
- Any advisers to the Appeal Hearing Officer remain in the room during deliberation.
- The appellant and Manager may be recalled by the Appeal Hearing Officer to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return even though only one may be concerned with the point giving rise to doubt.
- The Appeal Hearing Officer will decide whether to allow or dismiss the appeal and will inform the appellant. The decision will be confirmed in writing within 7 calendar days.

An appeal decision by the Appeal Hearing Officer will be final.