



Complaints and Grievance Procedure Staff

Agreed by Governors on; 20/03/2017

Signed by Chair of Governors: Sally Birkbeck

A handwritten signature in black ink that reads "Sally Birkbeck".

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1. Governing Body Policy Statement

The Governing Body is committed to ensuring that the employment arrangements in this school meet the highest standards of fairness and statutory entitlements in employment. We seek to build a workplace environment where colleagues are treated fairly and can work with dignity and respect.

The aim of the Staff Complaints and Grievance Procedure is to address any complaints fairly, consistently and promptly. We believe that the fair and effective resolution of staff concerns is beneficial to harmonious working, job satisfaction, productivity and ultimately to the effective education of our pupils.

This procedure is compliant with the ACAS Code of Practice on Discipline and Grievance.

2. General Principles and Definitions

This procedure applies to all staff employed in the school in respect of whom the responsibility for seeking redress of any complaint (except those matters which are subject to separate procedures e.g. flexible working and pay relating to their employment) is under the control of the Governing Body under the School Standards and Framework Act 1998, as amended from time to time.

Complaints made under this procedure should be made within 30 working days of the last action complained of. Where the actions complained of are allegations of bullying, harassment or discrimination on a continuing basis the 30 day limitation will not apply. Where there are medical reasons for a delay in making the complaint the 30 day period may be extended where it is reasonable to do so.

3. Terms used in the procedure

Throughout the document the person making the complaint may be termed the “complainant”. The term “Governing Body” also refers to any Interim Executive Board which may be in place at a school.

4. Definitions of bullying, harassment and discrimination

ACAS states that most people use the terms bullying and harassment interchangeably, however, ACAS provides the following definitions:

Bullying is:

“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”.

Harassment is:

“Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient”.

“Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual”.

Discrimination may be characterised as:

Any less favourable treatment or victimisation of an employee which is unlawful under legislation including the following:

- Gender
- Race
- Disability

- Sexual orientation
- Trans-gender Status
- Religion or belief
- Age
- Membership or non-membership of a trade union or involvement in trade union activities
- Status as an ex-offender
- Status as a part-time worker
- Or fixed-term

5. Responsibilities under this procedure

Management

Managers should be aware that in law an employer may be held responsible for the actions of its employees regardless of whether or not they are aware of those actions. It is therefore essential that the school takes appropriate measures to ensure that bullying, harassment, or discrimination do not occur. All meetings and proceedings should be confidential.

It is the responsibility of the school's management to:

- Make all members of staff aware of the policy and ensure their compliance.
- Deal with all issues in a timely, serious and sensitive manner.
- Maintain confidentiality when dealing with cases and ensure that a written record is kept of all informal and formal meetings and discussions.
- Make every effort to resolve complaints informally by discussion between the individual member of staff and the appropriate level of management; the resolution of employee complaints should form part of everyday informal managerial action.
- In considering evidence relating to a complaint the management representative will apply the "balance of probabilities" standard proof.

Individual members of staff

Each individual is responsible for his or her own actions whilst at work. It is the responsibility of all employees to:

- Be mindful of their own behaviour and treat others with dignity and respect
- Try to resolve problems informally by discussion with colleagues and/or management
- Report incidents of harassment or bullying either personally experienced or witnessed, immediately to the appropriate line manager
- Make written notes (with dates and names of any witnesses) of incidents, harassment or bullying experienced or witnessed
- Ensure confidentiality is maintained at all times

6. Right to be accompanied

Throughout the process, both the complainant and the person whom the complaint is made against may be accompanied, for example by a recognised trade union representative or by a work colleague not involved in the complaint. At a hearing or appeal a complainant may be represented by up to two trade union representatives or work colleagues.

In exceptional cases, dealing with sensitive matters or where the witness may feel intimidated he or she may be accompanied by a trade union representative or work colleague. However this should not be a person who has a conflict of interest. Trade union representatives cannot play the dual role of representing the person whom the complaint is made against, witnesses and/or the complainant in the same case.

It is good practice for a mutually agreed time to be arranged for meetings and hearings where a member of staff requires the presence of his or her trade union representative.

7. Postponement of hearings and appeals

In accordance with Section 10 (4) of the Employment Relations Act 1999 the complainant may seek a postponement of a complaint hearing and propose an alternative time, if their chosen trade union or professional association official or work colleague is not available at the time proposed for the hearing by the employer. The Act states that the alternative time proposed by the employee must be reasonable and fall within five working days beginning the first working day after the day proposed by the employer.

In exceptional circumstances where the efficient running of the school or the interests of the health and wellbeing of the parties involved is being compromised by the process; the hearing may be held in the absence of the complainant after considering any representation by either party.

The non-availability of the second of the two trade union/professional association representative permitted under this procedure will not be regarded as sufficient reason for a postponement.

8. Record keeping and confidentiality

It is important that accurate and contemporaneous records are kept throughout the complaints handling processes, including any initial informal processes. Copies of meeting records should be given to the employee, including copies of any formal minutes that may have been taken.

Records should be held in a secure and confidential manner. Often the issues raised are particularly sensitive and it is essential that the circulation of information be minimised to that which is necessary to ensure a fair investigation and hearing. All meetings, documentation and proceedings should be confidential.

In the event of a complaint being made, the management of the school may inform the Chair of Governors (or another appropriate Governor). But on no account should the case be openly discussed with any other Governors.

9. Resolving Complaints informally

Every effort should be made to resolve complaints informally by discussion between the individual member of staff and the appropriate level of management. This can often lead to a speedy resolution of the problem and is likely to be less damaging to working relationships.

The Individual

In cases where an employee feels aggrieved by the words or actions of another; it is important for the employee to deal with this at an early stage. The employee should address the issue by one or more of the following options:

- An employee with a complaint must start by discussing it with his or her manager at the earliest opportunity; it may be possible to resolve the complaint informally through discussion
- If the employee has a complaint regarding his or her line manager she or he may seek assistance from a more senior manager
- The employee may also seek support from his or her trade union representative, via Occupational Health or the mediation service (see paragraph 9)

If the complaint is against the Headteacher see paragraph 23.

Management

When a complaint has been raised verbally or in writing in the first instance the line manager must offer a meeting to discuss the details of the complaint, and seek to gain the employee's agreement to address the complaint informally. The line manager may decide to address the complaint by one or more of the following options:

- Offer the complainant a meeting with their manager and the person whom they have a complaint against to openly discuss any issues and agree a way forward
- Speak to the person whom the complaint is made against on the employee's behalf
- Refer the complainant and the person whom the complaint is made against to Occupational Health for support (if necessary)
- Arrange external mediation subject to agreement by both parties

In all circumstances, managers should try to resolve the underlying problem informally as part of good management practice. However, the decision to attempt to achieve an informal resolution ultimately rests with the complainant.

Mediation

Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement without recourse to the formal procedures. Mediation should be undertaken by a neutral third person who is trained in mediation techniques. Mediation, where it is successful, can produce quicker and more satisfactory results for the parties involved and may reduce the damage caused to working relationships and the health and wellbeing of both parties. Employees may be offered mediation at any stage of the complaints process. Equally, either party or their trade union representatives may make this suggestion.

Even if mediation is not initially agreed by the parties, the offer of a mediated process can be re-offered as the case progresses.

Mediation may be used for:

- Resolving conflict between colleagues of a similar job or grade, or between a member of staff and their line-manager
- Rebuilding relationships after a formal dispute has been resolved
- Addressing personality clashes, communication problems and bullying and harassment

Please note, where disciplinary action is required; this process should be completed prior to mediation.

The details of discussions within mediation processes are confidential to the parties involved.

The mediation process is normally carried out without the involvement of trade union or management representatives.

For advice on arranging mediation or for further details on the mediation process, please contact your Human Resources Business Partner.

10. The Formal Procedure

If it is not possible to resolve a complaint informally employees should raise the matter formally and without unreasonable delay (see paragraph 1.2) to the Headteacher, or the Chair of Governors if the complaint is against the Headteacher. This should be done in writing and set out the details of the complaint and state that the complaint is being made on a formal basis.

11. Step 1 – The Complaint Letter

Details of the complaint should be forwarded in writing to the Headteacher/Chair of Governors (see above) by the complainant or their representative. The complainant should normally receive an acknowledgement of the complaint within five working days. A formal complaint should normally be submitted without unreasonable delay following the action or decision under dispute (see paragraph 1.2).

A copy of the letter of complaint will be provided to the person complained against. He or she may respond in writing to the Headteacher or Chair of Governors. If the letter of

complaint refers to other persons then these elements of the complaint will be removed to preserve confidentiality.

The letter of complaint should carefully describe the complaint, giving a detailed account of what is alleged to have occurred, who was involved, detail any witnesses and state when the event/s happened. The complainant should also state what outcome they are seeking from their complaint.

Should an investigation be necessary then the timescales for arranging a complaints hearing may vary. To minimise employee stress and to facilitate the efficient running of the school all attempts will be made to complete the process in a timely manner.

12. Step 2 – The Case Manager

A case manager should be appointed to handle the complaint.

The case manager may be a member of the Governing Body or a senior manager. Care should be taken that the person who is to be the case manager has no direct interest in the outcome of the case and is not a witness to any of the events complained of.

The case manager's role is to:

- Acknowledge the complaint in writing, normally within five working days
- Manage the case in accordance with procedural requirements
- Offer mediation and arrange this, if required
- Undertake an investigation, or commission another appropriate person to undertake this role (for further advice please contact your Human Resources Business Partner)
- Present the findings of the investigation to the complainant and subsequently to the person complained against possibly in conjunction with the Headteacher or Chair of Governors if appropriate
- Arrange for any necessary hearings
- Present the management case at any hearing, or commission another appropriate person to undertake this role (for further advice please contact your Human Resources Business Partner)

Where the complaint is against the Headteacher the Chair of Governors will arrange for the Clerk to Governors to convene a Governing Body meeting to nominate a Governor/s to investigate. Alternatively, the school may decide to employ an external investigating officer.

13. Step 3 - The Investigation

The case manager will establish the basic facts of the case. Where the matter is not complicated it may be resolved by mutual agreement or mediation. If not, the complaint can be referred to a hearing where witness evidence can be heard and all the relevant factors can be considered. If the case is less complex, the complaint and response can be presented directly to a Headteacher or Governors hearing.

More complex or legally sensitive cases are likely to require a more detailed investigation. Should the case manager decide that an investigation is required then an investigating officer will be appointed. The investigating officer may be an appropriate school manager or Governor. In some circumstances the school may decide in the interests of fairness or capacity to appoint an independent external investigator.

The investigating officer's role is to:

- Interview the complainant, any witnesses and the person complained against
- Establish the facts of the case
- Submit a written report setting out the findings of the investigation

The investigating officer must not decide on the outcome of the complaint.

NOTE: In some cases it may be appropriate to suspend the person whom the complaint is made against in order to conduct the investigation.

Please refer to the Managing Investigations document and contact your Human Resources Business Partner for further support.

14. Step 4 – Feedback on the findings of the investigation

Once the investigation has been completed the case manager should arrange a meeting with the complainant to give feedback on the findings. If the case manager is not the investigating officer then the investigating officer may also be present. The complainant can be accompanied by a trade union representative or a work colleague. A meeting should then be arranged with the person whom the complaint is made against to provide feedback on the investigation. The person whom the complaint is made against may also be accompanied by a trade union representative or a work colleague. The meetings with both complainant and the complained against will be held consecutively.

If the findings of the investigation support the complaint then the case manager will inform the employee of this.

If the findings of the investigation do not support the complaints made by the employee because there is contrary evidence, or if there is insufficient evidence to support the complaints, then the employee can be given this information and advised that if s/he wants to take the matter further then s/he will need to inform the Headteacher/Chair in writing that s/he now wants to have the matter considered at a grievance hearing. Consideration may be given to disciplinary action at this stage.

Where there is reason to believe that the employee has been treated inappropriately or if there is evidence that the employee has been bullied, harassed or discriminated against then management action should be considered, using the school's Disciplinary Procedure where appropriate.

15. Step 5 – The Hearing

If the complainant remains dissatisfied then s/he may request that a formal hearing is arranged for the complaints to be considered.

The person against whom the complaint is made will normally be required to attend any formal hearing or appeal hearing and may be accompanied at the hearing by up to two trade union representatives or work colleagues. S/he may be present solely as a witness or, at the discretion of the management representative, may be present throughout the hearing.

For complaints made against the Headteacher see below

Where a Governors' Committee is used, its members will be convened by the Clerk to Governors from members of the Governing Body who (where possible) have not previously been involved in the case.

The complainant and the person whom the complaint is made against should be given ten working days written notice of the formal hearing.

The person against whom the complaint is made will be entitled to attend any formal hearing or appeal hearing and may be accompanied at the hearing by up to two trade union representatives or work colleagues. S/he may be present solely as a witness or, at the discretion of the management representative, may be present throughout the hearing.

Both parties will receive copies of the procedure and a full set of the evidentiary documentation for the hearing, including any material submitted by the other party. Should either party wish to present additional documentation they should do so by providing it to the Clerk to Governors (for Governor hearings or to the Headteacher/Deputy Headteacher for Headteacher/Deputy Headteacher hearings) by five working days prior to the hearing. Again, any additional material will be copied to the other party.

The nominated manager or Chair hearing the case may wish to adjourn the hearing pending further investigation.

A Human Resources representative will normally be present at hearings to advise on the procedure. The hearing will take place as soon as is reasonably practicable. If possible, a verbal decision will be given after the hearing. The decision will be confirmed in writing within ten working days.

16. Step 6 – The Decision

There are two possible outcomes:

Complaint - not upheld

The Discipline, Grievance and Dismissal Committee or Headteacher (as appropriate) may conclude that the complaint is not upheld, i.e. because the behaviour complained of did not occur or because there is insufficient evidence to support the complaint. If, in such a case, the Committee or Headteacher is nonetheless satisfied that the

complainant's distress is genuine and/or that there has been a serious breakdown in relationships the school will offer support to the colleagues in the restoration of their working relationship through mediation or other methods as appropriate.

Complaint upheld or upheld in part

If the outcome of the hearing is that the complaint is fully or in part proven on the balance of probabilities then consideration should be given to appropriate actions to prevent reoccurrence of the matters complained of. Disciplinary action may be recommended in appropriate circumstances as a separate procedure.

17. Step 7 – Issuing the decision

The complainant should be informed of the outcome, in writing, normally within five working days. The reason(s) for the outcome should be included as part of the response. If the complaint is not upheld (at a first hearing), the employee must be informed of the right to take the complaint to an Appeal Hearing.

The decision letter should be copied to the:

- Management representative who presented the case
- Headteacher
- Complainant's trade union representative

The person whom the complaint is made against should receive written confirmation of the outcome of the complaint against them.

18. Step 8 – The Appeal

If the complainant is dissatisfied with the decision from the first hearing, s/he should notify the Clerk to Governors within ten working days of receipt of the decision letter of his or her decision to appeal. The complainant must give specific reasons why they are dissatisfied with the outcome. An appeal can be made on the grounds of:

- Perceived unfairness of the decision
- Disputing the facts of the case including new evidence coming to light
- Procedural non-compliance

The Appeals Committee will hear the complaint. The Committee will be convened by the Clerk to Governors. The committee will comprise of Governors not previously involved at the first hearing. A Human Resources representative will be present to advise the Governors. The hearing will take place as soon as is reasonably practicable. If possible, the Chair of the Committee may be able to give a verbal decision after the hearing. The decision will be confirmed in writing normally within ten working days. The decision will be final; there is no further right of appeal.

19. Disciplinary Implications on the outcome of complaints process

- Where a complaint of bullying, harassment or discrimination is upheld, management may take action under the disciplinary procedures
- Where the behaviour complained of is found to be inappropriate but not meriting formal disciplinary action, management may work with the person whom the complaint is made against to modify their behaviour through the use of management instruction, coaching, training, mentoring and mediation
- The making of vexatious or false complaints may result in disciplinary action being taken

20. Restoring Working Relationships

Whatever the outcome of a complaint, it is management's responsibility to re-establish effective working relationships amongst the employees involved; it is the employees' responsibility to co-operate to achieve this. The school may seek agreement from both the complainant and the person who the complaint has been made against for the case to be referred to mediation.

21. Occupational Health Support

The school has a duty of care to both parties involved in the case and should recognise that the process may be stressful and have an impact on the health and wellbeing of both parties. Schools are advised to seek Occupational Health support for either party where required.

22. In-School arrangements

In some cases it may be difficult for employees to work closely together and if possible schools may offer suitable alternative employment within the school if able to do so. (Further advice should be sought from your Human Resources Business Partner).

23. Complaints against the Headteacher

Informal

- An employee who wishes to make an informal complaint against the Headteacher with a view to resolving an issue may use any of the following approaches:
- Approach a Deputy Headteacher or another member of the leadership team
- Contacting the trade union representative who may contact the Headteacher's trade union representative or the Headteacher directly.
- Approaching the Chair of Governors - The Chair of Governors may delegate the matter to a Governor with the particular skills to enable him or her to provide assistance in this type of problem. Whoever undertakes this role cannot subsequently be a member of the Discipline and Complaints Committee or the Appeals Committee dealing with the matter.

Where the situation cannot be resolved through mutual discussion, consideration should be given to the use of mediation.

It must be noted that this is the INFORMAL part of the process and that any person the employee chooses to contact to assist in resolving the problem must deal with the matter on a confidential basis.

Formal

The employee may contact the Chair of Governors to raise a complaint against the Headteacher. The complainant must put the details in writing outlining their specific complaint to the Chair of Governors/Clerk to Governors. The same steps outlined within the Complaints Procedure will apply with the exception that the investigation and any subsequent hearing(s) will be heard by the Discipline, Grievance and Dismissal Committee.

Only an external investigating officer or one or more Governors may carry out an investigation into complaints against the Headteacher.

24. Complaints made by the Headteacher

A Headteacher may raise a complaint against a member of staff on the grounds of bullying, harassment or discrimination. A Headteacher may raise a complaint against the Governing Body but not against an individual Governor unless s/he is exercising a delegated power or function or one conferred by law.

25. Allegations against the Governing Body

Please contact the school's Human Resources Business Partner (who will liaise with the Governors Support Service) for advice before taking action.

26. Collective Disputes

Where more than one member of staff has lodged a complaint relating to the same or substantially the same issue, the school may deal with the complaints together in the interests of fair and consistent decision-making. The trade union may initiate a collective grievance on behalf of more than one named employee where the issues are the same.

27. Overlapping complaints and disciplinary cases

Where an employee raises a complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the complaint, at the discretion of the Governing Body. Where the complaint and disciplinary cases are related it may be appropriate to deal with both issues concurrently.