

Managing Grievance

Policy Guiding Principles & Procedures

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Preface

The council's grievance procedure and guidance documents have been reviewed in line with the current law and ACAS best practice. In this respect the council's grievance procedure and guidance documents comply with the statutory requirements.

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Policy Statement on Grievances

It is sometimes the case that individual members or groups of staff will during the course of their employment encounter difficulties in the workplace. The council recognises this and encourages open and honest communication between all staff, so that difficulties may be resolved quickly and at the lowest level of management possible, through informal discussions and dialogue.

However, where resolutions cannot be found through informal discussions, the council has a clear policy and procedure for the management of grievances which must be followed.

The aim of this policy is to ensure that individual members of staff who feel aggrieved about the way that they have been treated, either by management or by their colleagues, are given every opportunity to express their views and have the issues they have raised resolved in a fair and just manner.

Scope

This procedure will apply to all established, temporary employees, agency and casual workers employed by Chesterfield Borough Council. The provisions contained within the *Local Authorities (Standing Orders) Regulations 1993* will apply with regard to disciplinary action in respect of the Head of Paid Service and any other statutory officer.

Issues not covered by this policy

Complaints made 3 months after the last occurring incident will be judged out of time unless there are very exceptional circumstances e.g. where it is accepted that he/she was unable to make a complaint at the time.

Vexatious, trivial or reckless complaints will not be accepted. Disciplinary action may be taken if an investigation finds evidence that a complaint is vexatious, trivial or reckless.

Complaints cannot be made by a third party on behalf of a colleague or from a manager on behalf of an employee. The complainant must 'own' his/her complaint.

Allegations against a trade union or an individual acting in the capacity of a trade union representative are not covered by this policy and procedure. These are legally *employee relations* matters and must be referred to the Human Resources Manager to deal with.

Concerns about an employee's work performance or related matters are not dealt with under this policy and procedure. These should be managed through the Disciplinary or Capability Policy and Procedure.

Complaints against elected members should be made under the members' code of conduct.

SECTION 1: GENERAL GUIDING PRINCIPLES

1.0 Introduction

1.1 All employees, who believe they have a grievance in relation to their employment, should in the first instance address this with their immediate line manager to try and resolve the issue informally.

1.2 Issues that may cause grievance include:

- a) Standard grievances: these relate to general work related issues, for example terms and conditions of employment, work relations, new working patterns, working environment and organisational change. These grievances do not include equality issues.
- b) Grievances based on equality issues: this is where an individual reasonably believes that he/she is being/has been discriminated against either intentionally or unintentionally on the basis of any of the nine protected characteristics under the Equality Act 2010.
- c) Harassment: this is behaviour that is offensive and/or intimidating and unwanted. It is behaviour that has created working conditions or an environment that is hostile, degrading and/or humiliating and that a reasonable person could justifiably complain about it. The behaviour or treatment may relate to any of the nine protected characteristics under the Equality Act 2010, or any other reason.
- d) Bullying: This is a form of harassment and can be defined as offensive, abusive, intimidating, malicious or insulting behaviour, an abuse of power or misuse of power through means intended to humiliate, denigrate or injure the recipient. Bullying can undermine an individual's self-confidence, competence and self-esteem.
- e) Victimisation: this is where a person is treated less favourably than another because they have brought proceedings, given evidence or information, rejected advances or complained about the behaviour of someone who has been harassing, discriminating against, or in some other way intimidating them.

Note: Allegations relating to harassment, victimisation and bullying, will be investigated under the council's *Anti-Harassment and Bullying Policy and Procedures*.

1.3 As a consequence of case law on this subject, ACAS has defined that any written complaint received by an employer, from an employee, should be treated as a grievance. If in doubt, please contact HR for further details.

1.4 Grievances should be addressed in a timely manner. The council will endeavour to deal with grievances raised by employees as quickly as possible in line with the time scales defined in this procedure.

1.5 Group grievances

Where a common problem has been raised by a group of employees, no more than two representatives of that group should take the grievance forward. A group grievance will follow the same procedures as an individual grievance.

2.0 Legal context

- Employment Relations Act 1999
- Data Protection Act 1998
- Employment Rights Act 1996
- Trade Union and Labour Relations Consolidation Act 1992
- Discipline and Grievance at Work: The ACAS Guide
- Paragraph 16.1 of Part 2 of the National Agreement on Pay and Conditions of Service for local government employees.
- Equality Act 2010

3.0 Confidentiality

All cases that are dealt with under this procedure, whether formal or informal, should be conducted in the strictest confidence, unless otherwise agreed by all parties and the managers concerned. Such matters must not be subject to general office discussion and where there is a grievance and action being taken (investigation or otherwise) employees will be instructed not to discuss the situation except with their manager and designated representative. Copies of any meeting records should be given to the individual concerned although in some circumstances some information may be withheld, for example to protect a witness.

4.0 Time-scales

- 4.1 Complaints should be submitted as promptly as possible and shall be within three months from the date of the incident(s) complained of. This time limit may be extended under exceptional circumstances and where it is considered reasonable, just and equitable to do so.
- 4.2 Managers and appeals officers will respond to complaints within the defined time-scales set out in the procedure unless it is mutually agreed with the complainant that these time-scales are extended e.g. to facilitate a reasonable period of time for an investigation into a complaint to be undertaken.

5.0 Special considerations

5.1 Bullying, harassment and victimisation

The council's Anti-Harassment and Bullying Policy and Procedure provides specific procedures for handling grievances about discrimination, victimisation, bullying and harassment as these subjects are often particularly sensitive.

5.2 'Whistle-blowing'

The *Confidential Reporting Policy and Procedure* provides protection to employees who raise concerns about wrongdoing (including frauds, dangers and cover-ups).

5.3 Grievance raised during a disciplinary or capability process

During a disciplinary investigation, the employee under investigation may raise a grievance that is related to the case. If this happens, the disciplining officer may consider dealing with the disciplinary investigation and grievance concurrently while also ensuring the grievance is dealt with under the council's *Grievance Procedure*. Depending on the outcome of the grievance process, the disciplining officer may need to consider bringing in another manager to deal with the disciplinary hearing

Where the employee is dissatisfied with the outcome of the disciplinary process, he or she may raise any issues relating to this through the disciplinary appeal procedure. The *Grievance Procedure* does not apply in such circumstances.

5.4 Representation

Employees who have raised a grievance or have had a grievance lodged against them have a right to be accompanied by a trade union representative or colleague (but not a paid legal representative) during any meetings that take place.

5.5 Record keeping

Records should be maintained at all stages of the procedure. Records should include details on the nature of the grievance raised, the employer's response, any action taken and the reasons for it.

Records will be kept confidential and retained in accordance with the Data Protection Act 1998. Copies of records of meetings should be given to the individual concerned although in some circumstances some information may be withheld, for example to protect a witness. Human Resources should be copied into all correspondence relating to the resolution of a grievance.

5.6 Equalities

Consideration must be given to ensure that all employees are able to access the Grievance Policy and to enforce it if necessary. Employees are asked to contact the Human Resources section if they require the policy document in an alternative format e.g. large print, Braille etc.

SECTION 2: MANAGING GRIEVANCE PROCEDURE

6.0 The procedure

6.1 Informal resolution

6.2 Before considering use of the formal procedure, any employee who has a grievance should if at all possible discuss it in the first instance with their line manager or the person concerned with a view to seeking an early resolution. The employee may, however, decide that their grievance is so serious that it is unlikely to be resolved informally. They may then proceed immediately to the formal stage of the procedure.

6.3 Line managers are normally responsible for carrying out any investigation, including interviewing any witnesses and collating any relevant information. Where it is not appropriate for the line manager to deal with the grievance it should be referred up to the relevant CMT manager who may delegate the issue to be dealt with by a nominated representative.

6.4 The manager dealing with the grievance will make every reasonable attempt to address the issue(s) at the earliest opportunity and preferably within ten working days, informing the employee of the actions taken or to be taken. During the meetings the grievance should be fully understood and both the employee and the line manager (or nominated representative) should suggest constructive solutions to resolve the issue. Both the employee and the line manager (or nominated representative) should take notes during these meetings.

6.5 The manager should refer an employee who feels that they have been bullied or harassed to the Anti-Harassment & Bullying Policy and Procedure.

6.6 If the grievance relates to another employee, the employee who is the subject of the grievance investigation must be informed, ideally in person and, in any event, in writing of the nature of the grievance against them and the steps being taken to resolve the grievance.

6.7 The role of managers (or nominated representative) at the informal stage is to:

- a) Meet with the parties in one-to-one sessions in order to identify issues, needs and concerns;
- b) Explore ways forward;
- c) Encourage both/all parties to meet together in a joint mediation session to resolve any conflict or issues between them.

6.8 During any joint meetings the manager will be expected to:

- a) Establish ground rules and a constructive environment;
- b) Ensure that everyone has an equal opportunity to communicate (speak and listen), negotiate and work out realistic and fair agreements; and

- c) Help people make their own decisions about how to achieve a resolution, understanding and/or improvement in behaviour.

6.9 Human Resources will provide support and guidance as requested to all parties.

6.10 If the grievance cannot readily be resolved informally, the employee may progress it through to the formal procedure.

7.0 Formal stage – lodging a grievance

7.1 If an employee wishes to invoke the formal grievance procedure he/she must set out the nature of the grievance in writing to his/her line manager, providing as much information as possible, to enable the grievance to be dealt with speedily. If the grievance is about the line manager, the grievance should be sent to the line manager's manager.

7.2 The statement should include:

- a) The nature and details of the grievance
- b) The name of the individual the grievance is against (if it is against an individual)
- c) Any supporting information which might include what was said and done, and any relevant documents
- d) How the complainant thinks the grievance can be resolved.

7.3 The manager dealing with any grievance at the formal stage should inform and involve the Human Resources department at this stage of the procedure. If the grounds of the grievance relate to discrimination, then the Policy Manager should also be informed.

7.4 If the grievance relates to another employee, the employee who is the subject of the grievance investigation must be informed, ideally in person and, in any event, in writing that the grievance against them is now formal and the steps being taken to resolve the grievance.

7.5 An employee, who is the subject of a grievance, has the right to be accompanied by a representative or colleague (but not a paid legal representative) during any investigatory interviews/meetings.

7.6 Further attempts may be made to resolve the matter informally, depending on the nature of the complaint. However, if the employee is not satisfied with the outcome, they may insist on the matter proceeding to a full grievance hearing

7.7 The manager should, in the first instance, formally acknowledge receipt of the grievance and give an indication of the likely timescale for resolution (if it cannot be resolved without further investigation.)

7.8 Before proceeding to a full grievance hearing, it may be necessary to carry out investigations of any allegations made by the employee, although the confidentiality

of the grievance process will be respected, wherever possible. If any evidence is gathered in the course of these investigations, the employee will be given a copy 5 days in advance of the hearing for them to consider their response. In exceptional circumstances, the evidence given by individuals may be anonymised to protect the individual witness.

The grievance hearing

- 7.9 The hearing will be held as soon as is reasonably practicable and, subject to any need to carry out prior investigations, within 10 working days of the receipt of the written complaint. It will be conducted by the line manager and attended by an HR representative. At the meeting, the employee will be asked to explain the nature of their complaint and what action they feel should be taken to resolve the matter. Where appropriate, the meeting may be adjourned to allow further investigations to take place. The employee will have the right, to be accompanied by a trade union representative or colleague (but not a paid legal representative) during these meetings.
- 7.10 If an employee or their representative is unable, for good reason, to attend the meeting on the date proposed, the manager dealing with the grievance will reschedule the meeting, to take place as soon as possible but no later than five working days after the original date. No further rescheduling will be considered unless the reason for non-attendance is considered exceptional.
- 7.11 The employee must have submitted all documentation to be considered at least two working days before the meeting.
- 7.12 If the grievance meeting has been adjourned for further investigation etc, it will reconvene at an agreed later date and the reasons for any subsequent delay will be confirmed in writing by the manager. The grievance hearing will normally be reconvened within 2 weeks of the original meeting. Management can seek assistance and support from Human Resources who will attend a grievance meeting.
- 7.13 The employee must be notified of the outcome either at the end of the meeting or in writing within five working days of the meeting. They will be given reasons for the decision which may be one of the following:
- a) That the grievance is upheld and the actions required or resolution(s) to be implemented, if appropriate. In this case the employee should be advised that if they are not satisfied with the resolutions determined, they may appeal the decision and progress their grievance to the appeals stage;
 - b) That the grievance is dismissed. Where this is the case the employee will be given the right to appeal the decision.
- 7.14 An employee who is the subject of a grievance investigation will be informed, ideally in person and in any event in writing, of the outcome of the formal grievance within

five working days of the conclusion of the grievance investigation and the reasons for the decision made.

7.15 The council recognises that a formal grievance procedure can be a stressful and upsetting experience for all parties involved. Everyone involved in the process is entitled to be treated with respect. The council will not tolerate abusive or insulting behaviour from anyone taking part in or conducting grievance procedures and will treat any such behaviour as misconduct under the disciplinary procedure.

7.16 All correspondence should be copied to Human Resources.

8.0 Appeal

8.1 If the employee is not satisfied with the outcome of the formal grievance they may appeal the decision.

8.2 The intention to proceed to appeal must be confirmed in writing to the manager who made the decision on the grievance within 10 working days of receipt of the letter confirming the outcome of the formal stage. The letter of appeal must set out the grounds on which the appeal is being made.

8.3 Appeals will be heard by the by the Appeals and Regulatory Committee.

8.4 The appeal hearing will be convened at the earliest opportunity but no later than 4 weeks from the date of receipt of the appeal letter.

8.5 The employee has the right to be accompanied by a trade union representative or work colleague (but not a paid legal representative) at the appeal hearing.

8.6 The employee must provide any additional documentation on which they intend to use at least five working days prior to the date of the appeal hearing. These documents should be submitted to the person hearing the appeal who generally will

- a) conduct the meeting as a fact finding process, ensuring good order and natural justice;
- b) decide if there were any procedural flaws and if they affect the merits of the grievance and resolve any disputes about procedure;
- c) consider the grounds of appeal and consider whether the decision made at the formal stage appears to be unreasonable and is not supported by the information gathered;
- d) consider any new information that was not available at the time of the original meeting but has since come to light;
- e) make a judgement consistent with their findings either that the grievance is upheld and their recommendations for action or that the appeal is dismissed.

8.7 In certain circumstances the person hearing the appeal may decide to seek external advice and assistance during the grievance procedure. For instance, where

relationships have broken down an external facilitator might be able to help resolve the problem.

- 8.8 The decision of the Appeals Committee will be final and there will be no further internal appeals procedure or action.