

## **EMPLOYMENT MATTERS COMMITTEE**

**16 MARCH 2011**

### **GRIEVANCE PROCEDURE (SCHOOL BASED STAFF)**

Report from: Tricia Palmer, Assistant Director, Organisational Services

Author: Ralph Edwards, Head of HR Services (Schools)

#### **Summary**

This report details the Council's proposals to implement a new Grievance Procedure for school based staff.

#### **1. Budget and Policy Framework**

- 1.1 The procedure lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

#### **2. Background**

- 2.1 The new Grievance Procedure (Appendix 1) is a new document. It meets its legal objectives by following the Statutory Minimum Procedure contained in the Employment Act 2002 and also accords with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

#### **3. Options**

- 3.1 The only option is to implement the new Grievance Procedure as the current procedure is no longer fit for purpose.
- 3.2 The new procedure will enable schools to deal with employees grievances more speedily by putting emphasis on dealing with them as early as possible to avoid the need for a formal process.

#### **4. Advice and analysis**

- 4.1 There are a number of good reasons why the current Grievance Procedure needs to be replaced. These are as follows:

- 4.2 Schools need a procedure that puts the emphasis on dealing with employee concerns and complaints primarily at an informal level. This prevents issues growing into larger issues and can also develop in some instances into group grievances.
- 4.3 The new Grievance Procedure is structured so that grievances can as far as possible, be dealt with informally by the line manager. It does however take into account that it may not always be possible to resolve some of the more serious cases informally and allows employees to raise grievances through a formal procedure.
- 4.4 The formal procedure has been changed and is now more streamlined with less governor involvement.
- 4.5 In recent years it has been common practice for an employee who is subject to either the disciplinary or capability procedure to invoke the grievance procedure. The effect of doing this is to either delay or halt either process continuing. This is clearly not appropriate and can be most stressful and frustrating for those engaged in either process.
  - 4.5.1 To resolve this issue, the new procedure explicitly states that if an employee raises a grievance in writing that relates to action being taken in accordance with either the disciplinary or capability procedure at any stage before the final appeal stage of that procedure, he or she will be treated as having complied with the grievance procedure. The grievance will be dealt with as part of the disciplinary or capability process and a future meeting will consider both the disciplinary or capability issue and the grievance.
- 4.6 Mediation can sometimes help to resolve grievance issues so long as both parties agree to enter the process with an open mind. The new grievance procedure advocates the use of mediation. Human Resources (Schools) has trained mediators who support schools if required.
- 4.7 The current formal procedure asks employees to submit their grievance in writing. This can sometimes be unhelpful as there is no consistent approach to this. The employee may find it difficult to put their thoughts into words without a prompt and as a result management may not interpret the issue correctly. Also during this process, employees are not encouraged to suggest how they would like to see their grievance resolved.
  - 4.7.1 The new procedure includes a mandatory form for the employee to complete when entering the formal grievance procedure. The form prompts the employee to provide details of why they are not happy with the way in which their grievance has been dealt with previously and also asks for the solution they desire.
- 4.8 The new grievance procedure seeks a commitment from managers to deal with grievances as quickly as possible and to “nip them in the bud” before they get the opportunity to grow into more serious issues.

- 4.8.1 However, should this not happen there is now a clearer process that should enable formal grievances to be heard and resolved more speedily whilst still remaining within the remits of the law.

## **5. Consultation**

- 5.1 This policy has been consulted upon with the trades unions and legal services.
- 5.2 A number of suggested amendments were made and wherever possible, the suggestions were taken on board. The discussions with the trade unions were particularly positive and the procedure is an agreed document.
- 5.3 Diversity Impact Assessment (DIA) has been undertaken on the proposals and it has been found that it is not necessary to carry out a full impact assessment. The screening form is attached at appendix 2 to the report.

## **6. Risk Management**

- 6.1 An updated and legally sound grievance procedure will reduce the risk of Employment Tribunal claims, and increase employee morale and motivation.

## **7. Financial and legal implications**

- 7.1 There are no direct financial implications. However the maximum compensatory award payable for unfair dismissal cases at Employment Tribunal is £68,400. There is no statutory cap on compensation payable under the Equalities Act 2010.
- 7.2 The leading statutory authority lies with:

Employment Rights Act 1996  
Employment Relations Act 1999  
Employment Act 2002  
Employment Act 2002 (Dispute Resolution) Regulations 2004 SI 2004/752  
ACAS Code of Practice on Disciplinary and Grievance Procedures

## **8. Recommendations**

- 8.1 That the Employment Matters Committee agrees to the implementation of the revised Grievance Procedure for schools based staff, as set out in appendix 1 to the report.

### **Lead officer contact**

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## **Background papers**

XPERTHR

ACAS Code of Practice on Disciplinary and Grievance Procedures

[www.acas.org.uk](http://www.acas.org.uk)

# Medway Council



## Grievance Procedure

( SCHOOL )

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# **GRIEVANCE PROCEDURE**

## **INTRODUCTION**

The Grievance Procedure provides a support mechanism for employees to raise concerns related to their employment. It aims to maintain good working relations between managers and employees and to resolve individual grievances as quickly and as close to the point of origin as possible in an equitable way which does not hinder the provision of effective and efficient service delivery.

It is essential that both managers and employees approach the process as an objective method of resolving differences and avoiding conflict rather than as a concept of “winning and losing.” Effective communication is therefore key to the success of the process.

## **SCOPE**

This policy is designed to ensure that employee’s complaints arising out of their employment can be resolved in a fast, fair and consistent manner. The policy applies to all members of teaching and support staff, regardless of grade or position, hours worked per week or whether the contract is permanent, temporary or fixed-term.

Where a complaint of discrimination, harassment, victimisation or bullying is alleged then the Dignity at work procedure should be invoked. This could lead to Disciplinary action being taken.

The procedure does not cover the following cases:

- Issues outside the control of the employer
- Employees appealing against a dismissal/disciplinary decision
- Redundancy
- Capability
- Grievances relating to alleged acts of harassment/discrimination are dealt with in accordance with the Dignity at Work Procedure
- Retirement on ill-health grounds
- Rules governing the pension scheme
- Job Evaluation grading or appeals against salary grading
- Collective disputes between Trade Unions and the school
- Raising a concern as a ‘protected disclosure.’

The procedure has been designed to enable employees to exercise their right to raise grievances relative to their employment and have them heard and settled. It is recognised that managers may handle complaints, requests and queries from staff on an informal basis every day, but in some cases, formal procedures may be necessary. The procedure provides a consistent method of dealing with complaints and allows issues to be addressed within the principles of natural justice.

Where the grievance is against the headteacher, the Chair of Governors will be responsible for the operation of these procedures and should consult with the school's Human Resources Adviser.

Where it can be established that an employee complaint is either deliberately false or malicious, the employee will be subject to disciplinary action.

Collective grievances will be dealt with under this procedure. The form attached at Appendix A must be completed and signed by all those who are party to the collective grievance.

## **GENERAL PRINCIPLES**

- Grievances will be treated seriously and resolved as fairly, equitably and quickly as possible.
- Grievances will be dealt with in a fair and consistent manner.
- Every effort will be made to deal with matters informally before recourse to the formal procedure.
- All parties involved need to respect confidentiality at all times. Information must not be shared with anyone except those directly involved.
- Copies of records should be made available to the employee if requested, including copies of any formal minutes.
- The employee has the right to be accompanied by a relevant Trade Union representative or workplace colleague of their choice but by no one else at all formal stages of the procedure.
- An employee involved in a grievance is likely to find the situation stressful. They should be made aware of the confidential counselling service available as follows: Care First Tel: 0800 174319 or [www.care-first.co.uk](http://www.care-first.co.uk).
- If a collective grievance arises through a group of employees relating to the same issue, they must nominate a spokesperson to act on their behalf; the grievance then becomes an issue, which follows the procedure outlined in this document.
- If an employee raises a grievance in writing that relates to action being taken in accordance with the disciplinary or capability procedure at any stage before the final appeal stage of the disciplinary/capability procedure, he/she will be treated as having complied with the grievance procedure. The grievance will be dealt with as part of the disciplinary/capability process. A future meeting will consider both a disciplinary/capability issue and a grievance.



- Throughout the procedure, managers will demonstrate their commitment to equal opportunities and carry out fair investigations and hearings taking account of the school's equal opportunities policy.
- No employee will be made to feel disadvantaged in any way because they have raised or pursued a grievance in good faith.
- Every effort will be made to operate within the prescribed time limits; although time limits may be altered by mutual consent.
- Employees raising grievances, which are frivolous, vexatious or malicious, will be subject to disciplinary action.
- Every attempt will be made to maintain the status quo until the final outcome of any grievance is settled.
- Reference in the procedure to a manager will be taken to mean the person responsible for the employee in that Department (i.e. the line manager). However, if the grievance is specifically related to or directed at any manager, another equivalent level manager can be nominated to act in their place.
- Grievance complaints should normally be made within 3 months of the decision or act about which the employee wishes to complain. If an employee wishes to complain outside of this period, they will need to show that:
  - within this timescale, they have made reasonable attempts outside of the grievance procedure to resolve the matter informally; or
  - they could not be reasonably expected to have known about the decision or act and have raised a complaint within 3 months of first becoming aware of it.
- An employee or who cannot attend a meeting because of illness or other unforeseen circumstances should notify the headteacher at the earliest opportunity and give full reasons. The meeting will be re-arranged but if the employee or representative fails to attend a second time then the meeting may proceed in their absence if having been informed of the reasons for non-attendance the headteacher is satisfied it would be reasonable to proceed. The reasons for non-attendance and for proceeding will be recorded.

## **MEDIATION**

An independent third party or mediator can sometimes help resolve disciplinary or 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. Mediation should be concluded within a reasonable timescale.

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 a line manager and their staff
- 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.

### **Cases unsuitable for mediation**

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, for example where there is possible criminal activity
- 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.

## **THE PROCEDURE**

### **STAGE 1 - INFORMAL MEETING**

If an employee has grievance they should raise it informally (either orally or in writing) with:

- their headteacher (if they are a teacher) or their line manager (if they are a non-teaching employee), or
- the alleged perpetrator, that is the person who is upsetting the employee, making them feel aggrieved.

Where a Headteacher has a grievance with either a colleague or the governors he/she should attempt to resolve the matter by a direct approach to the colleague or the Chair of Governors.

If the employee has a grievance against their headteacher, he/she should attempt to resolve the matter by a direct approach to the headteacher.

If the grievance is not resolved by a direct approach, or if a direct approach is not practicable, then the Headteacher should seek the help of their Human Resources Adviser.

It is important that the employee advise their manager by email or letter that they have a grievance, which they are attempting to resolve informally.

The employee may ask (in writing) that an informal meeting takes place with their manager to discuss the nature of the grievance and the steps they have taken or are taking to seek to resolve the grievance. Their manager may request the school's Human Resources Adviser to be present at this meeting.

If the employee is successful in resolving the grievance they should let their manager know by email or letter.

If the grievance cannot be resolved informally or if it is more serious, the employee can request that it is considered under "stage 2". In this event, the employee should use the Employee Grievance Form (Appendix A) to state their grievance and the remedy they are seeking. The employee may seek assistance from their trade union representative to do this. If the employee wishes to submit written evidence in support of their grievance it should be included with the form.

The completed Grievance Form should be sent to their manager. If the grievance relates to their manager it should be sent to their headteacher. If the grievance is against their headteacher then it should be submitted to the Chair of Governors. The Headteacher should send the completed grievance form to the Chair of Governors, who is their "manager."

## **STAGE 2 (FORMAL)**

The headteacher or manager will invite the employee to a meeting to enable them to explain their case and to consider how to deal with the grievance taking account of:-

- What has the employee done so far to resolve the issue?
- Has the employee clearly identified a reasonable remedy on the completed Employee Grievance Form? If not they will be asked to do so.
- Does the grievance require any immediate action to be taken?

The employee can be supported by their trade union representative or a work place colleague at this meeting.

The aim of the meeting is to find a way forward. Success is far more likely if a

potential solution can be identified and agreed. The Headteacher or manager will consider the options set out below, and will inform the employee of the way they intend to resolve the matter:

#### Options for the Headteacher or Manager

- take any appropriate immediate action to resolve the grievance;
- speak to the subject (perpetrator) of the grievance and/or other parties involved on the employees behalf;
- decide (with the employee's agreement) that both sides should meet further to discuss the issue;
- call in a third person (for example an HR Adviser or a mediator) to help resolve the problem. Before this starts a commitment to accept mediation will be required from everyone involved, otherwise it will not work. If mediation does not resolve the grievance, the grievance procedure will resume to find an alternative resolution.
- advise the employee, and any third parties, that a formal investigation will be required. This action will be taken when the manager considers, that by the nature of the allegations, some formal action may be necessary against the perpetrator, the employee and/or a third party. If an investigation is necessary, the manager will arrange for it to take place. The manager will advise the employee in writing of the arrangements for the investigation, which should commence within 15 working days of receiving the grievance.

Once the headteacher or manager has taken the appropriate action and made their decision on the grievance, they will confirm the outcome to the employee in writing, ideally within 28 days of receiving the grievance, setting out

- Whether the grievance has been upheld, either fully or in part;
- what action they have decided to take to resolve the grievance;
- appeal rights under this procedure.

The subject of the grievance will also be notified of the decision and any follow up action which may be required.

Although the projected timescale for resolution is within 28 days of the grievance being received by the manager, grievances frequently take much longer to resolve, owing to problems of obtaining evidence, scheduling the availability of all involved and conflicting priorities. Where the grievance is complex and/or where a formal investigation is commissioned, it may take longer to reach a conclusion.

### **STAGE 3 (APPEAL)**

If an employee wishes to appeal against the decision which has been made they must do so in writing, setting out the grounds of their appeal, within 5 working days of receiving the written confirmation of the decision. This must be done in writing to the Chair of Governors. An appeal hearing will take place normally within 15 working days of the written appeal being received by the Chair of Governors.

The appeal will be heard by a panel of Governors who have not been directly involved in the matters connected with the grievance to date. The panel will elect a chair. A representative of Human Resources will be present to advise the panel. The School should provide a confidential note taker.

The purpose of the appeal will be to:

- review the reasonableness of the original decision and, if necessary, determine an alternative outcome (if the original decision is unreasonable and/or if it would resolve the grievance).
- consider whether the procedure has been followed correctly.

The decision of the appeal panel is final and binding on all parties.

### **APPEAL HEARING PROCEDURE**

- The appellant or their representative\*, will state the grounds for appeal and call witnesses they feel will support their position. A different grievance or grievances cannot be raised at this stage. If any new evidence relating to the original grievance is raised at the appeal, which is considered by the panel to be material to the outcome, the panel may determine to continue with the hearing or to suspend the hearing to enable these matters to be considered by both parties.
- The appellant or their representative, and their witnesses can then be cross-questioned by the presenting manager or their representative, (the manager who made the original decision) and the appeal panel to obtain further clarification.
- The presenting manager responds and may also call witnesses.
- The presenting manager and any witnesses they may have called are cross-questioned by the appellant or their representative and the appeal panel.
- Both parties sum up evidence - firstly the presenting manager and then the appellant or their representative.
- The appeal panel adjourns to consider the outcome.

\* the appellant may only be represented by a trade union representative or workplace colleague.

Outcomes available to the panel are:

- to uphold the appeal in full and propose an appropriate way forward;
- to uphold the appeal in part and propose an appropriate way forward;
- to reject the appeal and propose an appropriate way forward, if necessary.

The decision and the reasons for coming to the conclusion will be confirmed in writing to the appellant and as appropriate to any other parties named in the grievance within 5 working days of the hearing.

## **SUPPORTING PAPERS**

Either side at the earliest opportunity and at a minimum should share any documents or relevant information or witnesses that would assist in the resolution of the grievance 3 working days before the grievance is heard.

## **POST EMPLOYMENT GRIEVANCES**

A former employee may raise a grievance after their employment at the school has come to an end. The grievance must be raised within 3 months of their last day of employment.

The following steps should take place:

- The former employee must set out the grievance and the basis for it, in writing, and address it to the headteacher.
- The headteacher in receipt of the written grievance must consider the case, set out their response in writing, and send it to the former employee. A copy of the response should be sent to the Head of HR (Schools). This should be completed within 28 days from when the alleged grievance was submitted.

<b>Date last reviewed</b>	<b>February 2011</b>
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**APPENDIX A**

**EMPLOYEE GRIEVANCE FORM**

<i>Your name</i>	
<i>Job title</i>	

***Grievance (please give a full description of your grievance, use this form to help a shared understanding of your grievance and what is needed to put things right)***

**Remedy**

*We encourage you to say what you think needs to happen to resolve your grievance. You may wish to take advice from your trade union representative on what might be an appropriate remedy. Remember, once the grievance is dealt with, the outcome will be at the discretion of the manager or the appeal panel and it may not reflect the remedy you have proposed.*

**Declaration**

*I confirm that the details above are true and that I have read and understood the Grievance Procedure. I also understand that a copy of this form will usually be given to the people I name in it.*

**Signature**

**Date**



<b>Directorate</b>	<b>Name of Function or Policy or Major Service Change</b>		
<b>Business Support Department</b>	<b>Grievance Procedure (school based staff)</b>		
Officer responsible for assessment	Date of assessment	New or existing?	
Ralph Edwards-----Head of Human Resources (Schools)	1 February 2011	Existing	
<b>Defining what is being assessed</b>			
<b>1. Briefly describe the purpose and objectives</b>	To treat all staff fairly and equitably by way of staff having access to a grievance procedure which provides a means for hearing and settling all grievances promptly, fairly and by as simple means as possible.  Establish a fair procedure in accordance with statutory guidelines.		
<b>2. Who is intended to benefit, and in what way?</b>	Employees are intended to benefit as they can raise grievances relative to their employment and have them heard and settled.  Line managers are intended to benefit by being confident in applying the procedure in a consistent manner and in accordance with the principles of natural justice.		
<b>3. What outcomes are wanted?</b>	The procedure is fairly and consistently applied leading to resolution of issues at an early and informal stage resulting in a happy and well motivated school workforce.		
<b>4. What factors/forces could contribute/detract from the outcomes?</b>	Contribute  Comprehensive training for managers  Good staff induction  Managers dealing with matters informally and at an early stage  Monitoring of the staff raising grievances  Consistent application of the procedure	Detract  Managers failing to implement the procedure speedily and consistently  Employees refusing to act upon management guidance  Line management confidence and competence to manage effectively  Appropriate resourcing (management and HR) to implement the procedure  Trades union resistance	
<b>5. Who are the main</b>	Managers and employees		

stakeholders?	
6. Who implements this and who is responsible?	HR services (Schools) and managers implement the procedure. HR Services (Schools) is responsible for the procedure.

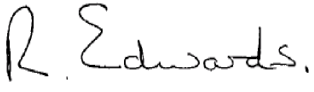
Assessing impact		
7. Are there concerns that there <u>could</u> be a differential impact due to <i>ethnicity/ racial groups</i> ?		Currently we do not report or monitor grievance cases in relation to ethnicity.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds of ethnicity.	
8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i> ?		Currently we do not report or monitor grievance cases in relation to disability.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds of disability.	
9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i> ?		Currently we do not monitor or report grievance cases in relation to gender.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds due to gender.	
10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i> ?		Currently we do not monitor or report grievance in relation to sexual orientation.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds due sexual orientation.	
11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion or belief</i> ?		Currently we do not monitor or report grievance in relation to religion or belief.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds of religion or belief.	
12. Are there concerns there <u>could</u> be a differential impact due to <i>age</i> ?		Currently we do not monitor or report capability in relation to age.
	NO	
What evidence exists for this?	No evidence to support a differential impact on grounds	

		of age.
<b>13. Are there concerns that there <u>could</u> be a differential impact due to <i>being transgendered or transsexual</i>?</b>		Currently we do not monitor or report grievance in relation to being transgendered or transsexual.
	NO	
<b>What evidence exists for this?</b>	No evidence to support a differential impact on grounds due transgendered or transsexual.	
<b>14. Are there any other groups that would find it difficult to access/make use of services, or who might experience unfavourable treatment, as a result of the function/ policy/ service change (eg people with caring responsibilities or dependants, those with an offending past, or people living in rural areas)?</b>		If yes, which group(s)?
	NO	
<b>What evidence exists for this?</b>		
<b>15. Are there concerns there <u>could</u> be a differential impact due to <i>multiple discriminations</i> (eg disability and age)?]</b>		
	NO	
<b>What evidence exists for this?</b>	No evidence exists in order to determine whether there could be a detrimental impact or not.	

<b>Conclusions &amp; recommendation</b>		
<b>16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?</b>	YES	Monitoring of cases could highlight some differential impact.
<b>17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?</b>		The procedure should be applied consistently to all staff in line with the Medway Council Equal Opportunities Policy.
	NO	

<b>Recommendation to proceed to a full impact assessment?</b>		
NO	This function/ policy/ service change complies with the requirements of the legislation and there is evidence to show this is the case.	
	What is required to ensure this complies with the requirements of the legislation?	

	<b>Give details of key person responsible and target date for carrying out full impact assessment</b> (see DIA Guidance Notes)	
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<b>Planning ahead: Reminders for the next review</b>		
<b>Date of next review</b>	3 years time.	
<b>Areas to check at next review (eg new census information, new legislation due)</b>	Check whether any particular groups have experienced: i. difficulties in accessing or making use of the function/policy/service; ii. the application of the function/policy/service has been fair and consistent across the council.	
<b>Is there <i>another group</i> (eg new communities) that is relevant and ought to be considered next time?</b>	Check that the function/policy/service continues to be accessible and fairly applied to members of the Council's workforce, including any additional demographic groups, including any additional demographic groups.	
<b>Signed (completing officer/service manager)</b> 	<b>Date</b>	10 February 2011
<b>Signed (service manager/Assistant Director)</b>	<b>Date</b>	

<b>Related documents</b>
List here