

The NHS Confederation

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Grievance Policy and Procedure

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1.0 Purpose

The NHS Confederation recognises that employees should be treated fairly, and the grievance policy aims to provide a fair and consistent procedure which can be used to raise a grievance or complaint in connection with your employment.

It recognises that difficulties may arise during the employment relationship and the grievance policy and procedure is there to ensure that these challenges are dealt with fairly and consistently. The procedure supports both the employee and NHS Confederation.

2.0 Scope

This guide applies to employees of the NHS Confederation irrespective of status, grade or contracted hours. It does not apply to non-employees (for example agency workers, self-employed contractors or volunteers and trustees.)

By the NHS Confederation we mean the NHS Confederation charity, any subsidiary companies, and any hosted networked organisation.

The NHS Confederation has designated the Director of People and Governance as the individual who is responsible for ensuring that the NHS Confederation implements this guide.

The Grievance Policy and Procedure does not form part of any employee's contract of employment, and it may be amended from time to time.

The aims of this policy are that:

- Managers are aware of the procedure to be used to deal with work related complaints and that they do this effectively
- Employees are aware how to formally raise a work-related complaint and that they trust that they will be dealt with appropriately
- Managers and employees aim to resolve work related complaints informally where at all possible

3.0 General principles

The Grievance Policy and Procedure is written in accordance with employment legislation, the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice, Equality Act 2010 and the NHS Confederation's Values (Respectful, Inclusion, Bold, Integrity, Collaborative).

A grievance is a concern, problem or complaint raised by an employee that relates to their employment. Issues that may cause a grievance include, but are not restricted to:

- Terms and conditions of employment
- Health and Safety concerns
- Work relations
- Bullying and harassment (please refer to Dignity at Work Policy)
- New working practices

- Working environment
- Organisational change
- Discrimination

The intention of this policy is to resolve grievances objectively, sensitively, consistently and fairly. This takes into account that employment issues are not always clear cut and managers will make decisions based on the balance of probability and weighing up the evidence as to whether it is more likely than not that the complaint has been substantiated.

NHS Confederation will assume that all grievances raised by employees are done in good faith. If we believe that a complaint is frivolous, malicious or vexatious, the employee raising the grievance may be subject to disciplinary action.

Everyone involved in this process is entitled to be treated fairly and with respect. Abusive or insulting behaviour will not be tolerated at any time during the grievance procedure and if we believe that any behaviour may be considered as misconduct, we will deal with it under the disciplinary procedure.

There may be times when mediation or a facilitated meeting between two or more parties involved in the grievance could be constructive in resolving the issues.

Feedback from grievances may be used to promote learning and continuous improvement in accordance with NHS Confederation Values.

4.0 Informal procedure

Employees are encouraged to discuss day to day issues informally with their direct manager so that concerns, grievances or complaints can be heard and responded to as soon as possible.

Reasonable attempts should be made to resolve complaints informally and only progress to the formal stage when the informal stage has failed to resolve the issue or could not be used.

Where the grievance is against an employee's direct manager and if they feel unable to approach them, the complaint should be raised with their manager's manager or HR.

If an employee feels that their grievance has not been sufficiently resolved through the informal approach, they may raise the grievance formally.

5.0 Formal procedure –raising a grievance

Employees should raise a formal grievance in writing to their direct manager as soon as possible after the incident to which the grievance relates and after completing the informal approach.

If the grievance is about their direct manager, they should address the grievance to their manager's manager. If their manager's manager is implicated in the grievance, the grievance letter should be addressed to HR.

The written grievance should provide as much factual evidence as possible to set out the nature of the complaint so that it can be investigated fully, accurately and promptly.

The letter/email should:

- describe the nature of the complaint (including any relevant facts, dates and names of individuals)
- state the desired outcome (what you would like to happen)
- include copies of any relevant documents or supporting evidence

The employee's manager (or manager's manager if appropriate) will acknowledge receipt of the formal grievance, and invite the employee to a meeting, usually within 5 working days, to discuss the complaint.

At this meeting the manager will confirm whether a formal investigation into the complaint is required and the likely timescales. They will also advise if a separate investigating manager will be appointed.

If the grievance relates to the behaviour of another employee, the investigation will involve interviewing other employees who have seen/heard the incident, as well as the individual against whom the employee has made the complaint.

5.1 Investigation

Depending on the nature of the grievance, an investigation may be needed to further establish the facts and speak to witnesses. The aim is to complete the investigation as quickly as possible to avoid any undue stress, balancing this with the need for a thorough and fair process.

When the investigation is complete a report will be produced. This report will document how the investigation was carried out and what the findings were and will be given to the grievance manager for them to review prior to the grievance hearing.

If a separate investigating manager is not required, the manager conducting the grievance will complete this report.

5.2 Grievance hearing

The manager will write to the employee who raised the grievance via email/letter inviting them to a grievance meeting, usually within 5 working days of the grievance letter or on completion of the separate investigation where required. The employee will be advised of any delays to the meeting date and the reasons why.

The grievance meeting invitation letter will confirm who will be conducting the meeting and that a member of HR will be present to take notes and advise on procedure.

The letter will advise that the employee has the right to be accompanied at the meeting by a TU representative or a colleague. This person can either attend as the employee's

witness and take notes on their behalf or they can act as a representative and help put forward the employee's case. They cannot answer questions on your behalf that are addressed to the employee.

Audio/electronic recordings of the meetings are not allowed by any party. A member of HR will take written notes of the meeting, a copy of which will be given to the employee.

The manager will adjourn the meeting before coming to a decision on the outcome of the grievance. If they need more information before making a decision they will inform the employee of this and the likely timescale.

Once a decision has been reached the manager hearing the grievance will meet with the employee and their representative to confirm the outcome of the grievance before sending the outcome letter. The purpose of this meeting is to reiterate the grievance process, confirm that the investigation is complete and deliver the decision in person.

The manager hearing the grievance will confirm his decision in writing via email/letter advising of the following:

- whether the grievance has been upheld in full, partially upheld or overturned
- if there is any further action to be taken i.e. mediation
- how to appeal against the decision (if appropriate), the timescale and to whom to address this

The grievance manager will also inform any employee being complained about in writing of the findings in relation to the allegations about them. If the outcome of the grievance is that further action (i.e. disciplinary) is to be considered, the detail of this will not be discussed with the employee who raised the complaint.

5.3 Possible grievance outcomes

A grievance may be:

- upheld
- partially upheld
- overturned

Each outcome will lead to a difference action depending on the nature of the grievance. It may acknowledge the concerns of the employee who raised the complaint and/or propose an agreed action plan to address them which could include mediation or conciliation if appropriate.

6.0 Appeal

If the employee is not happy with the outcome they can raise an appeal in writing within 5 working days of receiving the decision.

An appeal is not designed to re-hear the case but to examine the grounds on which the appeal has been made. A re-hearing is only necessary if the organisation believes there has been a fundamental flaw in the original grievance investigation. The usual

course of action will be a review/paper-based appeal.

Appeals can be raised on one of the following grounds:

- Procedure – failure to follow procedure which had a material effect on the outcome
- Decision – the evidence did not support the conclusion reached
- Any proposed action – was inappropriate given the circumstances of the complaint
- New evidence – which has genuinely come to light since the first hearing

The organisation will select another impartial manager of the same grade or higher to hear the appeal.

The employee will be invited to an appeal meeting, normally within 5 working days and they have the right to be accompanied by a TU representative or a colleague.

After the meeting the appeal manager will communicate the decision to the employee and then follow this up in writing, usually within 2 working days. This decision is final and there is no further appeal.

7.0 Hybrid working

The organisation values and supports hybrid working for employees as a way of maximising flexibility and work life balance. However if a manager believes that an employee would benefit more from being in an office environment with closer supervision and support, they are able to propose this as a temporary alteration to the working pattern.

As a high proportion of employees are working on an agile/hybrid arrangement, grievance and investigation meetings may be conducted via Teams.

8.0 Timescales

The timescales outlined in this procedure are those which the organisation aims to adhere to under normal circumstances. There are occasions when, for genuine reasons, the timescales cannot be adhered to and these should be explained to all involved in the matter.

If additional time is required to investigate, consult and seek solutions timelines may be extended by mutual agreement between the manager hearing the grievance, the employee and their representative.

Where there is a concern about the timescale this should be raised with HR who address and advise on the issue.

Appendix 1: Grievance procedure summary

Stage	Action
Stage 1 - Informal	<p>Employee has a concern which they raise informally with their direct manager</p> <p>Employee and manager meet no later than 5 working days with the aim of resolving the issue informally</p> <p>If issue is fully resolved, no further action</p> <p>Manager encouraged to keep summary of concerns raised and shares this with the employee</p>
Stage 2 - Formal Meetings and Investigation	<p>If no resolution is reached, employee writes formal grievance letter and emails to direct manager (If complaint is against direct manager, the letter is emailed to manager's manager or HR)</p> <p>Letter states nature of complaint, relevant facts and desired outcome</p> <p>Manager/HR acknowledges letter and meets with employee to understand the complaint, confirm likely timescale of any investigation and date of formal grievance meeting</p> <p>Investigation report (where applicable) produced</p> <p>Grievance meeting convened within 5 working days of receipt of the letter</p> <p>Employee has right to be accompanied to grievance meeting by TU rep or colleague</p> <p>Formal notes taken by HR and copy provided to employee</p> <p>Grievance outcome decision communicated to employee within 2 working days of the date of the grievance meeting (verbally and then in writing)</p> <p>Employee has the right of appeal</p> <p>If issue is fully resolved, no further action</p>
Stage 3 – Formal Appeal	<p>Employee writes formal appeal letter stating grounds of appeal and emails to HR within 5 working days of receipt of grievance outcome letter</p> <p>HR appoints independent manager at the same or more senior grade to examine the grounds of appeal</p> <p>HR acknowledges letter and confirms likely timescale of appeal hearing and the manager conducting it</p> <p>Manager decides whether to review the evidence presented in the original grievance meeting or conduct a full re hearing</p> <p>Appeal (or full re hearing) will take place within 5 working days of receipt of appeal letter</p> <p>Employee has right to be accompanied to grievance appeal hearing (where held) by TU rep or colleague</p> <p>Formal notes taken by HR and copy provided to employee</p> <p>Grievance appeal outcome decision communicated to employee by appeal manager (verbally and then in writing) within 2 working days of the decision being made</p>
	End of process

Appendix 2: Informal ways of resolving grievances

- Arranging a conversation between two employees or an employee and their manager
- A facilitated or mediated conversation with someone else enabling the conversation and seeking a resolution
- Direct manager feedback and conversations with the individuals involved
- Organisational feedback i.e. involvement in focus groups
- Using employee forum representatives to ensure views are recorded and fed back regarding changes or concerns
- Counselling or support on an individual or team basis
- Team development activities
- Training or coaching

Appendix 3: Overlap of disciplinary and grievance procedures

Where an employee is the subject of a disciplinary procedure and they raise a grievance, the manager will decide on the most appropriate action for dealing with this. Whilst it is usual to pause the disciplinary procedure until the grievance has been fully dealt with, we reserve the right to run both the disciplinary and grievance procedures concurrently. Each case will be considered based on its own merits.

In exceptional cases where a grievance complaint is made during a disciplinary or capability process which has direct impact on how that disciplinary/capability process is conducted, that process may be delayed whilst the grievance is considered. The Director of People and Governance will take this decision

Appendix 4: Sickness absence during the formal grievance process

If an employee is absent due to sickness and it is believed to be directly linked to the grievance process, we may seek professional medical advice on whether they are well enough to participate in the process. Where appropriate, a grievance meeting may be held away from the office or virtually via Teams.

In the event of long or repeated absences, we retain the right to continue the grievance process in the employee's absence.

Appendix 5: Timescales

The aim is to deliver an outcome within a reasonable timeframe; however delays may occur because of a high volume of witnesses to interview, a witness being unavailable due to sickness or absence or difficulty assigning an appropriate grievance manager

Appendix 6: Supporting employees during the grievance process

Appropriate adjustments can be provided to help the employee during the grievance process if they have a disability or where English is a second language. The employee should speak to HR for further details

The employee has the right to be accompanied in grievance meetings by their TU representative or a colleague. (The organisation will try and accommodate the availability of the representative/colleague, but the employee may be asked to choose an alternative if this is causing undue delay to the process).

The organisation will consider the health and welfare of everyone involved in a grievance process at all stages. Where requested or needed this will include access to an occupational health assessment

Appendix 7: Allegations of bullying and/or harassment

Any allegations of bullying and/or harassment within a grievance will be investigated

The grievance (or investigating) manager in conjunction with HR will decide whether it is acceptable for individuals to continue to work together whilst the matter is being investigated. Consideration should be given where individuals can continue to work remotely from home locations without affecting the outcome of the investigation or health and safety of either party

If the grievance (or investigating) manager considers there is a disciplinary case to answer, the grievance investigation report may be used as evidence to avoid duplication

Appendix 8: Employees who are the subject of a grievance

Any employee who is the subject of a grievance will be formally advised by their manager or HR (as appropriate) that a complaint has been made against them, including details of the allegations made. The employee will be given the opportunity to respond to the complaint by either the grievance manager or the investigating manager.

Appendix 9: Being a witness for a grievance investigation

Witnesses are an important and integral part of a fair and thorough investigation. A witness is not being asked to take sides, but to state what they know, heard or observed.

When an employee is asked to be a witness for a grievance investigation it is because the organisation believes that they have possible relevant information to provide. The investigation manager will explain the process and how the information provided will be used.

In order to maintain confidentiality a witness is not entitled to know the allegations being investigated. The investigating manager will provide as little detail and background information as necessary in order to obtain answers from the witness to the questions asked.

NHS Confederation will always support and protect any employee who is asked to be a witness should they have concerns, these can be discussed with the investigating manager or HR.

Appendix 10: Mediation

This can be a constructive way of resolving disputes and difficult situations, which is why it may be recommended as part of the grievance outcome.

For it to work successfully it requires agreement from both parties prior to starting the mediation process. It will usually be carried out by a trained independent mediator holding discussions with the individuals with the aim of bringing both parties together to talk the matter through.

Mediation is most appropriate when both parties are genuinely willing to communicate and agree a course of action, are focused on the future and prepared to seek a constructive solution.

If mediation is not successful, the employee who raised the complaint has the right to revert back to the grievance procedure.

Appendix 11: Malicious grievances

A grievance is judged to be malicious if it is done with the intention of wasting the organisation's time or stalling impending disciplinary action.

The grievance can be dealt with in the usual manner with the employee being advised that it is believed to be malicious and as such may be subject to disciplinary action

NHS Confederation reserves the right not to pursue grievances that are judged to be frivolous, vexatious or that repeat complaints that have already been considered

Appendix 12 - Raising a grievance after employment with NHS Confederation has ended

There is no legal requirement to follow a grievance procedure for an individual who is no longer employed by the organisation